The Treason Trial and Execution of David McLane

*F. Murray Greenwood**

I. INTRODUCTION

THE MAN ON THE GALLOWS WAS TALL, handsome, dressed in virgin white. Young women screamed offers to marry under the mistaken impression this could save him. A huge crowd, including little children on adult shoulders and a military escort apprehending rescue, watched as the masked, unknown executioner commenced his grisly business by kicking away the ladder. The man died quietly, the body hanging for about twenty-five minutes. Then the remainder of the sentence was carried out. According to the most comprehensive and trustworthy contemporary trial report:

> A platform with a raised block upon it, was brought near the gallows, and a fire was kindled .... The head was cut off, and the executioner holding it up to the public view proclaimed it "the head of a traitor." An incision was made below the breast and a part of the bowels taken out and burnt; the four quarters were marked with a knife but not divided from the body.[1]

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[1] *The Trial of David McLane for High Treason at the City of Quebec, in the Province of Lower Canada on Friday, the Seventh day of July, A.D. 1797: Taken in Short-hand at the Trial* (Quebec: William Vondenvelden, Law Printer to the Lower Canadian Government, 1797). The Vondenvelden report (two copies of which are held by McGill University) was carefully reprinted in 26 St. Tr. 721. For convenience I have used the State Trials version, which describes the execution at 826-28. The *Quebec Gazette* published the highlights of the trial in French and English (13 July - 17 Aug. 1797) and printed two short pamphlets (21, 22 pages) from the same types: see M. Tremaine, *A Bibliography of Canadian Imprints 1751-1800* (Toronto: University of Toronto Press, 1952), nos. 1054, 1055. An anonymous 12 page pamphlet entitled *The Trial, Condemnation and Horrid Execution of David M'Lean* was published in Windham, Connecticut in 1797 (copy held by Harvard University). It contains a number of dramatic descriptions

The date was July 21st, 1797; the place, Quebec City; the deceased, David McLane.

McLane was an insolvent architect-merchant, probably in his thirties, an American citizen, most recently from Providence, Rhode Island. Two weeks earlier McLane had been convicted of high treason. A copy of an account book of the French Ambassador to the United States, Citizen Adet, has been preserved in the Library of Congress. It proves conclusively that McLane had engaged in undercover subversive activity in Lower Canada (November 1796, May 1797) on behalf of revolutionary France.[2] French officials in the Directory and in the United States were then planning to mount a double invasion of the colony - by sea and the St. Lawrence river and, using Vermont adventurers, down the Richelieu. McLane's role was to recruit a "fifth column" of Canadiens to drug the British regulars, spike the cannon and create havoc in the capital as the French fleet approached.[3]

McLane had the misfortune to be captured at a time of intense crisis. Government officials and other members of the English ruling elite (seigneurs, lawyers, merchants) expected the French fleet that spring or summer and were genuinely afraid the Canadiens would rise *en masse* in armed, supportive rebellion. There was much nervous talk of English heads on Jacobin pikes. The Canadien working people (farmers, artisans, day-labourers), it is true, had twice engaged in widespread rioting in the last three years - against militia duty in 1794 and against forced labour on the roads in 1796-97. But these had been defensive riots against law enforcement - "*rebellion à la justice*" was a well understood term in French Canada from the early 17th to

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not found elsewhere. Later, polemical editions include A. Girod, *Notes diverses sur le Bas-canada* (Village Debartzch: J.P. Boucher-Belleville, 1835) at 49-53; (1862) 2 Les Soirées canadiennes at 353-400; *The Evening Bulletin* of Providence, Rhode Island, Supplement, 26 April 1873.

[2] France, Aff. Et. Corr. Pol., E.U., supp., vol. 19, Library of Congress, Washington, D.C. The account book records four payments totalling $345.00 to "Major Macklay [or M'Klay]," dated 13 and 16 Oct. and 27 Dec. 1796, and 31 Jan. 1797; and four receipts signed by McLane. The entry for 27 Dec. 1796 includes the Ambassador's note that McLane "has been employed by me to obtain intelligence about Canada - he has made a trip into that country" (trans.). The advance payment for 31 Jan. 1797 was authorized in consequence of a mission entrusted to "major M'Klay."

[3] Unless otherwise specified what follows is based on the report in the State Trials, *supra*, note 1 and the author's The Development of a Garrison Mentality among the English in Lower Canada 1793-1811 (Ph.D. Thesis, The University of British Columbia, 1970).

the mid 19th centuries[4] - and all attempts by agitators to provoke more aggressive rioting (e.g. to storm the prisons) had failed. There is evidence that French officials in the United States had not orchestrated the disturbances,[5] which were remarkably free of violence by contemporary European standards. And the Canadien working people had proved mostly impervious to the ideology of the French Revolution. These are the facts that the historian can see, but the English elite made no such fine distinctions. They were imbued with a garrison mentality, fed by any number of sources: inadequate military defences, a sense of the fragility of the social order, a belief in the efficacy of conspirators, and so on. But most important was the simple fact that the English were outnumbered about fifteen to one by former subjects of France, who were still culturally French. Most of them were farmers (among whom anglophobia was never far from the surface), who had hunting guns and lived along the two expected invasion routes. Writing to the Secretary of State in October 1796 the Governor, General Sir Robert Prescott, advised that if a French attacking force managed to land in the colony, the situation would be critical since "His Majesty's English subjects here compared to the former [the Canadiens] are not in a greater proportion as Seventy to Two Thousand."[6]

McLane also had the misfortune to be a foreigner. At the time of his capture, three Canadiens of Montreal were facing treason charges, but Prescott was not then willing to risk insurrection by trying them.[7] Now he acted quickly. Advised by Chief Justice William Osgoode (formerly Chief Justice of Upper Canada), the Governor issued a special commission on May 24th, 1797 for McLane's trial and

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[4] For proof of this with regard to the 1790's in general and to the riots in particular, see letter from Attorney-General James Monk to Governor Dorchester (25 May 1794) M.G. 11, CO 42 series, vol. 101, National Archives of Canada [hereinafter NAC]; Judge Pierre-Amable De Bonne's address to the Grand Jury at the spring assizes of Quebec, 1797, printed in the *Quebec Gazette*, 6 April 1797.

[5] Letter from Robert Liston (British Ambassador to the United States) to Governor Prescott (28 Nov. 1796) *Report on Canadian Archives*, 1891 at 62; letter from same to same (15 Jan. 1797) Prescott Papers, M.G. 23 GII 17, series 1, vol. 11, NAC.

[6] Letter from Prescott to the Secretary of State, the Duke of Portland (28 Oct. 1796) M.G. 11, CO 42, vol. 108, NAC.

[7] Letter from the Governor's Civil Secretary, Herman Ryland, to James Monk, Chief Justice of Montreal (13 April 1797) Prescott Papers, M.G. 23, GII 17, series 1, vol. 9, NAC.

explained to the Secretary that "the spirit of the Times calling forcibly for an immediate Example," he would teach a lesson to would-be spies and the "disloyal" Canadien working people[8] (and in fact he did, but this cannot be explored here). To insure that little could go wrong, the commission named as Judges all members of the Executive Council (i.e. the leading politicians of the colony, whether legally trained or not) except Anglican Bishop Jacob Mountain.

The historiography dealing with this trial - the first trial for treason in British America - has not been impressive. The best detailed scholarly studies published are an article by Mr. Justice William Renwick Riddell (1916) and a section of Claude Galarneau's book (1970) on relations between Quebec and France after the Conquest.[9] Riddell, basing himself solely on legal materials, concluded that there was no reason to think "any miscarriage of justice" had occurred. Indeed, "a perusal of the shorthand notes of the trial will prove to the lawyer [perhaps!] that the proceedings were conducted with the utmost fairness and decorum, and that no other verdict was possible." Galarneau is much more critical, citing the all-English jury and hinting at corrupt witnesses. But he does not back up this critical approach by archival research and ignores the legal issues involved.

Now we all know (but don't always practise) that the new legal history requires historians to dig deeply in archival sources. But we mustn't ignore the other side - the law side - of the equation simply because it seems old-fashioned or not sociological enough. Unless we know what the law said or can be reasonably argued to have said, how can we make intelligent judgments about the impact of, say, social class upon it? We need always to immerse ourselves not only in archival material, but also in past legal issues (even essaying an

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[8] Letter from Prescott to the Duke of Portland (27 May 1797) M.G. 11, CO 42, vol. 109, NAC.

[9] "Canadian State Trials; The King v. David McLane," Royal Society of Canada, Proceedings and Transactions, 1916, II, 321; Claude Galarneau, *La France devant l'opinion canadienne (1760-1815)* (Quebec: Presses de L'Université Laval, 1970) at 252-60. R. Roy, *Résistance indépendantiste 1793-1798* (Montreal: Editions québécoises, 1973) at 229-47 is a *Fanoniste* polemic. L.A. Knafla, "The Influence of the French Revolution on Legal Attitudes and Ideology in Lower Canada, 1789-1798" in P.-H. Boulle & R.-A. Lebrun, eds., *Le Canada et la révolution française* (Montreal: Interuniversity Centre for European Studies, 1989) 83 at 91-95 is essentially descriptive. The portions on and leading up to the trial are marred by countless errors of fact (*e.g.*, in dating various riots and even the trial itself) and law (*e.g.*, in confusing indictments for seditious offences with those for high treason, and in having "McClane" described by Osgoode as owing allegiance to the *city* of Quebec).

interpretation now and again), before we can hope fully to explain Canada's legal culture. Let me try to illustrate this proposition by concentrating on specific aspects of McLane's trial. Archival documents provide insight, *inter alia*, into the Crown's use of witnesses, the appointment of defence counsel and the selection of the petit (trial) jury. Legal sources can be exploited to assess the impartiality of Osgoode's interpretation of the law of treason (he presided at the trial) and to answer the question whether McLane had a substantive defence which was not made.

One generalization that can be drawn from all this material is that the Crown and the Bench followed the letter of the law. McLane received copies of the indictment, jury panel, and list of prosecution witnesses in due time[10] (required by the *Treason Act, 1695* as amended in 1708),[11] and Osgoode enunciated the reasonable doubt test. Another generalization, however, is that a guilty verdict was virtually guaranteed by manipulation of the law.

II. The Trial

A. The Witnesses Cushing and Barnard

From documents preserved at the National Archives of Canada it is clear that two of the seven witnesses for the Crown testified on the understanding each would receive a township of land in the Eastern Townships. They were Montreal innkeeper Elmer Cushing and Montreal shopkeeper William Barnard, to both of whom McLane had divulged his plans. This bargain was made (November 1796) by Governor Prescott, Attorney-General Jonathan Sewell, and Civil Secretary Herman Ryland. But Prescott would not give final approval until he had a positive response from the official who was then in effect his Prime Minister:[12] Chief Justice Osgoode. A retrospective report by Sewell in 1799 reads in part as follows: "Mr. Ryland accordingly accompanied me and we had a long conference with the

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[10] Affidavit of William Vondenvelden and Hugh Mackay, before Osgoode, C.J.L.C. (30 June 1797) records of the Court of King's Bench, 1797, Archives nationales du Québec (hereinafter ANQ).

[11] *An Act for Regulating of Trials in Cases of Treason and Misprision of Treason, 1695* (U.K.), 7 & 8 Wm. 3, c. 3; *An Act for Improving the Union of the Two Kingdoms* (U.K.), 1708, 7 Anne, c. 21.

[12] See particularly the letter from Prescott to the Duke of Portland (18 March 1797) Prescott Papers, M.G. 23, GII 17, series 1, vol. 13, NAC.

Chief Justice ... [with the] result ... that we were all of opinion that the expected information appeared of sufficient importance to justify an absolute promise of the Township of Shipton to Mr. Cushing."[13] A letter from Ryland to Cushing's lawyer warned the innkeeper - who was in a desperate financial situation and wanted to exploit his grant as soon as possible - that he had better perform: the "approaching Trial of Mr. McLane will probably afford Mr Cushing an opportunity to clear up his own conduct ... and evince how far he is deserving of the attention and favor of the Government."[14]

At trial, defence counsel asked Barnard if he had received "any promise or reward from government" for having informed against the accused. The witness "braved" a charge of perjury by answering "None." Osgoode interjected that the "question had been allowed; but I think it was an improper one." Cushing made a similar denial. Sewell, who led for the Crown, said nothing.

B. Defence Counsel

Immediately following his indictment on 14 June the prisoner, in response to a question from the Bench, requested the assistance of counsel. The Court appointed two lawyers, George Pyke and George Germaine Francklin, to act for him. Both were just beginning their careers. Pyke, then twenty-two years old, had studied under the Tory Solicitor-General of New Brunswick, Richard John Uniacke, and been admitted to practice in Lower Canada only seven months before. Francklin, admitted the previous January, had, incredibly, articled for the requisite five years in the office of Attorney-General Sewell and was actually living in Sewell's house as, in effect, a member of the family.[15]

The appointment of Francklin becomes even more astounding in view of the fact that in April 1797 he had written to Civil Secretary Ryland in his capacity as *Cushing's* lawyer to request that his client be given immediate possession of the promised township and that the

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[13] Letter from Sewell to Samuel Gale (9 July 1799) R.G. 4, A. 1, S series, vol. 68, NAC. See also Stephen to Jonathan Sewell (14 Nov. 1796) *ibid.*, vol. 65.

[14] Letter from Ryland to George Francklin (28 May 1797) Prescott Papers, M.G. 23, GII 17, series 1, vol. 9, NAC.

[15] Jacques Boucher, "George Pyke" in 8 *Dictionary of Canadian Biography* (Toronto: University of Toronto Press, 1985) 726; "Petitions for Notaries' and Advocates' Commissions, 1760-1841," R.G. 4, B. 8, vol. 18, NAC; letter from Francklin to Sewell (15 Aug. 1798) Sewell Papers, M.G. 23, GII 10, vol. 3, NAC.

government survey the land in order to avoid settlements on portions to be set aside as Crown or clergy reserves.[16] And he remained Cushing's attorney until at least May 18th. No final disposition of Cushing's claim had been made by the time of the McLane trial. Considering Francklin's intimate links to the Attorney-General, and to one of the Crown's leading witnesses, it is not surprising that the young lawyer later informed the trial jury and spectators that he had not, of his own volition, undertaken the defence of the accused.

One wonders what might have happened had a courageous, intelligent advocate such as Jean-Antoine Panet of Quebec (the Speaker of the House of Assembly) or Montrealer David Ross - both of whom had energetically defended Road Act rioters[17] - been nominated as one of McLane's lawyers.

In any case counsel were unimpressive. They allowed a jury which was a prosecutor's dream to be struck, called no defence witnesses, did not dissuade their client from his disastrous, patently false statement (made in court) that he had been escaping his creditors, and (as I will explain later) did not find McLane's best line of defence. Their performance may have been due to inexperience, internalized fear of the colonial elite, or even something more sinister.

C. Selection of the Jury

It is fortunate for the historian that a copy of the panel of jurors summoned to try McLane has been preserved in Quebec City.[18] Of the eighty-six names on the list, only thirty-three to thirty-five appear to be French. Thus, even if defence counsel exercised all available thirty-five peremptory challenges, the Crown was in a position to keep Canadiens off the jury - an important consideration in view of the unanimity rule and the common opinion among officials that most Canadiens were disloyal. The order in which the names appear - clearly the order in which they were called - is striking. The first fourteen were English as were all but four of the next eighteen and several of these twenty-eight English names belonged to persons in

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[16] Letter from Francklin to Ryland (17 April 1797) Prescott Papers, M.G. 23, GII 17, series 1, vol. 9, NAC.

[17] Postscript (27 Aug. 1796) to a letter from Osgoode to Under Secretary John King (3 Aug. 1796) M.G. 11, CO 42, vol. 22, NAC; letter from Ross to lawyer Arthur Davidson (5 March 1797) Arthur Davidson Letters, McCord Family Papers, McCord Museum, Montreal.

[18] Records of the Court of King's Bench, Quebec District, 1797, ANQ.

the higher ranks of society. This arrangement made it easy for the Crown to insure selection of a safe English jury, especially as the inexperienced defence counsel, at the outset of their careers and operating in an atmosphere of witch-hunt, were unlikely to challenge the city's mercantile elite. In the result eight jurors were selected from the first fourteen names listed and three others from names fifteen through thirty-two.

The fact that several of the mercantile elite appeared on the panel is itself peculiar, since they were rarely called for jury duty in the 1790s, except to serve on the Grand Jury. No prominent English merchant appears on the extant trial panel lists for 1796 and 1797, except for the McLane case. According to records of King's Bench cases preserved at the Archives nationales du Québec, petit juries were almost invariably dominated by clerks, artisans and shopkeepers. The English majority and the order of names on the list also contrast with the prevailing practice in the years 1796-1797. The usual panel whether for English or French speaking accused listed names alternatively: English, French, English, French and so on to the end of the list. It would seem quite clear that this divergence might have afforded grounds for a challenge to the array, that is to the panel as a whole. Defence counsel made no such challenge. Nor did they challenge peremptorily or for cause the first eight jurors called, seven of whom were leading Quebec merchants and were selected. Altogether the defence issued twenty-four challenges; the Crown eleven.

The end result could hardly have been better for the prosecution. Exactly half the persons selected had sat on the accusing Grand Jury in March and therefore had detailed knowledge of Attorney-General Sewell's French conspiracy interpretation of the Road Act disturbances.[19] Eight jurors were well established import-export merchants and one of them, John Blackwood, in his capacity as Magistrate, had helped gather evidence against McLane, including information of a rumoured plot so extensive that Governor Prescott had transmitted it to the Secretary of State.[20] The four remaining jurors were all dependent on the economic elite of the city: an auctioneer-broker, a watchmaker, a storekeeper and a man who operated the brewery of St. Roch, one of the principal owners of which was Executive Councillor John Young. Not one juror was Canadien.

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[19] *Quebec Gazette*, 7 April 1797.

[20] Letter from Prescott to the Duke of Portland (24 June 1797) M.G. 11, CO 42, vol. 109, NAC.

D. The Indictment

Edward III's *Statute of Treasons (1351)*[21] included three major heads of treason: levying war (rebelling or rioting to rectify a grievance of a general nature); compassing (or plotting) the death of the King and adhering to the King's enemies ("Or be adherent to the King's enemies ... giving them aid and comfort"). McLane was indicted on the last two counts.

Chief Justice Osgoode - worried that the jury might find the "compassing" count artificial - went out of his way to give "adhering" the most capacious definition possible, namely that any attempt, however preliminary, to support the enemy brought an accused under this head. Had Osgoode desired a more restricted definition, he might have found it in the writings (1762) of the noted treason jurist Sir Michael Foster who contended that "adhering" must reach a penultimate stage (e.g. intelligence letters actually sent but intercepted), which was not the case with McLane.[22]

Osgoode, moreover, told both the Grand and Petit juries that conspiracy to foment rebellion in an overseas colony amounted to "compassing", despite the King's residence (in this case) being about three thousand miles away. There was no judicial or juristic authority for this proposition. And the word "death" in Edward III's Statute obviously referred to physical, not political, death, since the compassing head protected the Queen consort and the eldest son, as well as the reigning King. It is interesting that following the Rebellions of 1837, the Judges of both Canadas extended the Osgoode interpretation to a peacetime situation.[23]

E. A Defence Not Made

Examination of the legal sources also indicates that McLane had a serious argument in law which was not made. The obvious first line of defence was that McLane should have been afforded the status of temporary alien enemy, who in the circumstances of the case owed no

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[21] (U.K.), 25 Edw. 3, st. 5, c. 2.

[22] Sir M. Foster, *A Report of Some Proceedings on the Commission for the Trial of Rebels in the Year 1746, in the County of Surrey; and of Other CROWN CASES: to which are Added Discourses upon a Few Branches of the Law*, 3rd ed. (London: E. & R. Brooke, 1792) at 217.

[23] See, *e.g.*, *Toronto Patriot*, 13 March 1838 (Robinson, C.J.U.C.); *Quebec Gazette*, 24 March 1838 (Sewell, C.J.L.C.); *Kingston Chronicle and Gazette*, 5 May 1838 (McLean J.K.B.U.C.).

allegiance to George III. Evidence at trial showed that he had operated in Lower Canada as a French military officer commissioned by Adet. The defence can best be understood by answering two questions: i) what duties of allegiance were imposed on alien *enemies* within British territory? and ii) could McLane, the subject of a state in amity with Great Britain, claim the status of enemy alien during the time he was committing his "treason"?

Only one of the treason jurists addressed the question of allegiance (if any) of an alien enemy sent by his government to Britain as a spy. Sir Matthew Hale, however, was explicit on this. After stating that an enemy alien invading the realm could not be indicted for treason, since no allegiance was owed, he added that "the like may be said of such as are sent over merely as spies by a foreign prince in hostility."[24] Thus what authority there was supports the proposition that had Adet sent a French national into Lower Canada to do what McLane had done, the Frenchman could not have been charged with treason. And since treason is a crime grounded in allegiance, surely one could argue more generally that the duties of enemy aliens were to be restrictively interpreted.[25]

But could McLane have claimed the status of an enemy alien? According to the judgment in *Vaughan's case* (1696) he could have.[26] Vaughan had accepted a French commission as a sea captain. It came out in evidence that some of his crew were Hollanders and King's Bench Chief Justice Holt laid down that such alien friends became temporary alien enemies. Holt's dictum was cited as the law on point in a pamphlet published in London, 1793 by "A Barrister At Law" and entitled *A Treatise upon the Law and Proceedings in cases of High Treason*. And in a civil case, *Sparenburgh* v. *Ballatyne*, heard just a few months after the McLane trial, the right of a German captured while serving on a Dutch (i.e. French) ship to sue in the courts was questioned. The determination of the issue depended on whether or not the German was an alien enemy at the time of the suit, for alien

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[24] Sir M. Hale, *Historia Placitorum Coronae/The History of the Pleas of the Crown* [c. 1670], vol. 1, ed. by S. Emlyn (London: E. & R. Nutt & R. Gosling, 1736) at 162-64.

[25] It is suggestive in this regard that Sir Edward Hyde East, who published his distinctly 'royalist' *Pleas of the Crown* in 1803, confined the duty of allegiance owed by alien enemies to those who had established a "domicile" in British territory, thus by implication excluding spies: *A Treatise of the Pleas of the Crown*, vol. 1 (London: J. Butterworth & J. Cooke, 1803), c. 2.

[26] (1696), 13 St. Tr. 485 at 525.

enemies had no access to the courts. Chief Justice Eyre of the Court of Common Pleas, approving the dictum in *Vaughan*, held that a neutral serving in the military forces of the enemy was certainly to be treated as an enemy alien, but only for so long as he was engaged in hostilities.[27] Applying this reasoning, one could have argued that until his capture McLane's undercover operations were those of an alien enemy and did not subject him to a charge of high treason. His lawyers did not assert this argument, nor did Osgoode mention it.

III. A Baconian Judiciary

THE ROYALIST LEGAL INTERPRETATIONS OF OSGOODE, and his helping to build the case for the Crown prior to trial (in addition to the bargain with Cushing and Barnard, Osgoode took Cushing's deposition,[28] gave his approval to a potential witness turning King's evidence,[29] and chaired the Executive Council's special committee on internal security)[30] were typical of the Lower Canadian Bench during the long war against France (1793-1815, with one short interruption).

This amounts to saying that the judiciary subscribed to the thesis of Sir Francis Bacon, James I's Attorney-General, who claimed that Judges were "lions under the throne, being circumspect that they do not check or oppose any points of sovereignty." It was important that the King and his Judges consult often on matters of state so that the latter could better perform their duty of supporting the government. Impartial construction of the law came second to that duty.

Bacon's great rival, Sir Edward Coke (successively Chief Justice of the Common Pleas and King's Bench), had a very different view, denying the propriety of consultation and giving pride of place to impartial interpretation even where it might damage the short term political interests of the Crown. He paid for these opinions when dismissed from judicial office in 1616. But it was Coke's view which triumphed in 1688-89. And the Cokean tradition (with an occasional

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[27] (1797), 1 Bos. & Pul. 163; 126 E.R. 837.

[28] 23 Nov. 1796, M.G. 11, CO 42, vol. 108, NAC.

[29] Letter from Magistrate John Richardson to Jonathan Sewell (23 March 1797) Sewell Papers, M.G. 23, GII 10, vol. 3, NAC.

[30] R.G. 1, E. 1, Lower Canada State Minute Book B (29 June 1797), NAC. The committee's job was to investigate suspected subsersives, with a view to trying or interning them.

exception like King's Bench Chief Justice Lord Kenyon, and with some qualifications) remained reasonably strong in England (although not Scotland) during the counter-revolutionary 1790s and early 1800s. In Lower Canada the Bench was thoroughly Baconian.

I can document the existence of a Baconian judiciary in Lower Canada during the years of the French revolutionary wars and indeed down to the aftermath of the Rebellions of 1837-38.[31] While the long-criticized practice of giving the Crown *ex parte* and extra-judicial opinions in politically controversial cases, for instance, had become obsolete in England by the early years of George III's reign, Lower Canadian Judges often compromised their independence in this way. Indeed, during Governor Sir James Craig's so-called "reign of terror" of 1810, and again in the grisly aftermath to the 1838 Rebellion, they virtually guaranteed in advance that the government would win critical cases, should the matters in issue arise in court - which they did.[32]

But many questions remain to be answered. For example, was such an attitude "inevitable" on the part of a colonial Bench? Or were colonial Judges merely predisposed to act this way, but did so only under the stimulus of historical experience? If so, was the Baconian judiciary in Lower Canada born of the garrison mentality? What were the similarities and differences between Lower Canada, other British colonies, and England itself? Is there a tradition of Baconianism in Canadian security cases which may still have potency? I hope my "glimpse" into the trial of David McLane illustrates the importance of finding answers to such questions.

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[31] See the author's "The General Court Martial of 1838-39 in Lower Canada: An Abuse of Justice" in W.W. Pue and B. Wright, eds., *Canadian Perspectives on Law and Society: Issues in Legal History* (Ottawa: Carleton University Press, 1988) 249 at 267-71.

[32] See, *e.g.*, *ibid.*; R.G. 1, E.1, Lower Canada State Minute Book B (17, 19 March 1810).