

The Summer Christmas Came to Minnesota: *The Case of Eliza Winston, a Slave*^{1, 2}

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"The law is the witness and external deposit of our moral life. Its history is the history of the moral development of the race."

Oliver Wendell Holmes
 "The Path of the Law"
 10 Harv. L. Rev. 457, 459 (1897)

Between 1857 and 1860, local courts throughout the North in communities that were hostile to slavery often ignored the policy behind the *Dred Scott* decision³ by granting fugitive slaves their freedom. These courts seldom left official records, forcing historians to rely on newspaper accounts, journals, and letters of participants and observers to tell the story.⁴ Often these decisions arose from jealousies between jurists within a state.⁵ Just as frequently, these proceedings were mere formalities designed to lend a gloss of legitimacy to manumitting actions that had no legal foundation.⁶ Since slaveholders often dispatched men to recover their "property,"⁷ freed slaves had to be spirited away. Timing was critical: Like the matador's cape, the courts served to forestall and misdirect the slaveowner who challenged his slave's claim to free-

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1. "The Case of Eliza Winston, a Slave" was the title of the case in the Minneapolis court records, according to Return Holcombe, *Compendium: History of Carver and Hennepin Counties, Minnesota* 130 (1915). There is, however, no present record of the actual hearing.

2. This article received the Steven Block Award in 1989.

3. *Dred Scott v. Sanford*, 60 U.S. (19 How.) 393 (1857).

4. Most fugitive slave cases were not officially recorded since they were held before irregular courts and commissions. Paul Finkelman, *Slavery in the Courtroom* 8 (1985).

5. *Id.* at 78.

6. See, e.g., John Hope Franklin, *From Slavery to Freedom: A History of Negro Americans* 264-65 (3d ed. 1969). See also State Atlas, Aug. 29, 1860, at 1, col. 5, for the account of a New York City case.

7. Franklin, *supra* note 6, at 266.

dom.⁸ Even if a master foresaw the outcome, he felt, at least for the moment, bound by local due process.⁹

During this period, Minnesota seemed far removed from the strife that consumed the rest of the country.¹⁰ Without a large Black population to threaten Whites for jobs, the issue of slave emancipation was at best theoretical, founded on principles lofty enough that they had little effect on the average Minnesotan. Concern with economics was reflected in the state's schizophrenic attitude toward slavery. On one hand, the institution of slavery was prohibited;¹¹ on the other, assurances that the right to slave ownership would not only be tolerated¹² but enforced¹³ were offered to encourage Southerners to tour the state. Adding to this confusion, Minnesotans, as strong unionists, believed that the country should live under one law.¹⁴ Yet most politicians and

8. Franklin, *supra* note 6, at 265.

9. When slaveholders found themselves in hostile jurisdictions, they were often literally outgunned by superior antislavery forces. Franklin, *supra* note 6, at 265. See *infra* note 80 and accompanying text.

10. See generally 2 William Watts Folwell, *A History of Minnesota* (1961); Earl Spangler, *The Negro in Minnesota* (1961).

11. Under Minn. Const. art. I, § 2 (1858) the state constitution read:

No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers. There shall be neither slavery nor involuntary servitude in the State, otherwise than in the punishment of crime, whereof the party shall have been duly convicted.

Id.

Notwithstanding this provision, the institution of slavery was tolerated in Minnesota. No Minnesota slaves were freed nor were any slaveowners prosecuted. See Spangler, *supra* note 10, at 28-29; Jane Grey Swisshelm, *Half a Century 171-72* (1880).

12. Minneapolis Lake Area, Jan. 1988, at 24, col. 1; Folwell, *supra* note 10, at 70.

13. In the spring of 1860, Minnesota Republican Governor Alexander Ramsey posted a \$250 reward for the apprehension of those who kidnapped an "alleged fugitive slave" and carried him off "without any legal forms or any warrant." Spangler, *supra* note 10, at 28.

14. St. Paul Pioneer and Democrat, Aug. 26, 1860, at 2, col. 2. Minnesotans had a practical interest in supporting the Union. During the earliest days of statehood, Minnesotans had turned to the nation for enabling legislation and for land grants. Theodore C. Blegan, *Minnesota: A History of the State* 233 (1975).

This does not mean that Minnesotans were uniformly antislavery. Folwell, *supra* note 10, at 69. Indeed, the occurrences surrounding the case of Eliza Winston illustrate the point. But it is important to stress that slavery in Minnesota was a difficult issue with which Minnesotans had to grapple. Being tolerant of slaveowners was done as much from a strict adherence to federal law as shaped by *Dred Scott* as from business interests. Despite the fact that some Minnesotans owned slaves, commentary supporting the institution was absent. Instead, in remarkable abundance, was a sentiment that was either largely condescending or boldly anti-negro.

In the State Atlas, abolitionist editor William S. King, a participant in the Eliza Winston rescue, wrote with the invective of a true believer: "[All that] we want to

journalists proclaimed that a state law condemning slavery should preempt the federal law that protected it.¹⁵ Abolitionists who helped slaves gain their freedom, however, were villified in their communities.¹⁶ In light of a failed effort in 1854 to pass a "Black Law," Minnesota had no laws prohibiting free Blacks from enter-

make Minnesota the greatest, richest, and happiest State in the Union is a few Southern nigger-drivers to spend the summer months with us, with plenty of Minnesota lickspittles to chase after and crawl around them. That's all." State Atlas, Sept. 26, 1860, at 2, col. 5.

In the conservative Mankato Weekly Record, the editor wrote:

Fortunate.—There is not a negro living in Mankato, nor do we believe in the whole of Blue Earth County. It is often remarked by visitors that we are peculiarly blessed in this respect. Occasionally, however, during political excitements, our Republican friends create imaginary "Sambos," but we are rarely favored with a sight of the real "ebony skin."

Mankato Weekly Record, Nov. 15, 1859, at 3, col. 1.

Nonetheless, by virtue of state government being controlled by the Republican Party and a state constitution that was not redrafted to accommodate *Dred Scott*, it is evident that the majority of citizens fell between the poles.

A further indication of the strength of state unionism: Upon receipt of news of the bombardment of Fort Sumter, two days later, on April 14, 1861, Governor Ramsey, who was in Washington, D.C., rushed to the office of the Secretary of War to offer "a thousand men for national defense." Minnesota authorized the first contingent of Union troops. Folwell, *supra* note 10, at 76-77.

15. Folwell, *supra* note 10, at 70. The Evening News, for example, noted that:

[I]n the face of th[e] plain provision [in Minn. Const. art. I, § 2], slavery has existed right here in this city, without a complaint, without a murmur. But within a few days past a *great outrage* has been committed, a black woman has been assisted in procuring her freedom. How has the outrage been committed? Have the laws of the *State* been violated, and if so, who has done it? Is it the man who attempts, nay, so far as his own acts go, makes this a slave state, contrary to law, or the man who assists in enforcing the laws as they exist?

The slaveholders themselves know that their *chattels* cease to be such the moment they land in our state, [the slaves] then "have rights that white men are bound to respect." [Slaves] are contraband, and as far as their owners are concerned, are confiscated.

Evening News, Aug. 25, 1860, at 2, col. 3 (emphasis in original).

A final example: F.R.E. Cornell, who represented Eliza Winston in court, prevailed on the argument that her enslavement violated the state constitution. Spangler, *supra* note 10, at 30.

16. "[T]here was really no danger [of the intermeddling propensities of Abolitionists] . . . since Minnesotans were law-abiding people and, 'although there may be now and then an odious creature who would not scruple to invade the family circle,' the Southerners were urged to come north, bring their slaves, and enjoy themselves." Stillwater Democrat, May 19, 1860, at 3, col. 1. See also Evening News, *supra* note 15, at 2, col. 3 ("[W]e have even heard some *strong, active, enthusiastic, intelligent, high-minded* Republicans, talking of lynching those concerned in procuring the poor woman her freedom. Shame on such liberty-loving Christians.") (emphasis in original); Minneapolis Plain Dealer, Aug. 25, 1860, at 1, col. 4 ("It is the duty of the people to put down the extremists everywhere. Let the conservative and true men of the South, take care of the disunionists there, and the good and true men of the North take care of the Abolition fanatics here."); Evening News, Sept. 22, 1860, at 2, col. 1; St. Paul Pioneer & Democrat, Aug. 23, 1860, at 2, col. 5.

ing the state,¹⁷ such as were enacted in the railroad states of Ohio, Indiana, and Illinois.¹⁸ In fact, before Eliza Winston, no slave brought to Minnesota had ever sought her own freedom.¹⁹ Suddenly, with the publicity surrounding the case of Eliza Winston, the issue of slavery was no longer theoretical, but immediate and filled with concrete economic implications. The "twin" cities of Minneapolis and St. Anthony were now forced to sever ties with the South and join the North.

Eliza Winston's case illustrates how local courts were often used in granting freedom to slaves who traveled with their masters. Further, it reveals how abolitionists sometimes used slaves to advance the cause of abolition while ignoring the individual slave's best interests. Finally, it illustrates the often antagonistic relationships among abolitionists, the Republican Party, and the community at large.

The Eliza Winston story began three years earlier in Washington, D.C. On Friday, March 6, 1857, in a "dusky, ground-level courtroom deep within the Capitol,"²⁰ the Supreme Court handed down its decision in *Dred Scott v. Sanford*,²¹ a case that was one of

17. Spangler, *supra* note 10, at 19. During the 1854 session of what was then the Minnesota Territorial Legislature, a "Black Law" was introduced requiring all Blacks entering the state to post a 300- to 500-dollar bond. The bill was defeated by a ten to six vote in the House. 1 Minnesota House Journal 255 (1854).

18. E. Franklin Frazier, *The Negro in the United States* 60-61 (1961). The Underground Railroad headed eastward through Illinois, Indiana, Ohio and into Michigan, where slaves could then be transported through Detroit into Canada. See generally Franklin, *supra* note 6, at 253-60.

Because of the state's proximity to Canada, it is odd that the Underground Railroad did not go through Minnesota. Indeed, very few blacks entered Minnesota in the period from the early 1800s to the decade preceding the Civil War. Most Blacks in the state during the period were either fur traders or slaves brought to the state by military officers at Fort Snelling. Spangler, *supra* note 10, at 19.

Still, the journey north by way of the Mississippi River seems feasible. Assistance could have been received from such Black fur traders as George Bonga of Leech Lake, who was famous for his knowledge of the northern forests of Minnesota. For an account of the 1856 visit of Judge Charles Flandreau with Bonga, see William L. Katz, *The Black West* 28-30 (1973). Moreover, northern Minnesota was settled primarily by farmers who had migrated from the East and by northern Europeans who came to escape famine and political persecution. Many of these northern Europeans, fleeing a different kind of slavery, might have been organized to form a network. One can only speculate.

19. In 1863, however, Robert T. Hickman, a slave from Missouri, led more than one hundred slaves to freedom in St. Paul "aboard a huge raft under cover of night." Katz, *supra* note 18, at 38. There is, however, no record after Eliza Winston of slaves in Minnesota gaining freedom through judicial means. Hiram Stevens, 1 *History of the Bench and Bar of Minnesota* 36 (1904). See also *infra* note 177.

20. Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* 1, 2 (1970).

21. 60 U.S. (19 How.) 393 (1857). Professor Fehrenbacher wrote the following: In the years immediately following, the response to the decision

the most important events of the century. For over two hours, in an aged voice that steadily weakened,²² Chief Justice Roger B. Taney read the majority opinion: No Negro whose ancestors were brought to this country and sold as slaves could be a citizen of the nation or a state "within the meaning of the Constitution," and Congress had no authority to exclude slavery from the federal territories.²³ Thus, the Missouri Compromise of 1850,²⁴ as well as all federal legislation that echoed its intent, was deemed unconstitutional.

"Public reaction was prompt and often intense, as countless lawyers, politicians, editors, and preachers reached for their pens or cleared their throats for oratory."²⁵ Often the reaction to rhetoric was physically violent. While delivering an impassioned speech condemning slavery, Senator Charles Sumner of Massachusetts was physically assaulted by Congressman Preston F. Brooks of South Carolina.²⁶ Across the country, militants for both sides de-

proved to be much more important than its direct legal effect. As law, the decision legitimized and encouraged an expansion of slavery that never took place; it denied freedom to a slave who was then quickly manumitted. But as a public event, the decision aggravated an already bitter sectional conflict and to some degree determined the shape of the final crisis.

Fehrenbacher, *supra* note 20, at 3.

It is also worth noting that the level of interest attending *Dred Scott and Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 536 (1842), convinced two official reporters for the Supreme Court, Benjamin Howard and Richard Peters, that publishing the cases could turn profits for publishers. Finkelman, *supra* note 4, at 9.

22. Fehrenbacher, *supra* note 20, at 2.

23. *Id.* at 3.

24. Franklin, *supra* note 6, at 266.

The Missouri Compromise, sometimes referred to as the Compromise of 1850, provided that (1) California should enter the Union as a free state; (2) the other territories would be organized without mention of slavery; (3) Texas should cede certain lands to New Mexico, and be compensated; (4) slave-holders would be better protected by a stringent fugitive-slave law; and (5) there should be no slave trade in the District of Columbia.

Id.

Each provision was a separate bill. Professor Fehrenbacher wrote:

No more than one-fourth of the members of Congress can be said to have voted for the Compromise of 1850, but by joining forces with the sectional supporters of each bill, they assembled the necessary majority six times in the Senate and five times in the House—not to mention all the preliminary votes taken. Only 4 senators and 28 representatives voted for all the compromise measures.

Fehrenbacher, *supra* note 20, at 162.

25. Fehrenbacher, *supra* note 20, at 2.

26. *Id.* at 291. Professor Ehrlich also wrote that the violent nature of the incident was not unusual: Caning and other sorts of beatings occurred quite frequently in Washington during this period. New York Tribune editor Horace Greeley, who was covering the hearing of *Dred Scott*, wrote commentary that was so biting that

stroyed towns and committed cold-blooded murder.²⁷ Proslavery forces raided the free-state stronghold of Lawrence, Kansas, setting the town ablaze and injuring men, women, and children.²⁸ Radical abolitionist John Brown retaliated for the Lawrence raid by executing proslavery leaders at Pottawatomie Creek.²⁹ Citizens of "Bloody Kansas" waged countless, brutal reprisals against each other.³⁰ Throughout the South, proslavery forces sought to destroy every vestige of thought that criticized the institution: "If conformity involved burning books or newspapers, spying on the enemy in order to be able to counter-attack him successfully, or even killing Negroes or Whites, then in a situation where so much was at stake it simply had to be done."³¹ This activity was not confined to the South. On March 24, 1858, in St. Cloud, Minnesota, three proslavery sympathizers led by Northern Territorial Adjutant General Sylvanus Lowry broke into the newspaper office of feminist writer Jane Grey Swisshelm, destroyed the printing equipment, and threw the parts into the Mississippi River.³² She had charged him with keeping slaves on his estate.³³

The question of fugitive slaves was equally volatile: What duty did northern state and local officials have to return them to their masters?³⁴ The United States Supreme Court, in the 1842 case of *Prigg v. Pennsylvania*,³⁵ provided no guidance, holding that state and local officials were not required to assist in the return of fugitive slaves. Rather, the decision to return slaves to

an unnamed Arkansas Congressman caned him on the street. Walter Ehrlich, *They Have No Rights: Dred Scott's Struggle for Freedom* 109 (1979).

Regarding the tension within the walls of Congress, Fehrenbacher wrote, "In both houses many men armed themselves and fingered their weapons nervously when debate became heated. Senator James H. Hammond, with grim hyperbole, said that the only members not carrying a revolver and a knife were those carrying two revolvers." Fehrenbacher, *supra* note 20, at 528.

27. Katz, *supra* note 18, at 110. Professor Filler wrote:

Friends of fugitives in Indiana were made aggressive by the strong proslavery sentiment in that state, and did not scruple to kidnap slave hunters, to poison their bloodhounds, and sometimes, under provocation, to commit murder. In Ohio, a fugitive slave, given no redress in the law, killed her own daughter to keep her from being re-enslaved.

Louis Filler, *The Crusade Against Slavery: 1830-1869*, at 202-03 (1960).

28. Filler, *supra* note 27, at 202-03.

29. See generally Finkelman, *supra* note 4, at 80-81, 87-89, 103, 107-12.

30. Katz, *supra* note 18, at 107-12.

31. Franklin, *supra* note 6, at 265.

32. Blegan, *supra* note 14, at 237.

33. Jane Grey Swisshelm wrote that General Lowry of St. Cloud "lived in semi-barbaric splendor, in an imposing house on the bank of the Mississippi, where he kept slaves . . ." Swisshelm, *supra* note 11, at 171.

34. Franklin, *supra* note 6, at 265.

35. 41 U.S. (16 Pet.) 539 (1842).

their owners was left to the officials' discretion.³⁶ Moreover, Justice Story, writing for the Court, held that claimants of fugitive slaves had a right of self-help—they could forcibly take the slave—provided the action in no way breached the peace of the community.³⁷ Indeed, "Story admitted that free states had the power to prohibit their officials from enforcing a federal law. After *Prigg*, many states passed legislation barring the use of state facilities for fugitive rendition and prohibiting state officials from participating in the rendition process."³⁸ Abolitionists could use the courts to frustrate slaveholders.³⁹ Another effective means of frustrating slaveowners' legal right to self-help was to threaten violence,⁴⁰ sometimes to the consternation of the community at large.⁴¹ To stall slave owners from reclaiming fugitive slaves, abolitionists needed only to resist those owners by force of arms. For example, in Salem, Iowa, in 1848, nineteen abolitionists forced slave catchers who had captured nine slaves to bring the fugitives before the justice of the peace. The slaves were released. Outnumbered, and threatened with violence, the slave catchers returned to Missouri empty-handed.⁴² After *Prigg*, the institution of slavery was shaken and violence was inevitable. The opinion came to be used as a weapon against slavery. Even Chief Justice Taney, who agreed with the majority, nevertheless bitterly attacked Justice Story for what he "perceived (correctly as it turned out) to be the antislavery implications of the opinion."⁴³

Eight years later when southern states threatened to leave the Union, thereby forcing the ratification of the Missouri Compromise, Congress mollified the South with assurances that *Prigg* would be mitigated by strict enforcement of the Fugitive Slave Act of 1850.⁴⁴ In practical terms, the new law was unenforceable

36. *Id.* at 622.

37. *Id.* at 615.

38. 1 Paul Finkelman, *Fugitive Slaves and American Courts: The Pamphlet Literature Series II*, at v-vi (1988).

39. Paul Finkelman, *Abolitionists in Northern Courts: The Pamphlet Literature Series III*, at iv (1988); Filler, *supra* note 27, at 202.

40. *See, e.g.*, Finkelman, *supra* note 4, at 79 (reporting *Daggs v. Frazier*, 6 F. Cas. 112 (D. Iowa 1849)).

41. *Eliza Winston* best illustrates this point. *See infra* notes 61-134 and accompanying text.

42. Finkelman, *supra* note 4, at 79.

43. Finkelman, *supra* note 4, at 44.

44. Finkelman reported that the Compromise was made to keep the South from seceding from the Union. To placate the Southerners who felt that northern jurists had not complied with the Fugitive Slave Act of 1793, the 1850 amendments to the act were drafted.

Under the amended act:

Federal commissioners were appointed in each county of the United

where the community sentiment was virulently antislavery.⁴⁵ Historian William L. Katz wrote:

Some Ohio legislators took a prominent part in the most militant phases of the antislavery struggle. [Republican Senator Joshua] Giddings told Congress how he defied the Fugitive Slave Act of 1850 by aiding runaway slaves, "as many as nine fugitives dining at one time in my house. I fed them, clothed them, gave them money for their journey and sent them on their way rejoicing." His two sons served as their guides. Giddings' Senate colleague, Salmon P. Chase, aided so many slaves in Ohio courts that he was known as "the attorney general of the fugitive slaves."⁴⁶

Other legal attempts to aid southern slaveowners, such as *In re Anthony Burns*,⁴⁷ were undercut by public opinion galvanized against the new law, which was perceived as an attempt by the federal government to supercede state and local authority by returning slaves to their masters.⁴⁸ Whether prominent leaders of

States to enforce the law. They were empowered to issue arrest warrants and appoint deputies and posse comitatus for capturing fugitives. Alleged fugitives could be brought before the commissioners, who would determine their status. At these hearings the alleged fugitives were explicitly prohibited from testifying in their own behalf; jury trials were also proscribed. Federal marshals and military officers were obligated to enforce the law, and "all good citizens" were "hereby commanded to aid and assist in the prompt and efficient execution of this law, wherever their services may be required." Federal marshals who failed to safeguard an alleged fugitive [slave] could be fined \$1,000 and face civil suits for the value of any slaves rescued. Any person convicted of interfering with the rendition of a fugitive slave could be fined \$1,000 and face up to \$1,000 in civil damages for each slave lost. In addition, a person convicted of interfering with the law could be sentenced to six months in prison. Finally, the 1850 act provided for a \$10 fee for the commissioner (to be paid by the claimant) if the commissioner found in favor of the claimant, but only a \$5 fee if the commissioner decided the person before him was not a slave.

Finkelman, *supra* note 4, at 60. See also Finkelman, *Slavery, Race and the Legal System, 1700-1872* (1988).

Mississippi, Georgia, Alabama, and South Carolina specifically demanded these terms if they were to remain in the Union. Franklin, *supra* note 6, at 266.

45. "One slavecatcher bitterly complained that Oberlin [Ohio] was an 'old buzzard's nest' where the negroes who arrive over the underground railroad are regarded as dear children." Katz, *supra* note 18, at 102.

46. *Id.* at 94-95.

47. Finkelman, *supra* note 4, at 107 (citing United States Fugitive Slave Comm. Mass. (1854) (unreported)).

48. Professor Finkelman recounted the following event that occurred in Boston:

The hearing before [U.S. Commissioner Edward G.] Loring began [on May 27, 1854.] and lasted until May 31. During this time there were futile attempts to have [a slave named Anthony] Burns released under state writ of habeas corpus or de homine replegiando, to have [slaveowner Charles F.] Suttle arrested for attempted kidnapping, and to purchase Burns from Suttle. On June 2, Commissioner Loring delivered his opinion. Despite conflicting testimony and imperfect evi-

the community or the entire community defied the slave law, the effect on the South was significant: Mississippi Governor James Quitman declared that the South by 1850 had lost more than 100,000 slaves at a cost exceeding thirty million dollars.⁴⁹

In response, southern officials posted bounties on the heads of abolitionists.⁵⁰ On July 17, 1860, a Northerner who had moved to Fort Worth, Texas, to farm was hanged on the suspicion of being an abolitionist.⁵¹ Spies were dispatched to follow prominent Republicans.⁵² Historian John Hope Franklin wrote:

A Kentucky slaveholder, dressed in the garb of a Quaker, went into Indiana to get information on the Underground Railroad. Because he knew so little about the Quaker speech and customs, he was soon discovered. Another went so

dence provided by Suttle, Loring declared Burns was indeed Suttle's slave. That day he was removed from the courtroom and placed aboard a U.S. revenue cutter for return to Virginia.

The trial and removal of Burns from Boston created one of the great spectacles of the late antebellum period. After the abortive rescue attempt [during which time a police deputy was killed], the courthouse was heavily guarded and completely surrounded by a cordon of men. Because this building was owned and used by state authorities, this protection gave Bostonians the sense that their city was under martial law. The presence of artillery companies, U.S. Marines and numerous other armed law enforcement personnel confirmed this.

After Loring decided in favor of the claimant, Burns was removed from the courthouse under heavy security. He was completely surrounded by police and military guards. The same military men had been guarding the courthouse for days. The streets between the courthouse and wharf were lined with troops, policemen, sheriff's deputies, and U.S. Marshals. Among these guards were eight companies of artillery with various field pieces, a battalion of light dragoons, a regiment of light infantry, an additional battalion of light infantry, and various companies of militia and cadets. Much of the city was decorated in black crepe, and a coffin labeled "Liberty" was suspended over the street along Burns' route. Church bells tolled, most businesses were closed, and thousands gathered to cheer Burns and protest his removal. At a cost of as much as \$100,000 the U.S. government proved it was possible to remove from Boston one slave, valued at around twelve hundred dollars, and place him on a federal revenue cutter for his return to bondage.

After Burns was returned, a number of Bostonians were indicted for the abortive rescue. However, none of these people were convicted, and the indictments themselves were quashed. In the meantime, the Massachusetts legislature passed (over a governor's veto) a series of "personal liberty laws" designed to prevent any future state complicity with the removal of a fugitive slave. In addition, Commissioner Loring was removed from his faculty position at Harvard Law School and, by a vote of the Massachusetts legislature, from his position as a Suffolk County probate judge.

Id. at 109-12.

49. Franklin, *supra* note 6, at 260.

50. For example, the Georgia Legislature posted \$4000 for the arrest of William Lloyd Garrison. *Id.* at 263-64.

51. Evening News, *supra* note 15, at 2, col. 4.

52. Franklin, *supra* note 6, at 264.

far as to pose as an anti-slavery lecturer; visiting several communities in Indiana and Ohio, he discovered that fugitives were hiding out and notified the masters, who promptly came and claimed their property. He was in a community, however, that was hostile to slavery and the citizens insisted that the slaves be given a hearing. In court it was decided that the masters' claims were invalid, and the slaves were set free.⁵³

Because of the methods employed by slavecatchers, antislavery forces refined their methods of protecting fugitives.⁵⁴ As a result of these new measures, proslavery forces concluded that more desperate measures were needed. One band of proslavery gunmen held an Indiana courtroom at gunpoint threatening to shoot anyone who tried to come near the slaves they had captured.⁵⁵ In Kansas, white free-state men captured in skirmishes with proslavery forces were executed at the slavery headquarters at Leecompton.⁵⁶

A high tide of violence was reached on Sunday night, October 16, 1859, when John Brown led his men on a raid of a federal arsenal at Harper's Ferry, Virginia, hoping to secure enough ammunition to launch a large-scale operation against Virginia slaveholders.⁵⁷ Though he was unsuccessful, his action sent a "wave of indignation, hatred, and fear" sweeping across the entire South.⁵⁸ Widespread rumors of insurrection placed most corners of the South on a "semi-war footing."⁵⁹ Despite the efforts of Republicans and some abolitionists to distance themselves from Brown's activities, the South knew that the antislavery movement now had a martyr "and nothing [won] followers to a cause like a

53. Franklin, *supra* note 6, at 264-65.

54. For example:

[N]ear Oberlin, two runaway slaves, Lewis and Milton Clarke, formerly of Kentucky, set up an organization that sought to foil slave catchers who prowled through the community looking to kidnap black people.

But the Oberlin-Wellington rescue of September 13, 1858, was, in the words of black attorney John Mercer Langston, "at once the darkest and the brightest day in the Calender of Oberlin." That day two dozen black and white residents united to rescue John Price, a slave

Katz, *supra* note 18, at 104.

55. Finkelman, *supra* note 4, at 80 (reporting Norton v. Newton, 18 F. Cas. 322 (C.C.D. Ind. 1850)).

56. Katz, *supra* note 18, at 110.

57. Franklin, *supra* note 6, at 268.

58. Avery O. Craven, *The Growth of Southern Nationalism, 1848-1861*, at 307 (1953).

59. State militias began drilling regularly as far south as Georgia and militia commanders of most of the states made increasing demands for arms and ammunition. Franklin, *supra* note 6, at 269.

martyr."⁶⁰ Knowing that a Republican candidate would stand on the antislavery platform, the South prepared to secede. For Southerners and Northerners alike, a hostile and foreign power stood at the Mason-Dixon line.

In this tense climate it seems paradoxical that wealthy southern planters found respite in Minneapolis and what was then the city of St. Anthony, yet this was precisely the case. Since 1857 they had sailed up the Mississippi to enjoy the cool summers, the supposed medicinal properties of the old Chalybeate Springs of St. Anthony Falls, and the resort-like comfort that was offered nearby at the Winslow House, where many visitors preferred to stay.⁶¹ "And it was at these springs that St. Anthony residents got their first glimpse of Southerners, dressed in fine clothes quite different from the frontier homespun they were used to seeing. Another difference was the slaves brought along as part of their retinue."⁶² Although some Minnesotans criticized their neighbors for tolerating the presence of slavery,⁶³ the Southerners "presum[ed] on the comity which had been accorded."⁶⁴ This presumption was well-founded. The editor of the conservative *Pioneer and Democrat* wrote,

We don't believe in slavery, and rejoice that Minnesota is a free state, but when people come up here from the South, and, relying upon the honor and good faith of our people, bring along with them their servants, we don't think it looks well, nor do we believe it right, for us to interfere or coax off these servants, then raise the "hue and cry" of Slavery in Minnesota.⁶⁵

Despite the control of state government by antislavery Republicans (with Alexander Ramsey and Ignatious Donnelly as Governor and Lieutenant Governor, respectively) and state law that staunchly condemned slavery, in practical terms, the constituents of the state accommodated slaveowners.⁶⁶

It was under these circumstances that Col. Richard Christmas, a wealthy planter and slaveholder from Issaquena County, Mississippi, came to town.⁶⁷ The Colonel had never brought slaves on his vacations to the North because of what he had heard of as abolitionist activity, but in the summer of 1860 his wife was too ill

60. *Id.*

61. Minneapolis Lake Area, *supra* note 12, at 24, col. 1.

62. *Id.*

63. State Atlas, *supra* note 14, at 2, col. 5.

64. Folwell, *supra* note 10, at 69.

65. St. Paul Pioneer & Democrat, *supra* note 16, at 2, col. 5.

66. Folwell, *supra* note 10, at 69.

67. Holcombe, *supra* note 1, at 130.

to travel without her servant's assistance.⁶⁸ Thus her servant Eliza Winston was brought along, who "was alive now to the possibility of freedom."⁶⁹

Reporter Harry Remington wrote a sentimental profile of Eliza Winston:

A round, full black face had Eliza. But she was not the musical comedy type of Negress, full of bubbling good humor. There were lines of care on her face, although she was only 30. Eliza was an inoffensive soul, except that sometimes she cussed. She cussed because she was above the average in intelligence. And she realized that life had been unusually rough on her. . . . [She] stood it, stood it because she had to, of course, but principally because she had dreams.⁷⁰

Eliza Winston originally belonged to Mr. McLemore,⁷¹ who later sold her to his son-in-law, Mr. Gholson. While with him, she married Jim Winston, a "free man of color"⁷² who hired Eliza's time from Mr. Gholson, paying the slaveowner for the time Eliza spent as a wife.⁷³ "So, Mr. Gholson, in paying Eliza's wages [to her husband], was merely returning the cash originally paid as 'wife rent' by Jim."⁷⁴ Eliza and Jim eventually saved enough money to invest in a house in Memphis, where they intended to live once her freedom had been purchased.⁷⁵ They needed \$1,000.⁷⁶ But, before paying off Mr. Gholson, Jim chose to pay for the Memphis house.⁷⁷ "Then sensing an opportunity to become a great leader of his race, he accepted an offer to lead a colony of freed slaves to Liberia, there to establish a Negro colony."⁷⁸ The plan was for him to return with enough money to buy her freedom and return with her to Africa.⁷⁹ But he never came back, having died of fever.⁸⁰

68. *Id.*; Harry Remington, *In the Days of Abolitionists . . . How Eliza Winston was Freed in Minneapolis*, Minneapolis Sunday Tribune, Nov. 18, 1934, at 54, col. 6, & 55, col. 1. The article is not paginated but can be found on pages 54-55 of the edition on Minnesota Historical Society microfiche (photo. reprint 1977).

69. Remington, *supra* note 68, at 54, col. 4.

70. *Id.* at 54, col. 5.

71. "McLemore" was the man's name. Holcombe, *supra* note 1, at 130. Apparently, Mrs. Winston's pronunciation of the name sounded like "Macklemo" to the ears of the secretary who recorded the affidavit. The misspelling appears in her affidavit. Evening News, Aug. 28, 1860, at 2, col. 3.

72. Holcombe, *supra* note 1, at 130; The Evening News, *supra* note 71, at 2, col. 3.

73. See sources cited *supra* note 72.

74. Remington, *supra* note 68, at 54, col. 5.

75. *Id.* at 54, cols. 5 & 6.

76. *Id.*

77. *Id.*

78. *Id.* For an account of the Colonization Movement, see Franklin, *supra* note 6, at 237-41.

79. Remington, *supra* note 68, at 54, col. 6.

80. Eliza described the reason for Jim's departure differently:

Gholson fell into debt and for collateral he "pawned" Eliza to Colonel Christmas for \$800.⁸¹ However, Gholson died before he could redeem her and the Colonel assumed ownership.⁸² "I was never sold," she said in her affidavit.⁸³ "They have often told me I should have my freedom and they at last promised me that I should have my free papers when their child was seven years old. This time came soon after we left home to come to Minnesota."⁸⁴ She had no confidence that Christmas would keep the promise but heard that she could be free simply by coming north, so she made plans to collect money and enough clothing in her trunk "sufficient to last [her] two years and of a kind suitable to what [she] supposed this climate would be."⁸⁵

While in St. Anthony, Eliza met Mrs. Eula Grey,⁸⁶ a Black woman who introduced her to Mrs. Gates,⁸⁷ a White abolitionist. They would later introduce her to W.D. Babbitt.⁸⁸ Apparently, the Colonel suspected Eliza's plan to escape. Eliza testified:⁸⁹

I fixed upon the coming Sunday when I would leave my master but before the time came Col. Christmas and his family went out to Mrs. Thornton's [who owned a boarding house on Lake Harriet]⁹⁰ and as I understood were not coming back to the Winslow House to stay anymore, I thought someone of the servants had made my master suspicious and that he went away on that account.⁹¹

It is ironic that at the cottage on Lake Harriet where they stayed, one could see from their shorefront the same cottage that had been occupied on occasion by Dr. John Emerson who, thirty years

My husband by request, went out with a company of emancipated slaves to Liberia, and was to stay two years. He went out with them because he was used to travelling, and it was necessary to have someone to assist and take care of them.

Evening News, *supra* note 71, at 2, col. 3.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. Evening News, Aug. 23, 1860, at 2, cols. 1 & 2; Evening News, *supra* note 71, at 2, col. 3; Stevens, *supra* note 19, at 33. For a profile of Mrs. Grey, see Emily O. Goodridge Grey, *The Black Community in Territorial St. Anthony: A Memoir*, 49 Minn. Hist. Mag. 42 (Patricia C. Harpole ed. 1984).

87. Evening News, *supra* note 86, at 2, col. 1; Evening News, *supra* note 71, at 2, col. 3.

88. See sources cited *supra* note 87.

89. See sources cited *supra* note 87.

90. See sources cited *supra* note 87. However, Hiram Stevens, *supra* note 19, at 33, and Earl Spangler, *supra* note 10, at 30, reported that the cottage belonged to the Colonel.

91. Evening News, *supra* note 71, at 2, cols. 3 & 4.

earlier, owned the most famous slave in American legal history.⁹²

The accounts of Eliza's rescue differ slightly, but the facts generally indicate that when Eliza Winston and the Christmas family moved out to the Lake Harriet cottage events happened quite quickly. Mrs. Gates, after talking with Eliza, contacted W.D. Babbitt who was a "pioneer citizen"⁹³ and one of the leaders of the abolitionist movement in Minnesota. Babbitt, with W.S. King, the radical Republican editor of the *State Atlas*,⁹⁴ and F.R.E. Cornell, a prominent local lawyer, swore out a writ of *habeas corpus* on August 21.⁹⁵ It was issued in a "hastily convened" hearing⁹⁶ by Judge Charles E. Vandenburg of the Fourth Judicial District of Minnesota, and given to Deputy Sheriff Joseph H. Canney for service.⁹⁷ As Sheriff Conney recalled, "I was called upon to arrest and bring before Judge Vandenburg, one Eliza Winston, an alleged slave of Col. Christmas . . . and in the company of Sheriff [Richard] Strout and others,⁹⁸ I proceeded to discharge my duty."⁹⁹

92. Having bought Dred Scott in St. Louis in 1833, Dr. John Emerson later became medical officer at Fort Snelling. Ehrlich, *supra* note 26, at 23; Stevens, *supra* note 19, at 30. Professor Ehrlich further wrote:

Being on the west bank of the Mississippi River, it was located in that portion of the Louisiana Purchase territory where slavery had been prohibited by the Missouri Compromise of 1820. Once again Dred Scott might have sued for freedom; but once again, as when he had been in Illinois, there is no evidence either that he was aware of that right or that he was even interested yet in becoming a free man. Instead, he remained with Emerson as a slave and used by him as such.

Ehrlich, *supra* note 26, at 19 (citing Saint Louis Daily Evening News, May 26, 1857).

In 1851, Dr. Emerson's widow, then Mrs. Calvin C. Chaffee, sold Dred Scott to her brother, John F. A. Sanford. Ehrlich, *supra* note 26, at 19.

93. Holcombe, *supra* note 1, at 130. Babbitt has been referred to as Judge William D. Babbitt. Joseph W. Zalusky, *Eliza Winston, Slave Woman in Minnesota*, 24 Hennepin County Hist. 17, 17 (1964). I have been unable to discover, however, how he received the title. But in the City Directory 1859-1860, he was listed as a real estate broker. In the 1860 census, he was simply designated, "Gentleman." Judging from those records and from the fact that he owned substantial property and had servants, one may conclude that he was modestly wealthy. Hennepin County Census 223 (1860 & photo. reprint 1967).

94. In some accounts it was referred to as the Minnesota Atlas while in others, the Minneapolis Atlas.

95. Stevens, *supra* note 19, at 33. Contrary to Stevens, the Evening News reported that Babbitt filed the complaint, not with Cornell and King, but with Mrs. Grey and Mrs. Gates. Evening News, *supra* note 86, at 2, col. 1.

96. Spangler, *supra* note 10, at 30.

97. Evening News, *supra* note 86, at 2, col. 2.

98. Commentators writing thirty or more years later (but oddly, not the reporters of the day) characterized the group that accompanied the deputy as self-righteous and rancorous.

For example, Hiram Stevens wrote:

About twenty men made an ostentatious and ridiculous display of their zeal in the cause of freedom by arming themselves with shotguns and revolvers and riding with the deputy sheriff as a self-appointed posse when he went out to the lake to serve the warrant. At the time

In her affidavit, Eliza Winston said:

I heard [informants] tell [the Christmases] that persons were coming out to carry me off. So whenever anyone was seen coming, my mistress would send me into the woods at the back of the house, I minded her, but I did not go very far hoping they would find me. I was sent into the woods several times during the day, as was the case, at the time when the party who took me away.¹⁰⁰

Eliza was brought to the courthouse in an apparent air of triumph, "amid cheers and shoutings."¹⁰¹ "It reminded her of a revival."¹⁰² The courtroom was located on the second floor of the brick and stone building at Fourth Street and Eighth Avenue South,¹⁰³ a building that could plainly be seen from the parapet roof of the Winslow House. The courtroom quickly filled with sympathizers for both sides, creating an atmosphere that was so charged that violence seemed inevitable.¹⁰⁴ There was a stark contrast between the volatility of the spectators and the paradoxical calm of Colonel Christmas who, as his adversary King described, "behaved like a perfect gentleman all through the proceedings."¹⁰⁵

the only inmates of the Christmas cottage were the invalid Mrs. Christmas, her little child, and Eliza, Colonel Christmas being in Minneapolis. The other cottages in the neighborhood were similarly tenanted. It was impossible to offer any resistance to the authorities had such a thing ever been contemplated.

Stevens, *supra* note 19, at 33.

Return Holcombe described the scene practically verbatim except for the following paraphrase. "[T]he garrison of [Colonel Christmas's] cottage was composed of the invalid Mrs. Christmas, her little child, and her maid Eliza. Against this array the stout-hearted posse was not dismayed, but boldly went forward." Holcombe, *supra* note 1, at 130.

Remington, writing over seventy years after the fact, later described what the deputy sheriff so modestly termed "others" to be "Eliza's high minded saviors," a "besieging army," and "the angry mob of 30 or so." Remington, *supra* note 68, at 44, col. 3.

It seemed that as the decades passed, the group's number increased along with its degree of lugubriousness.

99. Evening News, *supra* note 71, at 2, col. 3.

100. *Id.*

101. Holcombe, *supra* note 1, at 130.

102. Remington, *supra* note 68, at 55, col. 4.

103. 24 Hennepin County Hist. 33 (1964).

104. Evening News, *supra* note 86, at 2, col. 1.

105. Stevens, *supra* note 19, at 34; Holcombe, *supra* note 1, at 130. William King, however, described Christmas as follows:

Throughout the examination before Judge Vandenberg yesterday, Mr. Christmas, the former owner of the girl, Eliza Winston, acted the part of the well-bred, high-toned gentleman, which he doubtless is. Mr. Freeman, who acted as counsel for himself, gave ample evidence of his plantation breeding and manners. He is probably a seedy pettifogger [sic] when at home, who hires some decrepid old nigger to lick occasionally, so as to show his devotion to the institution.

Minneapolis Atlas, Aug. 22, 1860, at 2, col. 6.

He was the "calmest man in [the room]."¹⁰⁶

Judge Vandenburg wrote:

[W]hen the respondent [Christmas] and his counsel [John D. Freeman, a former Attorney General of Mississippi, who was also on vacation at the Winslow house]¹⁰⁷ discovered that it was to be a quiet and orderly judicial inquiry in which they were to be heard and treated fairly, they appeared quite satisfied, and after they found that the petitioner wanted her freedom, acquiesced in the result.¹⁰⁸

No court record seems to have survived.¹⁰⁹ According to Remington's account, the affidavits of Winston, Babbitt, Deputy Sheriff Channey, and S. Bigelow, another associate of Babbitt, were given.¹¹⁰

Judge Vandenburg heard brief objections by Colonel Christmas's attorney, who argued that Eliza, only temporarily in free territory, was therefore not entitled under *Dred Scott* to her absolute liberty.¹¹¹ Mr. Cornell, on behalf of the slave woman, was expected to make an effort of his life in arguing for her release, but he contented himself with reading the territorial statute that there should be no slavery in Minnesota.¹¹²

Stevens reported that "Judge Vandenburg decided the case very readily. In a few sentences he informed Eliza that she was not a slave, but free to go where and with whom she pleased."¹¹³

The hearing was held expeditiously. Vandenburg was pre-

106. Holcombe, *supra* note 1, at 130.

107. According to Remington, Freeman argued that under the Supreme Court's ruling in *Dred Scott*, the slaveholder kept his ownership rights over his slave when they entered non-slaveholding territory. Remington *supra* note 68, at 55, col. 3. *But see infra* note 118.

Freeman, perhaps more than any other participant in this case, was a man of contradictions. Like the judge and Babbitt and his colleagues, Freeman was a native of New York. After arriving in Mississippi, he became a successful lawyer and was soon elected District Attorney for the then prosperous town of Grand Gulf. In 1841, he was elected state Attorney General, campaigning for the repudiation of Union Bank Bonds. He served for ten years. From 1851-53, he served in Congress as a Unionist. Subsequently, he resided in Jackson, Mississippi. 1 *Encyclopedia of Mississippi History* 749 (1907); 1 *Biographical and Historical Memoirs at Mississippi* 129 (1891); Dunbar Rowland, *Courts, Judges, and Lawyers of Mississippi, 1798-1935*, at 256 (1935).

At the time of the Eliza Winston case, Freeman, like Christmas, was a guest at the Winslow House, having registered as such in mid-July. Winslow House Register 104 (1860) (available at the Minnesota Historical Society, St. Paul, Minnesota).

108. Address by Judge Charles E. Vandenburg (Nov. 11, 1895), text available in Charles E. Vandenburg, *Twenty-two Years at the Old Court House (1859-1881)* (unpublished papers).

109. Stevens, *supra* note 19, at 34.

110. Remington, *supra* note 68, at 55, col. 4.

111. *Id.* Stevens, *supra* note 19, at 34.

112. Stevens, *supra* note 19, at 34. According to Earl Spangler, Cornell relied on article I, § 2 of the state constitution. Spangler, *supra* note 10, at 30.

113. Stevens, *supra* note 19, at 78.

pared to hear the case immediately after Babbitt had filed. Cornell, the other partner in the law firm of Cornell and Vandenberg,¹¹⁴ perhaps felt no compunction to "make an effort of his life"¹¹⁵ to argue for Eliza Winston's release, for he knew that the case had a forgone conclusion. It is not presumptuous to say that the judge, Cornell, King, and Babbitt—all native New Yorkers, all generally of the same age, all who had moved to the Territory of Minnesota about the same time,¹¹⁶ and all who would figure prominently in Minnesota history¹¹⁷—felt in common about the current state of law that governed slavery. This, perhaps, was not lost on the good colonel:

Col. Christmas made no attempt at a technical defense, admitting that the woman was free and at liberty to choose whether to remain with him or to go at large. The court consequently ordered her to be discharged from the custody of the sheriff. Then came the most exciting time, and stories are conflicting as to what was said and done.¹¹⁸

According to Eliza Winston's affidavit:

[The Colonel] came up to me and gave me ten dollars. When I was told I was free my master asked me if I would go with him, told me not to do wrong. I told him I was not going to do wrong, but that I did not wish to go with him.¹¹⁹

Other parties, W.D. Babbitt, S. Bigelow, and others crowded around her and remonstrated. Colonel Christmas asked her a second time, when she replied that she would go with the other party for that day¹²⁰ but that she might return to her mistress in the future.¹²¹

The Reverend Knickerbacker, pastor of the Gethsemane Church, jumped up and accused the judge of making "an unright-

114. Stevens, *supra* note 19, at 77-80. They would also serve together on the Minnesota Supreme Court. *Id.* at 84.

115. Holcombe, *supra* note 1, at 130-31.

116. Babbitt was born in 1824, in New York, and moved to Minneapolis in 1855. History of the City of Minneapolis, Minnesota 44 (Isaac Atwater ed. 1893) [hereinafter Atwater]; Hennepin County Census, *supra* note 93. Cornell was born in 1821, in Chenango County, and moved to Minneapolis in 1854. Stevens, *supra* note 19, at 117. King was born in 1828, in Malone, Franklin County, New York, and moved to Minneapolis in 1858. Charles E. Flandrau, Encyclopedia of Biography of Minnesota 432-33 (1900). Vandenberg was born in 1829, in Clifton Park, Saratoga County, New York, and moved to Minneapolis in 1856. Stevens, *supra* note 19, at 77-78.

117. Cornell would later serve a term as Minnesota Attorney General before joining Vandenberg on the Supreme Court. Stevens, *supra* note 19, at 84. In 1861, King would be appointed to Lincoln's War Cabinet. Flandrau, *supra* note 116, at 434.

118. Evening News, *supra* note 71, at 2, col. 3.

119. *Id.*

120. *Id.*

121. This is a synthesis of Eliza Winston's sentiment as it was recollected in her affidavit. Evening News, *supra* note 71, at 2, col. 3.

eous decision," and he condemned the law that made a slave free on free soil.¹²² "The address by the minister filled the audience and spectators with delight. They boarded southern families, and were overjoyed to be assured by a minister of the church that slavery was right."¹²³ The pastor's tirade worked the crowd "to such a pitch that they would do exactly what the preacher wished them to do."¹²⁴ Then:

[t]he red head of "Bill King" . . . arose, like the burning bush at the foot of Mount Horeb, and his stentorian voice poured forth such a torrent of denunciation on priest-craft, such a flood of solid swearing against the insolence and tyranny of ecclesiasticism, that people were surprised into inactivity, until Mr. Babbitt got the woman in his carriage,¹²⁵

with the intent of taking her to a safe place.¹²⁶ Some excited persons proposed to seize her for the master, and appealed to Colonel Christmas to "say the word." He firmly repressed every suggestion of the kind, saying that the woman was by law free and she should do as she pleased.¹²⁷

Remington reported that Christmas' final gesture in the courtroom¹²⁸ "made even the abolitionists describe him as a kind and courteous gentleman. As Eliza left the courtroom he pressed a wad of currency in her palm and told her she could always depend on him to help her out of any future dilemma, as a free woman."¹²⁹

"'Well, colonel,' [said a southern friend] 'you have lost your nigger.' [And the colonel replied] 'Yes, I reckon so; but I have plenty more of them and it's all right.'"¹³⁰

The abolitionists took Eliza to Babbitt's house.¹³¹ Expecting danger, the Babbitt household prepared for the mob attack that came that night during a violent rainstorm.¹³²

According to Swisshelm:

122. Zalusky, *supra* note 93, at 18.

123. *Id.*

124. *Id.*

125. Swisshelm, *supra* note 11, at 174.

126. According to Swisshelm, "Babbitt brought into use his old training on the underground railroad to throw the bloodhounds off the scent, so secreted the woman in the house of Prof. Stone, and prepared his own strong residence to bear a siege. *Id.* at 175.

127. Evening News, *supra* note 71, at 2, col. 1.

128. Remington, *supra* note 68, at 55, col. 4.

129. *Id.*

130. Holcombe, *supra* note 1, at 131.

131. According to an early City Directory, William D. Babbitt resided at 10th and Russell Streets, a site which is now 10th and Park Avenue. Zalusky, *supra* note 93, at 17.

132. Swisshelm, *supra* note 11, at 175.

It was known that in my lecturing tours, I was often Mr. Babbitt's guest, and might arrive at any hour. So, shortly after midnight, the door-bell was rung, when Mr. Babbitt inquired:

"Who is there?"

"Mrs. Swisshelm."

"It is not Mrs. Swisshelm's voice?"

"William Griffin (a colored porter) is with her."

Then, for the first time, there were signs of a multitude on the porch, and with an oath the speaker replied:

"We want that slave."

"You cannot have her."

A rush was made to burst in the door, but it was solid walnut and would not yield, when the assailants brought fence-posts to batter it in, and were driven back by a shot from a revolver in the hall. The mob retired to a safer distance, and the leader—[the] host of a first-class hotel—mounted the carriage-block and harangued his followers on the sacred duty of securing the financial prosperity of the two cities by restoring Eliza Winston to her owners, and made this distinct declaration of principles:

"I came to this state with five hundred dollars; and have but five hundred dollars left, but will spend the last cent to see Bill Babbitt's heart's blood!"¹³³

Rocks and stones were thrown at the house, shattering windows and battering the door. Then, "one burly ruffian thrust himself half way in, but stuck, when a defender leveled a revolver at his head, and said to Mrs. Babbitt, who was then in command of the hall, while her husband defended the parlor windows:¹³⁴

"Shall I shoot him?"

"Yes, shoot like a dog."

But Mrs. Edward Messer, her sister, who knew Mr. Babbitt's dread of taking life, knocked the pistol up and struck the ruffian's head with a stick, when it was withdrawn, and again the mob fell back and resorted to stones and sticks and oaths and howlings and gunshots, and threats of firing the house.¹³⁵

Mrs. Babbitt, seven months pregnant, was able to sneak out of the house to run for help, but was chased by some of the members of the mob.¹³⁶ A neighbor intervened to allow her escape.¹³⁷ Eventually, the Sheriff came "with two or three men"¹³⁸ and per-

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.* at 176.

137. *Id.* at 177. "Mrs. Babbitt, however, succeeded in reaching the more thickly settled portion of the city, and the first man she called on for help, replied: 'You have made your bed—lie in it.'" *Id.*

138. *Id.* Remington, however, portrayed the mob as not being as resolute as Swisshelm depicted them. "[Someone in the mob shouted that they should take Eliza and return her to the colonel] [b]ut that was deemed a little too drastic. And

suaded the mob to disperse, although some lingered to shout more threats on Babbitt's life.¹³⁹ Meanwhile in St. Anthony, "[A] party forced their way into the house of Gray, the barber, and searched it for the slave woman."¹⁴⁰ At the *State Atlas* printing office, King and a small group of men, all well-armed, stood guard.¹⁴¹ The *Plain Dealer* reported the following:

The abolitionists Republicans who flourished to the mob who ran off a decrepped [sic] old Negro woman from her friends and protector, have been running around town trying to borrow pistols. The skim milk cowards who armed themselves with guns to make a bogus service of the writ of habeas corpus are becoming frightened.¹⁴²

In response to the taunt, King wrote:

Those of our citizens whose dwellings have been attacked and injured and whose persons are threatened with violence have, we are glad to know, prepared to give their assailants a proper reception in the future. "The skim milk cowards" who gather about the Nicollet House, and threaten to tar and feather peaceable citizens, and throw printing presses into the river, are the last men in the world who dare undertake to carry out their villainous threats, when they understand people are prepared to give them a proper reception.¹⁴³

The furor over Babbitt's actions did not immediately abate.

Swisshelm wrote:

For months, [Babbitt] was hooted at in the streets of Minneapolis as "nigger thief," and called "Eliza." No arrests were made, and he always felt it fortunate that Mrs. Messer prevented the shooting of the man [who was stuck in the doorway], as he thinks to this day that in the state of public sentiment, the man firing the shot would have been hanged for murder by any Hennepin court jury, and his home razed to the ground or burned.¹⁴⁴

Eliza Winston was spirited out of Minneapolis soon afterward, and through the Underground Railroad, passed through La-Crosse, Chicago, and Detroit, arriving finally in Windsor, Ontario.¹⁴⁵ Remington may have been correct when he wrote, "She was just as eager to get away from a place where her every

gradually, the mob dispersed. Babbitt and a few friends sat up all night, armed and ready to repel an attack, however. The only attack they had to repel was that launched in the newspapers of the next few days." Remington, *supra* note 68, at 55, col. 5.

139. Swisshelm, *supra* note 11, at 175.

140. Evening News, *supra* note 71, at 2, col. 2.

141. Stevens, *supra* note 19, at 35; Atwater, *supra* note 116, at 100.

142. Minneapolis Plain Dealer, *supra* note 16, at 3, col. 1.

143. State Atlas, *supra* note 6, at 3, col. 2.

144. Swisshelm, *supra* note 11, at 177.

145. *Id.*; Holcombe, *supra* note 1, at 131.

appearance provoked stares and a buzz of excited conversation."¹⁴⁶ But such an extended, overland journey that took her hundreds of miles from anything familiar, completely managed by people about whom she knew nothing, must have caused her great consternation. With no home, friends, money, prospects, or "free papers," she was completely alone. Even though she was no longer a slave, she still had no control over her life and no freedom.

A month later, from Detroit, she sent letters to Babbitt and a number of other White friends asking them to send her the "free papers"¹⁴⁷ together with enough money to take her home to Memphis, where she could take possession of the house and lot that she had bought with her husband.¹⁴⁸ She also mentioned her intention to find work with a White family or perhaps go back to the Christmas family,¹⁴⁹ expressing (as she had in her affidavit), her attachment to Christmas' daughter whom she had raised from infancy.¹⁵⁰ Historians noted that her Minneapolis friends were "disgusted" by her letters and refused to send money.¹⁵¹ There is, however, evidence to the contrary. According to the *State Atlas*, the city's abolitionists did indeed collect funds to be sent to Eliza:

The "Abolitionist begging" is only a necessary consequence of the Democrat-stealing by which Eliza Winston lost two hundred dollars worth of clothing, which had been presented to her in good part by her colored friends before she left the south. Having been robbed of nearly all her things, it is no more than an act of humanity and Christian duty to supply her wants.¹⁵²

It is not clear whether Eliza Winston actually left Minnesota as determined by most historians of the event.¹⁵³ Even if their reports are accurate, it is evident that she returned to Minnesota under the sponsorship of the abolitionists. According to the *St. Cloud Democrat*, however, she was kept in Minnesota in order "to establish Minnesota as a free state, and to show that she could give shelter to the oppressed who appealed to her hospitality in conformity to her laws."¹⁵⁴ In fact, the *State Atlas* reported that on

146. Remington, *supra* note 68, at 55, col. 6.

147. Stevens, *supra* note 19, at 35-36.

148. Zalusky, *supra* note 93, at 18; Holcombe, *supra* note 1, at 131; Stevens, *supra* note 19, at 36; Spangler, *supra* note 10, at 31.

149. Holcombe, *supra* note 1, at 131.

150. Evening News, *supra* note 71, at 2, col. 3.

151. Holcombe, *supra* note 1, at 131; Stevens, *supra* note 19, at 36.

152. State Atlas, *supra* note 14, at 2, col. 7 (emphasis in original).

153. See generally Stevens, *supra* note 19; Holcombe, *supra* note 1; Spangler, *supra* note 10; Remington, *supra* note 68; Folwell, *supra* note 10; Blegan, *supra* note 14.

154. St. Cloud Democrat, Oct. 11, 1860, at 2, col. 2 (emphasis in original).

October 19, Eliza Winston spoke at the Hennepin County Anti-Slavery Society.¹⁵⁵

In the wake of the case, the number of southern tourists dropped severely.¹⁵⁶ Whatever else happened to Eliza, the Civil War would soon relegate her story to a footnote in Minnesota history.

* * *

The relationship between the abolitionists and the slave they freed is itself noteworthy. There can be no doubt about their hatred of what Professor Stamppp called the *peculiar* institution.¹⁵⁷ The principals—Babbitt, King, Cornell, et al.—all held positions of responsibility in Minneapolis. Yet, once Eliza Winston made her desires for freedom known, they immediately began to plan her escape, including rescue at Lake Harriet, delivery to the courthouse where a legal proceeding was prepared to commence, swift escort to Babbitt's house and finally to Canada via the Underground Railroad. Everything had to be done for Eliza since she knew neither the community nor the network of escape that the abolitionists had created for her. She did not have to do anything, except follow Babbitt's lead. The abolitionists spoke for her, defended her against the mob, but ignored her safety by bringing her back to a hostile city to speak for the cause. This last point is the most disturbing and telling aspect of their relationship with Eliza Winston. To Babbitt's friends, Eliza Winston was merely a cause; not a person with the right of choice. This is consistent with historians William and Jane Peases' general view of abolitionists during this period: "Endemic was the abolitionists' tendency toward abstraction . . . [dealing] not with people in a situation but only with intellectualizations in a vacuum."¹⁵⁸

155. State Atlas, Oct. 24, 1860, at 2, col. 2. See also *Evening News*, Oct. 16, 1860, at 3, col. 3; *Minneapolis Plain Dealer*, Oct. 20, 1860, at 3, col. 2.

156. State Atlas, Sept. 12, 1860, at 2, col. 7; *Minneapolis Lake Area*, *supra* note 12, at 25, col. 1; Spangler, *supra* note 10, at 31. And, adding to the problem of Demetrius, it was determined that the chalybeate Springs, which had been thought to have medicinal properties, in fact drained a nearby marsh. *Minneapolis Lake Area*, *supra* note 12, at 25, col. 1. See also *Swisshelm*, *supra* note 11, at 174, and *Holcombe*, *supra* note 1, at 131 (both referred to Minnesota traders who catered to southern tourism, as Demetrius: "By this craft, we have our wealth." Acts 10:23-41). In May of 1861, the furnishings for the Winslow House were sold and the building stood empty. *Minneapolis Lake Area*, *supra* note 12, at 25, col. 1. In 1868, the legislature proposed that it be turned into an insane asylum, but the citizens of St. Anthony expressed their preference that the building remain empty. *Id.*

157. Kenneth Stamppp, *The Peculiar Institution: Slavery in the Antebellum South* (1956).

158. William Pease & Jane Pease, *Antislavery Ambivalence: Immediatism, Expediency, and Race*, in *Blacks in the Abolitionist Movement* 95 (John Bracey, August Meier & Elliot Rudwick eds. 1971).

I hesitate to conclude that this churlish attitude was not totally uncharacteristic of abolitionists. It was the nature of their work to efficiently whisk slaves out of the reach of slave catchers. Their work also included proselytizing the antislavery doctrine, often using emancipated blacks to tell accounts of their slavery.¹⁵⁹ But here, abolitionist motives were suspect. According to Remington, "[Babbitt] fully intended to keep [Eliza Winston] around as a kind of museum piece. She would be of vast assistance to the cause in the lecture hall, where she could mount the rostrum every evening and tell how she had been saved from the awful clutches of the colonel."¹⁶⁰ Frederick Douglass voiced the same point regarding his split with the famous abolitionist William Lloyd Garrison: Black speakers were mouthpieces for the White abolitionist movement, expected to follow the party line with minimal opportunity to contribute to policy formation.¹⁶¹ Many aboli-

159. See generally Frederick Douglass, *The Narrative of An American Slave* (1842); Phillip Foner, *Life and Writings of Frederick Douglass* (1955); Herbert Aptheker, *The Negro in the Abolitionist Movement* (1941).

160. Remington, *supra* note 68, at 55, cols. 1 & 2. See also sources cited in notes 154-55.

161. 2 Foner, *supra* note 159, at 524; Leon Litwack, *North of Slavery: The Negro in the Free States: 1790-1860*, at 241-42 (1961). Professor Litwack wrote:

Notwithstanding some opposition or misgivings [of abolitionists], most of the white abolition societies admitted Negroes, and some elevated them to positions on the executive committee. The Negro's most important function, however, was that of an antislavery lecturer, for "eloquent" Negro speakers were able to draw "in most places far larger" audiences than their white counterparts. "The public have itching ears to hear a colored man speak," one abolitionist wrote to Garrison, "and particularly a slave. Multitudes will flock to hear one of this class speak." Such was the response to Frederick Douglass, for example, that he soon became a leading abolitionist orator.

Id. at 241-42.

Regarding Douglass' experience as an orator, Professors Meier and Rudwick wrote:

[T]he Massachusetts Anti-Slavery Society engaged Douglass to lecture on his experiences as a slave. During the passing months he was intellectually "growing and needed room," and wanted to share with audiences the ideas of his "reading and thinking," rather than simply mechanically perform his stage role as a slave. Officials of the anti-slavery society, however, discouraged his striving toward manhood and independence. Instead of applauding his intellectual progress as an illustration of Negro potentiality, they preferred to exhibit him publicly in his frozen status of fugitive slave. Garrison told him, "Tell your story, Frederick." Others astonished, "We will take care of the philosophy. . . . Let us have the facts." As Douglass continued to acquire self-confidence and literary skill, members of the Society complained that he seemed "too learned": "People won't believe you ever were a slave, Frederick, if you keep on this way . . . better have a little of the plantation manner of speech than not."

August Meier & Elliot Rudwick, *The Role of Blacks in the Abolition Movement*, in *Blacks in the Abolitionist Movement* 117 (John Bracey, August Meier, & Elliot Rudwick eds. 1971).

tionists questioned the wisdom of freeing Douglass since many felt that he was a more valued lecturer to the antislavery movement as a slave because he exerted "immense moral power."¹⁶² Professor Litwack described the abolitionist sentiment that could revile slavery and insist that it not be extended into the territories, while simultaneously insisting on the separation of the races.¹⁶³ And, in Minneapolis, where the Black population was exceedingly small and not financially secure enough to withstand reprisals from those benefitting from southern tourism, no Black was likely to hold a leadership position in Babbitt's circle. Freeing Eliza was clearly a White man's burden.

The burden was somewhat lifted once she was safely out of town, and there seemed little concern for her once she was gone. There was, it seemed, no room for Eliza in Minnesota. This was typical of the majority of northern communities. Professor Friedman wrote, "Free blacks had nowhere to go. Northern states did not greet them with open arms, to put it mildly."¹⁶⁴ As early as 1835, Alexis de Tocqueville more pointedly observed:

Whoever has inhabited the United States must have perceived that in those parts of the Union in which the Negroes are no longer slaves they have in no ways drawn nearer to the whites. On the contrary, the prejudice of race appears to be stronger in the states that have abolished slavery than in those where it still exists; and nowhere is it so intolerant as in those states where servitude has never been known.¹⁶⁵

Without the certainty that abolitionists would help freed slaves start a new life, it is understandable why more slaves in Minneapolis did not seek their freedom.

The case of Eliza Winston also illustrates the relationships that abolitionists had with the courts, the Republican Party, and the community at large.

Whether or not a slave was freed through judicial means depended greatly on the confidence the abolitionists placed in the particular court in their jurisdiction.¹⁶⁶ In St. Paul, a month earlier, a slave who accompanied his master on vacation, had disappeared, allegedly "kidnapped" by abolitionists.¹⁶⁷ Nonetheless,

162. Aileen Kraditor, *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics: 1834-1850*, at 221 (1970).

163. Litwack, *supra* note 161, at 46-48, 275-80.

164. Lawrence Friedman, *The History of American Law 220-21* (2d ed. 1985).

165. 1 Alexis de Tocqueville, *Democracy in America* 373 (3d ed. 1945).

166. Finkelman indicated that both proslavery and antislavery partisans used the courts. Finkelman, *supra* note 4, at 78.

167. St. Paul Pioneer & Democrat, *supra* note 16, at 2, col. 5; State Atlas, Aug. 9, 1860, at 2, col. 4.

presuming that the slave had support from abolitionists, they evidently concluded that they could not find an accommodating judicial hearing in St. Paul. In the wake of *Dred Scott*, there simply was no legal authority to free fugitive slaves judicially. If it was to occur at all, it would happen with a wink and a nod. Figuratively speaking, this was the circumstance in the Fourth Judicial District, and Colonel Christmas understood the "game."¹⁶⁸

Perhaps recognizing this lack of legal authority, Republicans did not want to be associated with Eliza Winston. An unnamed Republican editor wrote:

Whilst the Republican Party has no concealment to make upon the subject of Slavery, regarding it as the giant evil of the age and uncompromisingly opposed to its extension into any territory or locality where it does not exist, still it has not undertaken, nor will not undertake to force freedom upon any human being, or to interfere in any way with the personal or private affairs of those who deem fit to visit us here from the southern states.¹⁶⁹

In response, Eliza's rescue manifested the philosophical spirit of the radical abolitionist William Lloyd Garrison,¹⁷⁰ who greatly influenced Babbitt and his colleagues.¹⁷¹ Speaking to Northerners, he said that "if the South depends on you to protect slavery, then who but you are the real slaveholders?"¹⁷² Republicans were to abolitionists what liberals are to radicals today.¹⁷³ Like radicals, the abolitionists wanted drastic change in the existing social and political structure.¹⁷⁴ Their local strategy—delivering an individ-

168. Vandenburg, *supra* note 108. See generally Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (1975).

169. *Evening News*, *supra* note 86, at 1, col. 2.

170. See generally Kraditor, *supra* note 162.

171. See generally Louis Filler, *supra* note 27, at 234 (1960) (noting that Minnesota abolitionists had been "exposed to Garrison" and "reflected [his] views").

172. Kraditor, *supra* note 162, at 198 (citing a Garrison speech given on May 6, 1842).

173. "The Republican party had no more 'moral' solution in 1860 to the problem of racial adjustment in America than did the benighted South." Robert F. Durden, *Ambiguities in the Antislavery Crusade of the Republican Party*, in *The Antislavery Vanguard* 362, 364 (M. Duberman ed. 1965).

174. Kraditor, *supra* note 162, at 197 (citing a Garrison resolution delivered on Feb. 25, 1842):

[W]hereas, in the adoption of the American Constitution, and in the formation of the Federal Government, a guilty and fatal compromise was made by the people of the North with southern oppressors, by which slavery has been nourished, protected and enlarged up to the present hour, to the impoverishment and disgrace of the nation, the sacrifice of civil and religious freedom, and the crucifixion of humanity
.....

2. Resolved, That the safety, prosperity and perpetuity of the non-slaveholding States require that their connexion [sic] be immediately dissolved with the slave States in form."

ual slave to freedom—was more pragmatic.¹⁷⁵ If using the courtroom was expedient, then a writ of *habeas corpus* was issued. If not, then other, more direct methods were appropriate.¹⁷⁶

The abolitionists' methods did not endear them to their local communities. Many residents of Minneapolis, St. Anthony, and St. Paul had investments in their neighbors' obeying the law. It was unlawful to breach the peace, which, as Harry Remington wrote, included harrasing southern tourists:

In little groups [abolitionists] would meet arriving steamboats at the St. Paul levee, booing and hissing southerners who stepped onto the dock with black retainers, bearing mountains of luggage. They would villify and insult southern visitors as they stepped into the four horse stage coach to be whisked to the Winslow House. At the hotel the lobby and halls were stealthily patrolled by small squadrons of the righteous emancipators, who set themselves up as ex-officio house detectives. . . . [They] had made such thorough pests of themselves¹⁷⁷

Eliza Winston was the second slave to escape servitude in as many weeks.¹⁷⁸ A clear and present danger threatened the way of life of the community.

But they were more than pests. The abolitionists, through their obstructive activities, reflected the ambivalence of antislavery Minnesota. Worse, the abolitionists were viewed to have made fools of the communities by using the local institutions of law and order against the compliant populace. Earl Spangler wrote, "In light of the agitation and court opinions expressed in other states concerning the status of fugitive slaves, it can be seen that Minnesota was in a quandary as to just how to handle this problem. . . . [N]o record exist[ed] that show[ed] any legal decision made to solve such cases."¹⁷⁹ Minnesotans had lost a lucrative trade by a legalistic sleight-of-hand and they were incensed, as evidenced by

Id.

175. Even though the courts upheld laws that violated abolitionist principles of natural law, their willingness to use the courts, nonetheless, was philosophically consistent with Garrison's position on the free-produce movement. The movement sought to boycott all slave-grown produce. Although he was branded as a strict ideologue, Garrison displayed a practical side by arguing that an abolitionist boycott could not weaken the slave system. Kraditor, *supra* note 162, at 219. See also *supra* text accompanying note 162.

176. See, e.g., Finkelman, *supra* note 4, at 64 (reporting the Latimer Case, 5 Month. L. Rep. 481 (Mass. Cir. Ct. 1842)).

177. Remington, *supra* note 68, at 55, col. 2.

178. St. Paul Pioneer & Democrat, *supra* note 16. The third incident of a slave escaping servitude occurred in Sauk Center in early October 1860. Evening News, Oct. 9, 1860, at 2, col. 3.

179. Spangler, *supra* note 10, at 28 (emphasis added). Professor Wiecek wrote in more general terms:

the mob attack on Babbitt's home.¹⁸⁰ It would be the Civil War that would ultimately distract Minnesotans from their procrustean grievance.

[The judge-made law of slavery], as developed by English and American jurists, had a curiously indeterminate quality; it was more often than not ambiguous and equivocal. Grounded on shifting considerations of public policy or jurisprudential theory, enunciated by men whose opinions spanned the entire spectrum of pro- and antislavery beliefs, and above all misunderstood by contemporaries and later generations, the case law of slavery evolved in striking contrast with the statutes governing slaves. The latter generally consisted of clear and specific 'thou-shalts' and 'thou-shalt-nots' regulating the minutiae of behavior of white and blacks alike. It is one of the paradoxes of slavery in the Anglo-American experience, however, that this iron structure rested on such an uncertain jurisprudential foundation.

William M. Wiecek, *Somerset: Lord Mansfield and the Legitimacy of Slavery in the Anglo American World*, 42 U. Chi. L. Rev. 86, 87 (1975).

180. See *supra* notes 106-139 and accompanying text.

