Interstate Extradition and Jim Crow Violence

The Case of Thomas Mattox

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TABLE OF CONTENTS

I. Introduction

II. The Mattox Family

III. Confrontation on the Road

IV. Violence Against the Mattox Family

V. A Fugitive

VI. A Pattern of Extradition Cases

- A. Slave Rendition Cases
- B. Modern Extradition Cases

VII. The Extradition Case of Thomas Mattox

- A. Creative Lawyering and a Collegial Court
- B. Judge Fenerty's Opinion
- C. The Apellate Decision

VII. Legal Impact of the Mattox Case

VIII. A Future for Thomas Mattox

I. Introduction

> *I was sitting in the back seat. They pulled me out and commenced beating me up over the head – got me on the grass side and kicked me here. One jumped on me. I couldn't hold him off. Then after beating me and blooding me, they carried me – went with me into some woods and beat me some more – the four beat me… They beat me to tell where Thomas was… I told them I didn't know where Thomas was. They said I was a liar – they said I know. They beat me with a black jack and a wide strap… The four whipped me; one beat me until he couldn't beat any more, then another. My teeth – everyone is loose. After I didn't tell them where Thomas was they got a chain out and put it around my neck. They told me there was a quarry on the way there and they would throw me in the water if I didn't tell them where Thomas was.*[1]

This is a story about courage: the courage of a 16 year old boy protecting his sisters from violence and standing up to Jim Crow inequality, It is about the courage of the mother who first sent her teenage son alone on a train heading north in hopes that he could escape a lynch mob, and then withstood brutal beatings to protect her children. And the courage of the two sisters who kept the whereabouts of their younger brother a secret at the expense of their own freedom. It is also the story of the courage of the lawyer who pushed the law's boundaries to reveal the rigidity of racial rules, and the judge who refused to accept that precedent required him to extradite a teenager into the hands of a lynch mob. Without the personal, professional and judicial courage of these individuals, the name of Thomas Mattox would likely have been added to a long list of race-based killings in the South in the 1940s.

The Mattox case, which came before the Pennsylvania courts in 1942, had the potential to enhance protections for blacks fleeing racial violence in the South. The case provided an opportunity for Northern exposure to the realities of the Jim Crow South. Yet, although this case

[1] Testimony of Sallie Mattox, 13-14, Trial Hearing Oct. 14, 1942.

was acknowledged in a report by United States Supreme Court Justice Douglas as "the enlightened view,"[2] these astonishing acts of courage were soon forgotten.

II. The Mattox Family

In the early 1940's, Georgia's lynching record was the second highest after the state of Mississippi.[3] Lynchers in rural Elbert County, which borders South Carolina and the Savannah River, were well known for keeping the County clear of lynching statistics by "carry[ing] their victims over the county line, so that the wrong county [received] credit for the lynching."[4] It was in Elbert County that Thomas Mattox was born on September 21, 1924,[5] as the tenth out of eleven children[6] in a sharecropper family.[7] Like many of his older siblings, he received an elementary school education.[8] However, his life changed after his father passed away in December 1941, when Thomas was just sixteen years old.[9] To provide for her young children, his mother, Sallie, moved the family to a new plantation, the County Farm, which was owned by Frank Ween[10] in the town of Bowman. There the fate of the Mattox family took a chilling turn.

III. Confrontation on the Road

Seven months after his father's death, around 7:00 pm on the hot humid summer evening of Saturday, July 11, 1942, young Thomas drove his family's Ford 1935 automobile[11] with his two sisters, nineteen year old Emmie and twenty-two year old Gussie, from their home in Bowman to

[2] *Sweeney v. Woodall*, 344 U.S. 86, 93 (1952).
[3] NLG Amicus Brief, 6.
[4] NLG Amicus Brief, 10.
[5] Thomas W. Mattox, U.S. Social Security Death Index, 1935-2014.
[6] Mattox Family Tree, www.ancenstry.com.
[7] Affidavit of Thomas Mattox, 1.
[8] 1940 Census.
[9] Testimony of Sallie Mattox, Trial Hearing Oct. 14, 1942.
[10] Testimony of Sallie Mattox, Trial Hearing Oct. 14, 1942; Testimony of Mark Cleveland Trial Hearing Oct. 14, 1942, 27.
[11] Affidavit of Thomas Mattox, 1.

go to a show in Elberton, approximately twelve miles away.[12] On the highway, Thomas passed a white motorist, nineteen year old Wilbur Cornell,[13] who also lived in Bowman.[14] Cornell, enraged that he was passed by a black driver, overtook the Mattox's car, stopped and blocked the road. He exited his car, stormed toward the Mattox's car and yelled "What do you mean by passing me, N…r?"[15]

As tensions rose, Gussie stepped out of her car and asked Cornell to allow them to continue down the road.[16] Instead, Cornell smacked her to the ground.[17] He then retrieved his automobile jack from his car and hit her arm with it.[18] Emmie rushed to help her sister but Cornell attacked her with the jack, hitting her across her eye, head and arm.[19] Thomas, who was five feet six inches tall and weighed 130 pounds, exited his car and asked Cornell to leave his sisters alone.[20] Instead, Cornell beat him with the jack, hitting him across the head and opening a large wound in his scalp.[21] At that point, to defend himself and his sisters, Thomas reached into his pocket and cut Cornell with his pocket knife.[22] Cornell ran to his car, yelling to Thomas and his sisters that the mob would come for them, and fled the scene.[23] He later received stitches at the hospital and was immediately released.[24]

[12] Affidavit of Thomas Mattox; Testimony of John Mattox,19.
[13] Affidavit of Thomas Mattox, 1-2.
[14] Georgia, Local newspaper, July 14, 1942.
[15] Affidavit of Thomas Mattox, 2.
[16] Testimony of Gussie Mattox, 8; Affidavit of Thomas Mattox, 2.
[17] Id..
[18] Id.
[19] Testimony of Gussie Mattox, 8-9.
[20] Testimony of Gussie Mattox, 9; Testimony of Emmie Mattox, 3; Affidavit of Thomas Mattox, 2.
[21] Affidavit of Thomas Mattox, 2.
[22] Testimony of Gussie Mattox, 9; Testimony of Emmie Mattox, 3; Affidavit of Thomas Mattox, 2.
[23] Affidavit of Thomas Mattox, 2.
[24] Id., 3.

Thomas was afraid.[25] He "knew from experience as a Negro boy in the rural sections of Georgia that there was absolutely no hope for [his] life if [he] remained there in face of what a mob would do to [him]."[26] Fearing mob violence, Thomas' family told him to flee to Philadelphia where his brother Lester lived.[27] His mother gave him money for the trip. The money had been left for the family by Thomas' father when he died.[28] Thomas boarded a train that night, leaving behind his family who prayed he would be safe.[29]

IV. Violence Against the Mattox Family

After leaving the scene of the altercation with Thomas Mattox, Wilbur Cornell alerted the authorities. They charged the three Mattox teenagers who were in the car with him with felonious assault with intent to murder.[30] Later that same night, an Elbert county deputy sheriff, Mark Cleveland, arrested Gussie and Emmie[31] and locked them up under the care of the county jailor, Wilbur Dye.[32] Determined to locate Thomas, Cleveland and Dye essentially held the Mattox sisters hostage in the Elbert County jail, refusing to release them even after the charges against them could not be substantiated.[33]

On Monday morning, July 13th, as Thomas' mother and siblings were trying to figure out how to get the two girls out of jail, Cleveland and Dye arrived at the Mattox home.[34] They

[25] Affidavit of Thomas Mattox, 2.
[26] Affidavit of Thomas Mattox, 2-3.
[27] Testimony of Sallie Mattox, 14; Affidavit of Thomas Mattox, 3.
[28] Testimony of Sallie Mattox, 14.
[29] Id.
[30] Testimony of Mark Cleveland, 29.
[31] Testimony of Emmie Mattox, 5.
[32] Affidavit of Thomas Mattox, 5.
[33] Affidavit of Thomas Mattox, 5; "Ga. Youth's Extradition Still Sought: Brother Escapes to Tell of Horrors as New Hearing Nears," *The Baltimore Afro-American*, Sep. 12, 1942; David A. Canton, Raymond Pace Alexander: A New Negro Lawyer Fights For Civil Rights in Philadelphia, 77.
[34] Testimony of John Mattox, 19-20.

interrogated Thomas' older brother John,[35] who was at home at the time of the incident and was not involved in the altercation on the highway.[36] They asked him to come outside and sit in their car, where they questioned him about Thomas' whereabouts.[37] Cleveland asked, "Where did you take Thomas?"[38] John told them he did not take Thomas anywhere.[39] Not believing him, they said they would lock John up.[40] Dye then told John, "If you don't tell us where you took Thomas we are going to turn you over to the Bowman mob crowd."[41] Refusing to believe that John knew nothing about Thomas' whereabouts, they arrested him and put him in the county jail alongside his two sisters.[42]

In the jailhouse, Deputy Cleveland and Jailor Dye continued to grill John, threatening him that, "[y]ou had better tell, God damn your soul; if you can't tell us there is nothing left to do."[43] Cleveland had a three foot long strap and threatened to beat John with it if he did not reveal where Thomas was.[44] Still without answers that afternoon, they unlocked the jail and allowed eight men to enter.[45] "John, come out; the Bowman crowd wants you," Cleveland said.[46] "You won't tell where Thomas was, I will turn you over to them," said Dye, the jailor. John asked them to return him home but Dye replied, "No, I can turn you loose anywhere I want in Georgia" and threatened to release him to the Bowman crowd.[47] Finally, Cleveland kicked John in the

[35] Testimony of John Mattox, 19-20.
[36] Testimony of John Mattox, 18-19.
[37] Testimony of John Mattox, 20.
[38] Id.
[39] Id.
[40] Id.
[41] Id.
[42] Id.
[43] Id.
[44] Id.
[45] Testimony of John Mattox, 20; "Ga. Youth's Extradition Still Sought: Brother Escapes to Tell of Horrors as New Hearing Nears," *The Baltimore Afro-American*, Sep. 12, 1942.
[46] Testimony of John Mattox, 21.
[47] Id.

back and shoved him out of the jail into the crowd.[48] The group struggled to force John into a car and "get him off."[49] His sisters, who saw what was happening, screamed and cried, "The mob got John!"[50] "The whole town – they were hollering so loud – trying to get them not to kill [John]."[51] In response to the hue and cry, Cleveland and Dye put John back in the jail and told the mob that they would not let him out that night.[52] Cleveland and Dye warned John that "If the Bowman crowd gets Thomas they will kill him…and if not they would put [John] in Thomas' place."[53]

Earlier that day, after John was hauled off to jail, Thomas's mother, Sallie Mattox, headed down to Elberton to try to bail her children out.[54] When she arrived at the jailhouse, Deputy Cleveland told her, "If you know where the boy is let me get him; no one will know but myself; but if the crowd get at him I will not be able to save him."[55] When she said she did not know where Thomas was, Cleveland "grabbed [her] by the arm, gave [her] a smack, jerked [her] shoulder, and Mr. Dye threw [her] in the street. White men came up behind [her] and kicked [her] three times."[56]

Sallie Mattox tried desperately to find someone who would help her. She "ran all over town begging someone for help. [She] begged them to help [her] boy and not turn him over to the mob crowd."[57] Instead, the citizens of Elberton threatened that her children would be killed. A local businessman warned her, "Let the girls stay in jail where they ought to be; and if their feet ever

[48] Testimony of John Mattox, 21.
[49] Testimony of John Mattox, 21; "Ga. Youth's Extradition Still Sought: Brother Escapes to Tell of Horrors as New Hearing Nears," *The Baltimore Afro-American*, Sep. 12, 1942.
[50] Testimony of John Mattox, 22.
[51] Id..
[52] Id.
[53] Testimony of John Mattox, 23.
[54] Testimony of Sallie Mattox, 12.
[55] Testimony of Sallie Mattox, 16.
[56] Testimony of Sallie Mattox, 12.
[57] Id.

hit the ground it had better be hitting it leaving here – leaving Georgia, because somebody is going to kill those girls."[58] He further threatened that "If the boy was his boy he would put his pistol in his damn back and kill him if he ever hit the ground."[59] Others in Elberton warned her that if Thomas ever returned to Georgia "they were going to lynch him, and [she] would never see him no more."[60]

As no one in town would help her, Sallie Mattox caught a ride heading back to Bowman.[61] However, on her way home, between 7:00 and 8:00 that evening,[62] four white men, one of whom she recognized, pulled their car over.[63] Blocking the road, the men exited their car and started shooting overhead.[64] They pulled Mrs. Mattox out of the car and brutally beat her in order to find out where Thomas had fled.[65] Beating her over the head, the four men dragged Sallie Mattox on the grass, kicked her, and then carried her into the woods where they continued beating her with a jack and a three foot long, two inch wide strap.[66] They called her a liar when she told them she did not know where Thomas was.[67] "The four whipped [her]; one beat [her] until he couldn't beat any more, then another. [Her] teeth – every one [was] loose… [T]hey got a chain out and put it around [her] neck. They told [her] there was a quarry on the way there and they would throw [her] in the water if [she] didn't tell them where Thomas was."[68] Finally, when she could not take it any longer, Sallie Mattox told them he went to Philadelphia.[69] They whipped her, still

[58] Testimony of Sallie Mattox, 15.
[59] Id.
[60] Testimony of Sallie Mattox, 15-16.
[61] Testimony of Sallie Mattox, 12.
[62] Testimony of Sallie Mattox, 18.
[63] Testimony of Sallie Mattox, 12.
[64] Id.
[65] Testimony of Sallie Mattox, 13.
[66] Id.
[67] Id.
[68] Testimony of Sallie Mattox, 13-14.
[69] Testimony of Sallie Mattox, 14.

not believing her, and asked where he got the money to go.[70] She told them her husband left some money when he died and that she gave it to Thomas so that he could escape to Philadelphia.[71] Satisfied, the four men left Sallie beaten and bloodied in the woods.[72] She eventually crawled back to the road, where she helped to push the car that she came in so that the driver could restart it.[73]

When Sallie Mattox finally made it back home, she was unable to go straight to the doctor. Cleveland and Dye interrupted her, arriving at her house about 9:30 pm, seeking the addresses of all of her children who lived in the north.[74] She gave them what they were looking for, including the address of Lester's home where Thomas had fled.[75]

When Sallie told Deputy Cleveland and Dye that she was beaten by four men on the road,[76] the lawmen turned and laughed, stating that "[if]f you had told where Thomas was, all this would not happen."[77] Sallie Mattox was under a doctor's care for two months after she was beaten.[78] County authorities never investigated the attack on her and no steps were ever taken to apprehend or punish those responsible for her beating and the criminal acts.[79]

John had been released to his mother's care after Cleveland and Dye confirmed her statement that Thomas was in Philadelphia.[80] He soon left the state to join his brothers in Philadelphia.[81]

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[70] Testimony of Sallie Mattox, 14.
[71] Id.
[72] Id.
[73] Id.
[74] Testimony of Sallie Mattox, 14-15.
[75] Testimony of Sallie Mattox, 15.
[76] Testimony of Sallie Mattox, 18; Testimony of Mark Cleveland, 27-28.
[77] Testimony of Sallie Mattox, 18.
[78] Affidavit of Thomas Mattox, 7.
[79] Testimony of Sallie Mattox, 18. No documents of an investigtion or criminal complaint related to the attack on Sallie Maddox were found in any of the files and sources available to CRRJ.
[80] Testimony of Sallie Mattox, 18.
[81] "Ga. Youth's Extradition Still Sought: Brother Escapes to Tell of Horrors as New Hearing Nears," *The Baltimore Afro-American*, Sep. 12, 1942.

However, Gussie and Emmie remained in jail where they were held as hostages for three months in an attempt to have their brother returned to Georgia.[82]

V. A Fugitive

Once the authorities knew Thomas' location, the governor of Georgia sent an extradition request to authorities in Philadelphia, asking them to return Thomas Mattox to Georgia to face trial on charges of aggravated assault and battery and attempted murder.[83] The Georgia governor also sent Cleveland and Dye to Philadelphia to escort Thomas back.[84] Before learning the circumstances surrounding the case,[85] the governor of Pennsylvania, quickly approved the extradition request and issued a warrant for Thomas' arrest.[86]

Thomas, who left Georgia on the night of the incident, arrived in Philadelphia two days later and went straight to the hospital for his injuries.[87] When he reached his brother Lester's house, he was arrested.[88] Although he knew his family in Georgia would likely suffer if he contested the extradition, Thomas and his brother decided to wage a legal fight to keep him out of Georgia. Lester hired Raymond Pace Alexander, a prominent civil rights lawyer, who immediately filed in the Philadelphia common pleas court a writ of habeas corpus to prevent the deputy sheriff from taking Thomas back to Georgia until he received an extradition hearing.[89]

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[82] Affidavit of Thomas Mattox, 5; "Ga. Youth's Extradition Still Sought: Brother Escapes to Tell of Horrors as New Hearing Nears," *The Baltimore Afro-American*, Sep. 12, 1942; David A. Canton, Raymond Pace Alexander: A New Negro Lawyer Fights For Civil Rights in Philadelphia, 77.
[83] Fenerty Opinion, 1.
[84] Keller Appellate Opinion, 1.
[85] Id.
[86] Keller Appellate Opinion, 1.
[87] Affadavit of Thomas Mattox, 3.
[88] Id.
[89] David A. Canton, *Raymond Pace Alexander: A New Negro Lawyer Fights For Civil Rights in Philadelphia*, 76.

The grounds asserted to sustain the writ of habeas corpus were "that [Thomas] left the State of Georgia to escape mob violence, that he [would] not receive a fair and impartial trial in that state and that he [would] be 'lynched' if he returned."[90] In fact, Thomas attempted to argue that he was not subject to extradition, reasoning that he was not a "fugitive" from justice because his reason for leaving Georgia was to protect his life. However, according to Supreme Court precedent, "apparently it is wholly immaterial what motive induced the departure."[91] Instead, a fugitive from justice is deemed merely to be "a person indicted in due form for an offense against the laws of the state, who was present in that state at the time when the offense is so alleged to have been committed and subsequently leaves it."[92] This notion of fugitives in extradition law evolved from the days of slavery when states had to determine how to handle escaped slaves.

VI. A Pattern of Extradition Cases

Extradition laws originally stemmed from slave rendition cases in which captured fugitive slaves had to be returned to their masters. The Fugitive Slave Law of 1793 allowed slave owners to bring escaped slaves before a state or federal judge, justice of the peace, or magistrate.[93] The law authorized these officials to issue certificates of removal merely by determining that the person seized was in fact the slave of the claimant.[94] However, the 1793 law was ineffective as it provided only minor penalties for those who rescued fugitive slaves. As the movement for abolition grew, Northern states increasingly refused to comply with the rendition

[90] Fenerty Opinion, 1.
[91] Fenerty Opinon, 2; *Drew v. Thaw*, 235 U.S. 432; *Appleyard v. Mass*., 203 U.S. 222.
[92] *Biddinger v. Commissioner of the City of New York*, 245 U.S. 128; Fenerty Opinion, 2.
[93] Paul Finkelman, *Slavery and Legal Ethics: Legal Ethics and Fugitive Slaves: The Anthony Burns Case, Judge Loring, and Abolitionist Attorneys*, 17 CARDOZO L. REV. 1793, 1797(1996), hereinafter Finkleman, *Slavery and Legal Ethics. See* Act of February 12, 1793, ch. 7, 3, 1 Stat. 302, 303-05 (amended 1850) (repealed 1864).
[94] Finkleman, *Slavery and Legal Ethics. See* Act of February 12, 1793, ch. 7, 3, 1 Stat. 302, 303-05 (amended 1850) (repealed 1864).

of escaped slaves.[95] This resistance led to an increased Southern demand for a new Fugitive Slave Law that would strengthen enforcement mechanisms.[96]

A. Slave Rendition Cases

Under the threat of Southern secession, the Fugitive Slave Law of 1850 was created.[97] The new law required that all escaped slaves were, upon capture, to be returned to their masters and that officials and citizens of free states must cooperate. "The Act commanded 'all good citizens… [to] aid and assist in the prompt and efficient execution of this law, whenever their services may be required.'"[98] Federal enforcement mechanisms were greatly enhanced, and Northern taxpayers were forced to financially support the return of escaped slaves.[99] "Persons interfering with the rendition of fugitive slaves were subject to fines and penalties of up to $2000 per slave and up to six months in jail."[100] Furthermore, the law prohibited any trial on the right of alleged slaves to their freedom and did not allow fugitives to testify on their own behalf.[101] "The alleged fugitive could neither seek a writ of habeas corpus nor appeal the commissioner's ruling to a higher court."[102]

Thus, in the era of the abolitionist movement, slave rendition cases put many Northern judges and lawyers in difficult positions. The famous 1854 case of Anthony Burns highlights the tension between upholding the law and upholding justice which was faced by judges and lawyers at this time. Burns, a slave who escaped to Boston from his master in Virginia, unwillingly

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[95] Finkleman, *Slavery and Legal Ethics,* 1793, 1797-98.
[96] Finkleman, *Slavery and Legal Ethics,*1793, 1800.
[97] Id.
[98] Finkleman, *Slavery and Legal Ethics,* 1793, 1802; Fugitive Slave Act, ch. 60, 5, 9 Stat. 462 (1850) (amending Act of Feb. 12, 1793, ch. 7, 1 Stat. 302) (repealed 1864).
[99] Finkleman, *Slavery and Legal Ethics,* 1793, 1800.
[100] Finkleman, *Slavery and Legal Ethics,* 1793, 1800; Fugitive Slave Act, ch. 60, 9 Stat. 462, 464 (1850) (amending Act of Feb. 12, 1793, ch. 7, 1 Stat. 302) (repealed 1864.).
[101] Finkleman, *Slavery and Legal Ethics,* 1793, 1801.
[102] Finkleman, *Slavery and Legal Ethics*1793, 1801.

became the focal point of an abolitionist agenda. Anti-slavery lawyer, Richard Henry Dana, Jr., promoted the abolitionist cause by trying to "help" Burns by opposing his return to slavery.

Judge Loring, wanting "to project an appearance of fairness,"[103] allowed Dana to defend Burns, even though Burns objected. Both Loring and Dana prioritized their own agendas over the risk of repercussions that Burns would likely face if he lost the case. Burns did not want to oppose the rendition because he realized that "any attempt to interfere in this rendition would only make things worse when he was finally sent back."[104] Indeed, Burns was correct. "When [he] was finally returned to the South, [his master] punished him harshly, keeping him in chains for many months. The experience left Burns weak, ill, and permanently lame."[105] Thus, "for all their actions on behalf of Burns and 'the cause,' neither Judge Loring nor Attorney Dana listened to Burns. It can be argued that their help actually hurt him. The gains of the antislavery cause from the Burns case were secured at the expense of an individual who never sought and initially rejected the help of abolitionist attorneys."[106]

Considering the conflicting requirements for upholding the law, upholding justice and serving the best interests of a client, it took immense judicial courage to defy the strict Slave Rendition Law and face the large fines that penalized officials who did not cooperate. Such acts of judicial courage were similar to those needed nearly a century later, in extradition cases where systemic racial violence was evident in the demanding state.

[103] Finkleman, *Slavery and Legal Ethics,* 1793, 1806.
[104] Finkleman, *Slavery and Legal Ethics,* 1793, 1805.
[105] Finkleman, *Slavery and Legal Ethics,* 1793, 1807.
[106] Finkleman, *Slavery and Legal Ethics,* 1793, 1818.

B. Modern Extradition Cases

Habeas corpus proceedings in the modern era allow the reviewing court only a very limited area of inquiry, a process similar to the previous slave rendition cases. Leading habeas corpus cases indicate that a court "cannot consider evidence, however persuasive, showing that the petitioner's life would be in danger if he were returned to the demanding state, or that he would not receive a fair and impartial trial."[107] Furthermore, "it [is] improper for the courts to inquire into the motives guiding the acts of the governors of the demanding and surrendering states."[108] The rationale behind this rule is based on the duty of each state to prevent its territory from becoming a sanctuary for fugitives.[109] This obligation was clearly expressed in *Appleyard v. Massachusetts*, a 1906 case in which the Supreme Court stated:

> "A person charged by indictment or by affidavit before a magistrate with the commission within a state of a crime covered by its laws, and who, after the date of the commission of such crime leaves the state – no matter for what purpose or with what motive, nor under what belief – becomes, from the time of such leaving, and within the meaning of the Constitution and laws of the United States, a fugitive from justice, and if found in another state must be delivered up by the Governor of such state to the state whose laws are alleged to have been violated, on the production of such indictment or affidavit, certified as authentic by the Governor of the state from which the accused departed. Such is the command of the supreme law of the land, which may not be disregarded by any state… A faithful, vigorous enforcement of that [Constitutional provision] is vital to the harmony and welfare of the states. And while a state should take care, within the limits of

[107] Fenerty Opinion, 3.
[108] *Pettibone v. Nichols*, 203 U.S. 192; Fenerty Opinion, 5.
[109] Fenerty Opinion, 8.

> the law, that the rights of its people are protected against illegal action, the judicial authorities of the Union should equally take care that the provisions of the Constitution be not so narrowly interpreted as to enable offenders against the laws of a state to find a permanent asylum in the territory of another state."[110]

Thus, in extradition cases such as that of Thomas Mattox, courts must exclude evidence of what might happen in the courts of another state.

Neither judge in the Mattox case dealt with the serious questions of federalism raised by their decisions.[111] Academics later found support for the decision in cases of federal injunction of state criminal prosecutions, where courts have ruled that "a state criminal trial will be enjoined only when the individual's constitutional rights are in great and immediate danger of being irreparably impaired."[112] Mattox's case could fall under this rule as he showed that he was in great and immediate danger of being lynched, which certainly falls within the ambit of irreparable harm. It should be noted that this line of argument assumes that there is a constitutional right not to be lynched, or at least the right to be protected against lynching.[113]

VII. The Extradition Case of Thomas Mattox

With strict precedent favoring the demanding state in extradition cases, Thomas Mattox was up against great odds in his attempt to prevent his return to Georgia. It was to his benefit that Raymond Pace Alexander agreed to represent him. Alexander was a renowned civil rights leader

[110] *Appleyard v. Massachusetts*, 203 U.S. 222, 1906.
[111] Extradition Habeas Corpus, 74 Yale L. J. 78, 97 (1964).
[112] Extradition Habeas Corpus, 74 Yale L. J. 78, 97-98 (1964).
[113] Extradition Habeas Corpus, 74 Yale L. J. 78, 97-99 (1964).

and a Harvard-educated lawyer.[114] He later became the first African-American judge appointed to the Court of Common Pleas in Philadelphia.[115]

Like Dana in the case of Anthony Burns, Alexander faced conflicting tensions and ethical questions about upholding the law, upholding justice and serving the best interests of his client. Like Burns, Thomas Mattox risked harsh consequences if he stood up against the Georgia authorities and lost his case. Not only would his own life be in danger, but his family members who still lived in Georgia would be put at risk of even greater violence than that which they had already suffered at the hands of law enforcement and angry mobs. However, unlike the attorney-client relationship in the case of Anthony Burns, there were no conflicting attorney-client objectives. The Mattox family sought out Alexander's services and chose to stand up to the injustices they faced.

Thomas Mattox also had the good fortune of having Judge Clare Gerald Fenerty preside over his extradition hearing. Judge Fenerty served one term as a Republican member of the House of Representatives in the 74th Congress from 1935-1937.[116] During his time as a Congressman, he supported anti-lynching legislation.[117] The proposed bill would have "penalize[d] the legal authorities of any community wherein a 'lynching' occurred, if such illegal act were preventable."[118] In 1939, he was appointed judge of Common Pleas Court No. 5 of Philadelphia, where he served until his death in 1952.

[114] David A. Canton, Raymond Pace Alexander: A New Negro Lawyer Fights For Civil Rights in Philadelphia.
[115] Id.
[116] Clare Gerald Fenerty, Biographical Directory of the United States Congress, 1774 – Present, available at http://bioguide.congress.gov/scripts/biodisplay.pl?index=F000071.
[117] Fenerty Opinion, 6.
[118] Fenerty Opinion, 6.

A. Creative Lawyering and a Collegial Court

Alexander challenged the hard and fast rule limiting the inquiry in habeas corpus proceedings in extradition cases and found language in leading cases that left space to push the boundaries. Asserting that this rule was based upon a "presumption that the demanding state would grant the accused a fair and impartial trial, and protect him from mob violence,"[119] he pointed to Supreme Court language in *Marbles v. Creecy*, decided in 1909. The Court stated:

> "The court that heard the application for discharge on writ of habeas corpus was entitled to assume, as no doubt the Governor of Missouri assumed, that the State demanding the arrest and delivery of the accused had no other object in view than to enforce its laws, and that it would, by its constituted tribunals, officers and representatives, see to it that he was legally tried, without any reference to his race, but would be adequately protected while in the State's custody against the illegal action of those who might interfere to prevent the regular and orderly administration of justice."[120]

This presumption "is based on the fundamental belief in the equality and integrity of the states of the Federal Union."[121] Alexander argued that such a presumption could not be made in the Mattox case and therefore, additional evidence, including testimony of the Mattox family, should be allowed at the habeas corpus hearing.[122]

The Mattox case presented obstacles for Judge Fenerty similar to those faced by many Northern judges in earlier slave rendition cases. As in the earlier cases, immense judicial courage

[119] Fenerty Opinion, 3.
[120] *Marbles v. Creecy*, 215 U.S. 63,1909; Fenerty Opinion, 4; See also *Leonard v. Zweifel*, 171 Iowa, 522; See also *Ople v. Sheriff*, 285 Mo. 365.
[121] Fenerty Opinion, 8.
[122] Fenerty Opinion, 9-10.

was required in order to defy the strict rules of extradition in the face of systemic racial violence in the demanding state. With Alexander's assistance, Fenerty found a way to stand up against injustice and also protect the Mattox family from future harm.

Alexander had argued many times before Judge Fenerty and their good relationship was of key importance to Thomas' case.[123] The Judge allowed the hearing to be delayed for three months so that Alexander could gather evidence about the pervasive violence against the Mattox family and other blacks in Elbert county and Georgia. Alexander worked to free the two Mattox sisters from jail, finally getting them released on bail, in October 1942, so that they could testify at the habeas corpus hearing;[124] Most important, he mobilized Thomas' mother, brother and two sisters so they could come to Philadelphia to testify.[125] Judge Fenerty even relied on Alexander to draft a compelling statement of facts to help strengthen his opinion so that it could withstand an appeal.[126]

B. Judge Fenerty's Opinion

The linchpin of Judge Fenerty's opinion in *Commonwealth* ex rel, *Mattox v. County Superintendent of Prisons, Philadelphia* was a letter written by R. Howard Gordon, the Solicitor General of the Northern Judicial District of Georgia and the chief prosecuting officer in the case. Seeking to remove Judge Fenerty from the case on the grounds that he had sponsored anti-lynching legislation as a Congressman and would therefore be biased, Gordon sent the letter to the District Attorney of Philadelphia County, John H. Maurer.[127] The letter, which infuriated Judge Fenerty, was included in the record and used as evidence against Georgia as the

[123] Kenneth W. Mack, Representing the Race: The Creation of the Civil Rights Lawyer, 78.
[124] Affidavit of Thomas Mattox, 5.
[125] Kenneth W. Mack, Representing the Race: The Creation of the Civil Rights Lawyer, 78.
[126] Kenneth W. Mack, Representing the Race: The Creation of the Civil Rights Lawyer, 78.
[127] David A. Canton, Raymond Pace Alexander: A New Negro Lawyer Fights For Civil Rights in Philadelphia, 78.

demanding state. Judge Fenerty interpreted the letter as demonstrating that the Georgia Solicitor General did not want "a judge who believed in the desirability of punishing legal authorities for permitting murder."[128] The Judge took issue with the Solicitor General's letter because it implied that lynching was not a crime for which legal authoritiesshould be punished when they failed to prevent it.[129]

Judge Fenerty used the Solicitor General's attitude toward lynching as a means of destroying the presumption of a fair and impartial trial in Georgia.[130] He wrote that,"[t]here can be no presumption of protection for the accused from murderous violence when the prosecuting attorney – charged with the duty of insuring this protection – expresses such bias and prejudice. A presumption of this kind, no matter how strong, cannot survive against the overwhelming force of known facts."[131]

However, Judge Fenerty limited his holding, noting that the presumption cannot be easily overcome by a petitioners' evidence, no matter how persuasive, but that in cases such as this, where "declarations of the prosecuting authorities of the demanding state indicate their lack of sincerity in the just and equal enforcement of the law against 'lynching,'" [132] then a court must inquire if the presumption is true. [133] Without this presumption, the court was free to hear evidence questioning whether Thomas would be protected from violence and receive a fair and

[128] Fenerty Opinion, 7.
[129] Fenerty Opinion, 7.
[130] Fenerty Opinion, 7.
[131] Fenerty Opinion, 7.
[132] Fenerty Opinion, 9.
[133] Fenerty Opinion, 9.

impartial trial in Georgia.[134] The Judge granted habeas corpus and released Thomas on $200 bail to appear on appeal.[135]

Judge Fenerty issued an important "opinion that stretched the governing legal doctrines to their limits in concluding that the required presumption that Mattox would get a fair trial in Georgia could be, and had been, rebutted."[136] This was a momentous decision, which gained commendations and praise from the media, legal and academic communities, civil rights groups, the NAACP and more.

C. The Appellate Decision

When Georgia appealed the case to the Superior Court of Pennsylvania, Alexander worked tirelessly to get the ACLU, NLG, NAACP and other civil rights groups to assist on the case by submitting amicus briefs and reports on lynchings. Included in the NLG's amicus brief was a portion of a report on lynchings, entitled "Negro Discrimination and the Need for Federal Action," written by Thurgood Marshall, counsel for the NAACP, and William H. Hastie, Dean of Howard University Law School.[138] The report included statistics for lynchings in Georgia and, although no lynchings had been counted in Elbert county, there were six lynchings within thirty miles of Elberton.[139] The brief asserted that "it is a well-known fact that lynchers often carry their victims over the county line, so that the wrong county gets credit for the lynching."[140] For example, in *Frank v. Mangum*, a 1915 case which originated in the same Georgia court that

[134] Fenerty Opinion, 9-10.
[135] Hearing Testimony, 38.
[136] Kenneth W. Mack, Representing the Race: The Creation of the Civil Rights Lawyer, 78.
[138] NLG Amicus Brief, 6.
[139] NLG Amicus Brief, 10.
[140] NLG Amicus Brief, 10.

demanded Mattox,[141] a mob broke into the jail, took the victim, who was imprisoned after being sentenced to life,[142] and lynched him 125 miles away.[143]

Judge Keller dismissed the appeal. He found that Judge Fenerty had the authority and sufficient evidence to refuse to extradite Thomas on the grounds that he would not receive a fair and impartial trial and was in grave danger of being lynched in Georgia.[144] According to Alexander, this was the first time that a lower court was sustained in examining evidence of what might occur in the courts of another state and in acting on that evidence.[145]

VIII. Legal Impact of the Mattox Case

The case of Thomas Mattox is a rare instance of one state denying the extradition request of another state. Attorney Alexander, Judge Fenerty and Judge Keller received great praises from lawyers, academics and the black and white press, claiming it as a landmark case.[146] It serves as an example of the elasticity of the law at this time and demonstrates how northern legal proceedings responded to southern violence in the 1940s. The decision in this case averted a lynching and saved Thomas Maddox's life. It took great personal, professional and judicial courage to call out the Jim Crow inequality and stand up against it.

For the most part, however, courts have distinguished this case based on its extreme facts where the demanding state implicitly admits or corroborates the petitioner's allegations against it. In *Commonwealth ex rel. Johnson v. Thomas*, the court reached the same result as in the

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[141] *Frank v. Mangum*, 237 U.S. 309 (1915).
[142] *Frank v. Mangum*, 237 U.S. 309 (1915); see also"Grim Tragedy in Woods, *New York Times,* August 18,, 1915, http://query.nytimes.com/mem/archive-free/pdf?res=9E0CE4DD133FE233A2575AC1A96E9C946496D6CF accessed August 22, 2015.
[143] NLG Amicus Brief, 10.
[144] Keller's Opinion, 7, 9.
[145] Laud Court For Saving Boy From Ga. 'Justice,' *Chicago Defender*, May 1, 1943.
[146] David A. Canton, Raymond Pace Alexander: A New Negro Lawyer Fights For Civil Rights in Philadelphia, 79.

Mattox case, based on nearly identical facts.[147] However, just two years later, in *People ex rel. Reid v. Warden*, the state court held that even if the Mattox rule was proper, the petitioner failed to meet his burden of proof.[148] It was not until five years after the Mattox case that "the Third Circuit infused the doctrine with new life in the landmark decision of *Johnson v. Dye*."[149]

In *Johnson v. Dye*, the Pennsylvania court dismissed Johnson's writ of habeas corpus in his Georgia extradition case, based on a failure to meet the required burden of proof.[150] With the help of the ACLU, Johnson took his cases to a federal district court .[151] However, the court found that his "allegations of prospective cruel treatment and of danger of mob violence and death were not sustained by credible evidence."[152] Johnson appealed to the Third Circuit, which reversed and released Johnson. However, the Third Circuit decision was based on different grounds and failed to address Johnson's allegations about the future treatment he would suffer if returned. [153] The "court affirmed two propositions: that past cruel and unusual punishment is ground for release on habeas corpus, and that release can appropriately be ordered by a court of the asylum state even in the absence of a finding that petitioner could not secure adequate relief in the courts of the demanding state."[154] The Supreme Court granted certiorari[155] solely on the issue of the exhaustion rule and reversed the decision in a very ambiguous 32 word opinion in which

[147] Extradition Habeas Corpus, 74 Yale L. J. 78, 99 (1964), citing *Commonwealth ex rel. Johnson v. Thomas*, 50 Pa. D.&C. 626 (C.P. 1944).
[148] Extradition Habeas Corpus, 74 Yale L. J. 78, 99 (1964), citing *People ex rel. Reid v. Warden*, 63 N.Y.S.2d 620 (Sup. Ct. 1946).
[149] Extradition Habeas Corpus, 74 Yale L. J. 78, 99 (1964), citing *Johnson v. Dye*, 175 F.2d 250 (3d Cir. 1949).
[150] Extradition Habeas Corpus, 74 Yale L. J. 78, 99 (1964).
[151] Extradition Habeas Corpus, 74 Yale L. J. 78, 100 (1964).
[152] Extradition Habeas Corpus, 74 Yale L. J. 78, 100 (1964).
[153] Extradition Habeas Corpus, 74 Yale L. J. 78, 100-01 (1964).
[154] Extradition Habeas Corpus, 74 Yale L. J. 78, 101 (1964).
[155] *Dye v. Johnson*, 338 U.S. 864, rehearing denied, 338 U.S. 896 (1949).

"[n]either the briefs nor the Court considered the problem in the context of habeas corpus doctrine generally, nor of extradition habeas corpus doctrine in particular."[156]

Finally, in *Commonwealth ex rel. Brown v. Baldi*,[157] the Pennsylvania Supreme Court "eliminated the last shreds of the *Mattox* broad-scope inquiry from Pennsylvania law."[158] The trial judge found that Brown had in fact suffered, and would suffer future cruel and unusual punishment in Georgia.[159] Nevertheless, the judge refused to consider evidence that Georgia federal or state courts would not protect the accused, even though the record was replete with such evidence.[160] "Notwithstanding its findings of past and prospective cruel and unusual punishment, the court dismissed Brown's petition on the ground that it was precluded from granting the relief sought."[161] Brown appealed to the Pennsylvania Supreme Court, which put an end to the Mattox rule: "[T]he testimony thus presented and the apprehensions thus expressed cannot be accepted . . . as proof that if relator were now returned to Georgia he would be prevented from recourse to the courts of that State or to the Federal courts for the protection of his constitutional rights.... [His allegations to that effect] must be rejected."[162] Thus, Pennsylvania, the state which gave "birth to the broad-scope inquiry in *Mattox*, interred it ten years later, at least temporarily, in *Brown v. Baldi*. During its brief life, the doctrine of *Mattox* seems to have released only three petitioners: Mattox himself, another Pennsylvania extradite,[163] and one federal petitioner.[164],,[165]

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[156] Extradition Habeas Corpus, 74 Yale L. J. 78, 105 (1964).
[157] 378 Pa. 504, 106 A.2d 777 (1954), cert. denied, 348 U.S. 939, rehearing denied, 348 U.S. 977 (1955).
[158] Extradition Habeas Corpus, 74 Yale L. J. 78, 117 (1964).
[159] Extradition Habeas Corpus, 74 Yale L. J. 78, 117 (1964).
[160] Extradition Habeas Corpus, 74 Yale L. J. 78, 117-18 (1964).
[161] Extradition Habeas Corpus, 74 Yale L. J. 78, 118 (1964).
[162] Extradition Habeas Corpus, 74 Yale L. J. 78, 118 (1964).
[163] *Commonwealth ex rel. Johnson v. Thomas*, 50 Pa. D.&C. 626 (C.P. 1944).
[164] *Dye v. Johnson*, 338 U.S. 864, rehearing denied, 338 U.S. 896 (1949).
[165] Extradition Habeas Corpus, 74 Yale L. J. 78, 118-19 (1964).

IX. A Future for Thomas Mattox

Although the Mattox case may not have had a long lasting impact on future extradition cases, the decision likely saved Thomas Mattox's life. Four months after his case ended, Thomas enlisted in the navy. He was a "first class seaman at Great Lakes Naval Training Base instead of perhaps buried in an unknown grave in the clay soil of Georgia if the liberal courts of Pennsylvania had not stepped in."[166] Many of his immediate family members also left Georgia and moved to Philadelphia.[167] Thomas lived a long life and died in 2008 at age 84.[168]

[166] David A. Canton, Raymond Pace Alexander: A New Negro Lawyer Fights For Civil Rights in Philadelphia, 80.
[167] *The Baltimore Afro-American*, Sep. 12, 1942, p. 14.
[168] Death record.