River of Injustice:
St. Louis's Freedom Suits and the Changing Nature of Legal Slavery in Antebellum America

by

Kelly Marie Kennington

Department of History
Duke University

Date:_____

Approved:

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Laura F. Edwards, Supervisor

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Edward Balleisen

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Peter H. Wood

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Adriane Lentz-Smith

Dissertation submitted in partial fulfillment of
the requirements for the degree of Doctor
of Philosophy in the Department of
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ABSTRACT

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Abstract

Slavery and freedom are central issues in the historiography of nineteenth-century America. In the antebellum era (1820-1860), personal status was a fluid concept and was never as simple as black and white. The courts provide a revealing window for examining these ambiguities because court cases often served as the venue for negotiations over who was enslaved and who was free. In St. Louis, enslaved men and women contributed to debates and discussions about the meaning of personal status by suing for their freedom. By questioning their enslavement in freedom suits, slaves played an important role in blurring the law's understanding of slavery; in the process, they incurred the enormous personal risks of abuse and the possibility of sale.

Using the records of over 300 slaves who sued for freedom, as well as a variety of manuscript sources, newspapers, and additional court records, this project traces these freedom suits over time, and examines how slave law and the law of freedom suits shifted, mainly in response to local and national debates over slavery and also to the growing threat of anti-slavery encroachment into St. Louis. When the laws tightened in response to these threats, the outcomes of freedom suits also adjusted, but in ways that did not fit the pattern of increasing restrictions on personal liberty. Instead, the unique situation in St. Louis in the 1840s and 1850s, with its increasingly anti-slavery immigrant population, allowed slaves suing for freedom to succeed at greater rates than in previous decades.

Contents

Acknowledgements

I am blessed to have had the generous help of many people while writing this dissertation. The shortcomings of the project are all my own, of course, but the project has benefited greatly from the assistance of numerous others who deserve recognition. I want to begin by thanking my advisor, Laura Edwards. Her guidance and advice along every step of this process has been invaluable to my professional development. I know this dissertation is immensely improved by Laura's thoughtful comments and suggestions, and I am deeply grateful for all of her help. My committee members, Peter Wood, Ed Balleisen, and Adriane Lentz-Smith also deserve special mention. Each of them brings a unique perspective to my work, and I appreciate each of their contributions. I am very lucky to have such a generous committee of scholars reading and commenting on my work.

A number of other professors at Duke and elsewhere have contributed to my development as a scholar. Randy Sparks and Judy Schafer generously gave their time to help an over-eager undergraduate begin to think about a career in history. The many conversations I had with them formed the basis for my research habits and my interest in studying southern slave law. I would also like to thank Margaret Humphreys for her generosity and support throughout my time in graduate school. Thanks also to Dirk Bonker, Sally Deutsch, Lil Fenn, John French, Eric Gardner, Barry Gaspar, John Hart, Reeve Huston, Tom Robisheaux, Alex Roland, and John Thompson for their support. I also want to thank Daina Ramey Berry, Jonathan Ocko, David Gilmartin, and the members of the Triangle Legal History Seminar for reading and commenting on one of my chapters.

I want to thank the members of my dissertation writing groups, Gordon Mantler, Sebastian Lukasik, Steve Inrig, Felicity Turner, Orion Teal, and Eric Weber, for reading and commenting on parts of the project. Heidi Giusto also read many pieces of my work, and I know that our innumerable conversations about slavery and the law have helped to improve the project. I also appreciate the conversations, advice, and friendship of: Anne-Marie Angelo, Adam Arenson, Kim Bowler, Elizabeth Brake, Jenny Crowley, Mitch Fraas, Julia Gaffield, Samantha Gervase, Reena Goldthree, Alisa Harrison, Paul Johstono, Max Krochmal, Pam Lach, Heather Marshall, Noeleen McIlvenna, Todd Olzewski, Bryan Pitts, Jacob Remes, Linda Rupert, Liz Shesko, David Silkenat, Silvermoon, Paige Welch, and Amy Williams.

Several archivists provided me with assistance during my visits to Missouri, and so I want to thank the staff of the Missouri Historical Museum, the Missouri State Archives-St. Louis, and the Western Historical Manuscripts Collection not only for their help, but for their kindness. Personal relationships can make quite a difference in the course of a project, and I cannot say enough good things about the people I met through my archival journeys. In particular, I want to thank Molly Kodner and Dennis Northcott at the Missouri Historical Museum; Eben Lehmen, Patricia Barge, Sharon Kenny, Nik Henle, and Bill Glankler at the Missouri State Archives-St. Louis branch; and Ruth Ann Hager at the St. Louis County Library. Kristin E. S. Zapalac at the Missouri Department of Natural Resources' State Historic Preservation Office deserves special thanks for her kindness and her willingness to share some of her own research and her unending knowledge about Missouri's freedom suits.

Thank you also to my family for their love and support through this process, especially my parents, Rohn Kennington and Leslie Kennington, for their words of encouragement, and my husband Kevin Brandewie, for his patience, his willingness to listen, and for always believing in me.

It is difficult to know where to begin in thanking Mike and Diane Everman. They not only opened up their home for me to stay while researching in St. Louis, they also provided me with endless evenings of conversation and fun exploring the many museums, festivals, and restaurants of St. Louis. They are two of the most remarkable individuals I know, and I thank them from the bottom of my heart for their support, their advice, and most of all their friendship.

Introduction

Never, perhaps…was there…a century of such unvarying and unmitigated crime as is to be collected from the history of the turbulent and blood-stained Mississippi. The stream itself appears as if appropriate for the deeds which have been committed…There are no pleasing associations connected with the great common sewer.

– Captain Frederick Marryat[1]

At the edge of the river, slaves in St. Louis lived on the border of the slave system. Only the Mississippi River separated the city of St. Louis, founded on its banks in 1764, from the free state of Illinois. Gazing across the river's churning waters, enslaved men and women in St. Louis could actually see freedom on the other side. Some in St. Louis also lived on the edge of the slave system in a figurative sense, because Missouri provided a means of winning freedom by using the legal system to question enslaved status. Their ability to sue for freedom meant that slaves in St. Louis stood on the edge of a river of injustice, where they desperately tried to avoid getting swept away. Like the Mississippi River, the history of slavery in America was constantly changing, full of twists and turns, ebbs and flows, all of which held momentous consequences for hundreds of thousands of men and women of African descent. There were powerful continuities from decade to decade, but there were also subtle and important shifts.

For generations, the Mississippi River has served as a rich symbol for all those who have lived along its banks or traveled its waters, as well as for the nation as a whole. Poet Walt Whitman once called it the "spinal river," and in some ways it

[1] Frederick Marryat, *Diary in America,* Series II, Volume I (Philadelphia: T.K. & P.G. Collins, 1840), chapter 8, accessed at: http://www.athelstane.co.uk/marryat/diaramer.htm (March 14, 2009).

acted such, holding the country together and facilitating transportation between different regions.[2] But in the decades before the Civil War, the "Mighty Mississippi" meant different things to different people. For settlers moving west, it was a barrier to cross and a stop along the way to greater opportunities. For Midwestern farmers and merchants, it became a highway for transporting goods to distant markets, opening important new commercial networks. For enslaved men and women who lived and worked along its banks, the river symbolized mobility and a possible route to escape. But the mobility the river facilitated also could include the transportation of slaves to areas where the system of slavery was even more entrenched, making it a symbol of terror for slaves in the Upper South who feared being sold "down the river."[3] As British traveler Frederick Marryat observed, the Mississippi was a "blood-stained" river. Missouri's slaves understood, even more clearly than Marryat, that the river was deeply tainted by the injustices committed along its banks and on its waters.

The Mississippi River was the lifeblood of St. Louis, sustaining commerce and uniting peoples from all over America in what is now called "the Gateway City." In St. Louis, the river lured runaway slaves from the Deep South, some of whom stayed in the city, while others crossed the river to seek freedom further north. The river provided employment for some slaves and free blacks, but it also allowed slaveholders to sell and transport their slaves to places like New Orleans. Despite

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[2] Walt Whitman, "Proto-Leaf," in *Leaves of Grass* (Boston: Thayer and Eldridge, 1860).

[3] Thomas Buchanan points out how the river carried ideas about slavery and racism throughout the country, in addition to the possibility of freedom. See Buchanan, *Black Life on the Mississippi: Slaves, Free Blacks, and the Western Steamboat World* (Chapel Hill and London: The University of North Carolina Press, 2004), p. 5.

these contradictions, "Big Muddy" allowed the city of St. Louis to grow and prosper. Its location on a key American waterway also made the city a major slave market for the Missouri hinterlands, keeping it firmly tied to the slaveholding south even as its population became increasingly cosmopolitan.

The Mississippi River bubbles up repeatedly in the case files of slaves who sued for their freedom in the St. Louis Circuit Court; the river literally ran through many aspects of the lives of these enslaved individuals, appearing in a variety of contexts. The Mississippi can also symbolize shifts in freedom suits, as the outcomes of the cases responded to the many forces at work in St. Louis and in antebellum America. Like the river itself, freedom suits brought both hope and disappointment to the enslaved—providing a public forum for slaves to challenge their enslavement and also sometimes reinforcing their bondage with the weight of law.

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Using more than 300 cases of slaves who sued for freedom in the St. Louis Circuit Court, this project examines how the categories of slave and free operated in the half century before 1860. Freedom suits were legal cases brought by enslaved individuals trying to win free status through the courts. The detailed contents, and indeed the very existence, of freedom suits powerfully show how Americans continued to wrestle over the meaning of the categories of slave and free throughout the antebellum years.[4] In this period, as in the previous two centuries, personal status was a fluid concept that was never as simple as black and white. Given this volatility,

[4] St. Louis Circuit Court Historical Records Project, "Freedom Suits Case Files, 1814-1860," accessed at: http://stlcourtrecords.wustl.edu/about-freedom-suits-series.cfm (April 26, 2003).

people with various degrees of African descent sometimes found themselves caught between slavery and freedom.

Slaveholders in Missouri, as elsewhere, pushed for greater clarity in the law of slavery in order to secure and protect their property interests, but when slaves sued for freedom they frustrated this effort and muddied the waters, precluding any precise definition of slave or free status. Slaveholders worked to establish fixed, inflexible rules concerning personal status, but the reality of life in a border area prevented them from accomplishing their designs, even on the eve of the Civil War, when certainly some of the rules were becoming better established. Although slaveholders could subvert the court's authority by ignoring its rulings and persisting in their claims of ownership, through their participation in freedom suits, slaveholders implicitly recognized the authority of the law to define the categories of slave and free.

The courts provide a revealing window for examining ambiguities of personal status because legal cases often served as the venue for negotiations over who was enslaved and who was free.[5] Enslaved individuals in St. Louis sued using a Missouri statute that allowed those "wrongfully" enslaved to sue for freedom, but this statute failed to outline any specific grounds for deciding these cases, which gave antebellum judges and juries wide latitude in making determinations of personal status. Judges'

[5] In his study of law in the postbellum South, Harold D. Woodman explains the relationship between law and social conditions as being about political interaction; law became the basis for designing social relationships. I also see law as constituting and defining social relationships, particularly those between slaves and the whites in their communities. Woodman's analysis breaks away from the law and society debate by defining law not merely as a reflection of society and also not as a tool for elites to maintain their control over dependents, but as a result of complex negotiations that were constantly being challenged and debated in local contexts. See Woodman, *New South-New Law: The Legal Foundations of Credit and Labor in the Postbellum Agricultural South* (Baton Rouge and London: Louisiana State University Press, 1995).

responsibility to interpret the written statute was critical when legislation offered few specifics about how the legal code should work in practice, especially in regards to laws about slavery. In addition, Missouri had a relatively new, still-developing legal system throughout the first half of the nineteenth century. This meant that few or no precedents existed to offer guidance for deciding issues of slavery and freedom. Missouri's courts struggled with questions of personal status throughout the antebellum years, and though by the late 1840s and 1850s, the laws sought to limit slaves' ability to win freedom through the courts, the actions of individuals in court continued to press judges and juries to think about slavery in less rigid ways.

Freedom suits provided an important venue for enslaved men and women, allowing them access to a public forum to challenge their own enslavement. Although their voices are filtered through court documents, these cases provide a great deal of detail about these slaves' lives and experiences, and they also reveal some of the ways enslaved men and women argued against their enslaved status within the boundaries of the law. Through the arguments enslaved plaintiffs made in court, they pushed the court to accept a broad, fluid definition of freedom. By challenging their enslavement in freedom suits, slaves took an active role in blurring boundaries, exposing contradictions, and challenging legal understandings of slavery. In bringing these suits, enslaved individuals incurred enormous personal risks; they faced verbal, physical, and mental abuse, and the looming possibility of sale. Although freedom suits emphasize the pivotal role of judges and lawyers in shaping and determining legal doctrines of slavery in antebellum America, they also demonstrate how enslaved

individuals forced the courts to confront difficult questions about a person's legal status that could have wider ramifications.[6]

Freedom suits provide a lens for examining how national and local politics connected with and influenced one another in the antebellum era. Local events influenced the way men and women in and around St. Louis thought about slavery and the place of free people of color in their society.[7] As a result, these cases added another dimension to the hierarchical power structure of the antebellum city by providing a voice to enslaved men and women and their allies. Freedom suits also contributed to southern whites' increasingly uneasy view of the slave system by making it possible for slaves to free themselves legally from their bondage. The ability to challenge personal status threatened slaveholders and added to sectional tensions over the slavery issue on the national level. But national debates over slavery also affected the prosecution and outcomes of freedom suits in St. Louis. In

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[6] Historian Peter Karsten contends that nineteenth-century judges exercised great authority in their decisions, especially in areas of the South or the West, where fewer legal materials or knowledge of precedents existed. Karsten, *Heart Versus Head: Judge-Made Law in Nineteenth-Century America* (Chapel Hill and London: The University of North Carolina Press, 1997), pp. 306-12. Karsten's work implies that in antebellum St. Louis, judges had less access to precedent and therefore tended to make decisions that reflected the community's beliefs and values. Karsten also argues that nineteenth-century judges made decisions based not solely on legal precedent or economic motivations but on their own feelings of sympathy for the litigants and for their understanding of the human costs of their decisions. Certainly no greater human cost entered the courts than the decision of a person's freedom, and this aspect must have entered the minds of the judges and juries deciding these cases. Ariela Gross argues that slaves shaped legal culture because judges and lawyers depended on slavery and the slave economy, including its preservation. She also suggests that slaves' actions in court could challenge the authority of their masters. See Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ and Oxford: Princeton University Press, 2000).

[7] Events like the Elijah Lovejoy incident and the Francis McIntosh affair all worked to create a climate of unrest over questions about the place of blacks in antebellum America. Lovejoy was an anti-slavery newspaper editor, and McIntosh was a free man of color, but both of these local events dominated discussions over slavery and freedom in the 1830s and 1840s in St. Louis, and they will be discussed in more detail in chapter five.

addition, Missouri found itself in the center of national conflicts over slavery during the Missouri Compromise debates, the Kansas-Nebraska crisis, and the aftermath of the Supreme Court's *Dred Scott* decision.

This project traces over time the cases of slaves suing for freedom and recasts our understanding of how slave law generally, and specifically the law regarding freedom suits, shifted in reaction to local and national debates over slavery, and also to growing anti-slavery sentiment within St. Louis. When white conservatives eventually tightened state laws in response to what they perceived as dire threats from anti-slavery forces, the judges and juries who decided freedom suits also responded, but in ways that did not necessarily fit the pattern of increasing restrictions on personal liberty. Instead, St. Louis, with its expanding immigrant population, saw a growth in anti-slavery sentiment in the 1840s and 1850s. This demographic shift, in turn, transformed jury pools, allowing slaves who sued for freedom to succeed at greater rates than in previous decades. This does not mean that the slave system was in jeopardy of being abolished, or that individual suits for freedom threatened slavery's existence; rather, I argue that legal contests over personal status demonstrate how the outlines of the categories of slave and free continued to be in flux, even as the expansion of the cotton kingdom in the Southwest progressed and brought with it an increased commitment to a rigid system of chattel slavery.

My work contributes to an emerging body of scholarship on the ways in which people without formal legal rights, such as slaves, free people of color, and white women, could and did use the legal system. Some of these publications discuss how people whom we typically think of as outside of the law interacted in *indirect*

ways with the formal legal structure, influencing the shape and the workings of local culture.[8] Others argue that people without rights made demands and *directly* participated in the legal system, forcing the law to recognize their claims.[9] My project builds on those works that look at how people without rights directly participated in the legal system, and it shifts the focus of this literature to a particular type of legal case—suits for freedom. In doing so, my work highlights the unique way that freedom suits allowed enslaved men and women to initiate litigation against

[8] For example, Ariela Gross argues that discussions about slaves and slavery in the antebellum courts were central to the creation of honor and the workings of local legal culture. See Gross, *Double Character*. Walter Johnson also sees discussions about slaves as central to how white slaveholders viewed themselves. He argues that slaveholders defined themselves through discussions of their slaves with one another and through their ability to negotiate the buying and selling of slaves. In addition, slaves could influence this process by refusing to obey slaveholders' demands or by working to affect negotiations over their sale. See Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, MA and London: Harvard University Press, 1999). For further discussion of how people without rights work to influence the law and politics, see Mary Beth Norton, *Founding Mothers & Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1996); Laura F. Edwards, *Gendered Strife and Confusion: The Political Culture of Reconstruction* (Champaign: University of Illinois Press, 1997); Edwards, "Status without Rights: African Americans and the Tangled History of Law and Governance in the Nineteenth-Century U.S. South," *American Historical Review* 112:2(2007): 365-93; and Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge, MA: Harvard University Press, 2003).

[9] The beginnings of this literature are with the Freedmen in Southern Society Project and the resulting published scholarship. See, for example, Ira Berlin, Joseph P. Reidy, and Leslie S. Rowland, eds., *The Black Military Experience* (Cambridge: Cambridge University Press, 1982). More recent work has demonstrated the many ways that people without rights engage the legal system. Dylan Penningroth argues that after the Civil War, freedmen and women asked the courts to recognize the property they had claimed under slavery. See Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South* (Chapel Hill and London: University of North Carolina Press, 2003). Hendrick Hartog details the ways in which women made their voices heard in divorce cases, forcing the law to respond to their claims. Hartog, *Man & Wife in America: A History* (Cambridge, MA: Harvard University Press, 2000). See also Judith Kelleher Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University Press, 2003); and Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 1995).

slaveholders and directly question their own enslavement.[10] In this type of legal action, the law recognized the humanity of enslaved individuals by hearing their complaints against slaveholders and in some instances, granting them a legal right to freedom. Not only did the court uphold the right to freedom of the wrongfully enslaved at the expense the slaveholders' right to property, the court's willingness to grant legal freedom continued into the late 1840s and 1850s, when pathways to freedom became more difficult for those held in bondage.

Scholars of slavery in the antebellum South have noted that the slave system become increasingly rigid during the decades immediately prior to the Civil War, with slaveholders granting fewer manumissions, therefore reducing access to freedom for enslaved men and women. This scholarship points out how whites in both slaveholding and free states passed laws to further restrict free blacks as well, in an effort to better demarcate the color line.[11] These works correctly show how restrictions on slaves and free blacks increased in response to the fear of abolitionism

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[10] Several historians have examined aspects of freedom suits in other locations, but few of them have explored the individual experiences of the litigants or looked at what these cases tell us about how antebellum Americans wrestled over the boundaries of slavery and freedom. See Emily Blanck, "Seventeen Eighty-Three: The Turning Point in the Law of Slavery and Freedom in Massachusetts," *The New England Quarterly* 75(2002): 24-52; William E. Foley, "Slave Suits for Freedom before Dred Scott: The Case of Marie Jean Scypion's Descendants," *Missouri Historical Review* 79(1984): 1-23; Sue Peabody, *"There Are No Slaves in France": The Political Culture of Race and Slavery in the Ancien Régime* (New York and Oxford: Oxford University Press, 1996); Claude F. Oubre and Keith P. Fontenot, "Liber Vel Non: Selected Freedom Cases in Antebellum St. Landry Parish," *Louisiana History* 39(1998): 319-45; Michael L. Nicholls, "'The Squint of Freedom': African-American Freedom Suits in Post-Revolutionary Virginia," *Slavery & Abolition* 20(1999): 47-62; Schafer, *Becoming Free, Remaining Free*.

[11] Richard C. Wade, *Slavery in the Cities: The South 1820-1860* (New York: Oxford University Press, 1964); Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaveholders Made* (New York: Pantheon Books, 1974); Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1974); Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill and London: University of North Carolina Press, 1996); Gross, *Double Character*.

and the national crisis over slavery. My work highlights an interesting dynamic occurring at the same time, which is that in St. Louis, rules surrounding freedom continued to be flexible enough to allow some enslaved men and women access to legal freedom through the courts. Freeing "wrongfully" enslaved individuals did not mean granting them equality to whites. In the Upper South and throughout the northern states during the late 1840s and 1850s, whites became less committed to a system of lifelong, chattel slavery for blacks, but they remained firmly committed to a strict color line that kept free people of color inferior to all whites in terms of status and rights.[12] Although courts in St. Louis remained open to granting freedom to the "wrongfully" enslaved, the recipients of this freedom encountered numerous restrictions on their liberty.

The relationship between slavery and freedom is central to the historiography of the nineteenth-century United States. Many of these studies consider the abstract meaning of slavery and freedom, arguing that a society's definition of slavery is closely linked to how it defines freedom.[13] Other scholarship examines the meaning

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[12] Joshua D. Rothman offers a different perspective and notes that in Virginia, the color line remained more flexible to allow for the interracial relationships that existed there. See Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1861* (Chapel Hill and London: University of North Carolina Press, 2003), especially chapter 6.

[13] Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* (New York: Vintage Books, 1956); Genovese, *Roll, Jordan, Roll;* David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Ithaca, NY: Cornell University Press, 1975)*;* Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton, 1975); Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981); Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA and London: Harvard University Press, 1982); James Oakes, *Slavery and Freedom: An Interpretation of the Old South* (New York: Knopf, 1990); Peter Kolchin, *American Slavery, 1619-1877* (New York: Hill and Wang, 1993); Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006).

of slavery and freedom for African-descended peoples, both before and after the Civil War.[14] My work looks at how struggles over the meaning of these categories played out "on the ground" during the antebellum era, in local courts and communities. In doing so, my project builds on this literature by arguing that judges and the slaves who appeared before them (through their white attorneys) engaged in an ongoing legal discussion about the meaning of slavery and freedom that carried the weight of the law. In the courtroom and in the larger community, judges and juries continued to wrestle over the boundaries separating slave and free, even into the late 1840s and 1850s. Examining negotiations over the boundaries of personal status in a local context allows us to see the categories of slave and free differently, as more fluid because of contestation by the "wrongfully" enslaved.[15]

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[14] Barbara Jeanne Fields describes another Upper South state, Maryland, as a critical battleground for struggles over the meaning of slavery and freedom. Fields, *Slavery and Freedom on the Middle Ground: Maryland during the Nineteenth Century* (New Haven, CT: Yale University Press, 1985). See also Berlin, *Slaves without Masters;* Stephanie McCurry, *Masters of Small Worlds: Yeomen Households, Gender Relations, & the Political Culture of the Antebellum South Carolina Lowcountry* (New York: Oxford University Press, 1995); Tera Hunter, *'To Joy My Freedom': Southern Black Women's Lives and Labors after the Civil War* (Cambridge, MA: Harvard University Press, 1997); Leslie Schwalm, *A Hard Fight for We: Women's Transition from Slavery to Freedom in South Carolina* (Urbana: University of Illinois Press, 1997); Noralee Frankel, *Freedom's Women: Black Women and Families in Civil War Era Mississippi* (Bloomington and Indianapolis: Indiana University Press, 1999); Julie Saville, *The Work of Reconstruction: From Slave to Wage Labor in South Carolina, 1860-1870* (Cambridge: Cambridge University Press, 1994)*;* Ariela Gross, *Double Character*; Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," *Yale Law Journal* 108:1(1998): 109-89; Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Resistance in the Plantation South* (Chapel Hill and London: The University of North Carolina Press, 2004).

[15] In their study of one black family over multiple generations, John Hope Franklin and Loren Schweninger also argue for the existence of fluidity in personal status. See Franklin and Schweninger, *In Search of the Promised Land: A Slave Family in the Old South* (New York and Oxford: Oxford University Press, 2006). In addition, Lea Vandervelde and Sandya Subrmanian argue for the existence of "*ranges* of coercion and agency," rather than a strict black-white, slave-free divide. See Vandervelde and Subramanian, "Mrs. Dred Scott," *The Yale Law Journal* 106:4(1997): 1038.

My methodology involves combining social history and legal history to understand people's experiences in court and to tease out the larger symbolic meaning of these experiences. Social historians employ a broad, anthropological approach to legal history to explore the reasons why people brought legal suits, to examine the arguments they presented to courts, and to dissect the meaning of judicial decisions.[16] Although this approach is more concerned with the social implications of legal proceedings than with the technical workings of the trials, it also places these experiences in their legal context and considers both the power of law and the meaning of a legal discourse.

My project provides a detailed study of the region around St. Louis to examine what this example can tell us about the larger dynamics of slavery and freedom in antebellum America.[17] Studying slavery in such settings is crucial, because law was actually being made and decided at the local level.[18] Looking at this particular location allows us to see how the law changed over time and responded, both to challenges brought before the courts and to the local and national debates over slavery.

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[16] For an excellent example of this approach, see Gross, *Double Character.*

[17] This type of examination now represents a common approach in colonial American legal history. For example, see: Ann Marie Plane, *Colonial Intimacies: Indian Marriage in Colonial New England* (Ithaca, NY: Cornell University Press, 2000)*;* Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca, NY and London: Cornell University Press, 2002); Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996)*;* and Dayton, *Women before the Bar*.

[18] Paul Finkelman argues for the importance of studying local court records because most cases never make it to the appellate level. See Finkelman, *An Imperfect Union,* p. 17.

Using a broad range of legal records and other materials, my work situates the cases in their larger context and further illuminates the dynamics of slavery in St. Louis. An extensive array of local records reveals the continual struggle over the meaning of slave and free, a perspective that is lost when focusing solely on appellate cases and statutory law. In addition to freedom suits initiated by those held in slavery, I have examined over 1,000 additional court records to find material relating to the freedom suits or to issues of slavery and freedom, including cases brought in the Criminal Court, the Court of Common Pleas, and the Missouri Supreme Court.[19]

Many of the St. Louis case records are lengthy and rich, but legal sources also have their limitations, which include a truncated view of the individuals' stories as well as prevarication and deceit by those people trying to win their cause in court. In these ways, the law represented a distinct arena in antebellum society that does not necessarily offer an exact reflection of social conditions. It is important to remain aware of these dynamics when examining legal records and to remain critical of the sources. But even if litigants exaggerated claims to help their causes, the claims still had to be plausible in order to convince the judge and jurors, so the material found in legal records does offer a reflection of scenarios that could have happened to the litigants.[20]

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[19] The freedom suit case files are part of the St. Louis Circuit Court Historical Records Project, which scanned selected freedom suits and placed the digital files on the internet.

[20] In this way, my analysis follows that of Walter Johnson, who says that he treated his legal material as "lies," but he argues that especially in court, the lies "had to be believable." See Johnson, *Soul by Soul,* p. 12.

This project uses a range of additional materials to supplement the rich legal sources that are its primary focus. Newspaper stories about slaves and free people of color provide insight into the community's beliefs and attitudes concerning slavery, showing how community attitudes changed over time, and how these changes reflected larger, national issues and debates over slavery and freedom. The personal papers of residents of the St. Louis community, particularly those of the white men involved in freedom suits, such as judges, lawyers, and slaveholders, include valuable evidence regarding individuals' views on slavery and freedom, and how some individuals discussed freedom suits outside of the courtroom. Consisting of letters, diaries, and other records, the personal papers of people involved in freedom suits provide crucial information about the workings of freedom suits and the motivations of those engaged in them and can help provide a sense of the place of slavery in the St. Louis community.

This dissertation is divided into five chapters, two that are loosely chronological (the first and the last) and three that are primarily thematic. Chapter one traces the development of the legal system in Missouri and St. Louis, examining the French and Spanish legal heritage as well as the changes that resulted from the large influx of Anglo-American settlers and lawyers in the 1810s and 1820s. This chapter also looks at how freedom suits worked, including the main arguments presented in court, to argue that the freedom suit statute left wide latitude for deciding these cases and that few precedents existed to guide judicial decisions. Chapter two details the experience of enslaved plaintiffs in freedom suits, looking at the enormous personal risks these individuals took by bringing their grievances to court, how they

learned about freedom suits, and why they ultimately chose to initiate freedom suits. Chapter three seeks to answer the question of how power operated in the St. Louis courts and community, considering the roles played by lawyers, judges, and slaveholders in shaping and determining the outcomes of these cases. These various actors brought their own motivations and backgrounds to bear on freedom suits, although not always in ways we might expect, a fact that further confused issues of personal status. Chapter four looks at free people of color in the St. Louis community, considering their roles in freedom suits as plaintiffs and also as defendants. It highlights the precarious nature of freedom for all free blacks in antebellum America, but especially for those living in a border region like St. Louis. Although whites tried to set up a clear color line and deny rights to all blacks, the existence of free people of color frustrated this attempt by turning to the courts to uphold their liberties. Chapter five investigates the changes in the laws and in the cases that occurred in the late 1840s and 1850s, as both local and national tensions over the slavery issue increased and the local population of St. Louis also dramatically shifted. This chapter finds that even as Missouri tried to limit slaves' access to freedom suits, the local St. Louis community did not fit the national pattern of increasing restrictions on liberty. Instead, a large influx of German and Irish immigrants in this period gave the city an increasingly anti-slavery character.

It is important to recognize and remember that the people who came into the St. Louis Circuit Court to sue for freedom considered themselves to be free men and women, so throughout this dissertation, I use a variety of terms to refer to the individuals who brought these cases to court. The term I prefer is "enslaved

plaintiff," which signifies that the identity of "slave" was not something these individuals adopted; instead, they viewed themselves as free persons. So whenever possible, I try to use the term "enslaved" or "alleged slave," although in some cases I do refer to them as "slaves" in the interest of clarity.

Chapter One
"According to the Statute": Missouri's Legal Heritage and the Fluidity of Law

When slaves brought the first freedom suits to the courts of St. Louis, they tested the waters that hundreds of future enslaved individuals would navigate when they looked to the courts to grant their legal freedom. In nineteenth-century Missouri, persons who believed they were wrongfully—that is, illegally—held in bondage could sue for freedom based on an 1807 territorial statute allowing these suits. But this statute, and the 1824 state law that codified it, left a great deal of latitude for judges and juries to decide freedom suits. In the 1810s and 1820s, Missouri was still a small, but growing, western outpost, and few local precedents existed for handling these cases. No statutory guidelines existed for what arguments to bring, how to prosecute these cases, or how to determine their outcomes. For this reason, the early St. Louis freedom suits served as forums for debate over the meaning of slavery and freedom—forums that included a multitude of actors. In these initial years, enslaved individuals, slaveholders, and the wider community struggled to define slavery through the St. Louis Circuit Court. The absence of state guidelines allowed for fluidity in how the courts decided freedom suits; this ambiguity created a space where numerous actors contributed to the development of more definite rules for these cases and where a variety of understandings of the law could coexist.

Missouri's French and Spanish legal heritage contributed to an atmosphere of local, personalized justice, where relationships and standing within the community exercised a powerful influence over the outcomes of legal disputes. This chapter traces the development of the legal system, from the origins of the courts to the early

laws surrounding slavery and freedom suits. It includes an analysis of the number of cases brought, the types of arguments made, and the outcomes of these cases throughout the antebellum period. The chapter also explores how some of the early cases worked, paying attention to the arguments presented, the responses of defendants to these contentions, and the way the courts waffled on how to decide these suits in the absence of clear precedents. Slaves in St. Louis brought suits for freedom based on three main arguments: free birth, prior manumission, or living or traveling in free territory. Early examples of these arguments uncover the inconsistency in the court's handling of these issues, as well as the responses of slaves and their enslavers to the court's development of new definitions of slavery and freedom.

Western River Town

From the earliest years of European settlement, Missourians blended together a variety of cultural influences. The remote inland territory's failure to produce riches made it something of a colonial hot potato, bouncing from France to Spain, back to France, and finally to the United States, all in the space of only forty years. European settlement originated with the French settlement of Ste. Genevieve around 1750, but the territory shifted to Spanish control immediately after the founding of St. Louis in 1764. After years of conflicts and failed settlement attempts, the Spanish relinquished Missouri to the French, who then quickly sold it to the United States. Throughout the territorial period, Native Americans, French, a few Spanish, and Anglo-American settlers interacted to construct Missouri's unique social landscape, which also included a substantial population of enslaved and free people of color.

In the early eighteenth century, Missouri and Osage Indians inhabited the lands around present-day St. Louis. Europeans made a few failed attempts at settlement in the early decades of the century before establishing the first permanent outpost in 1750, when France claimed the entire region as part of French Louisiana. In 1764, in an attempt to recover financial losses following the Seven Years' War (1754-1763), French adventurer Pierre Laclede and his stepson Auguste Chouteau traveled north along the Mississippi River from New Orleans and founded the settlement of St. Louis near the confluence of the Mississippi and Missouri rivers.[1] Soon after, new groups of permanent settlers began arriving, and the young village seemed to "spring into existence."[2] French colonists dominated this initial influx, moving west across the Mississippi River after word arrived from Europe that France had surrendered all of its territory east of the river to the British. By late 1764, when news of the French cession of Louisiana to Spain reached St. Louis, the area had around forty or fifty families living there.[3]

From its founding, St. Louis was a settlement committed to slave labor. The earliest known St. Louis inventory of goods and property, from March 1766, showed "two negroes, one named Samson, the other Larose," apparently brought from the

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[1] William E. Foley, *The Genesis of Missouri: From Wilderness Outpost to Statehood* (Columbia: University of Missouri Press, 1989), pp. 8, 26.

[2] Frederick L. Billon, *Annals of St. Louis in its Early Days under the French and Spanish Dominations* (St. Louis: Printed for the Author, 1886), p. 21.

[3] Foley, *Genesis of Missouri,* p. 28.

Illinois Territory by a French official.[4] In 1768, Alexander Langlais, a trader, agreed to "take a negro in place of the said sum of eight hundred livres in peltries" as payment for one of his debts.[5] Free blacks as well as slaves lived in early St. Louis. The first book registering births, marriages, and deaths in the Catholic parish of St. Louis contains an entry dated October 4, 1770, when Rene Kiersereau, sexton of the church, "interred the body of Gregory, a free negro man."[6] The Catholic Church baptized slaves and free blacks, in addition to the predominantly French inhabitants of the village.[7]

Organized government began in St. Louis right before the area shifted from one colonial power to another. The earliest European settlers constructed the first temporary governing structure in January 1766, when they set up the French military commander St. Ange de Bellerive as provisional governor. In May 1770, years after the Treaty of Paris gave Louisiana to Spain, St. Ange relinquished control of the settlement to the new Spanish lieutenant governor, Pedro Piernas.[8] The Spanish designated the area north of the 33rd parallel (the southern border of present-day

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[4] Inventory of Joseph Lefevre d'Inglebert, Deputy of the Orderer of Louisiana and Judge of the Royal Jurisdiction of the Illinois, quoted in Billon, *Annals of St. Louis,* p. 36.

[5] Billon, *Annals of St. Louis,* p. 63.

[6] Ibid., p. 78.

[7] According to some estimates, from St. Louis's founding to 1818, the Church baptized "582 negroes," performed one black marriage, and buried 362 black people. Newspaper clipping dated January 1, 1868, found in Folder 2, Wilson Primm Papers, Missouri Historical Museum, St. Louis, Missouri.

[8] David D. March, *The History of Missouri, Volume I* (New York and West Palm Beach: Lewis Historical Publishing Company, 1967), p. 43; Foley, *Genesis of Missouri,* p. 36.

Arkansas) as Upper Louisiana, part of Spanish Louisiana (an area encompassing Upper Louisiana and the present-day state of Louisiana).

In the 1770s, under the Spanish regime, the settlement grew more slowly than expected, but trade with the Native Americans flourished. In his 1769 report, St. Ange estimated that twenty-three tribes regularly came to St. Louis to receive presents and trade goods.[9] The trading relationships with Native Americans allowed the growing outpost to become the center for the Midwestern fur trade, and for this reason, St. Louis was a prime target for British attack during the American Revolution. In May 1780, Indians fighting for the British attacked the village of St. Louis and killed more than twenty people, including several slaves.[10] The attackers, perhaps numbering as many as one thousand strong, included warriors from the Sac, Fox, Sioux, Menominee, and Winnebago tribes. The French and Indian defenders of St. Louis drove back the attack, forcing the British and their allies to retreat all the way to Mackinac, a village located at the strait connecting Lake Huron and Lake Michigan.[11]

Slaveholders in St. Louis quickly employed a strategy of trying to divide slave loyalty in order to better control their human property. In the early decades of the city's settlement, owners employed their slaves in the business of catching runaway slaves, and conflict often existed between slaves of African descent and Native

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[9] Foley, *Genesis of Missouri,* p. 37.

[10] Billon, *Annals of St. Louis,* p. 199. The governor's report listed "fourteen whites and seven slaves killed, six whites and one slave wounded, and twelve whites and thirteen slaves taken prisoner." Foley, *Genesis of Missouri,* p. 44.

[11] March, *History of Missouri,* p. 52.

American slaves. On May 15, 1787, for example, Marie Therése Chouteau received $600 in silver for the value of her slave Baptiste, who was accidentally killed in a skirmish after trying to help recapture two runaway Indian slaves. One nineteenth-century historian described the incident, writing that "This affair was one of absorbing interest to the inhabitants of our little community, furnishing the gossips of the day a fruitful topic to engage their attention for the whole period of 16 months that the affair was before the public…Not so much from the death of the negro itself, *for that was a circumstance of minor importance at that day*, as from the high social position that all concerned [in] it occupied in the community."[12] Baptiste's death came as a result of trying to help capture runaway Indian slaves, which is indicative of how slaveholders created a rift between slaves of differing cultures in these early years. It is also notable that Marie Therése Chouteau was the mother of Auguste Chouteau and the mistress of Pierre Lacléde, the two men who together founded the village of St. Louis. A wealthy and powerful woman, her social standing no doubt influenced the award she received to compensate her for the loss of her slave.[13]

In the 1790s, the Spanish tried to stem the flow of foreign migrants to Upper Louisiana by closing the Mississippi River to foreign commerce. This strategy failed. After Pinckney's Treaty in 1795, Spain officially granted Americans the right to use the Mississippi and move into Spanish territories, provided they took an oath of loyalty to the Spanish crown. This concession opened the floodgate, and American

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[12] Billon, *Annals of St. Louis,* pp. 242-43 (emphasis added).

[13] Shirley Christian, *Before Louis and Clark: The Story of the Chouteaus, the French Dynasty that Ruled America's Frontier* (New York: Farrar, Straus, and Giroux, 2004), pp. 30-33.

settlers poured into Upper Louisiana, threatening to upset the delicate power balance between the Native American tribes, Spanish administrators, and the largely French population.[14] By 1797, St. Louis had more than 200 houses and had become a bustling fur-trade town, complete with numerous stores, as well as a building that housed the office of the Lieutenant Governor of Upper Louisiana. By 1800, free and enslaved people of color constituted around a third of the town's population. Of the seventy-seven free people of color listed on the territory's Spanish census of that year, seventy of them resided in St. Louis.[15]

The early nineteenth century brought an abrupt change in government to the area around St. Louis, but at first, the governing structure retained certain aspects of the Spanish regime, including the importance of community beliefs and practice in making legal decisions. The Louisiana Purchase of 1803 brought the residents of St. Louis into the United States, with the U.S. government splitting its vast new acquisition in two. The newly-acquired territory below the 33rd parallel became the Territory of Orleans, which became the present-day state of Louisiana. Further north, what had been Upper Louisiana became the new American Territory of Louisiana. (The U.S. government renamed it the Territory of Missouri in 1812 to distinguish it from the new state of Louisiana.) James Wilkinson served as the first governor for the Territory of Louisiana, commanding from the seat of government in St. Louis. The principal issue occupying the minds of St. Louis residents under the new American regime was the question of land titles. American administrators struggled

[14] Foley, *Genesis of Missouri,* p. 77.

[15] Ibid., pp. 98, 114-16.

to determine the rules of land titles granted under the Spanish regime because few owners of these titles had registered them with the Spanish government, as required by law, but local custom allowed title to land without this official recognition. Eventually, the government recognized the titles despite the failure of their owners to register them, allowing the title holders formal legal recognition of their property in accordance with Spanish practice. After a committee cleared these titles during the first decade of the nineteenth century, the town grew even more rapidly. In 1810, a traveler visiting St. Louis reported that "every house is crowded, rents are high, and it is exceedingly difficult to procure a tenement on any terms."[16]

As the first decade of the nineteenth century came to a close, residents of the Territory of Louisiana, including St. Louisans, feared increasing tensions between the United States and Great Britain. The British maintained friendly trading relationships with many of the Native American tribes in the Midwest, fueling concerns that the British might incite the Indians against them.[17] Both European settlers and Native Americans committed violent depredations in the more remotely settled areas of the territory, while Governor Meriwether Lewis's harsh dealings with Native American tribes inflamed existing tensions and created new problems for the U.S.

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[16] Henry Marie Brackenridge, *Views of Louisiana, Together with a Journal of a Voyage up the Missouri River in 1811* (Pittsburgh: Cramer, Spears, and Eichbaum, 1814), quoted in Foley, *Genesis of Missouri,* p. 185.

[17] Foley, *Genesis of Missouri,* p. 193. Rumors of Indian violence against settlers outside the established villages and towns circulated constantly amongst residents of St. Louis, fueling their growing fears of the vulnerability of their settlement to attack. This fear is apparent from perusing the young newspaper published in St. Louis, *The Missouri Republican,* which started in 1808.

government.[18] These tensions escalated in May 1811 when a group of Native Americans entered St. Louis and burned down the barn of Pierre Chouteau, a leading St. Louis resident and fur trader. Shortly after, the War of 1812 (1812-1815) brought another wave of bloodshed to the edges of white settlement, but the war did not start or end the endemic violence in the area. Instead, it represented only one episode in a long series of retaliatory attacks that often caught the innocent on both sides in their crossfire.

The end of the War of 1812 did bring significant change: with the war over and the British presence in the Northwest Territory eliminated, more settlers from further east and south entered the area. After 1815, the population of the area now called the Missouri Territory (with roughly the same boundaries as the state of Missouri) increased exponentially, driving explosive growth in its largest town, St. Louis. From 1815 to 1818, the population of St. Louis doubled to over 3,000 residents.[19] Many of these new settlers came from the slave states, particularly Virginia and the Carolinas, bringing their slaves with them to Missouri. Two years later, in 1820, Missouri joined the Union as a state permitting slavery, in accordance with the Missouri Compromise.[20] By this time, Missouri had over 20,000 slaves, representing roughly 15 percent of the population; St. Louis alone had over 10,000

[18] Foley, *Genesis of Missouri,* chapter 12.

[19] Ibid., p. 244.

[20] The federal Missouri Compromise allowed Missouri to enter the Union as a slave state at the same time that Maine entered as a free state. The Compromise also drew a line west from the southern border of Missouri, and it stated that new territories north of that line would not be allowed to have slavery, while territories south of the line would be open to the institution. The Missouri Compromise will be discussed further in Chapter 5. For more on the Compromise, see Foley, *Genesis of Missouri.*

total residents, and its 1,800 slaves comprised 18 percent of the city's population.[21] At the same time, the number of free blacks in the territory decreased to only 347, possibly because of the tightening legal restrictions placed on all black individuals, slave and free.[22]

Enormous population growth in the space of only a few years created a general state of lawlessness in St. Louis and the surrounding area. One particularly sensational St. Louis case was the *United States v. Elijah* (1818), involving a slave belonging to John B. Smith who was charged with conspiracy to commit murder for plotting to kill Smith's wife by poisoning her with arsenic. Elijah's case received widespread attention and eventually resulted in a guilty verdict and his execution.[23] Fears of slave uprising further unsettled the social relations in the area and vice versa. As a result, state and local officials passed a variety of ordinances designed to control slaves and free blacks.[24]

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[21] Historical Census Browser. The University of Virginia, Geospatial and Statistical Data Center. Accessed at: http://fisher.lib.virginia.edu/collections/stats/histcensus (November 9, 2007). See also Greg Robinson, "St. Louis," in *Encyclopedia of African-American Culture and History,* ed. Jack Salzman, David Lionel Smith, and Cornel West, Volume 5 (New York: Simon & Schuster, 1996), p. 2378.

[22] Historical Census Browser. University of Virginia, Geospatial and Statistical Data Center. Accessed at: http://fisher.lib.virginia.edu/collections/stats/histcensus.index.html (November 9, 2007); Foley, *Genesis of Missouri,* p. 253.

[23] *U.S. v. Elijah, slave of John B. Smith*, 1818, Missouri Supreme Court Records, Missouri Secretary of State, Jefferson City, Missouri. Accessed at: http://www.sos.mo.gov/archives/judiciary/supremecourt/ (January 9, 2009).

[24] Foley, *Genesis of Missouri,* chapter 15.

Creating a Law of Slavery

Missouri's slave laws began with the French and Spanish legal systems and eventually developed into a legal code that combined civil and common law traditions.[25] In the eighteenth century, St. Louis and surrounding settlements west of the Mississippi operated under successive French and Spanish civil law codes. French and Spanish colonial officials divided Missouri into five administrative districts: St. Louis, St. Charles, Ste. Genevieve, Cape Girardeau, and New Madrid. After the Spanish officially assumed control of St. Louis from the French in May 1770, Spanish officials—called commandants—administrated justice and settled local disputes in St. Louis, often without formal judicial proceedings. Commandants preferred arbitration or informal settlement to court proceedings, and the right of trial by jury did not exist in the Spanish legal system. Citizens could appeal commandants' decisions to the Lieutenant Governor of Upper Louisiana in St. Louis, the highest official in the territory, who then answered to the Governor of Louisiana in New Orleans, the highest-ranking Spanish official in North America.[26]

When France transferred control of the Missouri region to the United States in 1803, a combination of Spanish civil law, the French legal traditions of the mostly-French population, and English common law brought in by the new, American government and Anglo-American settlers, all worked to create a hodgepodge of rules and precedents for the new American courts to navigate. For the most part, existing

[25] Civil law was a system based on written legal codes, whereas common law was based on judicial decisions and interpretation of legislation.

[26] Foley, *Genesis of Missouri,* pp. 98-99; Missouri State Archives, "An Abstract of the St. Louis Court System, 1804 to 1875" (St. Louis: Missouri State Archives, 2004).

laws and practices remained in place unless directly altered by the new governmental authorities. Justices of the peace administered justice on the local level, and litigants could appeal their decisions to the Court of Quarter Sessions of the Peace (the precursor of the Circuit Court). This court exercised criminal and administrative jurisdiction for the District of St. Louis, with the right of appeal to the General Court of the Territory. Separate courts for common pleas, probate, and orphans rounded out the earliest American judicial system in the territory.[27]

The tremendous growth of the colony in the 1810s, with many new Anglo-American settlers moving in, brought changes to the court system in St. Louis. When Congress created the Territory of Missouri in June 1812, the act also affirmed the use of both common law and the mostly Spanish and French existing practices in judicial proceedings unless changed by the territorial legislature. In 1813, the courts operating in St. Louis combined to form the Court of Common Pleas, which exercised civil, criminal, and probate jurisdiction for St. Louis County until the creation of the Circuit Court on February 15, 1815. At its inception, the St. Louis Circuit Court provided civil, criminal, chancery, and probate authority in St. Louis. After the County Court took over probate in 1820, the Circuit Court continued to perform these other functions until the end of the 1830s.[28]

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[27] From March 26, 1804-July 3, 1805, St. Louis became part of the Louisiana District of the Indiana Territory, which consisted of the area north of the 33rd parallel. On July 4, 1805, Congress created the Louisiana Territory and divided it into five administrative districts, including the district of St. Louis. This division continued until the creation of the Missouri Territory on June 4, 1812, and of St. Louis County on October 1, 1812. Missouri State Archives, "Abstract of St. Louis Court System," pp. 2-3.

[28] Ibid., pp. 3-4. Civil cases involved conflicts between individuals, such as trespass, assault, or debt. Criminal cases involved breaking the criminal laws, including cases of theft, murder, and arson. Chancery courts provided equity jurisdiction, which gave people a remedy when there was no particular law governing a situation. For example, when someone failed to follow his or her end of a

This combination of French, Spanish, and English legal traditions profoundly influenced the creation of Missouri's system of slave law. By the mid-eighteenth century, slave laws and conditions in North America varied noticeably from place to place. The turnovers of imperial control in colonial Missouri shaped the local legal experience of slaves in St. Louis. Even so, slavery had become a strict, race-based system of exploitation and social domination, regardless of the European power in control; St. Louis was no exception. French law governed the earliest slaves in St. Louis. In 1724, the French established the *Code Noir,* or Black Code, for Louisiana, which also constituted the first law of slavery in Missouri. Based on the Roman law of slavery, the *Code Noir* provided for a minimum standard of care for slaves, and it allowed slaves to marry with the permission of their owners.[29] When the Spanish took over Louisiana in 1764, they eventually modified the *Code Noir*. The Spanish modifications allowed slaves to own property, restricted Native American slavery, and instituted the right of self purchase, or *coartación*. The Spanish let residents keep their existing Indian slaves, as long as they registered them with local authorities, but forbade the further importation and the buying and selling of Indian slaves. These policies confused the laws surrounding Native American slavery, later opening the door to a number of freedom suits, including the first freedom suit in Missouri, after it became a U.S. territory. The Spanish also permitted slaves to be parties to lawsuits.

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contract, a chancery court could order them to fulfill the agreement. Probate courts dealt with the execution of wills and estate settlements.

[29] Judith Kelleher Schafer, *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1994), pp. 1-2.

Although the Spanish instituted elaborate slave codes, the predominantly French population kept them from being fully enforced by Spanish authorities.[30]

The early United States government in Missouri kept the existing laws in place unless altered by the territorial legislature. Although the influence of the *Code Noir* and Spanish slave law remained, the legislature passed a new set of laws regulating slavery in Missouri on October 1, 1804. The new laws passed by Missouri's territorial legislature indicate the ways in which southern migrants to the territory brought along the laws of their home states, especially Virginia and Kentucky, which prohibited slaves from unlawfully assembling, traveling without a pass, or carrying firearms or other weapons.[31] The new law defined all slaves as "personal estate," and the statute defined a "mulattoe" as anyone with at least one-fourth "negro blood." It also prohibited any "negro or mulattoe," including slaves and free persons, from being "a witness [in court] except in pleas of the United States against negroes or mulattoes, or in civil pleas where negroes alone shall be parties."[32] The law committed runaways to jail, claiming that "many times slaves runaway and lie hid and lurking in swamps, woods and other obscure places, killing hogs and committing other injuries to the inhabitants of this district."[33]

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[30] Foley, *Genesis of Missouri,* pp. 114-15.

[31] Ibid., p. 154; *Laws of a Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, and of the Territory of Missouri, up to the Year 1824* (Jefferson City: Printed by W. Lusk & Son, 1842), pp. 28-29. An interesting exception to the rule of allowing slaves to carry firearms stated that "all negroes or mulattoes, bond or free living at any frontier plantation, may be permitted to keep and use guns," as long as they had a license from a justice of the peace, p. 28.

[32] *Laws of a Public and General Nature,* p. 28.

[33] Ibid., p. 30.

The new territorial statutes also included limits on the authority and actions of overseers and owners of slaves, restrictions that would come into play in later freedom suits. The laws forbade slaveholders from allowing a slave to "go at large, or hire him or herself out." If an owner permitted a slave to hire his or her own time, any person could apprehend the slave, commit them to jail, and, after giving notice in the newspaper, the sheriff or officer of the court could sell the slave.[34] The new statutes further prohibited whites and free blacks from stealing slaves or knowingly "selling any free person for a slave," with the latter infraction subjecting violators to execution. The law did permit owners to manumit their slaves by deed or by will, but only if the court deemed the slave "of sound mind and body" and the bondsman or bondswoman was under forty-five years of age and older than eighteen for females and twenty-one for males.[35] If the owner chose to manumit a slave by will, his or her estate had to be free of debt, or the slave could be sold to cover any deficiency.

Suing for Freedom

For Missouri's slaves, the possibility for freedom came not only through manumission, but also from an 1807 territorial statute allowing them to sue for freedom in the St. Louis Circuit Court. Missouri most likely adapted this statute from a similar law in Virginia, since the laws of that commonwealth formed the basis for

[34] Ibid., p. 31. When a sheriff sold a slave for self hiring, 25% of the sale went to "lessening the district levy," 5% to the sheriff for his trouble, and, after the deducting a jailor's fees, the remainder of the sale price went to the owner.

[35] Ibid., pp. 31-32. Lawmakers included age limits so that older freed persons would not become public charges and younger slaves would be old enough to support themselves.

much of Missouri's legal code.[36] The statute, codified by an 1824 Missouri state law, read: "It shall be lawful for any person held in slavery to petition the general court…praying that such person may be permitted to sue as a poor person, and stating the grounds on which the claim to freedom is founded." If the court found these grounds sufficient, they "may direct an action of assault and battery, and false imprisonment, to be instituted in the name of the person claiming freedom against the person who claims the petitioner as a slave, to be conducted as suits of the like nature between other persons."[37] Most Missouri freedom suits were initiated as assault and battery or false imprisonment cases, but they also included actions for trespass or habeas corpus. Sometimes a single case combined several of these charges. Enslaved men and women used these legal forms, as dictated by the statute, in order to raise the issue of wrongful enslavement and challenge their personal status.

Because Missouri's freedom suit statute ordered slaves to sue for assault and battery, trespass, or false imprisonment, the issue of the individual's freedom became a preliminary issue that had to be decided to determine whether the defendant committed the tort. Missouri slaves established wrongful enslavement using a variety

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[36] *The Code of Virginia, with the Declaration of Independence and Constitution of the United States, and the Declaration of Rights and Constitution of Virginia* (Richmond: Printed by William F. Ritchie, 1849), pp. 464-65. Historian Bradley J. Nicholson has observed how the slave law of the first American colonies came from borrowing related English legal traditions. See Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *The American Journal of Legal History* 38:1(1994): 38-54. Many states west of Virginia borrowed significantly from Virginia's slave code, including Kentucky and Missouri. Similar statutes can be found in states throughout the South, including Kentucky, Tennessee, Georgia, and Arkansas.

[37] *Laws of a Public and General Nature,* p. 96. David Brion Davis details how the captives of the slave ship *Amistad* were able to sue for assault & battery and for false imprisonment. See Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006), p. 19.

of arguments, some of which will be discussed below. Once the slave filed his or her petition, the judge then approved or denied the petition as sufficient to prove a right to freedom. Slaves most often sued *au pauperis* or as "poor persons," meaning they lacked the necessary funds to bring a suit, so the court appointed an attorney for them at the state's expense. This method of suit ended with an 1845 Missouri law requiring slaves to provide security, or financial resources, to cover the costs of their suits.[38]

After the court appointed an attorney, each case followed a similar legal process. First, the attorney filed a declaration complaining that the defendant had assaulted and falsely imprisoned the enslaved plaintiff, which he maintained was illegal because the plaintiff was a free person not a slave. This declaration allowed the plaintiff's status (as slave or free) to become the main issue for the court to decide. For example, a free person could claim assault and battery or false imprisonment, but the law of slavery allowed enslaved individuals to be assaulted and imprisoned with no penalty. After the declaration, the court issued orders instructing the sheriff to summon the defendant to court, to allow the enslaved plaintiff to see his or her attorney, and to prohibit the defendant from removing the plaintiff from the court's jurisdiction. Almost always, the slaveholding defendant then entered a plea of not guilty, claiming that the law allowed them to assault or imprison the plaintiff because they owned the plaintiff as a slave. After the defendant entered a plea, the plaintiff answered the plea by asserting (again) their free status. The case then went

[38] *The Revised Statutes of Missouri* (St. Louis: Chambers & Knapp, 1845), pp. 283-84. Persons thought to be slaves who won freedom using the statute rarely received monetary awards. The 1845 law prohibited the plaintiff from recovering monetary damages even if their suit succeeded.

to trial. The court records often include depositions of witnesses for both sides in the cases, but freedom suit case files, like those of most other nineteenth-century trials, lack materials that would become part of the record in many twentieth-century trials. Among the missing elements, unfortunately, are transcripts of the trial proceedings, witness testimony in open court, and the oral arguments presented by attorneys.

After both sides presented their case, they each asked the judge to give particular instructions to the jury, which could include points of law as well as whether the jury could consider specific pieces of the arguments presented at trial. The judge then chose which elements to include in his charge to the jury. This discretionary power gave judges influence over how the juries decided because it allowed them to dictate what elements of the case the jury could consider in its deliberations. The jury decided the outcome of the case and whether damages should be awarded. Following the verdict, the losing side could ask the judge to overturn the verdict or request an appeal to the Missouri Supreme Court. Such legal questioning of the verdict happened to 32 of the 325 St. Louis plaintiffs in freedom suits (9.8 percent) whose records survive (see Appendix, Table 3 and Figure 4).

The 1807 territorial statute and the state law that followed it in 1824 outlined specific rules for the legal actions of freedom suits, but it provided little guidance for judges and juries in deciding the cases. The only guidelines specified that the court "may instruct the jury that the weight of proof lies on the petitioner, but to have regard not only to the written evidences of the claim to freedom, but to such other proofs either at law or in equity as the very right and justice of the case might

require."[39] This mixed message indicated that the plaintiffs bore the burden of proof, but it also implied an openness to the types of evidence an enslaved individual would be able to present, including the support of powerful white allies. Written proof of freedom might be difficult or impossible to produce, so the testimony of white witnesses might be given more weight than otherwise allowed in other civil cases. In addition, a slave's personal relationships could influence the decision of the courts. Antebellum Americans often relied on personal connections to aid their causes in court, and slaves were no exception. For the most part, judges and juries exercised a great deal of discretion in deciding individual cases. In the absence of explicit statutory guidance, courts eventually established some basic guidelines for making decisions in freedom suits.

The law allowing slaves to sue for their freedom delineated the basic parameters for a legal discussion over the definition of slavery and freedom in St. Louis, but it left many questions unanswered and open to interpretation. Freedom suits in the nineteenth century brought new issues before the inexperienced courts. Enslaved individuals pursued a variety of arguments in their cases, each forcing the courts to consider different aspects of slavery and how they defined the institution. With few precedents to guide them, early courts made decisions that would influence later courts in these types of cases.

Freedom suits in St. Louis involved three different arguments for freedom: that the plaintiff was free at the time of birth; that the owner had manumitted the plaintiff; or that the individual became free by living or traveling in free territory.

[39] *Laws of a General and Public Nature,* p. 97.

The arguments presented in the cases included variations on these three arguments, and most of the cases involved a combination of several arguments for the enslaved plaintiff's freedom. The argument of being free at the time of birth could be presented in a couple of ways, by claiming to be "born free" (97 cases) or by specifically mentioning that their mother was free (100). Prior manumission could come in the form of manumission in an owner's will (15), or by a deed issued from the owner while he or she was still living (39). Eighteen cases mention that the enslaved plaintiff and the owner reached an agreement for manumission that the slaveholder failed to honor. The majority of the cases (236) based the claim to freedom on having lived or traveled in free territory, and all but a few of these arguments referred to time spent in the Northwest Territory, especially the area that became the state of Illinois.[40] Although these three arguments were the most common, seven enslaved plaintiffs argued their suits based on having previously purchased their freedom, and eight claimed that they had obtained freedom as a result of a previous court decision. Thirty-one plaintiffs claimed that they were victims of kidnapping, and twenty-nine of them added in their petitions that they had been previously "living as free."

The St. Louis Circuit Court records include the cases of 325 enslaved individuals from 1814-1860.[41] Of these 325, the bulk of the cases happened in the

[40] The Northwest Territory was the area north of the Ohio River encompassing the modern states of Ohio, Indiana, Michigan, Illinois, Wisconsin, and part of Minnesota. The kidnapping of free persons of color will be discussed in greater detail in a later chapter. For a breakdown of the arguments presented in court, see the Appendix, Table 2 and Figure 2. For a map of Missouri and Illinois, see Appendix, Figure 6.

[41] See the Appendix for a complete breakdown of the cases over the entire period under study.

twenty-year period from 1825-1845, when the courts decided the freedom of 247 enslaved individuals. From 1814-1860, enslaved plaintiffs won 116 of their cases outright and eight more cases because the defendant failed to show up in court. The court decided in favor of the slaveholding defendant in forty-one cases. Defendants won an additional twenty-four cases because the plaintiff failed to appear in court, since the defendant, claiming ownership, sometimes had the plaintiff removed from the court's jurisdiction. In a surprisingly large number of cases (sixty-two), enslaved plaintiffs voluntarily agreed not to prosecute their cases further. Although it is not entirely clear what happened in these cases, it seems likely that the enslaved plaintiff managed to arrange an agreement for freedom, either through self purchase or an indenture (an agreement to serve for a specified amount of time, after which the plaintiff would be free). Perhaps in some of these cases the defendant simply agreed to abandon claims to the plaintiff as a slave. The court dismissed thirteen of the cases with no explanation, and eight cases ended when the enslaved plaintiff died.

Raising Arguments

During the early years of the century, Missouri courts faced a particular challenge with regard to freedom suits because few guiding precedents existed on which to base decisions. Enslaved plaintiffs widened the scope of how these cases were brought, prosecuted, defended, and decided throughout the antebellum period by introducing new issues to the court. The rest of this chapter will look at how enslaved plaintiffs presented each of the three main arguments in these cases: freedom at the time of birth, prior manumission, and residence in free territory. This chapter looks at these cases to argue for the ambiguities they brought with them in the early years of

the freedom suits. In addition, these cases also illustrate the basic pattern used for bringing and prosecuting freedom suits throughout the antebellum period.

Ambiguity resulted from a system in which judges and juries made decisions on a case-by-case basis, but this also allowed for experimentation and flexibility. Enslaved plaintiffs tried bringing different types of actions and presenting varying kinds of evidence to support their claims to freedom, while slaveholding defendants, on the other hand, attempted to manipulate the system to sidestep legal determinations and to avoid forfeiting their valuable enslaved property. The law considered slaves to be both property and people, depending on the specific type of legal case, and aspects of slaves as property cropped up in numerous freedom suits. This legal contradiction blurred the neat distinction slaveholders sought, and it created problems for judges trying to make decisions in freedom suits.[42] Both slaveholders and enslaved plaintiffs challenged the courts to try to establish rules for these types of suits, therefore contributing to the discussion over what those rules would be. Examining early examples of the three main arguments for freedom reveals the substance of this discussion and its implications for future cases.

From the outset, one of the three arguments presented to the St. Louis Circuit Court in freedom suits involved the plaintiff claiming freedom from the time of his or her birth. Making this argument usually meant proving that the plaintiff's mother was a free woman, because children inherited the mother's status as slave or free in the

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[42] Historian Ariela Gross found that the "double character" of slaves as both people and property created numerous problems for judges in antebellum America. See Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ and Oxford: Princeton University Press, 2000).

United States. Some plaintiffs had lived as free persons their entire lives, only to be kidnapped and sold into slavery. This happened most often in the Northwest Territory, where free people of color remained especially vulnerable to kidnapping because of this Territory's proximity to slaveholding states where kidnappers could easily sell their victims. Enslaved plaintiffs also could argue that their mothers were wrongfully enslaved, which allowed them to present a variety of arguments about their mother's status. One concerned the existence of Native American slavery in Missouri.

Questioning the freedom of one enslaved woman might have implications for the freedom of numerous descendants.[43] This is particularly evident in the earliest recorded freedom suit in Missouri, an 1806 case from Jefferson County involving a Natchez Indian woman, Marie Jean Scypion, and her descendants.[44] The Scypion case centered on issues of a mother's free status, but it also raised thorny questions about race and the involvement of owners (and the owners' powerful white allies) in deciding the fate of slaves who challenged their enslavement. Scypion's descendants spent nearly thirty years fighting to win their freedom, a length of time that was not unusual in some freedom suits.

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[43] This description is based on that of William Foley in "Slave Freedom Suits before Dred Scott," *Missouri Historical Review* 79(1984-85): 1-23. This article is an excellent, in-depth analysis of one case for freedom involving Indian ancestry. Although the case came out of Jefferson County, Missouri, rather than St. Louis, Marie Jean Scypion lived as a slave in St. Louis, and the issues involved in this case parallel those of St. Louis cases.

[44] The early date of the Scypion case suggests that Missourians had already adopted from other states the practice of suing for freedom, even before they formally instituted the supporting statute.

Marie Jean's mother, Marie or Mariette, a Natchez woman sold into slavery as a war captive, along with Marie's father, a black slave named Scypion, bequeathed their enslaved status to their children. A sexual imbalance of mostly female Indian slaves and mostly male African-descended slaves in the French and Spanish territorial period created a large racially mixed population in the Spanish and early American eras. A racially-complex population complicated suits for freedom and made race a prime factor in some of the early cases.[45] Although the records do not reveal the identities of their fathers, Marie Jean Scypion had three daughters, Catiche, Celeste, and Marguerite. The lineage of Marie's daughters was most likely only one-fourth Indian, meaning some of their children had only one-eighth Indian ancestry. Despite their tenuous ties to Indian ancestry, the three women entered writs for habeas corpus in 1805 to prove their freedom based on matrilineal descent from a Native American slave woman. The court, unsure about which laws governed status in this early period, issued the writs and declared the women free based on the Spanish law prohibiting Indian slavery and the fact that personal status followed the mother's line. Shortly thereafter, however, a white slaveholder defied the court's decision and again forcibly returned the women to slavery. After the seizure, they sued for their freedom and the case went to trial, where the women lost on a verdict from a jury that elected as foreman the brother-in-law of Pierre Chouteau, a wealthy slaveholder and fur trader who lived with the women's owner.

Not only did community beliefs about race and slavery influence the decisions in these cases, personal relationships also helped to determine their outcomes. Pierre

[45] Foley, "Slave Suits for Freedom before Dred Scott," 4.

Chouteau was one of the wealthiest, most influential slaveholders in the community, and it is likely that he was working through his brother-in-law to influence the jury's decision in this case. Shortly after the decision, the women's owner sold them to Pierre Chouteau, in clear violation of the prohibition on interested parties serving on juries—although such legal lapses were not unusual in a legal environment based more on community relations than a single, absolute idea of law.[46]

The Scypion women reentered court in 1824, now appealing explicitly to the regulations laid out by the 1807 statute and arguing for a change of venue to St. Charles County because they believed it would be impossible to escape Chouteau's influence in Jefferson County. In 1836 the court declared the women and their children free based on the fact that the law prohibited Native American slavery and the plaintiffs' descent from a Native American mother secured their freedom, but awarded only one cent in damages for assault and battery. "Members of the jury," historian William Foley suggests, "willingly granted freedom to slaves detained illegally, but they apparently had no desire to jeopardize a master's authority to discipline slaves."[47] The Scypions probably did not expect a sizeable financial award. Although freedpeople desired the financial security that large awards could provide, most slaves entering the courts to win their freedom realized that monetary awards were usually minimal because juries hesitated to grant large sums of money to newly-freed slaves, especially when those moneys came at the expense of white slaveholders. Still, the final decision in the Scypions' case officially ended Indian

[46] Ibid., 10-12.

[47] Ibid., 13-21, 21.

slavery in Missouri. By the time the court ruled, however, Indian slavery had largely died out in the area, and it is likely that the plaintiffs alone benefited from the ruling.

The second argument slaves presented for freedom was that their owners had previously manumitted them or had agreed to do so at a future date. When owners manumitted a slave, they did so either through a deed of emancipation or through their will. Sometimes an owner arranged to free a slave after a certain number of years of service, or after a slave earned enough extra money to pay the owner for his or her value. All of these manumissions could be contested by various parties: the owner's relatives, other slaveholders, creditors, or by owners who changed their minds or refused to honor their promises. When challenges to manumissions occurred, the slaves involved turned to the courts to force owners and the community to honor their agreements.

Enslaved plaintiffs used different strategies to attempt to negotiate how the courts interpreted the 1807 statute. In 1818, Arch and Jack both sued Barnabas Harris, but neither was sure what the best course to pursue was to obtain freedom in the courts.[48] The men technically belonged to Eusebius Hubbard in Kentucky, as the result of an October 11, 1811, indenture, which transferred property (including the two enslaved men) to Eusebius from his wife Elizabeth. The document decreed that Arch and Jack serve Eusebius until his death, and then continue to serve his heirs.[49]

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[48] *Arch v. Barnabas Harris*, October 1818, Case Number Unavailable, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, http://stlcourtrecords.wustl.edu (hereafter SLCC); *Jack v. Barnabas Harris*, October 1818, Case No. 111, SLCC.

[49] *Arch v. Barnabas Harris*, SLCC, pp. 1-4.

Arch and Jack both based their claims to freedom on an August 18, 1817, deed of manumission ordering that Jack (and presumably Arch, although the document freeing Arch did not survive in the case file) be freed after Eusebius's death. They were to "be fully Emancipated and completely discharged from the claim or claims to any servitude, bondage or authority whatsoever of any or all of my heirs Executors administrators or assigns forever and from any other person or persons whatsoever."[50] When Eusebius died shortly after the deed of manumission was drawn up, Jack and Arch passed into the possession of Eusebius's heirs: George Hubbard, Thomas Balus, and John Proctor, who were well aware of the manumission deed. Hoping to avoid prosecution, they quickly sold the manumitted slaves to Barnabas Harris of Madison County, Missouri, for an unnamed price.[51]

When Harris brought Arch and Jack to St. Louis, the two men pursued different legal remedies in the St. Louis Circuit Court. In May 1818, Arch filed a habeas corpus case against Harris, ordering him to justify the legal basis for his claim to ownership. True to the ad hoc nature of the court system in St. Louis at this time, a document filed May 11, 1818, ordered Harris to bring Arch "before Nathaniel Beverley Tucker our Judge of the Country the Northern Circuit of the Territory aforesaid at his house in the County of St. Louis & Township of St. Ferdinand."[52] Attempting to defend his claim to Arch as his slave, Harris brought Arch to Tucker's

[50] *Jack v. Barnabas Harris*, SLCC, p. 21.

[51] Ibid., pp. 1-2.

[52] *Arch v. Barnabas Harris*, SLCC, p. 7. Tucker was the son of the legal scholar St. George Tucker, of Virginia, and the half-brother of the Roanoke jurist John Randolph.

home and showed the judge the bill of sale from Hubbard, Balus, and Proctor, which he claimed entitled him to possession of Arch as his slave. Tucker responded by denying his authority to decide this question and suggesting a different remedy for Arch. He wrote that the case "presents a question which I am incompetent to try." Because the case involved "a controversy which a right to personal liberty is alleged on the one hand, and a claim to property on the other," the right to trial by jury and the constitutional protection of property meant that he could not decide the case on his own. Instead he instructed Arch that "The legislature… passed a law providing the remedy of persons claimed as slaves, & I therefore have no doubt they intended this Law for the relief of persons not so claimed… I can do nothing therefore in this case, but leave the applicant in the possession of Barnabas Harris, to pursue the Remedy which the Law has pointed out."[53]

Judge Tucker recognized that this case required a jury, and so he suggested that Arch sue directly for freedom. In doing so, Tucker dismissed the case for lack of jurisdiction. In his written statement, Judge Tucker pointed out the problems that arose when the conflicting nature of slaves as both persons and property came up in court. When the issue surrounding a freedom suit was an issue of property, enslaved men and women could not use a habeas corpus claim to win freedom. Instead, he or she needed to use the remedy provided in the statute allowing for slaves to sue for freedom. For this reason, Arch instituted a freedom suit when his habeas corpus claim failed. Using the 1807 territorial statute, he petitioned the court to recognize him as a free man, claiming that Eusebius executed "an instrument in writing" and

[53] Ibid., pp. 9-10 (emphasis in original).

"emancipated your petitioner after the death of…the said Eusebius."[54] Arch's case file does not contain a copy of this manumission, and the file suggests in a notation that Arch did not succeed in winning his freedom. Even so, his ability to pursue these separate remedies for his situation illustrates the different legal strategies slaves used.

Jack, the other slave claimed by Harris, chose to begin his legal struggle for freedom with the second strategy employed by Arch. He filed suit in October 1818 for trespass and false imprisonment, and the court assigned Joshua Barton as his attorney. Jack presented what appeared to be a strong case for his freedom; not only did he manage to produce a copy of the manumission deed Hubbard executed for him, he also procured white testimony to authenticate it.[55] This evidence bolstered the argument Jack presented that he should be free based on the manumission.

Barnabas Harris answered Jack's arguments and called witnesses to challenge the validity of the manumission. His actions raised difficult questions to the court: when faced with these conflicting arguments, how would the court react? What kinds of testimony proved a person's status? Harris's attorney, most likely William C. Carr,[56] ordered depositions taken in Kentucky to confirm that the sale of Arch and Jack to Harris was correct and legitimate. When Carr notified Jack's attorney of the time and place for the depositions, he allowed Jack to be present. This was an unusual offer, and although it may only be a clerical error, with the plaintiff's

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[54] Ibid., pp. 5-6.

[55] *Jack v. Barnabas Harris*, SLCC, pp. 21-24.

[56] There is a notation near the end of the case file that Carr becomes the attorney for the administrator of Harris's estate, Frederick Hyatt, after Harris dies. This does not mean for certain that Carr was Harris's attorney from the start of the case.

attorney and not Jack the intended invitee, it also suggests the ad hoc nature of the procedural rules in this type of case. A notation on one of the depositions, taken April 10, 1819, indicates that Barnabas Harris had died, making Frederick Hyatt, his administrator, the defendant in the case. The depositions presented testimony that in 1802, before the marriage of Eusebius to Elizabeth, Eusebius sold Arch and Jack to his son and son-in-law, George Hubbard and John Proctor, for $1000. This sale would nullify the deed of manumission, because Eusebius Hubbard did not own the slaves at the time of their manumission. The witness also claimed that when he saw Jack recently, Jack admitted to being a part of this transaction. Therefore, Jack recognized that he legally belonged to George Hubbard and John Proctor before they sold him to Harris. If the court believed this testimony, it would mean that Jack's own evidence undermined his claim to freedom.[57] The jury rendered a verdict that left Jack a slave.

The Court's role in determining Jack's case discloses the discretionary power that the 1807 statute granted to judges in these types of actions. In an August 23, 1819, motion listing reasons for the court to grant a new trial, Jack's attorney argued that "The Court misdirected the Jury in this, to wit: that if they believed the sale in Kentucky was intended as a fraud upon all the world, That still it was good."[58] A second motion complained "that the Court rejected the Evidence that was offered by the Plff that E. Hubbard had during his life often declared that it was his intention at

[57] *Jack v. Barnabas Harris*, SLCC, pp. 25-28.

[58] Ibid., p. 33.

his death to set the said Plff free and that he had promised to the said Plff to do so."[59] In other words, the court took no interest in the accuracy of the testimony about the sale; even a fraudulent sale would not help Jack's case. Instead, the court directed the jury to ignore the question of the sale's legitimacy. The court also prevented the jury from considering evidence that Eusebius had wanted to free Jack. Based on these instructions, which limited the jury's options, the jurors declared Jack a slave.

Arch and Jack struggled to determine what types of legal actions to bring to court, and at the same time, St. Louis judges and juries also wrestled with how to determine the outcomes of these cases. Conflicting testimony forced judge and jury to decide whom to believe and how much weight to give to that testimony, a problem that would come up in freedom suits throughout the antebellum years. Enslaved plaintiffs and their allies employed a variety of legal strategies to win freedom in court, but slaveholders also drew on a multitude of counter-tactics to defend these actions. In the early years of freedom suits, the court's interpretations were not always predictable, which allowed for complex maneuvering to try to influence the outcome of the suits.

These two cases indicate that whites in the St. Louis community knew about the possibility of freedom suits and tried to find ways around becoming defendants in these types of cases. Looking beyond the case files themselves reveals that Harris expected Arch and Jack to sue for freedom and did not intend to pay for the slaves until the courts resolved the freedom suits. In a June 29, 1818, letter to his brother in Kentucky, Harris wrote that his brother should be able to get money for a land

[59] Ibid., p. 35.

purchase from "Mr. Ballew [most likely Ballus] and Procter," who "should decline receiving pay for the negroes I purchased of them until the suits is [sic] decided which I expect they intend. I wish they may and rather intend they shall unless it would disoblige them verry [sic] much."[60] Harris most likely knew of the freedom suits before he purchased Arch and Jack, and he insisted that Eusebius's heirs should decline receiving payment until the cases concluded.

These letters further suggest the complex negotiations and maneuvers surrounding slaves' struggle for freedom. Eusebius's heirs purposefully sold Arch and Jack at a reduced price to Harris, thereby hoping to avoid becoming defendants themselves. A second letter, dated August 5, 1818, from Thomas Ballus in Madison County, Kentucky, to Harris in St. Louis, explained that Ballus and his brother-in-law Proctor (and possibly George Hubbard, although he was not mentioned) had sent Harris "our bill of sale with a full Receipt theirof [sic] we wish you to make use of them as your council [sic] and wisdom may direct."[61] They intended the bill of sale to help Harris with his suit, but this document indicates that they received a letter from Harris in early June suggesting that they should procure their own counsel or that he could do so for them, advice pointing to his belief that Ballus and Proctor could also be named as defendants in the freedom suits.

The answer Ballus gave to Harris is instructive: "sir we have consulted our minds on the subject & we do not feel disposed so to act. *we let you have those boys*

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[60] Barnabas Harris to Overton Harris, June 29, 1818, in "Barnabas Harris Papers and Estate, 1818-1836," Folder 4, Hyatt-Hume Papers, Missouri Historical Museum, St. Louis, Missouri, pp. 1-2.

[61] Thomas Ballus to Barnabus Harris, August 5, 1818, in "Barnabas Harris Papers and Estate, 1818-1836," Folder 4, Hyatt-Hume Papers, Missouri Historical Museum, St. Louis, Missouri, p. 1.

at a reduced price in consiquence [sic] of some trouble that we thougt [sic] their might arise, we never expected any on the grounds it has arose, and we perceive none yet, we trust sir to your wisdom and candure [sic] in the whole proceedings."[62] Ballus and the others knew of Arch and Jack's claims to freedom and believed they would sue, so they offered the slaves for sale at a lower price to avoid prosecution and let Harris deal with the problem. But Ballus also quickly backed off this admission, claiming that he and Proctor "never expected" trouble "on the grounds it has arose." Whites like Ballus and Proctor conspired to secure their safety from prosecution and conviction at the expense of enslaved people who they realized were legally free. Evidence of this type of maneuvering by defendants in freedom suits is even more striking in light of the fact that the perpetrators of fraud would usually try to avoid leaving written proof of intent.

Whites sometimes worked together to grant freedom to a person held in slavery. At times, however, enslaved individuals found themselves caught in the middle when disputes arose over these types of agreements. In the case of *Winny v. Samuel Donner* (1820), a mulatto woman named Winny sued for freedom after two white men arranged to free her and one refused to honor their agreement. Winny worked as the slave of Jennings Beckwith until Beckwith had a "conversation" with Samuel Donner, which led to an agreement for Donner to purchase Winny for $300 and manumit her after she paid him $350 "by her work and labour or earning the same by being hired or otherwise."[63] This indenture, dated October 21, 1817, served

[62] Ibid (emphasis added).

[63] *Winny, a woman of color v. Samuel Donner*, August 1820, Case No. 70, SLCC, p. 6.

as a manumission deed with the condition that Winny pay the required sum to Donner before receiving her freedom. At the time of this indenture, Winny's market value was approximately $575.[64] The document prohibited Donner from selling Winny under penalty of her becoming immediately free, but it did permit him to sell her time or hire her out. Beckwith intended to free Winny, and this arrangement allowed him to receive some compensation for his benevolence. The agreement also permitted Donner to make a profit and to benefit from Winny's services until she earned the required sum of money and repaid him for her purchase. But even after she paid Donner "considerably more" than the agreed sum, her August 1820 petition claimed that he "retains and keeps her as a slave and refuses to allow her her freedom."[65]

When slaveholders failed to honor agreements with their slaves, these enslaved individuals turned to the St. Louis Circuit Court. Despite Donner's efforts to prevent her from becoming free, the Court recognized the indenture as binding. Donner's defense was that "there was but one subscribing witness" to the agreement, "and the said indenture does not appear ever to have been proven or acknowledged in court or to have been recorded in any court."[66] Donner's attorney asked the Court to prohibit the indenture from being read to the jury, and he argued that any evidence that he received money for Winny's hiring "ought to be disregarded" by the jury "in

[64] This figure is determined by taking a rough average of the figure of $650, which Beckwith argued was Winny's value, and $500, which is the value Donner claimed for Winny. In either case, Winny's value clearly exceeded the figure of $300, which is the price of her sale to Donner.

[65] *Winny v. Samuel Donner*, SLCC, p. 7.

[66] Ibid., p. 36.

making up their verdict."[67] When the court refused and admitted this evidence in Winny's favor, the defendant filed a bill of exceptions to set up his possibility for appeal. The jury found for Winny and awarded her legal freedom, along with token damages of one cent.[68]

Negotiations outside of the courtroom also shaped the decisions in freedom suits and could generate additional litigation. Two related Circuit Court cases demonstrate the way that arrangements for freedom could be contested and manipulated by white slaveholders. At an earlier stage in Winny's odyssey, Donner failed to pay Beckwith the $300 in exchange for possession of Winny. After making the agreement to free Winny, Beckwith then employed multiple tactics to try to recover this debt. He first attempted to reclaim Winny by physically removing her from Donner's control. In February 1818, a few months after signing the indenture that transferred Winny to Donner, Donner sued Beckwith for replevin (unlawfully taking his property) for stealing Winny, a slave he claimed was worth $500, and he asked for $1000 in damages.[69] Beckwith argued that he reclaimed Winny because Donner never paid him for her sale, so Winny remained the property of Beckwith. Although no verdict is recorded in this action, there is a notation that the sheriff returned Winny to Donner, indicating he won this case.

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[67] Ibid., p. 37.

[68] Ibid., p. 41. The verdict is signed by Obediah Reynolds, the foreman, who worked as a stone mason and hired slaves to help with his business.

[69] *Samuel Donner v. Jennings Beckwith*, February 1818, Case No. 16, Circuit Court Case Files, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri.

Over a year later, in June 1819, Beckwith tried a new tactic, suing Donner for debt in chancery court.[70] Beckwith's petition described the agreement, stating that immediately after they signed the indenture, Donner and Beckwith were supposed to go to the house of James Irwin (who owed Donner money), so that Irwin could pay Beckwith the $300 for Winny. Beckwith complained that Donner failed to show up at Irwin's house. By the time Beckwith realized that Donner did not intend to pay him, the witness to the indenture (and Donner's attorney), Matthias McGirk, had already recorded the indenture in court and Beckwith had transferred Winny to Donner's possession. Beckwith also feared that a group of people, who testified that the debt had already been paid, had conspired with Donner to deprive Beckwith of his money. All witnesses for Beckwith's side of the case were either dead or had left Missouri, so he could not obtain relief in a common law court and had to bring his case in chancery. Donner claimed that since the time of the indenture, he attempted to pay Beckwith with a note from Irwin, but Beckwith refused to accept the note as payment and exclaimed that Donner "was a rascal and that he would kill him."[71] Despite this alleged threat, the Circuit Court, sitting as a chancery court, decided the case in Beckwith's favor for $300 plus the costs of the suit. Donner not only had to pay the cost of Winny's indenture to Beckwith, he also lost possession of Winny after the Circuit Court found in her favor.

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[70] *Jennings Beckwith v. Samuel Donner*, June 1819, Case No. 80, Circuit Court Case Files, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri.

[71] *Beckwith v. Donner*, June 1819, St. Louis Circuit Court, response of Donner. According to Donner, Beckwith first called him and Irwin "rascals" when Donner tried to pay him with a note from Irwin, but repeated the charge and added that he "would kill him" after Donner received the money from Irwin and tried again to pay Donner.

The conflict between Donner and Beckwith over the cost of Winny's indenture involved lengthy and escalating tensions that resulted in multiple legal actions to determine Winny's fate. In some instances, negotiations over freedom had the ability to extend far beyond a freedom suit, creating a web of interrelated legal actions. When slaveholders manumitted their slaves or made these types of agreements to free them, other parties could challenge the manumission or fail to honor its terms. In these instances, enslaved plaintiffs turned to the courts to win their freedom.

Proximity to Free Territory

The most common argument for freedom that slaves presented in the St. Louis Circuit Court was that they became free by living or traveling in free territory, usually the Northwest Territory, where the Northwest Ordinance of 1787 prohibited slavery. This argument rested on the principle of the famous English case, *Somerset v. Steuart,* from 1772. In *Somerset,* Lord Chief Justice Mansfield found that a slave, once transported to a place where slavery did not exist, became free because slavery was "odious" to the law and therefore required the existence of positive law to support it.[72] America's courts, including the St. Louis Circuit Court, adopted this standard with some frequency in cases in which a slave claimed to have lived in the Northwest Territory. When successful, these cases found that slaves having lived or traveled on "free soil" became free.

[72] For more information on the *Somerset v. Steuart* case, see William R. Cotter, "The Somerset Case and the Abolition of Slavery in England," *History* 79(Feb. 1994): 31-56, and the recent forum in *Law and History Review* 24(Fall 2006).

In the case of *Milly v. Mathias Rose* (1819), Rose attempted to circumvent the Northwest Ordinance. Rose's slave Milly based her claim to freedom on her sixteen-year residence in the Indiana Territory (in what became the state of Illinois). In August 1819, Milly and her children Elizabeth, age four, and Bob, age two, filed suit for trespass and false imprisonment against Mathias Rose "according to the statute" and based on "the laws of Illinois & the Ordinance of Congress."[73] Rose answered this petition by claiming that he brought Milly from Kentucky to the Indiana Territory and, within thirty days of their arrival, entered the Knox County Court and registered an indenture for Milly to serve Rose for seventy years, after which time she would be free. Prior to the 1818 Illinois Constitution, the territorial laws required newcomers to the territory to register their slaves as indentured servants, a practice known as "voluntary servitude," despite the fact that there was nothing "voluntary" about these types of agreements.[74] This legal tactic allowed slaveholders to move into the territory and retain their slaves. The frequency of these maneuvers effectively rendered the anti-slavery portion of the Northwest Ordinance meaningless. Rose argued that the indenture was legal and that as part of this contract, he had agreed to provide Milly with sufficient provisions during this time period "according to her

[73] *Milly v. Mathias Rose*, August 1819, Case No. 20, SLCC, p. 1.

[74] For more on the nature of and debates over voluntary servitude in Illinois, see James Simeone, *Democracy and Slavery in Frontier Illinois: The Bottomland Republic* (DeKalb: Northern Illinois University Press, 2000), especially pp. 19-21. The 1818 Constitution restricted future indentures to one-year terms.

degree and station."[75] Rose claimed Milly voluntarily agreed to the indenture and, because the seventy-year period had not ended, Milly remained his legal servant.

Slaveholders in the Northwest invented ways to maintain their mastery despite the federal prohibition of the Northwest Ordinance. Through the use of long-term indentures, slaveholders like Mathias Rose introduced new complications to the system of American slavery by creatively reconfiguring the categories of personal status. Because of her indenture, Milly was technically no longer a slave. However, she was also not a free woman. When Milly brought her freedom suit, she forced the court to make a decision about categories of personal status not explicitly anticipated by the 1807 statute.

Milly's case began with a habeas corpus claim, but Rose manipulated this claim to support his defense. Milly filed a writ of habeas corpus in the Circuit Court demanding that Rose bring her before the court and explain why he held her in slavery. With this claim, Milly attempted to free herself immediately from Rose's possession. Perhaps she feared he would remove her from the court's jurisdiction or mistreat her or her children because of their suit. Rose's response to her writ introduced a new defense to freedom suits in the St. Louis courts. On August 17, 1819, Rose answered the writ ordering him to bring Milly to court by stating that on July 20, Milly "absconded from the house and possession of the said Mathias Rose, without his consent and against his will, since which time he has neither seen nor

[75] *Milly v. Mathias Rose*, SLCC, pp. 6-9, p. 9. This is an interesting qualification on the type of provisions Rose had to provide for Milly because it demonstrates how slaves' livelihoods required a different "degree and station" of care.

heard of her."[76] He therefore argued that she could not continue her suit against him because the premise of her petition was that he unlawfully held her as a slave. Rose evaded prosecution by claiming Milly had run away, meaning that she was no longer in his immediate possession. Many later defendants would also use this circular logic to deny possession of the slave in question.[77] If the person no longer held the plaintiff as a slave, how could the plaintiff maintain a lawsuit against them to win their freedom? Milly responded by calling Rose's answer "evasive and insufficient," stating that "she did not…abscond from the house & possession of the said Mathias Rose."[78]

When slaveholders, in order to avoid prosecution in freedom suits, argued that their enslaved property ran away, the local authorities sometimes intervened with criminal prosecutions to prevent these tactics. In December 1819, the United States sued Rose for contempt of court for failing to produce "the body of Milly agreably to the requisition of a certain writ of Habeas Corpus issued from our said Court."[79] The Circuit Court did not free Milly because she never appeared in court. Although Rose claimed she had run away, a more likely explanation is that he prevented Milly from appearing in court and prosecuting her freedom suit against him. Milly's ability to

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[76] Ibid., p. 11.

[77] This tactic will be discussed in more detail in chapter four.

[78] *Milly v. Mathias Rose*, SLCC, p. 18. Unfortunately, there is no verdict in Milly's case file.

[79] *United States v. Mathias Rose*, December 1819, Case Number Unavailable. Criminal Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 1.

sue Rose directly threatened his property rights to her and her children. Unfortunately, there is no verdict in the criminal case against Rose.

The maneuverings of slaveholders to avoid losing their enslaved property forced the courts to begin to establish basic standards for acceptable arguments for freedom. Central to these standards is the distinction based on the amount of time spent in free territory and the purpose of being there. The court established this precedent in 1821 through the case of an enslaved woman, also named Winny, against her owner Phebe Whitesides. Winny sued Whitesides for herself and three of her children, Hannah, Malinda, and Lewis. Winny's other children also filed cases against their different owners, all based on Winny's right to freedom.[80] Emancipating enslaved women meant freeing their offspring as well, under the principle of *partus sequitur ventrum,* literally meaning "what is born follows the womb." This made freedom even more imperative for women because the status of their children rested on their own freedom, so only by winning freedom for themselves would they have the right to bequeath free status to their descendants. By contrast, such cases gave slaveholders more incentive to fight for their legal ownership rights. Winny, like Milly, based her claim to freedom on her residence in the Northwest Territory, in Illinois. According to Winny's petition, she lived as the

[80] *Winny v. Phebe Whitesides*, April 1821, Case No. 190, SLCC; see also *Sarah, a free girl v. Charles Hatton*, April 1821, Case No. 191, SLCC; *Lydia, a free girl v. John Butler*, April 1821, Case No. 192, SLCC; *Nancy, a free girl v. Isaac Voteau*, April 1821, Case No. 193, SLCC; *Jenny, a free girl v. Robert Musick*, April 1821, Case No. 194, SLCC; *Jerry, a free man of color v. Charles Hatton*, April 1821, Case No. 195, SLCC; *Daniel, a free man v. John Whitesides*, April 1821, Case No. 196, SLCC; *Hannah, a free girl of color v. Phebe Whitesides*, April 1821, Case No. 197, SLCC; *Malinda, a free girl of color v. Phebe Whitesides*, April 1821, Case No. 198, SLCC; and *Lewis, a free boy of color v. Phebe Whitesides*, April 1821, Case No. 199, SLCC.

slave of John Whitesides or Whitset, his wife Phebe, and their son Thomas in Kentucky until 1792, when they moved north of the Ohio River to a place called Whitesides Station. The family lived there with Winny as their slave until they moved to St. Louis in 1796. Winny continued living as the slave of Phebe and Thomas after John's death, and in 1818 or 1819, Phebe sold her to Rufus Pettibone, a well-known attorney who eventually became a judge.[81]

Winny's struggle for freedom involved multiple attempts to bring legal actions to the St. Louis courts. She filed her original petition against Phebe Whitesides in June 1818, claiming Phebe assaulted her and held her illegally in slavery. The court dismissed this petition, but Winny continued to argue that she should be allowed to sue, with her case finally appearing in court in the April 1821 term.[82] When her suit came up for trial, Winny based her claim on her four-year residence in the Northwest Territory. The response of Phebe Whitesides to Winny's claim indicates the complex legal maneuvering slaveholders practiced to retain their enslaved property. Phebe claimed that Winny was not actually her slave or her husband's slave. Instead, Phebe maintained that Winny belonged to Phebe's father, who gave Winny to his infant grandchildren but ordered that Winny serve Phebe during her lifetime, then pass to her heirs. Phebe attempted to argue that Winny could not be free because she was not held in the Northwest Territory by her true owner. Ironically, Phebe denied actually owning Winny in order to be able to

[81] *Winny v. Rufus Pettibone, et al.*, July 1825, Case No. 12, petition, found in "Slaves Papers," Missouri Historical Museum, St. Louis, Missouri.

[82] *Winny v. Phebe Whitesides*, SLCC, p. 9. The reason the court dismissed Winny's first petition is not given in the records.

continue holding her in slavery. But Phebe also claimed that at the time of the freedom suit, she no longer held Winny or her children as her slaves.[83] Phebe denied physical possession of her slave to protect her rights to ownership. To support her claim, Phebe called a witness who testified that he knew Phebe and Winny and had known them for the past eighteen years. He claimed that for the previous eight years, Phebe had not claimed Winny as her slave, but instead Winny had served Phebe's children at their homes.[84] This testimony supported Phebe's claim that Winny actually belonged to her children, suggesting that Winny perhaps should be suing them to win her freedom.

The court rejected this maneuver, decreeing that Winny belonged to Phebe and that Phebe had held Winny as a slave in the Northwest Territory and thereafter. The court's actions on Winny's behalf indicate the judge's willingness to be balanced in his treatment of both parties to freedom suits. When explaining the points of law to the jury, the judge introduced a new consideration into the rules for determining freedom based on the Northwest Ordinance. Rejecting Phebe's defense of denial of owning Winny, on February 15, 1822, the judge instructed the jury that Winny's residence in the Northwest Territory with Phebe and her husband did free her under the Northwest Ordinance, "if it should appear to the satisfaction of the jury that the said defendant & her then husband resided there *with intent to make that territory the*

[83] Ibid., pp. 21-22, 29-30.

[84] Ibid., pp. 23-24.

home of themselves and of the said Winne [sic]."[85] This is the first use of the doctrine of the defendant *intending* to reside in the Northwest Territory, which came into wider use in the later freedom suits. In addition, the judge continued that "said Winne [sic] was entitled to damages in this form of action on the same principles that any other plaintiff might recover in an action of false imprisonment."[86] The 1807 territorial statute did not provide for allowing damages in freedom suits, but because it instructed slaves to bring assault and battery and false imprisonment charges, in this case the judge interpreted the statute to mean that slaves also deserved the same damage awards that juries might award to free persons. Having expanded the scope of the law to provide these kinds of awards, the jury in Winny's case granted an unusual verdict: "We the Jurors find for the Plaintiff And Damages to the amount of one hundred Sixty seven dollars fifty cents."[87] This was a large amount of money in the early nineteenth century, and it was a substantial amount to be given to a formerly enslaved plaintiff. Very few freedom suits provided monetary damages to successful plaintiffs; the courts generally viewed the grant of free status as sufficient and hesitated to award monetary compensation to free people of color.

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[85] Ibid., p. 28 (emphasis added). For most of the antebellum period, Missouri's courts made distinctions based on the amount of time spent in free territory and the purpose of being there. Historian Paul Finkelman argues that Missouri's distinction based on intent to reside in the Northwest was a "more limited interpretation" than the courts of Kentucky or Louisiana took. He also finds that eventually most states developed inflexible rules that did not distinguish between residing in free territories or states and passing through these areas. See Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981), p. 15, 218.

[86] *Winny v. Phebe Whitesides*, SLCC, p. 28.

[87] Ibid., p. 31.

This extraordinary verdict did not end Winny's struggle for freedom for herself and her children. Phebe Whitesides continued to plead her case and push the issue of possession and ownership. After the jury found Winny and her children to be free, Phebe filed a list of reasons for setting aside this verdict, including the fact that she did not possess Winny when the case came to trial. Instead, she revealed to the court that Rufus Pettibone, a local attorney (who served as Milly's attorney in her case against Mathias Rose), had purchased Winny and her family as his slaves. This document is signed by Pettibone and by Josiah Spalding, who served as Pettibone's attorney.[88] A few years later, on May 16, 1825, Winny filed a new petition complaining that Pettibone continued to hold her and three of her children, Malinda, Henry, and Lorinda, as slaves despite the court's judgment for their freedom. Her petition repeated the story behind her case and concluded that Pettibone "still refuses to liberate your Petitioner or to allow her and her said children to go at large and enjoy their natural freedom."[89] The court instituted new freedom suits for Winny and her children, assigned two attorneys, Edward Bates and Mathias McGirk, to the plaintiffs, and ordered that the plaintiffs have "reasonable liberty of attending their counsel – (according to the statute on freedom, the new law)."[90] Pettibone, who was a judge by the time of the 1825 case, died during its prosecution, and his heirs became the defendants. The jury's verdict does not survive in this case file, but a bill of

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[88] Ibid., pp. 21-22.

[89] *Winny v. Rufus Pettibone, et al.*, July 1825, Case No. 12, petition, found in Folder 1, "Slaves Collection," Missouri Historical Museum, St. Louis, Missouri, p. 2.

[90] *Winny v. Rufus Pettibone et al*., July 1825, Case No. 12, SLCC, p. 27. This language references the fact that the territorial statute on freedom suits became state law in 1824.

exceptions filed by the defendants indicates that Winny and her children again won their freedom in the St. Louis Circuit Court. The story of Winny and her children demonstrates the drawn-out nature of some freedom suits, as well as the various tactics defendants employed to prevent the loss of their enslaved property. But in Winny's case, the court clearly sided with her and for her freedom, instructing the jury that the Northwest Ordinance did free Winny and even suggesting that Winny should receive a similar amount of damages to any other plaintiff in a false imprisonment case. This is a clear example of the court's struggles to determine the rules for freedom suits. In later cases, large damage awards for enslaved plaintiffs became extremely rare.

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In the first decades of the nineteenth century, the diverse population of St. Louis created a multifaceted legal environment where access to the law was available to a wide range of people, including slaves. Missouri's residents adopted slave codes to control the enslaved population and to regulate the system of slavery, which also meant restricting some of the behavior of slaveholders. The Spanish legal tradition bequeathed to Missourians a system of local justice based on personal relationships. The 1807 statute permitting slaves to sue for freedom, which was most likely borrowed from Virginia's law allowing freedom suits, left many questions unanswered about how these cases should be prosecuted, what kinds of arguments enslaved plaintiffs would present to the courts, and how slaveholding defendants would respond. These omissions in the statute allowed for wide latitude in the cases and their outcomes.

The arguments of enslaved plaintiffs and the responses of slaveholding defendants widened the terrain of debates over personal status by introducing new elements into the system. Freedom suit arguments in the St. Louis Circuit Court fell into three broad categories: freedom at the time of birth, prior manumission, and residence in free territory. Within each of these categories, numerous variations on the arguments existed. Marie Jean Scypion's descendants claimed freedom based on her Native American ancestry, but slaves could dispute their mother's status in other ways. Slaves made arguments of prior manumission by will, like Arch and Jack's cases, or by manumission deed, as Winny asserted in her claim against Samuel Donner and Jennings Beckwith. Arguments based on residence in free territory included cases dealing with indentured servitude, such as Milly's case against Mathias Rose, but they also tackled questions of how long the enslaved plaintiff had to be in free territory, an issue that the Missouri Supreme Court grappled with in Winny's case against Phebe Whitesides.

The courts struggled to sort out the complex legal wrangling of enslaved plaintiffs and slaveholding defendants. Both plaintiffs and defendants worked to manipulate the courts to win a favorable outcome in these suits. Plaintiffs considered whether to bring habeas corpus cases, or to follow the statute's dictates and file false imprisonment or assault and battery cases. When enslaved plaintiffs argued for freedom based on free status at the time of their birth, prior manumission, or residence in free territory, they presented diverse evidence to prove their arguments. For example, Jack not only procured a copy of the manumission deed Hubbard executed for him, he also managed to supplement this documentary evidence with

white testimony. In her case against Samuel Donner, Winny offered her indenture as evidence of Donner's agreement to manumit her after she paid him $350. Defendants, on the other hand, resisted the efforts of enslaved plaintiffs to win their freedom in court. Slaveowners evaded prosecution whenever they could, using their superior social and economic position to try to undermine the limited legal rights of any enslaved plaintiff. Some slaveholding defendants even denied the legal ownership of a slave, as Phebe Whitesides did in defense of Winny's freedom suit.

The courts had to decide what precedents to set and what rules to establish, which allowed the legal system to become the key arena for discussions over personal status. In Arch's case, Judge Tucker dictated that Arch challenge his enslavement through an assault and battery case, rather than using habeas corpus. In *Winny v. Whitesides*, the Missouri Supreme Court set the important precedent that freedom based on residence in the Northwest Territory depended on the time spent in that Territory and the reason for being there. Ultimately, it was the local judges who resolved these legal issues, but in the 1810s and 1820s, these questions continued to be debated in the courts and in the wider community. Individual judges reacted to these suits on a case-by-case basis, but eventually, basic guidelines emerged. These cases also affected and were affected by outside litigation, expanding the influence of freedom suits beyond enslaved plaintiffs. In doing so, they involved the wider community in discussions over personal status and the place of slavery in antebellum America. By bringing their cases before the court and indicating their idealistic desire to use the legal system to sue for their freedom, enslaved plaintiffs initiated a new conversation about the boundaries of slavery in St. Louis.

Chapter Two
"Good Reasons to Fear": Slaves' Experiences in Freedom Suits

Lucy Delaney trembled in her seat. As she later described the scene at the conclusion of her 1844 freedom suit, it was "a bright, sunny day, a day which the happy and carefree would drink in with a keen sense of enjoyment. But my heart was full of bitterness." "I could not tell one person from another," Lucy continued. "Friends and foes were as one, and vainly did I try to distinguish them. I felt dazed, as if I were no longer myself."[1] Lucy sat bewildered as Judge Bryan Mullanphy entered the courtroom to announce her fate. As the court began to discuss its other business, Judge Edward Bates, Lucy's lawyer, asked the court to release Lucy.[2] Judge Mullanphy readily agreed and rendered a verdict of guilty against the defendant David D. Mitchell. By this verdict, the court granted Lucy her freedom. Mitchell's lawyer leaped from his seat to protest and demand that Lucy be returned to jail until further proceedings could be instituted. Bates responded and successfully defended Lucy's right to her liberty. Lucy's writing years later expressed some sense of her appreciation for the law and the lawyer who helped her achieve freedom. "Oh! The overflowing thankfulness of my grateful heart at that moment, who could picture it?

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[1] Lucy A. Delaney, *From the Darkness Cometh the Light; or Struggles for Freedom* (St. Louis: Publishing House of J. T. Smith, 1892, reprinted by Chapel Hill: Academic Affairs Library, University of North Carolina, 2001), Electronic Edition accessed at: http://docsouth.unc.edu/neh/delaney/delaney.html (October 2, 2003), pp. 39, 47.

[2] Ibid., p. 48. The trial documents record Lucy as Lucy Ann Britton, but her lawyer Judge Bates refers to her as Lucy Berry in her memoir. This variation in names demonstrates the precarious state of slaves' identities under slavery because they often adopted their owner's last name. In 1849, Lucy changed her name to Delaney after marrying her second husband Zachariah Delaney.

None but the good God above us! I could have kissed the feet of my deliverers, but I was too full to express my thanks."[3]

Lucy sued for freedom based on her mother's status as a free woman in Illinois before kidnappers sold her mother into slavery in Missouri. Lucy's case is one of over 300 suits for freedom brought to the St. Louis Circuit Court, but she is the only enslaved plaintiff in a freedom suit known to have left a memoir of the experience. Her story, told in *From the Darkness Cometh the Light; or Struggles for Freedom,* helps shed light on the experience of slaves suing for their freedom in St. Louis. Using that narrative and other materials from the Circuit Court, this chapter explores slaves' experiences in freedom suits to discover what brought them to law and why they chose to trust the legal system to free them.

Slaves primarily learned about freedom suits through the varied and extensive communication networks that existed among the diverse non-white residents in the urban setting of St. Louis.[4] Whites in St. Louis, as in other slaveholding cities like New Orleans and Charleston, feared the existence of such communication links because they believed these networks could foster slave revolts, aid fugitive slaves, or offer rudimentary legal counsel. Slaves and free blacks in the city lived and worked in close proximity to one another and could share information about the laws allowing these types of cases, practical advice about bringing a lawsuit, and anecdotal reports about the success of prior claims. The daily interactions marking life in an

[3] Ibid., p. 49.

[4] See Appendix, Figure 7 for a map of the city.

urban environment allowed a larger number of slaves to learn of the option of suing for freedom than happened in less heavily populated areas.[5]

Bringing a freedom suit involved enormous risk, including the risk of being sold away from St. Louis and from family, friends, and all things familiar. Slaves suing for freedom faced other forms of danger from resentful owners who used violence and mistreatment to express their outrage at becoming defendants in freedom suits. Slaves also confronted the prospect of being held in jail for the duration of their cases and could find themselves hired out to earn money to help pay for their suits and their care. The jail was available to protect enslaved plaintiffs from slaveholders' abuses, including violence, neglect, or threat of sale, but it was also the place where owners who no longer wanted to care for their slaves could confine them in order to force the state to pay for their upkeep. Freedom suits often dragged on for years, leaving plaintiffs in a legal limbo and subjecting them to all kinds of horrors in the process.

Slaves came to court because these suits provided the only way to acquire *legally* recognized freedom, but this did not mean that they had no other option. The proximity of St. Louis to the free state of Illinois provided slaves an easier route for running away than was available further south. The city's location also made it a popular destination for runaway slaves and the slave catchers who hunted them. But runaways always had to worry about recapture and reenslavement and could never

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[5] For more on how the urban landscape made information more accessible to slaves, see Richard C. Wade, *Slavery in the Cities: The South 1820-1860* (New York: Oxford University Press, 1964), especially pp. 56-57.

establish themselves in their communities in the way that legal freedom allowed. Rather than suing for legal freedom, some slaves asserted it in less obvious ways, such as stealing time for themselves or maneuvering so they could be hired out to the master of their choice. In some cases, enslaved plaintiffs used the courts as a last resort, after exploring other options such as daily resistance or running away.

Why, in the face of great difficulty, did slaves decide to sue for freedom? Because powerful whites dominated the legal system, one might expect that system to capitulate to them in controversies between them and their slaves. In antebellum America, law held the power to declare certain individuals as slaves, severely restricting their liberty and determining them to be the property of another person. The law of slavery denied enslaved persons citizenship and basic human rights and aided slaveholders in controlling and abusing their enslaved property. Still, this same law could also act to protect the limited rights held by persons of color, including recognition of wrongful enslavement in freedom suits.

In the St. Louis cases and elsewhere, the court sometimes sided with slaves over slaveholders, upholding their claims and recognizing the injustices they suffered. These cases demonstrate slaveholders' obligation to abide by the court's decisions. By allowing enslaved plaintiffs the legal status to sue for freedom, courts implicitly recognized their humanity by providing a venue for them to be declared free persons. It is for this reason, and because of the limited options available to them, that enslaved plaintiffs relied on the same law controlled by white southerners to come to

their rescue and set them free.[6] In the face of enormous personal risk, these men and women brought their grievances before the law because they believed the courts would acknowledge the injustice of their treatment and grant them legal freedom, and they also believed that whites, including slaveholders, would recognize and obey the court's ruling.

Communication Networks

Lucy Delaney's narrative, along with other evidence, gives first-hand confirmation of the fact that slaves learned about the existence of freedom suits from other slaves and free people of color. In urban, antebellum St. Louis, slaves came into frequent contact with other slaves and free people of color living and working in the city. Through these connections, they shared experiences and information that included discussions of freedom suits. It is also possible that slaves heard about the law of freedom suits from lawyers trying to solicit their cases. Worried slaveholders offered this explanation, complaining that these antebellum ambulance-chasers would stir up discontent and disobedience among the slaves. Whether driven by money or principle, some attorneys undoubtedly encouraged slaves to sue for freedom. But low fees and the wide range of attorneys assigned to these cases make it likely that more slaves discovered their rights by talking to one another.[7]

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[6] My analysis found that 124 of 325 cases, or just over 38%, resulted in freedom for the plaintiffs, with 51 cases that had no verdict reported (15.6%). See Appendix for the outcomes of the freedom suits.

[7] Scholars of numerous other slave societies have argued for the existence of widespread networks of communication among slaves. In her study of freedom suits in France, Sue Peabody found that slaves learned of their rights to sue for freedom through informal networks, and they also used these networks to secure funds and assistance in their suits. See Peabody, *"There are no Slaves in France": The Political Culture of Race and Slavery in the Ancien Régime* (New York and Oxford: Oxford University Press, 1996), p. 48. See also Julius Sherrard Scott, III, "The Common Wind: Currents of Afro-American Communication in the Era of the Haitian Revolution" (Ph.D. Dissertation, Duke University,

When Lucy Delaney's mother Polly Wash sued for her freedom in 1839, the possibility of suing appeared to be common knowledge among slaves in St. Louis. Delaney's 1892 narrative suggests the range of choices for enslaved persons to try to obtain freedom, and her own ultimate decision reminds us that suing was the only option that allowed slaves to win legal freedom through their own direct action.[8] Wash first chose to run away to try to obtain freedom, but when slave catchers found her in Chicago, she feared for Lucy's safety and voluntarily returned to slavery in St. Louis. Lucy's memoir records that after Polly returned from her failed escape, she "decided to sue for her freedom, and for that purpose employed a good lawyer."[9] This language implies that Polly knew of her ability to sue for freedom but chose not to do so until after she failed to secure her freedom by running away. She began her legal suit after exhausting other options. Her selection of words is notable: when she returned, she simply "decided" to sue for freedom and "employed a good lawyer." Lucy's narrative makes it sound like this was an obvious, available course, a choice of which slaves were well aware.

1986) for a discussion of how slaves spread information throughout the Caribbean and to the United States, including information about potential uprisings and also changes in French and English slave law. John Hope Franklin and Loren Schweninger found evidence that slaves would discuss the current political issues of the day amongst themselves. See Franklin and Schweninger, *In Search of the Promised Land: A Slave Family in the Old South* (New York and Oxford: Oxford University Press, 2006), p. 60. For a closer look at the dynamics of the antebellum slave community, see Anthony E. Kaye, *Joining Places: Slave Neighborhoods in the Old South* (Chapel Hill: The University of North Carolina Press, 2007), especially chapter 1. Lea Vandervelde and Sandya Subramanian also suggest that Dred and Harriet Scott may have learned of the right to sue for freedom through networks of communication with other slaves and free people of color. See Vandervelde and Subramanian, "Mrs. Dred Scott," *The Yale Law Journal* 106:4(1997): 1083.

[8] Slaveholders could also choose to manumit their slaves and grant them legal freedom in this way.

[9] Delaney, *From the Darkness Cometh the Light,* pp. 23-24.

The language used in freedom suits also insinuates that slaves spread information amongst themselves about the right to sue. Numerous case documents use phrasing that hints at the existence of a community that spread knowledge of the law and of legal rights to enslaved individuals. Several freedom suit petitions state that the plaintiff was "informed" and "believe[d]" he or she was entitled to freedom, and for this reason, they sued. For example, in his 1837 case against Absalom Link, Jack's petition stated that he was "advised and believe[d]" he was entitled to his freedom.[10] Although the cases do not specify who "advised" the plaintiffs about their rights to sue, this language makes clear that information traveled through networks of communication that must have included both slaves and free people of color, as well as opportunistic or sympathetic whites.

The urban environment of St. Louis undoubtedly contributed to the likelihood of slaves hearing about these cases from other slaves and free people of color. Slaves in cities interacted daily with other slaves, free blacks, and whites far more easily than on isolated rural plantations. Such contact worried white slaveholders who recognized that close and crowded quarters allowed for the physical gap between slaves and slaveholders to be "filled" with people they viewed as subversive, such as free people of color and poor whites. Relatively large populations of free people of color made them especially uneasy because free blacks shared physical characteristics

[10] *Jack, a man of color v. Absalom Link*, November 1837, Case No. 38, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, http://stlcourtrecords.wustl.edu (hereafter SLCC), p. 1. See also *Susan, a black woman v. Henry Hight*, February 1822, Case No. 127, SLCC, and *Seyton (also known as Sydney), a woman of color v. William Littleton*, March 1840, Case No. 3, SLCC.

with slaves but their status suggested the possibility of freedom to the enslaved.[11] Some free blacks secured their freedom by successfully using the courts to sue for their status, and these individuals must have made slaveholders particularly nervous.

Slaveholders' anxiety over their slaves intermingling in the city is evident in the legislation passed that restricted black people's movement and ability to gather in groups. These laws existed throughout the slaveholding states, expressing the widespread fear of slaves' ability to disseminate information, especially when meeting in groups with other slaves and free blacks.[12] The earliest digest of Missouri state laws, compiled in 1824, included the implementation of the pass system, which required slaves traveling away from their owners' homes or plantations to carry a pass granting them permission to leave. This same digest of laws also contained early legislation prohibiting slaves from gathering in groups without permission. For example, an 1804 statute against slave gatherings started with the preamble: "To prevent the inconvenience, arising from the meeting of slaves…" This "inconvenience" was slaves' sharing information, possibly about a wide range of topics, from planned uprisings to other insubordinations like freedom suits. The very next law warned that "if any white person, free negro or mulatto shall at any time be found in company with slaves at any unlawful meeting," that person owed a fine of

[11] Wade, *Slavery in the Cities,* p. 249. For more on the anxiety whites had about the existence of free people of color, see chapter 4.

[12] Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill and London: University of North Carolina Press, 1996), chapter 16.

$3.00 for each offense, or twenty lashes if they could not pay.[13] This law recognized that the nature of urban slavery made it a constant necessity for slaves to travel in the city, often for their owners or their hirers. Clearly, free blacks and whites, as well as slaves, could spread dangerous information or encourage unruliness among slaves. But the very existence of such laws suggests how difficult it was to prevent slaves from developing contacts and relationships with other slaves, free people of color, and whites.

The ability to mix and mingle on city streets, docks, and in shops and markets meant that information networks constantly evolved, grew, and adapted to changing circumstances among urban slaves. The northern observer Frederick Law Olmsted noted of slaves in cities that "Slaves can never be brought together in denser communities, but their intelligence [i.e. knowledge] will be increased to a degree dangerous to those who enjoy the benefit of their labor."[14] The spread of information by word of mouth was a powerful force that slaveholders both recognized and feared. A condescending article in the *Missouri Argus* described the process of how verbal

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[13] *Laws of a Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, and of the Territory of Missouri, up to the Year 1824* (Jefferson City: Printed by W. Lusk & Son, 1842), p. 29. See pp. 28-30 for other laws restricting slaves' gatherings. See also *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighth General Assembly during the Years One Thousand Eight Hundred and Thirty-four, and One Thousand Eight Hundred and Thirty-five. Together with the Constitutions of Missouri and of the United States* (St. Louis: Printed at the Argus Office, 1835), p. 585; Evans Casselberry, *The Revised Statutes of the State of Missouri, Revised and Digested by the Thirteenth General Assembly…* (St. Louis: Printed by Chambers & Knapp, 1845), p. 530; and Charles H. Hardin, *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighteenth General Assembly…* (Jefferson City: Printed for the State, by James Lusk, 1856), pp. 1474-75.

[14] Frederick Law Olmsted, *A Journey in the Seaboard Slave States, with Remarks on Their Economy* (New York and London: Dix and Edwards; Sampson Low, Son & Co., 1856; reprinted by Chapel Hill: Academic Affairs Library, University of North Carolina, 2001), Electronic Edition accessed at: http://docsouth.unc.edu/nc/olmsted/menu.html (January 2, 2008), p. 591.

communication in the community contributed to the spread of news about freedom suits:

> Tom wants his freedom, and sallies in quest of legal advice; he states his case, and right or wrong, is flattered to proceed. Pleased with his prospects, he brags to Dick, who after a little scratching and bumping of his reminiscences, takes a notion that he has a right to freedom too…Fired with untried hope, Dick flies to Ned…Ned catches flame and communicates it to Big Bill- Big Bill to little Jim, and little Jim to everything that wears wool.[15]

This article pointed explicitly to the fear of slave networks of communication, but it also hinted at the shadowy involvement of attorneys who could offer "legal advice."

Slaveholders believed that the condition of slavery was good for blacks and that their enslaved property would not sue them for freedom without encouragement. They complained that lawyers solicited freedom suits from their otherwise contented slaves.[16] In a narrative of Dred Scott's case written around 1880, William Vincent Byars wrote that two attorneys, "Burd and Risk, who were called the 'nigger lawyers,'" approached Scott and "urged Scott to sue for his freedom, telling him he was entitled to dosso [sic]."[17] The attorneys he referred to, Gustavus A. Bird and Ferdinand W. Risque, did prosecute a large number of freedom suits, although many

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[15] *Missouri Argus,* January 20, 1837, as quoted in Wade, *Slavery in the Cities,* p. 257.

[16] See Judith Kelleher Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University Press, 2003), chapter 2, for an example of a lawyer in New Orleans who solicited freedom suits.

[17] William Vincent Byars, "Dred Scott – Life of the Famous Fugitive and Missouri Litigant," T. W. Chamberlin Collection, Missouri Historical Museum, St. Louis, Missouri, p. 1. According to Robert Moore Jr., Byars took this description of Bird and Risque from a contemporary newspaper report. See Robert Moore, Jr., "A Ray of Hope, Extinguished: St. Louis Slave Suits for Freedom," *Gateway Heritage* 14(1993-1994): 4-15, 8. Moore also emphasizes the important role of slave communication networks in the urban setting of St. Louis in informing slaves of their right to sue.

of Bird's cases happened in the 1820s, before the number of attorneys practicing in St. Louis grew and more of them became involved in freedom suits.[18] The attorneys who prosecuted freedom suits played important roles in these cases, sometimes protecting enslaved plaintiffs from the possibility of removal from the court's jurisdiction.

Risk of Removal

Although relatively few slaves in these cases were actually sold away from St. Louis, usually to areas further down the Mississippi River, the frightening possibility of sale must have loomed large in their minds.[19] Lawmakers and judges acknowledged the danger involved in these suits; they expected the type of violent reaction from slaveholders that many slaves experienced. As a result, they created legal protections for plaintiffs. The territorial statute and Missouri state law allowing slaves to sue for freedom specified that "the petitioner shall not be taken nor removed out of the jurisdiction of the courts, nor be subjected to any severity because of his or her application for freedom."[20] When a judge granted a slave permission to sue for

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[18] William Francis English, *The Pioneer Lawyer and Jurist in Missouri* (Columbia: University of Missouri Press, 1947), pp. 49-66. Bird's motivation may have been pecuniary, as suggested by his July 1833 suit against Lydia Titus for the fees incurred in prosecuting at least eight suits for freedom for Lydia's children. See *Gustavus Bird v. Lydia Titus, a free woman of color*, July 1833, Case No. 44, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri. The fees lawyers earned in freedom suits will be discussed further in chapter 3.

[19] Harrison Anthony Trexler found that slaveholders used the threat of sale as a method of enforcing discipline on their slaves. See Trexler, *Slavery in Missouri, 1804-1865* (Baltimore, MD: The Johns Hopkins Press, 1914), p. 52.

[20] *Laws of a Public and General Nature*, p. 96. See also *The Revised Statutes of the State of Missouri,* 1835, pp. 285-86; Casselberry, *The Revised Statutes of the State of Missouri,* pp. 283-84; Hardin, *The Revised Statutes of the State of Missouri,* pp. 809-12.

freedom, his orders included this prohibition against selling or removing slaves away from St. Louis or mistreating them because of their freedom suits. These fears were well grounded. Slaveholders perpetrated these types of abuses despite the court's efforts to prevent them.[21]

The threat of sale to areas "down the river," to the Deep South, was a real possibility that slaveholders used as a way to threaten their slaves and prevent prosecution in freedom suits. Pelagie, a young woman who sued for her freedom based on her two-year residence in the Northwest Territory, confronted this prospect when she brought her freedom suit against Jean P. Cabanne in 1822. Pelagie's attorney, James H. Peck, filed a motion stating that Cabanne had "recently sent or caused said Pelagie to be conveyed to Ste. Genevieve, and there to be shiped [sic] on board of some boat for New Orleans – and beyond the jurisdiction of this court…with a view of having her sold as a slave beyond the reach of justice."[22] Motions about removing plaintiffs from the court's jurisdiction often made reference to the "reach of justice" or the "ends of justice," as if leaving St. Louis also meant moving beyond the realm of justice, which may suggest that they believed the courts of St. Louis provided certain advantages in freedom suits, or that other jurisdictions may be less willing to recognize freedom. Peck's motion asked that Cabanne be held in contempt of court for ignoring the order against removing the petitioner "with a view to defeat

[21] See St. Louis Circuit Court Historical Records Project, "Freedom Suits Case Files, 1814-1860," http://stlcourtrecords.wustl.edu/about-freedom-suits-series.cfm (accessed April 26, 2003).

[22] *Pelagie, a woman of color v. Jean P. Cabanne*, June 1822, Case No. 9, SLCC, pp. 13-14.

the ends of justice."[23] This statement appealed to the court to elevate the legal protection of slaves over the preservation of slavery and the interests of slaveholders. By making these types of appeals, enslaved plaintiffs' attorneys expected the court to use its authority to shield enslaved plaintiffs from the designs of those who claimed them as property, and the court often responded with additional orders of protection or by summoning the litigants to appear in court. Pelagie's case file ends with this petition, so perhaps Cabanne succeeded in selling her away from her ability to sue for freedom.

Slaveholders also resorted to trickery to remove enslaved plaintiffs from the court's jurisdiction. In the 1852 case of *Laura, a woman of color v. Henry Belt*, the plaintiff's attorney filed an affidavit claiming that Belt sold Laura to James Riley and James Christy. According to the affidavit, these new owners, with the aid of E. Curtis and others, "did decoy the said plaintiff…by stating to her that they wished her to go and see her attorney and that instead of taking her to see her to see an attorney…[they] did compel her…to go on board of the Steam Boat Isabel." So the defendants, with their agents, lied to Laura by telling her that they would take her to her attorney and instead compelled her onto a steamboat. Richmond's affidavit accused Riley and Christy of forcing Laura onto the boat "to be carried to New Orleans in the state of Louisiana or to some other place out of the jurisdiction of this court for the purpose of selling her as a slave." [24] Richmond later reported to the court that he visited Curtis to try to determine Laura's whereabouts, but that Curtis

[23] Ibid., p. 14.

[24] *Laura, a woman of color v. Henry Belt*, April 1852, Case No. 22, SLCC, p. 7.

and the owners had "all failed or refused to give him any information about the subject."[25] Richmond did not hear of Laura's removal, which occurred on January 10, 1852, until February 24, 1852, when he "received a letter from a passenger on said Steamboat Isabel or one who purports himself to have been such at the time said plaintiff was taken on board and carried off on said steamer." The letter, written February 15, 1852, came from Memphis, suggesting the steamboat was indeed heading for New Orleans.[26]

As this letter to Richmond suggests, when owners attempted to remove enslaved plaintiffs from the court's jurisdictions, plaintiffs sometimes received aid from third parties willing to help them. Such persons included steamboat captains, who also faced the possibility of legal sanctions if they aided the kidnapping of a slave, transported a slave without a pass, or transported a slave for a person lacking full title to the slave.[27] In her 1845 case against S. Burrell and James Mitchell, for example, Elsa Hicks detailed for the court how the defendants tried to remove her from Missouri by taking her aboard a steamboat. "The Captain of the boat learning that your petitioner was entitled to her freedom refused to take your petitioner on board of his boat."[28]

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[25] Ibid., p. 8.

[26] Ibid., p. 9.

[27] See *Laws of a Public and General Nature of the District of Louisiana,* pp. 31, 33; *Laws of a Public and General Nature of the State of Missouri,* p. 287; *Revised Statutes of the State of Missouri, 1835,* p. 586; Casselberry, *Revised Statutes,* p. 530; and Hardin, *Revised Statutes,* pp. 1476-77.

[28] *Elsa Hicks, a mulatto girl v. S. Burrell and James Mitchell*, April 1845, Case No. 55, SLCC, p. 7.

Third parties also helped slaves to write their own letters pleading their case and providing details about their removal. One letter in particular reveals the demands enslaved plaintiffs made on the court and the anguish they experienced when the court failed to protect them from removal. In a remarkable letter written by the enslaved plaintiff Dorinda to Hamilton Gamble, she pleaded for Gamble's assistance after her first attorney died and her second attorney neglected to take depositions for her case.[29] Although it is possible that she received assistance in writing her letter because most slaves could not write themselves, Dorinda's ability to send a letter to a prominent attorney while being held in captivity is unusual.[30] Dorinda sued John Simonds Jr., the agent of her owner Avington Phelps, based on her residence in the Northwest Territory.[31] Dorinda's letter, dated April 1, 1827, recounted the methods Phelps employed to prevent Dorinda's suit. In it, she expressed her understanding of Phelps' intentions and her desperation that the court act to protect her from Phelps' attempts to prevent her freedom suit. She wrote,

> Sir i wish to inform that Mr. felps is trying his best to keep me a slave; he has got me out of the county where i cannot do nothing for my self and he says that he will keep me out of your reach if possible. therefore i hope you will do the more for me. for i believe that he will not apear to court from

[29] Hamilton Gamble, a wealthy St. Louis attorney, eventually became governor of Missouri during the Civil War. For more on Gamble, see Dennis K. Boman, *Lincoln's Resolute Unionist: Hamilton Gamble, Dred Scott Dissenter and Missouri's Civil War Governor* (Baton Rouge: Louisiana State University Press, 2006).

[30] Eugene Genovese estimates that perhaps only 5% of slaves could read. See Genovese, *Roll Jordan Roll: The World the Slaves Made* (New York: Vintage Books, 1976), pp. 561-65, but he finds that the percentage was higher in cities. Thomas D. Morris, however, argues that the laws against teaching slaves to read and write were mostly symbolic and not actually enforced. See Morris, *Southern Slavery and the Law,* p. 348. Plaintiffs in the St. Louis freedom suits almost universally signed their petitions with only a mark, suggesting a low level of literacy.

[31] *Dorinda, a woman of color v. John Simonds Jr.*, March 1826, Case No. 42, SLCC.

> what i can see and does not intend to fetch me unless he is made to do so. and you know that he was ordered by the court not to fetch me out of the county where the court sets. And he told the court that he was going to take me to Lualin [sp?] Browns about 9 miles from St. Louis and when he got me there he forced me on to Clarksvill where he has kep me ever sense and said i shold not go back to St. Louis untill spring.[32]

Unfortunately for Dorinda, her letter contained a notation on the back that it reached Gamble after the court dismissed her case for lack of prosecution when no attorney appeared in court to argue her case.

Although most slaveholders removing enslaved plaintiffs from the court's jurisdiction carried them further south, the proximity of St. Louis to the Northwest Territory allowed slaveholders to remove their slaves to areas in the North, usually Illinois, meaning that slaveholders took these enslaved plaintiffs to a free territory to avoid prosecution in a freedom suit. In the case of Charles against Belina Christy, Charles argued for freedom based on his birth and residence in Illinois. Belina Christy, the widow of Charles's former owner Samuel Christy, tried to prevent prosecution by having Charles "seized in the public streets of the City of St. Louis" and taken to the jail of St. Clair County, Illinois, where "the jail of said County refused to take Charge of your petitioner on the ground that there was no offense alledged [sic] against your petitioner."[33] After the St. Clair jail refused to hold Charles, he managed to escape during the night and return to St. Louis. Charles's case lasted two years, and after a change of venue from the Circuit Court to the Court

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[32] Dorinda to Hamilton R. Gamble, April 1, 1827, folder 2, box 2, Hamilton R. Gamble Papers, Missouri Historical Museum, St. Louis, Missouri. The numerous misspellings in the letter are original. For purposes of clarity, I did not use the term [sic] here for each misspelled word.

[33] *Charles, a man of color v. Belina Christy*, March 1841, Case No. 343, SLCC, p. 9.

of Common Pleas, Charles received his freedom.[34] In his case, the jailer in Illinois recognized the illegality of holding him in jail in a free territory and refused to aid his enslavers.

Numerous slaves filed motions asking a judge to prevent the defendants from removing them from the court's jurisdiction, placing their trust in the courts to provide protection. In his case against Benjamin Wilder, Cary's petition stated that he lived and worked in Illinois, so he should be allowed to sue for freedom. Cary explained that because Wilder threatened to sell him away from St. Louis, he "is afraid" and "has good reasons to fear."[35] Mary, an enslaved mother of three small children who sued based on her birth in Kaskaskia, Illinois, communicated the trepidation involved in filing a suit when she told the judge that "she knows of no person to whom…she thinks she could safely confide her intention of instituting a suit for her freedom, without incurring the hazard of being deprived of the opportunity of making this application, by being sent out of the jurisdiction of this court."[36] Mary's willingness to brave these dangers suggests the determination of enslaved plaintiffs to utilize the limited options available to them.

The fear of poor treatment and sale at the hands of slave traders certainly affected slaves' calculations about bringing freedom suits. The constant presence of dealers in human flesh in St. Louis provided ample opportunity for slaveholding

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[34] *Charles, a man of color v. Belina Christy*, February 1842, Case No. 359, SLCC.

[35] *Cary, a man of color v. Benjamin Wilder*, March 1831, Case No. 53, SLCC, p. 1.

[36] *Mary, a woman of color v. Francis Menard and Andre Landreville*, November 1827, Case No. 7, SLCC, p. 3.

defendants in freedom suits to sell their slaves. When Eliza Tyler filed her petition against Nelson Campbell, she explained that her owner, George Taylor, held her as a slave illegally in Galena, Illinois, until he brought her to St. Louis and sold her to Campbell, "a negro trader or slave dealer, as your petitioner has been informed, who resides in the lower country either of Louisiana or Mississippi, & who is about to take your petitioner out of this state, & to remove her to the lower country as a slave."[37] Another enslaved woman named Rachel, who sued for her freedom and that of her son James Henry, told the court in her 1834 petition that her owner sent her to St. Louis and had recently "sold her & her child to one William Walker, who is a dealer in slaves & is about to take your petitioner & her child down the Mississippi River, probably to New Orleans for sale."[38] Walker was a regular in the St. Louis slave trading business; he found himself a defendant in multiple suits for problems with his slave sales.[39] The fear of slave traders surely prevented some potential plaintiffs from bringing suit, but it also encouraged others to take that step.

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[37] *Eliza Tyler, a woman of color v. Nelson Campbell*, July 1835, Case No. 35, SLCC, p. 1. Eliza's case record is incomplete, but the chancery court record books indicate that the court set her free with damages of one cent. See Circuit Court Record Book 7, p. 481, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri.

[38] *Rachel, a woman of color v. William Walker*, November 1834, Case No. 82, SLCC, p. 1.

[39] See, for example, *George Freyschlay v. William Walker*, July 1835, Case No. 84, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri. In this case, Freyschlay sues over a false warranty on the slave George, who lost part of his foot to frostbite, so Freyschlay sues to recover the cost of George. The court granted Freyschlay $600 plus court costs. In *Benjamin Roach v. Walker* (November 1837, Case No. 62, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri), Roach complained that he paid Walker to buy slaves for his Mississippi plantation but that Walker failed to buy any slaves or to return his money. Again, the court found against Walker.

Sometimes exigent circumstances led slaves to brave the risks and file a suit for freedom: fear of being sold or violent mistreatment could be both cause and effect of freedom suits. Although some slaves suffered as a result of their suits, some sued to combat their sufferings. In this way, the fear of being sold further south could be the impetus for bringing a freedom suit. When slaves learned of their owner's intention to sell them, they could choose to institute suit in order to ask the court for protection. Lucy Delaney brought her freedom suit after she had an argument with her "mistress" and her greatest fear became a real possibility. She writes, "I was not surprised to be ordered by Mr. Mitchell to pack up my clothes and get ready to go down the river, for I was to be sold that morning, and leave, on the steamboat Alex. Scott, at 3 o'clock in the afternoon."[40] It was only after this threat that Lucy ran to her mother's protection and received help in beginning her freedom suit. Another enslaved woman named Seyton sued William Littleton for freedom in March 1840 when she was "informed and believes" he was preparing to sell her to "a distant place where she will be unable to procure the evidence of her freedom."[41]

Violent Resistance

Enslaved plaintiffs in freedom suits endured the ire of those they sued. Their cases outraged slaveholders who seethed at the audacity of their enslaved "property" dragging them to court and demanding release from slavery. Because of the statute's requirement that freedom suits be brought as assault cases, nearly every St. Louis

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[40] Delaney, *From the Darkness Cometh the Light,* p. 29.

[41] *Seyton (also known as Sydney), a woman of color v. William Littleton*, March 1840, Case No. 3, SLCC, p. 2.

freedom suit describes an incident of violence. Some of these accounts could be exaggerated, but the prevalence of abuse makes sense when one considers the fact that violence played a crucial role in keeping enslaved people subjected to the rule of slaveholders. When slaves disobeyed their owner's orders or questioned his or her authority, slaveholders often responded with physical abuse. Few offenses angered slaveholders more than a slave suing them for freedom. Not only did freedom suits mean that the slaveholder was in danger of losing control of his or her property, these cases also meant that slaves had the backing of the law, which constituted a direct challenge to the absolute authority of slaveholders. Even slaveholders recognized the courts' ability to emancipate slaves.

Slaves took an enormous risk in initiating cases because physical violence often became even more pronounced once the slave filed his or her freedom suit. In her 1827 suit against Jacob Baum, Polly Wilson complained that Baum assaulted her and "with a certain stick and whip and with his fists gave and struck the said Polly Wilson a great many blows and strokes on and about the head, face, chest, back, shoulders, arms legs and…other parts of the body."[42] In 1844, when an enslaved woman named Hannah sued John Pitcher for freedom for the second time, she reported to the court that "she has been treated with great cruelty severity and oppression by said Pritcher [sic]" since her previous suit. Therefore, she "verily believes that the same severe and oppressive treatment will be exercised toward her

[42] *Polly Wilson, a free woman of color v. Jacob Baum*, March 1827, Case No. 19, SLCC, p. 1. There is no verdict in Wilson's case file.

on account of this application."[43] Despite her fears of continued mistreatment, Hannah made a second attempt to secure her freedom in the St. Louis court. She sued for freedom based on living in Boston, Massachusetts, but the jury decided against her and she remained Pitcher's slave.

Violence was a real threat that many plaintiffs in freedom suits would have anticipated and at least some plaintiffs experienced. Evidence of violence or mistreatment existed in the majority of these cases in order to demonstrate that the defendant assaulted the plaintiff because this was the legal form for Missouri freedom suits.[44] But it does not follow that plaintiffs and their attorneys fabricated or embellished all descriptions of this type of violence to fit the guidelines set down in the statute. For example, Tempe, in her case against Risdon H. Price, complained in her petition that Price assaulted her to the point where she "was in great danger of losing her life."[45] Although Tempe's attorney may have inserted this language to prove the assault as required by the statute, a later petition in her case described in detail the great violence and mistreatment she suffered as a result of her freedom suit. In her petition, Tempe complained that since the beginning of her case, Price "has frequently abused and beaten her (and particularly on yesterday) for no other cause that she knows of but her present application for freedom." In addition to the physical punishment, Price "has refused to supply her with clothing necessary for comfort and decency, alleging as a reason that he expected soon to lose her."

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[43] *Hannah, a woman of color v. John Pitcher*, November 1844, Case No. 28, SLCC, p. 2.

[44] *Laws of a Public and General Nature, of the District of Louisiana*, p. 96.

[45] *Tempe, a black woman v. Risdon H. Price*, April 1821, Case No. 181, SLCC, p. 3.

Slaveholding defendants had little incentive to properly clothe and care for enslaved plaintiffs. Price also made Tempe work harder because of her suit, and "her duties as a servant are rendered much more hard than that of the other servants in the family, and that she is seldom spoken to by Mr. Price accept [sic] with ill humor and abusive language."[46] The detailed description of the abuses Tempe endured makes it unlikely that she did not actually experience them. Even if Tempe did not suffer the abuses her petition described, her attorney had to craft her petition in a way that would be believable to the court, which suggests the likelihood that Tempe and other enslaved plaintiffs did fall victim to these type of cruelty.[47]

The overwhelming majority of defendants in the cases used in this study did not deny the accusations of violence leveled against them. Instead, they maintained their right to discipline their property with force, if necessary. Mathias Rose, accused by the enslaved woman Milly, defended himself by claiming he used "no more force and violence *than was absolutely necessary* to ensure the obedience and service of his said servant."[48] In order to justify his use of violence, Samuel Abbott, the defendant in Lethe Fenwick's freedom suit, detailed the reasons for using force against Fenwick. In his plea of not guilty to the charges of assault and battery, trespass, and false imprisonment, he argued that Fenwick "neglected her duty" as his slave and

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[46] Ibid., p. 27. Tempe and her husband Laban both sued Price for freedom based on their residence in the Northwest Territory; juries in both cases found Price guilty and declared Tempe and Laban free.

[47] This line of reasoning follows that of Walter Johnson, who treated his sources as "lies" that had to be believable in order to achieve success in court. See Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge, MA and London: Harvard University Press, 1999), p. 12.

[48] *Milly v. Mathias Rose*, August 1819, Case No. 20, SLCC, p. 9 [emphasis added].

"behaved and conducted herself in a disorderly, saucy, contumacious and improper mannour [sic] toward the said defendant." He added that she "resisted and refused to obey the lawful commands" of the defendant. In response, Abbott defended his actions by stating that he "did modestly chasten and correct…the said plaintiff…and in so doing did *necessarily and unavoidably* a little beat, bruise, and ill treat the said plaintiff."[49] Other defendants commonly used similar language when explaining their use of force to the court, asserting their rights as owners of slave property to punish slaves when they failed to obey.

Punishment or Protection?

Enslaved plaintiffs also confronted the possibility of being confined to the St. Louis jail during their cases. Because these cases could sometimes last many years, slaves feared the prospect of spending years in jail as a consequence of their freedom suits. Lucy Delaney complained of her imprisonment for "seventeen long and dreary months" in the St. Louis jail, writing that "My only crime was seeking for that freedom which was my birthright!"[50] Slaves in the majority of freedom suits in St. Louis spent at least part of the time during their suits in the city's jail, but their experiences there varied as much as each of their cases.

Imprisonment in the St. Louis jail was almost never intended as a punishment for enslaved plaintiffs or for others detained in the jail. In fact, one difference between American law and Spanish colonial law in Missouri was that after the United States took possession of Missouri, incarceration was not a sentence for any crime

[49] *Lethe Fenwick v. Samuel Abbott*, October 1823, Case No. 99, SLCC, pp. 1-2 [emphasis added].

[50] Delaney, *From the Darkness Cometh the Light,* pp. 34-35.

committed by a slave.[51] The exception was persons confined on suspicion of being runaway slaves, who will be discussed further below. Instead, slaves placed in jail in St. Louis were often put there for "safekeeping," mainly to protect them from owners who might abuse them if they were removed from the court's custody and protection. When Sam brought his freedom suit against Alexander Field and Elijah Mitchell, the court asked George Hammond, the jailer, why he kept Sam in prison. Hammond answered the court by explaining that he held Sam "for safe keeping & for no other cause." Hammond went on to clarify that he took Sam into custody after two men threatening Sam were "arrested by virtue of a warrant for kidnapping."[52] In many cases, the court ordered the sheriff to take possession of the plaintiff and hold him or her in jail for the duration of the suit. In these instances, the court exerted its authority over slaveholders by protecting enslaved plaintiffs while they sued for freedom.

Abuses and mistreatment of enslaved plaintiffs, however, did occur in the jail. Sometimes a slaveholder put a slave in jail to prevent him or her from bringing a freedom suit, or to prepare to sell or transport the slave away from St. Louis. Consider the case of a mulatto man named Pierre, who sued Gabriel Chouteau in 1842. Pierre's case lasted over ten years, and in August 1852, a motion brought before a justice of the peace stated that Pierre "was locked up in a cell of the jail of the County of St. Louis & whipped violently on account of his claim for freedom."

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[51] Harriet C. Frazier, *Slavery and Crime in Missouri, 1773-1865* (Jefferson, NC: McFarland & Co., Inc., 2001), p. 17.

[52] *Sam, a person of color v. Alexander P. Field and Elijah Mitchell*, July 1832, Case No. 49, SLCC, p. 6.

Pierre was also "restrained" by Chouteau and another man "of the reasonable liberty of attending his counsel & the Court."[53] Perhaps it was the long duration of Pierre's case or the amount of time and suffering he endured in jail, but eventually Lewis Martin and William Kerrick, the keepers of the jail, told the court that they had "observed his conduct" daily and they believed he was "at times of unsound mind and insane." Kerrick "believes him to have been insane the whole time of his incarceration."[54] Pierre spent an unusually long period of time in jail because the sheriff could not find anyone to hire him out. At least one potential hirer returned Pierre before his term of hired service ended because of "his strange conduct." This hirer preferred to "pay his board in jail and his hire and lose the services he was able to render." The sheriff reported to the court that he "was unable to hire him out afterwards to anyone."[55] There is no mention that Pierre's imprisonment led to his "strange conduct," but ten years in jail could not have helped his mental state.

The St. Louis jail, like most county jails in the antebellum period, was not a pleasant place to pass time. Cramped quarters and poor sanitary conditions added to the misery enslaved plaintiffs, whose freedom hung in the balance, felt during their suits. Antebellum communities often segregated their jails by race, with white prisoners kept in a separate facility or at least in separate cells. An 1865 inspection found that the cells in the St. Louis jail measured only eight feet square with ten foot

[53] *Pierre, a mulatto v. Gabriel S. Chouteau*, November 1842, Case No. 125, SLCC, p. 241.

[54] Ibid., p. 227.

[55] Ibid., p. 231.

ceilings, and they usually held from three to six prisoners.[56] Long-term confinement in these conditions must have been a dismal experience, but it was something many enslaved plaintiffs were willing to risk.

By placing slaves in jail, the responsibility for their maintenance moved from their alleged owners to the county in which they sued. Counties paid for slaves' maintenance during their cases, although county officials usually hired slaves out to help defray these costs. Responsibility for upkeep of the jail and its prisoners fell to the sheriff, who delegated daily management to a jailer. Money spent on feeding and caring for enslaved plaintiffs held in jail during their freedom suits was less than prisoners elsewhere. In his study, *Frontier Law and Order,* historian Philip D. Jordan found that as early as 1796, Tennessee sheriffs received 25 cents per day to care for prisoners. By the 1850s, Alabama sheriffs received 50 cents to care for their prisoners.[57] After bringing his case against Gabriel S. Chouteau in 1844, enslaved plaintiff Louis Chouteau spent more than three and a half years in the St. Louis jail. In an abstract of court costs in his case, the jailer asked for only 30 cents per day for Louis's care during this long stretch.[58] As late as 1860, the jailor caring for Isham Shaw received only $27.00 for ninety days, or 30 cents per day.[59]

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[56] E. C. Wines and Theodore W. Dwight, *Report on the Prisons and Reformatories of the United States and Canada* (Albany: Van Benthuysen & Sons' Steam Printing House, 1867), p. 318, cited in Philip D. Jordan, *Frontier Law and Order* (Lincoln: University of Nebraska Press, 1970), p. 152.

[57] Jordan, *Frontier Law and Order,* p. 146.

[58] *Louis Chouteau, a man of color v. Gabriel Chouteau*, April 1844, Case No. 51, SLCC, p. 49.

[59] *Isham Shaw v. Augustus H. Evans*, February 1860, Case No. 456, SLCC, p. 41.

The lack of funds spent on enslaved plaintiffs held in jail did not mean that sheriffs or jailers were always insensitive to the needs of the individuals within their care, as seen in the example of Samuel Conway and Elsa Hicks. Conway was the sheriff in 1847, when Hicks sued Patrick T. McSherry to free her and her infant son. Conway filed an affidavit with the court asking for help for Elsa and her son, explaining to the court that he had held Elsa and her child from February 1847 to the time of the affidavit, June 1848. The court ordered him to hire Elsa out to help defray the costs of her suit. Unable to do so, he stated "that I have tried diligently to hire said woman out," but "I have not yet been able to hire her at all." He continued, "I think there is very little probability that I shall be able to dispose of the said woman & child." Conway believed he would not be able to hire out Elsa because of the high bond asked for her hire and probably also because of her deteriorating health. He continued that "since said woman & child have been confined in jail the health of both of them appears to have become impaired the woman has reduced in flesh & looks badly."[60] Conway expressed concern that Elsa's case would not be heard at the next term of the court, in the fall of 1848. He told the court "if she shall remain in jail til [sic] said suit is determined the consequence will probably [be] very serious to her health & to that of her child & *may be fatal to one or both of them.*"[61]

The responsibility for jailed plaintiffs lay with the sheriffs, so these men did not want to be held responsible for "damage" to enslaved property. Conway's concern stemmed in part from the fact that no security was given in Elsa's case, so "if

[60] *Elsa Hicks, a mulatto girl v. Patrick T. McSherry*, November 1847, Case No. 121, SLCC, p. 15.

[61] Ibid., p. 16 [emphasis added].

her suit shall be dismissed I know of no responsible party who will be liable to pay for the expense of keeping her in jail." Sheriffs provided for jailed plaintiffs out of their own funds until the end of the case, when the losing party had to pay the costs of the suit. If a plaintiff remained in jail for a particularly long time, the sheriff could incur considerable expense if the losing party refused or was unable to pay. Conway therefore asked, "If I am required to perform further duties & incur further expenses with said negro that the court will require some security to be given for any costs & expenses & trouble so required."[62] Conway may have felt true concern for Elsa's and her child's physical well being, but the fact that he requested security to provide money for her care instead of asking that she be released from jail suggests his primary concern was pecuniary. As Conway's complaint reminds us, sheriffs not only took care of the plaintiffs while they were in jail, but also hired them out to the highest bidder to help cover the cost of the slave's suit and perhaps to avoid responsibility for caring for the slave.

Across the South, slave hiring occurred with the greatest frequency in cities, where the dearth of large-scale plantation agriculture encouraged slaveholders to find new employments for their slaves. In St. Louis, the most frequent posts for women included domestic service, while men were most readily hired along the bustling waterfront for tasks linked to the busy levy and the riverboats tied up there. But the incessant demand for labor in the growing urban area meant that enslaved workers could be assigned to a wide range of tasks. When the court hired a person out, it required that sheriffs collect a bond from the hirer to guarantee the security of the

[62] Ibid., p. 16.

plaintiff, based upon that individual's estimated market value as a slave. These bonds were intended to keep the hirer from mistreating plaintiffs or removing them from the court's jurisdiction.

Sometimes sheriffs faced difficulty hiring slaves out if the bond the court required was too high, as was the case with Elsa Hicks. Louis Chouteau's bond was also too high to secure a hirer, forcing him to remain in jail for long stretches of time. In January 1861, the court asked for $1000 bond for Chouteau's hire, so his attorney filed a motion for the court to reduce this amount, which they agreed to do.[63] The documents do not specify what the new bond amount was, but in February 1861, Chouteau's attorneys again asked that bond be reduced, stating that "the same is excessive in view of the value of the property, which is not worth more than four hundred dollars." Here Chouteau is arguing that his own sale value is lower, most likely because he wanted to get out of jail. The motion also states that "The Plaintiff is confined in a dungeon without having committed any offense, and has simply presented his petition for his freedom."[64] Imprisonment may not have been a legal punishment, but it clearly felt like one to the men and women confined there for long periods of time.

Louis Chouteau appeared to prefer being hired out to living in jail, but hiring out also had its dangers. There was no guarantee as to how the hirer would treat the plaintiff; hirers had few incentives to treat plaintiffs with care because a hirer had only temporary control of the hired slave, although the bonds put up by hirers did

[63] *Louis Chouteau v. Gabriel S. Chouteau*, April 1844, Case No. 51, SLCC, pp. 46-47.

[64] Ibid., p. 53.

provide a measure of security to enslaved plaintiffs in these situations. Slaves throughout the South were more likely to be hired out at some point in their lives than to be sold; in this way, the experience of St. Louis's enslaved plaintiffs in freedom suits overlapped with the experience of numerous slaves throughout the South.[65] But the purpose of slave hiring in freedom suits was to cover the costs of caring for the slaves and of bringing a freedom suit. By working for their hirers during their cases, enslaved plaintiffs contributed to the costs of their suits. A few of these individuals, including Lucy Delaney's mother Polly Wash in her 1839 case against Joseph Magehan, received their wages after winning their cases, although the court usually hesitated to award back wages to freed plaintiffs.[66]

Pathways to Freedom

Suing for freedom was not the only option enslaved individuals had to obtain freedom. Polly Wash brought her 1839 case only after she had attempted to run away to freedom in Canada. Slaves turned to the St. Louis Circuit Court to provide them with *legal* freedom, which allowed them to establish themselves as free persons in their communities with less risk of capture or reenslavement. The city's proximity to Illinois made it a popular place both for runaway slaves passing through and the slave catchers who hunted them. Although it is impossible to determine the exact number of runaway slaves in the antebellum era, undoubtedly many slaves reached free soil

[65] For more on slave hiring in the South, see Jonathan D. Martin, *Divided Mastery: Slave Hiring in the American South* (Cambridge, MA: Harvard University Press, 2004).

[66] *Polly Wash v. Joseph M. Magehan*, November 1839, Case No. 167, SLCC, pp. 39-40.

and never appeared in court. The precarious nature of freedom in the North led others to invoke the law to confirm their right to freedom.[67]

Runaway slaves had a variety of reasons to use the St. Louis Circuit Court. Anyone suspecting that a person was a runaway slave could ask the sheriff or a justice of the peace to place him or her in jail until the "owner" could claim his or her property.[68] In response to this imprisonment, a number of suspected runaways brought suits for freedom or habeas corpus claims to establish their right to legal freedom and to gain their release from jail. Some slaves ran away for the purpose of suing for their freedom. For these slaves, distance from their owners was necessary for them to be able to approach the court. In addition to imprisonment for suspicion of running away from slaveholders in slaveholding states, a number of runaways whose stories entered the courts ran *to* St. Louis *from* the Northwest, usually from Illinois, which may seem odd because slavery was illegal in Illinois, and it was legal in Missouri.[69] But freedom in Illinois was precarious, with many persons of color serving life-long indentures or being held as slaves despite the existence of laws

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[67] The many ads in St. Louis newspapers for runaway slaves suggest both the existence of large numbers of runaways from St. Louis and that St. Louis was a popular place for runaways to pass through on their way to free states or to Canada. The *Daily Evening Gazette* complained in 1841 that slaves' ability to work on boats on the Mississippi River "renders the slaves restless and induces them to run away." *Daily Evening Gazette,* August 18, 1841, as quoted in Trexler, *Slavery in Missouri*, pp. 177-78. Stephanie H. M. Camp argues that many slaves, especially women, would run away for short periods of time, a phenomenon she calls slave "truancy." See Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill and London: The University of North Carolina Press, 2004), chapter 2.

[68] *Laws of a Public and General Nature, of the District of Louisiana,* p. 32; *Revised Statutes of the State of Missouri, 1835,* pp. 588-90; Casselberry, *Revised Statutes,* pp. 531-35; Hardin, *Revised Statutes,* pp. 1098, 1479-87.

[69] Vandervelde and Subramanian found that Illinois was "not much more hospitable to free blacks or freeing slaves" than those states where slavery was legal. See Vandervelde and Subramanian, "Mrs. Dred Scott," 1082.

against slavery. For this reason, at least some people viewed St. Louis as a destination where they could obtain freedom, either through the courts or through the anonymity provided by an urban setting with a relatively large number of free people of color. Although slaves had other options for obtaining freedom, the vulnerable nature of freedom for runaway slaves led some to use the courts in order to receive the legal status necessary to force others to recognize their freedom.

Suspected runaway slaves appeared in court to argue against their imprisonment, which forced them to demonstrate their freedom. Because Missouri's laws allowed any person who suspected a man or woman of color of being a runaway slave to approach the sheriff or any justice of the peace to ask that they hold the suspect in jail until their owner could claim them, the suspected runaway often had to petition the court for a habeas corpus suit and ask that they be released from jail because they were free and therefore had not run away. Suspected runaways could bring their cases to justices of the peace in addition to the Circuit Court, so estimates of the total number of people in this position are impossible to determine.[70] While sheriffs held suspected runaways in jail, they advertised their confinement in St. Louis newspapers to summon slaveholders to collect their enslaved "property."[71] After a specified amount of time, suspected runaways not claimed by their owners

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[70] Most records of justices of the peace have not survived as part of the historical record. The informal nature of these procedures meant that justices did not always record them or keep their records for posterity.

[71] See, for example, the *Missouri Republican* from: September 17, 1823, p. 1; February 28, 1825, p. 4; October 12, 1826, p. 3; November 29, 1827, p. 3; September 27, 1831, p. 3; June 6, 1835, p. 3; July 3, 1835, p. 3.

could be sold at auction. The presumption that all blacks were slaves meant that free persons wrongfully enslaved needed to prove their freedom. To prevent being wrongfully sold into slavery or reclaimed by slaveholders, free people of color used the courts to establish their free status. In fact, the structure of these proceedings forced them to rely on the courts. In her case against Curtis Skinner in July 1835, Mary Ann Steel petitioned the court to release her because Skinner "did imprison the said Mary Ann in the Common Gaol [jail] of said County & kept & detain[ed] her in prison there as a runaway slave for the space of ten days."[72] Mary Ann brought a suit for her freedom against the sheriff who ordered her imprisonment, but suspected runaways could also use an action of habeas corpus to raise the issue of their freedom. When Samuel Slaughter brought his habeas corpus claim to protest his imprisonment as a runaway, he argued "that he is free born and entitled to his freedom" so he asked "that he be discharged."[73] By making freedom the issue before the court, Slaughter sought legal recognition of the freedom he believed he deserved.

Sometimes slaves needed to escape the control of their owners long enough to be able to come to court and file a suit, so they ran away and requested the aid of the court. For example, a slaveholder named James Duncan filed a petition stating that "Joe and Ralph black persons…are runaway slaves and now lurking about the county

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[72] *Mary Ann Steel v. Curtis Skinner*, July 1835, Case No. 96, SLCC, p. 1. The case records do not say exactly what happened to Mary Ann Steel after her petition for freedom. She sued both Curtis Skinner and William Walker for her freedom, and in both cases, the record indicates that she voluntarily agreed not to further prosecute her suits.

[73] *Samuel Slaughter, a negro, in the matter of habeas corpus*, November 1854, Case No. 253, SLCC, p. 7. St. Louis Circuit Court Record Book 24, p. 340 (Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri), shows that on November 23, 1854, the jailer brought Slaughter to court and the court discharged him from custody.

of St. Louis and that he verily believes that the said Negroes are now hid in the said county and at the house of Gustavus H. Bird."[74] For this reason, Duncan asked a justice of the peace to arrest the two men. In his response, the sheriff answered that "Joe & Ralph surrendered themselves to me and are now in Jail – They claim to be free men – have sued for their freedom and have been ordered to be hired out untill [sic] the termenation [sic] of the suit."[75] Ralph and Joe, along with others, needed to get away from their owner's immediate control in order to be able to sue for freedom. Once they instituted their cases, they had no problem surrendering to jail and answering the charge of running away.

Not surprisingly, conditions in neighboring Illinois figured constantly in slavery matters before the courts in St. Louis. The federal Northwest Ordinance of 1787 prohibited slavery in areas north of the Ohio River, including Illinois. Slavery, however, still existed in Illinois. Despite legal prohibitions, many slaveholders migrated to Illinois from Virginia and Kentucky, bringing their slaves along with them. When statehood arrived for Illinois in 1818, the original state constitution of that year outlawed slavery, though certain loopholes persisted. A constitutional provision allowed slaveowners in other states to hire their slaves to work at the valuable Salt Lick in Illinois for a period of less than one year at a time. This

[74] *Vincent, a man of color v. James Duncan*, November 1829, Case No. 110, SLCC, p. 33. Gustavus Bird was an attorney and justice of the peace in St. Louis. He served as Ralph's attorney in his freedom suit.

[75] Ibid., pp. 33-34. Both Ralph and Joe sued James and Coleman Duncan. Ralph's case went on for years, with at least one appeal to the Supreme Court before Ralph won his case and his freedom. Joe died during the prosecution of his case.

exception ended in 1825, but a larger loophole continued.[76] Under Illinois's laws, any person could sign a contract for a term of indentured servitude, and the contractor could file it in an Illinois court. Slaveholders in Illinois often coerced their black servants into signing these indentures. Unlike the traditional brief indentures for white workers in the colonial era, these binding contracts could last for long periods of time, sometimes as long as ninety years. In this backhanded way, long-term indenture contracts allowed lifelong slavery to continue in slightly disguised form, even though these long contracts became rarer after Illinois became a state in 1818.[77] For example, an enslaved woman named Dunky, who claimed to be originally from Africa (a claim supported by the unusual knife marks on her face), brought suit for her freedom in St. Louis in 1831. When the defendant, Andrew Hay, entered his plea of not guilty, he complained to the court that "at the time of the committing the said supposed grievances in the declaration mentioned the said plaintiff was held to labour in the State of Illinois under the laws of said State of Illinois and had escaped into the county of Saint Louis."[78] The reference to the "laws of said State of Illinois," most likely signified the laws of indentured servitude.

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[76] "Constitution of 1818," in *Illinois Constitutions,* ed. Emil Joseph Verlie (Springfield: Illinois State Historical Library, 1919), pp. 38-39.

[77] For more on slavery and indentured servitude in Illinois, see Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: The University of North Carolina Press, 1981), especially chapter 3; James E. Davis, *Frontier Illinois* (Bloomington: Indiana University Press, 1998), pp. 20, 22, 161, 165; James Simeone, *Democracy and Slavery in Frontier Illinois: The Bottomland Republic* (DeKalb: Northern Illinois University Press, 2000); and N. Dwight Harris, *The History of Negro Servitude in Illinois, and of the Slavery Agitation in that State* (Chicago: A. C. McClurg & Co., 1904).

[78] *Dunky v. Andrew Hay*, July 1831, Case No. 12, SLCC, p. 5.

Slaveholders in Illinois worried about their slaves escaping to St. Louis and either instituting suits for freedom or successfully living as runaways. As late as 1828, Ninian Edwards, the slaveholding governor of Illinois, complained in a letter to St. Louis attorney William Carr Lane about the situation. Edwards' slave, a woman whose name was not given, had recently run away to St. Louis with her husband Paul Vallad. Although Edwards claimed he held a good title to her, he felt that "the encouragement that our negroes have received to run to St. Louis, might render it almost useless" to try to reclaim her. Edwards wanted Lane to inform him about the laws in St. Louis requiring slaves to carry passes and free people of color to carry free papers, because he hoped to try to recover his lost slave there. He warned that Illinois slaveholders were getting "tired" of their slaves escaping to St. Louis where officials failed to retrieve them. As a final protest, he chastised Lane, arguing that St. Louis slaveholders should not complain about Illinois failing to return runaway slaves because St. Louis was guilty of the same thing: "if our negroes are to find refuge in your state, you ought not to complain if we should refuse to take up or authorize our citizens to take up yours."[79]

In this border area, slavery and freedom were complicated categories, and Illinois and Missouri were not simply "free" and "slave" states, respectively. Slavery and freedom existed in both places, and slaves in both locations took advantage of the porous state boundary to claim their freedom in various ways. Governor Edwards'

[79] Ninian Edwards, Belleville, Illinois, to William Carr Lane, St. Louis, Missouri, September 21, 1828, William Carr Lane Papers, Missouri Historical Museum, St. Louis, Missouri.

letter reminds us that the loss of their enslaved property to Missouri constituted an enormous problem in the minds of Illinois slaveholders.

Slaveholders in St. Louis also feared their slaves' ability to run away. They were fully aware that the close proximity of St. Louis to a territory with a greater possibility of freedom served as a lure to runaway slaves, and they took precautions to prevent their property from absconding. One preventative step was to temporarily place troublesome slaves in the St. Louis jail for "safekeeping." Michel Paul, who sued Gabriel Paul for freedom in April 1844, grew impatient and considered running away after Gabriel died and Adolph Paul, his administrator, took possession of him. In a document filed with the court, Adolph complained that "particularly since the death of the said Gabriel Paul, he [meaning Michel, or Michael, as this document referred to him] has so comforted himself as almost to be utterly worthless, and in a great degree unmanageable, and within the past few days, gave by his actions your petitioner reasonable grounds for supposing that he will abscond" unless the court helped prevent this by taking him "into immediate custody" until the end of his freedom suit.[80] Because of his fear that Michel would run away, Adolph asked the court to secure him in jail to prevent his escape.

Experience with the Law

Slaves in St. Louis and elsewhere interacted with legal institutions in a variety of ways throughout their lives. Slaves and free people of color understood the law's

[80] *Michel Paul v. Adolph Paul, administrator*, April 1845, Case No. 143, SLCC, pp. 5-6. Michel Paul's case file is incomplete, but looking at the Circuit Court Record Books 18-22 shows that the court continued his case until November 1852, when the plaintiff defaulted by failing to appear in court, and the court granted costs to the defendant.

restrictions on their liberty as well as the protections it offered them. The life story of one enslaved individual, Thornton Kinney, recounted in his 1853 freedom suit against John F. Hatcher and Charles C. Bridges, details some of the different experiences slaves and free blacks had with the law. Kinney sued John Hatcher for freedom after James Guion, possibly seeking a bounty, arrested him as a runaway slave who, Guion believed, belonged to Hatcher of New Orleans. Bridges, acting as Hatcher's agent in St. Louis, attempted to reclaim Kinney and return him to New Orleans.

In response to his imprisonment as a runaway slave, Kinney took the same step many enslaved individuals had before him and filed a petition stating his reasons for being released from jail. He claimed he was born in Virginia to a free mother whose mother, of Indian descent, was also free. His father worked as the slave of a "celebrated Virginia Lawyer."[81] While a young man in Virginia, Kinney worked as an apprentice to a tanner and shoemaker until he turned twenty-one and received his free papers. After receiving a certificate of his freedom, he left Virginia and traveled to the west and the south, where he worked on steamboats on the Mississippi and Ohio rivers between New Orleans, St. Louis, and Louisville, Kentucky, for "some years."[82] Eventually, he met a Reverend Robert Finley in St. Louis, a member of the American Colonization Society, who "induced" him to travel to the colony of Liberia.

Kinney lived in Liberia for five years, and while there, he threw away his freedom papers. They "were so worn and mutilated that no one could decipher

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[81] *Thornton Kinney, a man of color v. John F. Hatcher and Charles C. Bridges*, November 1853, Case No. 35, SLCC, p. 9.

[82] Ibid., p. 5.

them." Also, he believed he would no longer need them because Liberia was where "he then thought he would continue living his life."[83] A year after his return to the United States in 1836, he resumed his work as a cook and steward on steamboats traveling the Mississippi and Ohio Rivers. In Louisville, Kentucky, he went to court and registered a permit before the "Collonial [sic] Secretary of Sierra Leone in Africa" that proved his freedom. He also filed this permit with a notary public in New Orleans in 1838, and he provided a copy of this document to the St. Louis Circuit Court.[84]

Kinney continued working on steamboats until a captain tried to claim him as a slave, had him imprisoned in New Orleans, and offered him for sale by a slave trader. When Kinney protested to the trader that he was a free man, the trader replied, "'Shut up – you cannot make it appear, and you are our slave and we intend to sell you,' or some such language." The trader tried numerous times to sell Kinney, but "could not succeed, for the reason that he [Kinney] would always tell any one who spoke about buying him, that he was free." Kinney escaped from the trader after three months when the "window of the jail being left open, he walked out, and was no more molested by them."[85] After his escape, he resumed his business of working on steamboats on the Mississippi. About two years before his freedom suit, he met and married a woman in St. Louis who had been the slave of William Moore until she bought her freedom.

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[83] Ibid., pp. 9-10.

[84] Ibid., p. 10.

[85] Ibid., p. 11.

When a free person of color became the victim of kidnapping, his or her occupation or personal connections could help them sue for freedom. Kinney lived with his wife in St. Louis as a free man until about seven days before his petition, when an agent of Hatcher, the New Orleans slave trader who claimed him as a slave, had him arrested as a runaway. He filed a petition for habeas corpus to be discharged from jail, but his attorney left town and his proof of freedom had not yet arrived from Virginia. For this reason, he asked permission to sue for freedom and to prove his status by documents from the Virginia court where he had registered his free papers as a young man. Kinney explained to the court that he had many acquaintances in St. Louis, Louisville, and Cincinnati who could testify to his freedom. He closed his petition by stating that it is "heartrending" to be subject to "the penalties imposed upon him under the Statute by virtue of which he makes this application--but all this your petitioner is willing to submit to, rather than be dragged off and bound forever in chains of slavery, fastened by strangers who feel not for him but only desire to 'put money in their purses.'" Therefore, he asked "for a continuance of the blessings he has ever enjoyed, blessings enjoyed by others, not more free than himself, and by them prized beyond life itself."[86] On December 21, 1855, the court dismissed Kinney's freedom suit because he failed to provide money to secure the costs, which the law required of enslaved plaintiffs after 1845.[87]

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[86] Ibid., p. 13.

[87] St. Louis Circuit Court Record Book 25, p. 253, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri. In February 1856 Kinney asked the court to set aside the dismissal, but on April 9, 1856, the court overruled this motion. St. Louis Circuit Court Record Book 25, pp. 314, 362, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri.

Freedom suits in St. Louis often reached into other jurisdictions, and sometimes the plaintiffs' mobility between places aided their ability to sue. Kinney's travels took him far beyond the confines of the court's jurisdiction, working on Mississippi River steamboats, migrating to Liberia, and escaping from false imprisonment as a slave in New Orleans. Kinney's choice to run away from the slave trader in New Orleans reflected the existence of multiple options for persons held illegally in slavery. Kinney could have sued for freedom in Louisiana; New Orleans was a popular place for freedom suits. Kinney instead seized his opportunity when the slave trader left a window ajar to run away to freedom.[88] But ultimately his status as a suspected runaway led to his imprisonment in St. Louis, in spite of his many years as a free man of color and his marriage to a free woman of color in St. Louis. Although our only evidence for Kinney's life story comes from his petition to the court, his experience demonstrates the many connections antebellum slaves must have made with other slaves, free people of color, and whites. His travels and his work on steamboats allowed him great freedom of movement and no doubt facilitated interaction with others and access to numerous channels of information, including the possibility of suing for freedom. But in the end, he appears to have lost his tenuous freedom rather than confirming and strengthening it through the courts.

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Initiating a suit for freedom brought enormous risks and challenges for enslaved plaintiffs. Each individual had various factors contributing to his or her

[88] For more on freedom suits in Louisiana, see Schafer, *Becoming Free, Remaining Free*; and Claude F. Oubre and Keith P. Fontenot, "Liber Vel Non: Selected Freedom Cases in Antebellum St. Landry Parish," *Louisiana History* 39(1998): 319-45.

decision to sue, and this process included deciding that the possible benefits of suing outweighed the risks. Using the courts to sue for freedom was not the only option for slaves trying to free themselves from their condition, a fact reflected by Polly Wash's decision to run away before bringing her freedom suit. Slaves came to the decision to sue after a process of thought that included weighing or exploring other options. In some instances, slaves chose to sue after trying other options such as running away, as seen in both Polly Wash's and Thornton Kinney's cases.

In all cases, enslaved plaintiffs suing for freedom expected that the law would recognize the injustice of their situations and set them free. Thornton Kinney's relationship with the law provides evidence of why some enslaved individuals chose to use the courts to win freedom, despite the risks and notwithstanding the alternative possibility of running away. From the time of his birth as a free man of color, Kinney relied on the law to prove his freedom. When he reached the end of his apprenticeship, his guardians helped him register his free papers with the Stanton, Virginia court. When he returned from Liberia without a copy of his free papers, it was a Jefferson County, Kentucky, court that issued him a new permit to prove his freedom. Kinney counted on the courts in these instances to help him verify his freedom, so it makes sense that he would also trust the St. Louis Circuit Court to do the same in his freedom suit.

Ultimately slaves sued because they believed the courts would recognize their right to freedom, and they hoped that whites would recognize this legal freedom and honor the court's decision. Enslaved plaintiffs' expectation that the courts would accept their arguments and recognize them as free persons demonstrated a profound

confidence in a legal system run by powerful white men, many of them slaveholders and defenders of slavery; this confidence derived from the fact that the legal system allowed slaves to sue and in many cases, granted them legal freedom. Freedom suits thus expose the interesting fact that even staunch pro-slavery men would recognize that a slave could live as free when the courts decided in that slave's favor. Although the courts did not always acquiesce to the pleas of enslaved plaintiffs, the determination of enslaved individuals to confront grave danger in order to prove legal freedom suggests their reliance on a legal system run by the very men who held them in slavery. Slaves' confidence in the legal system derived in part from the fact that freedom suits were not always dichotomous contests; these cases involved a multitude of participants, and a person's interests in each case did not always play out in straightforward ways.

Chapter Three
"Under the Protection and Authority": Interests and Influences in St. Louis Freedom Suits

Slaves' suits for freedom involved a variety of competing interests and perspectives that could change based on a number of factors, including the role an individual played in each case. The roles of lawyers, judges, jury members, witnesses, and white slaveholders often overlapped and combined within individuals, depending on their perspective in each case.[1] In other words, a lawyer prosecuting a case for an enslaved plaintiff could also own slaves and could even be a defendant in a freedom suit against their own slaves. Although the legal system cast freedom suits as contests with dichotomous opponents—whites on one side of the cases defending slavery and blacks on the other opposing their enslavement—in actuality, these cases created a web of interwoven interests. Slavery and freedom were fluid, elastic categories under constant negotiation among the various actors who influenced the prosecution of freedom suits. The multiplicity of concerns each individual actor possessed are impossible to generalize. Instead, it is important to recognize that each person who came into court may have had multiple interests at stake and therefore brought various influences to bear on the outcomes of freedom suits.

This chapter explores the lines of authority and influence in antebellum St. Louis, particularly in the arena of the law and in freedom suits, by examining some of the interests and actions of the various actors involved in these cases. Lawyers and

[1] This chapter will discuss each group of actors in freedom suits separately, but it is important to remember that many of these actors could play multiple roles with changing perspectives. For example, many of the lawyers in antebellum St. Louis also became judges and political figures, and the majority of them owned slaves, a fact that certainly influenced their perspective in freedom suits.

judges possessed the key decision-making powers in these suits, and their backgrounds and motivations are central to how they interacted with enslaved plaintiffs and how they handled cases. Jurors ultimately pronounced judgment in the majority of freedom suits, but a judge's instructions to the jury played a large role in how the jurors could decide, a fact that demonstrates the authority exercised by antebellum judges. Slaveholders strategized and negotiated with lawyers, judges, and jurors to try to obtain favorable outcomes to these disputes. But slaveholders were not the only ones with influence; the domain of the courts allowed others to express opinions and manipulate decisions as well. Lawyers, judges, and even enslaved plaintiffs presented ideas and expressed opinions that affected the outcomes of freedom suits. The interactions within these various circles of influence created a network of personal relations that many enslaved plaintiffs relied on to influence the outcome of their cases.

Contests over an individual's freedom were not always as simple as slave versus free or black versus white. When multiple legal interests clashed in freedom suits, individuals did not always act as one might expect, a fact that further confused questions of personal status. Slaveholders sometimes supported the cases of enslaved plaintiffs, by working as their attorneys, testifying for them at trial, or making judicial decisions in their favor. Substantiating the claims of those held wrongfully in slavery allowed whites to defend the institution to their critics as a fair, equitable system that provided a remedy when a free person of color fell victim to the evil designs of a freedom suit defendant. Although it is impossible to understand what motivated each person in a freedom suit, the fact that some slaveholders backed the causes of slaves

against those holding them in slavery suggests a firm commitment to the rule of law over the interests of individual slaveholders.[2]

Lawyers

The degree of commitment slaves' attorneys made to freedom suits affected the course of the suits and their outcomes, adding to the unsettled nature of these cases. Slaves relied on the work and skills of white attorneys to bring their cases to court and present their arguments for freedom. These attorneys lived and worked in the growing western outpost of St. Louis, although many of them had migrated to Missouri as adults, especially in the early years of Missouri's statehood. The legal training and experiences of these men shaped the ways they interacted with enslaved plaintiffs and the courts. Lawyers' reasons for taking freedom suits, as well as their background and skills, contributed to their willingness to work for enslaved plaintiffs and therefore affected the outcomes of the cases and added to discussions over how the legal system determined personal status and how slavery and freedom operated in antebellum America.

Lawyers came late to Missouri, intermingling with the largely French population and bringing ideas and experience from the eastern states. Most of Missouri's lawyers moved to the area in the 1810s, and no lawyers lived in Missouri

[2] Paul Finkelman, in his study of comity in the state courts, found that the South's courts saw "themselves not as enforcing vaguely defined general principles of liberty, but as preserving the integrity of the law… [by upholding] the integrity of the courts and laws… [over] any individual claims to liberty or property." It was only in the wake of threats to the institution of slavery posed by the Abolitionist Movement and national contests over slavery, especially in the 1840s and 1850s, that this changed and the principle of comity broke down. See Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981), p. 182.

prior to the Louisiana Purchase.[3] Missouri's residents still litigated, though, even before lawyers migrated to the area. The largely French population used the imperial courts, which operated differently than the American model and did not require lawyers for most matters. After the Louisiana Purchase, the implementation of American governmental institutions created opportunities for enterprising attorneys to migrate to the new territory. In the first two decades of the nineteenth century, the population of lawyers exploded. By 1821, Missouri had thirty-one lawyers, when the new state had a population of only 4,700. This means that the proportion of lawyers was 6.6 per 1,000 people, higher than the ratio in Massachusetts at the same time.[4] They moved to Missouri, and especially to St. Louis, to fill new government positions; many had heard rumors of high fees and available work, especially in debt collection. The majority in these years came from the east coast, especially the slaveholding states of Virginia and Maryland, where a chronic oversupply of lawyers encouraged many enterprising young men to move west.[5]

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[3] Stuart Banner, *Legal Systems in Conflict: Property and Sovereignty in Missouri, 1750-1860* (Norman: University of Oklahoma Press, 2000), p. 38.

[4] Ibid., p. 104. This percentage also surpasses the percentage in the United States in modern times.

[5] For example, Edward Bates, Robert Wash, Joseph Wells, Hamilton Gamble, William C. Carr, Spencer Pettis, James Bowlin, Beverly Allen, Uriel Wright, and George W. Goode all came from Virginia. Henry S. Geyer and Bryan Mullanphy were both born in Maryland. See W. V. N. Bay, *Reminiscences of the Bench and Bar of Missouri, With an Appendix, Containing Biographical Sketches of Nearly all of the Judges and Lawyers who have passed away, together with many interesting and valuable letters never before published of Washington, Jefferson, Burr, Granger, Clinton, and Others, some of which throw additional light upon the Famous Burr Conspiracy* (St. Louis: F. H. Thomas and Company, 1878), pp. 126, 143, 219, 244, 281, 288, 310, 314, 462, 474, 500, 569. Many attorneys came to St. Louis from western New York and New England as well. Often attorneys moved first to Kentucky or the Northwest Territory, then continued west to St. Louis. Rufus Easton, Rufus Pettibone, and Josiah Spalding were all born in Connecticut, and Easton moved to Vincennes, Indiana, before arriving in St. Louis. Samuel Bay came from Hudson, New York, then Columbus, Ohio, before

Lawyers practicing in St. Louis in the early decades of the nineteenth century and throughout the antebellum years brought different kinds of training and experience to their endeavors. Most read law in the offices of other attorneys, and some attended college as well. Attorneys were admitted to the bar in individual towns after an exam given by the judge of each particular court, meaning that exam requirements varied widely depending on the presiding judge. This also meant that attorneys needed to be certified in each town in which they planned to practice.[6] Some attorneys in St. Louis possessed large legal libraries, consisting mostly of English books but also some American-authored texts and published case reports from Missouri. For example, when St. Louis attorney Beverly Allen died in 1845, his law library included the complete laws of Missouri, as well as volumes by Story on Partnership, Philips on Insurance, and Greenleaf on Evidence.[7]

Lawyers in St. Louis created a web of interconnected relationships with one another. Many of them worked in partnerships, which allowed young attorneys to learn from more experienced men and also facilitated the development of intimate friendships. When Charles Drake moved to St. Louis in 1834 from Jacksonville, Illinois, he immediately met Hamilton Gamble, who took Drake under his wing. The two developed "an intimate friendship." Drake later described Gamble as "altogether

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settling in St. Louis. Born in Bennington, Vermont, Myron Leslie moved to Meredosia and Jacksonville, Illinois, before arriving in St. Louis in 1838. See Bay, *Reminiscences of the Bench and Bar of Missouri,* pp. 78, 98, 104, 165, 349.

[6] Banner, *Legal Systems in Conflict,* p. 108.

[7] Ibid., p. 124; "Account Books," Records of the Estate of Beverly Allen, 1849-1869, Missouri Historical Museum, St. Louis, Missouri.

the ablest lawyer that Missouri has had in the nearly fifty years I have known it."[8] Gamble also was good friends with Edward Bates, and the two eventually formed a successful law partnership. Other St. Louis law partnerships included Rufus Pettibone and Rufus Easton, Thomas Hudson and James Bowlin, Charles Lord and Miron Leslie, and Lewis Bogy and Logan Hunton, to name a few.[9]

Attorneys in St. Louis not only befriended one another but also embroiled themselves in numerous conflicts, some of which turned violent. The violent antebellum honor culture created an atmosphere where brawling and dueling was not unusual.[10] Edward Bates, a prominent St. Louis attorney, wrote in a letter to his brother that he wished "a plague upon George Strother- I wish he had some disease that dogs die of. He hates truth as the Devil does the piety which depopulates his kingdom."[11] George Strother often found himself in trouble with the law for arguing with other attorneys, gambling, and "carrying a challenge."[12] In 1825, the court suspended Strother from practicing law for six months for "his frequent interruptions of the counsel of the opposite side," including telling the opposing counsel "that he

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[8] Charles Drake Autobiography, Western Historical Manuscripts Collection, Columbia, Missouri, pp. 475-76.

[9] Bay, *Reminiscences of the Bench and Bar of Missouri,* pp. 99, 193, 289-90, 304, 577.

[10] Joanne Freeman locates the roots for this culture of honor in early national politics, when duels often involved lawyers and lawmakers. See Freeman, *Affairs of Honor: National Politics in the New Republic* (New Haven, CT and London: Yale University Press, 2001), especially chapter 4.

[11] Edward Bates to Frederick Bates, August 24, 1824, Box 6, 1817-1824, Bates Family Papers, Missouri Historical Museum, St. Louis, Missouri.

[12] See St. Louis Criminal Court files for July 1829, July 1830, and January 1836, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri.

would settle the matter with him out of doors."[13] Criminal case records charged attorneys who participated in the St. Louis freedom suits with fighting and violence, and at least two attorneys died in duels.[14] For example, Thomas B. Hudson fought a duel with Colonel A. B. Chambers in 1840. But according to nineteenth-century historian W. V. N. Bay, in his *Reminiscences of the Bench and Bar of Missouri,* the incident did not make Hudson a "duelist." Instead, Bay explains that in that time "the custom was sanctioned by long usage and a perverted public opinion; and no young man, particularly if he belonged to the profession of the law, could live in this country without acknowledging its obligation."[15] The conflicts that escalated to violence in the streets and on "Bloody Island" (the notorious location of many St. Louis duels) influenced the behavior of these attorneys inside the courtroom.[16]

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[13] Transcript of Missouri Supreme Court appeal, found in *State v. George Strother*, July 1825, St. Louis Criminal Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri. The Missouri Supreme Court approved the fine but found that the court lacked the authority to suspend Strother for six months.

[14] See *State v. Horatio Cozens* [charge of assault & battery], April 1820, St. Louis Criminal Case Files, *State v. Joseph Charless Jr.* [charge of starting an affray and fighting in public], July 1825, St. Louis Criminal Case Files, *State v. Charless* [charge of assault & battery], November 1827, St. Louis Criminal Case Files, all in Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri. For the two killed in duels, see Copy of Article from *Missouri Intelligencer,* July 8, 1823, Folder 1, Duels Collection, Missouri Historical Museum, St. Louis, Missouri, which details Joshua Barton's death in a duel with Thomas Rector; and Edward Dobyns, "Account of the Duel of Spencer Pettis and Major Thomas Biddle on Bloody Island," November 10, 1866, folder 2, Duels Collection, Missouri Historical Museum, St. Louis, Missouri. Luke Lawless fought in a duel and received a wound that left him with a permanent limp. See Bay, *Reminiscences of the Bench and Bar of Missouri,* p. 440.

[15] Bay, *Reminiscences of the Bench and Bar of Missouri,* p. 194.

[16] For more on the importance of honor and reputation among early Americans, especially lawyers and politicians, see Freeman, *Affairs of Honor;* and for the argument that violence and honor were particularly pronounced among southerners because there the tradition of honor combined with the existence of slavery, see Bertram Wyatt-Brown, *Honor and Violence in the Old South* (New York and Oxford: Oxford University Press, 1986).

Many of the lawyers in St. Louis were also slaveholders, who actively participated in the slaveholding culture of Missouri. Historian Ariela Gross found a high level of slave ownership among lawyers, and she argues that widespread ownership of human property influenced Mississippi's legal culture by tying it closely to the system of slavery.[17] Lawyers in St. Louis also tied themselves to the institution of slavery in a number of ways. An 1845 tax receipt reveals that Edward Bates paid taxes on seven slaves valued at $1400. An 1821 receipt from Bates to John B. C. Lucas shows that Bates hired out his enslaved woman, Chloe, to Lucas at the rate of $8 per month.[18] John F. Darby's papers contain numerous letters about buying and selling slaves. In 1844, Gouveneur Morris of New York wrote to ask Darby to sell his slave Cecilia, who was about twenty-two years old, "a likely looking mulatto," and "a first rate servant." He insisted that "she is worth about $500, at least She cost me about that sum."[19] Beverly Allen's estate record indicates that he owned eleven slaves worth over $2000 at his death, and attorney Hamilton Gamble's papers contain numerous bills of sale for slaves he purchased.[20]

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[17] Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ and Oxford: Oxford University Press, 2000), pp. 27-30.

[18] "Receipt for hire of slave Chloe," April 10, 1821, Folder 1, Correspondence 1794-1841, William H. Semrott Papers; and "Tax Receipt," 1845, Box 6, Edward Bates Papers, both in Missouri Historical Museum, St. Louis, Missouri.

[19] Gouveneur Morris to John F. Darby, November 1, 1844, Box 3, Darby Family Papers, Missouri Historical Museum, St. Louis, Missouri.

[20] "Account Books," Records of the Estate of Beverly Allen, 1849-1869, Missouri Historical Museum, St. Louis, Missouri; and for examples of Gamble's slave purchases, see "Bill of Sale of Priscilla, and her children William Henry and Jane for $650," January 8, 1835, Folder 4, Box 5; "Bill of Sale of Simon Bolivar for $550," August 25, 1847, and "Bill of Sale of Sukey and her daughters Ellen, Martha, and Mary for $1050," September 10, 1847, both in Folder 4, Box 8; Hamilton Gamble Papers, Missouri Historical Museum, St. Louis, Missouri.

Lawyers' ownership of enslaved persons meant that they could be parties to freedom suits or have pecuniary interests in the outcomes. The same individuals who worked for enslaved plaintiffs, trying to help them win their freedom, sometimes found themselves having to defend a freedom suit initiated by their own enslaved property. For example, in 1825, several enslaved plaintiffs sued Rufus Pettibone, an attorney, for their freedom.[21] In 1832, Sam sued attorneys Alexander P. Field and Elijah Mitchell, and in 1835, Arthur Magenis became a defendant against the enslaved woman, Hetty.[22]

Lawyers' efforts on behalf of enslaved plaintiffs did not damage their reputations or prevent them from pursuing their larger ambitions. The lawyers who participated on both sides of freedom suits secured numerous political appointments on the local, state, and national levels, serving in a variety of judgeships and other offices.[23] Matthias McGirk, Robert Wash, and Hamilton Gamble all became judges on the Missouri Supreme Court, and Gamble also became governor of Missouri during the Civil War. John F. Darby served as mayor of St. Louis (among his many political offices), and Spencer Pettis, Henry Geyer, and David Barton represented Missouri in the U.S. Senate. Edward Bates, who prosecuted at least eleven freedom

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[21] *Malinda, a free girl of color v. Pettibone, Rufus et al.*, July 1825, Case No. 13, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, http://stlcourtrecords.wustl.edu (hereafter SLCC); *Lorinda, v. Pettibone, Rufus; Hatton; Wingfield; Voteau; Butler; Whitset (also known as Whitesides); Sanford*, July 1825, Case No. 11, SLCC; *Winny, a free woman of color v. Pettibone, Rufus et al.*, July 1825, Case No. 12, SLCC; *Harry, a free boy of color v. Pettibone, Rufus, et al.*, July 1825, Case No. 14, SLCC.

[22] *Sam, a person of color v. Field, Alexander P.; Mitchell, Elijah*, July 1832, Case No. 49, SLCC; *Hetty, a woman of color v. Magenis, Arthur L.*, March 1835, Case No. 43, SLCC.

[23] Banner, *Legal Systems in Conflict,* p. 103. Banner finds that it was not unusual for lawyers to be "overrepresented" in politics, and this was certainly the case with St. Louis's attorneys.

suits and defended at least eighteen, became Abraham Lincoln's Attorney General. St. Louis's attorneys also held a number of lesser offices, including those of city attorney, county surveyor, and public administrator.[24]

The reasons why attorneys prosecuted freedom suits underscore their motivations and interests when they approached these cases. One possible reason is that they sought out the fees earned for this type of work. White slaveholders in St. Louis accused attorneys of seeking out slaves and convincing them to sue for freedom. The losing party in a freedom suit was usually responsible for paying the court costs, which included the attorneys' fees. In most cases, the enslaved plaintiff petitioned the court to sue *au pauperis,* or as a "poor person," meaning that the state paid for the costs of the suit. The sheriff usually hired out enslaved plaintiffs during their suits to help defray the expenses, but in longer suits, these expenses included fees for serving summonses and witnesses' travel costs as well as court and attorneys' fees.

Attorneys earned fees in these cases that were comparable to other types of legal work, so they most likely did not accept freedom suits solely for the purpose of earning higher fees. There is little direct evidence of the fees lawyers collected for prosecuting or defending freedom suits, but a close look at the scattered evidence allows for speculation. In July 1833, attorney Gustavus Bird sued Lydia Titus, a free woman of color, for $125, which he claimed was his fee for prosecuting several freedom suits for Titus's children. The existing records indicate that Titus had four children who sued for their freedom, making an average charge of $31.25, although

[24] Ibid.; Bay, *Reminiscences of the Bench and Bar of Missouri,* pp. 126-29, 203, 244-46, 288-96, 314-15, 474, 536.

the fee may have included interest and other charges.[25] In her 1843 case against James Black and others, Rebecca complained that she hired Harris L. Sproat as her attorney, "to whom she paid at sundry times sums of money amounting in all to about fifty dollars or more, as a fee in said cause for his services."[26] Rebecca's complaint suggests that in at least some cases, plaintiffs not only sought out and hired an attorney, but also paid these attorneys out of their own funds, possibly obtained through hiring themselves out for wages.

Evidence from other types of cases provides clues as to the fees earned by attorneys in freedom suits. In a suit for damages from February 1824, Rufus Pettibone, who served as Milly's attorney in her case against Mathias Rose, sued Charles Fremon Delauriere for a debt of $300 for his work as an attorney for Delauriere "in and about the prosecuting, defending and soliciting of divers causes" as well as "the drawing, copying and engrossing of divers conveyances, deeds and writing for the said defendant."[27] The suit does not list every case Pettibone handled for Delauriere, but a list of fees included in the case file suggests he charged $10 for most of the cases he handled. In his autobiography, attorney Charles Daniel Drake, who prosecuted at least four suits for freedom in St. Louis (and worked for the

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[25] *Gustavus Bird v. Lydia Titus*, July 1833, Case No. 44, St. Louis Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri. The court awarded Bird his $125 fee, plus costs, when Lydia Titus failed to appear in court. The records indicate Titus was not a resident of St. Louis, and after she was arrested to pay the fees, the court released her as an insolvent debtor.

[26] *Rebecca, a negro woman v. Black, James; Horine; Melody*, March 1843, Case No. 24, SLCC, p. 2.

[27] *Rufus Pettibone v. Charles Fremon Delauriere*, Feb. 1824, Case No. 48, St. Louis Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, pp. 3-4.

defense in at least five cases), wrote that his first case when he arrived in St. Louis in the mid-1830s was for a man accused of stealing, and though his client could not afford to pay him, "I defended him as vigorously as if he had paid me a hundred dollars; which would then have been a very large sum in such a case."[28] These bits of evidence do not provide a definitive answer to the question of what fees lawyers earned in freedom suits, but they suggest an approximate range from around $10-$30.[29]

Lawyers also prosecuted freedom suits because they sympathized with the plight of enslaved plaintiffs—or at least they may have sympathized with those whom they believed to be *wrongfully* enslaved. This distinction was an important one in a slaveholding society, because some attorneys may have participated in freedom suits to demonstrate the "fairness" of the slave system in Missouri. Montgomery Blair, the attorney who argued Dred Scott's case pro bono before the United States Supreme Court in 1857, wrote in an 1856 letter that "In Missouri, and generally, I believe, in the Southern States, almost every lawyer feels bound to give his services when asked in *such a case* arising in the community to which he belongs."[30] Blair's letter suggests a commitment on the part of southern lawyers to prosecuting freedom suits for the purpose of ensuring the legal sanctity of slavery in their communities.

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[28] Chapter 15, Charles Drake Autobiography, Western Historical Manuscripts Collection, Columbia, Missouri, p. 486.

[29] A young clerk or artisan in the 1840s could expect to earn about $30 per month, so the fees in freedom suits could help an attorney earn a good living.

[30] Montgomery Blair to The Editors of the *National Intelligencer*, December 24, 1856, typescript copy, folder 6, box 1, Dred Scott Papers, Missouri Historical Museum, St. Louis, Missouri [my emphasis].

Perhaps compassion is what motivated Mathias McGirk, in Susan's 1818 case against Henry Hight, to provide a $100 bond out of his own funds to guarantee the costs of an appeal to the Supreme Court.[31] The sympathy some attorneys had for enslaved plaintiffs does not mean they necessarily opposed the larger slave system.

Many lawyers recognized slaves' humanity and ability to live as free persons, though they did not see this view as a threat to the legitimacy of the slave system. Lucy Delaney's lawyer, Edward Bates, used his position as a slaveholder to his advantage in making his argument for her freedom. In his plea to the jury, Bates stated, "I am a slave-holder myself, but, thanks to the Almighty God. I am above the base principle of holding any a slave that has as good right to her freedom as this girl has been proven to have."[32] Bates and other slaveholding attorneys may have viewed freedom suits as providing a remedy when slaveholders violated the laws of slavery and wrongfully enslaved free people of color, so at least some slaveholders did not see a contradiction in the co-existence of free people of color and slaves. For them, personal status was not inherent; at least some people of African descent could and did legally live as free.

Attorneys also worked in freedom suits to obtain experience in order to solidify their status in the legal community. These suits provided the opportunity to dazzle potential clients and voters with their oratory skills, a crucial factor in any

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[31] *Susan, a black woman v. Hight, Henry*, February 1822, Case No. 127, SLCC, pp. 15-16.

[32] Lucy A. Delaney, *From the Darkness cometh the Light; or Struggles for Freedom* (St. Louis: Publishing House of J. T. Smith, 1892, reprinted by Chapel Hill: Academic Affairs Library, University of North Carolina, 2001), Electronic Edition accessed at: http://docsouth.unc.edu/neh/delaney/delaney.html (October 2, 2003), p. 42.

lawyer's reputation. Charles Drake explained that jury trials were the best method for a young lawyer to win clients and influence others: "This gave young lawyers a capital chance for showing their ability and their eloquence, if they had any. Oftentimes the speeches before juries would attract a number of passersby; and so a single trial might make a young lawyer known to many." Drake used jury trials to build his reputation and business, and because he "had a loud voice, and talked with a great deal of force, and besides was as diligent and faithful as any young man," he began to "to attract clients in more profitable business."[33] In an article about Lucy Delaney's case, Eric Gardner suggests that Edward Bates prosecuted Delaney's case for the "game" of it, or for the challenge of trying to win the case.[34] A desire to win clients and influence through prosecuting these cases, which often included juries, may have prompted some attorneys to undertake these cases and to work hard for a successful outcome for their enslaved clients.

In some instances, lawyers accepted work in freedom suits simply because the court assigned them to work for an enslaved plaintiff. According to the statute allowing for freedom suits, "the court shall assign the petitioner counsel, and if they deem proper shall make an order directing the defendant or defendants to permit the petitioner to have a reasonable liberty of attending his counsel."[35] Although some

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[33] Chapter 16, Charles Drake Autobiography, Western Historical Manuscripts Collection, Columbia, Missouri, p. 511.

[34] Eric Gardner, "'You have no business to whip me': The Freedom Suits of Polly Wash and Lucy Ann Delaney," *African American Review* 41:1(2007): 41.

[35] *Laws of a Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, and of the Territory of Missouri, up to the Year 1824* (Jefferson City: Printed by W. Lusk & Son, 1842), p. 96.

plaintiffs requested particular attorneys or approached them before bringing their causes to court, many and perhaps most of them relied on whatever counsel the court appointed for them. In his petition against Peter Verhagen, Charles asked for "leave to sue as a poor person, in order to establish his right to freedom, and that Trusten Polk and C. C. Carroll, Esqrs. be assigned as his counsel."[36] But Charles's request was unusual; the vast majority of freedom suits' petitions do not specify a certain attorney. Rather, it was only after the judge appointed an attorney to prosecute the case that the lawyer begins working for the plaintiff. For this reason, it is possible that lawyers took the cases because the court assigned them to do so, much as public defenders work today.

Enslaved plaintiffs took a difficult step by initiating cases, but they ultimately relied on the attorneys assigned to them to win their freedom. The attorney was responsible not only for filing all of the paperwork that accompanied a lawsuit, but also for framing the argument in a way that would make it more acceptable to the court. Attorneys procured, prepared, and questioned potential witnesses, which sometimes required traveling far from St. Louis and incurring personal expenses. They could make or break enslaved plaintiffs' cases simply by choosing to show up (or conversely, by failing to appear) when court was in session. Some attorneys went to great personal expense and effort to prosecute these cases, while others destroyed plaintiffs' cases by failing to appear in court, giving bad advice, or refusing to expend personal finances for such extra necessities as traveling to take depositions. The

[36] *Charles, a man of color v. Verhagen, Peter*, July 1840, Case No. 203, SLCC, p. 1.

choice to strongly pursue remedies for enslaved plaintiffs or to neglect their cases had life-altering implications for the individuals bringing these suits.

Filing additional affidavits to bolster plaintiffs' cases could influence the court's decision in these suits and have implications for the outcomes. Attorneys sometimes filed affidavits stating that the facts provided by enslaved plaintiffs in their petitions were accurate. In Ralph's 1830 case against James and Coleman Duncan, his attorney Gustavus Bird included an affidavit certifying that the facts in Ralph's petition were true.[37] In her 1850 case against John F. Darby (a prominent St. Louis attorney), Ellen Duty's attorney Alexander Field filed an affidavit in addition to her petition that repeated the facts upon which Duty based her case. Field also provided affidavits in the cases of Lucinda Duty, Caroline Duty, and Mary Duty against Darby.[38] Attorneys sometimes filed affidavits when they believed the defendant had removed the plaintiff from the court's jurisdiction, as Joel C. Richmond did for Laura in her 1852 case against Henry Belt, who sold her to slave traders who removed her from St. Louis on a steamboat.[39] Gustavus Bird filed a similar affidavit for James Talbot, in his 1839 case against Delford Benton, James C. Musick, and Prudence Musick. Bird's affidavit stated that he believed that "some time in the night time on or about June last said plaintiff was taken in a clandestine manner & removed

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[37] *Ralph, a man of color v. Duncan, Coleman & James*, July 1830, Case No. 35, SLCC, p. 4.

[38] *Ellen Duty v. John F. Darby, Administrator*, April 1850, Case No. 18, SLCC, pp. 1-2; *Lucinda Duty v. John F. Darby, Administrator*, April 1850, Case No. 22, SLCC, pp. 1-2; *Caroline Duty v. John F. Darby, Administrator*, April 1850, Case No. 23, SLCC, pp. 1-2; *Mary Duty v. John F. Darby, Administrator*, April 1850, Case No. 24, SLCC, pp. 1-2.

[39] *Laura, a woman of color v. Henry Belt*, April 1852, Case No. 22, SLCC, pp. 7-10.

forcably [sic] from the Jurisdiction of this court." Not only did he know that Talbot was away from the jurisdiction, but he "has good grounds to suspect & believe & does suspect & believe that Delford Benton aforesaid aided by others so took & removed said plaintiff."[40] These affidavits indicate a willingness to work for their clients and to protest when defendants disobeyed the court's orders not to remove them from the jurisdiction of the court. Garland Rucker, a defendant in two freedom suits, even complained that during Maria's and Henry's freedom suits against him, "they absconded and put themselves under the protection and authority of George F. Strother and Newman, Esq.," where he "believes" them to be, and "since the Commencement of the suit of the suit [sic] for freedom I have not seen them."[41] Attorneys sometimes even physically housed or protected enslaved plaintiffs during their suits.

Some attorneys went so far as to put up their own funds for bonds of security or to procure witness testimony, but using the attorney's own funds to help the enslaved plaintiff was the exception rather than the rule in most freedom suits. Plaintiffs needed financial assistance to put up bonds of security after the 1845 law requiring that enslaved plaintiffs provide security in order to sue. In her November 1845 case against George W. Coons, Malinda's attorney Alexander Field, along with

[40] *Talbot, James v. Benton, Delford, Musick, James C., and Musick, Prudence*, March 1839, Case No. 92, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, St. Louis, Missouri, Office of the Secretary of State, p. 9.

[41] *Maria, a free woman of color v. Rucker, Garland*, November 1829, Case No. 14, SLCC, p. 8.

W. Hall, provided a bond of security to cover the costs of her suit.[42] In the same term of court, attorney Ferdinand Risque, along with John Hanson, provided a bond of security in Jane McCray's case against William R. Hopkins and several other defendants.[43] In her 1843 case against Gabriel S. Chouteau, Mary Charlotte's attorney Henry Cobb signed a bond for $6,000 to allow Alexander P. Garesche, another St. Louis attorney, to hire Mary Charlotte and her children during her case.[44]

In some instances, attorneys' interests in winning freedom suits led them to try to influence these cases through their actions outside of the courtroom. Some attorneys consulted with witnesses before their depositions, possibly influencing their testimony for or against enslaved plaintiffs. In Mary's 1851 case against Launcelot H. Calvert, James Hendrickson admitted on cross-examination that "I have talked with different persons about the negro woman have talked with Mr. Hastings [plaintiff's attorney] today." Hendrickson also stated that he read depositions taken from earlier in the case, and he explained that these depositions were "showd [sic] to me by Mr. Hastings, the attorney in this suit for plff."[45] In a letter referencing Julia's case against Samuel McKinney, Archibald Williams complained of Gustavus Bird's interference in the case. Williams wrote that Bird "had been up for several days

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[42] *Malinda, a woman of color v. Coons, George W., Administrator*, November 1845, Case No. 220, SLCC, p. 9.

[43] *McCray, Jane, a mulatto woman v. Hopkins, William R., et al.*, November 1845, Case No. 162, SLCC, p. 10.

[44] *Mary Charlotte, a woman of color v. Chouteau, Gabrie*l, November 1843, Case No. 13, SLCC, pp. 107-8.

[45] *Mary, of color, and her children Samuel & Edward v. Calvert, Launcelot H.*, April 1851, Case No. 2, SLCC, p. 27.

fishing & killing ducks in company with one of the witnesses."[46] This line, added as an aside to his primary complaint that Bird meddled in the taking of depositions for the defense, suggests that by spending casual leisure time with the witness, Bird may have colluded with that individual, possibly influencing testimony.

More of the attorneys show up in the case records for their negligence in their duties than for their overzealousness. Some attorneys viewed these cases as obligations, not as opportunities to aid enslaved plaintiffs. Several abandoned their cases, leaving the enslaved plaintiff with no recourse other than to attempt to file a new case. For example, in her November 1833 case for herself and her children against Francis Menard, Mary filed a petition stating that her counsel had continued her suit for a number of years, but "finally, Mr. Bass, one of her counsel, having left the state, & the other, I. C. McGirk, Esqr., being dead, her suit abated, for want of some person to prosecute the same."[47] After the court discontinued Mary Robertson's case against Ringrose D. Watson because her counsel failed to appear, Robertson filed a motion to reinstate her case, stating as one of her reasons that "her former counsel withdrew the suit without her knowledge or instructions." She also filed an affidavit explaining that "she employed Henry L. Cobb, Attorney…to bring suit for her freedom…for his services in said suit she paid him money and did work for him as his washerwoman." She came to court to try her case, but "to her supprise

[46] Archibald Williams to Archibald Gamble, October 28, 1833, folder 1, box 5, Hamilton R. Gamble Papers, Missouri Historical Museum, St. Louis, Missouri.

[47] *Mary, a woman of color v. Menard, Francis; Busby*, November 1833, Case No. 34, SLCC, p. 2.

[sic] her suit had been dismissed."[48] In what appears to be a case of outright neglect of a client's business, Rebecca complained in her 1843 suit against James Black and others (after the court dismissed her 1838 case) that after she paid her attorney Harris L. Sproat over fifty dollars, she learned "that the said Sproat had utterly neglected her business in said cause." As a result, the court issued a nonsuit in her first case, which she complains was "owing wholly to the gross neglect of said attorney and not in any manner to this petitioner."[49] Lawyers' power over the outcome of cases, when considered alongside the many ways attorneys sometimes worked diligently for enslaved plaintiffs and sometimes ignored their cases, adds to the indeterminacy of the construction of legal status in the courts in the antebellum era.

Additional Courtroom Actors

In addition to the plaintiffs, the defendants, and their respective attorneys, freedom suits involved many other individuals, including judges, jurors, and witnesses. These groups of people all approached court cases with different ideas about slavery and freedom. Each group's perspective could also shift based on the circumstances of the particular case. Although it is impossible to generalize about the views of judges, jurors, or witnesses, a closer examination of the role of each of these

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[48] *Robertson, Mary, a person of color v. Watson, Ringrose D.*, November 1841, Case No. 30, SLCC, pp. 25-27. Robertson won her motion to reinstate her case, but the jury found for Watson and left her a slave. She brought a second case in 1845, which ended when she voluntarily agreed not to prosecute her suit. This could mean that she made other arrangements with Watson and Amos Corson (who also claimed her as his slave) to become free, or that Watson and Corson no longer held her in slavery.

[49] *Rebecca v. James Black, et al.*, March 1843, SLCC, p. 2. Unfortunately for Rebecca, in her second case, a jury found in her favor, but the court set aside this verdict and a second jury found the defendant not guilty. See St. Louis Circuit Court Record Book 15, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 389, and St. Louis Circuit Court Record Book 16, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 432.

groups suggests how they made determinations that shaped the course of freedom suits. The backgrounds and politics of these individuals certainly influenced their participation in these cases, although not always in predictable ways, a fact that contributes to the muddled nature of personal status in this period.

Judges held a great deal of influence over the prosecution and outcomes of freedom suits. The judges of the St. Louis Circuit Court, and indeed, the Missouri State Supreme Court, often rose from the ranks of the city's attorneys. For this reason, in discussion of these cases, the categories of "lawyer" and "judge" often overlapped in the same individual. Twelve men presided over the St. Louis Circuit Court from 1815, at its inception, until 1863, when emancipation made suits for legal freedom obsolete. The backgrounds of these men, as well as their roles in freedom suits, demonstrate the crucial authority they exercised in these cases and how personal relationships sometimes factored into their discretion.[50] Two sketches of individual judges illuminate the typical experience and background of judges in St. Louis.

William C. Carr came to St. Louis in 1804 and was one of the first Americans to arrive in Missouri. Carr studied law in his native state of Virginia, and according to nineteenth-century historian W. V. N. Bay, he "received a good academic course."[51] Appointed judge of the St. Louis Circuit Court in 1826, Carr served until 1833 and presided over numerous freedom suits. In addition to his legal career, Carr took interest in the buying and selling of slaves, and reported about this practice to

[50] Sketching the lives and backgrounds of each of these men is outside the scope of this project.

[51] Bay, *Reminiscences of the Bench and Bar of Missouri,* p. 310.

friends outside of the area. Carr wrote from Ste. Genevieve, Missouri, in 1810 that "Slaves are bought in great number here from the Eastern and Southern states…and the demand for them is yet very great."[52] Attorneys in St. Louis looked up to Carr and admired his legal mind, although he did have enemies who entered articles of impeachment against him in 1832-1833, charging him with "favoritism, partiality, prejudice, oppression, neglect of duty, and incapacity." Although eventually acquitted of these charges, Carr resigned as judge about a year later.[53]

Born in Dublin, Ireland, Luke Edward Lawless came to St. Louis in 1824, after fighting in Napoleon's army and practicing law in France for roughly fifteen years. Lawless followed Carr to the judgeship of the St. Louis Circuit Court in 1834. Trained at Dublin University, Lawless spoke a number of languages, and one nineteenth-century legal historian found "his power of judicial analysis…remarkable."[54] Lawless, like many of the lawyers in St. Louis in the 1820s, became deeply involved in the disposition of lands granted under the Spanish legal regime. When a federal district judge, James H. Peck, decided a land grant case in 1825 against one of his clients, Lawless found himself in trouble for writing an anonymous newspaper article complaining about Judge Peck's decision. Peck viewed this article as an attack on both his reasoning and the integrity of the federal district court, so in retaliation, found Lawless in contempt of court and sentenced him

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[52] William C. Carr to John B. C. Lucas, July 7, 1810, John B. C. Lucas Papers, Missouri Historical Museum, St. Louis, Missouri.

[53] Bay, *Reminiscences of the Bench and Bar of Missouri,* p. 311.

[54] Ibid., p. 441.

to twenty-four hours in jail. Peck also suspended Lawless from practicing law in federal court for eighteen months. Outraged at Peck's actions, Lawless brought articles of impeachment against him to the United States Senate in 1826. On January 31, 1831, Peck narrowly escaped impeachment by one vote.[55] After this incident, Lawless served as judge of the Circuit Court from 1834 until 1841.

The personal histories of both Judge Carr and Judge Lawless demonstrate the wide range of backgrounds and training of lawyers and judges in antebellum St. Louis. Their stories also reveal certain aspects of the social and political climate within which these men operated. Both came from outside of St. Louis, and Lawless received a university education before immigrating to the United States. Each was generally well-liked and well-respected, but they still managed to embroil themselves in conflicts over honor and reputation that escalated to impeachment and reached as high as the United States Senate.[56] Judge Carr made enemies who tried to impeach him, and this conflict most likely led to his resignation from the bench shortly thereafter. Lawless's accusations against Peck persisted for several years before the U.S. Senate and "was the most celebrated trial of its kind ever had before that body."[57] Although the national attention of the Lawless-Peck quarrel was

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[55] Eleanore Bushnell, "The Impeachment and Trial of James H. Peck," *Missouri Historical Review* 74(1979-1980): 137-65, 162. See also Bay, *Reminiscences of the Bench and Bar of Missouri,* p. 442; and John F. Darby, *Personal Recollections of Many Prominent People Whom I have Known, and of Events—Especially of Those Relating to the History of St. Louis—During the First Half of the Present Century* (St. Louis: G. I. Jones and Company, 1880), p. 174.

[56] For more on how honor and reputation affected men in early America, perhaps especially in slaveholding areas, see Freeman, *Affairs of Honor;* and Wyatt-Brown, *Honor and Violence in the Old South.*

[57] Bay, *Reminiscences of the Bench and Bar of Missouri,* p. 442.

extraordinary, these types of tensions were common, and the heated political climate of the antebellum years affected judges both inside and outside the courtroom.

Judges in freedom suits, like judges in other legal actions, enjoyed a great deal of discretionary authority.[58] In the beginning of a freedom suit, it was a judge or justice of the peace who decided whether the enslaved plaintiff's petition contained sufficient substance to warrant legal action. Judges decided what evidence both sides could present, whether a verdict should be set aside or a new trial granted, whether to grant an appeal, and what instructions to give the jury. It is this last role, instructing the jury, which allowed circuit court judges to wield the most authority and to influence the outcomes of freedom suits.

Jury instructions laid out the points of law and evidence for the jurors. Each side presented the court with a list of points or instructions they wanted the jury to consider when making a decision, and the judge determined which instructions to present to the jurors to aid in their deliberations. Because both sides made multiple, conflicting points, the decision about which arguments to include in the jury instructions was a pivotal point that relied on each judge's discretion.[59] For example, in her March 1841 freedom suit against William Randolph, Alsey based her claim to freedom on her five-year residence in the Northwest Territory, specifically in Illinois.

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[58] Jeannine Marie DeLombard argues that as the nineteenth century progressed, judicial practice became more standardized and put more power in the hands of judges and less in the hands of juries. See DeLombard, *Slavery on Trial: Law, Abolitionism, and Print Culture* (Chapel Hill: University of North Carolina Press, 2007), p. 20.

[59] Ariela Gross argues that jury instructions granted more power to the juries by allowing them to decide both matters of fact and law. Although this does grant juries more decision-making power, because judges ultimately decided what matters the jury could consider, I argue that the law of jury instructions ultimately strengthened the power of antebellum judges. See Gross, *Double Character,* p. 38.

Alsey claimed that Robert Funkhouser hired her from her owner Robert Cross and, with Cross's permission, took her to Illinois to live and work for him. The instructions given to the jury in her case underscore the influence that the judge's instructions had on the jury's deliberations. One instruction given to the jury stated that "the burden of proof lies on the plaintiff in this case to make out her right to freedom."[60] This instruction may seem to work against Alsey, but the others clearly encouraged a decision in her favor. One instruction was that "by the Ordinance of 13 July 1787 – slavery was prohibited throughout the Territory North west of the Ohio river. And that by the Constitution of the State of Illinois, it is also prohibited throughout that state."[61] Another was that "if the jury believes from the evidence that the plaintiff was held to service and labor in the State of Illinois by Funkhouser, with the knowledge and consent of Cross, that she is entitled to freedom."[62] This instruction made the critical question whether her former owner, Cross, knew about and consented to Funkhouser taking Alsey to Illinois to work. Apparently the jury believed that Cross did know and consent, because on September 13, 1843, the jury found the defendant guilty and freed Alsey from slavery.[63]

The question of how to instruct the jury forced judges to decide what facts and which points of law were most relevant to the case. Plaintiffs and defendants often

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[60] *Alsey, a woman of color v. Randolph, William*, March 1841, Case No. 305, SLCC, p. 80.

[61] Ibid., p. 79.

[62] Ibid., p. 81.

[63] St. Louis Circuit Court Record Book 14, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 170.

tried to push the envelope of acceptable instructions to encourage the jury to find in their favor. In the 1860 case of Louisa Lewis against Henry Hart, Lewis sued because her mother, Elizabeth Dickson, was a free woman of color and purchased Lewis for the purpose of manumitting her. In this case, the judge refused to give the defendant's requested instruction that "at the instance of the defendant, the jury are instructed to find for the Defendant on the case made by the Plaintiff."[64] Ignoring Hart's efforts to influence the case's outcome, the judge instead instructed the jury that if Elizabeth Dickson "purchased Louisa for the purpose of securing her freedom – that she treated Louisa as her daughter and as a free person…then the jury are authorized to find that the Plaintiff is a free person."[65] In John Merry's 1826 case against Clayton Tiffin and Louis Menard, the court gave the instruction asked for by the defense, which stated "That the plaintiff, being a negro, they ought to presume that he is a slave, until the contrary be shown."[66] By stating that the jury should assume the plaintiff was a slave, this type of instruction reinforced the fact that the burden of proof in a freedom suit was on the plaintiff and influenced the jury's considerations of the evidence.

Personal relationships affected freedom suits in a number of ways, including the relationships of the Circuit Court judges to parties in a case. Numerous litigants

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[64] *Louisa (also known as Louisa Lewis) v. Hart, Henry N., Administrator*, February 1860, Case No. 12, SLCC, p. 41.

[65] Ibid., p. 57. It is interesting to note here that the court made a distinction between treating Louisa as her *daughter* and treating her as *free,* with the insinuation being that it would be presumed that Dickson would treat her daughter as a slave, if she was legally a slave.

[66] *Merry, John, a free man of color v. Tiffin, Clayton; Menard, Louis*, November 1826, Case No. 18, SLCC, p. 45.

complained of judicial bias in their cases, usually asking for a change of venue to another court or another county to avoid any possible prejudice. After a jury failed to reach a verdict in her case against Laforce Papin, Celeste requested a change of venue because she believed the judge held a bias against her.[67] Defendants also feared judicial partiality. Belina Christy, the defendant against Charles in his 1841 suit, requested a change of venue because "the Judge of the said court has prejudices against the petitioner's defence [sic] to the said suit."[68] The court allowed a change of venue to the St. Charles County Court, although the records did not specify what Judge Bryan Mullanphy had against her. The personal nature of the antebellum legal system meant that litigants may have known the judge or had some personal connection to him. Personal ties were even more likely in the early antebellum years, given the small size of St. Louis. For example, in Hetty's 1835 case against Arthur Magenis, Judge Luke Lawless ordered a change of venue to Ste. Genevieve County because Magenis was one of Lawless's family members.[69]

Personal relationships not only gave the impression of bias existing amongst the judges of the Circuit Court, personal connections also spilled over into the other actors in the courtroom, including the jurors.[70] The statute allowed freedom suits to

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[67] St. Louis Circuit Court Record Book 9, September 12, 1838, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 263.

[68] *Charles, a man of color v. Christy, Belina*, March 1841, Case No. 343, SLCC, p. 17.

[69] St. Louis Circuit Court Record Book 7, March 28, 1835, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 346.

[70] Paul Finkelman argues that it was the decisions of antebellum juries on issues of slavery that contributed to the crisis that led to civil war because "the decision-making of antebellum juries reflected the assumptions, attitudes, and fears of antebellum Americans." See Finkelman, *An Imperfect Union,* p. 19.

be jury trials, but it also allowed them to be decided without a jury. Many of these cases did not include a jury verdict because they did not last long enough to be put to a jury (which happened for a variety of reasons), or because both parties preferred to have the judge decide the case without a jury. Nonetheless, a brief consideration of the composition of antebellum juries is instructive because juries did decide many of these cases.

Jury composition varied over the antebellum period. In the first statute of the Territory of Louisiana concerning juries, passed in 1808, the statute indicated that only those "whose estate within the district, whether real, personal or mixed, shall be rated on the said list of taxable property to one hundred dollars or more." The statute required jurors to be above the age of twenty-one, and it also exempted certain professions from serving as jurors, including "clergymen, practitioners of physic, or attorneys of any court, sheriffs or their deputies, free-keepers, or constables." The statute also warned against "persons of ill fame" serving on juries.[71] An 1810 statute removed the minimum property requirement, stating that "every male resident within the territory, of lawful age, shall be subject" to be summoned as a juror, although it kept the same restrictions on the professions listed above.[72] In 1830, a law passed dictating that jurors in St. Louis would receive $1 per day as payment for their services.[73] The law of 1835 specified that "every petit juror shall be a free white

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[71] *Laws of a Public and General Nature, of the District of Louisiana*, p. 199.

[72] Ibid., p. 238.

[73] Ibid., p. 208.

male citizen of this state," and in addition, the same law also excluded ferry-keepers, overseers of the road, and anyone over age sixty-five.[74] The December 1855 revision to the law of jury service added that the free, white citizen should be "sober and judicious" and of "good reputation," and it also excluded postmasters in the list of occupations barred from service.[75] These same statutes also specified that jurors be free from bias or from the influence of either of the parties to the lawsuit. Still, most free, white citizens of Missouri in the pool of eligible jurors brought preconceived ideas about slavery into their considerations of the cases of enslaved plaintiffs.

Witnesses also helped to influence the direction of freedom suits, and the prohibition of black testimony (slave or free) in cases against whites severely limited the ability of enslaved plaintiffs to prove their freedom.[76] In the small number of freedom suits brought against free people of color, much of the testimony came from other free people of color, which is not surprising considering that slaves and free people of color most likely interacted more often with enslaved plaintiffs and therefore had evidence to present of their claims to freedom. But, the majority of witnesses in most freedom suits were white men and women—not only farmers and

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[74] *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighth General Assembly, during the Years One Thousand Eight Hundred and Thirty-Four and One Thousand Eight Hundred and Thirty-Five, together with the Constitutions of Missouri and of the United States,* 3rd ed. (St. Louis: Printed by order of the Secretary of State, by Chambers & Knapp – Republican Office, 1841), p. 343.

[75] Charles H. Hardin, *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighteenth General Assembly…,* vol. 2 (Jefferson City: Printed for the State, by James Lusk, 1856), pp. 910-11.

[76] A territorial statute stated "No negro or mulatto shall be a witness except in pleas of the United States against negroes or mulattoes, or in civil pleas where negroes alone shall be parties." See *Laws of a Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri, up to the Year 1824* (Jefferson City: W. Lusk & Son, 1842), p. 28.

laborers but also slave traders, attorneys, doctors, wives, and wealthy merchants. Many traveled from outside of St. Louis to testify or had their depositions recorded and sent to St. Louis. Lewis Martin, a witness in the July 1825 case of Jenny against Ephraim Musick, traveled thirteen miles each way to attend court and testify. He received $1.30 for his travel expenses.[77]

Litigants in freedom suits, as in other forms of lawsuits, relied on the testimony of witnesses to prove their case, but this was even more critical in freedom suits because enslaved plaintiffs could not testify in their own cases or have black witnesses testify. Enslaved plaintiffs relied heavily—sometimes primarily—on witness testimony to meet their burden of proof, and when a witness changed his or her story, the results could be devastating to the plaintiff's efforts. After Peter lost his March 1828 case against James Walton, he asked the court for a new trial because two of his witnesses, Polly Walton and John Walton, failed to appear to testify for Peter. He planned to ask for a continuance to allow them time to arrive, but Henry Walton and James Walton (the defendant) "represented to him the deponent that the testimony of the said Henry Walton was all sufficient to prove him entitled to his freedom." When Peter listened to this advice and proceeded to trial, "the testimony of the said Henry Walton, proving ineffectual (he falling short of the expectations of this deponent)," he lost his case.[78] The law prohibited Peter from testifying on his own behalf, which forced him to rely on the testimony of the family of the man who claimed him as a slave. Two of these family members failed to appear and Henry

[77] *Jenny, a free woman of color v. Musick, Ephraim et al.,* July 1825, Case No. 15, SLCC, p. 4.

[78] *Peter, a free man of color v. Walton, James*, March 1828, Case No. 12, SLCC, p. 25.

Walton failed to testify as Peter expected, leaving Peter with no other recourse but to ask for a new trial. When Dred and Harriet Scott's witness, Samuel Russell, changed his testimony, they asked the court to continue their suit so they could procure Russell's wife instead. Russell told the Scotts' attorney, J. R. Sackland, that he hired Dred as a slave from Emerson, but when Russell came to testify in court he instead claimed that "he did not hire this affiant [Dred Scott] from said defendant, nor did he pay said hire to said defendant, but that his knowledge of such facts was solely claimed from the information of his wife."[79] When witnesses changed their stories in court, enslaved plaintiffs scrambled to find other means of proving their claims, sometimes calling additional witnesses, and asking the court to grant them time to regroup.

Variations in witness testimony also confounded the attorneys prosecuting these cases for enslaved plaintiffs. In Louise Vincent's November 1833 case against Marie P. Leduc, her attorney Arthur Magenis filed an interesting affidavit in response to the testimony of Charles St. Vrain. In this affidavit, Magenis claimed that before the suit began, he "had several conversations with Charles D. St. Vrain," and St. Vrain made an affidavit swearing to the facts used to convince the court to institute Vincent's case. After the institution of the case, St. Vrain again had "repeated conversations" with Magenis and claimed he knew Vincent and her former owner Joshua Pahlen and that Pahlen held Louise Vincent as a slave in Illinois.[80] Because St. Vrain lived in St. Louis and could testify to Vincent's long residence in free

[79] *Scott, Dred, a man of color v. Emerson, Irene*, November 1846, Case No. 1, SLCC, p. 50.

[80] *Vincent, Louise, a woman of color v. Leduc, Marie P.*, November 1833, Case No. 52, SLCC, p. 22.

territory, Magenis did not believe "it was necessary" to find additional witnesses. The affidavit continues that "Louise Vincent is an ignorant person & entirely relied upon the legal skill and professional fidelity of this affiant."[81] Because Magenis believed that St. Vrain would testify for Louise Vincent and substantiate the facts of her case, he "was wholey surprized [sic] by the testimony given by said St. Vrain which not only materially varied" from what St. Vrain told Magenis, but also varied from what St. Vrain swore to in court at the beginning of the suit. As a result of St. Vrain's turnaround in court, the court issued a nonsuit in Vincent's case.[82]

Although it is not clear why these witnesses changed their testimony or failed to appear in court, personal relationships with the defendant or with others involved may have been a contributing factor. In at least one case, an enslaved plaintiff objected to one of the defense's witnesses because he believed the witness was "interested" in the suit or had some formal stake in its outcome.[83] Some witnesses worked for both sides of freedom suits. Alexis Amelin, for example, appeared as a witness for the plaintiff in at least two freedom suits; in a related case, the sheriff arrested Amelin for transporting slaves as the agent of a defendant.[84] Whatever their

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[81] Ibid., p. 23.

[82] Ibid., pp. 24-27.

[83] *Samuel, a man of color v. Howdeshell, John*, April 1844, Case No. 6, SLCC, pp. 68-69.

[84] *Tempe, a black woman v. Price, Risdon H.*, April 1821, Case No. 181, SLCC, p. 32; *Merry, John, a free man of color v. Tiffin, Clayton; Menard, Louis*, November 1826, Case No. 18, SLCC, p. 26; *State v. Alexis Amelin et al.*, March 1826, St. Louis Criminal Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri.

reasons, personal relationships could figure into the decision to alter testimony and possibly sabotage an enslaved plaintiff's case.

Personal relationships also bred conflicts that could boil up and result in additional litigation as well as indirect influence in other lawsuits. For example, one witness in a freedom suit elaborated on his personal problems with Judge Robert Wash. In Alsey's case against William Randolph, one of her witnesses, James Duncan, testified against the character of Judge Wash. Wash eventually purchased Alsey and her children and became a defendant in this case. When asked if he knew Judge Wash, Duncan replied that he did, and he was "sorry to know such a man." When asked why he disliked Judge Wash, Duncan replied that the judge had made decisions against him, "which were neither legal nor constitutional." Duncan even offered to give $100 to help Alsey win her freedom from Wash because he "very much dislikes the man."[85] Clearly this kind of personal conflict seeped into the decision-making process of freedom suits, when even James Duncan, a slaveholder who was also a defendant in a handful of St. Louis freedom suits, willingly offered to help an enslaved plaintiff prosecute her case against Judge Wash.

Owners of Human Property

Of all those who influenced the court in freedom suits, none tried to do so more than the slaveholders who stood to lose their valuable human property. As defendants, they employed every imaginable weapon to combat the charges against them. Chapter two discussed slaveholders' use of violence, threats, intimidation, and removal to prevent enslaved plaintiffs from filing and pursuing cases. But

[85] *Alsey, a woman of color v. Randolph, William*, March 1841, Case No. 305, SLCC, pp. 30-32.

slaveholders' efforts went beyond the perpetration of violence and the disobedience of court orders. Slaveholders also tried to manipulate the court system to recognize their authority as slaveholders. These individuals—usually, but not always, white men—employed numerous strategies to avoid successful prosecution. They sometimes discussed these strategies, amongst themselves and with their attorneys, who they, like their slaves, relied on to win a favorable outcome in court. The court sometimes circumvented slaveholders' power, and when this happened, slaveholders did not willingly surrender their control.

As the court developed rules for deciding freedom suits, slaveholders looked for ways to get around these rules. For example, slaveholders tried to maneuver around the court's doctrine of requiring *intent* to reside in free territory or state in order for a slave to be freed by residence in areas that prohibited slavery. In Martha Ann's case against Hiram Cordell, one witness testified that she knew Martha Ann's prior owner and that when he and his wife came to Illinois, they had Martha Ann with them but "they sent her back to Missouri for fear she might recover her freedom."[86] When Rebecca sued James Black and Louis Matlock in July 1838, Black's witness Maria Field stated that when Black placed Rebecca into Field's care (in trust for his daughter), Field took Rebecca to Illinois on a *visit* to her sister. Field intended to return to Missouri in four or five months, but the absence of her sister's husband convinced her to stay the winter. She sent Rebecca to St. Louis in February, "and would have sent her there sooner, but could not in consequence of the ice in the

[86] *Martha Ann, a person of color v. Cordell, Hiram*, November 1844, Case No. 9, SLCC, p. 14.

Mississippi River."[87] Field tried to use the weather as an excuse for holding Rebecca as a slave in Illinois for over six months, and she hoped the court would therefore allow Black to avoid prosecution.

There is little evidence of the behind-the-scenes dealing that surely went on around these cases. But the evidence that does survive suggests that a larger web of lawyers and slaveholders interacted and discussed these cases as well as other types of legal matters. Defendants stood to lose their valuable human property if the court found against them, and sometimes other slaveholders could also have a pecuniary interest in the outcome of the case.

Two related cases produced ample evidence of this type of surreptitious dialogue, so we will look at them in more detail here. In the early 1830s, Julia and her daughter Harriet sued Samuel T. McKinney for their freedom based on Julia's residence in Illinois with her previous owners, the Carringtons. Julia argued that Lucinda Carrington, her former owner, took her to Illinois and held her there for over eight weeks in one stretch and over five weeks in another.[88] In McKinney's defense, Joseph Bennett testified that Mrs. Carrington stopped at his farm in Illinois with her son Joseph Carrington and Julia, but they did not rent his cabin for a specified period of time, instead "merely [held] it as a temporary shelter by his permission." Bennett also added that he heard both Lucinda and Joseph Carrington "frequently say that they would not or had no intention of makeing [sic] a slave of Julia the plaintiff in

[87] *Rebecca, a colored girl v. Black, James; Matlock*, July 1838, Case No. 237, SLCC, p. 22.

[88] *Julia, a woman of color v. McKinney, Samuel*, March 1831, Case No. 66, SLCC, p. 3.

this cause in the state of Illinois."[89] Bennett's testimony clearly reflects an awareness of the court's requirement that a slaveholder intend to make their permanent residence in free territory. By only using a *temporary* shelter, Carrington tried to get around the judicial precedent that settling in a permanent home signified making a permanent residence in free territory.

Both the McKinney and the Carrington families had vested interests in the outcomes of these cases. In a December 12, 1831, letter from J. G. McKinney to Hamilton Gamble, McKinney wrote, "I understood from Mr. Carrington that he had employed you in defending the Suit against the Black woman who has sued for her freedom." Because of McKinney's interest in the case, he provided an extra incentive to Gamble to win the case: "If you Succeed in gaining it, In addition to the fee which he has to give you I will add the Sum of thirty, providing the Suit is determined at the Sitting of the present Court."[90] The court rendered its decision for McKinney in 1833, so Gamble did not meet the second stipulation in McKinney's letter. It is unclear if he paid Gamble any extra fee for his service in this case. Nonetheless, his offer suggests the means by which a separate "interested" party would try to influence the result of a suit.

After the Circuit Court found against her, Julia filed notice of an appeal, which the court granted. In the fall of 1833, the Supreme Court reversed the Circuit Court and remanded the case for further proceedings, stating that Mrs. Carrington was

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[89] Ibid., p. 17.

[90] J. G. McKinney to Hamilton R. Gamble, December 12, 1831, Folder 6, Box 4, Hamilton Gamble Papers, Missouri Historical Museum, St. Louis, Missouri.

not merely passing through Illinois but "went into Illinois with an avowed view to make that state her home." As a result, "these acts of the owner surely amounted to the introduction of slavery in Ill[inois]."[91] In response to this decision, Archibald Williams of Pike County, Illinois, wrote an additional letter to Gamble explaining another possible reason for the Carringtons to keep Julia in Illinois for so long. He also offered a wealth of evidence to destroy the credibility of Julia's witnesses. His letter reflects not just the concern and anxiety of Mrs. Carrington over the Supreme Court's verdict, but also her willingness to do whatever was necessary to win. Mrs. Carrington told him she "had the negro in this state only about three or four weeks" but "was told by the neighbours & travellers that the ice was running in the Mississippi river so as to make it dangerous crossing." She also told him "That she can discredit Nancy Harris by a number of respectable witnesses who would swear that they could not from her general character believe her oath." In addition, Carrington promised evidence to discredit another witness. She insisted "that those two witnesses contradicted themselves upon crossexamination," but that the opposing attorney, Gustavus Bird "(who had been up for several days fishing & killing ducks in company with one of the witnesses) interfered & prevented the justice from inserting their contradictions in the depositions." Finally, Carrington desperately asked Williams to determine whether the Supreme Court issued a final judgment, and if the verdict included Julia's daughter Harriet because she could not afford to lose the value of both Julia and her daughter. Mrs. Carrington also offered Gamble an extra fee to win both cases for her, as she was "not well able to lose the woman & girl &

[91] *Julia, a woman of color v. McKinney, Samuel*, March 1831, Case No. 66, SLCC, p. 78.

pay the costs of suit."[92] Although McKinney was the original defendant in both cases, Lucinda Carrington clearly felt a strong interest in the cases' outcomes. She had good reason: when McKinney died in December 1835, the court named Lucinda Carrington the defendant to Harriet's suit.[93]

Slaveholders exhibited enhanced sensitivity to the procedural rules of a trial when they feared losing their cases to enslaved plaintiffs. In December 1833, when Lucinda Carrington visited St. Louis, McKinney wrote Gamble asking him to meet with her to discuss the case. McKinney wrote that Mrs. Carrington "wishes some talk with you Relative Julias suit. She says she has never Rcd. Any notice to take deppositions." Carrington argued that the prosecuting attorney, Gustavus Bird, failed to present the proper notice before taking his depositions, a mistake that could allow the court to disregard the evidence in those depositions. In addition to this suggestion, McKinney complained that the court's rulings gave Julia unfair advantages. He grumbled to Gamble that Julia's attorney "Burd has had all on his side as to such matters. I consider [it] unfair."[94]

Carrington continued to pursue Gamble outside of the courtroom, a testament to her investment in the suit and her near obsession with winning a favorable outcome. When the case came to trial again in the spring of 1834, a new batch of

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[92] Archibald Williams to Hamilton R. Gamble, October 28, 1833, folder 1, box 5, Hamilton Gamble Papers, Missouri Historical Museum, St. Louis, Missouri.

[93] St. Louis Circuit Court Record Book 7, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 482.

[94] Sam. T. McKinney to Hamilton R. Gamble, December 26, 1833, folder 2, box 5, Hamilton Gamble Papers, Missouri Historical Museum, St. Louis, Missouri.

letters came to Gamble inquiring about the case. On February 8, 1834, Archibald Williams wrote to Gamble that Mrs. Carrington "is anxious to hear what disposition was made of the suit in which she is interested in your court." He went on to offer to take additional depositions in Illinois if the case carried over to the next term of court, and he supplied specific instructions about when and where he wished to take depositions. After completing the depositions for the defense, Williams again wrote to Gamble, sending the deposition of Mr. Bateman and adding that Bateman "swears that he would not believe Nancy Bright from her general character" and "that she was prejudiced against Mrs. Carrington." Williams offered yet another reason for Mrs. Carrington to have kept Julia in Illinois for such a long span of time: "Mrs. Carringtons horses ran away about the time she came to this state [and] that he Bateman & Mrs. Carringtons son were about one week looking for them." By the time they located the horses, "it was also understood that it was dangerous to cross the Mississippi river because of the running of ice." For this reason, Carrington kept Julia in Illinois, "during which time she manifested great anxiety to have her sent to Mo. & did send her as soon as practicable."[95]

Carrington's escalating concerns of Julia winning freedom are apparent in the panoply of explanations she offered to justify holding Julia in Illinois. In the spring of 1834, the Circuit Court set Julia free, after which Archibald Williams wrote another letter to Gamble, stating that "I am surprised at the result." He added that "you must determine what sourse [course] to pursue in relation to the matter, if a new

[95] Archibald Williams to Hamilton Gamble, March 20, 1834, folder 3, box 5, Hamilton Gamble Papers, Missouri Historical Museum, St. Louis, Missouri.

trial appeal or writ of error would avail anything Mrs. Carrington would be please to pursue them. I am anxious to hear from you."[96] This pleading is the last record we have of Williams and Gamble's communication, but the amount of ink spilled outside of official court proceedings to try to ascertain the course and outcome of the case points to the presence of a large network of slaveholders and others who took an active interest in the adjudication of freedom suits.

Slaveholders also suggested that enslaved plaintiffs failed to follow the guidelines of the law allowing freedom suits. By placing their own actions firmly within the letter of the law and by discrediting the actions of enslaved plaintiffs, slaveholders hoped to halt prosecution. They often complained that enslaved plaintiffs brought their case with no legal ground for freedom, and so the court should disallow their suits. For example, in David McFoy's 1850 case against William Brown, C. Edmund Labeaume, acting as Brown's attorney, was quick to point out the errors made by the plaintiff. In a document requesting the case be dismissed, Labeaume complains that "the petition is not sworn to according to law, and no costs for security are given or required." More than that, the case is "iniquitous in its inception and will work manifest injustice and oppression if permitted to stand for trial." Brown believed that McFoy brought his case "with no expectation of success but solely for purposes of delay and annoyance."[97] The case had "no expectation of success," and so the proceedings should be discontinued and the case dismissed.

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[96] Archibald Williams to Hamilton Gamble, May 8, 1834, folder 3, box 5, Hamilton Gamble Papers, Missouri Historical Museum, St. Louis, Missouri.

[97] *McFoy, David v. Brown, William,* April 1850, Case No. 37, SLCC, p. 28. The court did not grant Brown's motion to dismiss the case, but continued the case until May 12, 1851, when McFoy's

By the 1840s, slaveholders became increasingly paranoid about abolitionists working in St. Louis to try to deprive them of their enslaved property, and they used the widespread belief of abolitionist interference to argue for dismissal of freedom suits against them. Hoping to avoid prosecution, defendants accused enslaved plaintiffs of fabricating their enslavement in order to convince the court to recognize them as free. In the case of Elsa Hicks against Patrick T. McSherry, a group of minors (under the age of twenty-one), through their agent Lewis Burnell, approached the court and suggested that *they* were the real owners of Elsa Hicks, and that McSherry agreed to be a defendant to defraud them of their enslaved property. "There is no lawful defendant to the case," they complained. Instead, Hicks's "residence with him [McSherry] was free and voluntary, and he has been selected as a *sham defendant*." According to the petition, Hicks brought this case to the "annoyance and prejudice of the real owners," and "under such circumstances it would be a mockery to continue the suit."[98] By suggesting that the court made a "mockery" of justice, this petition challenged the court to dismiss the case in order to prove that the judges followed certain standards of justice.

Slaveholders did not always accept the court's decisions in freedom suits. Instead, they explored their options for subverting the court's authority. When the court decided against them, they sometimes ignored the ruling and continued to claim the successful plaintiff as "property." Such actions necessitated continued action on

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attorney voluntarily agreed not to further prosecute it. See St. Louis Circuit Court Record Book 21, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 76.

[98] *Hicks, Elsa, a mulatto girl v. McSherry, Patrick T.*, November 1847, Case No. 121, SLCC, pp. 13-14 [emphasis added].

the part of plaintiffs to confirm their right to freedom. For example, Leah and her child sued Arthur Mitchell for freedom in Ohio, and an Ohio court set them free. Despite this ruling, Mitchell, "in defiance of said Judgement," continued to hold Leah and her child as slaves.[99] In Andrew's November 1839 case against Peter Sarpy, Andrew's next friend and mother Celeste reminded the court that Andrew was free because that same court declared his mother free in a previous case. Celeste argued that Sarpy continued to hold Andrew as a slave, which was "contrary to law," so the court should declare him free. The court agreed and found Sarpy guilty in 1841.[100]

In at least one case, the defendant's refusal to accept the court's verdict resulted in the reenslavement of an enslaved plaintiff. In July 1837, Aspisa sued Hardage Lane, a prominent St. Louis physician, for her freedom based on her mother's residence in the Northwest Territory. In August 1838, a jury decided in her favor and set Aspisa free.[101] Lane apparently ignored this order, and in July 1839 Aspisa again filed suit against Lane for freedom. In his plea in the second case, Lane denied possessing Aspisa. He described the previous case in detail and argued that "said judgment still remains in full force and effect not in the least reversed or made void." But perhaps Lane's true feelings came in his first plea, which stated that

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[99] *Leah, a woman of color v. Mitchell, Arthur*, November 1832, Case No. 68, SLCC, p. 1. The records indicate that Leah eventually agreed not to further prosecute her case. For this outcome, see St. Louis Circuit Court Record Book 3, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 427.

[100] *Andrew, a person of color v. Sarpy, Peter*, Nov. 1839, Case No. 20, SLCC, p. 2; St. Louis Circuit Court Record Book 12, February 2, 1841, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 81.

[101] *Aspisa, a woman of color v. Lane, Hardag*e, July 1837, Case No. 263, SLCC, pp. 51-53; St. Louis Circuit Court Record Book 9, August 30, 1838, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 242.

"when the said supposed trespasses and grievances" happened, "that she the plaintiff was a slave."[102] In answer to Lane's plea, Aspisa insisted that the grievances she complained of were not the same ones in her 1837 case. Lane continued to hold her as a slave and assaulted her again after the court's first verdict. Unfortunately for Aspisa, Lane's persistence paid off, and her second case resulted in a jury finding her to be a slave, reversing the previous judgment.[103]

When an enslaved plaintiff brought a second freedom suit, he or she had to prove that the charges brought were new charges, and that the defendant refused to obey the court's ruling of freedom. In 1837, Celeste sued Laforce Papin for her freedom, and after requesting and receiving a change of venue to St. Charles County (allegedly because she believed Judge Luke Lawless held "prejudice" against her, as discussed above), a jury declared her a free woman and awarded damages of one cent plus court costs.[104] Her second case came in July 1839, when Celeste sued Alexander Papin, who defended himself with the earlier verdict. Papin claimed that the previous verdict, made in St. Charles, "still remained in full force," so Celeste should not win her second case. This time, the jury agreed with Papin that the previous judgment was still in effect, but instead of also declaring Celeste to be a slave (which the jury in Aspisa's case declared), this jury merely stated that Celeste could not recover

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[102] *Aspasia (also known as Aspisa) v. Lane, Hardage*, July 1839, Case No. 347, SLCC, pp. 7-8.

[103] St. Louis Circuit Court Record Book 12, February 1, 1841, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 79.

[104] *Celeste, a woman of color v. Papin, Laforce*, March 1837, Case No. 41, SLCC.

additional damages. One final attempt by Celeste again resulted in a not guilty verdict.[105]

In a separate strategy, slaveholders also attempted to subvert the court's decisions by endeavoring to recoup some of their financial losses. Slaveholders could sue the individual from whom they purchased the enslaved plaintiff, to try to shift the financial burden of freedom suits onto these sellers. For example, after Rachel and her son William Henry sued William Walker in 1834, John James sued Joseph Magehan, who was the administrator of Joseph Klunk. Klunk sold Rachel and William Henry to James before their freedom suit, and James got stuck with the bill of sale for Rachel and William Henry after they successfully won their freedom from Walker. James asked for $1000 in damages, and the jury awarded James $601.67, which includes the $500 he paid for the slaves plus interest.[106] In another similar action, in July 1836, Robert Duncan sued James C. Sutton, administrator of John L. Sutton's estate, for a breech of covenant on the sale of the slave girl Julia, who sued Duncan for freedom and won. The deed of sale, dated December 10, 1822, stated that Julia was only a year old at her sale, and Duncan argued that Julia was actually free

[105] *Celeste, a woman of color v. Papin, Alexander*, July 1839, Case No. 335, SLCC, pp. 44-45. See also St. Louis Circuit Court Record Book 13, November 17, 1841, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 85, and St. Louis Circuit Court Record Book 14, May 29, 1843, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 50.

[106] *John James v. Joseph Magehan*, November 1837, Case No. 443, St. Louis Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri; for verdict, see St. Louis Circuit Court Record Book 9, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 128.

and Sutton "had no right to sell." Duncan was able to recover $217 plus court costs against Sutton.[107]

One of the most remarkable cases for recovering financial losses involved Robert Wash, a prominent St. Louis attorney and eventual judge. In November 1843, William S. Randolph sued Wash for a breech of covenant for selling Alsey and her son Moses as slaves for life in 1838. After Alsey and Moses won their freedom in 1843, Randolph demanded $1500 to recoup the $850 he paid for Alsey and Moses, plus the court costs and damages he suffered. On December 12, 1843, Wash failed to appear in court, so the court issued a judgment for Randolph by default.[108] Wash then appealed this judgment to the Missouri Supreme Court, who reversed the default judgment.[109] The willingness to take this type of action to the state supreme court indicates the significance of these actions amongst slave buyers and sellers and their larger economic implications. Any person buying a slave who later sued successfully for freedom was likely to pursue legal recourse, and in most cases, the buyers recovered the cost they had expended on the freed slaves.

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[107] *Robert Duncan v. James C. Sutton*, July 1836, Case No. 42, St. Louis Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri; for verdict, see St. Louis Circuit Court Record Book 8, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 107.

[108] *William S. Randolph, to the use of Alfred Tracy v. Robert Wash*, November 1843, Case No. 155, St. Louis Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, St. Louis, Missouri, Office of the Secretary of State; St. Louis Circuit Court Record Book 14, December 4, 1843, p. 251.

[109] The records of the second Circuit Court case did not survive, so we do not know the outcome of the case. The Supreme Court did state in their opinion that their reason for reversing the default was because the Circuit Court did not allow Wash the number of days permitted by law for a person to appear in court, indicating that they believe Wash would owe Randolph the money, although instead of appealing, he should have asked for a new trial.

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Determinations of personal status were intimately connected to the interests of each of the actors working in the cases. As we have seen, these interests were not always straightforward and predictable, with all whites working to prevent slaves from winning their freedom. Instead, enslaved plaintiffs relied on and received the assistance of white allies, whose influence could be crucial to the success or failure of a freedom suit. The fact that some whites aided the cause of the enslaved demonstrates the complexity of questions over personal status in a hierarchical society where one's social position was not fixed, but could change based on an individual's perspective or their stage in life. For this reason, a detailed consideration of the backgrounds and motivations of the various individual actors in freedom suits is vital to understanding the dynamics at play in these cases.

Judges were the ultimate arbiters of justice, but the arguments and actions of attorneys, witnesses, and slaveholders could influence their decision-making. Although judges instructed juries on points of law and evidence, juries used these instructions to make the ultimate decisions, and each juror certainly brought his own ideas about slavery and freedom to the courtroom. Slaveholders could also attempt to subvert the wheels of justice by finding ways around established rules and precedents, offering incentives to court officers to win their suits, or simply ignoring rulings and continuing to hold freed plaintiffs as slaves. Some slaveholders even sued the person from whom they purchased the plaintiff to try to recover their expenses and shift the financial burden of these suits onto the slave trader or seller. All of these strategies

and influences demonstrate that freedom suits served as the intersection for collisions of diverse personal interests and agendas.

Although the letter of the law attempted to establish a hierarchical structure of authority, with judges overseeing and directing the actions of all who came into their courtroom, slaveholders, accustomed to possessing absolute authority over enslaved individuals, had to readjust their outlook and try to carve out their own influence within the law. The power of law forced slaveholders to develop strategies for subverting it or wielding it to their own advantage. But as we have seen, this scheme was not always effective.

Enslaved plaintiffs also developed strategies for using the law to their advantage, threatening the established lines of authority in antebellum society and challenging our ideas of the meaning of slavery. It is also important to remember that plaintiffs in freedom suits did not view themselves as slaves challenging the larger structures of the institution of slavery. Instead, they viewed themselves as free, and as free people of color, they expected the law to uphold their freedom. Free people of color occupied the precarious position in antebellum society of being both free and black, which forced them to negotiate for their limited rights and for the protection of the law.

Chapter Four
"Living as Free": The Problem Posed by Free Blacks in a Slave Society

In October 1826, Milly, a young woman around twenty-six years old, lived in Shelbyville, Kentucky, with her husband Moses and their three children, all the property of David Shipman, who owned numerous slaves, tracts of land, and a grist mill. Unbeknownst to Milly and Shipman's other slaves, on October 17, 1826, Shipman mortgaged some of his slaves (including Moses, Milly, and their children) and other property to Stephen Smith, his nephew, who had agreed to serve as financial security for several of Shipman's debts. Shipman, supposedly "embarrassed" by his financial difficulties, quietly left Shelbyville on October 30, taking Milly and her family with him to Indiana but leaving behind his nephew Smith, his wife, and his debts. In an Indiana court, Shipman executed deeds of emancipation freeing Milly, Moses, and their children. In early November 1826, after their manumission, Milly and her family accompanied Shipman to Peoria, Illinois, where Shipman rented a farm, stocked the farm, and began settling into his new residence.

Back in Kentucky, several of Shipman's debts became due, and Stephen Smith paid two of these debts. In early 1827 Smith tracked down Shipman in Illinois and demanded Milly, her children, and other slaves in return for paying these debts, as promised in the mortgage. Shipman refused to give up the former slaves, offering Smith his land, mill, and other property instead, but Smith insisted it was "the negroes

he wanted."[1] Shipman remained resolute, so in May 1827, Smith gathered six or seven men, visited Shipman's farm in the middle of the night, and seized Milly, two of her children, and one other of Shipman's former slaves, carrying them off to St. Louis to serve Smith as his slaves. Milly's husband and at least one other child remained behind in Illinois with Shipman.

At the July 1827 term, Milly, her children, and Henry Dick, another slave taken by Smith, brought four suits for freedom in the St. Louis Circuit Court. Milly filed cases for herself and for each of her children, including her two-year-old son, whom she had named David Shipman, or "Davy," after her former owner. Milly stated in her petition that they were "violently taken away in the night time," and brought to St. Louis as slaves.[2] Milly argued that she and her children were free both because of deeds of emancipation filed for them in an Indiana court and because of their residence for over six months in Illinois. After a long and complicated legal struggle, Milly and her children won their freedom in court, but this single act of kidnapping created untold misery and hardships for the young mother and her small children, separating them from their father and their home, as well as depriving them of the freedom they enjoyed in Illinois. Milly's decision to use the law reflected the common interactions that slaves and free people of color had with legal institutions throughout their lives, as evidenced by her prior manumission in court and her discovery that Shipman had mortgaged her and her family to Smith.

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[1] *Milly, a free mulatto woman v. Smith, Stephen*, July 1827, Case No. 14, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, http://stlcourtrecords.wustl.edu (hereafter SLCC), pp. 13-14.

[2] Ibid., p. 16.

As scholars have shown, free people of color occupied a unique space in antebellum society.[3] These individuals walked a fine line between freedom and slavery. This was especially true in slaveholding states, and perhaps even more so in border states like Missouri, whose proximity to free states created opportunities for slaves to obtain freedom but also brought increased dangers to free people of color. The experience of free people of color in and around St. Louis supports many of the findings of other scholars of free blacks in antebellum America. A closer examination of the lives of free people of color in St. Louis not only suggests the ways in which slaveholders pushed for a strict color line that degraded all blacks as socially inferior, but also reveals how free people of color pushed back against white efforts in the arena of the law.[4]

The existence of a small but growing population of free people of color in and around the city in the antebellum decades posed a difficult question for the St. Louis community, where, as elsewhere in the antebellum south, "blackness" brought with it

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[3] My ideas about free people of color as being between slave and free are most influenced by Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1974), especially chapter 10. Berlin also makes an important distinction between the Lower South and Upper South, but I would add that living in border states like Missouri also contributed to the precarious place of free blacks. See also, Richard C. Wade, *Slavery in the Cities: The South 1820-1860* (New York: Oxford University Press, 1964); Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York and London: W. W. Norton & Company, 1984); Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground: Maryland during the Nineteenth Century* (New Haven, CT: Yale University Press, 1985); Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana: University of Illinois Press, 1990); John Hope Franklin and Loren Schweninger, *In Search of the Promised Land: A Slave Family in the Old South* (New York and Oxford: Oxford University Press, 2006).

[4] Ariela Gross argues that during the antebellum period, and especially by the 1830s, the South moved to "assert the color line rather than the slave/free line as the boundary that mattered." See Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, NJ and Oxford: Princeton University Press, 2000), p. 65.

a presumption of slavery: what was the place of free blacks in their society? If society presumed that all blacks were slaves, what should they make of free blacks, who belied this presumption? What rights and privileges should be afforded to free blacks, and what restrictions and limitations on their freedom should be in place? St. Louis, like other legal jurisdictions both north and south, answered these questions with a series of constraints on the freedom of free blacks.

Free people of color in antebellum America lived in constant danger of being kidnapped and enslaved, especially in areas like Illinois, where the proximity to slave states made it easier for kidnappers to "unload" their illicit cargo to unknowing third parties. When these kidnappings occurred, the victims had little recourse. One possible avenue open to the wrongfully enslaved victims was to sue for freedom. In Milly's case, she lived as a free woman with her family in Illinois before her kidnapping and reenslavement in St. Louis. Although like Milly, a number of these individuals came from Illinois, a handful came from states further north and east, including Pennsylvania and New York, and some from as far away as Africa. In a few cases, kidnapped individuals described being "persuaded" to leave their homes and traveling to St. Louis with a person who eventually enslaved them.

Free people of color interacted with the courts in St. Louis in a variety of ways, both in freedom suits and in other types of legal actions. In freedom suits, free people of color acted not only as plaintiffs, but also as witnesses for other parties, and sometimes, as defendants. Some free people of color did own slaves, and their motivations for doing so varied from trying to help slaves earn their freedom to trying to increase their own social standing by entering the ranks of slaveholders. One

particularly prominent free man of color in St. Louis, the Reverend John Berry Meachum, found himself the defendant in a number of freedom suits.

The precarious position of free blacks in antebellum society also left them vulnerable to a range of frauds and strategies to deprive them of their limited rights and resources. Trickery was a common tactic used by whites to swindle slaves and free blacks, and when these deceptions occurred, the courts often sorted them out. A closer examination of some of these tricks divulges the shaky ground upon which freedom stood; cases of deception also uncover the invaluable role the courts played in protecting even the limited rights of free blacks. The untenable position of free people of color within antebellum society points to the vulnerability of all black people, but despite their weak social position, slaves and free people of color could and did choose to use the legal system to bolster their status and protect themselves from potential abuses.

Free People of Color in a Slave City

Free people of color in St. Louis constituted a small but important percentage of the population, and their existence shaped the community's views on race and slavery. Like many urban areas in slaveholding states, St. Louis had a growing population of free people of color over the antebellum decades. In 1820, the census for St. Louis County reported only 196 free people of color out of a total population of 10,049, but by 1860, there were 1,865, out of a total population of 190,524, a number that outstripped the number of slaves in St. Louis for the first time. Between 1850 and 1860, the number of slaves in St. Louis decreased from 2,656 to 1,542

while the number of free people of color grew from 1,398 to 1,755.[5] Many of these new free blacks came from other states, so that by 1860, as many as one third came to St. Louis from other areas of the South.[6] The free state of Illinois also saw an increase in free blacks up to 1860. During the antebellum years, the population of free people of color in Illinois increased from only 457 in 1820 to 7,628 in 1860, although the proportion of free blacks in the population dwindled from 0.8% to 0.4%.[7] Despite the fact that free people of color did not constitute a significant percentage of the population, the overall growth in numbers of free blacks in St. Louis and Illinois is significant because their presence suggested an alternative status for slaves by recognizing that some blacks could and did live as free. This confused the neat distinctions of slave and free that slaveholders sought to establish and maintain. Inevitably, free blacks reminded slaveholders that not *all* blacks were slaves, and the slaveholders rightly feared that free people of color might interfere with their human property and aid enslaved persons in trying to become free.

Free people of color in St. Louis claimed freedom for a number of reasons, including freedom from the time of birth. Despite living their entire lives as free, some of these individuals needed to use the courts to confirm their right to freedom. When Peggy Perryman sued Joseph Philibert for freedom in 1848, she claimed that

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[5] Wade, *Slavery in the Cities,* Appendix, p. 327, taken from the U.S. Census data; Historical Census Browser, The University of Virginia, Geospatial and Statistical Data Center, accessed at: http://fisher.lib.virginia.edu/collections/stats/histcensus (November 9, 2007).

[6] Berlin, *Slaves without Masters,* p. 174.

[7] Clayton E. Cramer, *Black Demographic Data, 1790-1860: A Sourcebook* (Westport, CT: Greenwood Press, 1997), p. 112.

both of her parents were free persons, her father a free man of color and her mother an Indian of the Blackfoot tribe. Perryman's petition specified that they were both "free since the memory of man."[8] In another case, Henry sued William Morrisson, and he claimed he "was born in St. Cla[i]r, Illnos [sic] Northwestern territory, [and] that he is free from birth."[9] These plaintiffs declared to the court not only their free status, but also the long duration of their freedom and their status from birth.

Enslaved individuals could also become free through agreements for manumission with their owners or through their owners' wills.[10] Sometimes these agreements included conditions on purchasing a slave for a bargain price in exchange for later manumitting him or her. For example, Ann Davis sued for her freedom from James F. Symington in 1839 because when Symington purchased her from James Cheston in September 1836, he did so for only $100 on the condition that in October 1842, she "is to be free from slavery forever." Although the appointed date had not yet arrived, Davis sued for freedom because part of the agreement specified that Symington was not to remove her from the state of Maryland (where he purchased her), and he did remove her and bring her to St. Louis.[11]

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[8] *Perryman, Peggy, of color v. Philibert, Joseph*, November 1848, Case No. 255, SLCC, p. 3. The appeal to "the memory of man" was a common law formulation meant to connect one's argument to the long common law tradition.

[9] *Henry, a man of color v. Morrisson, William; Swan, John*, July 1834, Case No. 19, SLCC, p. 2.

[10] David Brion Davis argues that manumission implies that a slave is capable of being a free person, but most areas of the United States virtually closed off the practice of manumission after 1815. See Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York: Oxford University Press, 2006), p. 3.

[11] *Davis, Ann v. Symington, James F.*, March 1839, Case No. 515, SLCC, p. 1.

Freeing slaves by will could become quite complicated because it often required the cooperation of that person's heirs and the executors of the estate. In her case against Henry Chouteau in 1835, Sally restated the agreement between the widow of Joseph Brazeau and Brazeau's niece Marie Therese Duchouquette, whereby Duchouquette and her husband agreed, after the death of Brazeau and his widow, to "recognize, declare & set free and will give deeds of freedom to the mulatto Peter aged about fifty years as well as to the mulatto woman Marianne and to the children whom they may have, that they may enjoy their freedom and act and contract as free and independent persons."[12] Sally claimed freedom because she was the daughter of Marianne, whom this agreement and will manumitted. Unfortunately for Sally, the widow Brazeau outlived the Duchouquettes by fifteen years, and their heirs failed to honor this agreement and instead sold Sally to Henry Chouteau. When whites failed to honor their agreements or the agreements of their ancestors, free blacks needed the courts to uphold their right to freedom.

The proximity of St. Louis to the Northwest Territory directly influenced the number of free people of color entering the city and the courts. By passing through or residing in the Northwest, according to the court's doctrine in freedom suits, slaveholders effectively freed their slaves and increased the number of free blacks in their communities. Although this standard had its limitations and did not always guarantee freedom to an enslaved plaintiff (as we have seen), the fact that the court accepted this reasoning as an acknowledged basis for freedom did contribute to the growing population of free people of color in Missouri. Not only did the court

[12] *Sally, a person of color v. Chouteau, Henry*, July 1835, Case No. 101, SLCC, pp. 3-4.

directly grant freedom to individuals who lived or worked in the Northwest Territory, but it also effectively freed their descendants, therefore multiplying the importance of these rulings.

Evidence of the types of occupations worked by slaves and free people of color could contribute to the outcome of a person's freedom suit. The court needed to hear that a plaintiff worked as a free person and that people who knew them in their jobs considered them to be free. Free blacks in St. Louis, like slaves, worked in a variety of occupations. Men often worked on steamboats and river occupations, and they also worked as common laborers. When George Johnson sued Rueben Bartlett for his freedom in 1852, one witness testified that George "has been on boats with me for the last eight years at different times," and that during this work he "never knew him has anything else but a free man."[13] Thornton Kinney also worked on steamboats before his enslavement, sometimes as a cook or a steward.[14] Women could work as seamstresses or house servants, among other jobs. Lucy Delaney's mother Polly Wash was a seamstress, and Lucy worked caring for children.[15] In her suit against Reddin B. Herring, Phillis asserts that she has always been "a good servant," and she "hired for 12 Dollars per month."[16] The vast majority of free blacks

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[13] *Johnson, George, a man of color v. Bartlett, Reuben*, November 1852, Case No. 281, SLCC, p. 12.

[14] *Kinney, Thornton, a man of color v. Hatcher, John F.; Bridges, Charles C.*, November 1853, Case No. 35, SLCC, p. 5.

[15] Lucy A. Delaney, *From the Darkness Cometh the Light; or Struggles for Freedom* (St. Louis: Publishing House of J. T. Smith, 1892, reprinted by Chapel Hill: Academic Affairs Library, University of North Carolina, 2001), Electronic Edition accessed at: http://docsouth.unc.edu/neh/delaney/delaney.html (October 2, 2003), p. 11.

[16] *Phillis (also known as Susan), a free woman of color v. Herring, Reddin B.*, November 1836, Case No. 51, SLCC, p. 1.

in urban areas like St. Louis were laborers, who worked at a variety of occupations doing the type of jobs poor whites refused to do. By being willing to accept low wages for the worst types of work, free blacks created a niche for their services that made them a valuable asset, especially in urban areas like St. Louis that required lots of unskilled labor and had fewer slaves.[17]

The wealth and property acquired by a small contingent of free people of color in St. Louis allowed them to form close relationships with white allies that could benefit their efforts when other whites threatened their free status or the freedom of their descendants.[18] Cyprian Clamorgan, the son of the wealthy white businessman Jacques Clamorgan and a free woman of color, wrote a short book on some of these elite free people of color. *The Colored Aristocracy of St. Louis* provides a series of brief sketches of several of the wealthiest free people of color in St. Louis and suggests how these individuals made their influence felt in the political realm. Clamorgan wrote with an eye for publicity, and possibly to attract other wealthy people of color to St. Louis, so he may have exaggerated the number and wealth of these elites, but his observations on the common jobs and features of the wealthy free colored population are useful in understanding the lives and situations of free people of color in antebellum St. Louis.[19] Clamorgan explained how one of the most prestigious occupations for free men of color was that of barber; Clamorgan and

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[17] Berlin, *Slaves without Masters,* pp. 243-45.

[18] For a discussion of the class differences among free blacks in the Upper and Lower South, see Berlin, *Slaves without Masters,* pp. 57-60, and chapter 7.

[19] Cyprian Clamorgan, *The Colored Aristocracy of St. Louis,* ed. Julie Winch (Columbia and London: University of Missouri Press, 1999), Introduction by Julie Winch, p. 3.

his brother ran a barbershop that was popular among white men in St. Louis. He wrote that "a mulatto takes to razor and soap as naturally as a young duck to a pool of water, or a strapped Frenchman to dancing." Not only did Clamorgan view mulattoes as "natural" barbers, he also noted that through this job, "they take white men by the nose without giving offense, and without causing an effusion of blood."[20] Although he does not elaborate on the significance of this close physical proximity to whites, Clamorgan's statement suggests a brief moment of power for a free black barber, sharpened razor in hand, over an immobilized white patron. That such "dangerous" moments of inverted power did not result in an "effusion of blood" may have confirmed the confidence of white patrons in the existing racial order, making them willing to chat openly with a demonstrably competent and "safe" black barber. At any rate, it is not difficult to imagine that these regular but not unusual encounters led to a sharing of daily gossip and news between white men and their barbers that broke with the usual social mores in St. Louis.

Clamorgan also emphasized that the wealthiest among free people of color were those who benefited from close, and especially familial, relationships with whites.[21] Through these intimate ties, free people of color distorted the boundaries of status by intermingling socially and sexually with whites. Clamorgan suggested that "Many of them are separated from the white race by a line of division so faint that it

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[20] Ibid., p. 52. Historian Frank Towers also noted the importance of white alliances to free people of color, especially with their black barbers. See Towers, *The Urban South and the Coming of the Civil War* (Charlottesville and London: University of Virginia Press, 2004), p. 50.

[21] Loren Schweninger notes that St. Louis was like the Gulf region in this respect because in St. Louis, the four wealthiest families of color descended from whites. See Schweninger, *Black Property Owners in the South,* p. 109.

can be traced only by the keen eye of prejudice."[22] For even those free people of color with pale skins and considerable wealth, the "keen eye of prejudice" conspired to keep most of them in a subjected state of social and political inferiority. It was mainly through their connections with whites that these elite free blacks gained their wealthy and notoriety. But by aligning themselves with whites, some elite free people of color adopted the same prejudices against poorer free blacks and slaves that kept them from obtaining full success, independent of white assistance.[23]

Free people of color in antebellum America faced numerous legal restrictions on their liberties, and free blacks in Missouri were no exception. In the decades following the American Revolution, the population of free people of color expanded rapidly throughout the new United States, due to a number of factors. The revolutionary rhetoric of liberty and equality led to an upswing in manumissions in southern states, while northern states moved to end slavery entirely. In addition, many slaves had earned their freedom through serving the patriot cause in the Revolutionary War, while others used the confusion of war to escape bondage and establish new identities as free persons.[24] Partly in response to the growing numbers of free blacks, states passed increasingly tight restrictions on the liberties of free people of color.

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[22] Clamorgan, *The Colored Aristocracy of St. Louis,* p. 45.

[23] Berlin, *Slaves without Masters,* pp. 276, 340; Schweninger, *Black Property Owners in the South,* p. 137.

[24] Berlin, *Slaves without Masters*, chapter 1.

Scholars have described the increase of restrictions on slaves and free people of color as beginning in the 1820s and gradually being adopted in newer states.[25] A closer look at Missouri's legislation relating to free blacks reveals how the new states west of the Mississippi passed these laws slightly later than those of most slaveholding states. Restrictions on free blacks increased in the 1830s in Missouri, which is when the overall population of the state began to expand rapidly. Under the territorial statutes and early state laws, Missouri's free blacks faced relatively few limitations on their autonomy. In 1835, a group of new restrictive statutes passed to better "control" the growing population of free people of color in Missouri and to limit their movement. After that date, the law required black people to obtain a license to carry weapons, a common restriction found in numerous laws of other states. In addition, an 1835 statute also directed that free blacks had to have a license even to reside in the state, and this license could be issued by the county court.[26] In comparison with other southern slaveholding states, Missouri's laws appear somewhat more liberal, although in 1847, Missouri added new restrictions prohibiting teaching any black person to read or write, requiring all black gatherings (including church services) to have white supervision, and forbidding any black person from

[25] See Berlin, *Slaves without Masters,* chapter 10, especially pp. 316-17.

[26] *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighth General Assembly during the Years One Thousand Eight Hundred and Thirty-four, and One Thousand Eight Hundred and Thirty-five. Together with the Constitutions of Missouri and of the United States* (St. Louis: Printed at the Argus Office, 1835), p. 414.

immigrating to the state.[27] Again these types of laws were not unusual among slaveholding states, but Missouri and other newer states adopted them later than most southern slaveholding states, partly because of Missouri's late founding and statehood and also in response to the population explosion of the 1830s and 1840s.

Missouri's licensure laws for free blacks became integral to controlling the expanding population of free people of color in St. Louis throughout the antebellum years. White control of free blacks was deemed necessary to maintain the social structure and keep all black people in inferior positions to whites. After 1835, when an enslaved plaintiff won freedom through the courts, he or she then had to obtain a license from the court and pay a small fee to get this license, or face larger fines, imprisonment, and possible deportation from the state. Some free blacks emancipated by the courts faced difficulty in obtaining a license to remain in Missouri because the law provided strict guidelines about eligibility. The statute allowed licenses only for people who met one of the following conditions: those who were "a citizen of some one of the United States;" those who lived in Missouri from January 7, 1825, to the passage of the act in 1835; those whose owners emancipated them in Missouri or who were born free in the state; those freed after a term of bound service in Missouri; the spouse of a slave held in Missouri; and the spouse of a slave brought to Missouri by his or her owner.[28] Licenses of free blacks listed their "name, age, size, personal appearance and occupation," and if the person moved from the

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[27] Charles H. Hardin, *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighteenth General Assembly…* (Jefferson City: Printed for the State, by James Lusk, 1856), pp. 1100-1.

[28] *Revised Statutes of the State of Missouri,* pp. 414-15.

county that issued the original license, he or she had to register with the new county. The license cost the applicant a fee of 50 cents plus 12½ cents for a registration of the license if the person moved to a new county. The license also contained a large loophole, specifying in a vague and ominous way that the individual and his or her children could remain in the state of Missouri only "so long as he shall be of good behavior, and no longer."[29] Needless to say, whites hoping to make life difficult for enslaved plaintiffs freed by the courts could readily allege bad "behavior" in order to have them deported from the state.

Missouri's license laws added an important provision intended to limit the ability of successful plaintiffs in freedom suits to remain within the state. This prescription stated that "Every free negro or mulatto, whose right to freedom shall have accrued without this state, although he may have recovered his freedom by suit within the same, shall be treated as if he had been actually free at the time of coming or being brought into this state, and as such shall be subject to the provisions of this act."[30] In other words, the law recognized that if a person won freedom based on something like residence in free territory, he or she was actually free at the time of coming to Missouri. This meant that the law requiring a license would treat that individual as a free black migrant and would deny that person a license unless he or she could prove they fit one of the conditions of the law. In many cases, proving "citizenship" of another state would be impossible, and so if the person did not reside in Missouri prior to 1825, or was not married to a Missouri slave, the person would

[29] Ibid., p. 415.

[30] Ibid., p. 415.

have to leave the state of Missouri. Although it is not clear how closely Missourians enforced this restriction, its existence could have encumbered some individuals hoping to win freedom through the courts based on living in the Northwest Territory.

Community perception of free people of color could be pivotal if they needed to defend their freedom in freedom suits. Enslaved plaintiffs sometimes relied on testimony and language indicating that he or she *appeared* to be free, and that the community *treated* him or her as a free person of color. This type of evidence, which today might be called hearsay evidence or circumstantial evidence, played a crucial role in determining freedom suits in St. Louis. In her study of trials of racial determination, legal scholar Ariela Gross argued that the "performance" of whiteness was crucial to determining a person's race. This performance could include the person's appearance in court, testimony about the person's past behavior, or how the community understood the person's racial categorization.[31] Because of the prohibition on black testimony in court, white testimony about the perception of a person's race, or their personal status, highlights the pivotal part played by the wider community in freedom suits.[32]

Plaintiffs in freedom suits presented this type of evidence through witness testimony or in their initial petitions. In both instances, the suggestion that the community recognized the plaintiff as a free person went a long way towards proving

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[31] Ariela Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," *Yale Law Journal* 108:1(Oct. 1998): 109-89.

[32] Joshua D. Rothman also argues that personal relationships in the community were vitally important to the outcomes criminal trials in Virginia. See Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1861* (Chapel Hill and London: University of North Carolina Press, 2003), p. 163.

his or her claim. In 1836, Delph sued Stephen Dorris, and William Scott gave a deposition on Delph's behalf. In this testimony, Scott indicates that he knew Delph as the slave of Josiah Ramsey until 1826 or 1827, and that after that point "she did go at large and act as a free woman."[33] In George Johnson's 1852 case against Reuben Bartlett, Joel V. Kimber, an engineer working on steamboats, testified that he knew Johnson from working on boats with him. Kimber indicated that Johnson hired himself to one boat as a fireman, that the clerk of the boat paid him his wages, and that he worked on numerous other boats in Pennsylvania and Ohio. Kimber stated "My impression was that he was a free man because he acted for himself." Although Kimber did now know if others considered Johnson to be free, he did add that Johnson "lived in the town where I was born & raised in a free state."[34] Both Delph and George Johnson relied on their community's impression that they were free to help demonstrate that freedom to the court, just as individuals whose race was in question needed community testimony that they acted like whites. The perception of whiteness, or of freedom, could be used as evidence in cases where the plaintiffs lacked the ability to testify for themselves.

Enslaved plaintiffs also presented evidence that they lived as free persons and that their communities considered them to be free at the opening of their cases, when trying to convince the courts to hear their claims. When Jane sued William Dallam in 1831, her petition indicated that her former owner, Colonel Dallam, made an

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[33] *Delph (also known as Delphy), a mulatress v. Dorris, Stephen*, March 1836, Case No. 4, SLCC, p. 45.

[34] *Johnson, George, a man of color v. Bartlett, Reuben*, November 1852, Case No. 281, SLCC, p. 34.

agreement with her in Maryland that he would manumit her at a future date. Colonel Dallam filed this agreement in a Maryland court before moving with Jane to Kentucky. While in Kentucky, Dallam set her free by custom if not by deed, "giving her complete and perfect personal liberty and power to do with herself what she pleased and requiring from her neither service nor wages for her time."[35] But Jane did not rely solely on this assertion, instead offering to produce "legal evidence" of her freedom, most likely a copy of the Maryland deed of manumission she believed Colonel Dallam recorded.[36] Vina also presented evidence in her petition against Martin Mitchell that she lived as free, stating that "for several years she has lived both in the state of Illinois and in the state of Missouri as a free person."[37] Evidence that the plaintiff lived as free suggests the important role of the community in determining who was a slave and who was free. If Jane and Vina lived as free women for years without anyone questioning their status, this provided powerful evidence of their status to the court. The lives of women like Jane and Vica also point to a central dilemma for free people of color in antebellum America: although they lived as free, their skin color suggested they were slaves, a tension that made them vulnerable to kidnappers and whites who tried to claim them illegally as their slave.

Kidnapping

Kidnapping exposed the artificiality of the categories of slavery and freedom. Free blacks could be legally free and recognized as free in their community, but when

[35] *Jane, a woman of color v. Dallam, William*, July 1831, Case No. 22, SLCC, p. 2.

[36] Ibid., p. 3.

[37] *Vina, a woman of color v. Mitchell, Martin*, March 1832, Case No. 19, SLCC, p. 1.

forcibly removed from their homes, new communities could declare the same persons to be slaves and treat them as such. The precarious nature of freedom for free people of color becomes evident in the numerous stories of kidnapping victims found in the St. Louis Circuit Court. After removing people from their homes, kidnappers easily passed them off as slaves because of the widespread legal presumption that blacks were slaves. This story repeated itself numerous times across the country.

Racism, as well as a legal system designed primarily to protect slavery, helped to facilitate kidnapping of free people of color for sale as slaves. Kidnapping became institutionalized in the antebellum years with the closing of the Atlantic slave trade.[38] Historian Carol Wilson points out that it was easier to kidnap free people of color because masters often tracked down their slaves when someone stole them, but free people of color rarely had someone able to search for them or vouch for their freedom. Wilson also remarks on the racial dimensions of slavery that allowed kidnappers to pass off their victims as slaves, writing that "the ever-present threat of kidnapping provided a constant reminder to free blacks that even though they were not slaves they were nonetheless black, and the autonomy they possessed could be stolen from them at any moment."[39] Hundreds, perhaps thousands, of men and women suffered at the hands of a growing number of professional kidnapping gangs.

Examples abound in the St. Louis court records of men and women whose lives were permanently transformed when kidnappers wrenched them from their

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[38] See Berlin, *Slaves without Masters,* who writes that "kidnappers acted with impunity," p. 99, and when slave prices rose, they sometimes worked "with the tacit consent of local officials," p. 160.

[39] Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865* (Lexington: University Press of Kentucky, 1994), pp. 16-20, 20.

homes and families, demonstrating the fragile, elusive nature of freedom and how easily a person's free status could be altered. White slaveholders often threatened free people of color with kidnapping, which was one strategy slaveholders used to try to eliminate free blacks from their communities. When kidnappings occurred, the victims had little recourse other than to try to escape and risk being treated as a runaway slave or to bring a suit for freedom. Thirty-one of St. Louis's 325 freedom suit plaintiffs argued that they were the victims of kidnapping.[40] Sometimes a plaintiff combined kidnapping with other arguments for freedom, such as residence in a free territory or that he or she was a free person of color prior to the kidnapping.

Kidnapping victims had few options, but they might try to escape by running away, although they then risked the possibility of being seized and treated as runaway slaves. For example, in November 1827, John Singleton brought suit for freedom in St. Louis based on his mother's manumission before his birth, as well as the fact that he had lived in the free state of Illinois. The young man's petition stated that he "always from his birth enjoyed and exercised his natural freedom," until about six years prior to his suit, when kidnappers stole him and took him to Alabama.[41] He attempted to sue for freedom there, but before the court decided his case, a man named Henry Byron took him to New Orleans and sold him. While in New Orleans, he recalled "That your petitioner, knowing his right to freedom, attempted to regain it and went on board the steam boat America of St. Louis commanded by Mr.

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[40] See the Appendix for a table of the arguments used by plaintiffs in freedom suits.

[41] *Singleton, John, a free man of color v. Scott, Alexander, Lewis, Robert*, November 1827, Case No. 23, SLCC, p. 1.

Alexander Scott." He absconded on the boat to St. Louis, where he "was arrested and cast into the common jail" as a runaway slave.[42] Although Singleton had to sue in Alabama, escape from Louisiana, and sue again in Missouri, a jury eventually found Alexander Scott guilty and awarded Singleton his freedom and his court costs.[43]

Some free blacks who sued for their freedom ended up as victims of kidnapping *after* a successful freedom suit. The persistence of these individuals in the face of multiple obstacles demonstrates both the vital importance of freedom suits as a possible avenue to freedom and also the dangers that occurred when defendants refused to honor the court's decisions. In her 1832 freedom suit against Elijah Mitchell, Matilda reported that she won her freedom about thirteen years prior in another Missouri free suit.[44] Phillis, another enslaved plaintiff (also known as Susan), described her brutal kidnapping and assault by Reddin B. Herring in 1836. He had "fitted the hands & feet of affiant with irons [and] he then kept affiant bound as aforesaid for about 10 or 12 days concealed in a corn crib." At the time he assaulted her, Herring knew that Phillis was a free woman because she "was liberated by the Judgement [sic] of the Supreme Court of Louisiana."[45] Phillis first sued Pierre Gentin for freedom in 1834 in the First Judicial District Court of New Orleans, which found Phillis and her two children to be free persons based on Phillis's birth in

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[42] Ibid., p. 2.

[43] St. Louis Circuit Court Record Book 5, April 3, 1828, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 121.

[44] *Matilda, a woman of color v. Mitchell, Elijah*, July 1832, Case No. 47, SLCC, p. 1.

[45] *Phillis (also known as Susan), a free woman of color v. Herring, Reddin B.*, November 1836, Case No. 51, SLCC, p. 3.

Pennsylvania.[46] When Gentin appealed this decision to the Louisiana Supreme Court, that court also upheld her freedom. But Reddin B. Herring, whom the Louisiana courts named as a defendant to her case, recaptured Phillis and reenslaved her and her children. Although Phillis won freedom twice in Louisiana, in a New Orleans court and again in the Louisiana Supreme Court, in her St. Louis case, after many continuances, the court found for the defendant when she failed to appear in court.[47]

While the close proximity of St. Louis to the states carved out of the Northwest Territory provided slaves in Missouri recourse to an argument for freedom, ironically, it also rendered free blacks in the Northwest vulnerable to kidnappers operating out of Missouri. For example, Jane Cotton was a young child living in Illinois when a group of kidnappers stole her and absconded to Missouri to sell her into slavery. Cotton brought suit several years later, stating in her petition that "she was born free as she believes, in the Territory of Illinois and…after this Territory had been admitted into the Union as a free state, she was brought forcibly into Boonville Missouri, where slavery was by law permitted." Cotton goes on to argue that at the time of her removal "she was in infancy and without knowledge of her rights, and

[46] See the judgment and the transcript of the Louisiana Supreme Court decision in *Phillis v. Pierre Gentin*, April 1834, Case No. 11262, First Judicial District Court, Orleans Parish, Louisiana Division and City Archives, New Orleans Public Library, New Orleans, Louisiana.

[47] St. Louis Circuit Court Record Book 12, January 1, 1841, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 2.

when she had no one to protect her, and since she was then brought into Missouri she has been wrongfully held as a slave."[48]

Professional kidnapping gangs operated in and around Missouri, threatening the autonomy of free people of color. When these threats became reality, the victims turned to the court to recognize their free status. In 1832, a family of enslaved plaintiffs entered petitions against several individuals who appear to be part of a professional kidnapping gang. Lydia Titus, the matriarch of the family, lived as a slave of Elijah Mitchell until 1812, when Mitchell took her and her family to Illinois and, according to a witness, stated that "it was not his intention that they should be slaves."[49] After Elijah's death, Lydia and her family (including her three daughters and four sons) lived as free persons in St. Louis for eight years until Martin Mitchell, the administrator of Elijah's estate, tried to kidnap them and return them to slavery. He had some of them imprisoned as runaway slaves, but when the family asked the court to be released from prison, the jailer George Hammond explained that he took them "out of the possession of Henry G. Russell & Henry G. Mitchell against whom a warrant had issued for kidnapping." Hammond argued that he held Matilda in jail only for "her personal safety" and to protect her from these potential kidnappers.[50] Lydia's daughter Mary Ann's case file is more complete than the others, and it

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[48] *Cotton, Jane, a free person of color v. Little, James A.*, April 1848, Case No. 37, SLCC, pp. 1-8, 3. There are not exact dates or ages recorded in Jane's case file, so it is not possible to determine her exact age at the time of her kidnapping or when she brought suit. It is only stated that she was a minor at the time of her kidnapping and only after a number of years was she old enough to act for herself and sue for her freedom. There is no verdict recorded in Jane's case.

[49] *Mahala, a free woman of color v. Martin Mitchell*, November 1832, Case No. 6, SLCC, p. 5.

[50] *Matilda, a woman of color v. Mitchell, Henry G.; Russell*, July 1832, Case No. 55, SLCC, p. 6.

contains a notice of agreement between counsel that the verdict rendered in Mary Ann's case should also be applied to the cases of Matilda, Anson, and Michael. Mary Ann's verdict reads, "we the jury find for the plaintiff and assess damages at $250.00."[51] This sum was one of the largest awards found in these cases and may have been a result of the combined arguments of kidnapping and previous residence in Illinois. In a similar instance of possible "professional" kidnappers, Sarah sued Thomas and Janus Johnson in July 1833 because they took her from her place of free birth in Jefferson County, Missouri, and sold her to a man she believed was a "negro trader" who was "purchasing slaves to take to the South."[52] Untold numbers of victims found themselves in this situation, and although Sarah was fortunate enough to bring her case to court, she died waiting for the court's decision.[53]

The crowded urban environment of St. Louis made it difficult to determine who was a slave and who was free, a fact that contributed to kidnappers' ability to enslave free blacks living in the city. In at least one instance (and probably more), an enslaved woman claimed that her kidnapper stole her from her home in St. Louis. In her November 1835 case against Pierre Menard, Agnis (sometimes called Agathe) claimed her freedom based on her birth in Kaskaskia, Illinois. Although her mother

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[51] *Mary Ann, a person of color v. Fields, Alexander P.; Mitchell*, July 1832, Case No. 51, SLCC, pp. 28-29, 34. The records show that Mahala, Sam, and Nathan all died during their cases. See St. Louis Circuit Court Record Book 7, January 2, 1834, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 89, and St. Louis Circuit Court Record Book 6, May 3, 1833, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 489.

[52] Sarah, a girl of color v. Johnson, Thomas & Janus, July 1833, Case No. 9, SLCC, p. 1.

[53] St. Louis Circuit Court Record Book 7, January 21, 1834, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 130.

was an indentured servant, Agnis claimed she was never indentured or registered as a slave, according to the laws of Illinois. Agnis also maintained that she lived as a free woman in Illinois, and four years earlier she moved to St. Louis, where she also lived as free and "unmolested untill [sic] within a few days past, when one Pierre Menard claimed her as his slave for life." Agnis's petition went on to specify that Menard "has taken her and deprived her of her liberty & freedom."[54] Menard planned to take Agnis away from St. Louis and sell her as a slave, so she asked to be able to sue for her freedom. The court transferred her case to the United States District Court because Menard was a citizen of Illinois, and Agnis a citizen of Missouri. Unfortunately for Agnis, in September 1836, the U.S. District Court for Missouri dismissed her case when she defaulted and failed to appear in court.[55]

Kidnapping sometimes combined with other issues in freedom suits, including the possibility of an interracial sexual relationship. Defendants sometimes used the suggestion of an intimate relationship to discredit an enslaved plaintiff's freedom suit, which points to the unease many whites felt about interracial unions. In her case against Garland Rucker in November 1829, Maria Whiten claimed to be a victim of kidnapping, but Rucker brought evidence of a different kind of "illicit" activity. In her petition, Maria claimed that her former owner, John Whiten, took her and her infant son Patrick Henry from their home in Virginia to Illinois with him. He hired

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[54] *Agnis (also known as Agathe), a woman of color v. Menard, Pierre*, November 1835, Case No. 3, SLCC, p. 1.

[55] United States District Court Record Volume A, 1822-1856, September 9, 1836, 280, National Archives and Records Administration, Kansas City Branch, Kansas City, Missouri. The reason for her default is not given, and it possible that she died, that Menard sold her away, or that she reached some sort of agreement with Menard that made her suit unnecessary.

her out while living in Illinois and he "established himself with your petitioner" in December 1828. Maria does not elaborate on what the statement that he "established himself" meant, but later testimony suggests an intimate relationship. When Whiten died in February 1829, he requested on his death bed that Maria and her son be emancipated.[56] Garland Rucker, the defendant to Maria's freedom suit, ignored this request and, according to Maria, kidnapped her and her son, selling them into slavery.[57]

Witness testimony, however, suggested an entirely different narrative to explain her departures from Virginia and Illinois. In a deposition for Rucker, one witness elaborated on Maria's relationship with Whiten, stating that "it was reported and universally believed that Whitten kept the woman for a wife and that he was the father of her child." This witness not only claimed that Whiten had an illicit sexual relationship with Maria, but also that he stole Maria and her son from their legal owner Abel B. Nichols. When Maria and her son disappeared from Nichols's home, Nichols believed Whiten may have them and so he sent the witness and others to Whiten's house to look for the slaves. Whiten then "denied all knowledge of the said slaves, and pretended to aid us in our search." According to this same witness, Whiten accompanied the search party looking for Maria and her son in order to conceal the fact that he intended to run away with Maria. Whiten promised to return

[56] Ira Berlin found that the large population of free people of color in Louisiana was predominantly the result of relationships between white men and slave mistresses, with these men sometimes freeing their enslaved mistresses and the children born of these relationships. See Berlin, *Slaves without Masters,* pp. 108-9. The court documents also mention that Maria was a "mulatto," which could have factored into Whiten's decision to free her and her child.

[57] *Maria, a free woman of color v. Rucker, Garland*, November 1829, Case No. 14, SLCC, p. 1.

the slaves if he heard from them, but "shortly afterwards…Whitten… [and] the said slaves disappeared from this country & said deponent has not heard of them since."[58] Garland Rucker (the defendant in Maria's freedom suit) suggested Whiten and Maria had a sexual relationship because he believed this suggestion could deny Maria's claim to freedom. The fact that Maria could potentially be a free person of color living in Illinois with her lover John Whiten cast doubt on Rucker's account that it was Whiten who stole Maria from her rightful owner and not Rucker who stole her from the freedom she enjoyed in Illinois.

Freedom suits in St. Louis had wide-reaching implications, affecting kidnapping victims from as far away as Africa. Although the legalized African slave trade to the United States closed in 1807, kidnappers continued to seize Africans and bring them to the U.S. as slaves. This practice continued well into the nineteenth century, and some of these victims ended up suing for their liberty in America's courts. In 1831, Dunky sued Andrew Hay for freedom based on her birth in Africa and also her residence in Illinois. About twenty years prior to her suit, she lived in Africa, "from which place she was shiped [sic] by persons unknown to her" and brought to Charleston, South Carolina.[59] Dunky subsequently lived in Kaskaskia, Illinois, as an indentured servant until April 1831, when Andrew Hay brought her to St. Louis. One witness in Dunky's case testified that she had "a yellow tinge and scars upon her cheeks apparantly [sic] made with a knife," which led him to believe that she was "a native African." He also noted that the son of her previous owner

[58] Ibid., p. 23.

[59] *Dunky v. Hay, Andrew*, July 1831, Case No. 12, SLCC, p. 1.

William Morrison "brought said Dunky to Galena and left her to hire her own time."[60] This testimony indicates how Dunky used both evidence of her birth in Africa, as well as living in Illinois and acting independently while living there, to aid her case for freedom. In a similar case, Jack sued Charles Collins for freedom in July 1831 based both on his African birth and his residence for over twelve months in Illinois.[61] These two cases reveal how the danger of kidnapping reached far beyond St. Louis and even beyond the United States, leaving anyone of African descent at risk.

Sometimes free people of color *willingly* accompanied their kidnappers from a free state to a slave state, not realizing the result would be enslavement. In a handful of cases, plaintiffs in freedom suits described how a white person had "persuaded" them to leave their family and their home, seemingly for work or a new opportunity, only to have that white person either claim them as a slave or sell them into slavery. When this happened, evidence about living as a free person and being recognized by the community as free could be paramount in deciding whose story to believe. Although it is not always clear how the court determined who was persuasive in their testimony, white witnesses certainly helped bolster the cases of enslaved plaintiffs.[62] In his 1839 case against Benjamin Clapp, Charles Endicott's petition stated that he

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[60] Ibid., p. 21.

[61] *Jack, a man of color v. Collins, Charles*, July 1831, Case No. 3, SLCC.

[62] Sometimes plaintiffs and defendants offered additional witness testimony about the general character of witnesses in the case. Testimony about a person's character or reputation could be positive or negative. In other words, defendants sometimes used character witnesses to discredit witnesses for enslaved plaintiffs by suggesting that they were dishonest. In other instances, character witnesses testified about a person's reputation for honesty.

was "free Born & Justly entitled to his liberty" because he lived in Sackets Harbor, New York, and "his father & mother & himself were well Known as free persons."[63] In an affidavit filed with Endicott's petition, two witnesses testified that they believed Endicott's story that Samuel Gray "persuaded" him to leave New York and "afterwards kidnapped him & sold him as a slave" to Benjamin Clapp, the defendant.[64] Depositions taken for Endicott supplement this testimony and produce more evidence that the community recognized Endicott and his parents as free. Another witness testified that he knew Endicott's father and "he was reputed a free man & acted as such."[65] Calvin Case testified that Endicott's parents acted as free persons "as all other colored persons do" in that area. When cross-examined about whether he knew of any runaway slaves who "pass themselves off as free persons," Case replied that he had "never known any as low down as Sackets harbor [but] higher up about Buffallo [sic] & on the lake there are."[66] Case's willingness to admit to knowing about some runaway slaves in New York may have helped his credibility to the St. Louis community. On January 26, 1841, a jury found Clapp guilty and set Endicott free.

A similar group of cases from July 1837 indicates how white guardians used trickery to convince free people of color to accompany them to slave states, only to enslave them once they arrived. Lewis, William, Robert, Phebe, and Nancy Stubbs

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[63] *Endicott, Charles v. Clapp, Benjamin*, July 1839, Case No. 116, SLCC, p. 3.

[64] Ibid., p. 5.

[65] Ibid., p. 13.

[66] Ibid., p. 14.

all sued William Burd (sometimes spelled Bird) for freedom based on their birth in Campbell County, Virginia, to a free woman of color. The case files for Robert, Phebe, and Nancy are short and incomplete, but the details of their cases can be gleaned from Lewis and William's cases. According to William's petition, William Burd lived in the same county of Virginia where the Stubbs family resided. When Burd decided to migrate to Missouri, he "induced your petitioner to accompany him." After they arrived in St. Louis, Stubbs reported that "from that time to this" Burd "has resided in the city of St. Louis and…held your petitioner in slavery."[67] This means that for the previous *four years*, Burd held five members of the Stubbs family as his slaves. None of these cases elaborate on how a white person could "persuade" or "induce" a free person of color to leave their home for an unknown location in a slave state, but it is certainly imaginable that Burd's residence in the same community as the Stubbs family made him appear more trustworthy. Perhaps he promised them employment (presumably free employment), or the possibility of land in the new western state of Missouri. Whatever their reasoning, some free people of color willingly accompanied their eventual kidnappers.

Uses of Law

Free people relied on the legal system to protect their limited rights and privileges in antebellum society. Like slaves, free people of color depended on the same law that restricted their liberty to also preserve and uphold the few benefits they did enjoy. Suing for freedom was just one way free blacks relied on the law to protect them. The variety of ways free people of color interacted with the legal

[67] *Stubbs, William v. Burd, William*, July 1837, Case No. 133, SLCC, p. 1.

system suggest both their reliance on the law and their expectation that the law would recognize the validity of their claims and side with them in suits against other black people as well as those against white individuals.[68] Free people of color depended on the law to uphold their own mastery over others; free black slaveholders existed throughout the antebellum south, and St. Louis was no exception. When slaves challenged these black masters, black slaveholders appeared in court as slaveholding defendants.[69] Free people of color also turned to the courts when whites attempted to take advantage of their vulnerable position in the social order by tricking them, trying to swindle them out of money, or failing to live up to their promises. When these incursions happened, some free people of color used the courts as recourse to these injustices. In a variety of ways, free people of color approached the St. Louis Circuit Court and expected the Court to hear their claims and protect their interests.

Though many free people of color ended up in the courts of St. Louis as plaintiffs in freedom suits, occasionally free people of color owned slaves who could sue *them* for freedom. Freedom suits against black defendants suggest that a legal system run by powerful whites also supported the mastery of a few powerful blacks. A handful of these cases exist in the Circuit Court records, and many of them involved one particular free black slaveholder, the Reverend John Berry Meachum. Meachum was a vital local figure, especially among slaves and free people of color.

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[68] A full study of all of the many ways free blacks in St. Louis interacted with the legal system is beyond the scope of this project. This section will attempt to raise some of the issues other than directly suing for freedom that come up in and around these types of cases.

[69] For a thorough study of one black slaveholder, see Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York and London: W. W. Norton & Company, 1984).

He warrants greater examination here both because of his important community role, and also because few historians have examined Meachum's involvement in the freedom suits and the implications this has for the role of law in the black community.[70] Although slaves and free people of color most often used the legal system for protection from white slaveholders, Meachum's example suggests that sometimes the law also protected blacks from abuses perpetrated by other free people of color.

A brief look at Meachum's background, his motivations, and his accomplishments helps to establish the complex nature of his position within the St. Louis community of free people of color. Born a slave in Virginia in 1789, Meachum moved to Kentucky with his owner, who allowed him to hire himself out and earn enough money to purchase his freedom.[71] After buying his freedom, Meachum returned to Virginia and purchased his father, whom he emancipated. Meachum's father was a Baptist preacher, and after obtaining freedom, he introduced Meachum to the Baptist faith, which Meachum converted to in 1811. Following his baptism,

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[70] None of the works I located mention Meachum's role as a defendant in freedom suits. Most histories of free people of color leave Meachum out completely, or mention him only in passing (see Berlin, *Slaves without Masters,* p. 70). The best evaluation published to date is Dennis L. Durst, "The Reverend John Berry Meachum (1789-1854) of St. Louis: Prophet and Entrepreneurial Black Educator in Historiographical Perspective," *The North Star: A Journal of African American Religious History* 7:2(Spring 2004), accessed at: http://northstar.vassar.edu/volume7/durst.pdf (July 26, 2008). See also Michael Patrick Williams, "The Black Evangelical Ministry in the Antebellum Border States: Profiles of Elders John Berry Meachum and Noah Davis," *Foundations* 21:3(1978): 225-41, for an analysis of how Meachum worked within the constraints of the border society where he lived.

[71] John B. Meachum, "An Address to All the Colored Citizens of the United States" (Philadelphia: Printed for the author by King and Baird, 1846; reprinted by Chapel Hill: Academic Affairs Library, University of North Carolina, 2001), Electronic Edition accessed at: http://docsouth.unc.edu/neh/meachum/meachum.html (July 20, 2008). Much of what we know about Meachum comes from this "Address," written by him in 1846. The following sketch comes from the "Address," pp. 3-5.

Meachum and his father returned to Kentucky to free Meachum's mother and siblings. Once they accomplished this goal, Meachum moved to St. Louis, where his enslaved wife had moved with her owner. When he arrived in St. Louis in 1815, Meachum had little money and no connections, but his training as a cooper allowed him to make a good living. Following his purchase of his wife and children (he does not specify how many children he had) and their manumission, Meachum claimed that he bought twenty additional slaves, whom he trained to work in trades. Meachum claimed that when these individuals earned enough money to repay their purchase price to Meachum, he emancipated them.[72]

From the time of his ordination to the ministry in 1825, Meachum played an increasingly important leadership role in the antebellum St. Louis free black community, heading the First African Baptist Church and also running a Sunday school for black children. Meachum believed that education was critical to blacks' ability to improve their situations in antebellum America. His "Address to All the Colored Citizens of the United States," published as a pamphlet in 1846, called for all free people of color to unite as one body and work together to improve their position within society. His "Address" specified that only through educating children to read and write, as well as to work and farm, and by teaching them the virtues of hard work and "industry," could blacks bring about changes in the condition of their people in the United States.[73] When the legislature passed a law against teaching blacks to read or write, Meachum improvised by holding school on a steamboat on the Mississippi

[72] Ibid., p. 5.

[73] Ibid., pp. 16-19.

River, where the federal government held jurisdiction, and he ferried black children to and from his "Floating Freedom School," as it became known.[74]

Although Meachum's claims about buying slaves in order to free them may be correct, Meachum also found himself a defendant in a number of freedom suits, a fact that suggests his willingness to emancipate his slaves may have been less expansive than he claimed. It is also possible, however, that Meachum used these freedom suits as a way to confirm the enslaved plaintiff's freedom before the law, with Meachum acting as a defendant simply to help these men and women receive legally recognized freedom. In March 1835, Judy, also known as Julia Logan, sued Meachum for freedom based on her working in Indiana and Illinois, and a jury awarded her freedom.[75] The year after the final judgment in Judy's case, her son, Green Berry Logan, also sued Meachum for freedom based on the fact that the court declared his mother to be free, so that should also make him free. Meachum defaulted on this case, allowing Logan to win his freedom in exchange for nominal damages.[76] A year later, a second woman named Judy also sued Meachum for freedom, and a jury also

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[74] Durst, "The Reverend John Berry Meachum," 6.

[75] *Judy (also known as Julia Logan) v. Meachum, Berry*, March 1835, Case No. 11, SLCC; St. Louis Circuit Court Record Book 8, March 23, 1836, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 24. Meachum appealed this verdict to the Missouri Supreme Court, who agreed with the Circuit Court and affirmed their decision for Judy's freedom. Judy's son Green Berry Logan also sued Meachum for freedom after Judy's successful suit, in July 1836. See *Logan, Green Berry, an infant of color v. Meachum, John Berry, a free man of color*, July 1836, Case No. 22, SLCC.

[76] *Logan, Green Berry, an infant of color v. Meachum, John Berry, a free man of color*. For the decision and damages, see St. Louis Circuit Court Record Book 8, December 22, 1836, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 174.

found her to be a free woman based on her hiring out in Illinois for an extended period of time.[77]

Meachum registered little resistance to most of the freedom suits filed against him, which suggests that he may have colluded with these enslaved plaintiffs, feigning his opposition to their suits in order to obtain clearer legal declarations of freedom for the petitioners. In some cases he defaulted by failing to appear in court, and in others he did not require a jury. Although it is possible that Meachum had benevolent motives in his defense of freedom suits, one case stands out because it alleges a specific, cruel treatment by Meachum towards a fifteen-year-old girl named Brunetta Barnes. In 1840, Brunetta sued Meachum for freedom, but she also instituted a separate case complaining of Meachum's treatment, asking the court to bar him from mistreating her and protect her from this abuse. In her petition, Brunetta explained that she already sued Meachum for freedom, but while her suit continued in court, he "is in the habit of sending her to sell and deliver milk on board the several steamboats lying at St. Louis wharf." When she completes these errands, which is "long before it is fully light…she is exposed on these occasions to insults of the grossest character from various members of the crew of different vessels." She continued to explain that Meachum had other slaves, "among them her brother," who "are more fit than herself for such errands." With help from her next friend Peter Charleville, she sent Meachum a written request "couched in the most respectful language, stating the inconveniences she suffers from," and that "Meachum has

[77] *Judy, a woman of color v. Meachum, Berry*, March 1837, Case No. 40, SLCC; St. Louis Circuit Court Record Book 8, August 23, 1837, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 304.

nevertheless continued to send her as before to said steamboats." Not only that, Meachum also "declared his determination to pay no regard to her request."[78] Brunetta thus appealed to the court to protect her by forbidding Meachum from sending her to this dangerous place at the early morning hour when sailors could heap abuse on her. The court responded by ordering Meachum to "relieve the petitioner from the grievances complained of in her petition and find other employment for said petitioner," although the court allowed Brunetta to remain in Meachum's custody during her pending freedom suit.[79] The court decided Brunetta's freedom suit in her favor after both parties agreed not to have a jury, suggesting that Meachum had little argument against her claim to freedom.[80]

Meachum's role in freeing slaves needs to be considered in light of these freedom suits. It is possible that not all of the slaves he purchased received their freedom when they expected it, but their case records also suggest that Meachum often failed to defend against their claims, with one exception. Meachum did appeal Judy's case in 1835 to the Missouri Supreme Court, but this was possibly because the person who sold Judy to Meachum paid for this appeal, fearing he would be left holding the warranty for Judy and lose the price of her sale to Meachum. Meachum

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[78] *Barnes, Brunetta, of color v. Meachum, Berry*, July 1840, Case No. 123, SLCC, pp. 3-4.

[79] St. Louis Circuit Court Record Book 11, September 2, 1840, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 225.

[80] St. Louis Circuit Court Record Book 13, August 22, 1842, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 326. Brunetta's brother, Archibald Barnes, also sued Meachum for freedom on the same grounds as Brunetta, although he did not file a separate case alleging cruel treatment. For his case, see *Barnes, Archibald, of color v. Meachum, Berry*, November 1840, Case No. 41, SLCC. The court decided Archibald's case in his favor on the same day as Brunetta's, again without needing a jury.

was an important leader in the St. Louis community, and although he did not openly agitate for emancipation or profess abolitionist sentiment, he did find ways to help some slaves obtain their freedom. His mistreatment of Brunetta Barnes seems like strange behavior for a Baptist preacher who bought slaves to help them become free. His reasons for forcing her to go to the docks in the early morning hours remain a mystery.

Free people of color could serve as witnesses in freedom suits, but only when the defendant was also a free person of color. One case against Meachum serves as an example of the type of testimony entered by black witnesses and some of the ways around allowing this kind of evidence. In the 1835 case of Judy (also known as Julia Logan) against Meachum, the testimony of Lewis, a man of color, formed the basis for Meachum's request for a new trial. Lewis could only testify in this trial because Meachum was a free black, so Meachum argued that a white person also had a pecuniary interest in the case. Lewis testified that "Judy was sent by Benjamin Duncan, her then owner, from…Kentucky, into the state of Indiana, where she remained about four weeks" working for John Daniels. He also reported "Benjamin Duncan told him, the said Lewis, that said Daniels had paid him for the services of Judy."[81] After the verdict in Judy's favor, Meachum's attorney, Charles Drake, filed an affidavit listing reasons for the court to grant Meachum a new trial. Drake complained that "Lewis, a man of color, was admitted & testified as a witness, when, though the defendant is a man of color, one James Newton a white man was and still is interested in the event of this suit." Apparently, Newton sold Judy to Meachum

[81] *Judy (also known as Julia Logan) v. Meachum, Berry*, March 1835, Case No. 11, SLCC, p. 23.

and "in the bill of sale given by him of the said Judy to the said defendant is a clause binding the said Newton to defend the said Meachum in the quiet & peaceable possession of said Judy against any other claim."[82] Apparently this warranty also applied to any possible case for freedom. Drake also filed an affidavit claiming he did not realize that a man of color would be introduced as a witness, and so he "was taken wholly by surprize [sic]" when Lewis testified, which is the reason he could not produce the bill of sale between Newton and Meachum until after the trial. He also added that he "was employed to act for defendant in this case by said Newton through his agent."[83] This is notable because it implies that Meachum may not have hired an attorney, or at least not hired Drake, to defend his case. Newton was the person who stood to lose the cost of Judy when she won her freedom, so he hired Drake to defend Meachum's case to protect his interests. The court did grant an appeal to the Missouri Supreme Court on the grounds that Lewis's testimony should have been excluded and a new trial granted on this basis. The Supreme Court responded that "no objection was made to his [Lewis's] competency at the time" of the trial, so "the power of the court to grant a new trial being discretionary they will not exercise it for the purpose of excluding competent testimony."[84] In this case, the Supreme Court defended the right of a free person of color to testify when the named defendant to a case was also a person of color.

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[82] Ibid., p. 17.

[83] Ibid., p. 19.

[84] Ibid., p. 26.

Protection from Fraud

Free people of color needed the courts' protection for a variety of reasons. Free blacks faced many restrictions on their liberty, and even the few rights they possessed were under constant attack. Scheming whites conspired to deprive them of these privileges, and to take advantage of their vulnerable position within antebellum society. When this happened, free people of color relied on the courts to buttress their autonomy and keep them safe from incursions on it. Cases involving these issues occurred numerous times in the St. Louis Circuit Court, suggesting the existence of a close relationship between free blacks and the law in a slaveholding community. In a society where slavery was crucial to the economy, and to the way whites conceived of their own freedom, the law played a vital role in delineating the boundaries of black rights and privileges. With so many individuals working against them, free people of color needed the courts to defend them and protect their liberty.

Whites could try to defraud free people of color of their limited funds in a number of ways, including tricking them into buying freedom for blacks who were already free. In the early 1830s, Coleman Duncan, a resident of Illinois (although he also frequently did business in St. Louis) and a defendant in two St. Louis freedom suits, sold Gilbert Duncan to his brother Jonathan Duncan, a free man of color. Coleman claimed Gilbert as a slave, and he threatened that if Jonathan would not buy Gilbert, Coleman would "take said Gilbert to some other place & sell him as a

slave."[85] Jonathan and Gilbert agreed to pay Coleman Duncan $100 up front, and three additional $100 payments over the next three years.

Jonathan and Gilbert needed the court's protection when they discovered that Coleman tricked them into making this arrangement. In March 1831, Jonathan and Gilbert Duncan sued Coleman Duncan in chancery court to recover this money. They recounted this story and added that Coleman proposed that "as Gilbert desired to be a free man Said Coleman should Convey said Gilbert to said Jonathan as a slave by bill of Sale – That Said Jonathan Should give said Gilbert a Deed of Emancipation."[86] Jonathan explained that he, "acting under the belief that the representation made by said Coleman that said Gilbert was his slave was true & said Gilbert acting under Duress of false imprisonment," agreed to pay Coleman the money he asked for to free Gilbert. Despite their assenting to this arrangement, in their complaint they "alledge [sic] that when said Bond [of sale] was executed & long before that said Gilbert had become entitled to his freedom & said Coleman well knew it but then & for a long time previous held said Gilbert in slavery & false imprisonment."[87] The complaint also stated that Edward Tracy and Charles Wahrendorff, local merchants, should be named defendants to the suit because they held the $300 bond for the balance of Gilbert's purchase price. Because Jonathan and Gilbert claimed that Coleman

[85] *Jonathan & Gilbert, free men of color v. Duncan, Coleman; Tracy, Edward; Wahrendorff, Charles*, March 1831, Case No. 304, SLCC, p. 1.

[86] Ibid., p. 1.

[87] Ibid., pp. 2-3.

Duncan was "insolvent" and not a resident of Missouri, they wanted to recoup their losses from Tracy and Wahrendorff.

Tracy and Wahrendorff presented a different side of the story in their answer to the charge. Their response reminds us that suing for freedom was no easy feat, and sometimes free people of color like Jonathan Duncan tried to help relatives avoid the difficult step of suing for freedom. Tracy and Wahrendorff stated that in 1830, Jonathan approached Wahrendorff and stated that his brother Gilbert "could get free" if Jonathan could purchase him. Wahrendorff claimed he "acted merely as the friend of Jonathan & at his request." Wahrendorff's answer went on to suggest that Jonathan purchased Gilbert to avoid Gilbert having to sue for freedom. Apparently Coleman and Gilbert got into a dispute, and Gilbert threatened to sue for his freedom to avoid being sold away from St. Louis, "but that as he Jonathan knew that Gilbert belonged to Coleman, it would be best to settle the matter amicably."[88] Wahrendorff argued that there was no "fraud" in the transaction, but that Jonathan and Gilbert had chosen "rather to pay the sum of four hundred dollars, than to abide the result, & pay the expenses, of a tedious suit." Although Wahrendorff and Tracy did not know "whether said Gilbert could have obtained his freedom from said Coleman by suit," they said that "both Jonathan & Gilbert were doubtful of the event, & chose rather than try the experiment of a suit," to purchase freedom instead.[89] This case dragged

[88] Ibid., pp. 12-13.

[89] Ibid., pp. 14-15.

on for years before Gustavus Bird, the agent for Jonathan and Gilbert Duncan, asked the court to dismiss the suit.[90]

Free blacks like Jonathan and Gilbert relied on the legal system to protect them from Coleman's fraud, but Coleman also expected the court to help protect his interests and force Jonathan and Gilbert to pay the agreed-upon sum. While the case to recover the bonds taken out to purchase Gilbert continued, Jonathan and Gilbert failed to pay their $100 notes to Coleman Duncan. Coleman continued to push for the funds Jonathan and Gilbert owed him for Gilbert's freedom, and in March 1832, he sued Jonathan for a breech of covenant to recover his money. In his plea of not guilty, Jonathan claimed that the sale of Gilbert was the result of "fraud" and "misrepresentation." Jonathan also reported that in April 1830, Gilbert obtained a deed of emancipation in Galena, Illinois, and that Coleman did "seize said Gilbert & then & there Sell Said Gilbert to Said Defendant as a Slave well knowing said Gilbert to be a free man."[91] The case ended when James Thomas, who held one of the notes from Jonathan and Gilbert to Coleman, voluntarily agreed not to prosecute it further.[92] The circumstances of Jonathan and Gilbert Duncan's struggle to win Gilbert's freedom and have it legally recognized by Coleman Duncan reveal one of the many ways whites tried to thwart the efforts of free blacks to secure their autonomy.

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[90] St. Louis Chancery Court Record Book 1, April 2, 1833, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 414.

[91] *Duncan, Coleman v. Duncan, Jonathan*, March 1832, Case No. 29, SLCC, p. 3.

[92] St. Louis Circuit Court Record Book 3, March 23, 1833, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 426.

Free blacks sometimes needed the assistance of white benefactors to protect their family members from the horrors of slavery, but when white supporters reneged on their promises, these free people of color hoped the law would intervene on their behalf and force whites to honor their agreement. In an 1838 chancery case, Samuel Stokes, a free man of color, sued John and William Finney for the freedom of his grandchildren Mary and John. According to Stokes' petition, his daughter Charity was the slave of William Stokes. After William Stokes died, his administrator put Charity and her daughter Mary up for sale. At this time, Samuel Stokes and his wife "felt great anxiety to make such arrangements as to secure the freedom of their child & grand child aforesaid but they were unable at that time to buy them. that having great confidence in the responsibility & integrity & humane feelings of John and William Finney," they asked the Finneys to buy their daughter and her one-year-old child until they could pay the purchase price. The Finneys agreed to buy them and hold them until Stokes could pay, and they also agreed not to make a profit off of the situation, stating "that in making the contemplated purchase all they desired was to [help these slaves] be saved from sale and to serve the cause of Liberty and humanity."[93] The Finneys bought Charity and her daughter Mary, and Mary lived with Samuel and his wife until she was old enough to serve the Finneys. Charity had a second child, her son John, while working for the Finneys. During her pregnancy, she lived with her parents, who "cheerfully nursed & maintained her wishing the said Finneys should be at as little trouble & expense as possible with his child & believing

[93] *Stokes, Samuel, a man of color v. Finney, John & William*, Nov. 1838, Case No. 501, SLCC, pp. 1-2.

that they should act towards her with good faith."[94] They also nursed their grandson John until he was old enough to serve the Finneys.

Samuel Stokes and his wife paid the Finneys $229 towards the $325 purchase price, but despite this effort, the Finneys "sold said Charity to one Gratiot for two hundred & fifty dollars & that she died in servitude." Stokes complained to the court that despite receiving $229 from them and $250 from Gratiot for Charity, the Finneys "now claim said Mary & John as slaves for life & refuse to convey them to your orator so that he may set them free or to emancipate them themselves." The Finneys also refused to refund any money to Stokes or to pay him for taking care of his grandchildren while they were young or too sick to work. Claiming the Finneys' action to be "against equity & good conscience," Stokes asked the court to remedy his situation. Because the Finneys sold Charity "against her consent & thereby rendered it improbable that the contract between your orator & them could be performed," Stokes asked that the Finneys either convey his grandchildren to his custody or refund the money he paid to them for this purpose.[95] Although it is not clear if the Finneys ever did either of these things, on September 6, 1842, the court dismissed the case because of Stokes' failure to prosecute the suit.[96] It is possible that the Finneys had no intention of honoring their agreement with Samuel Stokes and his wife, and they perhaps used the excuse of wanting to help Stokes and his family to obtain a lower

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[94] Ibid., pp. 3-4.

[95] Ibid., pp. 4-5.

[96] St. Louis Chancery Court Record Book 2, September 6, 1842, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 153.

price for Charity and her daughter at auction. Although it is impossible to know the Finneys' intentions, their actions are a reminder of how despite the reliance of free people of color on the law to uphold their rights, the law also served the function of upholding the property rights of white slaveholders like John and William Finney.

Wrongfully enslaved individuals sometimes preferred to negotiate agreements for freedom outside of the courtroom, rather than institute legal cases, but whites could ignore these arrangements, forcing the law to step in and make determinations about personal status. When this happened, free people of color relied on their own ingenuity and determination as well as the power of the law to secure the freedom promised to them. An 1826 freedom suit provides evidence of how whites made agreements with blacks that they had no intention of honoring. John Merry sued Clayton Tiffin and Louis Menard for his freedom based on his birth in Cahokia, Illinois, after passage of the Northwest Ordinance. In addition, he recounted how despite this right to freedom, a man named Pensins claimed him as a slave and gave Merry to his son Louis Pensins as a gift.

When wrongfully enslaved, Merry chose to enter an agreement to confirm his legal freedom rather than institute a freedom suit. Louis Pensins agreed to allow Merry to purchase his freedom for $450. After Merry paid Pensins $230 towards his price, Pensins set him free and allowed him to go to St. Louis to hire himself out to earn the remaining money he owed. After Merry worked in St. Louis and lived as a free man for several months, Pensins arrived and "seized your petitioner by main force and put your petitioner in the common jail, as his slave." Pensins defiantly claimed "that it was lawful to cheat defraud, oppress & reduce your petitioner to a

state of slavery," so he "did chain and manacle your petitioner, and put him on board a certain steam boat, bound for the city of Orleans." Pensins sent Merry to a New Orleans merchant, asking him to sell Merry as a slave. In 1825, Andrew Sheckoni purchased Merry, but "being indignant at the injustice & oppression fraud & injustice thus inflicted upon him, your petitioner absconded from the possession of said Sheckoni, and after many hardships reached Cahokia in the County of St. Clair in the state of Illinois." After this long journey to return to freedom in Illinois, Merry was again "forcibly seized by certain persons, who pretended that your petitioner was an outlying slave." These "persons" had him thrown in the St. Louis jail until Clayton Tiffin and Louis Menard removed him and claimed him as their slave.[97]

After his second re-enslavement, Merry sued for his freedom. When the St. Louis Circuit Court decided against him, he appealed to the Missouri Supreme Court and won based on his birth in Illinois prior to the Northwest Ordinance. Neither the Circuit Court nor the Supreme Court chose to legally recognize the agreement he made with Pensins to purchase his freedom. When blacks, slave or free, made these kinds of arrangements, whites responses with widespread and often openly allowed trickery and fraud.

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Free blacks lived a separate existence between slaves and free persons; in a slave society, their status threatened the existing hierarchy and threw it into confusion by suggesting that blacks could live as free persons and sometimes even prosper

[97] *Merry, John, a free man of color v. Tiffin, Clayton; Menard, Louis*, November 1826, Case No. 18, SLCC, p. 3.

within their communities, an argument that challenged the claim that slavery was the best condition for blacks. For this reason, whites worked to limit the resources and the rights of free people of color, creating restrictive laws and exercising prejudice in a variety of ways.

Free blacks in and around St. Louis enjoyed only an insecure freedom, which could be threatened at any time by kidnappers looking to deprive them of their liberty and sell them into slavery. Kidnapping was a major concern for free people of color, especially those people living in one of the states in the old northwest, whose close location to slave states made them particularly vulnerable to kidnapping and sale. Kidnapping only increased as the antebellum period came to a close, when rising slave prices made the prospect of selling free persons as slaves even more enticing. When free blacks became the victims of kidnappers, they had little recourse to regain their liberty. In St. Louis, suing for freedom was one option available to them, and many kidnapping victims took advantage of this possibility, using the courts to restore their rights.

Free blacks were susceptible to numerous scheming whites looking to defraud them of their financial resources, their autonomy, and their limited privileges. When whites entered into agreements with free people of color and with slaves, there was little to stop them from breaking their promises and cheating these individuals. When this happened, blacks relied on the courts to correct these wrongs and to force whites to honor their agreements. Although this did not always work, the courts sometimes sided with free blacks when the court believed them to be victims of whites' deception. It is impossible to know exactly why the court chose to side with free

people of color over white defendants, but the court's willingness to hear the cases of free blacks and uphold their rights suggests that in many cases, the court placed the rule of law above the interests of slaveholders. The cases of whites cheating free people of color out of money or breaking their agreements demonstrate the fragile nature of freedom for free blacks and how easily the lines separating them from slaves could become indistinguishable.

Freedom was an invaluable asset, and free blacks jealously guarded the rights and privileges afforded them with this status. When their independence came under attack, they turned to the law to uphold their delicate position within antebellum society. Negotiating their place within the bounds of the law, free people of color called whites to answer to the injustices they sometimes perpetrated. Although their freedom was precarious and vulnerable, free blacks relied on it and defended it through their actions and their use of the law. Their resistance to encroachments on their liberty represented a form of pushing back against the hierarchical structure that placed them only a slight step above slaves and below all whites. Through their existence and through their actions, free blacks blurred the social distinctions amongst all people of color and suggested that blacks could live and succeed as free, a fact that threatened to throw the slave system into disarray. In a border city like St. Louis, social distinctions were that much more important because of the threat posed by a growing population of free blacks within St. Louis and the larger populations of free people of color in Illinois and the northwest. For this reason, cases in which free blacks turned to the courts to bolster their liberty demonstrate the role the law played in upholding these social distinctions.

Chapter Five
Changes in Law, Changes in Politics: St. Louis in the Turbulent 1850s

The fifteen years prior to the outbreak of the American Civil War witnessed a sweeping wave of changes to the political climate and the laws of St. Louis. This period saw the slavery crisis explode on the national political scene, reigniting sectional tensions in the border city of St. Louis as well as throughout the antebellum United States. Numerous scholars have examined this era's political ideology and the national crisis over slavery in the decades leading up to the Civil War.[1] This chapter uses this scholarship to show how Missouri's location on the border of slave and free states meant that it played an integral role in the national debate over slavery and its future in American society and also to highlight the influence of debates over slavery on suits for freedom. Missourians participated in some of the most pivotal events of this era, fueling the national contest over slavery at the same time that this crisis dictated local and state politics in the border state. All of this had implications for the slaves and free people of color living in St. Louis because in addition to the explosive political climate leading to numerous new restrictions and regulatory statutes, immigration, the rise of the Republican party, and an increase in anti-slavery sentiment in the city helped facilitate favorable outcomes in freedom suits.

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[1] David Potter, *The Impending Crisis 1848-1861* (New York: Harper and Row, 1976); Michael F. Holt, *The Political Crisis of the 1850s* (New York: John Wiley & Sons, 1978); Eric Foner, *Politics and Ideology in the Age of the Civil War* (New York: Oxford University Press, 1986); William W. Freehling, *The Road to Disunion, Volume 1: Secessionists at Bay* (New York: Oxford University Press, 1990); John Ashworth, *Slavery, Capitalism, and Politics in the Antebellum Republic* (Cambridge: Cambridge University Press, 1995); Michael A. Morrison, *Slavery and the American West: The Eclipse of Manifest Destiny and the Coming of the Civil War* (Chapel Hill: University of North Carolina Press, 1997).

Slavery continued to be a central issue in national politics in the mid-1840s, growing in importance throughout the 1850s and culminating in the Civil War. Southern slaveholders and northern opponents of slavery clashed in the United States Congress, but these groups also mingled side by side in the border states, including Missouri. Home to migrants from the Northeast as well as the South, Missouri served as a microcosm of the larger nation, where debates over slavery were crucial to the country's politics. Located just across the river from free territory, Missouri occupied a pivotal place in the conversations over the future of slavery in the nation.

Looking at debates over slavery in the antebellum era reveals the centrality of St. Louis and Missouri to national conflicts over this issue. Several of the nation's political controversies over slavery involved the people of Missouri, with Dred Scott's freedom suit in the United States Supreme Court emerging as perhaps the most important of these events. A closer examination of Dred and his wife Harriet's cases on the local, state, and national levels helps uncover what was at stake when the nation argued over their freedom: the future for all blacks, slave and free, in the nation. Just as Dred Scott's case showcased the issues surrounding slavery and the place of slaves and free blacks in the nation, other local freedom suits in the St. Louis courts raised questions about the position of slaves and free blacks within a border state like Missouri.

The shifting political climate in the state as well as on the national stage had implications for the laws of Missouri and these, combined with a large influx of immigrants, paved the way for changes in the outcomes of freedom suits. A critical change to the laws of freedom suits limited enslaved individuals' ability to bring a

suit for freedom. New laws also placed stricter limitations on the lives and movement of slaves and free people of color in the state of Missouri, and although the courts were slow to enforce some of this legislation, eventually slaves and free people of color felt the power of these new statutes through the actions of local law enforcement and the courts. Despite these laws, freedom suits continued, and the demographic changes led the city to break with the slaveholding tradition and stop deciding cases in favor of defendants.

The role of anti-slavery agitators in bringing freedom suits in St. Louis may never be fully appreciated because of the secretive nature of abolitionist work in Missouri. Nevertheless, examples of anti-slavery activity do surface in some court discussions, and the willingness of anti-slavery activists to aid enslaved individuals coming to court had huge implications for the outcomes of freedom suits and the reactions of some slaveholders against these cases. Anti-slavery activists also clashed with pro-slavery factions in St. Louis and throughout Missouri. These battles led to changes in laws and created a climate of fear and unrest among the residents of St. Louis. When violence erupted over the slavery issue, slaves and free people of color felt the repercussions.

The role of national politics in freedom suits should not be overstated – the outcomes of these cases resulted primarily from the local situation and the beliefs and values of judges and juries in St. Louis. Even so, the attitudes of judges and juries in freedom suits could be influenced by the national political debates occurring around them. St. Louis and Missouri were often at the heart of the nation's debates over the slavery issue, from the Missouri Compromise to Bleeding Kansas to Dred Scott. St.

Louis witnessed a number of other episodes, such as the lynching of Francis McIntosh and the attacks on and martyrdom of abolitionist Elijah Lovejoy, which surely factored into discussions surrounding slavery in the city and also to the outcomes of freedom suits. The political scene influenced the St. Louis community's views on slavery by hardening attitudes towards slaves and free blacks, resulting in increasing restrictions on black autonomy and new laws that made it more difficult to sue for freedom.

This chapter will explore the influence of national and local politics on freedom suits, as well as the changes that occurred as a result. In the late 1840s and 1850s, when slaveholders pushed even harder for clear definitions of black people as socially inferior and legally enslaved, the changing demographics of the city of St. Louis frustrated their designs. A large influx of German and Irish immigrants in this time period brought increasing anti-slavery sentiment to this border community and transformed jury pools, allowing enslaved plaintiffs in freedom suits to enjoy a greater rate of success than in previous decades.

Antebellum St. Louis and National Politics of Slavery

When the slavery question burst onto the national political scene in 1820, Missouri was at the center of the conflict. The Compromise of 1820, also known as the Missouri Compromise, resulted from the question of whether Missouri would be a slave or a free state. Northerners, many of whose states had already abolished or were in the process of abolishing slavery, feared that allowing Missouri to enter as a slave state would upset the balance of power in the U.S. Senate. Southerners wanted to guarantee the ability for slaveholders to bring their slaves into new territories in

order to preserve their own power in Congress and to protect the institution they viewed as crucial to the region's survival. The majority of Missourians in 1820 wanted slavery to be permitted in their state. By this time, Missouri had nearly 20,000 slaves. With more entering every day, white Missourians erupted in protest over the suggestion that they would not be admitted as a slave state.[2] The eventual Compromise admitted Missouri as a slave state and Maine as a free state, which preserved the balance of power in the Senate. Even more important for future debates over slavery, the Compromise also created a line at the 36'30'' parallel to denote that new states admitted to the United States north of this line would not have slaves, and those territories south of the line could have slaves. Although the Missouri Compromise left both sides with battle scars in the form of added distrust and increased tension, it did manage to keep slavery in the background of national politics for over two decades.[3] This does not mean that slavery was a non-factor in national politics after 1820. Rather, slavery was the issue that simmered below the surface, feeding sectional tensions that arose over other issues such as the tariff and the national bank. St. Louisans also attempted to keep slavery in the background of the city's politics. In 1835, a group of leading citizens of St. Louis, including attorney

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[2] William E. Foley, *The Genesis of Missouri: From Wilderness Outpost to Statehood* (Columbia and London: University of Missouri Press, 1989), pp. 253, 293.

[3] Michael Holt argues that slavery remained of central importance in national politics throughout the antebellum years. I agree with Holt that slavery remained a significant issue, but I disagree that the importance of slavery to national politics did not escalate in the late 1840s and 1850s. Slavery came to dominate political debate in the wake of the Mexican War, when the question of whether the institution would spread into new territories became increasingly divisive in national politics, and it became the primary issue in American politics during the 1850s with the *Dred Scott* decision, the Kansas-Nebraska Act, the publication of *Uncle Tom's Cabin,* and John Brown's raid on Harper's Ferry. See Holt, *The Political Crisis of the 1850s*.

Hamilton Gamble, wrote a letter to the *St. Louis Observer* asking the paper to "pass over in silence everything connected with the subject of slavery."[4]

The lynching of Francis McIntosh in 1836 pushed the issues of violence towards blacks and the place of free blacks in a slave society to the forefront of local and national attention. Eric Gardner wrote of this event that it was "one of the most complex moments in St. Louis's racial history," and it "changed the national debate on slavery," mainly because of the response in St. Louis to the Reverend Elijah Lovejoy's coverage of the lynching in his newspaper editorials.[5] On April 28, 1836, McIntosh, a black steamboat steward, tussled with the deputy sheriff George Hammond and the deputy constable William Mull, while these officers were attempting to arrest two other black boatmen. When the other two boatmen escaped, the deputies arrested McIntosh. While en route to the St. Louis jail, McIntosh attacked the men with a knife, fatally stabbing Hammond in the neck and wounding Mull in the abdomen. The authorities caught and arrested McIntosh, and while he was in the St. Louis jail, a mob stormed the jail, dragged McIntosh out, and burned him to death.[6] This horrific lynching drew the ire of anti-slavery activists who sympathized with the plight of blacks in a slave society, contributing to the reputation of St. Louis

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[4] *St. Louis Observer,* December 5, 1835, as quoted in Harrison Anthony Trexler, *Slavery in Missouri, 1804-1865* (Baltimore, MD: The Johns Hopkins Press, 1914), pp. 117-18.

[5] Eric Gardner, "'You have no business to whip me': The Freedom Suits of Polly Wash and Lucy Ann Delaney," *African American Review* 41(2007): 35. The events surrounding Lovejoy's role in St. Louis and in Alton, Illinois, will be discussed later in this chapter.

[6] Gardner, "'You have no business to whip me,'" 35; Louis S. Gerteis, *Civil War St. Louis* (Lawrence: University of Kansas Press, 2001), chapter 1.

as a particularly violent city in its dealings with slaves and free blacks.[7] The incident brought the nascent tensions over slavery in St. Louis to life again, and from this point until the start of the Civil War, the issues surrounding slavery and the place of free blacks in society continued to attract local and national attention.

St. Louis tried to redeem its reputation after the McIntosh lynching in a May 1841 incident involving four black criminals, but the end result only fed into this reputation for racial violence and continued to make the city a focal point for national attention to slavery issues throughout the antebellum years. In May 1841, police arrested three free blacks, Charles Brown, James Seward, and Alfred Warrick, along with a slave named Madison Henderson. St. Louis authorities charged them with robbing a bank and subsequently burning it down, killing two white bank tellers. In an effort to provide the men with a fair trial, the city appointed prominent attorneys to defend these charges, but at the conclusion of their trial the court found the men guilty and sentenced them to execution by hanging. St. Louis's reputation for violence against African Americans only grew with the spectacle of their execution; boats provided special transportation to Duncan Island to witness the hanging, with an estimated attendance of 20,000, or "approximately three-quarters of the St. Louis population."[8] The fact that this violent episode drew such large crowds from the city

[7] Antonio F. Holland, "African Americans in Henry Shaw's St. Louis," in *St. Louis in the Century of Henry Shaw: A View beyond the Garden Wall,* ed. Eric Sandweiss (Columbia and London: University of Missouri Press, 2003), p. 60.

[8] Holland, "African Americans in Henry Shaw's St. Louis," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, p. 60.

added to the infamy of St. Louis in the national mindset as a place where violence against blacks, slave or free, was a commonly accepted part of life.

From the middle of the 1840s to the outbreak of the Civil War, slavery came to dominate America's national politics and to divide Missourians. The debate over going to war with Mexico, as well as the new territories the U.S. acquired at the war's conclusion, focused discussion on the future of slavery in these new western areas. As a western state, Missouri played an important role in these deliberations. In the debates over western expansion and the Mexican War, southerners and their supporters feared the loss of potential political power if the newly-acquired territories could not have slavery. Northerners, on the other hand, wanted to keep these new areas free of slaves, partly to avoid the competition for jobs they created for working-class white migrants. Most Missourians favored the annexation of Texas and western expansion generally, so when Missouri's Senator Thomas Hart Benton argued that the U.S. needed Mexico's approval before annexation, some Missourians felt Benton failed to represent their interests properly.[9] Proslavery forces dominated Missouri's state government throughout the antebellum years, and although there may have been

[9] Perry McCandless, *A History of Missouri, Volume II: 1820 to 1860* (Columbia: University of Missouri Press, 1972), p. 233. Benton underwent a shift in this period from his Jacksonian, proslavery roots to a more moderate position that supported slavery where it existed but opposed its expansion. This put Benton at odds with the proslavery, pro-Southern Democrats in Missouri and led to continued clashes between pro- and anti-Benton forces in the 1850s. Kenneth Winn also suggests that Benton's long residence in Washington D.C. contributed to his disconnection from the pulse of life in Missouri. See Winn, "Gods in Ruins: St. Louis Politicians and American Destiny, 1764-1875," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, p. 24. Harrison Anthony Trexler found that although Missouri's white population only made up one forty-fifth of the white population of the nation at the time of the Mexican War, men from Missouri comprised one eleventh of the volunteers in the War. See Trexler, *Slavery in Missouri,* p. 140.

some anti-slavery sentiment, most of it remained veiled at the state level until the mid-1850s.

Missourians, like people throughout the U.S., struggled over the place of slavery in their society as well as the future of the institution. In 1854, Senator Stephen Douglas of Illinois proposed the Kansas-Nebraska Act, which allowed the settlers of these territories to vote to decide whether to have slavery. This proposal created a storm of controversy in Missouri because it bordered the Kansas-Nebraska territory. Largely surrounded by free states to the north and east, Missourians feared that the admission of Kansas to the Union as a free state might bring the end of slavery in Missouri because abolitionists working in free states would entice Missouri's slaves to run away.[10] Western Missourians, and those in the heavily-slaveholding region known as "Little Dixie," pushed for slavery to expand into Kansas, and many of these individuals moved into Kansas to fraudulently vote for a proslavery constitution.[11] These proslavery supporters clashed with anti-slavery forces moving into Missouri and into Kansas, igniting a brutal guerilla war that left many dead on both sides and fueled the increasing tensions within the state of Missouri.[12]

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[10] Harrison Anthony Trexler called Missouri a "peninsula" of slavery surrounded by free territory, which is why Missouri's slaveholders became so concerned by the possibility of Kansas entering the Union as a Free State. See Trexler, *Slavery in Missouri,* p. 173.

[11] "Little Dixie" refers to several counties lining the Missouri River where most of Missouri's slaves lived. The area was the leading agricultural region of the state and a magnet for settlers from the Upper South states of Virginia, Kentucky, and Tennessee. For more on this region, see R. Douglas Hurt, *Agriculture and Slavery in Missouri's Little Dixie* (Columbia: University of Missouri Press, 1992).

[12] Louis S. Gerteis, *Civil War St. Louis*, p. 68. This struggle also had consequences for Missouri's economy, as northern investors and businessmen worried about the violence and began to view St.

At the same time, Dred and Harriet Scott started their fateful battle for freedom, which thrust Missouri's freedom suits into the national spotlight and again made a question about slavery in Missouri central to national discussions over the fate of slaves and free blacks in antebellum America. Beginning in 1846 with two petitions filed in the St. Louis Circuit Court, the Scotts' long struggle would have momentous consequences for slavery in St. Louis and for the national debate over the institution. The Scotts' cases began like the majority of other freedom suits in St. Louis, and their claim resembled numerous other cases that had come before them. Dred and Harriet Scott filed separate petitions for freedom in 1846, but shortly after, Harriet's case joined with Dred's, and her fate became dependent on the outcome of her husband's case.[13] Both Dred and Harriet based their claim to freedom on their residence in the Northwest Territory, at Fort Snelling in present-day Minnesota. Dred Scott also spent time in Rock Island, Illinois, bolstering his claim that he resided in free territory. Dred and Harriet met and married at Fort Snelling, when Harriet's owner, Major Lawrence Taliaferro, "gave" her to Dred.[14] Dred's petition reported

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Louis as perhaps more southern than western. See James Neal Primm, "The Economy of Nineteenth-Century St. Louis," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, pp. 126-27.

[13] For an excellent commentary on Harriet's life and her case, including the argument that she had a stronger claim to freedom than Dred, see Lee Vandervelde and Sandhya Subramanian, "Mrs. Dred Scott," *The Yale Law Journal* 106:4(1997): 1033-1122; Vandervelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (Oxford: Oxford University Press, 2009).

[14] Taliaferro noted in his journal that he "gave" Harriet to Dred, Lawrence Talioferro, *Auto-biography of Maj. Lawrence Talioferro (Written in 1864), in 6 Collections of the Minnesota Historical Society* (St. Paul, MN: Pioneer Press, 1894), 235, as quoted in Vandervelde and Subramanian, "Mrs. Dred Scott," 1054. The exact meaning of this statement is unclear: it could mean he granted her to her freedom to allow her to marry Dred, or that Taliaferro gave her to Dred's owner or perhaps even sold her to Dred's owner. Vandervelde and Subramanian argue that Taliaferro's giving Harriet to Dred made her claim to freedom even stronger than his, making it strange that his case subsumed hers.

that his owner, John Emerson, held him as a slave at Fort Snelling for five years, until Emerson went to Florida and left Dred and Harriet in St. Louis with Captain Bainbridge.[15] The Scotts did not decide to sue for freedom until after John Emerson's death, leaving them to sue his widow, Irene Emerson.[16]

Dred and Harriet's freedom suits began in St. Louis, much as numerous other men and women who sued for freedom, and their cases included some of the same frustrations as other slaves who sued for freedom. In their first case against the widow Irene Emerson, the court found for the defendant because one of the Scotts' witnesses, Samuel Russell, changed his testimony at trial and said it was his wife who paid for the hire of the Scotts from Emerson. Prior to the trial, Russell told J. R. Sackland, the Scotts' attorney, that he hired Dred Scott, but when he testified in court, he indicated it was his wife who hired Scott. When the Scotts asked for a continuance to be able to call Russell's wife to testify, the judge denied their motion and they lost their original case. In a second trial, the Circuit Court granted the Scotts their freedom, but Mrs. Emerson appealed to the Missouri Supreme Court. In a reversal of years of precedent on the issue, in 1852 the Missouri Supreme Court found against the Scotts' freedom and remanded the case for further proceedings.

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[15] *Scott, Dred, a man of color v. Emerson, Irene*, November 1846, Case No. 1, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, http://stlcourtrecords.wustl.edu (hereafter SLCC), pp. 1-12.

[16] The issue of why the Scotts decided to sue when they is a matter of debate among scholars. Some scholars argue that perhaps Dred or Harriet only recently learned of their right to sue for freedom. See Paul Finkelman, *Dred Scott v. Sandford: A Brief History with Documents,* The Bedford Series in History and Culture (Boston: Bedford Books, 1997), p. 19. See also Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), p. 252, who suggests Dred Scott learned of this right from the Blow family or from talking to other slaves in St. Louis; and Vandervelde and Subramanian, "Mrs. Dred Scott," 1083.

Historian Paul Finkelman argues that this decision represented a turning point in slavery jurisprudence, after which Missouri denied comity and placed its own laws above the laws of free states.[17]

The Missouri Supreme Court's decision to reverse substantial existing precedent is momentous because it happened at a time when slavery consumed national political discussions and was also a central concern of Missourians. While the proceedings against Mrs. Emerson continued in the Circuit Court, in 1854 the Scotts also filed a federal suit against Mrs. Emerson's brother John F. A. Sanford, the executor of John Emerson's estate and a citizen of New York.[18] The United States District Court of Missouri, presided over by Judge Robert W. Wells, allowed the case to proceed in federal court, meaning that Judge Wells did recognize that if Dred Scott was a free man, he was also a citizen of the state of Missouri. This would be a central issue in the U.S. Supreme Court decision, with the Court deciding the opposite. The decision that Dred Scott could be a citizen of Missouri reminds us that some whites recognized black people's ability to live as free persons and to enjoy certain rights and privileges, perhaps even the privileges of citizenship.

When the District court chose to follow the dictate of the Missouri Supreme Court and leave the Scotts in slavery, the issues involved combined with the crucial national debates over the place of blacks in society and the rights of free people of color and slaves. At least some antislavery forces viewed the Scotts' freedom suit as

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[17] Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981), p. 224.

[18] The U.S. Supreme Court clerk misspelled Sanford's name, so the Supreme Court case is *Dred Scott v. John F. A. Sandford*.

an opportunity to force the issue before the nation's highest court. For this reason, and with the continued financial assistance of the Blow family (who owned Dred Scott before John Emerson) and Montgomery Blair, a celebrated Missouri attorney who lived in Washington D.C. and agreed to take on the case for free, the Scotts continued to press their claim. There was also a substantial sum of money collected from the Scotts' hiring during their case; the winner of the federal case would also receive these funds. But the main reason for continuing this case to the U.S. Supreme Court was to force the issue of slavery to be decided on by the highest court in the land. The outcome of this case had the potential to provide enormous support for either the pro- or anti-slavery cause, and its importance brought a great deal of attention to the situation of freedom suits in Missouri.

The U.S. Supreme Court case *Dred Scott v. Sandford* is one of the most infamous decisions in the history of the Supreme Court.[19] In *Dred Scott*, Chief Justice Roger Taney attempted to resolve some of the major questions concerning slavery and its place in American society. Most significantly for the Scotts, Taney denied them their citizenship and therefore claimed that the Supreme Court did not have jurisdiction to decide on Dred's freedom because his lack of citizenship forbid him from bringing a case in federal court. This decision left the Scotts in slavery, but

[19] I will not go into all of the complex legal issues at play in this case, or the opinions of each of the justices. There are numerous other works that cover this in more detail. For more information on the Dred Scott case, see Don E. Fehrenbacher, *The Dred Scott Case*; Walter Ehrlich, *They Have No Rights: Dred Scott's Struggle for Freedom* (Westport, CT: Greenwood Press, 1979); Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective* (New York: Oxford University Press, 1981); Finkelman, *Dred Scott v. Sandford*; Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge: Cambridge University Press, 2006); and Earl M. Maltz, *Dred Scott and the Politics of Slavery* (Lawrence: University Press of Kansas, 2007).

Taney also went on to declare the Missouri Compromise unconstitutional by stating that Congress had no power to ban slavery in the territories. These two parts of Taney's decision, that blacks were not citizens of the United States and that Congress lacked the power to legislate over slavery in the territories, overturned established law and provoked a tempest of outrage from many northerners, even those who did not support the abolitionist cause. Although the *Dred Scott* decision did not single-handedly lead to the Civil War, the Supreme Court's ruling came at a time when other events like the debate over Kansas and the question of slavery in the territories were at the apex of political attention. When Kansas voted in the Lecompton Constitution, a highly-disputed document that many believed was approved in a fraudulent election (that included a multitude of Missourians who crossed into Kansas to vote), the Democratic Party divided over its authenticity.[20] It was this split in the Democratic Party as well as the Lincoln-Douglas debates in 1858 in Illinois that largely focused on the *Dred Scott* case, which drove the country toward civil war.

The example of Dred and Harriet Scott's case suggests the importance of the interplay between national and local contexts; a brief look at the local and national circumstances of their cases suggests how the relationship between these two interrelated contexts resulted in harsher legislation for slaves and free blacks and contributed to the outbreak of Civil War. The Scotts' case did not happen in a vacuum; like other freedom suits, national events influenced the path it followed as well as its outcome at the various levels of jurisprudence. When Irene Emerson filed her first plea in the St. Louis Circuit Court, she did so against the backdrop of the

[20] Fehrenbacher, *The Dred Scott Case,* p. 485.

creation of the first anti-abolitionist society in St. Louis, a society devoted to enforcing the legal restrictions against slaves and free people of color, which her father helped to found.[21] The Scotts' first trial in St. Louis received no press coverage, both because suits for freedom were routine at this time in St. Louis and also because the trial occurred amid celebrations of soldiers returning from the Mexican War and a celebratory speech by Thomas Hart Benton.[22] When the Missouri Supreme Court heard the Scotts' case, Chief Justice William Scott delivered the Court's 2-1 opinion, writing that "Times are not now as they were when the former decisions on this subject were made." Justice Scott continued to describe a "dark and fell spirit in relation to slavery" that had fallen across the country, and "whose inevitable consequence must be the overthrow and destruction of our Government."[23] Chief Justice Scott recognized the enormity of his decision and chose to overthrow all existing precedent to try to stem the tide of freedom suits coming into Missouri's courts. The political crisis over slavery led the Missouri Supreme Court and the United States Supreme Court to use Dred Scott's freedom suit to make a definitive statement about the place of slavery in antebellum America. With fighting occurring on both sides of the slavery question, these courts tried to put their stamp of authority on the slavery issue.

The late-1840s and 1850s ushered in a new era of two-party politics that brought the conflict over slavery to a head, culminating in the rise of the Republican

[21] Gerteis, *Civil War St. Louis,* p. 22.

[22] Ibid., p. 24.

[23] *Scott v. Emerson*, 15 Mo 576 (1852), 586, quoted from Finkelman, *Dred Scott v. Emerson,* p. 22.

Party and the election of Abraham Lincoln. In the decades following the Missouri Compromise in 1820, the nation clung to an uneasy truce over the slavery issue. Content to leave slavery alone where it already existed, northern whites focused their attention on what they saw as more pressing issues, such as building up industry and expanding the young nation. Concerns over slavery briefly resurfaced around isolated events, such as Nat Turner's rebellion, but for the most part, it simmered beneath the surface of mainstream news and politics. Slavery again became the central concern of the nation in the late-1840s, as the rapid expansion of the country raised new questions over the place of slavery in these new lands. Missourians played a central part in the national debates over slavery, and the enormous national attention to questions of slavery also shaped Missourians' beliefs and the outcomes of freedom suits. For this reason, Missouri's state legislature enacted a range of new legislation attempting to stem the tide of antislavery agitation that grew stronger in and around the metropolis of St. Louis.

Changes in the Law of Freedom Suits

Missouri's legislators voted in legislation that reflected a growing uneasiness about the place of slaves and free blacks in society during the 1840s and 1850s. Some of these restrictions started as early as the mid-1830s, when national events such as Nat Turner's Rebellion, and more local events, like the lynching of Francis McIntosh in the streets of St. Louis, planted seeds of apprehension in the minds of the region's slaveholding lawmakers. Viewing free people of color as a menace to slavery and an orderly society, Missouri's legislators moved to restrict the growth and autonomy of the free black population. A major statutory change to freedom suits

passed in 1845, shaping the way slaves sued for freedom and the frequency of these cases.

But the outcomes of freedom suits did not follow the pattern of greater restrictions amid the growing tension among slaveholders. Instead, the results of the cases brought to the St. Louis Circuit Court seem to rebuff the idea of increasingly strict treatment of slaves and free people of color. St. Louis in the 1850s diverged from the overall pattern of Missouri's government and southern regional distinctiveness; the city's location, and a massive wave of immigrants who moved into St. Louis in the 1840s and 1850s, changed the face of the city and shaped its political culture to be increasingly opposed to slavery. As the majority of the city came to oppose slavery, the outcomes of freedom suits in St. Louis reflected this shift.

The most sweeping changes in the laws regulating slaves and free people of color in Missouri occurred in 1835. That year's revised code enacted for slaves the harsh punishment of not more than thirty-nine stripes with a whip for the crime of harboring or concealing runaway slaves.[24] This code also reinforced the restriction from 1831 against slaves interrupting church services "by noise, riotous or disorderly conduct."[25] The greatest change occurred in laws requiring free people of color to

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[24] *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighth General Assembly during the Years One Thousand Eight Hundred and Thirty-four, and One Thousand Eight Hundred and Thirty-five. Together with the Constitutions of Missouri and of the United States* (St. Louis: Printed at the Argus Office, 1835), p. 584.

[25] *Revised Statutes of the State of Missouri,* 1835, 586; *Laws of a Public and General Nature of the State of Missouri, Passed between the Years 1824 & 1836, not published in the Digest of 1825, nor in the Digest of 1835* (Jefferson City: Printed by W. Lusk & Son, 1843), p. 354. Punishment for this crime allowed for thirty-nine lashes, whereas the 1831 statute against disturbing religious congregations only allowed twenty lashes.

obtain a license to be allowed to remain in the state, a new constraint that clearly demonstrated the legislature's fears of the growing number of free people of color in Missouri. Licensure laws severely restricted the rights of those free blacks living in the state, making it more difficult for them to move within Missouri, and also requiring them to pay taxes and fees to get their license. In addition to these restrictions, licensing laws made it harder for free blacks to immigrate to the state without a prior connection or reason for moving there.[26] Another new requirement of the 1835 code was for all free black children between ages seven and twenty-one to be apprenticed by "the several county courts," and in addition, the statute dictated that "no colored apprentice shall be placed in company with a free white apprentice."[27] The new apprenticeship laws granted counties great power in deciding what trades to allow free blacks to learn to practice, and it also gave white officials another way to keep track of free blacks and control them through control of their children.

The 1845 code did not include many changes to the earlier restrictions on slaves and free blacks, but the alterations it contained reflect the growing apprehension whites felt as a result of both anti-slavery activity and the perceived threat of free blacks. The new slave code of 1845 dictated that not only "riots, routs and assemblies, and seditious speeches of slaves" were illegal and punishable by whipping, but also "insolent and insulting language of slaves to white persons, shall

[26] Ibid., pp. 414-15.

[27] Ibid., p. 414.

be punished with stripes."[28] This type of legislation gave free reign to all whites to seize any slave they deemed "insolent" or "insulting" to them, and drag them before a justice of the peace for punishment. Because blacks could not testify against whites, the slave would have little way to defend against these types of accusations. The 1845 code also restricted "any person" who "shall forge, for any slave, a free pass…by which such slave may the more readily escape from his master," and also "any person who may abduct or entice, or attempt to abduct or entice, any slave away from his master." Anyone convicted of this crime "shall be confined in the penitentiary of the state for a term of years not less than five, nor more than ten."[29] The code also specified that free people of color could not provide slaves with any type of paper to forge free papers or a pass on, or help slaves to escape or convince them to escape, or such person could also face five to ten years in the penitentiary. These dictates, clearly aimed at abolitionists or anti-slavery agitators, also required the Governor of Missouri "to select two newspapers in different sections of the State of Illinois, in which he shall cause this act to be published for three months, and said publication shall be made annually."[30] It is notable that the statute actually mandated the publication of this law in Illinois, a place legislators in Missouri clearly viewed as the crux of their abolitionist problem.

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[28] Evans Casselberry, *The Revised Statutes of the State of Missouri, Revised and Digested by the Thirteenth General Assembly* (St. Louis: Printed by Chambers & Knapp, 1845), p. 529.

[29] Ibid., p. 534.

[30] Ibid., pp. 534-35.

A trio of laws regarding free people of color entering the state reveal the depth of paranoia whites felt about the growing population of free blacks, whom they feared would induce slaves to run away or rebel against their owners; this legislation also shows how the location of St. Louis made it a focal point of the legislature's concern. The first statute directed that anyone who brought into the state "any slave entitled to freedom at a future period, shall be guilty of a misdemeanor" and face punishment of up to $500 or six months in the county jail. A second statute specifically targeted "the harbor master of the city of St. Louis," requiring him to "report to the Recorder of said city, the arrival of any steamboat, or other vessel, having on board any free negro or mulatto, not authorized to remain in the state." This law indicates how the position of St. Louis on the major river ways of the state made it particularly vulnerable to entering free blacks or runaway slaves. A third statute specified that "any person" who brought into the state "any free person of color…or who shall employ, harbor or entertain such person, after he is so introduced or brought within this state," would face a misdemeanor conviction with a fine of at least fifty and not more than two hundred dollars.[31] The licensure laws of 1835 remained in place, but this legislation put the onus on individuals who aided, hired, or allowed a free black to enter the state illegally. These laws also included stiff punishments for violations.

By 1847, the end of the Mexican War and the conflicts over the spread of slavery into the western territories fed slaveholders' fears, and Missouri's position on the northern edge of slavery made it especially sensitive to anything viewed as a threat to the slave institution. The new legislation of 1847 included a prohibition on

[31] Ibid., p. 394.

teaching any person of color to read or write, and it was specifically aimed at schools for free blacks and slaves.[32] The new laws required a white "sheriff, constable, marshal, police officer, or justice of the peace" to be present at all "meeting or assemblage of negroes or mulattoes, for the purpose of religious worship or preaching." This was "in order to prevent all seditious speeches, and disorderly and unlawful conduct of every kind."[33] By this time, the law required that "No free negro or mulatto shall, *under any pretext,* emigrate to this State, from any other State or Territory."[34] This law effectively tried to close Missouri's door to all black migration, but the existence of this type of law suggests that it must have been difficult, if not impossible, to enforce. One final addition to the legal code required that free black children "who would not be entitled to receive from the county court a license to remain in the State, if they were twenty-one years old, shall not be bound out as apprentices in this State."[35] This requirement was most likely enacted to prevent free black children from acquiring a right to a license (based on living in the state for ten years) by working as apprentices.

One final piece of slavery-era legislation deserves brief consideration here because it suggests the deep degree of prejudice against free blacks in Missouri. In 1859, the Missouri House and Senate passed a statute that dictated that all free people

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[32] Charles H. Hardin, *The Revised Statutes of the State of Missouri…*Vol. 1 (Jefferson City: Printed by James Lusk, 1856), p. 1100.

[33] Ibid., p. 1101.

[34] Ibid., p. 1101 [emphasis added].

[35] Ibid., p. 1101.

of color be expelled from the state. The law declared "that the presence of free negroes was a menace to slavery."[36] Passed "almost unanimously," this bill never became law. Governor R. M. Stewart knew that if he officially vetoed it, then it would pass over his veto without difficulty, so he "pocketed it, and the free negroes were left in peace."[37] Although this bill failed to become law, it both fed into and reflected the tense environment of Missouri at this time regarding the place of slaves and free people of color in the state. Following the *Dred Scott* decision, the Lincoln-Douglas debates of 1858, and John Brown's 1859 raid on the federal arsenal at Harper's Ferry, Virginia, Missourians grew increasingly uneasy about their ability to retain their enslaved property. With thousands of immigrants pouring into St. Louis, the state's more established slaveholding population worried that the anti-slavery sentiment of these newcomers would take over their state's politics and lead to gradual emancipation of their slaves. At the heart of these fears was the presence of successful free people of color, who threw confusion on the belief that all blacks were slaves and that slavery was the best condition for them.

The statute allowing slaves to sue for freedom also underwent a crucial change in this period that made bringing a suit for freedom more difficult. In 1845, the legislature passed a new freedom statute that required the plaintiff to give "security satisfactory to the clerk, for all costs that may be adjudged against him, or

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[36] Galusha Anderson discusses this law in *The Story of a Border City during the Civil War* (Boston: Little, Brown, and Co., 1908), 11.

[37] Ibid., p. 14.

her."[38] This meant that the plaintiff could no longer sue "as a poor person," or without providing financial security for the costs of the case.[39] This new constraint meant that fewer individuals held in slavery would be able to sue for freedom because it required them to either have some financial resources themselves or rely on the financial assistance of others.

Although this new clause did not immediately affect the ability of slaves suing for freedom, the number of cases significantly decreased in the 1850s, suggesting that eventually the courts began enforcing the rule, and suing for freedom became more difficult for many individuals. Some examples from the cases bear this out. In her 1848 case against Joseph Philibert, Peggy Perryman asked the court for permission to sue as a poor person. Her request mirrored those of many enslaved plaintiffs who sued before 1845, but the new law made this a request for the court to make an exception and allow her to sue without security. In Perryman's case, the court agreed to do this and granted her permission to sue as a poor person.[40] In April 1850, when David McFoy claimed he was "unable to bear the expenses of bringing and prosecuting a suit or action" against William Brown, the court allowed him to sue only because the court also ordered the sheriff to hire him out and take $1000 bond for his hiring.[41] Possibly recognizing the difficulties for enslaved plaintiffs to finance

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[38] Casselberry, *The Revised Statutes of the State of Missouri,* p. 283.

[39] *Revised Statutes of the State of Missouri,* 1835, p. 285.

[40] *Perryman, Peggy, of color v. Philibert, Joseph*, November 1848, Case No. 255, SLCC, pp. 2, 14.

[41] *McFoy, David v. Brown, William*, April 1850, Case No. 37, SLCC, p. 19; St. Louis Circuit Court Record Book 19, December 14, 1849, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 268.

a suit, at least in these cases, the court appeared hesitant to enforce the new law requiring security in order to sue.

When the law of freedom suits changed to require security, slaveholders were quick to press this issue before the courts, forcing judges to determine whether or not to enforce the new statute. As early as 1845, Jane McCray asked to sue as a poor person against William R. Hopkins and others, but the judge indicated that her case may proceed only "if the petitioner shall give security as required by law." In this case, Ferdinand W. Risque (an attorney involved in other freedom suits) and John Hanson provided security for McCray, so the court allowed her to sue.[42] In Matilda Thomas's November 1846 case against William Littleton, the defendant asked the court to dismiss her case not only because he claimed her as a slave and his own property, but also because she "has not filed security for the costs as the law of the land in such case made and provided, requires."[43] Jane Cotton faced a similar problem in her April 1848 case against James A. Little. Cotton provided security for her case, but in his plea, Little "moves the court for a rule on the plaintiff to furnish additional security" because "the person whose name has been submitted for security is insolvent."[44] Although Little withdrew this motion, the following day he again complained about the insolvency of the person providing the plaintiff's security. After going back and forth several times with the defendant asking for security and

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[42] *McCray, Jane, a mulatto woman v. Hopkins, William R., et al.*, November 1845, Case No. 162, SLCC, pp. 4, 10.

[43] *Thomas, Matilda (also known as Matilda Cunningham), person of color v. Littleton, William*, November 1846, Case No. 28, SLCC, p. 7.

[44] *Cotton, Jane, a free person of color v. Little, James A.*, April 1848, Case No. 37, SLCC, p. 11.

the plaintiff again providing the same person, on December 4, 1848, the court ruled that the plaintiff failed to provide sufficient security and dismissed Cotton's case.[45] The courts may have been slow to start enforcing the new law requiring security for costs, but in some cases in the 1840s, the court chose to dismiss the suit when the plaintiff lacked adequate security.

Even as late as 1849-1850, the court remained open to the idea of allowing slaves to sue without providing security for costs, sometimes because the court found ways around the law and also possibly because of the changing composition of the population of St. Louis and its shifting views on slavery. One way around the law was to hire the plaintiff out to provide payment for some of the costs of the suit. Hiring out was common in many of the cases before 1845, but the profits of the hire in those earlier suits went to the victor in the case and to the sheriff to cover his costs. In David McFoy's April 1850 case against William Brown, the court granted McFoy permission because the court also ordered the sheriff to hire McFoy out to cover the costs of his suit.[46] In another April 1850 group of cases, the court allowed several slaves of the estate of Milton Duty to sue Duty's administrator John F. Darby for freedom without providing security for costs. Darby, a well-known St. Louis attorney who worked on other freedom suits, argued against the court's ruling. He asked that

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[45] Ibid., pp. 11-12, 27-28; St. Louis Circuit Court Record Book 18, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, April 20, 1848, p. 218, April 29, 1848, p. 255, May 1, 1848, p. 260, May 2-3, 1848, p. 266, May 6, 1848, p. 279, June 28, 1848, pp. 369, 389, December 4, 1848, p. 421.

[46] *McFoy, David v. Brown, William*, April 1850, Case No. 37, SLCC, p. 19; St. Louis Circuit Court Record Book 19, December 14, 1850, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 268.

the court "amend the order heretofore made" and "that said petitioner be required to give security satisfactorily to the clerk of said court for all the costs that may be adjudged."[47] Despite the authority of the new law requiring security, the court overruled Darby's motion and allowed the plaintiffs to continue their case without providing security.[48] By allowing some flexibility in the enforcement of the new law, the court kept the window open for those trying to claim freedom through the courts but who lacked the financial resources or powerful white allies to provide security for the costs.

The 1845 law resulted in a significant drop in the *number* of cases brought to the St. Louis Circuit Court.[49] With only forty-six cases in the decade and a half following the statute, this period witnessed a considerably smaller number of freedom suits than the earlier two decades. For example, in the five years leading up to the statute, from 1841-1845, slaves brought seventy-one freedom suits to the court. In the five years before that, 1836-1840, there were forty-three cases, and from 1831-1835 there were eighty-five cases. It is not surprising that the number of cases would decrease after the law passed requiring security for the costs of the suit. Although some slaves were able to procure security from white allies with the necessary resources, many lacked this advantage and were therefore not able to sue. In this

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[47] *Duty, Ellen v. John F. Darby, Administrator*, April 1850, Case No. 18, SLCC, p. 9.

[48] St. Louis Circuit Court Record Book 20, June 12, 1850, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 82.

[49] For the number of cases brought in each five-year period throughout the antebellum years, see Appendix.

way, the 1845 statute drastically altered the possibility of winning legal freedom for many enslaved men and women in St. Louis.

A close analysis of the cases after 1845 and their results uncovers a somewhat surprising picture, especially in light of the traditional antebellum narrative of tighter restrictions on slaves and closer monitoring of freedom: slaves suing for freedom after 1845 were more likely to win freedom, and the court found none of these late cases for the slaveholding defendant. The existing records yield forty-six cases for freedom in the St. Louis Circuit Court from 1846 to 1860. Of these cases, the court granted freedom in fifteen of these cases, or 32.6% of cases. In addition to the fifteen cases directly won by the plaintiff, in one case, the defendant defaulted on the case by failing to appear in court. In this type of case, too, the plaintiff would be set free from the defendant's control. In twenty of these late cases, or around 43.5%, the plaintiff voluntarily allowed the case to be dismissed, agreeing not to further prosecute the case. This outcome could happen for a variety of reasons. Perhaps the plaintiff reached an agreement with the defendant for purchase of freedom or for freedom at some future date. Or it is possible that the defendant stopped claiming the plaintiff as a slave and simply agreed to recognize his or her freedom. There are numerous possibilities for why an enslaved plaintiff might voluntarily agree to a dismissal of their case, but this outcome does not necessarily mean the plaintiff failed to receive his or her legal freedom. Nine cases, or 19.6%, resulted in a nonsuit, which meant that the plaintiff failed to sufficiently prosecute his or her case, or a dismissal by default of the plaintiff. In these instances, the plaintiff most likely failed to win freedom, although some of them may have also reached arrangements with the

defendant to obtain freedom through other legal means, such as purchase, or later manumission. In one case (*Jane Cotton v. James A. Little*, discussed above) the court dismissed the suit because the plaintiff failed to provide security as required by the 1845 statute. And there is one case after 1845 for which the outcome is unknown.

What is most surprising about these results is that in *none* of the forty-five cases for which we know the outcome did the court find in favor of the defendant. In the cases of default by the plaintiff or nonsuit, it is certainly possible that the ultimate outcome favored the defendant, with the plaintiff remaining in slavery. It is also possible that when the plaintiff voluntarily agreed not to further prosecute, the defendant could have coerced the plaintiff into doing this and continued to hold him or her as a slave. But the more likely scenario in these cases is that the two parties made some other arrangement to avoid further legal action, or that it was no longer necessary for the plaintiff to sue.

It is impossible to know for certain why the cases in these late years were not found for the defendants. The most likely explanation points to the changing demographics of St. Louis in the late 1840s and 1850s. In these decades, the city's population ballooned from 16,469 in 1840 to 77,860 in 1850, and it more than doubled to 160,773 by 1860.[50] Much of this increase in the population consisted of immigrants, especially the Irish, who fled their homes to escape harvest failures and the potato famine in Ireland, and the Germans, who fled political upheaval in

[50] Richard C. Wade, *Slavery in the Cities: The South, 1820-1860* (New York: Oxford University Press, 1964), Appendix, p. 327.

Germany in 1848.[51] These immigrants largely opposed slavery as a labor system, the Germans mostly on ideological grounds and the Irish more often because they disliked the increased competition for jobs.[52] Although most immigrants were not abolitionists, in the mid to late 1850s, many Germans flocked to the new Republican Party. Historian Harrison Trexler found that the Germans in the 1850s became "a great force in Missouri politics."[53] This growing presence among the population of St. Louis influenced the beliefs and ideas of those other groups living there, and this influence contributed to an atmosphere of greater tolerance for freedom. By the 1850s, the slaveholders of the city were the minority, and though they were not eliminated until the abolishment of slavery in 1865, they faced an uphill battle during the 1850s. This shift in the city's politics certainly affected the course of freedom suits, and it possibly explains why the court found no freedom suits for the slaveholding defendant during this period.

The issues brought by plaintiffs in freedom suits also changed, especially in the few years following the Missouri Supreme Court's surprising ruling in Dred Scott's case. In that case, the Court abandoned its precedent of allowing residence in free territory to confer freedom, which meant that the St. Louis Circuit Court had to

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[51] Walter D. Kamphoefner, "Learning from the 'Majority-Minority' City: Immigration in Nineteenth-Century St. Louis," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, p. 82.

[52] Winn, "Gods in Ruins," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, pp. 34-36. Walter Kamphoefner argues that Germans had less interaction with blacks, slave or free, than did the Irish. Germans were generally more skilled and able to work in industries dominated by successful German immigrants, such as brewing, whereas the Irish were more rural and lacked the skills necessary to move beyond the most menial jobs. For this reason, Irish found themselves competing with slaves and free blacks for unskilled work. See Kamphoefner, "Learning from the 'Majority-Minority' City," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, p. 93.

[53] Trexler, *Slavery in Missouri*, p. 165.

follow this directive and could no longer accept residence in a free territory or free state as a legitimate reason to grant freedom to an enslaved individual. But slaves continued to use this argument. Still, the legal change meant that enslaved plaintiffs had to come up with other reasons to sue for freedom and different ways to present their cases to court. After the *Scott* decision, only eight more freedom suits came to the St. Louis Circuit Court. In none of these cases did the plaintiff claim freedom based on residence in the Northwest Territory. In five of these cases, the plaintiff argued for freedom based on prior manumission, four of them by deed and one in the owner's will. Two of these cases argued for freedom because they claimed they had lived as free persons from birth and the community treated them as free, and one case claimed birth to a free mother. This shift away from arguing for freedom based on residence in the Northwest Territory suggests that the drop in the number of cases may also have resulted from the *Dred Scott* decision's elimination of this argument as a means to freedom in court.

Anti-Slavery Influences

Anti-slavery activity was also a significant factor in the changes occurring to freedom suits in the mid-1840s and throughout the 1850s, mostly because of the growing fear among slaveholders in St. Louis and Missouri's legislators that there were abolitionists scheming to free all of the slaves and overthrow the slave system in Missouri. This fear became a weapon used by defendants to cast doubt on enslaved plaintiffs' claims and to stoke the suspicions of potential jurors, as well as others coming into the courtroom. The evidence of actual abolitionist and anti-slavery activity occurring in and around freedom suits is slight, but there is some mention in

these cases of this type of sentiment affecting the prosecution and outcome of the suits. Anti-slavery activity and the suspicions of abolitionism interacted with freedom suits and although little of this activity is proven, the existence of *suggestions* of this type of action was enough to potentially influence these cases.

Despite the scarcity of evidence of a large, active abolitionist community in St. Louis, by the 1840s and 1850s, the tide was beginning to turn against slavery in the city. By the 1850s, Missouri Democrat William Napton believed St. Louis had "evinced an unmistakable hostility to slavery," and he feared the institution would wither in his state under "the influence of her own metropolis."[54] The increasing immigrant population, especially the Germans, generally opposed slavery, and the small number of slaves in the city lessened the dependence on their labor and made the defense of slavery the purview of a small but powerful group of wealthy slaveholders. Although the expansion of St. Louis and the increase in free laborers contributed to the city's growing opposition to slavery, St. Louis remained tied to the slaveholding south because of its importance to the domestic slave trade as well as the extensive system of slave hiring.[55] For these reasons, openly expressing anti-slavery sentiment in St. Louis remained dangerous throughout the years before the Civil War, and the vitriol created by abolitionists could and did sometimes lead to violence. This anti-abolitionist sentiment continued to dominate public discourse in St. Louis,

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[54] William B. Napton Diaries, August 25, 1856, p. 183, Missouri Historical Museum, St. Louis, Missouri, as quoted in Frank Towers, *The Urban South and the Coming of the Civil War* (Charlottesville and London: University of Virginia Press, 2004), p. 32.

[55] Towers, *The Urban South and the Coming of the Civil War*, pp. 43-46, 95; Trexler, *Slavery in Missouri,* p. 48.

despite the growing presence of individuals who, though they might not actively work to end slavery, did oppose the system and favor some form of gradual emancipation or colonization.[56]

One of the most well-known examples of anti-abolitionist activism in St. Louis was the harsh response to the Reverend Elijah Lovejoy. Lovejoy moved to St. Louis after attending Princeton University, and he edited a newspaper, the *St. Louis Observer,* during the mid-1830s. Although he did not begin his career in the city as an abolitionist, his views changed in the wake of local and national events around the slavery issue.[57] In 1835, he defended himself against the accusation that he sent abolitionist documents with a box of Bibles to Jefferson City by claiming that he had unknowingly used the newspaper the *Emancipator* to pack the Bibles.[58] Protests against Lovejoy and his newspaper continued in St. Louis, but the violence started in response to his coverage of the lynching of Francis McIntosh. In the trial of the ringleaders of the lynching, Judge Luke Lawless justified their violent actions, saying they were overcome with an "electrical frenzy" in response to the abolitionists working in St. Louis, and he cited Lovejoy and his newspaper as an example of this.[59] When Lovejoy retaliated with an article denouncing Lawless's instructions to the

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[56] Judy Hoffman, "'If I fall, my grave shall be made in Alton': Elijah Lovejoy, Martyr for Abolition," *Gateway Heritage: Quarterly Journal of the Missouri Historical Society* 25(2005): 12.

[57] Benjamin C. Merkel, "The Abolition Aspects of Missouri's Antislavery Controversy 1819-1865," *Missouri Historical Review* 44(1949-1950): 239-40.

[58] *St. Louis Observer,* November 5, 1835, as cited in Merkel, "Abolition Aspects of Missouri's Antislavery Controversy," 239.

[59] *Missouri Republican,* May 26, 1836, as cited in Merkel, "Abolition Aspects of Missouri's Antislavery Controversy," 239-40; Louis S. Gerteis, *Civil War St. Louis*, p. 14.

jury, a mob destroyed his printing press and drove him out of town. Lovejoy moved his press to Alton, Illinois, and within a year of moving, became a full-blown abolitionist, advocating for an anti-slavery society to form in Illinois. He returned to St. Louis to preach to a Presbyterian Church in October 1837, but an angry mob again drove him out of town. An article in a St. Louis paper, the *Missouri Republican,* called for the citizens of Alton to take action against him, saying "We had hoped that our neighbors would have ejected from amongst them that minister of mischief." Claiming that Lovejoy and other abolitionists' efforts stymied trade in the slave states, the article suggested that "Everyone who desires the harmony of the country, and the peace and prosperity of all, should unite to put them down."[60] A month later, a crowd trying to steal and destroy his press in Alton shot and killed Lovejoy. The press in St. Louis, as well as those in other cities, suggested that Lovejoy got what he deserved, and many in Alton believed the mob action that ended in his murder was the work of St. Louisans.[61] Lovejoy's murder made him a national martyr for the abolitionist cause and only fed the furor of those working against slavery. In this way, Lovejoy's murder backfired against those trying to suppress anti-slavery agitation by providing fodder to the anti-slavery movement in the border states.[62]

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[60] *Missouri Republican,* August 17, 1837, as cited in Hoffman, "'If I fall, my grave shall be made in Alton,'" 14.

[61] Hoffman, "'If I fall, my grave shall be made in Alton,'" 19; Terrell Dempsey, *Searching for Jim: Slavery in Sam Clemens's World* (Columbia and London: University of Missouri Press, 2003), pp. 29-30.

[62] Merkel, "Abolition Aspects of Missouri's Antislavery Controversy," 240; Gerteis, *Civil War St. Louis,* p. 7. For more on the importance of the Lovejoy incident for the national abolitionist cause, see Jeannine Marie DeLombard, *Slavery on Trial: Law, Abolitionism, and Print Culture* (Chapel Hill: University of North Carolina Press, 2007), especially pp. 56-58.

A small but determined group of anti-slavery agitators began operating in Missouri late in the antebellum period; these individuals provided a direct threat to slavery by agitating for its eventual end, and their rhetoric took hold amongst the numerous immigrants in St. Louis who opposed slavery largely for economic reasons. This movement, led, surprisingly, by former slaveholders such as Thomas Hart Benton, Frank and Montgomery Blair, and B. Gratz Brown, did not oppose slavery for humanitarian reasons. Rather, these individuals argued against slavery as an economic system that limited Missouri's ability to grow and also affected the flow of immigration and industry to the state.[63] They united on the issue of preventing slavery from spreading to the western territories because they believed slave labor interfered with the ideal of free labor for white workers. Although Benton mostly preferred continued silence on the slavery issue in order to placate his political constituency, Frank Blair and Brown began their agitation against slavery through writings in the *Missouri Democrat,* which Brown edited. Anti-slavery writings in the *Missouri Democrat* led to a political rift between the older, more conservative Benton and the younger generation of politicians favoring the abolition of slavery. In the 1850s, proslavery candidates continued to compete for and win political offices throughout Missouri, even in St. Louis.[64] In perhaps the boldest move made by an abolitionist in antebellum Missouri, B. Gratz Brown called for slavery's immediate abolition in an 1857 speech to the Missouri House of Representatives. This speech, intended to appeal to immigrants as well as ordinary white farmers and laborers,

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[63] Winn, "Gods in Ruins," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, pp. 37-39.

[64] Towers, *The Urban South and the Coming of Civil War,* p. 185.

backfired and created a backlash against Brown that forced him to the background of Missouri politics until the Civil War.[65]

Suspicion of anti-slavery activism influenced freedom suits by playing on the fears of slaveholders and their allies in St. Louis. The case of *Elsa Hicks v. Patrick McSherry* illustrates how slaveholders and other pro-slavery agitators used the anxieties many St. Louisans felt about the presence of abolitionists to their advantage. By harping on the possibility that abolitionists set up McSherry as a "sham defendant," they hoped to influence the judgments of those in positions of power within these suits, including not only the judge, but also the jury and witnesses as well. In this November 1847 case, Elsa Hicks sued for freedom based on her previous owner, James Mitchell, taking her to Wisconsin for six years, in violation of the Northwest Ordinance. Mitchell obtained Hicks through his marriage to her prior owner's daughter, Ellen Burrell. Elsa Hicks originally sued Mitchell and Lewis (also spelled Louis) Burrell in St. Louis in 1845, and after the court dismissed her first case, she sued McSherry for her freedom.[66] It was Lewis Burrell who raised the issue of potential abolitionist interference in this case. Burrell argued that McSherry had

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[65] Winn, "Gods in Ruins," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, pp. 39-40. In the late 1850s, the American Missionary Association (AMA) also tried to convince Missouri's slaveholders to consider abolishing slavery, but instead slaveholders drove the organization out of the state until the Civil War. See Holland, "African Americans in Henry Shaw's St. Louis," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, p. 67.

[66] See her original case file, *Hicks, Elsa, a mulatto girl v. Burrell, L.; Mitchell, James*, April 1845, Case No. 55, SLCC, and her second case, *Hicks, Elsa, a mulatto girl v. McSherry, Patrick T.*, November 1847, Case No. 121, SLCC. For the decision to dismiss her first case, see St. Louis Circuit Court Record Book 17, November 25, 1846, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 375.

no claim to ownership of Hicks and that he acted as a "sham defendant" to prevent her legitimate owners from maintaining their claim to her labor.[67]

Attorney Joseph B. Wells raised the abolitionist issue when he filed an affidavit for the four minors who he claimed actually owned Elsa Hicks, and he detailed the possible interference of specific suspected abolitionists in defrauding these four minor children of their slave property. These minors lived in Virginia and had no representative in St. Louis to protect their interests. In his affidavit, Wells claimed that he "heard the said Elsa declare that she never authorized the said suit against McSherry." Instead, he believed she had "been harbored & Secreted" in St. Louis "for a considerable length of timme [sic]" to prevent her owners from taking her back. He argued that if she was released from custody of the jail, she would again be "harbored & secreted by persons tinctured with abolitionism."[68] In this statement, Wells claimed that perhaps Hicks took no active role in suing for her freedom, and that those "tinctured with abolitionism" controlled her and instituted the case in Elsa's name without her consent. Wells' affidavit continued by claiming that the Reverend Joseph Tabour, "who has been strongly suspected of being an abolitionist," tried to hire someone to convey Elsa Hicks in a carriage to Tabour's house. When Wells inquired about Tabour's interest in the case, Hicks' attorney stated that Tabour "had nothing to do with the matter in any way."[69]

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[67] *Hicks, Elsa, a mulatto girl v. McSherry, Patrick T.*, November 1847, Case No. 121, SLCC, p. 13.

[68] Ibid., p. 19.

[69] Ibid., pp. 19-20.

Wells closed his affidavit with a strong denunciation of abolitionists and a warning against their tactics. He claimed, "I have seen enough to satisfy me that to turn said Elsa loose again…would be to hazzard [sic] & expose the rights of her owners to all the unfortunate influences that abolitionists may exert upon slave property on this border of a slave country."[70] While indicting abolitionists' influence on slaves like Elsa Hicks, Wells continued by playing on the fears of unknown anti-slavery activism existing in St. Louis. He argued that he believed "there are in disguise in this community as unprinsipled [sic] abolitionists as can befound [sic] disgracing that name." He closed his argument with a plea that the court not subject the property belonging to "infants" to "the reach of those whose creed & religion induce them to disrespect" the property rights of slaveholders.[71] By directly suggesting the existence of a large population of abolitionists "in disguise" within St. Louis, Wells stoked tensions that existed by the late 1840s around the possibility of an end to slavery.

A related case involving Elsa Hicks and Lewis Burrell also served as a forum for complaints against abolitionism in St. Louis. The existence of this type of peripheral case evidence demonstrates how this type of agitation against abolitionists was widespread in the legal culture of St. Louis in the 1840s and 1850s. Freedom suits were merely one vehicle for slaveholders to provoke opposition against anti-

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[70] Ibid., p. 20. The court did release Elsa Hicks and her infant child from jail because her health was in danger. The court ordered them placed in the county farm to continue to labor there and earn money to put towards the costs of their suit. See the above case record, pp. 21-23, and also St. Louis Circuit Court Record Book 18, June 12, 1848, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 342.

[71] *Hicks, Elsa, a mulatto girl v. McSherry, Patrick T.*, November 1847, Case No. 121, SLCC, p. 20.

slavery activists. In this case, the State of Missouri sued Lewis Burrell to prevent him from removing Elsa Hicks and her child from the court's jurisdiction while her freedom suit continued. In his response to this charge, Burrell again accused McSherry of creating a "collusive & fraudulent suit…for the purpose of cheating the owners of said slave out of their property in her."[72] Burrell then began to speak on the practice of abolitionists taking slaves from slaveholding states, declaring that "the frequent combinations of abolitionists to cheat the owners of Slaves out of their property in them & the frequent successes of such combinations have produced a very general practice - among slave owners, of seizing their fugitive slaves wherever they could find them."[73] Burrell continued to defend the practice of reclaiming slave property and denounce the kidnapping charges that often resulted from slaveholders taking back their slave property, especially from free states.

Slaveholders could also raise doubts about plaintiffs' cases by questioning their witnesses about possible abolitionist beliefs, including their voting records in previous presidential elections and their political party affiliation. By raising these types of questions to witnesses in freedom suits, slaveholding defendants sought to cast doubt on the witnesses' credibility by painting them as abolitionists willing to say anything to assist enslaved plaintiffs. In the case of Mary and her children Samuel and Edward against Launcelot H. Calvert, several witnesses testified about

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[72] *State of Missouri v. Lewis Burwell*, November 1847, Case No. 237, Circuit Court Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 9.

[73] Ibid., pp. 9-10. Antonio F. Holland has argued that Missouri's geographic location makes it seem likely that there was some Underground Railroad activity in the state, "it is unlikely that it had the effect on Missouri slavery that contemporary masters believed." See Holland, "African Americans in Henry Shaw's St. Louis," in *St. Louis in the Century of Henry Shaw,* ed. Sandweiss, p. 59.

their abolitionist beliefs. When the defense attorney asked William Maxwell in his deposition if he was "a member of what is called the Abolition party," Maxwell replied that "I do not know that I am a member but I am decidedly opposed to slavery." When the defense asked Maxwell if he had ever voted for an abolition candidate, he replied that he voted for Martin Van Buren in 1848. At this point the plaintiff's counsel objected that these questions were "irrelevant and illegal and otherwise informal."[74] Henry Wise, another witness for Mary, was a bit more forward in professing his abolitionist views, stating in his deposition that "I am an abolitionist as I understand it. I voted for what they call free soilers for a number of years." He even continued by revealing that he was not summoned to testify, but stated that "I heard they were taking deposition [sic] in regard to this negro woman…I wished if I could be of any benefit to the Girl by telling the truth."[75] So his anti-slavery sentiment led him to *seek out* the opportunity to testify on Mary's behalf. Sometimes witnesses who did not share this anti-slavery viewpoint needed financial inducement to come and testify. James Hendrickson, another witness in this case, admitted to being paid for his testimony, but only for his expenses and the amount of money he would make at home during the same amount of time. Hendrickson also added that he was not an abolitionist and "I allways [sic] voted the democratic ticket."[76] Although the witnesses in Mary's case were generally

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[74] *Mary, of color, and her children Samuel & Edward v. Calvert, Launcelot H.*, April 1851, Case No. 2, SLCC, p. 41.

[75] Ibid., p. 43.

[76] Ibid., p. 55.

forthcoming about their beliefs on slavery and abolitionism, in the case of George Johnson against Reuben Bartlett in November 1852, one of Johnson's witnesses, William F. Boyd, when asked if he believed slavery was right or wrong, stated "I wont [sic] answer that Question."[77] So in Boyd's case, he simply refused to answer questions about his beliefs on slavery, perhaps realizing the intent of the question was to discredit his opinions.

In some freedom suits, plaintiffs testified about the fact that individuals opposed to slavery were willing to assist them in gaining their freedom. This reference to anti-slavery sentiment and these individuals' willingness to assist enslaved plaintiffs provided credence to the concerns slaveholding whites in St. Louis felt about these cases. In Eliza Briscoe's case against William Anderson in 1839, Briscoe's petition explained how during her residence in Illinois (which she based her freedom suit upon), "some persons in the place last aforesaid [Illinois] ha[d] signified their intentions to take measures to procure the freedom of your petitioner." In response to these anti-slavery sentiments to help Briscoe, "your petitioner was thereupon immediately sent by her master to the city of St. Louis."[78] Briscoe's case was not the only freedom suit that mentioned the engagement of anti-slavery neighbors trying to help an enslaved individual held illegally in slavery in Illinois win his or her freedom. In Thomas Jefferson's March 1843 case against Milton W. Hopkins, Jefferson's petition also explained that while Hopkins held him to labor in Illinois for eight months, it was the interference of others in that area that caused

[77] *Johnson, George, a man of color v. Bartlett, Reuben*, November 1852, Case No. 281, SLCC, p. 17.

[78] *Briscoe, Eliza v. Anderson, William*, November 1839, Case No. 219, SLCC, p. 1.

Hopkins to send him on to St. Louis in order to retain his property rights in Jefferson. He describes how after eight months of laboring on his owner's (Samuel Prosser's) farm, "there began to be a good deal of talk in the neighborhood about said Prosser holding petitioner as a slave." As a result of this "talk," Prosser, "fearing the intervention of the authorities there," brought a carriage to the farm, retrieved Jefferson, and "drove off and brought your petitioner to St. Louis."[79] In these cases, the anti-slavery sentiments of William Anderson's and Samuel Prosser's neighbors led directly to the suits of Eliza Briscoe and Thomas Jefferson for freedom. In this way, opponents of slavery, even in areas outside of St. Louis, could assist and influence freedom suits.

St. Louis's proximity to free states, and especially Illinois, which had a small but determined abolitionist community, made it a potential hotbed for anti-slavery activism. One particularly rich case suggests the extent and type of anti-slavery activity in and around St. Louis. In this case, John Finney, a defendant in a freedom suit, sued Calvin Kinder for taking Finney's slave woman Ritter and her children Martha, Sarah, and James, across the Mississippi River into Illinois and aiding them in their escape from St. Louis. A closer look at this case is warranted because the case highlights not only the possible consequences for those who might aid slaves in their attempts to win freedom, but also the dangers inherent in trying to escape slavery by running away to free territory. It describes a number of actions by whites that may be interpreted as abolitionist or anti-slavery activity, and it also shows how the St. Louis courts dealt with these types of activities in the 1840s.

[79] *Jefferson, Thomas, a man of color v. Hopkins, Milton W.*, March 1843, Case No. 14, SLCC, pp. 3-4.

John Finney sued Calvin Kinder in November 1842 for trespass on the case with damages of $1000 for taking his slave woman Ritter and her children in contravention of the 1835 law against removing slaves across the Mississippi River without permission or a pass from their owner. Finney complained in his petition that Kinder intended "to injure & defraud" him of "the price & value of the said slaves," and Kinder "did cross & transport the said slaves…across the Mississippi River to the State of Illinois."[80] The testimony in this case demonstrates a method for slaves trying to escape as well as how others assisted these attempts.

William Smith Wallace of Illinois told an incredible story concerning how a free man of color manipulated him and other whites to help his family escape freedom. According to Wallace, he was living in Alton, Illinois, when Nicholas Jones, "a Negro man, came to Alton and contracted with…me, to move him and his family from the Illinois side of the Mississippi river, to Carlinsville." When Wallace and Jones reached the appointed spot to pick up Jones's family, they were not there, so Jones convinced Wallace to cross to St. Louis and retrieve his family. While crossing the river on the ferry, Wallace directed the captain of the ferry to collect the fare from Jones, and he said the captain "went to the Negro, and they had some

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[80] *John Finney v. Calvin Kinder*, November 1842, Case No. 17, St. Louis Circuit Court, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, petition of John Finney. An 1835 statute ordered that "Any ferryman, or other person, who shall cross any slave, from this state across the Mississippi river, unless such slave have a pass…shall forfeit and pay to the owner or employer…all damages and costs which may accrue to the owner or employer of such slave, and the value of such slave in addition thereto." A similar law forbade any "master, commander or owner of a steamboat, or any other vessel" from transporting slaves, with a penalty of $150 "to be recovered by action of debt, without prejudice to the right of such owner to his action at common law." See *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighth General Assembly…*, 3rd ed. (Saint Louis: Printed by order of the Secretary of State, by Chambers & Knapp-Republican Office, 1841), p. 586.

conversation together, but what it was I don't know…and I did not see the Negro pay him any thing."[81] This testimony insinuated that Wallace believed the captain knowingly assisted Jones with the removal of his family from St. Louis, and it also absolved Wallace of the responsibility for breaking the law against transporting slaves without a pass.

Wallace had to ensure that the court would not hold him responsible for the loss of property, and so he framed his actions in ways that indicated his ignorance of the consequences of his actions and the deliberate actions of the ferry captain. After picking up Jones's family, Wallace hid Jones's wife and three children under a cover on the back of his wagon while they traveled across the ferry and into Illinois all the way to Springfield. He defended this action by stating that "my waggon [sic] cover was too small and did not come down to the edge of the waggon [sic] bed by about eight inches," and therefore "I frequently saw the heads and faces of the Negro woman & children, and I think that they might easily have been seen by any person." He also claimed that when they reached Illinois, he was not familiar with the area, so "the Negro Jones was enabled and did, practice a trick on me, and made me hawl [sic] him all the way to Springfield instead of Carlinsville as was the bargain." At the close of his deposition, Wallace reported that a few days after he delivered Jones and his family to Springfield, a man from the ferry company approached him, and "told me that if he had to suffer, I would suffer too, that Finney had sued him…and advised me to go away."[82] Robert McEvan, another witness, worked on the ferry boat and

[81] *John Finney v. Calvin Kinder*, deposition of William Smith Wallace, pp. 2-3.

[82] Ibid., deposition of Wallace, pp. 4-6.

testified that he saw the wagon but did not see any slaves in it. He was there the next day when Finney approached the owner of the ferry, and he told Finney that he did not see any slaves in the wagon. He then stated that before this incident, "Negroes were in the habit of crossing on the Ferry boat without passes."[83]

Finney's brother-in-law John Lee was the individual charged with retrieving Finney's escaped slaves, and his testimony indicates the prevalence of abolitionists in Illinois, where he traveled to recover the slaves. He recalled the difficulty of his search for them, stating that he "frequently heard that they were conveyed in wagons, covered, from stage to stage by abolitionists." He finally caught them in Chicago, where they were "concealed in the hold under the machinery" on the steamboat "Chicago." According to Lee, he had "some difficulty" getting them off the boat because the woman was "then and there refusing to go with him," and he also had trouble putting the slaves in jail for safekeeping because "of the danger to which his property might be subjected by the threatened violence of the abolitionists of the place." Finally, he recounted being stopped in Ottaway, Illinois, and charged with kidnapping, which forced him to hire a lawyer to defend himself from the abolitionists.[84] This testimony provides another piece of evidence of the anti-slavery activism that St. Louis slaveholders feared. It is particularly rich in its description of the ways that slaves and free blacks like Jones worked to safely remove slaves from St. Louis, and also for its description of abolitionists' assistance of slaves in their

[83] Ibid., deposition of Robert McEvan.

[84] Ibid., deposition of John Lee. Lee also recounts how as payment for his services for four weeks to return the slaves to Finney, he received the eldest daughter of Jones and Ritter, whom he sold for $200.

escapes. The case suggests that while slaveholders in St. Louis may have exaggerated the extent of anti-slavery activism in and around the city, in at least some instances, abolitionists did operate in the area to assist slaves in St. Louis with their escape efforts.

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During the decade and a half prior to the Civil War, the slavery issue not only became central to national debates over sectionalism and the future direction of the country, but also heated up in the local St. Louis community, where discussions over the future of slavery and the place of free blacks in society became paramount. These debates affected the laws of slavery and of freedom suits, as well as the operation of these laws through the local court system. Fueled by national and local events that drew particular attention to these issues, lawmakers at all levels of government struggled with how to control the increasing sectional tensions that threatened to destroy the federal union as well as the unity within the state of Missouri. Freedom suits were integral to these debates in St. Louis, and with the *Dred Scott* case, they rose to national prominence as well. This case focused the country's attention on the plight of slaves suing for freedom when Chief Justice Taney's opinion in the case aroused the anger of many fence-sitters on the slavery issue. In this direct way, freedom suits contributed to national debates over the place of slaves and free blacks in the country, but they also indirectly affected these debates by bringing questions of freedom before the community.

Freedom suits provide an interesting angle for viewing the changes in law brought by legislators' reactions to local and national events. Using freedom suits as

a lens, we can better see the ways in which a community's views influenced the outcomes of legal actions. But they can also bring to light contradictions in the laws. When the laws tended towards increasing restrictions on personal liberty in the late antebellum years, freedom suits became *less* likely to be decided in favor of slaveholders. A closer look at some of the demographics and politics of St. Louis helps explain this trend. The unique position of St. Louis on the border between North and South, and East and West, made it an attractive location for immigrants entering the United States in these years. The expanding immigrant population had little use for slave labor; most immigrants could not afford to own slaves themselves, and many found themselves in competition with slaves and free blacks for the menial labor positions they sought. For this reason, poorer immigrants opposed slavery and also opposed free blacks in their society. The large immigrant presence in St. Louis helps explain how freedom suits tended not to be found for slaveholding defendants in these years.

Another vital element to the changes in the laws and the shift in prosecution and outcomes of freedoms suits was the great paranoia experienced by slaveholders over the threat of anti-slavery activism. From its beginnings in the 1830s, the national Abolitionist movement grew into a powerful force in the decades leading up to the start of the Civil War. Because Missouri bordered free territory on multiple sides, slaveholders in the state became especially fearful of the encroachments of abolitionists from these free areas into their state. Although certain elements of Missouri's population, such as immigrants and those poorer whites who feared competition from slave labor, began to oppose slavery, these groups did little to

actively work for abolition or to liberate Missouri's slave population. There is some evidence of anti-slavery activism, as demonstrated by the case of *Finney v. Kinder* and the politics of Frank Blair and B. Gratz Brown, but more important for changes in the law of slavery was the *perceived* threat Missouri's slaveholders held of hordes of abolitionists bent on seizing and liberating their enslaved property.

All of these ingredients combined in the mixing bowl of St. Louis, a large and increasingly cosmopolitan city where people from a variety of backgrounds clashed over issues of slavery and the place of slaves and free people of color in their society. St. Louis serves as a microcosm of the larger nation's politics in this era; home to migrants from the Northeast, the Midwest, and the South, as well as a massive foreign immigrant population, St. Louis vigorously debated these issues in the 1840s and 1850s, with no resolution in sight. At the start of the Civil War, St. Louis became a hotbed for enthusiasts on both sides, who clashed on numerous violent occasions before the city eventually fell into Union hands and became a stronghold for the Union's base of operations in the western theater of the war.

Epilogue

The powerful dynamics at play in the cases of slaves who sued for freedom in antebellum St. Louis illuminate a generations-long struggle over the boundaries of free status. The debates over freedom that occurred in and around these cases had momentous consequences for the men and women who braved the risks and initiated a lawsuit to win freedom—the difference between lifelong, hereditary slavery, or the beginning of new lives as free persons. By taking the fateful step of suing for freedom, despite enormous personal risk, enslaved men and women became participants in a larger legal struggle over the meaning of personal status.

Throughout the antebellum period, whites in the slaveholding states, as well as those northern states that had already begun the process of abolition, pressed for greater clarity in laws regarding personal status and race. Although many northern states abolished or started to abolish slavery in the late-eighteenth and early-nineteenth centuries, most whites in these areas remained committed to a strict color line that granted certain privileges to whites solely on the basis of color. In the southern states, slaveholders argued for protection for their slave property against freedom suits, as well as against the designs of free black and white abolitionists who they believed threatened the slave system.

Slaves and free people of color frustrated white efforts through the arena of the law, bringing suits to challenge white authority, question personal status, and demand legal protection. By initiating legal action, slaves and free blacks used the law to defend themselves from white encroachment on their liberty, and they expected the law to recognize and uphold their claims. In this way, slaves and free

people of color evinced a profound belief in the same legal system that held them in slavery or denied them many of the rights enjoyed by whites. The ways in which people without formal legal rights managed to employ the law to their benefit suggest the need for a broad conception of the antebellum legal system, one that recognizes the contributions and participation of men and women of all races and statuses.

Antebellum judges and juries upheld the claims of enslaved men and women because they recognized the importance of maintaining the rule of law, even when it conflicted with the interests of individuals within the slaveholding elite. Providing a method for those wrongfully enslaved to sue for freedom allowed legislators to point to the fairness of the slave system in Missouri and to better defend the existence of slavery against the attacks of northern abolitionists and critics of the institution. Missouri's legislators believed they acted for the good of the larger community and protected the continued existence of the slave system, even though it sometimes meant recognizing the freedom of individuals held wrongfully in slavery over the protests of individual slaveholding defendants.

The expansion of the nation's territory in the years following the Mexican War reignited the flames of sectional tension that had surfaced periodically throughout the antebellum years. The question of whether to allow slavery to expand into new territories, coupled with the growth of the Abolitionist movement in the northern states, created a rift in the country that could not be repaired by legislative compromises. This growing conflict made southerners increasingly anxious about possible threats to the institution of slavery, including threats by abolitionists, free people of color, and slaves themselves. In response to these perceived threats,

southern legislators passed laws that further restricted the limited rights and privileges of slaves and free people of color.

During this period of increasing restrictions, Missouri's legislators passed a law requiring slaves to provide financial security for suits for freedom. Although the requirement for security made it more difficult for slaves to initiate freedom suits, shifts in the demographics of St. Louis also altered the composition of juries and created an interesting phenomenon: in the fifteen years prior to the Civil War, slaveholding defendants did not win a single freedom suit in St. Louis. Slaves suing in this period did not always win freedom, but St. Louis juries became increasingly hesitant to find for slaveholding defendants. The demographic changes in St. Louis in the 1840s and 1850s made the city more northern in character, with large numbers of immigrant laborers, many of whom opposed slavery, although not necessarily on moral grounds. But St. Louis remained a city divided—the slaveholding elite did not relinquish their control of the city without a fight.

The final years of the freedom suits and the start of the Civil War suggest the determination of slaveholders in St. Louis to continue their ties with the South.[1] The last record in Isham Shaw's February 1860 freedom suit against Augustus H. Evans is a February 1863 notation that the Court issued a nonsuit in the case because the plaintiff failed to appear in court.[2] Although the record does not specify what may

[1] For a more complete treatment of St. Louis and Missouri in the era of the Civil War, see Louis S. Gerteis, *Civil War St. Louis* (Lawrence: University Press of Kansas, 2001).

[2] St. Louis Circuit Court Record Book 32, Friday, February 13, 1863, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri, p. 74. A nonsuit was a judgment for the defendant because the plaintiff failed to prosecute their suit.

have happened to Isham Shaw, the date suggests that perhaps Shaw viewed his suit as no longer necessary to prove his freedom. Shaw had possibly already fled to join the Union army to fight in the cause that many enslaved individuals believed would end the institution of slavery, or maybe Shaw believed that Lincoln's Emancipation Proclamation meant that he no longer needed the courts to declare him a free man. Whatever the reason, the Civil War ultimately ended the need for freedom suits in Missouri, despite the state's continued divisions over the place of black people in society. Missouri was the site of a prolonged, "internal civil war," with brother fighting brother and neighbors warring in the streets.

After the election of Lincoln in 1860, St. Louis appeared to be a solidly Republican city, but the state of Missouri still had deep sympathies with the southern cause. When the sheriff held a routine slave sale as part of an estate settlement on New Year's Day, 1861, a large Republican crowd gathered and held the bidding below $8, so the auctioneer gave up and returned the slaves to jail. Although St. Louisans would continue to sell their slaves elsewhere during the Civil War, historian Louis Gerteis found that this was the last instance of a public slave sale in St. Louis.[3] But when South Carolina seceded and the standoff in Charleston began over the federal arsenal at Fort Sumter, Missouri's newly-inaugurated governor Claiborne Jackson declared that Missouri's "honor, her interests, and her sympathies point alike in one direction, and determine her *to stand by the South.*"[4]

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[3] Gerteis, *Civil War St. Louis,* p. 78.

[4] Quoted in Gerteis, *Civil War St. Louis,* p. 79 [emphasis in Gerteis].

The Civil War officially came to St. Louis when on May 10, 1861, a large group of Union forces marched on Camp Jackson outside the city, where Governor Claiborne Jackson had mustered about 800 state militiamen in an attempted show of force to try to prevent the Union forces from occupying St. Louis and controlling the federal arsenal there. Although the state militia surrendered, in the ensuing transfer of power fighting broke out, killing twenty-eight civilians who came out after the surrender, as well as two soldiers. William Tecumseh Sherman, who had moved to St. Louis to become president of the Fifth Street Railroad, lay on the ground with his son Willie to avoid the firing.[5] The Camp Jackson affair polarized the state of Missouri even further, and turned much of the state into what historian James McPherson called "a no-man's land of hit-and-run raids, arson, ambush, and murder."[6]

Although freedom suits in St. Louis ended with the Civil War, the struggle for freedom and equality for African Americans continued long after the fighting stopped, with whites throughout the nation remaining fully committed to a strict color line. St. Louis today remains a polarized and somewhat segregated city, made up of ethnic neighborhoods with a slight majority-African American population.[7] But St.

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[5] Gerteis, *Civil War St. Louis,* p. 109; James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), p. 291. Frank Towers argued that the Camp Jackson affair "brought the Civil War to Missouri." See Towers, *The Urban South and the Coming of the Civil War* (Charlottesville and London: University of Virginia Press, 2004), p. 190.

[6] McPherson, *Battle Cry of Freedom,* p. 292.

[7] The 2000 census shows that 51.2% of St. Louis's 348,189 residents are self-identified as African American. U.S. Census Bureau, State and County QuickFacts, Accessed at: http://quickfacts.census.gov/qfd/states/29/2965000.html (January 13, 2009).

Louis is also a place that is proud of its heritage of freedom suits, with displays about Dred Scott and the freedom suits prominently on view at the Old Courthouse historical site, as well as at the Missouri State Archives-St. Louis branch and the Missouri Historical Museum. In 2007, Washington University in St. Louis hosted a three-day conference commemorating the 150th anniversary of the Supreme Court's *Dred Scott* decision, featuring historians and legal scholars as well as members of the current Missouri Supreme Court. Dred and Harriet Scott's descendants are prominent members of the St. Louis community, where they regularly attend community events to publicize their ancestors' fight for freedom. The wide public interest in these displays and events suggests that the freedom suits offer the city a more complex heritage, one that recognizes their painful slaveholding past but also takes pride in being the site where so many enslaved individuals brought suit for their freedom, and where many of these enslaved plaintiffs won their freedom.

Appendix

Table 1: Totals and Number of Male and Female Plaintiffs

Years	1814-1825	1826-1830	1831-1835	1836-1840	1841-1845	1846-1850	1851-1855	1856-1860	All Years
Total	32	48	85	43	71	25	15	6	325
Male	9	23	31	20	36	9	8	3	139
Female	23	25	54	23	35	16	7	3	186

Figure 1: Male and Female Plaintiffs

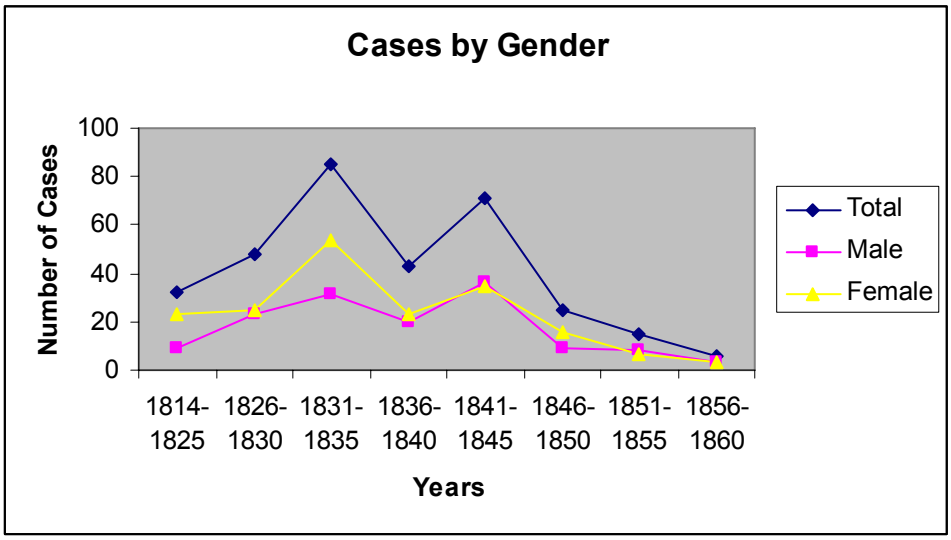


Table 2: Arguments Presented in St. Louis Freedom Suits, 1814-1860

Years	1814-1825	1826-1830	1831-1835	1836-1840	1841-1845	1846-1850	1851-1855	1856-1860	All Years
Residence in NW	25	41	73	28	50	11	8	0	236
Free Mother/Born Free	14	8	28	20	25	3	2	0	100
Manumission	3	10	9	8	21	9	8	4	72
Kidnapping	1	6	14	8	0	1	1	0	31
Other	2	2	13	12	8	5	2	5	49
Unknown	3	5	2	2	0	2	0	0	14

Figure 2: Arguments Presented in St. Louis Freedom Suits, 1814-1860

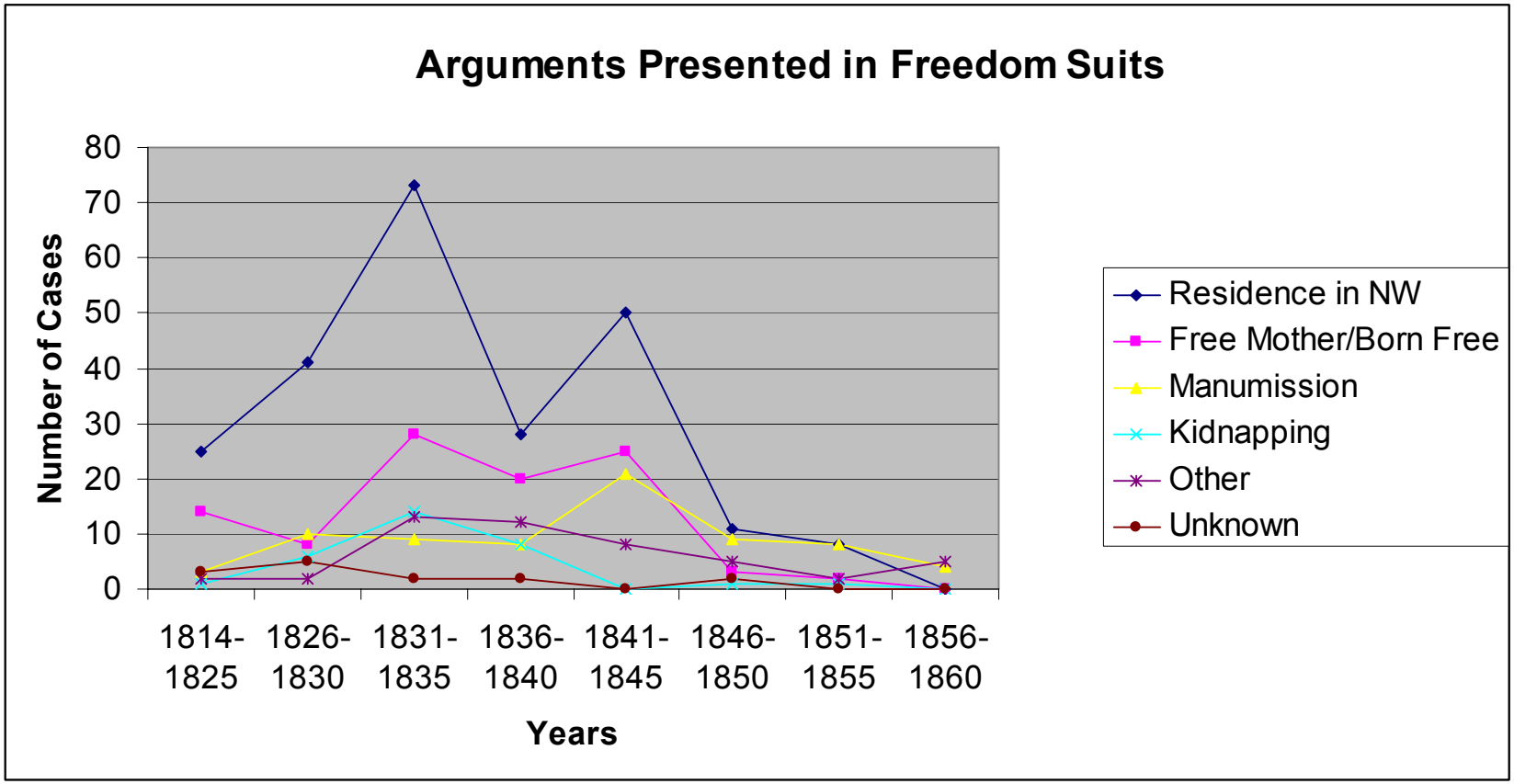


Figure 3: Arguments Presented in St. Louis Freedom Suits

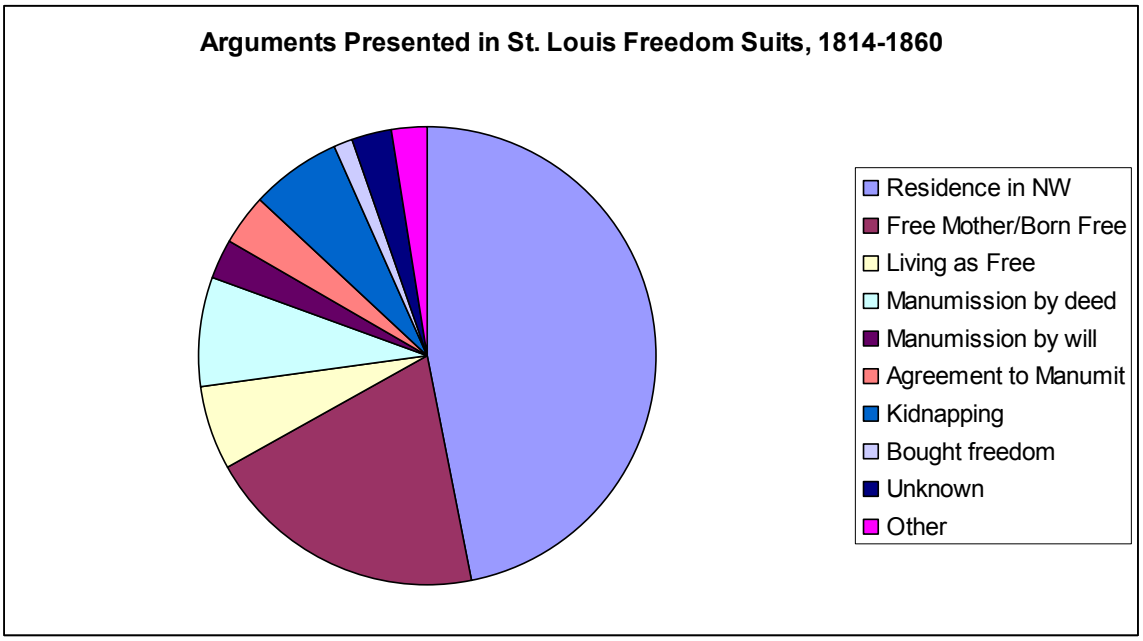


Table 3: Outcomes of St. Louis Freedom Suits, 1814-1860

Years	All Years	1814-1825	1826-1830	1831-1835	1836-1840	1841-1845	1846-1850	1851-1855	1856-1860
Unknown	51	5	15	23	3	4	0	1	0
Plaintiff Won	124	21	13	29	18	27	8	5	3
Defendant Won	65	5	11	12	11	19	2	2	3
Case dismissed	13	1	2	3	1	4	1	1	0
Plaintiff ceases prosecution	62	0	6	13	7	16	14	6	0
Death of party	10	0	1	5	3	1	0	0	0
Appealed	32	0	9	10	1	10	2	0	0

Figure 4: Outcomes of St. Louis Freedom Suits and Number of Appeals, 1814-1860

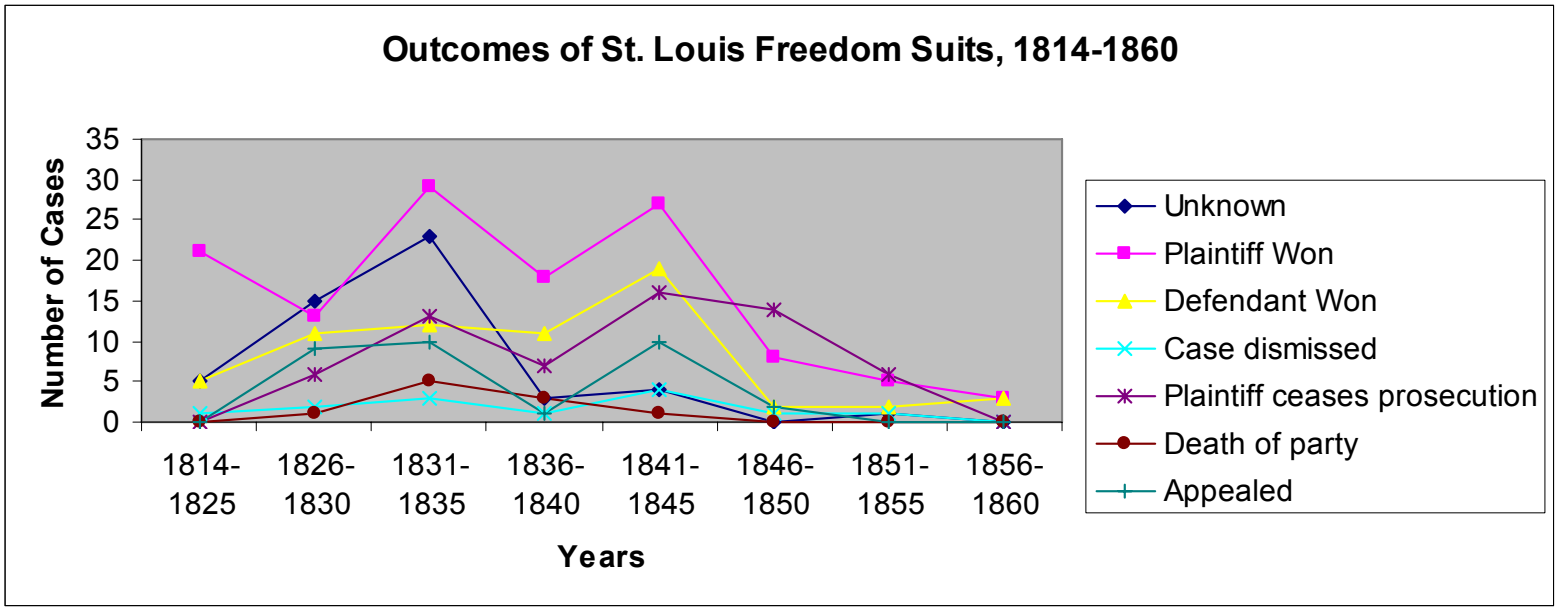
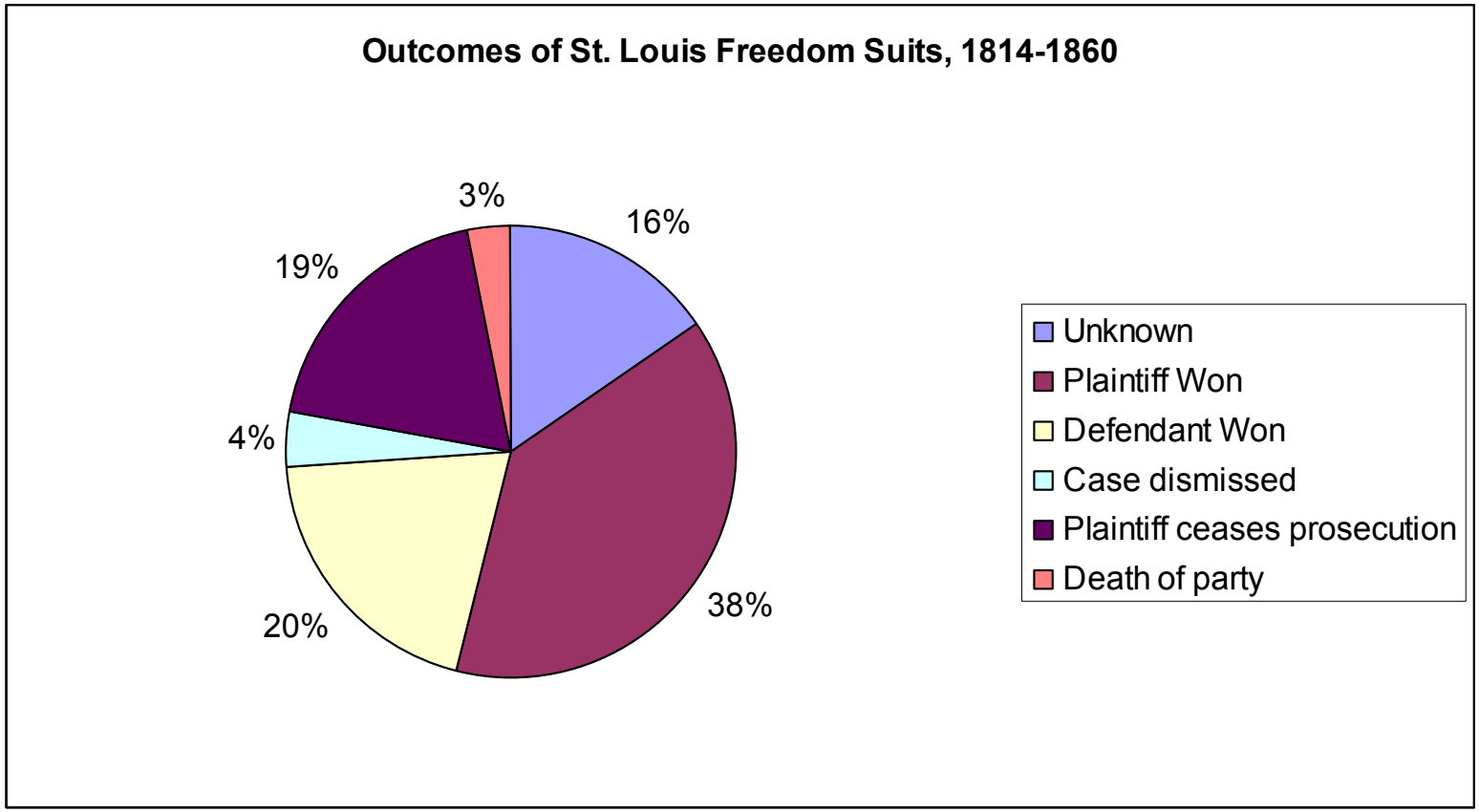


Figure 5: Outcomes of St. Louis Freedom Suits as Percentage of Total Freedom Suits, 1814-1860



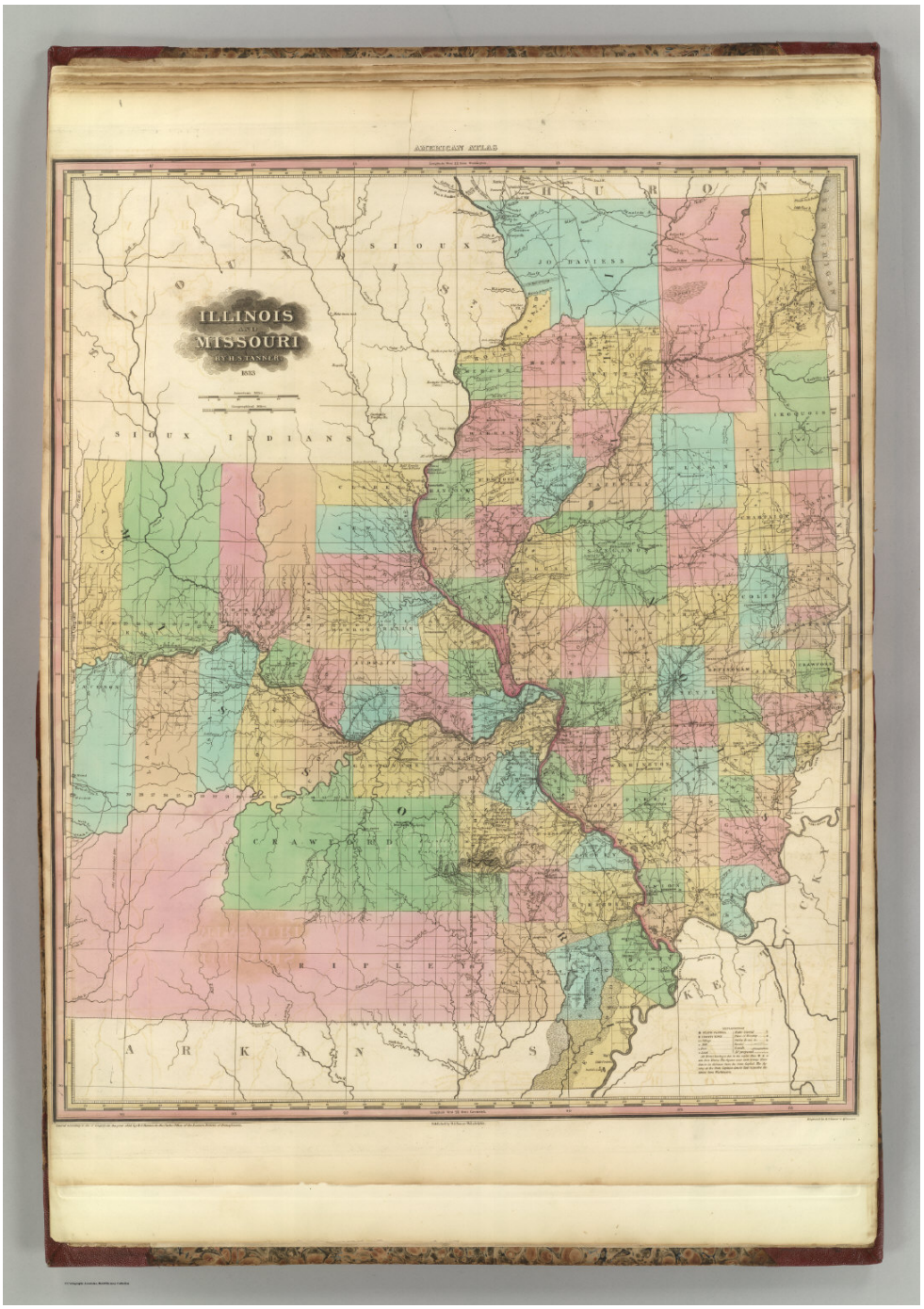


Figure 6: Map of Missouri and Illinois

Illinois and Missouri 1833. American Atlas. (Philadelphia: Published by H.S. Tanner, entered according to Act of Congress, engraved by H.S. Tanner & Assistants, 1833) From the David Rumsey Map Collection, Cartography Associates. Accessed at: http://www.davidrumsey.com/luna/servlet/RUMSEY~8~1 (March 23, 2009). Copy of license agreement available at: http://creativecommons.org/licenses/by-nc-sa/2.0/.

Figure 7: Map of St. Louis in 1844

Map Of The City Of St. Louis Compiled from information in the possession of Rene Paul Esqr. 1844. Published By Twichel & Cook N.W. Cor. Main & Pine Sts. St. Louis Mo. Engraved at the Office of J.T. Hammond, By T. Twichel. N.W. Cor. Main & Pine Streets. St. Louis Mo. From the David Rumsey Map Collection, Cartography Associates. Accessed at: http://www.davidrumsey.com/luna/servlet/RUMSEY~8~1 (March 23, 2009). Copy of license agreement available at: http://creativecommons.org/licenses/by-nc-sa/2.0/

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St. Louis Circuit Court Case Files, Office of the Circuit Clerk, Missouri State

Archives, Office of the Secretary of State, St. Louis, Missouri.

St. Louis Court of Common Pleas Case Files, Office of the Circuit Clerk, Missouri State Archives, Office of the Secretary of State, St. Louis, Missouri.

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Biography

Kelly Marie Kennington was born on September 28, 1979, in Kettering, Ohio. She completed her B.A. in history at Tulane University in 2002, her M.A. in history at Duke University in 2004, and her doctorate in history at Duke in 2009. Since 2003, Kelly has served as Assistant to the Editor of the Journal of the History of Medicine and Allied Sciences. She also was a co-organizer of the First Annual North Carolina History Thesis Writers Conference in 2006 and the Duke-UNC Southern Studies Seminar, 2005-06. She has been blessed to receive several fellowships at Duke, including the Anne Firor Scott Research Award (2004), the Summer Research Fellowship (2006), the Julian Price Endowed Dissertation Research Fellowship (2006-07), the Special Collections Library Reference Internship (2007-08), and the Bass Instructorship (2008-09). She has received the Law and Society Postdoctoral Fellowship at the Institute for Legal Studies at the University of Wisconsin for 2009-10, and she will begin her position as an assistant professor of history at Auburn University in August 2010.