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The Fugitive Slave Law, Antislavery and the Emergence of the Republican Party in Indiana

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THE FUGITIVE SLAVE LAW, ANTISLAVERY AND THE EMERGENCE OF THE REPUBLICAN PARTY IN INDIANA

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ABSTRACT

Walker, Christopher D. Ph.D., Purdue University, December 2013. The Fugitive Slave Law, Antislavery and the Emergence of the Republican Party in Indiana. Major Professor: Dr. Robert E. May.

The most contentious portion of the Compromise of 1850 between the Northern free states and the Southern slave states was the Fugitive Slave Act of 1850. For decades slaveholders had complained of the difficulties encountered in reclaiming their fugitive slaves and demanded stronger legislation to deal with the problem. Northerners, however, did not believe that national legislation on the subject of fugitive slaves as embodied in the Fugitive Slave Act of 1793 provided adequate protection to free blacks and many states passed anti-kidnapping laws which often placed obstacles to rendition. Slaveholders discovered that the costs involved in reclaiming an absconding slave often exceeded the slave's value, and because of Northern hostility to slave hunting, could be physically dangerous. The Fugitive Slave Act of 1850 increased the weight of federal power behind the rendition process, provided additional administrative facilities to slaveholders for reclamation, and stiffened penalties for harboring, concealing, aiding and abetting fugitive slaves, or in any way obstructing the law. Instead of ameliorating sectional conflict, the new fugitive bill became a source of constant interstate conflict and was a factor in bringing about the Civil War.

Historians have written extensively about the Fugitive Slave Law - specific cases arising under the law, how rigorously the law was enforced, and Northern reaction to the law. However, little of this scholarship has focused on Indiana, by 1860 the sixth most populous state

in the nation, a border state, and a state with important cultural and commercial ties to the South. As illustrated by the fugitive slave cases discussed in this work, the Fugitive Slave Law played an important role in reshaping the political loyalties of the Indiana electorate in the politically turbulent decade of the 1850s. The kidnapping of free blacks and the often heartless enforcement of the law concretely demonstrated the evils of slavery to many Hoosiers who had previously given little thought to the issue. Abolitionists capitalized on the propagandistic value of fugitive slave cases, which became indispensible to increasing antislavery sentiment in the state.

For most of the antebellum period, Democrats had controlled Indiana politically. In the 1852 national and state elections, Hoosiers emphatically endorsed the "finality" of the 1850 Compromise package by sweeping Democrats into office. However, in 1854 the People's Party , a fusionist opposition movement opposed to the extension of slavery into the federal territories, coalesced in the aftermath of the passage of Illinois Senator Stephen Douglas' Kansas-Nebraska Act, and carried the state's fall elections. By 1860, the fusionists, now calling themselves Republicans, captured Indiana for Abraham Lincoln, as well as the gubernatorial race, a majority of the congressional seats, and control of the state legislature. The injustices occasioned by the heavy-handed enforcement of the Fugitive Slave Law increased antislavery sentiment in the state, awakened Hoosiers to the danger of a "slave power" conspiracy that threatened the liberty of all Northerners, and significantly contributed to the political transformation of the Indiana electorate in the decade prior to the Civil War.

INTRODUCTION

The Civil War claimed over a million lives and physically wounded, emotionally scarred, and financially ruined millions of others. The staggering social costs produced a new, hopeful era in the nation's history. The North's victory over the Confederacy not only secured the perpetuity of the Union, but also ended slavery. The nation began the process of realizing its lofty ideals about human equality in the Declaration of Independence.

The decade before the Civil War was a particularly turbulent one politically. The sectionalization of politics caused by the slavery issue destroyed the Whig Party and with it the Second American Party System. The political vacuum left by the Whigs was eventually filled by the Republicans, a fusion movement which included nativist Know-Nothings, temperance advocates, and free soilers – or, as Indiana Democrats derisively referred to them, "The Abolition, Free Soil, Maine-Law, Native-American, Anti-Catholic, Anti-Nebraska Party of Indiana."[1] The Compromise of 1850, the Kansas-Nebraska Act of 1854, and the subsequent conflict in "bloody Kansas" were all important milestones in the nation's progressive march to war. Indiana, in what was then known as the Old Northwest, played an important role in the success of Lincoln and the Republicans in 1860 and was a critical component of the victorious Union war effort between 1861 and 1865.

[1] Charles Zimmerman, "The Origin and Rise of the Republican Party in Indiana from 1854 to 1860," *Indiana Magazine of History* 13, no. 3 (September 1917): 239.

By 1860, Indiana, the sixth most populous state in the country at 1,350,428 inhabitants, was an important state politically with thirteen electoral votes.[2] The Democratic Party and the Jacksonian-Jeffersonian philosophies that emphasized state's rights were dominant in the state during the antebellum period. Not only were the Democrats successful in local politics, but the Democratic presidential candidate had carried the state in the years 1844 to 1856. Indiana had more Southern-born residents than any other state north of the Ohio River. Socially, politically, and economically, Hoosiers were closer to the Southern states than the Northeast. Despite the cultural ties to the South, Indiana contributed significantly to the Union war effort between 1861 and 1865. The state provided nearly 200,000 men for the Union armies and ranked second among all Union states in the percentage of its eligible men who served during the war.[3] Indiana's Oliver Perry Morton worked tirelessly for the state's soldiers and was probably Lincoln's most loyal and energetic war governor. Indianapolis, the state's capital, boasted of a state (later federal) arsenal, a Confederate prisoner-of-war camp (Camp Morton), and a soldier's home, which was the largest in the Midwest. The Soldier's Home could feed 8,000 and lodge 1,800 soldiers per day.[4] Indianapolis was a strategic crossroads for soldiers passing to and from the front. The state's contribution to the war effort can be largely attributed to Morton's efforts.

Like all the other free states in the decade before the Civil War, Indiana experienced a political revolution that brought a new party into existence, the Republicans. Controversy

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[2] Joseph C.G. Kennedy, Superintendent of the Census, *Population of the United States in 1860 Compiled from the Original Returns of the Eighth Census* (Washington D.C.: Government Printing Office, 1864), xvi.
[3] William F. Fox, *Regimental Losses in the American Civil War* (Albany, NY: Albany Publishing Company, 1889), 536 (Table F). According to Fox, 74.3 percent of Hoosier men between the ages of 18 and 45 served during the war, second in percentage only to Delaware at 74.8 percent.
[4] William H.H. Terrell, *Indiana in the War of the Rebellion, Report of the Adjutant General*, Vol. 1 (Indianapolis: Indiana Historical Bureau, 1960), 456. Terrell's report consisted of eight volumes and was originally published in 1869.

surrounding slavery extension, the Fugitive Slave Act, nativism, and temperance provided the spark that ignited the formation of the People's Party in 1854. Since the People's Party (name was later changed to Republican Party) was formed in opposition to the Kansas-Nebraska Act, this explosive piece of legislation has naturally been credited with being the most important event in ushering in the new political system. However, other issues besides slavery extension played a crucial role in creating sentiment necessary for political change. One of these issues was the Fugitive Slave Act, passed as part of the Compromise of 1850.

Both Democrats and Whigs declared the series of legislative acts which formed the Compromise of 1850 to be the "final adjustment" of the slavery question.[5] As the Thirty-First Congress debated the fate of slavery in the Mexican cession, Mississippi's Democrats called for a regional Southern convention to meet in Nashville in June, 1850 (the Nashville Convention). Georgia threatened secession if Congress admitted California as a free state, enacted the Wilmot Proviso, or refused to pass a more stringent fugitive slave law. California's admission as a free state was so controversial because it would upset the delicate balance of power in the Senate between Free and Slave States. While Southerners insisted that they had as much right (along with their slave property) to the federal territories as anyone, Northerners were determined to impose congressional prohibition of slavery in all the territories. Into this maelstrom of political conflict stepped the venerable Senator of Kentucky, the 73-year old Henry Clay. Eager to reassert his control over the Whig Party (he was still bitter over the nomination of Zachary Taylor for president in 1848), and sincerely appalled at the raging sectional conflict, Clay provided a blueprint for how Congress might resolve the crisis. As historian Michael Holt writes, Clay's resolutions "ignited a tumultuous, exhausting, and agonizing eight-month struggle in

[5] Thomas Hudson McKee, *The National Conventions and Platforms of all Political Parties, 1789-1905* (Baltimore: The Friedenwald Company, 1904), 74-80. See both Whig and Democratic 1852 national platforms.

Congress."[6] While Clay's plan began the discussion, the real credit for the passage of the acts that formed the Compromise of 1850 belongs to Stephen A. Douglas, Democratic Senator from Illinois, and chairman of the powerful Committee on Territories. Douglas was able to form the political combinations that provided the necessary votes for passage of each bill. This "final adjustment" of the slavery question included the following: the Texas boundary bill, the admission of California as a free state, the organization of New Mexico on a popular sovereignty basis, passage of a rigorous fugitive slave law, and a bill abolishing public slave markets in the District of Columbia.

On Wednesday, September 25, 1850, Indiana congressman George W. Julian delivered a speech to the House of Representatives called the "Healing Measures of Congress" in which he declared his hostility to the bills recently passed and known as the Compromise of 1850. He particularly bid defiance of the Fugitive Slave Act, asserting, "I tell those southern gentlemen and their northern brethren who have passed this bill, that for one, I would resist the execution of this latter provision, if need be, at the peril of my life. I am sure that my constituents will resist it. … I give notice now to our southern brethren that their newly-vamped fugitive bill cannot be executed in that portion of Indiana which I have the honor to represent." Julian represented the Fourth Congressional District of Indiana, the eastern counties of Wayne, Union, Fayette, and Henry. This region of Indiana was heavily populated with Quaker settlements, was traditionally Whig in politics, and well-known for its antislavery sentiment. While vowing that his constituents would resist the enforcement of the Fugitive Slave Act, Julian admitted in the same speech that "There may be portions in Indiana where this law would be executed with alacrity." Indeed, most Hoosiers probably didn't share Julian's strong feelings regarding the

[6] Michael F. Holt, *The Fate of their Country* (New York: Hill and Wang, 2004), 71.

Fugitive Slave Act and came to accept it as a necessity for the preservation of Union. While the law may have been distasteful to most Hoosiers, disunion was a greater evil.[7]

Shortly after the "Healing Measures of Congress" were enacted, the Georgia State Legislature called for a special session to determine an appropriate response to the Compromise. They adopted what is known as the "Georgia Platform," and in this declaration was a very specific resolution regarding the Fugitive Slave Act. The Georgia representatives warned that "upon the faithful execution of the Fugitive Slave Bill by the proper authorities depends the preservation of our much loved Union."[8] Many Hoosiers believed Southern rhetoric regarding disunion and came to believe that all antislavery agitation threatened to bring about civil war. After passage of the Compromise of 1850, there was a reaction against "agitation" regarding the slavery issue in Indiana and a plea for peace and Union. Indiana Democrats became the self-anointed guardians of the Compromise and campaigned for the faithful adherence to all of its provisions, while the Whigs refused to endorse the measures as a "finality".[9] The 1852 national and local campaigns in Indiana were fought primarily over the acceptance of the Compromise measures as a final adjustment between the sections regarding the slavery issue. The constant pleas for "finality" underscored the reluctant acquiescence given by many Hoosiers to the Compromise measures, especially the Fugitive Slave Act.

One of the primary purposes of this dissertation will be to take a detailed look at several important fugitive slave cases in Indiana, to discover how Hoosiers responded to these events, and to explore the role of these cases in the creation of a political environment that led to the ruin of one party and the creation of a new one (the Republicans). It will therefore be helpful to

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[7] *Congressional Globe*, 31st Cong., 1st sess., Appendix, 1299-1302.
[8] David M. Potter, *The Impending Crisis, 1848-1861*. Completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 128.
[9] Thomas J. Engleton, "The Reaction Against the Anti-Slavery Efforts in Indiana, 1849-1852" (master's thesis, University of Notre Dame, 1949).

briefly review some of the history of fugitive slave legislation. The Constitution of the United States in Article Four, Section Two, provided that "No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party, to whom such service or labor may be due." This provision led to the adoption of the first fugitive slave legislation, the Fugitive Slave Law of 1793. The Fugitive Slave Law of 1793 allowed the slaveholder or his agent to go into a free state, arrest the fugitive, and take his property back to the state from which he had fled without due process of law. The slave owner could apply for a certificate from a district or circuit judge to enable him to take the fugitive out of the state. However, without the authority of the Federal government behind such seizures, the hostility of some Northerners made the capturing of fugitives difficult.[10]

Northerners objected to the law of 1793 because it did not protect the free blacks living in their community, and it placed responsibilities upon state officers which did not belong to them. Some Northern states began to pass legislation regulating the rendition of fugitive slaves, and making it more difficult for slave owners to capture their property. A turning point in the history of the fugitive slave legislation was the United States Supreme Court's decision in *Prigg* v. *Pennsylvania* (1842). Justice Joseph Story declared that the 1793 federal Fugitive Slave Law was constitutional, that state laws interfering with the rendition of fugitive slaves were unconstitutional, and that state officials were not required to enforce the federal law of 1793. This decision led to the passage of personal liberty laws in the North. The personal liberty laws forbade state officers from aiding in the rendition of runaway slaves. The personal liberty laws and the hostility of many Northerners to the institution of slavery made the rendition of fugitive

[10] Stanley W. Campbell, *The Slave Catchers* (New York: W.W. Norton, 1972), 5-10. Campbell's work was originally published in 1968.

slaves very difficult in certain parts of the North. Throughout the antebellum period, Southern slave owners, particularly in the border states, demanded a more stringent fugitive slave law.[11]

As a result of the personal liberty laws and the growing hostility of Northerners, the costs of rendition, which included travel and court expenses, often exceeded the slave's value. Southerners, who had long argued for a new fugitive slave bill, finally succeeded in getting the new law in the Compromise of 1850. The provisions of the Fugitive Slave Law of 1850 differed from the 1793 act in that the enforcement of the law became the responsibility of the federal government and not the states. United States commissioners now held the authority to hear and determine cases under the fugitive slave clause of the Constitution. The commissioners had the power to grant certificates to claimants upon satisfactory proof, and the authority to have fugitives taken back to the state from which they escaped. United States marshals and deputy marshals were to execute all warrants issued, and the marshals could force local citizens to aid in the arrest of the fugitive. The slave owner or his agent could reclaim the fugitive by procuring a warrant from the proper circuit, district, or county court for the arrest of the slave, or by seizing the fugitive and taking him before the commissioner, court, or judge, whose duty it was to hear and try the case. The testimony of the fugitive was not to be admitted in evidence before the commissioner. Stiff penalties were imposed on those who would obstruct, hinder, or prevent the claimant from arresting his fugitive. One of the provisions of the law that was particularly galling to the abolitionists was the stipulation that ten dollars would be granted to the commissioner when a certificate for removal was granted to the claimant, but only five dollars would be allowed the commissioner when there was not enough evidence to grant the certificate of removal. This differential was justified by the cost of paperwork involved in the

[11] Charles H. Money, "The Fugitive Slave Law of 1850 in Indiana," *Indiana Magazine of History* 17, no. 2 (June 1921): 160; Paul Finkelman, *An Imperfect Union* (Chapel Hill: University of North Carolina Press, 1981), 132-33.

two transactions.[12] According to the abolitionists, this amounted to nothing less than a bribe to the commissioner for ruling against the alleged fugitive.

The new, strengthened Fugitive Slave Law had originally been offered by Senator James M. Mason, a Virginia Democrat, in the first week of January, 1850. The bill passed in the Senate on August 26, and then in the House on September 12, in both cases by comfortable margins. Despite its easy passage, Historian Holman Hamilton in *Prologue to Conflict: The Crisis and Compromise of 1850* asserted that the Fugitive Slave Law "was decidedly the most explosive part of the Compromise."[13] The Northern public's response to the bill probably surprised many of the politicians in Congress, who presumed that they were only providing the necessary machinery for a more faithful execution of a plain provision of the Constitution. For some historians, the fugitive issue was more theoretical than real – the hysteria it created was not supported by actual numbers. Southerners' extreme sensitivity to the fugitive issue hid the fact that very few slaves apparently escaped into the free states.[14] Don Fehrenbacher writes that the fugitive slave legislation "had symbolic and strategic value transcending its doubtful utility. Passage of the act lent weight to the southern definition of what the federal government owed to slavery, while at the same time setting up an acid test of northern fidelity to the Constitution."[15] As newspapers and magazines in the decade before the Civil War covered dramatic stories about fugitive slave rescues, Underground Railroad operations, hostile

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[12] Money, "The Fugitive Slave Law of 1850 in Indiana," 161-163; Leon Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: University of Chicago Press, 1961), 248.

[13] Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (New York: W.W. Norton, 1964), 168.

[14] Kennedy, *Population of the United States in 1860,* xvi. According to the 1850 and 1860 census returns, only 1,011 and 803 fugitive slaves are reported, respectively. These figures seem to contradict some of the extravagant numbers offered by both aggrieved Southerners and the abolitionists.

[15] Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery.* Completed and edited by Ward M. McAfee (New York: Oxford University Press, 2001), 232.

Northern courts, personal liberty laws, and Northerners' interference with the Fugitive Slave Law, it was clear to Southerners that the North had failed to live up to its constitutional obligations – they had failed the acid test. The North's failure to enforce the Fugitive Slave Law became one of the many reasons that Southern states used to justify secession. As such, the Fugitive Slave Law of 1850 demands a closer look, especially in those states where the fugitive issue was most relevant – the border states.

In his *History of the Underground Railroad*, William M. Cockrum includes a series of letters from prominent political and military figures of the Civil War era regarding Harriett Beecher Stowe's *Uncle Tom's Cabin* and the Fugitive Slave Law of 1850. Cockrum was a participant in the Anti-Slavery League, a secret organization dedicated to helping slaves escape from their masters. He was also a Hoosier Civil War officer and an Indiana historian. His *History of the Underground Railroad as It Was Conducted by the Anti-Slavery League*, published in 1915, and his *Pioneer History of Indiana*, published in 1907, are excellent sources for historians on early Indiana history and the antislavery movement in Indiana. Cockrum had considered writing about the effect of Stowe's *Uncle Tom's Cabin* and the Fugitive Slave Law of 1850 on the coming of the Civil War and the subsequent overthrow of slavery. He questioned several prominent public figures in the following manner: "Which added most to the overthrow of slavery: Mrs. Harriett Beecher Stowe's *Uncle Tom's Cabin* or Senator Mason's fugitive slave law of 1850?" Cockrum published letters from Republican Senator Oliver P. Morton, Indiana's Civil War governor, Indiana Democratic Senator Daniel W. Voorhees, known as the "Tall Sycamore of the Wabash," Democratic Senator Roger Q. Mills of Texas, a Confederate officer during the Civil War, Confederate General Alexander P. Stewart, Confederate General William B. Bates, Republican Senator Benjamin F. Wade of Ohio, Republican Senator William G. "Parson"

Brownlow of Tennessee, Republican Senator Matthew S. Quay of Pennsylvania, Democratic Senator David Turpie of Indiana, Confederate General Simon B. Buckner, Confederate General James Longstreet, William D. Kelley, Civil War Republican Representative from Pennsylvania, and Shelby M. Cullom, Republican Representative from Illinois.[16]

The responses to Cockrum's question were varied and interesting, but all agreed that both Stowe's novel and the Fugitive Slave Law of 1850 were critical in bringing about the Civil War and the overthrow of slavery. While Stowe's novel inflamed the South, the Fugitive Slave Law made many Northerners who had previously been indifferent to the slavery question abolitionists. Senator Brownlow used the metaphor of a man preparing a rope to hang others and was himself hanged with it to describe the effect of the Fugitive Slave Law on the South. Senator Turpie of Indiana described the law as a boomerang that did the South much harm. It is no secret that the Fugitive Slave Law of 1850 was an offense to many Northerners, especially in New England and the mid-Atlantic regions. But what of the Old Northwest, and specifically in the state of Indiana, which was described by one historian as the most backward of all the Northwestern states in antislavery matters.[17] The overwhelming majority of the scholarship on the Fugitive Slave Law has focused on other regions of the country. The fugitive cases of Shadrach, Thomas Sims, and Anthony Burns in Boston, the "Jerry Rescue" in Syracuse, New York, Joshua Glover's rescue in Milwaukee, Wisconsin, John Price's rescue in Oberlin, Ohio - these and other high-profile cases have captured the attention of historians to the detriment of fugitive slave research in states like Indiana, whose antislavery movement was allegedly anemic. In February 1851, Senator Henry Clay expressed his satisfaction that the Fugitive Slave Law had

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[16] William M. Cockrum, *History of the Underground Railroad as It Was Conducted by the Anti-Slavery League* (New York: Negro Universities Press, 1969), 277-306. Cockrum's book was originally published in 1915.

[17] Theodore Clarke Smith, *The Liberty and Free Soil Parties in the Northwest* (New York: Longmans, Green & Company, 1897), 191.

been executed faithfully in Indiana, Ohio, Pennsylvania and New York. Census records seem to indicate that a very small percentage of slaves actually escaped. And yet many contemporaries and subsequent historians of the period have credited the Fugitive Slave Law with a major role in increasing the sectional tension that led to the Civil War. Admittedly, it is very difficult to quantify the impact of the Fugitive Slave Law; however, there seems to be a plethora of circumstantial evidence to indicate that even in a conservative border state such as Indiana, the notorious law did serve the antislavery cause well and contribute to a change in public sentiment.

Despite the intriguing research opportunities offered by a state such as Indiana, only a handful of historians have written specifically about Indiana fugitive cases. Two articles have appeared in the *Indiana Magazine of History*, one written by Charles H. Money in 1921, and the other by Emma Lou Thornbrough in 1954. Money focused on the Fugitive Slave Law of 1850 and he discussed several high profile cases that occurred in Indiana in the decade prior to the Civil War. He came to the conclusion that despite the strong opposition to the law from some quarters, the majority of Hoosiers accepted the law as a necessary concession to the preservation of the Union. He wrote that it was the heavy-handed enforcement of the law in the state that aroused sympathy for the beleaguered fugitive and swelled the ranks of the antislavery columns. Money wrote, "Men who had previously been strongly in favor of the law now began to align themselves against its execution. The reality of slavery had never before been brought so forcibly to their attention before. "[18] Money covered several fugitive slave cases in Indiana, including the two most prominent – the Freeman and West cases.

Emma Lou Thornbrough discussed the history of fugitive slave legislation in Indiana going back to the territorial and early statehood periods. According to Thornbrough, Indiana's

[18] Money, "The Fugitive Slave Law of 1850 in Indiana," 180.

early lawmakers showed a disposition to protect the rights of free black residents as evidenced by the "Act to Prevent Manstealing" of 1816. However, pressure from Kentucky legislators and a desire to preserve national unity led to a retreat from the early efforts to protect the rights of fugitives and free persons of color. While other states passed personal liberty laws that undermined the Fugitive Slave Acts of 1793 and 1850, Indiana enacted no legislation in contravention to the federal law on fugitive slaves after 1824. Indiana's Supreme Court prnounced that all state legislation on the subject of fugitive slaves was unconstitutional in lieu of the *Prigg* ruling. Thornbrough concluded: "In a period when the legislation of many northern states reflected increasingly the demands of anti-slavery groups, Indiana's legislators and courts appear to have ignored these groups and to have adopted a policy which placed the preservation of national unity above the protection of the rights of fugitive slaves or free colored people."[19] Specific fugitive cases are mentioned in general Indiana histories, but Money and Thornbrough have offered the most thorough analyses of the Fugitive Slave Law in Indiana.

William R. Leslie published an article in 1947 in the *Journal of Southern History* in which he examined Indiana's early statutes on fugitive slaves, particularly the statute of 1824, called "An Act relative to Fugitives from Labour." Leslie sought to determine if Indiana's 1824 act interfered with the federal Fugitive Slave Act of 1793. Indiana's territorial legislature and first General Assembly attempted to provide protection to her black residents by enacting anti-kidnapping laws in 1810 and 1816. The act of 1824 provided the machinery for the arrest and jury trial (on appeal) of the fugitive, but the act was permissive and simply presented another option other than that outlined in the act of 1793 in recapturing runaways. Leslie asserted that while the 1816 statute interfered with national legislation by forcing masters to use the Indiana

[19] Emma Lou Thornbrough, "Indiana and Fugitive Slave Legislation," *Indiana Magazine of History* 50, no. 3 (September 1954): 228.

method for recapture, the 1824 act didn't interfere because it was permissive and didn't require masters to use the Indiana method. Justice Joseph Story's decision in *Prigg* v. *Pennsylvania* made all state legislation on the subject of fugitive slaves unconstitutional. However, Leslie concluded that "Indiana's earliest legislation on the subject of fugitives from labor was based, apparently, on the theory that the states had concurrent authority along with Congress to implement the fugitive slave clause of the Constitution."[20] While early Hoosier legislators and jurists attempted to prevent the kidnapping of blacks, it appears that they had no intention of creating obstacles to Southern slave owners in their pursuit of fugitives.

A more recent analysis of Indiana and fugitive slave legislation can be found in Dean Kotlowski's 2003 article in the *International Social Science Review*. The article, called "'The Jordan is a Hard Road to Travel': Hoosier Responses to Fugitive Slave Cases, 1850-1860," explored several fugitive slave cases in Indiana that occurred in the decade prior to the Civil War. While conceding that the Fugitive Slave Act of 1850 was perhaps unpopular among Hoosiers, Kotlowski asserted that "support for the Union, racism, and property rights moved most state residents to respect the law." Real fugitives received little sympathy, and Hoosiers rarely resorted to extra-legal means to release alleged fugitives. Kotlowski reviewed several fugitive slave cases in Indiana, including the most renowned case of John Freeman in Indianapolis, which occurred in 1853. While Freeman was released after an impressive defense by abolitionist lawyers, Kotlowski finds little evidence in the other cases to suggest that there was widespread resistance to enforcement of the law or even sympathy expressed for down-trodden, weary fugitives.[21]

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[20] William R. Leslie, "The Constitutional Significance of Indiana's Statute of 1824 on Fugitives from Labor," *Journal of Southern History* 13, no. 3 (August 1947): 352-53.

[21] Dean J. Kotlowski, "'The Jordan is a Hard Road to Travel': Hoosier Responses to Fugitive Slave Cases, 1850-1860," *International Social Science Review* 78, no. 3-4 (2003): 72.

The legislative proceedings of the Indiana Constitutional Convention of 1850 provide a fascinating look into the mind of the Indiana politician in the mid-nineteenth century, and assuming that the convention delegates accurately represented the views of Hoosiers generally, we are able to ascertain public attitudes toward slavery (or antislavery), the Fugitive Slave Law, and legislation concerning the rights and privileges of free persons of color. An interesting debate regarding the recently passed congressional compromise measures took place among the delegates to the constitutional convention. The debate was precipitated by a resolution introduced by James Rariden, a Whig delegate from Wayne County. Rariden, concerned over resolutions passed in Wayne County opposing the Fugitive Slave Law, sought to chastise the abolitionists and at the same time assure the Southern states that Indiana would "uphold the laws enacted for the benefit of those who live in the slave States."[22] His resolution inspired a heated debate over the efficacy of the compromise measures, particularly the Fugitive Slave Law. The resolution was eventually passed in amended form, but the debate revealed that like the nation, Indiana, in the words of delegate Robert Dale Owen of Posey County, had "her North and her South; and the popular sentiment on the subject matter of these resolutions, is very different in one of these sections from what it is in the other."[23] Perhaps no feature of the 1851 Indiana Constitution has received as much comment by historians as Article Thirteen, or the Negro Exclusion Act. This act was approved in a separate vote from the rest of the Constitution and was overwhelmingly supported by Hoosiers. What the constitutional convention debates appear to reveal is that while many Hoosier politicians perhaps doubted the wisdom of certain features of the compromise measures, particularly the Fugitive Slave Law, they weren't too alarmed about the vulnerability of the free blacks living among them – nor were they

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[22] *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana, 1850,* Vol. 1 (Indianapolis: Austin H. Brown, Printer to the Convention), 744.
[23] Ibid., 873.

particularly eager to express sympathy for African-Americans generally. Indiana's politicians believed that to earn the epithet "abolitionist" spelled political death.

The Liberty and Free Soil Parties in Indiana found little fertile soil with which to work in their effort to advance the antislavery agenda. But after passage of the Kansas-Nebraska Act in the spring of 1854, Hoosiers were electrified as perhaps never before. The Second Party System was hastened to its death as temperance advocates, Know-Nothings, former Whigs, anti-Nebraska Democrats, free soilers, and abolitionists joined together to form the People's Party, the forerunner of the Republican Party in the state. George W. Julian, perhaps the state's most radical antislavery partisan, called the People's Party "a combination of weaknesses" rather than a powerful opposition movement.[24] Still, the People's Party stunned the Democrats in the fall 1854 state and congressional elections and progressively gained ground in subsequent elections up to the Civil War. The Democrats had dominated the state's politics for most of the antebellum period, but the heavy-handed enforcement of the Fugitive Slave Law, the Kansas-Nebraska Act, "bloody Kansas," the caning of Senator Charles Sumner, the Lecompton "fraud," and the Dred Scott decision seemed to provide sufficient proof of a "Slave Power conspiracy" determined to nationalize slavery.

Charles Zimmerman, who up to this time has written the most complete account of the formation of the Republican Party in Indiana, observed that the injustices occasioned by the zealous enforcement of the Fugitive Slave Act "served to stir up a bitter hostility toward the Fugitive Slave law and any further extension of slavery."[25] William Dudley Foulke in his two-volume biography of Oliver P. Morton wrote that "the harsh provisions of the fugitive slave law were brought home to the people by circumstances of peculiar atrocity which sometimes

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[24] George W. Julian, *Political Recollections, 1840-1872* (Charleston, SC: BiblioBazaar, 2008), 105. Julian's work was originally published in 1884.

[25] Zimmerman, "The Origin and Rise of the Republican Party from 1854 to 1860," 218.

attended the enforcement of those provisions."[26] Colonel William M. Cockrum, a participant in the activities of the Anti-Slavery League, reminisced that "In southern Indiana at an early day, four-fifths of the people were in sympathy with slavery. The greater portion of them had moved to Indiana from slave states and had been raised to regard the rights of the slave owner to his slave as sacred as his rights to his horses, cattle or any other property. It was but natural that law abiding people would have just such a regard for the law that they had been taught to obey. … After that obnoxious law [Fugitive Slave Law] came in force so many brutal acts were committed by the kidnappers that a great change came over the people."[27] While Indiana may have been inhospitable to abolitionists for most of the antebellum period, it appears that the workings of the Fugitive Slave Law contributed significantly to the development of the antislavery sentiment in the state and was one of the factors that helped Republicans gain electoral ascendency by 1860.

Inscribed on the Washington Monument in Washington D.C. is the declaration that "Indiana knows no East, no West, no North, no South, nothing but the Union." The inspiration behind the phrase was Joseph A. Wright, governor of the state for most of the 1850s and one of the leaders of the Indiana Democracy. The inscription accurately depicts how most Hoosiers perceived their role in the sectional conflict – as a balancing wheel between Northern and Southern extremists. Expressions of fidelity to the Constitution and the Union were not simply platitudes, but accurately represented what most Hoosiers perceived to be their responsibilities toward the nation. As previously discussed, their overwhelming support for the Union war effort provides the best evidence of their commitment to the Union and their constitutional obligations. Alongside their patriotic zeal, however, was an apparent dislike for the presence of

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[26] William Dudley Foulke, *Life of Oliver P. Morton*, Vol. 1 (Indianapolis: Bowen-Merrill Company, 1899), 65.
[27] Cockrum, *History of the Underground Railroad*, 12.

African-Americans. This was especially true in the southern half of the state and can be attributed to the Southern origins of many of the state's residents and the commercial ties with the South via the Ohio and Mississippi Rivers. Like most Americans, Hoosiers didn't believe that blacks were the social or political equals of whites. Certainly Indiana wasn't known for the strength of its antislavery movement, causing George W. Julian to remark that Indiana was an "outlying province of the empire of slavery."[28] Despite the cultural and commercial ties with the South and the racism of the majority of its inhabitants, the antislavery history of Indiana was, however, surprisingly eventful.

Indiana was the home of arguably the father of modern abolitionism and the first proponent of immediate and unconditional emancipation, Charles Osborn. Also, the reputed "President of the Underground Railroad," Levi Coffin, lived in Newport, Indiana (now Fountain City, Wayne County) for two decades during the antebellum period. The east-central or Whitewater Valley region of the state, inhabited by many Quakers, ranked alongside the Western Reserve in the strength of its antislavery movement. It is also probable that several Indianans were the inspiration behind some of the characters found in Harriet Beecher Stowe's "Uncle Tom's Cabin," a book that was widely read in Indiana. A determined minority of Hoosiers resisted the Fugitive Slave Law by serving as agents on the Underground Railroad, or in secret organizations such as the Anti-Slavery League. George W. Julian was a nationally recognized Indiana abolitionist who served in Congress and was the Free Soil vice-presidential candidate in 1852. Finally, the state was home to two schools that were open to all regardless of gender or

[28] Julian, *Political Recollections*, 81.

race: the Union Literary Institute in Randolph County and the Eleutherian Institute near Madison, in Jefferson County.[29]

There exists a wide range of materials on Indiana's antislavery history. Scattered throughout libraries and archives all over the state are county histories, magazine and journal articles, newspaper features and reports, personal papers, letters, diaries and other manuscript collections, and church and state government records that provide clues about Hoosiers' attitudes toward slavery, race, and the sectional conflict. An impressive array of state histories is also available by such eminent state historians as Emma Lou Thornbrough, Logan Esarey, and Jacob P. Dunn, among others. Another important source of information is the Congressional Globe, as it contains transcripts of legislative debates in Congress and important speeches by Indiana's senators and representatives during the antebellum period. As a border state, Indiana was the scene of a tremendous amount of fugitive slave activity, including several cases that became national stories. As previously discussed, the primary goal of this dissertation will be to explore the state's antislavery history by taking a closer look at the resistance to the Fugitive Slave Law of 1850, and by exploring potential links between opposition to the Fugitive Slave Law of 1850 and the formation of the Republican Party in the state. The Underground Railroad was alive and well and the passage of the Fugitive Slave Act of 1850 only hardened the resolve of the abolitionists. Kidnappings, rescues, legal battles over an alleged fugitive's status – whatever the case may be few issues were covered as regularly in the papers as those concerning the Fugitive Slave Law. To explore the social and political impact of the Fugitive Slave Law in Indiana, it will

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[29] George W. Julian, *The Rank of Charles Osborn as an Anti-Slavery Pioneer* (Indianapolis: Bowen-Merrill Co., 1891); Ben Richmond, ed., *Reminiscences of Levi Coffin: The Reputed President of the Underground Railroad,* abridged (Richmond, IN: Friends United Press, 2006). Coffin's book was originally published in 1876. Marion C. Miller, "The Antislavery Movement in Indiana" (PhD diss., University of Michigan, 1938); Jacob Piatt Dunn, "Indiana's Part in the Making of the Story of 'Uncle Tom's Cabin,'" *Indiana Magazine of History* 7, no. 3 (September 1911): 112-18.

be necessary to review the state's most important cases extensively. Therefore, it will be helpful to take a cursory survey of these cases.

The fugitive case in Indiana with the most far-reaching consequences occurred in the summer of 1853 in Indianapolis. Pleasant Ellington of Platte County, Missouri accused John Freeman, an Indianapolis resident, of being his escaped slave "Sam." Ellington claimed that Sam had escaped from him while living in Kentucky in 1836, seventeen years earlier. John Freeman was a respectable citizen of Indianapolis for many years and his friends in the city immediately went to work on his behalf. His counsel included some of the best lawyers in the state, including John Lewis Ketcham, John Coburn, and Lucien Barbour. Ellington was also represented by competent lawyers Jonathan A. Liston, who had previously represented John Norris, a Kentucky slave owner, in an important South Bend fugitive slave case, and Thomas D. Walpole, who had previously served as a state representative from Hancock County. After a couple months of legal wrangling, Freeman's attorneys were able to prove that their client was not the fugitive Sam and he was released. The real Sam was found in Canada and Freeman's counsel was able to support the alleged fugitive's claim to freedom ironically with the help of Georgia slaveholders. However, the manner of Freeman's arrest and his imprisonment provided more ammunition for those who sought to discredit the Fugitive Slave Law. The case attracted state-wide and national attention, even appearing in William Lloyd Garrison's *Liberator*. This case was particularly important because it occurred shortly before passage of the Kansas-Nebraska Act in the spring of 1854. The injustices occasioned by the event contributed to a feeling of resentment against the perceived aggressions of the Slave Power which ultimately found expression in the Fusion movement after the Kansas-Nebraska "swindle."[30]

[30] Money, "The Fugitive Slave Law of 1850 in Indiana," 180-98. The Freeman case is covered briefly in several general Indiana histories, including Oliver H. Smith's *Early Indiana Trials and Sketches* (Cincinnati:

The first prosecution in the state for a violation of the Fugitive Slave Act occurred in December 1854. Due to the exertions of Deputy Marshal Madison Marsh and Marshal John L. Robinson, Benjamin B. Waterhouse of LaGrange County, Indiana was tried in the United States District Court at Indianapolis for harboring and assisting the escape of two slaves belonging to Daniel Payne of Kentucky. The slaves successfully escaped to Canada, but Marsh and Waterhouse, who both hated abolitionists, determined to make an example of Waterhouse. Waterhouse was represented by George W. Julian, the "notorious abolitionist" and most outspoken Indiana radical. While it was proven that Waterhouse had indeed assisted in the fugitives' escape, Julian's appeal to the jury was so successful that the defendant was only fined $50.00 and ordered to spend an hour in jail. The penalties prescribed for a violation of the Fugitive Slave Act of 1850 included a maximum six-month imprisonment, a fine of $1,000, and civil damages up to $1,000. Notwithstanding the harsh penalties for violating the law, the jury was content to give Waterhouse a light sentence for his role in the escape of the fugitives. Again, this case illustrates that while Hoosiers recognized a legal duty to uphold the law, they weren't exactly sympathetic with its operation or execution.[31]

Another well-publicized event was the West case, which occurred in December 1857 in Indianapolis. West was the slave of Dr. Austin W. Vallandingham of Frankfort, Kentucky. West or Weston as he was known, worked on the steamer *Blue Wing* and escaped in 1853. He was arrested as a fugitive in Naples, Scott County, Illinois in December 1857. Vallandingham was passing through Indianapolis with his slave when legal proceedings were begun by a coterie of abolitionists, including George W. Julian and John Coburn. The abolitionists hoped to liberate

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Moore, Wilstach, Keys & Company, 1858), 278-79; Emma Lou Thornbrough's *Indiana in the Civil War Era* (Indianapolis: Indiana Historical Bureau, 1965), 51; Julian, *Political Recollections*, 92-93; Thornbrough, "Indiana and Fugitive Slave Legislation," 224-25.

[31] Charles H. Money, "The Fugitive Slave Law of 1850 in Indiana," *Indiana Magazine of History* 17, no. 3 (September 1921): 275.

West, but if that proved impossible they would make his rendition so expensive and troublesome that slave hunting in Indiana would be discouraged. In this last respect, they were successful. After losing the legal battle, the abolitionists hatched an escape plot that failed. With the assistance of the United States marshal and a posse of 40 deputies, Vallandingham was able to take West back to Kentucky by train. Obstructions were thrown upon the track a few miles out from Indianapolis, but the track was cleared and no one was injured. Throughout the affair, the authorities feared mob violence and great precautions were taken to prevent the rescue of West. The case illustrated the depth of feeling against the Fugitive Slave Act and the great amount of legal and police power that was required to enforce the law.[32]

One of the most exciting sagas in the annals of Indiana's fugitive slave history began on September 27, 1857. Charles, a blacksmith slave of Dr. Henry A. Ditto of Brandenburg, Kentucky, crossed the Ohio River and with the help of abolitionists escaped to Canada. Charles was assisted in his bid for freedom by Charles Alexander Bell, a young abolitionist who lived across the Ohio River from Brandenburg, in Harrison County, Indiana, and Oswell Wright, a free black living in Corydon, the county seat of Harrison County. Wright escorted Charles to Brownstown and helped him catch the train for his northern journey. A futile search was made for Charles by his owner and his agents, but they learned that Charles Bell and Oswell Wright had assisted in the slave's escape. Charles Bell was lured onto the Kentucky side of the river and arrested, while Oswell Wright and David Williamson Bell, Charles' father, were arrested on the Indiana side. There was no evidence to support the charge that David Bell was involved in the escape of Dr. Ditto's slave, but nevertheless he was taken to the Brandenburg jail and held for trial. Hoosiers were infuriated that a citizen of their state was illegally arrested and secreted across the river for trial. David and son Charles Bell would remain in jail for eight months until

[32] Ibid., 257-70; Julian, *Political Recollections*, 110-11.

heroically rescued by John and Horace Bell, two other sons of the elder Bell, on July 29, 1858. Feelings ran high on both sides of the Ohio River and the threat of border warfare seemed imminent. The events associated with the case were covered extensively by the press. Kidnapping was a serious problem in southern Indiana according to Indiana historian and abolitionist, William M. Cockrum. If most Hoosiers were apparently willing to obey the Fugitive Slave Law for the sake of sectional compromise and the Union, the abuses of the unpopular act created an undercurrent of animosity against the perceived aggressions of the Slave Power. Such encroachments on Northern rights made Hoosiers less inclined to cooperate in the enforcement of the Fugitive Slave Act.[33]

No account of the causes of the Civil War would be complete without an analysis of the role that the Fugitive Slave Act of 1850 played in exacerbating sectional conflict. Historians of the antebellum period and the Civil War have written extensively about the Fugitive Slave Act and it will be appropriate to review some of their thoughts on its influence among antebellum Americans. One of the first systematic analyses of the history of fugitive slave legislation was by Marion Gleason McDougal, who concluded that the provisions of the act of 1850 "were found to be so severe that the trials and rescues it occasioned served only to educate the people to the evils of slavery by bringing its effects close to them. Thus, far from compelling the North to acquiesce in the system, it greatly increased the number of abolitionists."[34] Wilbur H. Siebert, for a long time the recognized authority on the Underground Railroad, commented that "The law contained features sufficiently objectionable to make many converts to the cause of the

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[33] *Wabash Express*, August 18, 1858; Money "The Fugitive Slave Law of 1850 in Indiana," 287-97; Benjamin S. Harrison, *Fortune Favors the Brave: The Life and Times of Horace Bell, Pioneer Californian* (Los Angeles: The Ward Ritchie Press, 1953), 75-85.

[34] Marion Gleason McDougall, *Fugitive Slaves, 1619-1865* (New York: Bergman Publishers, 1967), 87. McDougall's book was originally published in 1891.

abolitionists," and that the law "stimulated the work of secret emancipation."[35] Dwight Lowell Dumond in *Antislavery Origins of the Civil War in the United States* asserted that the storm of protest over passage of the Fugitive Slave Act of 1850 never subsided. Louis Filler, another historian of the antislavery movement, wrote in *The Crusade Against Slavery, 1830-1860* that the "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."[36] Holman Hamilton wrote that the Fugitive Slave Law of 1850 intensified extremism and broadened the antislavery base as well. Richard H. Sewell in *Ballots for Freedom* perceptively observed that "Except for the awful spectacle of the auction block, no scene in slavery's chamber of horrors so aroused Northern moral sensibilities as did the image of the panting fugitive, struggling to escape his captors and their dogs." Finally, David Potter in *The Impending Crisis* referred to the Fugitive Slave Law as a "firebrand" and discussed how the "gratuitously obnoxious provisions" of the law caused a strong revulsion in the North. He did concede, however, that "there is no convincing evidence that a preponderant majority in the North were prepared to violate or nullify the law."[37] The consensus of most historians seems to be that the passage and enforcement of the Fugitive Slave Act was a significant factor in increasing the antislavery feeling in the North, even if most Northerners were willing to abide by the law for the sake of compromise and the Union.

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[35] Wilbur H. Siebert, *The Underground Railroad: From Slavery to Freedom* (Mineola, NY: Dover Publications, 2006), 23-24. Siebert's work was originally published in 1898.

[36] Dwight Lowell Dumond, *Antislavery Origins of the Civil War in the United States* (Ann Arbor, University of Michigan Press, 1959), 65; Louis Filler, *The Crusade Against Slavery, 1830-1860* (New York, Harper & Row, 1960), 202-03.

[37] Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850*, 170; Richard H. Sewell, *Ballots for Freedom: Antislavery Politics in the United States 1837-1860* (New York: W.W. Norton & Company, 1980), 236. Sewell's book was originally published in 1976. Potter, *The Impending Crisis, 1848-1861*, 130-31, 139.

Perhaps the most thorough account of the Fugitive Slave Law of 1850 is that offered by Stanley Campbell in *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860*. Campbell attempted to debunk the notion that the Fugitive Slave Law was unenforceable or a dead letter in the North. Campbell writes that the majority of Northerners "although unsympathetic with the harsh provisions of the law, was willing to acquiesce in the return of fugitive slaves to their owners in order to maintain good relations with the South and to prevent disruption of the Union." Commenting specifically about Indiana, he continues "Union sentiment was strong in the state, and public opinion was opposed to anything that might offend neighboring slave states."[38] Campbell concluded that the federal government was quite successful in executing the Fugitive Slave Law, but doesn't seem to take into account all the clandestine activities of the abolitionists on the Underground Railroad.

Historians have debated whether the Underground Railroad was more legend than reality, however. Larry Gara in *The Liberty Line: The Legend of the Underground Railroad* believes that the Underground Railroad was more useful as a propaganda device than a method of spiriting away slaves from their owners. He writes that the fugitive issue and especially the Fugitive Slave Law of 1850 were of "enormous value in winning sympathy for a once unpopular movement."[39] Indiana historian Logan Esarey had come to the same conclusion decades earlier, asserting that the results of the Underground Railroad in Indiana were negligible as far as alleviating the miseries of the slaves were concerned. However, he contended that

> The great influence [of the Underground Railroad and the Fugitive Slave Law] must be sought in the changed attitude of the people on the question of slavery. It is the consensus of opinion that an overwhelming majority of the people of southern Indiana in 1850 were indifferent to the evils of slavery, at least so long as the evils were

[38] Campbell, *The Slave Catchers,* 49, 58.
[39] Larry Gara, *The Liberty Line: The Legend of the Underground Railroad* (Lexington: University of Kentucky Press, 1996), 141. Gara's book was originally published in 1961.

> restricted to the southern states; but the continued agitation produced by negro hunters rapidly aroused the indignation of most of the people. … Especially were the United States marshal and his assistants, whose duty it was to help catch the refugees, held in contempt by the people of Indiana."[40]

This "changed attitude of the people" contributed to a political revolution in the decade of the 1850's that ended the dominance of the Democratic Party in Indiana and ushered a new party into power that would lead the nation into the Civil War, the Republicans. An investigation of Indiana's antislavery history and an analysis of the state's most important fugitive slave cases will shed additional light on the political crisis of the 1850s. A social and political history, it is hoped that this dissertation will be a valuable addition to the historiography of the sectional crisis between the free and slaveholding states.

[40] Logan Esarey, *A History of Indiana from 1850-1920,* Vol. 2 (Bloomington: Indiana University Bookstore, 1935), 628-29. Esarey's work was originally published in 1918.

CHAPTER ONE
FREEDOM'S TRIUMPH IN INDIANA

The Northwest Ordinance, passed by the Continental Congress on July 13, 1787, played a crucial role in determining the outcome of the slavery debate in the vast region north and west of the Ohio River. Described by eminent historian Robert Remini as "one of the most important, progressive, and far-reaching legislative acts in our history," the Northwest Ordinance created order out of chaos in the region and established the process by which a territory could achieve statehood.[1] More importantly, the Ordinance forbade the introduction of slavery and saved for freedom an area that would eventually produce the states of Ohio, Indiana, Illinois, Michigan and Wisconsin. Article Six declared, "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: Provided, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original states, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her service as aforesaid."[2] Article Six, then, of the Northwest Ordinance established the legal framework by which the institution of slavery would ultimately be vanquished in the states that would eventually comprise the "Old Northwest." Significantly, however, the framers of this landmark

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[1] Robert V. Remini, "The Northwest Ordinance of 1787: Bulwark of the Republic," *Indiana Magazine of History* 84, no. 1 (March 1988): 75.

[2] Charles Kettleborough, *Constitution Making in Indiana*, Vol. 1, *1780-1850* (Indianapolis: Indiana Historical Bureau, 1971), 33. Kettleborough's work was originally published in 1916.

piece of legislation recognized that these future states dedicated to freedom might become a haven for fugitive slaves and sought to preserve the rights of reclamation for Southern masters. The fugitive slave issue would ultimately become an exasperating source of friction between the slave states and the free states organized out of the Northwest Territory.

In his celebrated debate with South Carolina Senator Robert Hayne during the Nullification Crisis in 1830, Senator Daniel Webster of Massachusetts doubted "whether one single law of any lawgiver, ancient or modern, had produced effects of more distinct, marked, and lasting character, than the ordinance of '87." Webster extolled the Northwest Ordinance as a measure that "fixed, forever, the character of the population in the vast regions Northwest of the Ohio, by excluding from them involuntary servitude. It impressed upon the soil itself, while it was yet a wilderness, an incapacity to bear up any other than free men."[3] Conversely, John C. Calhoun, perhaps the greatest of Southern apologists during the antebellum period, viewed the Northwest Ordinance as the first in a long list of aggressive acts committed by the North against the institutions and interests of the South. The effect of the Northwest Ordinance, according to Calhoun, "was to exclude the South entirely from that vast and fertile region which lies between the Ohio and the Mississippi, now embracing five states and one Territory."[4] The positive assertions by Webster and Calhoun notwithstanding, the Northwest Ordinance, significant though it was, did not decisively settle the slavery controversy in the Northwest Territory.

Slavery had existed in the Northwest Territory for generations, during the periods of French and British occupation. Virginia gained control of the region in 1779 as a result of the military exploits of George Rogers Clark and his hardy band of frontiersmen during the American Revolution. In an act of session passed on December 20, 1783, soon after the war ended,

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[3] *Congressional Globe,* 21st Cong., 1st sess., 1830, 39-40.
[4] Ibid.*,* 31st Cong., 1st sess., 1850, 452.

Virginia agreed to relinquish her western lands to the United States. One of the stipulations in the Virginia Deed of Session was "that the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents, and the neighboring villages who have professed themselves citizens of Virginia, shall have their possessions and titles confirmed to them, and be protected in the enjoyment of their rights and liberties."[5] Slaveholders alleged that the confirmation and protection of the inhabitants' property included their slaves, and that this privilege continued despite passage of the Northwest Ordinance four years later. While the Ordinance clearly prohibited the further introduction of slaves into the region, it said nothing about the status of slaves already living in the territory. In a 1793 response to a petition from concerned slaveholders, the Northwest Territory's first governor, General Arthur St. Clair, assured them that Article Six was not *retroactive* and that settlers owning slaves before 1787 could continue to hold them.[6] In the absence of congressional clarification, the territorial governing authorities maintained that Article Six posed no threat to those who had owned slaves before 1787. The peculiar institution had gained a foothold in the Northwest Territory, and proslavery advocates made a determined effort to secure repeal or modification of the stricture against slavery.

The existence of slavery prior to the organization of the territory, the ambiguity of Article Six and the Southern influence in the settlement and formation of the Indiana Territory were factors that undermined the slavery prohibition. Congress created the Indiana Territory (including the Illinois Country) from the Northwest Territory on May 7, 1800, and the territorial government went into effect on July 4, 1800. The president appointed a governor and three judges to govern the territory in its "first stage" of development as directed by the Northwest Ordinance. The governor and judges formed what was called the legislative council. During the

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[5] Kettleborough, *Constitution Making in Indiana*, 13.
[6] Merrily Pierce, "Luke Decker and Slavery: His Cases with Bob and Anthony, 1817-1822," *Indiana Magazine of History* 85, no. 1 (March 1989): 34.

first stage, territorial laws were merely adopted from existing statutes of other states, subject to the review of Congress. Indiana's first governor, William Henry Harrison, arrived in Vincennes, the territorial capital, in early 1801. Harrison, the son of Benjamin and Elizabeth (Bassett) Harrison, was reared at Berkeley Plantation in Charles City County, Virginia. Benjamin Harrison had been a delegate to the Continental Congress, a signer of the Declaration of Independence, and governor of Virginia. William Henry Harrison was, therefore, a member of a prominent Virginia aristocratic family and schooled in the values of the planter class. As governor of the Indiana Territory, Harrison and his political supporters, known as the "Virginia Aristocrats," sought to transplant the social customs and institutions of the plantation South into the new territory.[7] During Harrison's administration, the territorial assembly enacted laws to evade the ban on slavery and sent several petitions to Congress asking for repeal or modification of Article Six.

A convention of settlers in Vincennes in late 1802, led by Governor Harrison, petitioned Congress to suspend Article Six for ten years. They asked that slaves and their progeny brought into the territory during the suspension period "be considered and continued in the same state of servitude, as if they had remained in those parts of the United States where slavery is permitted and from whence they may have been removed."[8] The petitioners declared that the slavery restriction was driving many valuable slaveholding citizens to the Spanish side of the Mississippi River and thus was hindering emigration to the territory. The committee in Congress which considered the petition disagreed. On March 2, 1803, John Randolph of Roanoke, the eccentric and fanatical devotee of state's rights and Chairman of the Ways and Means Committee, reported to the House of Representatives:

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[7] John D. Barnhart, "The Southern Influence in the Formation of Indiana," *Indiana Magazine of History* 33, no. 3 (September 1937): 261-76.

[8] Jacob Piatt Dunn, *Slavery Petitions and Papers* (Indianapolis: Bowen-Merrill Company, 1894), 20-21.

> The rapid population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region [the Indiana Territory]. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States; that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the northwestern country, and to give strength and security to that extensive frontier.[9]

In 1804, Indiana moved to the "second stage" of territorial organization, which allowed settlers to choose a representative assembly. Indiana's territorial assemblies petitioned Congress in 1805 and 1807 to suspend the slavery restriction. Indiana's representatives in 1805 reasoned:

> The slaves that are possessed south of the Potomac render the future peace and tranquility of those states highly problematical. Their numbers are too great to effect either an immediate or gradual simultaneous emancipation. They regret the African that was first landed in the Country and could wish that the invidious distinction between freemen and slaves was obliterated from the United States. But however repugnant it may be to their feelings, or to the principles of a republican form of Government, it was entailed upon them by those over whose conduct they had no control. The evil was planted in the Country when the domination of England overruled the honest exertions of their fellow-citizens, it is too deeply rooted to be easily eradicated, and it now rather becomes a policy, in what way the slaves are to be disposed of, that they may be the least injurious to the Country and by which their hapless condition may be ameliorated.[10]

According to the legislature then, dispersing the slaves over a wider geographical area would not only reduce the possibilities of insurrection in the nation, but also improve the living conditions of the slaves themselves. Only by diffusing the slaves in the Northwestern territories could a gradual emancipation of the slaves ever be achieved. The legislature "would venture to predict that in less than a century the colour [color] would be so disseminated as to be scarcely

[9] Ibid., 29.
[10] Ibid., 35.

discoverable."[11] The declarations of Indiana's territorial representatives to some degree anticipated the arguments of the later colonizationists, who would later claim that the removal of blacks was the best strategy toward achieving emancipation. The legislative petition of 1807 repeated the arguments of the preceding years: Article Six was a barrier to emigration, dispersing the nation's slaves would reduce the threat of insurrection, slaves would be better fed and clothed if concentrated in smaller numbers, and such a dispersal might actually lead to a gradual emancipation. Thus by petitioning Congress, the proslavery party in Indiana hoped to open the territory to slaveholders. Much to their chagrin, however, Congress refused to act positively on any of these petitions.

The Indiana Territory's Legislative Council and General Assemblies, however, did not stop at petitioning in their effort to establish slavery in the region. As Paul Finkelman writes, territorial officials "did not actually introduce *de jure* slavery throughout the region, in direct violation of the ordinance. Rather they creatively developed *de facto* slavery through a system of long-term indentures, rental contracts, enforcement statutes, and the recognition of the status of slaves who had been brought to the territory before 1787."[12] Impatient for Congress to intervene, Indiana's governing authorities passed legislation designed to circumvent Article Six. On September 22, 1803, the Legislative Council adopted "A Law concerning Servants" and this became the basis for future legislation on slaves and servants. The law was based on a Virginia statute for the regulation of slaves and indentured servants and declared: "All negroes and mulattos (and other persons not being citizens of the United States of America) who shall come into this territory under contract to serve another in any trade or occupation, shall be compelled to perform such contract specifically during the term thereof." Masters were to

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[11] Ibid., 36.

[12] Paul Finkelman, "The Persistence of Bondage in Indiana and Illinois," *Journal of the Early Republic* 9, no. 1 (Spring 1989): 22.

provide their servants with "wholesome and sufficient food, cloathing [clothing] and lodging" and a complete suit of clothing at the expiration of the contract. The benefit of the servant's contract was assignable to any citizen of the territory, as long as the consent of the servant was "freely" given. Servants could also be whipped for being "lazy, disorderly, or guilty of misbehavior." No person was allowed to transact business with a servant, including buying, selling, giving to or receiving from, without the consent of the master. The law also prescribed punishments for forging certificates of freedom, using a forged certificate, or for harboring a servant without a freedom certificate. This legislation essentially amounted to a slave code, although the term "slave" was nowhere to be found in the act.[13]

In 1805, Indiana's first popularly elected General Assembly passed "An Act concerning the introduction of Negroes and Mulattoes into this Territory." The law permitted "any person being the owner or possessor of any negroes or mulattoes of and above the age of fifteen years, and owing service and labour [labor] as slaves in either of the states or territories of the United States, or for any citizen of the said states or territories purchasing the same, to bring the said negroes or mulattoes into this territory." The law required owners to appear before a clerk of the court of common pleas, along with his or her Negro or mulatto, and to agree to a term of service. If the Negro or mulatto refused to serve, the owner could within sixty days lawfully remove such person to another state or territory. In other words, the slave could be sold and removed from the state. Negroes or mulattoes under the age of fifteen brought into the territory were required to serve the owner, males until the age of thirty-five, and females until the age of thirty-two. On December 3, 1806, the legislature passed "An Act concerning Slaves and Servants" which restricted the movements of slaves and servants, and prescribed

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[13] Francis S. Philbrick, ed., *The Laws of Indiana Territory, 1801-1809* (Springfield: Illinois State Historical Library, 1930), 42-46.

punishments for harboring slaves without the consent of the master or helping them to abscond. Upon conviction, a person could be fined up to $100.00 for harboring a slave or servant unlawfully, and up to $500.00 for helping a slave or servant escape from their master.[14]

The proslavery party's early success at evading the Northwest Ordinance's prohibition of involuntary servitude can be largely attributed to the dominance of Southerners in the territory's highest political circles. Indiana's first territorial legislature included just seven members, five of whom were from the slave states of Virginia and Maryland. A sixth was a slaveholder from the Illinois Country. The only native Northerner was Benjamin Parke, a future congressman and federal judge in Indiana. Parke was born in New Jersey, but had practiced law in Kentucky before coming to Indiana and was sympathetic with the institution of slavery.[15] Indiana's two territorial governors, Harrison and Thomas Posey, were both aristocratic Virginians and slaveholders. A detailed study of Indiana's constitutional convention of 1816 has revealed that of the forty-three members, thirty-two had either been born in the South or had lived there prior to coming to the state (seventy-four percent).[16] The majority of Hoosiers in the territorial and early statehood periods had emigrated from the Upland South, comprising the states of Virginia, North Carolina, Tennessee, and Kentucky, and while many of these Southerners had come to Indiana to escape the competition of slave labor, they brought with them racial prejudices typical of the plantation South.[17] The exception to this was the migration

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[14] Ibid., 136-39, 203-04, 523-26.
[15] Finkelman, "The Persistence of Bondage in Indiana and Illinois," 37.
[16] Barnhart, "The Southern Influence in the Formation of Indiana," 271.
[17] Marion C. Miller, "The Antislavery Movement in Indiana," (PhD diss., University of Michigan, 1938), 7-10; John D. Barnhart & Dorothy L. Riker, *Indiana to 1816: The Colonial Period* (Indianapolis: Indiana Historical Society, 1994), 362. Barnhart and Riker's book was originally published in 1971. The *New Albany Ledger* in an November 2, 1850 article boasted that "negro fanaticism" had but few devotees in Indiana … It should not be inferred from this state of things, however, that the people of Indiana have any sympathies with slavery, as an institution. Many of our citizens have emigrated hither from slave States to escape the evils of that institution."

of large numbers of Quakers to the Whitewater Valley region, in the east-central portion of the state, who came to Indiana, primarily from North Carolina, to escape the moral contamination of slavery. The Quakers were an important factor in the political development of this area of the state and later were conspicuous for their antislavery activities. The Southern orientation of Indiana culture made it difficult later to create an effective abolition movement in the state. The Southern influence in the political life of Indiana remained strong until the Civil War, and it is this cultural phenomenon that makes a study of Indiana unique among the other Northern free states.

The substance of the proslavery argument was that the slavery restriction was inhibiting population growth and that dispersing the slaves over a wider geographical area would diminish the threat of insurrection in the slave states and ameliorate the condition of the slave. They insisted that the question was not one between slavery and freedom, but merely one of policy since the slave population would not increase. Diffusion of the slave population was the best path to achieving gradual emancipation. The Indiana Legislative Council and House of Representatives passed a resolution in 1807 which included the assertion that a temporary suspension of Article Six would "meet the approbation of at least nine-tenths of the good citizens" of the territory; however, an antislavery movement was gaining momentum in the region.[18] Despite the efforts of Harrison and the proslavery party, Article Six was serving as a deterrent to the immigration of slaveholders. Antislavery pioneers were rapidly settling in the eastern half of the territory. After Congress created Illinois Territory in 1809, the proslavery

[18] Dunn, *Slavery Petitions and Papers*, 65.

advocates lost much of their support since many of the slaveholders lived in Randolph and St. Clair Counties, west of Vincennes.[19]

As petitions to the Indiana Territorial Legislature, published in the *Vincennes Western Sun*, indicate, the slavery question was one of the most important issues debated prior to statehood. The petition of John Allen was typical: "Mr. Johnston [Washington Johnston] laid before the House the petition of John Allen and other citizens of Knox County praying that slavery may not be admitted into this Territory and that the Delegate to Congress be instructed to this effect."[20] Judging from the number of petitions published for and against slavery, it appears that by 1808 the antislavery sentiment in the territory was in the ascendancy. General Washington Johnston, a native of Culpeper County, Virginia, and one of Knox County's first attorneys, was chairman of the House committee which reviewed the petitions on slavery. He delivered a powerful report on October 19, 1808 favoring repeal of the indenture law permitting the introduction of slaves, and arguing against the admission of slavery in the territory. Johnston forcefully argued the superiority of free labor and institutions: "the hand of freedom can best lay the foundation to raise the fabric of public prosperity." The practice of slavery would have a degrading effect on morals and manners: "what is morally wrong can never by expediency be made right." He asked rhetorically, "must the Territory of Indiana take a retrograde step into barbarism" by admitting slavery?[21] Johnston's report signaled a political change in the territory - the influence of the proslavery party had reached its zenith and would precipitously decline in subsequent years. The refusal of Congress to act on several petitions

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[19] Jacob Piatt Dunn, *Indiana: A Redemption from Slavery* (Boston & New York, Houghton, Mifflin & Company, 1888), 379-83. The Act creating Illinois Territory was approved on February 3, 1809. The creation of the Illinois Territory reduced Governor Harrison's political support and gave an impetus to the burgeoning antislavery movement in the Indiana Territory.
[20] *Vincennes Western Sun*, November 26, 1808.
[21] Dunn, *Slavery Petitions and Papers*, 80-85; Dunn, *Indiana: A Redemption from Slavery*, 356-57, 370-71.

asking for a suspension of Article Six, the separation of the Illinois Country from Indiana Territory, the rapid emigration of settlers seeking free territory, and the efforts of antislavery pioneers all worked to thwart the plans of those hoping to make Indiana a slave state.

Jonathan Jennings, one of the most important figures in Indiana's early history, served as territorial delegate to Congress and president of the state's constitutional convention, and he became the state's first governor. After his service as governor, he was elected to serve several terms in the national House of Representatives. Jennings was born in 1787 in New Jersey, but spent most of his early life in Fayette County, Pennsylvania. He was the son of a Presbyterian minister and was reared with antislavery ideas. He studied the classics and mathematics at the Cannonsburg, Pennsylvania Presbyterian School, where he was a classmate of William Wick and William Hendricks, two men who would later become very prominent in Indiana politics.[22] After studying law in Washington, Pennsylvania, Jennings relocated to the Indiana Territory, where the burgeoning West offered great political opportunities for talented, ambitious lawyers. He was admitted to the bar in the spring of 1807 in Vincennes. The strength of the proslavery movement was in Knox County, and Jennings' political ambitions were frustrated in Vincennes. He was never accepted into the inner circle of political influence, probably because of his antislavery views.[23] Governor Harrison and the "Virginia Aristocrats" were too firmly entrenched politically to offer much hope for Jennings' aspirations. He therefore set his sights

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[22] William Watson Wick held numerous political and judicial offices in Indiana and served as a Democrat in Congress during the years 1839-1841 and 1845-1849. He was born February 23, 1796 in Cannonsburg, Washington County, PA and died in Franklin, Johnson County, IN on May 19, 1868. William Hendricks was born November 12, 1782 in Westmoreland County, PA and died May 16, 1850 in Madison, Jefferson County, IN. He was one of Indiana's leading political figures in its territorial and early statehood periods. He served in the territorial legislature, was secretary of the state's first constitutional convention in 1816, served in Congress as a representative from 1815 to 1822 and in the United States Senate from 1825 to 1836. He was also governor of Indiana from 1822-1825. Hendricks was the uncle of Thomas A. Hendricks, who would later become a leading figure in the Indiana Democratic Party in the decade leading up to the Civil War.

[23] Dunn, *Indiana: A Redemption from Slavery*, 390.

on the eastern part of the territory, relocating in Charlestown, Clark County, in the latter part of 1808.

The antislavery sentiment in the eastern part of Indiana Territory was strong and increasing by the time of Jennings' arrival. Southern Quakers and other free soilers were pouring into the upper Whitewater Valley, most of them having emigrated to escape the institution of slavery. Jennings' political prospects brightened, and he became the territory's first popularly elected delegate to Congress. In a close vote, he defeated Thomas Randolph and John Johnson, two candidates who favored the introduction of slavery into the territory. Jennings' youthful appearance and engaging personality, indeed charisma, gave him an ability to draw men to himself. One of Indiana's early historians, Jacob Piatt Dunn, tells a fascinating story that sheds light on Jennings' electioneering style:

> It was at a log-rolling on the farm of David Reese, in Dearborn County. Randolph [Thomas Randolph] came up on horseback and was received by Reese with the common salutation of "light you down." Randolph dismounted, and having chatted for a few minutes was asked by Reese, "Shall I see you to the house?" Randolph accepted the invitation, and, after remaining there a short time, rode away. On the next day came Jennings, who had a similar reception, but to the invitation to repair to the house he replied, "send a boy up with my horse and I'll help roll." And help roll he did until the work was finished; and then he threw the maul and pitched quoits with the men, taking care to let them outdo him though he was very strong and well skilled in the sports and work of the frontier farmers. So he went from house to house; and long after he had gained rank among the great men of the commonwealth the people treasured up their anecdotes of his doings in his campaigns: how he used to take an axe and "carry up a corner" of a log house; how he took a scythe in the field and kept ahead of half a dozen mowers; and other agricultural deeds which proved him a man of merit.[24]

During the pioneer period of Indiana history when politics centered more around personalities than parties, Jennings' ability to mingle comfortably with the people gave him a tremendous advantage over other political candidates. Historians disagree over the relative influence

[24] Ibid., 395-96.

exercised by Jennings on the slavery debate in Indiana. Dunn enthusiastically referred to Jennings as "a young Hercules, stripped for the fray, and wielding the mighty bludgeon of 'No slavery in Indiana'". Other Hoosier historians argue that the proslavery party was already losing ground before Jennings was in a position to exercise any political influence.[25] At the very least, however, Jennings was a loud, consistent voice for the advocates of freedom, and as president of the state's first constitutional convention, had at least partial responsibility for the strong statement against slavery in the constitution.

The Third General Assembly of the Indiana Territory met at Vincennes on November 12, 1810. There were nine representatives (three from Knox, three from Dearborn, two from Clark, and one from Harrison County) and five councilors (Solomon Manwaring of Dearborn, James Beggs of Clark, John Harbison of Harrison, and William Jones and Walter Wilson of Knox). All of the representatives were antislavery men, with the exception of the delegates from Knox County. This assembly has the distinction of being the one which repealed the hated indenture law passed in 1805. The repeal act was divided into three sections. The first section repealed the act entitled "An act for the introduction of negroes and mulattoes into this territory," approved September 17, 1807 (originally passed in 1805). The second section was a provision designed to prevent the kidnapping or the unlawful removal of Negroes from the territory. It required the claimant to prove ownership before a judge of the Court of Common Pleas, or a justice of the peace, whereupon a certificate would be provided (filed in the county clerk's office) authorizing the removal of the Negro. Anyone convicted of violating this provision would be fined $1,000, and be subject in damages to the aggrieved party. Also, the kidnapper would be "forever disqualified from holding any office of honor, profit, or trust under this territory." The final section repealed "An Act concerning Servants," except to "such persons as may

[25] Dorothy L. Riker, "Jonathan Jennings," *Indiana Magazine of History* 28, no. 4 (December 1932): 239.

heretofore have executed indentures of servitude, their right under the same, and the master his remedy thereon." An Act concerning Servants had also been approved on September 17, 1807 and had regulated the contracts between master and servant, as well as the behavior of the servant. The repeal act was not retroactive, so previously contracted indentures remained in force.[26] The House passed the repeal act easily; in the Legislative Council, Jones and Wilson of Knox opposed repeal, while Harbison and Manwaring were in favor of it. James Beggs of Clark County, the president of the Council, cast the deciding vote in favor of repeal. Governor Harrison, sensing the antislavery tide in the territory and anxious to get the slavery question out of politics, signed the legislation on December 14, 1810. The indenture law, passed to circumvent the prohibition of slavery in the Northwest Ordinance, finally became a thing of the past, and the process of exorcising involuntary servitude from the territory (and eventually state) began.

Under an act of March 11, 1813, Indiana's Territorial Legislature moved the capital from Vincennes to Corydon, in Harrison County. After the creation of the Illinois Territory, Vincennes was no longer a central or suitable location for the transaction of territorial business. While Corydon was more favorably situated and became politically relevant, Vincennes, which had been the epicenter of the proslavery element, declined in political importance. Governor Harrison's civil service in Indiana came to an end on September 24, 1812 with his appointment as commander of the Army of the Northwest, a military force created at the outset of the War of 1812 and charged with maintaining the peace and security of Ohio, Indiana, Illinois and Michigan. After Harrison's departure, the Indiana Territorial Legislature appealed to President James Madison in 1813 that he would "appoint or nominate no man to the office of Governor of

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[26] Louis B. Ewbank & Dorothy L. Riker, eds., *The Laws of Indiana Territory, 1809-1816* (Indianapolis: Indiana Historical Bureau, 1934), 138-39; Dunn, *Indiana: A Redemption from Slavery*, 405.

the Indiana Territory who is in favour [favor] of the principle or practice of slavery."[27] President Madison replaced Harrison with another native Virginian, General Thomas Posey, a 63-year old Revolutionary War veteran and politician. Installed as governor on May 25, 1813, Posey had served in the Kentucky State Senate, and most recently as a United States Senator from Louisiana. According to Dunn, "With his [Posey's] Virginia training, his military life, his political experience, and his social culture, it was only natural that the personal friends of General Harrison became Posey's personal friends; and in equally natural sequence he fell heir to Harrison's political estate as well as to his office, though he was not much of a politician."[28] Posey was a slaveholder, but professed to be an opponent of the institution. In a letter to John Gibson, Secretary of Indiana Territory, March 3, 1813, he asserted: "I am as much opposed to slavery as any man whatsoever; I have disposed of what few I had sometime since to my children and by emancipation. I am sure I shall never sanction a law for slavery … ." However, Posey's will, probated in 1818, left two slaves to each of his three children and two of his indentured servants were sold after his death to Hyacinthe Lasselle, a prominent Vincennes innkeeper.[29] Despite the appointment of this Virginia slaveholder to the governorship of the territory, the antislavery element continued to increase its influence in territorial politics. Antislavery delegates controlled the territorial assemblies during this period and were the driving force behind Indiana's push toward statehood.

In his capacity as Indiana's territorial congressional representative, Jennings presented a memorial from the Indiana Territorial Assembly requesting an enabling act for statehood on December 28, 1815. This petition was accompanied by a census, showing that the thirteen

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[27] Ewbank and Riker, *The Laws of Indiana Territory, 1809-1816*, 795.
[28] Dunn, *Indiana: A Redemption from Slavery*, 418.
[29] Emma Lou Thornbrough, *The Negro in Indiana Before 1900* (Indianapolis: Indiana Historical Bureau, 1985), 12.

counties of the territory had a combined population of 63,897 free inhabitants. The Northwest Ordinance had provided that whenever a territory reached 60,000 free inhabitants, it would be admitted into the Union. The territorial representatives expressed a desire to abide by the congressional prohibition against slavery:

> And whereas the inhabitants of this Territory are principally composed of emigrants from every part of the Union, and as various in their customs and sentiments as in their persons, we think it prudent, at this time, to express to the general government our attachment to the fundamental principles of legislation prescribed by Congress in their Ordinance for the government of this Territory, particularly as respects personal freedom and involuntary servitude, and hope they may be continued as the basis of the constitution.[30]

Congress duly passed an enabling act on April 19, 1816 which called for the election of delegates to a state convention.

Historians disagree over the importance of slavery as a political issue in the election of delegates to the state convention.[31] Certainly since the separation of Illinois and the repeal of the indenture act, the antislavery party's political strength had greatly increased. The antislavery declaration in the petition to Congress requesting an enabling act would seem to indicate that the question of slavery had been all but settled. Yet slavery and involuntary servitude still existed in the territory, and it was a hotly debated subject among some Hoosiers.

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[29] Dunn, *Indiana: A Redemption from Slavery*, 419.

[31] Thornbrough, *The Negro in Indiana Before 1900,* 22. She writes, "The slavery issue played a part, although not a significant one, in the contest over the election of delegates to the convention which drew up the state constitution." Merrily Pierce in "Luke Decker and Slavery" asserts that "Slavery was no longer a major political issue by the time Congress passed the Enabling Act in 1816 permitting delegates to be chosen for the constitutional convention." (37) Conversely, Dunn in *Indiana: A Redemption from Slavery*, maintains that "There was more warmth than usual in the canvass [for delegates to the constitutional convention], principally over the slavery issue, which was forced as an issue by the anti-slavery people." (420)

Timothy Flint, a Methodist clergyman and author from Massachusetts, observed during his travels through the territory at this time that

> The southern portion of the emigration seemed to entertain no small apprehension, that this would be a Yankee state. Indeed the population was very far from being in a state of mind, of sentiment, and affectionate mutual confidence, favourable [favorable] to commencing their lonely condition in the woods in harmonious intercourse. They were forming a state government. The question in all its magnitude, whether it should be a slave-holding state or not, was just now agitating. I was often compelled to hear the question debated by those in opposite interests, with no small degree of asperity. Many fierce spirits talked, as the clamorous and passionate are accustomed to talk, in such cases, about opposition and "resistance unto blood."[32]

Flint's observation about the political climate of Indiana prior to statehood seemingly supports the contention that slavery was indeed the leading issue in the selection of delegates to the state convention. Hoosiers debated the advantages and disadvantages of admitting slavery into the new state through the columns of the *Vincennes Western Sun* in the months leading up to the election of delegates. One "antislavery" Indianan argued against the admission of slavery because it would "cause a compound of the human species - one part always lying under disabilities of one kind or another." In other words, fear of miscegenation with a degraded race motivated this Hoosier's support for an antislavery constitution. On the other hand, a Gibson County resident oddly reasoned that the admission of slavery would be beneficial to its victims: "Let the people maturely consider this question abstractly, and let them say and instruct their conventionalists to say, whither the corn of Indiana would or would not be more nourishing and palatable to the poor negro than the cotton feed of South Carolina or Georgia?"[33] One cannot fail to see the irony in these contrasting positions - one Hoosier was antislavery because he

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[32] Timothy Flint, *Recollections of the Last Ten Years* (Boston: Cummings, Hilliard & Company, 1826), 57.
[33] *Vincennes Western Sun*, February 3, 1816. Moses Wiley argues against the admission of slavery based on the fear of miscegenation; *Vincennes Western Sun*, March 2, 1816. In this issue, "A Citizen of Gibson" repeated previous arguments of the proslavery camp, i.e. that the admission of slavery would encourage immigration to the state and also improve conditions for the slaves.

feared the presence of blacks, while the other supported the admission of slavery into the state out of a professed concern for the well-being of slaves. After months of contentious wrangling over the issue of slavery, the argument was exhausted and the election of delegates, held on May 13, 1816, was a resounding victory for the antislavery party.

The delegates convened in Corydon on June 10, 1816 and elected Jonathan Jennings as president of the convention. The "father of Indiana history," John B. Dillon, asserted that

> The convention that formed the first constitution of the State of Indiana was composed mainly, of clear-minded, unpretending men of common sense, whose patriotism was unquestionable, and whose morals were fair. Their familiarity with the Declaration of American Independence - their territorial experience under the provisions of the Ordinance of 1787 - and their knowledge of the principles of the Constitution of the United States, were sufficient, when combined, to lighten materially their labors in the great work of forming a constitution for a new State.[34]

Most of the convention delegates were unremarkable, frontier farmers with a limited education. They were a good representation, however, of the general population in a state whose pioneers were characterized by a strong sense of individualism and democracy, many of whom had left their Southern homes to escape the economic and political domination of the planter class.

Though the Journal of the convention does not include any record of debates, speeches, or discussions, the antislavery provisions in the Indiana Constitution do not appear to have inspired much opposition. The framers in a strong, unequivocal statement in the Seventh Section of Article Eleven forever settled the future of slavery in the state: "There shall be neither slavery nor involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted. Nor shall any indenture of any negro or mulatto hereafter made, and executed out of the bounds of this state be of any validity within

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[34] James A. Woodburn, "Constitution Making in Early Indiana: An Historical Survey," *Indiana Magazine of History* 10, no. 3 (September 1914): 239; George S. Cottman, "John Brown Dillon: The Father of Indiana History," *Indiana Quarterly Magazine of History* 1, no. 1 (First Quarter 1905): 4-8.

the state." This latter clause was thought necessary to prevent the possibility of subsequent legislatures from evading the slavery prohibition by providing for the enforcement of indenture agreements made outside the state. While making provisions to amend the Constitution in Article Thirteen, the delegates made sure that the stricture against slavery could never be rescinded: "But, as the holding of any part of the human creation in slavery, or involuntary servitude, can only originate in usurpation and tyranny, no alteration of this constitution shall ever take place so as to introduce slavery or involuntary servitude in this state, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted." The Indiana Constitutional Convention adjourned on June 29, 1816 with a completed state constitution and Congress admitted Indiana into the Federal Union on December 11, 1816.[35]

The antislavery constitution culminated the political triumph of Jonathan Jennings and the "popular party" over Governors Harrison, Posey and the "Virginia Aristocrats." Early antislavery sentiment, however, often accompanied an equal desire to exclude free African-Americans from the state. Many Hoosiers were indifferent to the morality of slavery and adopted a non-interventionist position when it came to the slave states. Indianans, especially those of Southern origin or ancestry, stereotyped blacks as "untrustworthy, lacking in moral restraint, and ignorant," and were skeptical that African-Americans could successfully fulfill the responsibilities of freedom. Most Hoosiers were convinced of the innate inferiority of the Negro and often resented his presence among them. Such a degraded race would resort to pillage and plunder to make a living, threatening the peace and security of the entire community - or so the argument went.[36] This anti-Negro sentiment would eventually find expression in an exclusion

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[35] Dunn, *Indiana: A Redemption from Slavery,* 426-30.

[36] Eugene H. Berwanger, *The Frontier Against Slavery: Western Anti-Negro Prejudice and the Slavery Extension Controversy* (Champaign: University of Illinois Press, 2002), 19, 21. Berwanger's work was originally published in 1967.

act in the 1851 Constitution. The French observer of American culture, Alexis de Tocqueville, ironically concluded that racial prejudice seemed

> stronger in the States which 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. … In the South the master is not afraid to raise his slave to his own standing, because he knows that he can in a moment reduce him to the dust at his pleasure. In the North the white no longer distinctly perceives the barrier which separates him from the degraded race, and he shuns the negro with more pertinacity , since he fears lest they should some day be confounded together.[37]

After the adoption of Indiana's antislavery constitution, subsequent state legislatures would enact a series of "black laws" designed to discourage the emigration of free blacks into the state, as well as restrict the activities of African-Americans already living among them.

The Indiana Territorial Legislature made several attempts to exclude free blacks from coming into the state. In 1813, both the House of Representatives and the Legislative Council passed "An Act more effectually to prohibit the introduction [of] negroes mulattoes or slaves into the Indiana Territory," but it was vetoed by the slaveholder, Governor Posey. At the next session, the House received a petition from Jessee Emmerson and others of Gibson County asking for the exclusion of free people of color, but the petition was reported upon unfavorably by the committee to which it was referred. The committee was of the opinion that such a law "would be contrary to the Laws of humanity, inasmuch as it would prevent the free sons of Africa from becoming citizens of our Territory, and would also be contrary to the constitution of this our Territory."[38] Again in 1814 the House passed an exclusion bill, but it was rejected by the Legislative Council. Despite the failed attempts, there remained strong sentiment among

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[37] Alexis de Tocqueville, *Democracy in America* (New York: Random House, 2004), 416-417. Tocqueville's work was originally published in 1835.

[38] Dorothy L. Riker & Gayle Thornbrough, eds., *Journals of the General Assembly of Indiana Territory* (Indianapolis: Indiana Historical Bureau, 1950): 544, 592, 601, 606.

Hoosiers for exclusion. A memorial to Governor Posey from Harrison County residents announced opposition "to the introduction of slaves or free Negroes in any shape. … Our corn Houses, Kitchens, Smoke Houses … may no doubt be robbed and our wives, children and daughters may and no doubt will be insulted and abused by those Africans. We feel for our property, wives, and daughters. We do not wish to be saddled with them in any way."[39] As the Harrison County memorial seems to illustrate, Hoosiers' antislavery convictions were inspired as much by fear of miscegenation than moral outrage over the peculiar institution.

While the exclusionists failed to achieve their objective, some territorial and early state legislation was decidedly unfriendly to African Americans. In 1803, the Legislative Council enacted a law which decreed that "No negro, mulatto, or Indian shall be a witness except in pleas of the United States against negroes, mulattoes, or Indians, or in civil pleas where negroes, mulattoes or Indians, alone shall be parties." A mulatto was defined as any "such person who shall have one fourth part or more of negro blood."[40] Not only were blacks forbidden from giving testimony in any case involving whites, but they were also barred from serving in the state militia. An 1814 act required "free male persons of color" between the ages of twenty-one and fifty-five, to pay a poll or head tax of three dollars a year.[41] In 1818, the state legislature passed a law forbidding sexual intercourse or intermarriage between whites and blacks. African Americans were not granted citizenship, nor could they vote. Hoosiers believed that free blacks were "lazy and shiftless; that they were unable to support themselves and frequently became dependent upon the community; that they competed with white citizens; that they were demoralizing to the community and particularly to the youth; that they committed an undue

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[39] Thornbrough, *The Negro in Indiana Before 1900*, 20-21.
[40] Philbrick, *The Laws of Indiana Territory*, *1801-1809*, 40.
[41] Ewbank & Riker, *The Laws of Indiana Territory, 1809-1816*, 485.

proportion of crime."[42] The legal disabilities imposed on blacks reflected Hoosiers' racial prejudice and the discriminatory legislation remained in place until after the Civil War. Such discrimination and social ostracism made life precarious for many of Indiana's African-Americans.

While the legislative prohibition against slavery in the state constitution spelled the ultimate doom of the institution, involuntary servitude was not immediately eradicated. Slaveholders believed that the state constitution could have no effect on preexisting slavery and most continued to hold their slaves or servants. In 1820, there were still 190 slaves reported in the state, only forty-seven less than in 1810. The vast majority of these slaves lived in Knox and Gibson Counties, in the southwest corner of the state.[43] Yet, although the strength of the proslavery movement had been in this region since the arrival of Governor Harrison in Vincennes in 1801, a group of abolitionist attorneys in Vincennes, led by Amory Kinney, even challenged slavery there. They decided to initiate a legal challenge to determine if the constitutional restriction against slavery was retroactive. Did it apply to preexisting slavery and involuntary servitude? Born in 1792 the son of a Congregational minister, Kinney was a Vermont native who had studied law in New York under Samuel Nelson, later a United States Supreme Court Justice. Kinney was assisted by his brother-in-law, John Willson Osborn, Moses Tabbs, the son-in-law of Charles Carroll, a signer of the Declaration of Independence, and Colonel George McDonald.[44] In 1820, Kinney issued habeas corpus proceedings on behalf of

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[42] Earl E. McDonald, "The Negro in Indiana Before 1881," *Indiana Magazine of History* 27, no. 4 (December 1931): 299.

[43] Thornbrough, *The Negro in Indiana Before 1900*, 22, 25.

[44] Amory Kinney was born April 13, 1792 in Bethel, Windsor County, VT and died November 20, 1859 in Berlin, Washington County, VT. In 1850 Kinney appears in the Vigo County, IN census, living in Harrison Township with Cyrus and Rachel Bishop, age 58, born VT, and no occupation listed. Colonel George McDonald, a native of New Jersey, was the father-in-law of Judge Isaac Blackford, a towering figure in Indiana's judicial history. Blackford married McDonald's daughter, Caroline. Moses Tabbs was Charles

Polly, a house servant of one of Vincennes' leading citizens, Hyacinthe Lasselle. Polly was the daughter of a Negro woman that Lasselle had purchased from the Indians prior to the Treaty of Greenville (1795) and cession of that territory to the United States.[45] Polly's attorneys claimed that by the Northwest Ordinance and the Indiana Constitution, "slavery was, and is, decidedly excluded from this state." In rebuttal to the plaintiff's argument, Jacob Call, Lasselle's counsel, asserted that the rights of slaveholders had been protected in the Virginia Act of Cession and the Northwest Ordinance and that these rights could not be divested by any provision of the state constitution.[46]

The Knox Circuit Court determined that because Polly's mother was a slave prior to the passage of the Northwest Ordinance and Virginia's cession of the Northwest Territory to the United States, and because in the slave states the master was entitled to the benefit of the slave and the slave's offspring, that Polly was born a slave and that Lasselle could hold her as such.[47] Polly's attorneys then appealed to the Indiana Supreme Court, which unanimously reversed the decision of the trial court on July 22, 1820, discharging Polly and awarding her costs. Indiana's highest court, meeting in Corydon, consisted of just three justices, Jesse Lynch Holman of

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Carroll's son-in-law according to Jacob Piatt Dunn in *Indiana and Indianans*, Vol. 1 (Chicago & New York: The American Historical Society, 1919), 346. John Willson Osborn was born at St. John's, New Brunswick, February 7, 1794 and fought for the Americans in the War of 1812. He first became a newspaper editor in New York, then relocated to Vincennes, IN where he became an antislavery newspaper editor. He later edited papers in Terre Haute, Greencastle, Indianapolis and Sullivan, IN and was instrumental in the founding of Asbury University (now DePauw). Willson was the consummate reformer - dedicating his life to antislavery and temperance and was a strong advocate of the Union war effort in the Civil War. He died November 12, 1866 in Greencastle, IN. Willson's biographical information comes from *The National Cyclopedia of American Biography*, Vol. 18 (New York: James T. White & Company, 1922), 293-94.

[45] Dunn, *Indiana: A Redemption from Slavery*, 436-40. Dunn suggests that this constitutional test case "was the result of a quiet, friendly agreement" between Lasselle and Polly's attorneys, and in fact there seemed to be no animosity between the litigants. Lasselle had already offered freedom to his slaves and servants, but most had chosen to stay with the family. See also Sandra Boyd Williams, "The Indiana Supreme Court and the Struggle Against Slavery," *Indiana Law Review* 30 (Winter 1997): 305-07.

[46] Isaac Blackford, *Reports of Cases Argued and Determined in the Supreme Court of Judicature of the State of Indiana*, Vol. 1, 61-62.

[47] Williams, "The Indiana Supreme Court and the Struggle Against Slavery," 305-07.

Dearborn County, James Scott of Clark County, and Isaac Blackford of Knox County, none of whom were friendly to slavery.[48] Holman's wife had inherited several slaves, but upon the family's arrival in Indiana in 1811 the slaves were emancipated. He was a devout Baptist, and a leader in a variety of benevolent religious and educational endeavors, including being one of the organizers of the Indiana Colonization Society.[49] Justice Blackford had only recently begun a career on the bench of the Supreme Court that would last thirty-five years, and according to one biographer he "hated slavery in all its forms, and early allied himself with the free State party led by Jonathan Jennings."[50] Interestingly, Blackford was Colonel George McDonald's (one of Polly's attorneys) legal mentee and son-in-law, but the integrity or partiality of the Court apparently was never questioned because of this familial connection. Justice Scott wrote the Court's opinion in *State of Indiana* v*. Lasselle*, wherein he declared that "the framers of our constitution intended a total and entire prohibition of slavery in this state; and we can conceive of no form of words in which that intention could have been more clearly expressed." Scott maintained that Virginia's Act of Cession and the Northwest Ordinance, whatever privileges they may have

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[48] Jesse Lynch Holman was born October 24, 1784 near Danville, KY. After the death of United States District Judge for Indiana, Benjamin Parke, in 1835, Holman was appointed by President Andrew Jackson to fill the vacancy and held this position until his death on March 28, 1842. Holman established a homestead near Aurora, Dearborn County, calling it Veraestau, and this remained his home from the time he came to Indiana in 1811 until his death. Justice James Scott was a native of Pennsylvania, born May 28, 1767 and he died in Carlisle, Sullivan County, IN on March 2, 1855. Scott served as Clark County prosecuting attorney, a Clark County representative to the Indiana Territorial Legislature and he was a member of the Indiana Constitutional Convention in 1816. He was appointed to the bench on the Indiana Supreme Court by Governor Jonathan Jennings and served in this capacity from December 28, 1816 to December 28, 1830. Judge Isaac N. Blackford was born in Somerset County, NJ on November 6, 1786 and was "the best known and most eminent jurist Indiana has ever produced" according to Woollen - see William Wesley Woollen, *Biographical and Historical Sketches of Early Indiana* (Indianapolis: Hammond & Company, 1883), 346. He served on the Supreme Court from September 10, 1817 to January 3, 1853 and was a household name in Indiana. Blackford's *Reports* of the decisions of the United States Supreme Court became a standard reference for Indiana lawyers. He was a founder and president of the Indiana Colonization Society. He was appointed by President Franklin Pierce to the Court of Claims in Washington D.C. in 1855 and held this position until his death on December 31, 1859.

[49] I. George Blake, "Jesse Lynch Holman: Pioneer Hoosier," *Indiana Magazine of History* 39, no. 1 (March 1943): 25-51.

[50] Woolen, *Biographical and Historical Sketches of Early Indiana*, 350.

granted to slaveholders then living in the region, were irrelevant now because the Indiana Constitution was now the legitimate, lawful, governing authority. After reviewing Indiana's constitutional statute on slavery, he further reasoned that "a special reservation cannot be so enlarged by construction, as to defeat a general provision. If this reservation were allowed to apply in this case, it would contradict, and totally destroy, the design and effect of this part of the constitution."[51] The Court's ruling in *State of Indiana* v*. Lasselle* ended the controversy over slavery's existence in Indiana.

While the Indiana Supreme Court had decided that slavery could have no legal existence in the state, one loophole yet remained to be closed to end all forms of involuntary servitude. What about long-term labor contracts? Masters had used indenture agreements to create a *de facto* form of slavery during the territorial period, and there were still servants laboring under these contracts after the constitution had been framed. In 1821, Amory Kinney again acted against bondage in the case of *Mary Clark, a woman of Colour* v. *G.W. Johnston* in the Knox Circuit Court. Clark sought release from a long-term labor contract with General Washington Johnston of Vincennes, ironically the man who had led the fight in the territorial legislature for the repeal of the indenture law. Clark had been a slave in Kentucky until January, 1815, when she was brought to Vincennes by her owner, Benjamin I. Harrison. In Vincennes she entered into an indenture whereby she agreed to serve Harrison for thirty years. On October 24, 1816, Harrison manumitted her and on the same day, she "of her own free will and accord and for a valuable consideration" agreed to serve Johnston for twenty years. Thornbrough speculates that the case was likely initiated by Kinney, who was probably looking for a test case to challenge the legality of long-term indentures. The Knox Circuit Court predictably denied Clark's

[51] Williams, "The Indiana Supreme Court and the Struggle Against Slavery," 307; Blackford, *Reports of Cases*, Vol. 1, 61-62.

appeal for relief from the indenture agreement and the case was appealed to the Indiana Supreme Court, where the appellant was represented this time by Charles Dewey, who would later become an Indiana Supreme Court Justice.[52] Justice Holman ruled that Clark's request to be discharged was valid and her service to Johnston was involuntary:

> [Clark was] of legal age to regulate her own conduct; she has a right to the exercise of volition; and, having declared her will in respect to the present service, the law has no intendment that can contradict that declaration. We must take the fact as it appears, and declare the law accordingly. The fact then is, that the appellant is in a state of involuntary servitude; and we are bound by the constitution, the supreme law of the land, to discharge her therefrom.[53]

In the case of *Mary Clark*, Justice Holman made no mention of the date of the indenture, which was contracted after the constitution took effect. The Court's reasoning was broad enough, however, that even indenture agreements made before the constitution was drafted were nullified, once it was established that the service was involuntary. The Indiana Supreme Court's rulings in *State* v. *Lasselle* and *Mary Clark* added juridical weight behind the constitutional prohibition against slavery and ended the legality of any form of involuntary servitude in Indiana.

While legislative enactments and judicial pronouncements had sealed slavery's fate in Indiana, another issue related to the system of bondage would create conflict in the decades before the Civil War. Indiana's proximity to the slave state of Kentucky made it a high traffic area for fugitive slaves and slave hunters. The state's legislators desired to abide by the federal constitutional requirement to return fugitive slaves to their masters, but they also wanted to

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[52] Charles Dewey was born in Sheffield, MA on March 6, 1784 and died April 25, 1862 in Charlestown, Clark County, IN. Dewey, a Whig, was one of the most respected jurists in antebellum Indiana, serving on the Supreme Court from May 30, 1836 to January 29, 1847. He came to Indiana in 1816, first settling in Paoli, Orange County, where he opened a law practice and later represented the county in the state legislature. He then relocated to Charlestown, Clark County, in 1824, where he lived until his death.
[53] Blackford, *Reports of Cases*, Vol. 1, 123-26.

protect free blacks from kidnapping by unscrupulous slave hunters. Despite many Hoosiers' hostility toward blacks, they displayed little enthusiasm for returning fugitives to their masters, causing outrage below the Ohio River. The Fugitive Slave Act of 1793 and Indiana's "Act to Prevent Manstealing," adopted by the General Assembly in 1816, provided the administrative machinery by which masters were to reclaim their fugitives. Clashes over the enforcement (or lack of it) of the Fugitive Slave Law remained almost a constant source of irritation between Indiana and Kentucky throughout the early Federal and antebellum periods.

The disruption of interstate harmony often occurred because Southern slave hunters were not always careful to follow the prescribed process for reclaiming fugitives, preferring instead to use brute force to accomplish their ends. One Hoosier complained that "A headlong determination of putting the grappling irons to a fellow without a shadow of proof has too frequently marked the conduct of such as travel our state in quest of runaway negroes."[54] Indeed, the reckless behavior of slave hunters brought Hoosiers and Kentuckians to blows in the case of Moses, an alleged slave who was seized in New Albany on February 1, 1821. Arrested as the fugitive slave of Abraham Fields of Louisville, Moses was brought before Justice of the Peace David S. Bassette. Mason Cogswell Fitch and Lathrop Elderkin, counsel for Moses, made a motion for the postponement of the hearing so they could gather evidence to prove his freedom.[55] Squire Bassette granted the motion over the objection of Fields' attorneys, who claimed that the "cause before the court was in the nature of an *ex parte* trial," meaning a trial conducted for the benefit of one party, and without notice to, or argument by any person adversely effected. In other words, the plaintiff argued that the clause in the Constitution

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[54] *Vincennes Western Sun & General Advertiser,* February 15, 1823.

[55] Mason Cogswell Fitch was born in Williamstown, MA on June 25, 1797 and died in New Albany, IN November 29, 1848. He married Anna Maria Paxson and they were among New Albany's first pioneers, assisting in the organization of the first Presbyterian church in the city. Fitch's wife was the daughter of Colonel Charles Paxson, who commanded the militia in the Moses affair.

requiring the return of fugitive slaves defined an extradition process rather than a judicial proceeding; therefore, Moses had no right to a trial wherein evidence would be heard. During the week that the parties had been given to prepare their cases, Floyd County's sheriff received intimations that a body of Kentuckians was prepared to take Moses by force if the case went against them. The sheriff consulted with New Albany civic leader and associate judge, Seth Woodruff, and they decided to call up the militia, commanded by Colonel Charles Paxson, to enforce the laws and prevent a public disturbance.[56]

Tensions were high on February 8, the day of the trial. Forty-three Kentuckians had crossed the river and were prepared to kidnap Moses in the event of an adverse verdict, while Colonel Paxson had posted twenty militiamen around the courthouse to impose order. After weighing the evidence, Squire Bassette decided that there wasn't sufficient proof to establish Fields' claim and he discharged Moses. Immediately after Moses was released, he was attacked by the Kentuckians, armed with pistols and dirks, whereupon Colonel Paxson ordered the Indiana militia to charge the ruffians with bayonets fixed. The *New Albany Chronicle* reported what followed:

> On giving the orders to charge Col. Paxson was insulted by one of the assailants, by most opprobrious language, and accompanying his abuse by words with a violent kick against his thigh. For this insult the aggressor was knocked down with a musket by a soldier and put under guard. The assailants still persevering in their violence, pressing on the militia

[56] Colonel Charles Paxson came to New Albany, Indiana from Philadelphia in 1817, opened a store, ran a grist and saw mill, operated a ferry across the Ohio River, and for many years owned the only brick house in town - see Reuben Gold Thwaites, ed., *Early Western Travels*, *1748-1846*, Vol. 10 (Cleveland: The Arthur H. Clark Company, 1904), 44; Henry McMurtrie, *Sketches of Louisville and its Environs* (Louisville: S. Penn, Printer, 1819), 166-67, 203. Seth Woodruff was another early pioneer of New Albany, arriving in the city in the spring of 1817. He helped organize the first Baptist church in New Albany and became a minister in its service. He served as justice of the peace, associate judge, and judge of the probate court in New Albany. "Father" Woodruff was born in Elizabethtown, NJ on October 20, 1770 and died August 12, 1852 in New Albany - see biographical sketch in the *New Albany Ledger*, November 3, 1852.

> and insulting them, several of them were knocked down with muskets, and others pricked with the bayonets and some badly wounded.[57]

As the melee unfolded, outraged Hoosiers reclaimed Moses from the clutches of the maddened Kentuckians and safely conducted him out of the crowd. The whole affair lasted less than an hour and remarkably nobody was killed, though several were wounded. The Indiana militia showed great restraint in not discharging their guns, despite the provocation of the irate slave hunters. The altercation over Moses would not be the only time that Hoosiers and Kentuckians would come to blows over the rendition of fugitive slaves. The *Chronicle's* reporter of the incident exclaimed that such controversy "portended great peril and public mischief," and expressed a warning that would be reiterated again and again by Union-loving Hoosiers in the decades leading to the Civil War: "We ought not therefore, to suffer state feelings to pervert our reason nor permit different conditions in society that have, in a manner, been imposed on us without our own agency, & the effectual alteration of which is beyond our controul [control], to be a cause of schism and dissension or a standing source of acrimony and recrimination."[58] Whatever dangers to the Union might be risked by the fugitive slave issue however, the kidnapping of free blacks or the sight of weary, starving, thinly-clad fugitives desperately trying to avoid capture by arrogant, swaggering slave hunters posed an image that had the potential to change Hoosiers' attitudes toward slavery, slaveholders and African-Americans.

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[57] *Vincennes Western Sun & General Advertiser*, March 24, 1821 (quotes the *New Albany Chronicle*).
[58] Ibid.

CHAPTER TWO
FUGITIVE SLAVES, RACISM AND ABOLITION

While the delegates to the Constitutional Convention hammered out a new government charter in Philadelphia in the summer of 1787, the Continental Congress drafted and approved the Northwest Ordinance. Article Six of the ordinance not only forbade slavery, but also provided that "any person escaping into the same [Northwest Territory] from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."[1] This clause represented the first legislative effort of Congress to deal with what would soon become the highly contentious fugitive slave issue. During the colonial period, recovery of fugitive slaves had depended largely on the initiative of the owner rather than the assistance of public officers. Colonial laws on the subject of fugitive slaves recognized the right of "recaption," which permitted private action to recover property wrongfully taken so long as the exercise of that right did not cause "strife and bodily contention, or endanger the peace of society." Article Six in the Northwest Ordinance was essentially a recognition of the right of recaption. Historian Don Fehrenbacher suggests that the issue of fugitive slaves may not have come up at all in the Constitutional Convention without the example of Article Six in the Northwest Ordinance. The topic was discussed only a couple weeks before the convention adjourned, elicited little debate and resulted in the following clause which appears in Article Four, Section Two of the

[1] Charles Kettleborough, *Constitution Making in Indiana,* Vol. 1, *1780-1850* (Indianapolis: Indiana Historical Bureau, 1971), 33.

Constitution: “No person held to service or labour in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up on claim of the party to whom such service or labour may be due.” In the Northwest Ordinance, fugitives “may be lawfully reclaimed,” but in the Constitution, fugitives were to be “delivered up.” As Fehrenbacher writes, “the effect of the phrase, though far from clear, appeared to be something *more* than, or something *other* than, mere validation of the right of recaption.” The clause in the Northwest Ordinance was merely an injunction against state interference, while the fugitive slave statute in the Constitution imposed a restriction against state authority.[2]

As Northern states began emancipating their slaves, slaveholders became alerted to the necessity of express confirmation of their right to pursue and capture fugitive slaves across state lines. Though the Constitution had declared that fugitives from service or labor "shall be delivered up," it did not specify by whom or define a rendition process. Because of the Constitution's ambiguity, Congress passed the Fugitive Slave Act of 1793, which more clearly delineated a process by which masters could reclaim fugitives, and the bill was signed by President George Washington on February 12, 1793. The act, officially titled "An act respecting fugitives from justice, and persons escaping from the service of their masters," consisted of four sections, of which only the last two concerned fugitives from labor. By linking the process for remanding fugitive slaves with that of fugitives from justice, the founders seemingly viewed the rendition of fugitive slaves as an extradition process rather than one which necessitated normal judicial proceedings.

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[2] Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery.* Completed and edited by Ward M. McAfee (New York: Oxford University Press, 2001), 206-08.

Specifically, the act empowered the slaveholder or his agent to arrest the fugitive, take him before a circuit or district judge, or any other local magistrate, and in a summary hearing, establish his claim to the person's service. The slaveholder could establish his claim to the alleged fugitive's service by presenting oral testimony or a certified affidavit from a magistrate in any state or territory. Upon such proof, the judge or magistrate was required to issue a certificate to the claimant authorizing the removal of the slave to the state from which he had fled. The last section of the Fugitive Slave Act prescribed a penalty of $500.00, recoverable in an action of debt by the claimant, against anyone convicted of hindering the recovery of a fugitive, or harboring, concealing or rescuing a fugitive. Though the law required some judicial supervision over the process for returning runaways slaves, the judge's role was merely ministerial, limited to verifying the identity of the person whose labor was claimed. No provision was made in the act for legal representation of the accused, a jury trial or the right to habeas corpus, nor was the defendant allowed to testify in his own behalf. The legislation clearly demonstrated that protection of Southern property rights was more important than the protection of Northerners' civil liberties. Whether by honest mistake or intentional kidnapping, many Northern free blacks were taken into bondage under the implementation of the law. Amazingly, despite the contentiousness of the fugitive slave problem, the 1793 Act would remain in force, unchanged, for over half a century.[3]

In an effort to protect free black residents from kidnapping, some Northern states imposed their own rules for the rendition of fugitive slaves. As discussed earlier, the Indiana Territorial House of Representatives and Legislative Council, as part of the act repealing the indenture law, had approved an anti-kidnapping measure which essentially eliminated the common law right of recaption – the legislation was signed by Governor Harrison on December

[3] Ibid., 211-13.

14, 1810. In his message to the Indiana General Assembly, just before Indiana was officially admitted into the Union, Governor Jonathan Jennings urged the legislature to provide by law a measure "to prevent more effectually any unlawful attempts to seize and carry into bondage persons of colour legally entitled to their freedom, and at the same time as far as practicable prevent those who rightfully owe service to the citizens of any other state or territory from seeking within the limits of this state, a refuge from the possession of their lawful owners."[4] The legislature responded quickly by adopting on December 30, 1816 "An Act to Prevent Manstealing", which declared that "any person or persons hereafter, who shall forcibly take or arrest, or aid or abet in forcibly taking or arresting any person or persons with a design to take him, her, or them out of the state, under any pretense whatsoever, without establishing his, her or their claim, according to the laws of this state or of the United States, shall be guilty of man-stealing." Anyone convicted of the crime of manstealing was subject to a fine of not less than $500.00, nor more than $1,000.00 plus costs of the suit, and as in the previous anti-kidnapping law, was ineligible to "hold any office of honor, profit, or benefit within this state hereafter." Indiana also defined its own rendition process in the act, requiring slaveholders to obtain a warrant naming and describing the person or persons whose labor was claimed from a county justice of the peace or judge of the supreme circuit courts, whereupon the sheriff or constable would bring the alleged fugitive before the judge or justice of the peace, "who shall hear and examine all testimony, adduced both by plaintiff and defendant," meaning the slaveholder and the fugitive. If the judge decided that the slaveholder's claim had merit, then the person or persons claimed would be ordered to appear at the next term of the circuit court, where "he, she or they, shall have a fair and impartial trial by a jury of said county." If the verdict and

[4] *Laws of Indiana*, 1st sess., 1816-1817, 11. Jennings delivered his message on November 7, 1816 and Indiana was admitted into the Federal Union on December 11, 1816.

judgment went against the fugitive, then the judge would issue a certificate to the slaveholder authorizing the removal of the slave, after the claimant had paid all costs attending the trial.[5] Indiana's legislators, then, early on recognized the dangers posed to free blacks living within the state by the Fugitive Slave Act of 1793 and sought to protect them against kidnapping by creating a rendition process that guaranteed basic civil liberties.

Within a year of the Indiana Legislature's approval of the manstealing act, the Kentucky Legislature passed a resolution requesting their governor to open a correspondence with the governors of Ohio and Indiana, "in relation to fugitive slaves, who escape from their proprietors in this state, and conceal themselves, and are concealed, or assisted in their concealment by some of the citizens of those states." The Kentucky Legislature also warned that "the difficulty experienced by the citizens of this state in reclaiming their fugitive slaves who may have escaped into those states, owing to the real or supposed obstructions produced by their citizens, is calculated to excite sensations unfavorable to the friendly relations which ought to subsist between neighboring states."[6] In response to the legislature's request, acting Kentucky Governor Gabriel Slaughter wrote Indiana Governor Jennings on September 14, 1817, asserting "Whether it is owing to a defect in your laws, or the want of promptitude and energy in those who administer them, or the prejudice of your citizens against slavery, or to all those causes, I have not learnt. But our citizens complain of serious obstructions to the recovery of their property." Governor Jennings assured Slaughter that he desired that every regulation, not inconsistent with the Constitution of the United States or Indiana, might be adopted to assist

[5] Ibid., 150-152.
[6] *Acts Passed at the First Session of Twenty-Fifth General Assembly for the Commonwealth of Kentucky* (Frankfort, KY: Gerard & Kendall, Printers, 1817), 282. Hereafter referred to as *Kentucky Acts.*

slaveholders in the reclamation of their slaves.[7] In his next message to the legislature, Jennings suggested that Indiana lawmakers make "further provision by law, calculated to restrain [slaves] from fleeing to this state to avoid their lawful owners; and to enable the judges of the circuit courts, or any judge of the supreme court, in vacation, to decide with the aid of a jury, upon all claims of this character, without delay."[8] Jennings noted that the subject of fugitives escaping into Indiana had produced excitement in Kentucky and hoped that additional legislation might produce harmony between the two states. Interestingly, however, Jennings still insisted that fugitives be granted a jury trial and this provision undoubtedly frustrated Kentucky slaveholders, who believed they were entitled to a summary process as provided for in the Act of 1793. The Kentucky Legislature's resolution and the subsequent correspondence between the two governors suggests that at least some Hoosiers, whether through the agency of the law, or perhaps illegally, were willing to assist fugitive slaves in their quest for freedom.

Indiana's fugitive slave law, though it created more barriers for slaveholders, was permissive rather than compulsory as it gave masters the option of establishing their claim under the Indiana law or the laws of the United States. The Indiana law was clearly more rigorous and costly from the claimant's perspective. The Fugitive Slave Act of 1793 was much more favorable to the slaveholder as the judicial authority, whether he be a federal judge, or town, city or county magistrate, was only required to examine the evidence for ownership in a summary way and if convinced of the merit of the claim would then issue a certificate for removal of the fugitive. Indiana's "Act to Prevent Manstealing" and the federal Fugitive Slave Act of 1793 seemed to be at odds and the constitutionality of both was argued in 1818 in an

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[7] Logan Esarey, ed., *Governors Messages and Letters: Messages and Papers of Jonathan Jennings, Ratliff Boon, and William Hendricks*, *1816-1825* (Indianapolis: Indiana Historical Commission, 1924), 48-50.
[8] *Journal of the House of Representatives of the State of Indiana*, 2nd sess., 1817-1818, 9. Hereafter referred to as *Indiana House Journal*.

important case before Judge Benjamin Parke of the United States District Court for the District of Indiana.

The federal court had been organized on May 5, 1817 at the Old State Capitol in Corydon, pursuant to a March 3, 1817 act of Congress that created the Indiana district court. President James Monroe appointed Benjamin Parke, Indiana's territorial judge, to the district seat. Parke was a well-respected public figure who had already served as attorney general in the territory, territorial delegate to Congress, and territorial judge for nearly a decade. A native of New Jersey, Parke spent time in Lexington, Kentucky before coming to Indiana about 1800, where he opened a law office in Vincennes and became friends with Governor Harrison.[9] Parke was on friendly terms with the proslavery clique in Indiana and believed that the states had a constitutional duty to assist masters in the recovery of their absconding slaves. John L. Chasteen of Hardin County, Kentucky claimed Susan as his fugitive slave and had her arrested and brought before the Jefferson County Circuit Court.[10] Rather than prove his claim to Susan under the Indiana law, Chasteen informed the Jefferson County court that he would establish his right to Susan under the Fugitive Slave Act of 1793 in the United States District Court for the District of Indiana and he asked the Jefferson County court to dismiss the case. Susan's lawyers sought an injunction from the Jefferson County judge, preventing Chasteen from taking Susan out of the state until she had been tried under the Indiana law. They believed that the beleaguered fugitive had a much better chance at winning her freedom in a jury trial, under the provisions of the Indiana law, than before the federal court under the Act of 1793. The

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[9] George W. Geib & Donald B. Kite, Sr., *Federal Justice in Indiana: The History of the United States District Court for the Southern District of Indiana* (Indianapolis: Indiana Historical Society Press, 2007), 16-17, 21-24; William Wesley Woollen, *Biographical & Historical Sketches of Early Indiana* (Indianapolis: Hammond & Company, 1883), 384-90.

[10] John L. Chasteen appears in the 1820 Kentucky census living in Little York, Hardin County and based on his age category, he was born between 1776 and 1794.

Jefferson County judge decided that the case should be heard under Indiana law and ordered Chasteen to post bond as security that Susan would not be removed until the case had been tried at the next term under the state law. Chasteen ignored the order and secured a warrant from the United States District Court requiring Susan to appear before Judge Parke.[11]

Susan's attorneys asked Judge Parke to dismiss the warrant because the Fugitive Slave Act of 1793 was unconstitutional. The law was unconstitutional because the fugitive slave clause in Article Four, Section Two of the Constitution did not give Congress the authority to legislate on the subject of fugitive slaves. They also contended that even if the law were constitutional, "the several states have authority, concurrent with congress, to legislate on this subject, and therefore, that any procedure under the law of this state … operates to the exclusion of any authority derived from the act of congress." Susan's counsel essentially presented a state's rights argument, declaring that Susan's claim to freedom should be decided under the Indiana law, which provided a jury trial – state law superseded federal law when it came to deciding the fate of alleged fugitives. In his written opinion, Judge Parke surmised that "this case has probably furnished the first occasion on which the validity of this law [Fugitive Slave Act of 1793] has been questioned … ."[12] He therefore recognized the significance of the case and his decision's potential impact on the rights of slaveholders to recover their runaway slaves. "Gracious in manner, affable in address, and ever alert to the politics of a particular situation, Parke's instinct was to avoid and mediate conflict rather than seek it out."[13] Parke sidestepped a potential conflict between federal and state sovereignty by concluding that the

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[11] Thornbrough, "Indiana and Fugitive Slave Legislation," *Indiana Magazine of History* 50, no. 3 (September 1954): 204-06.
[12] *In re Susan*, November 3, 1818, United States District Court, District of Indiana, Judge Benjamin Parke opinion. See LexisNexis *Academic* database.
[13] Geib & Kite, *Federal Justice in Indiana*, 22.

Act of 1793 was valid and that when Congress legislated and provided a remedy for the return of fugitives from labor, the law

> superseded any state regulation then existing, or that might thereafter be adopted. The idea of another concurrent power in the federal and state governments appears to have been carried too far in the argument, and if admitted would be pregnant with the greatest mischief, and the source of perpetual collisions between the states and the general government. … it is unnecessary to inquire whether one or the other [federal or state method for recovery of fugitives] is best calculated to promote the ends of justice. It is sufficient that congress have prescribed the mode, and the motion must, therefore, be overruled.[14]

Parke did concede that "a concurrent power may be exerted, on the same subject, for different purposes, but not for the attainment of the same end." While he did not explicitly declare Indiana's "Act to Prevent Manstealing" unconstitutional, his ruling certainly had the effect of limiting the effectiveness of the act's third section, which outlined the state's procedures for the lawful recovery of fugitive slaves.

Despite this legal setback, Indiana's legislators continued to try and fulfill constitutional obligations regarding the return of runaway slaves, while protecting the state's free blacks from being illegally seized and taken outside the state. In response to Judge Parke's *Susan* decision and attempts in Congress to amend the Fugitive Slave Act of 1793 in favor of slaveholders, the Indiana General Assembly approved a joint resolution on December 31, 1818, insisting on what abolitionists decades later would demand - a jury trial for persons charged with being fugitives from labor:

> Whereas sundry persons destitute of every principal of humanity are in the habit of seizing, carrying off and selling as slaves, free persons of color who are or have been for a long time inhabitants of this state: and whereas all persons resident therein, are under the protection of our laws, and fully invested with those invaluable rights, guaranteed by our constitution namely, life, liberty, and the pursuit of happiness of which they

[14] *In re Susan*, November 3, 1818, Judge Benjamin Parke opinion.

> cannot be divested but on conviction of crime against the community of which they may claim to be members, by a jury of their country according to law. Therefore most solemnly disavowing all interference, between those persons who may be fugitives from service and those citizens of other states, who may have a just claim to such service, whenever such claim is legally established we deem it our just right to demand the proofs of such claim to service according to our laws.
>
> Resolved, by the general assembly of the state of Indiana, that our senators in congress be instructed and our representative be requested, to use their exertions to prevent congress from enacting any law, the provision of which would deprive any person resident in this state, claimed as a fugitive from service of a legal constitutional trial, according to the laws of this state before they shall be removed therefrom.[15]

In an effort to placate Kentuckians' demands for more effective and efficient fugitive slave legislation, Hoosier lawmakers amended the state's "Act to Prevent Manstealing", adding a provision that fugitive slave cases were to be tried within three days of the arrest of the fugitive. The amended act declared that "the judge or judges, as the case may be, notified and attending, as directed in this act, are hereby authorized and required to proceed to hear and determine by jury, the cause or causes so brought before them, which trial shall be conducted and governed, in every respect by the same regulations and rules that are prescribed by law in term time, and the verdict and judgment shall have the same effect and virtue as if obtained in the circuit court." While the Indiana Legislature accommodated slaveholders by providing for a quicker resolution to fugitive cases, the legislators still insisted that alleged fugitives receive more than a summary hearing and that they be given the benefit of a jury trial. The amended act also provided an additional punishment for those convicted of manstealing . Kidnappers could "receive, on his or their bare back any number of stripes not less than ten nor more than one hundred, at the discretion of the jury by whom such person or persons are convicted."[16] The Indiana General Assembly attempted to strike a balance between protecting the constitutional

[15] *Laws of Indiana*, 3rd sess., 1818-1819, 141-142.
[16] Ibid., 64.

rights of slaveholders, while at the same time providing fugitives with basic legal rights guaranteed in the Fifth and Sixth Amendments to the Constitution.[17] Indiana's "An Act to amend an act entitled an act to prevent man stealing" was approved January 2, 1819, two months after Benjamin Parke's decision in *Susan,* indicating that Hoosier legislators still maintained that the state had a concurrent authority with Congress to legislate on the subject of fugitive slaves.

While the case of *In re Susan* highlighted the conflict between state and national laws on the subject of fugitive slaves, a case involving another Susan resulted in a lengthy altercation between Indiana and Kentucky and illustrated the genuine concern that Indiana public officials had over the protection of the free blacks living among them. A fugitive named Susan had escaped from her Bardstown, Kentucky master, Richard Stephens, and settled in Harrison County, Indiana around the time of Indiana's admission to statehood. Before being sold to Stephens, she had previously been owned by a master living near the Pennsylvania-Virginia line who operated a ferry across the Monongahela River. Susan instituted a suit for her freedom in the Harrison County Circuit Court by virtue of her previous residence in Pennsylvania. Stephens claimed that he had a bill of sale for Susan which warranted her a slave for life. A Harrison County jury heard the case in August, 1818, and decided in favor of Stephens, ordering that Susan be returned to his possession. However, on motion of Susan's attorney, a new trial was ordered and the case was continued for another term. Frustrated by the delay of the return of what he regarded as his lawful property, Stephens decided to take matters into his own hands.

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[17] The Fifth Amendment to the Constitution declares that no person shall be "deprived of life, liberty, or property, without due process of law. The Sixth Amendment guarantees that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

He sent his son Robert and two accomplices, James Thompson and Jesse Young, to seize Susan and carry her back to Kentucky. The kidnappers found Susan in Corydon at the home of Daniel C. Lane, Indiana's State Treasurer, where she was staying awaiting a new trial, abducted and carried her back to Kentucky. Stephens, a member of the Kentucky Legislature, along with Thompson and Young, were immediately indicted for manstealing by a Harrison County grand jury and a warrant was issued for their arrest.[18]

Governor Jennings, hoping that the Kentucky kidnappers might again come into the state where they could be arrested on Indiana soil, waited for nearly a year before sending the Kentucky governor a warrant for the extradition of Stephens, Thompson and Young. Despite repeated attempts to get the cooperation of Kentucky authorities, Jennings was rebuffed each time. Ostensibly, Kentucky Governor Gabriel Slaughter's refusal to turn over the fugitives from justice was based on the insufficiency of the requisition documentation that Jennings submitted; however, the real objection of Kentuckians was that they believed Indiana's kidnapping law to be unconstitutional as the Fugitive Slave Act of 1793 precluded states from enacting their own laws on the subject of fugitive slaves. Governor Slaughter refused to extradite Stephens, Thompson and Young because he, along with the Kentucky Legislature, believed that the law on which the fugitives from justice had been indicted was unconstitutional. Not satisfied with simply refusing Indiana's repeated requests for the arrest and extradition of the kidnappers, the Kentucky Legislature went so far as to amend its state law on the rendition of fugitives from justice. The amended measure provided that in any case in which a Kentuckian might be convicted for kidnapping a person whom he claimed as his runaway slave, a Kentucky circuit judge would first examine the case of the indicted person. If the judge determined that the person was the owner of the slave or had acted in the owner's behalf, then the alleged fugitive

[18] Thornbrough, "Indiana and Fugitive Slave Legislation," 207-08.

from justice would be discharged from custody. If the judge decided that the accused was not the owner of the slave, or had not acted in the owner's interest, then the person would be placed in custody to be dealt with according to existing laws on kidnapping.[19] Kentucky hypocritically modified the federal rendition process for fugitives from justice, yet insisted that Indiana could not do so regarding fugitives from labor.

In January 1820, Governor Jennings submitted the correspondence between him and Governor Slaughter as well as other documentation related to Susan's case to the Indiana House for its review. The House responded with a lengthy report sustaining the course pursued by Jennings. Indiana legislators maintained that the state had a concurrent authority with Congress to regulate the rendition of fugitive slaves:

> But though an unfortunate race of human beings are recognized as property in several of the states, and though their fleeing from service does not dissolve their obligation to serve, yet as slavery is unknown in our Constitution, the natural presumption is, that every individual within the limits of Indiana is free, and must be deemed as such until the contrary is proved. Hence the propriety of the law that requires the individual claimed as a fugitive from service, to be proved to be such, prior to his removal from the state.

The House committee interpreted the fugitive slave clause of the Constitution as merely prohibiting one state from emancipating the slaves of another state. If Indiana were to surrender the right to legislate on the subject of fugitive slaves in deference to an alleged congressional exclusivity, "an essential prerogative of our sovereignty would be lost; one that should be as strenuously contended for, as any state right whatever."[20] Hoosier lawmakers, acting on the presumption that Kentucky's refusal to deliver the fugitives from justice was based on its interpretation of the fugitive slave clause in the Constitution, made no mention of the

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[19] Ibid., 211.

[20] *Indiana House Journal*, 4th sess., 1819-1820, 360-62. The committee's report is dated January 20, 1820.

Fugitive Slave Act of 1793 and how it might conflict with the state's 1816 "Act to Prevent Manstealing."

At the next session of the legislature, Governor Jennings again informed the House that further attempts to secure the extradition of Susan's kidnappers were unavailing, and he submitted additional correspondence relating to the matter. The House Judiciary Committee commended Jennings' continued efforts to bring to justice the Kentucky felons and again defended the necessity of the state's anti-kidnapping law. Kentucky courts could not punish crimes committed in other states, nor could it be "admitted for a moment that those states alone, where slavery is tolerated, are to try the right to freedom, where it is disputed, and to prohibit and punish manstealing." As in the House report of the previous year, the committee vigorously denied that fugitive slave legislation was the exclusive domain of Congress, asserting that "powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states respectively or to the people" according to the Tenth Amendment. The Fugitive Slave Act of 1793 provided no penalty for abuses occurring under the law, and therefore it was left to the individual states to provide additional regulations in order to prevent illegal seizures and kidnappings. Finally, Indiana House legislators ominously warned:

> Your committee cannot but view with regret the course that has been pursued by our sister state, and which, if persisted in, may be attended with the most fearful consequences. If the violators of our laws find protection in another state, and the wise provisions of the constitution that fugitives from justice shall be surrendered are disregarded, then, indeed, we may predict a speedy dissolution of those bonds, under which we have hitherto acted as members of one family - when our rights are again invaded force may be repelled with force.[21]

[21] *Indiana House Journal*, 5th session, 1820-1821, 307-10. The Judiciary Committee's report is dated January 8, 1821.

The House committee requested Governor Jennings to submit the controversial matter to President James Monroe for his consideration and mediation. Jennings received a communication from Secretary of State John Quincy Adams assuring the Indiana governor that all the papers were laid before the president; however, President Monroe apparently refused to intervene for there is no evidence that he replied or attempted to settle the dispute. The case against Stephens, Thompson and Young was finally dismissed in the Harrison County court in June 1823. Kentucky emerged the victor in this acrimonious debate over the kidnapping of Susan and Indiana's subsequent attempts to punish her kidnappers. Throughout the early Federal and antebellum periods, Kentucky authorities would repeatedly ignore Indiana laws regarding the rendition of fugitive slaves. Ultimately, such blatant disregard for the law would lend credence to abolitionist, and later Republican charges, of a Slave Power conspiracy determined to nationalize slavery and destroy the liberties of white freemen.

The lengthy wrangle between Indiana and Kentucky over fugitives from justice and fugitives from labor, if anything, illustrates that Governor Jennings and early Indiana legislators were quite concerned with protecting free blacks from being illegally taken out of the state. Indiana lawmakers asserted a concurrent authority with Congress on the subject of fugitive slaves and required slaveholders to use either the state rendition process, which provided a jury trial, or follow the procedures for recovering fugitives from service outlined in the Fugitive Slave Act of 1793. Perhaps in an attempt to induce masters seeking to recover their runaways to use the state process, the Indiana General Assembly had amended the “Act to Prevent Manstealing” so that the claimant’s case could be heard within three days of the arrest of the fugitive. In the first general revision of Indiana statutory law, which occurred in 1824 under the direction of Judge Benjamin Parke of the United States District Court, however, the General Assembly

adopted "An Act relative to Fugitives from Labour", a measure which conformed more closely with congressional legislation on fugitive slaves and was less favorable to those persons claimed as fugitives from service. The new act, approved on January 22, 1824, allowed the slaveholder or his agent to file an affidavit establishing a claim with any clerk of the circuit court, whereupon the clerk would issue a warrant authorizing the claimant to arrest the fugitive and present him before a justice of the peace or judge of the circuit or supreme courts in the county or district where the fugitive was found. The judge or justice of the peace would then place the fugitive in jail or let him out on bail until the parties were ready for trial, which time could not exceed sixty days. It then became the duty of the judge or justice of the peace "to hear and determine the case in a summary way," and if persuaded by the slaveholder's claim, to grant the owner or agent of the owner a certificate authorizing the removal of the fugitive to the state from which he had fled.[22]

The new rendition process outlined in "An Act relative to Fugitives from Labour" contrasted sharply with the 1816 act, which required a sheriff or constable to arrest the fugitive and then provided the fugitive a jury trial. In the 1824 act, either party could appeal the decision of the judge and receive a jury trial, but the appellant had to pay the costs of the new hearing. The alleged fugitive was required to file an affidavit stating that he did not owe service before an appeal would be granted. Finally, the appellant had to give security for his appearance at the new trial, and failing this, would be placed in jail at his own expense. The sheriff was then required to summon a jury, which would hear the case within five days from the date that the appeal was granted by the judge. If either party were not prepared for trial, the judge could continue the case until the next term of the circuit court. While the 1824 law

[22] *Laws of Indiana*, 8th sess., 1823-1824, 221-22; William R. Leslie, "The Constitutional Significance of Indiana's Statute of 1824 on Fugitives from Labor," *Journal of Southern History* 13, no. 3 (August 1947): 338-53.

provided a jury trial on appeal, the expenses incurred in a new trial would have precluded the vast majority of fugitives from appealing the summary decision of the judge. The penalties for kidnapping remained stiff – the penalty could be a fine anywhere from $100 to $5,000 or from one to fourteen years imprisonment.[23] However, from the perspective of those concerned with providing some measure of protection to free blacks, the 1824 fugitive slave legislation was a step backwards, and indeed, for most of the remaining antebellum period the actions of Hoosier legislators and judicial authorities were generally characterized more by a desire to stay on friendly terms with the South than to protect the civil liberties of the state's free black residents. This change in policy might have been inspired by continued protests from Kentucky regarding the difficulty encountered by its citizens in recovering fugitives, perhaps the Missouri Crisis persuaded Indiana legislators that a more faithful, efficient and expeditious enforcement of congressional fugitive slave legislation was necessary to preserve sectional peace, or the 1824 fugitive legislation might simply have reflected the legal bias of Judge Benjamin Parke, who from his first days in the Indiana Territory had aligned himself with the proslavery group. Indiana's new fugitive slave law became part of a larger trend of anti-Negro measures adopted in the next two decades designed to discourage the further immigration of blacks and to keep those already living in the state in an economically, socially and politically disadvantaged condition.

Indiana's territorial "black laws" as previously discussed barred blacks, mulattoes and Indians from serving as jurors or testifying in criminal or civil cases where white persons were a party. They could only testify in cases where Negroes, mulattoes or Indians alone were the litigants. Any person with one fourth part or more of Negro blood was considered a mulatto. In

[23] Thornbrough, "Indiana and Fugitive Slave Legislation," 215-216.

other words, any person whose grandmother or grandfather was black was deemed a mulatto.[24] The prohibition against the testimony of blacks in court was continued even into the Civil War. Indiana's 1816 Constitution gave the suffrage only to white men aged twenty-one years and up who had resided in the state at least a year prior to the election. According to Article Seven of the Constitution, all able bodied male persons between the ages of eighteen and forty-five could serve in the state militia, with the exception of "Negroes, Mulattoes and Indians."[25] On February 10, 1831, the Indiana Legislature approved "An Act concerning Free Negroes and Mulattoes, Servants and Slaves," a measure designed to discourage the immigration of African-Americans into the state. The law required colored immigrants to post a $500.00 bond for good behavior and self-support. Blacks who entered the state without giving such a bond could be hired out for six months in order to earn money for their support, or removed from the state by the county overseer of the poor. Anyone convicted of hiring or harboring a Negro or mulatto who had not posted the required bond would be fined an amount between $5.00 and $100.00. Hoosier lawmakers did attempt to protect African-Americans from unlawful imprisonment. Sheriffs or jailers convicted of unlawfully imprisoning Negroes or mulattoes could be fined between $100.00 and $500.00. Finally, the legislature added a provision assuring Southern slaveholders that they could travel through the state unmolested with their slaves or servants, provided they made "no unnecessary delay." The 1831 "Act concerning Free Negroes and Mulattoes" would be repealed two decades later by the notorious exclusion clause, Article Thirteen of Indiana's 1851 Constitution. Most Hoosiers throughout the antebellum period were quite averse to the presence and further immigration of free blacks because of their fears of miscegenation. Because they believed that African-Americans were an inferior race, Indianans

[24] Francis S. Philbrick, ed., *The Laws of Indiana Territory, 1801-1809* (Springfield: Illinois State Historical Library, 1930), 40.
[25] Kettleborough, *Constitution Making in Indiana*, 107-09.

could not accept them as social and political equals – nor could they imagine a day when such an eventuality might occur.[26]

In the winter of 1840, the marriage of a light-skinned mulatto and a white woman in Indianapolis illustrated just how serious Hoosiers were about preventing the amalgamation of the races. A Massachusetts family by the name of Spears with several daughters emigrated from Massachusetts to Missouri where the father purchased a farm. He then hired a mulatto slave named "Charley" to help on the farm, and the slave's term of bondage was nearing an end – he was shortly to be emancipated by his master. After his emancipation, Charley, whose complexion was nearly white, continued to work for the Massachusetts farmer and became a valued member of the Spears family. The Missouri wilderness didn't suit the Massachusetts natives and they resolved to return to their previous home. However, before leaving Missouri, the father died, leaving a widow, three daughters and Charley, his trusted servant. Before his death, the father had entrusted the care of his family to Charley on their return to Massachusetts. The Spears family started the journey home and due to the deplorable condition of the roads, decided to take a temporary residence in Indianapolis for several months until the spring of 1840 when the roads might be dry enough to traverse.

While sojourning in Indianapolis, the family earned the respect of the community, one of the daughters even playing the organ in the Episcopalian church. With the mother's consent, another daughter, Sophia Spears, married Charley, whose real name was John M. Wilson, on January 1, 1840. When news of this marriage between the white Sophia Spears and the mulatto Wilson spread, a mob led by Josiah D. Simcox, a local rowdy, formed and determined to drive the couple out of town. The bride was humiliated as the crowd "made her ride in on a horse &

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[26] *Laws of Indiana*, 15th sess., 1830-1831, 375-76; McDonald, "The Negro in Indiana Before 1881," *Indiana Magazine of History* 27, no. 4 (December 1931): 297-98.

marched her up & down the street." The frightened groom fled Indianapolis and was taken in by the reputed president of the Underground Railroad, Levi Coffin, in Newport, Indiana. Disgraced at the hands of the unruly mob and fearing for her personal safety, the frightened bride consented to a divorce and shortly thereafter, the Spears family made haste for Cincinnati. According to Levi Coffin, Charley joined the family in Cincinnati and "it was supposed that they returned to Massachusetts, and that the husband and wife lived together unmolested." The interracial marriage had offended the sensibilities of an overwhelming majority of the Indianapolis community. Calvin Fletcher, an Indianapolis attorney, banker, philanthropist and indefatigable diarist, noted "There is not an individual in the place to my knowledge who justifies the white family who have submitted to such indignity."[27]

Indiana legislators immediately took notice of the affair and began to lobby for specific measures to prevent such mixed marriages. The Indiana Senate judiciary committee reported that "there is no subject which, in the present state of the times, calls more loudly for legislative interposition than the one before them. It is an infraction of the laws of the Almighty, for one moment to allow the pernicious doctrine of such amalgamation to have an abiding place in our government or upon our statute books, being marked as they are by the eternal and

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[27] Gayle Thornbrough & Dorothy L. Riker, eds., *The Diary of Calvin Fletcher, 1838-1843*, Vol. 2 (Indianapolis: Indiana Historical Society, 1973), 132-33. Calvin Fletcher was an eminent citizen and civic leader in Indianapolis from the earliest days of the city's organization. An attorney and banker, he was always at the forefront of any philanthropic or benevolent enterprise. He was born February 4, 1798 in Ludlow, VT, came to Indianapolis on October 1, 1821, and died in the city on May 26, 1866. See also Jacob Piatt Dunn, *Greater Indianapolis: The History, the Industries, the Institutions, and the People of a City of Homes*, Vol. 1 (Chicago: Lewis Publishing Co., 1910), 240-41; Ben Richmond, ed., *Reminiscences of Levi Coffin: The Reputed President of the Underground Railroad,* abridged (Richmond, IN: Friends United Press, 2006), 101-05. Coffin calls the groom "Charley" in his version, but it appears his real name was John M. Wilson. A Marion County, Indiana marriage record shows Sophia Spear married John M. Wilson on January 1, 1840. Berry R. Sulgrove also covers the event in his *History of Indianapolis and Marion County, Indiana* (Philadelphia: L.H. Everts & Co., 1884), 90. Sulgrove notes that Simcox, the leader of the mob, "never dared to return to the town openly, though he did secretly at times." Josiah D. Simcox was born November 30, 1815 in Ohio and died May 5, 1902 in Marshall County, Iowa.

unchangeable laws of God, the one *white,* and the other *black*."[28] In 1840, Indiana did not have a law which specifically prohibited marriage between whites and African-Americans – the only restriction was that it be "not prohibited by the law of God." The interracial marriage in Indianapolis between John M. Wilson and Sophia Spears, however, not only inspired a riot but ultimately led to the passage of draconian legislation by the General Assembly on January 20, 1842 which specifically prohibited marriage between a white person and any Negro or mulatto having one-eighth part or more of Negro blood. Previously a person was considered a mulatto who had one-fourth part of more of Negro blood, or who had a grandparent that was black. Marriages contracted in violation of the act were declared null and void. Any person who aided, abetted, or assisted in any way such a marriage could be fined between $100 and $1,000. Finally, any couple who married in contravention of the provisions of the act could be fined between $1,000 and $5,000 and sent to the state penitentiary for one to ten years.[29] The severity of the punishments for violators of the act dramatically illustrates Hoosiers' fears of amalgamation, which was unthinkable to them. Indiana's "black laws," including the 1831 law requiring black immigrants to post bond for their good behavior and self-support, and the later exclusion law were aimed at preventing the intimate social intercourse between whites and a supposedly degraded African-American race.

The apogee of Indiana's racial discriminatory legislation found expression in Article Thirteen, also known as the Negro exclusion clause, which became part of the state's organic law in the 1851 constitution. Section One of the article declared that "No Negro or Mulatto shall come into, or settle in the State, after the adoption of this Constitution." Section Two voided all contracts made with "any Negro or Mulatto coming into this State contrary to the

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[28] *Journal of the Senate of the State of Indiana*, 24th sess., 1839-1840, 260. The judiciary committee's report is dated January 31, 1840. Hereafter referred to as *Indiana Senate Journal.*

[29] *Laws of Indiana*, 26th sess., 1841-1842, 142; Dunn, *History of Greater Indianapolis*, 240-41.

provision of the" act, and stipulated that any person who employed or encouraged any Negro or mulatto to remain in the state would be fined a sum between $10.00 and $500.00. Section Three provided that all fines collected for violations of the provisions of the act would be appropriated for the colonization of any Negroes, mulattoes and their descendants who may be willing to emigrate. The fourth and final section of the article directed the General Assembly to pass laws to implement the provisions of Article Thirteen.[30] Indiana's second constitutional convention met on October 7, 1850, just a few months after Kentucky's new constitution went into effect in June. Indiana's Negro exclusion clause in part was motivated by the actions of the Kentucky constitutional convention, which had declared that slaveholders could only emancipate their slaves if they made provision for their removal from the state and that any free Negro or mulatto immigrating to the state would be deemed guilty of a felony and sent to the penitentiary for any length of time up to five years. William McKee Dunn, a delegate to the Indiana State Constitutional Convention of 1851 from Jefferson County, approved of Indiana's new constitution, but voted against Negro exclusion. He later explained the rationale used by most of the Indiana delegates who defended Negro exclusion:

> The advocates of the thirteenth section [Article Thirteen] insisted that this section of the Kentucky Constitution would cause our state to be invaded by the free Negroes from that state, many of whom, old and infirm, we would have to support. What was the free Negro of Kentucky to do? If he remained in Kentucky he was to be confined in the penitentiary for the crime of being free. If he attempted to put his foot on Indiana soil he was to be driven back as a leper, and any one who should extend to him the ordinary acts of human kindness or give him employment, was to be fined as an offender against the laws of the State.[31]

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[30] Donald F. Carmony, *The Indiana Constitutional Convention of 1850-1851* (Indianapolis: IBJ Book Publication in association with Indiana Supreme Court, 2009), 132.
[31] Ibid., 182-83.

One Indiana editor also described the predicament of Indiana lawmakers on the subject of free Negroes:

> Indiana, by the action of her neighbors, has found herself in the positions we have assumed (of self defense and self-preservation). Kentucky will not permit a freed negro to remain within her borders; Illinois has strictly forbidden the further immigration into that State; and there is every possibility that Ohio will do the same. But two courses remained for Indiana to pursue – she must either become the receptacle of the wandering, worthless, and corrupting negro population of the surrounding States, or else, like them, adopt some stringent means of protecting herself against the alarming evil with which she was threatened.[32]

Though the editor admitted that an exclusion policy was a violation of the Golden Rule and perhaps unjust, the law of self-preservation and self defense was a higher law to be pursued. The vast majority of Hoosiers, threatened by the specter of miscegenation, agreed and overwhelmingly approved Article Thirteen, which had been submitted to them separately from the rest of the constitution. Indiana's 1851 constitution was approved by the voters by a margin of 113,230 to 27,638, while the Negro exclusion clause was enthusiastically endorsed by a vote of 113,828 to 21,873 – eighty-four percent in favor of keeping blacks from immigrating into the state.[33] The exclusion clause was not simply the product of racial prejudice, but also a response to the growing sectional crisis between the free and the slaveholding states. Indiana's constitutional convention convened just after Congress gruelingly crafted the various measures which composed the Compromise of 1850, and it was widely believed that secession and war had narrowly been averted. As the conflict between the North and the South intensified, many Hoosiers manifested an increasing intolerance toward African-Americans, whom they blamed for the nation's ills. Not only did Indiana lawmakers attempt to keep blacks out of the state, but

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[32] *New Albany Ledger*, August 13, 1851 (see article titled "African Colonization").
[33] Carmony, *The Indiana Constitutional Convention of 1850-1851*, 94-95.

they hoped to colonize those that were already living in the state at the time the constitution was approved.

Colonization, despite the scheme's impracticability and the lack of enthusiasm displayed by blacks themselves, remained a favorite hobby horse of Indiana's political figures throughout the antebellum period even up to the Civil War. The Indiana State Colonization Society, an auxiliary to the American Colonization Society, was formed in late 1829 in Indianapolis, and included some of the capital city's most prominent political and civic leaders, including Judge Isaac Blackford, Calvin Fletcher, Judge James Scott, Judge Jesse L. Holman, Isaac Coe, James Rariden, James M. Ray, and Samuel Merrill. Josiah F. Polk, the parent society's field agent for Indiana, was instrumental in the formation of the state colonization society and in an 1830 report to the board of managers, was sanguine about the movement's prospects in the Hoosier state. He optimistically declared that Indianans were "Fully sensible of all the evils of a black population, and having experienced the blessings of its absence, they deprecate for their *interest's* sake, its introduction – whilst patriotism and humanity unite in urging them to hasten to the relief of their suffering Country and of an oppressed people."[34] At the first meeting of the Indiana Colonization Society in Indianapolis on December 14, 1829, Judge Blackford outlined the organization's purpose and goals. Blackford lamented that "the degradation of the free blacks, resident within our country, is their misfortune, not their fault. It becomes us, as a civilized and christian community, to unite in every rational plan proposed for their benefit, not interfering with the rights of others. Blackford asserted that establishing a colony on the Western coast of Africa with expatriated American blacks would diffuse knowledge in a foreign land, introduce "the divine religion of the Saviour of the world into the unenlightened and pagan regions of

[34] *The African Repository and Colonial Journal*, Vol. 6 (Washington D.C.: The American Colonization Society, 1831), 74.

Africa," and assist in the effort to stop the slave trade. Finally, the colonization enterprise would make slaveholders more disposed to emancipate their slaves – in other words, colonization was a prerequisite to universal emancipation. Blackford buoyantly exclaimed that the society "whilst it disclaims the remotest idea of ever disturbing the right of property in slaves, conceives it to be possible that the time may arrive, when, with the approbation of their owners, they shall all be at liberty; and, with those already free, be removed, with their consent, to the land of their ancestors." Colonizationists could not envision a biracial America – one which granted full social and political equality to African-Americans, and therefore sought to alleviate the condition of "a low, ignorant, debased multitude" by encouraging and assisting their emigration to their ancestral land so that they could fulfill their human potential. Local chapters of the state's colonization society were established throughout the state and the movement was in some respects the precursor of the organized abolition crusade which came later. Many of the early colonizationists were genuine humanitarians who loathed the institution of slavery and later became abolitionists. Of course the abolitionists would later claim that the colonization societies were tools of the slaveholders because they placed conditions on emancipation instead of promoting immediate and unconditional emancipation.[35]

The Indiana General Assembly also lent its moral and material support to the colonization movement. On February 16, 1848, the state legislature instructed the Indiana senators and congressmen to urge the passage of a law requiring the United States to furnish free transportation to all persons of color who may apply through the American Colonization Society to be removed to the Republic of Liberia. The legislature hailed the "growing influence of the American Colonization Society in its noble scheme of removing those that are set free to

[35] Ibid., 65-71 (Judge Blackford's address); Marion C. Miller, "The Antislavery Movement in Indiana" (PhD diss., University of Michigan, 1938), 46-51.

the land of their forefathers, and giving to the heretofore oppressed a home and a country that they can call their own, and thereby plant our own free institutions in a territory hitherto enveloped in the most repulsive barbarism." Indiana legislators had persuaded themselves that colonization was not only conceived in self-interest, but that it was a benevolent enterprise crafted for the betterment of African-Americans. Lawmakers deplored the existence of slavery as a moral, social, and political evil; however, they also warned that "we can never consent that Indiana shall be made the receptacle of the manumitted negroes of other states, as their color and character would forbid political and social equality, and their migration here could but be injurious to us and detrimental to them."[36] This same argument was echoed later in the constitutional convention debates over the Negro exclusion clause. On March 3, 1853, the Indiana General Assembly adopted "An Act providing for the colonization of Free Negroes," which appropriated the sum of $5,000.00 for the purpose of colonization for the years 1853 and 1854, to be expended by the state board of colonization.[37] The absorbing interest showed by Indiana lawmakers in the colonization scheme demonstrates that Hoosiers were by no means ready to accept a racially integrated society. For some well-intentioned humanitarians, the absolute separation of blacks and whites was the only possible solution to the escalating racial problem – a difficulty which took on a new sense of urgency as the sectional crisis became increasingly more serious after the country's acquisition of the Mexican cession.

Other incidents in antebellum Indiana outside the legislative halls illustrate the antipathy felt by many Hoosiers toward their black neighbors, including an Indianapolis brawl on July 4, 1845 which resulted in the death of Indianapolis resident John Tucker, a free black and father of two children. Tucker was peaceably passing along Washington Street when he was

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[36] *Laws of Indiana*, 32nd sess., 1847-1848, 111-12.
[37] Ibid., 37th sess., 1853, 23-24.

struck by a missile hurled by Nick Woods, a ruffian "uproarious with liquor." The blow bloodied Tucker's nose, who subsequently challenged Woods to a fight. Woods and Tucker began to exchange blows when other bullies joined in the attack using stones, brickbats, and clubs. Tucker fiercely defended himself as he retreated down Illinois Street, chased by the vengeful mob. A few in the crowd tried to stop the attack, but Tucker was finally caught and repeatedly struck on the head and over the body until he was dead. Woods delivered the death blow with a club, fracturing Tucker's skull with a force which "would have felled an ox" according to the *State Sentinel*. Indictments were immediately drawn up for the arrest of Woods, William Ballenger, a saloon keeper, and Edward Davis, the principle assailants in the unprovoked attack on Tucker. Some of Indianapolis' leading citizens, including Calvin Fletcher and merchant Alfred Harrison, donated money to employ two of the city's best attorneys, Oliver H. Smith and James Morrison, to assist the state's prosecution of the perpetrators of the awful deed.[38]

Woods, whose right eye was injured in the affray, was convicted of manslaughter and sentenced to three years in the state penitentiary in Jeffersonville; Edward Davis, also seriously wounded, was acquitted of his role in the affair, and Ballenger evaded arrest by skipping town. The Whig *Indiana State Journal* called the affair "a most barbarous and unprovoked murder," while the *Sentinel,* describing Tucker as a man with a "quiet and inoffensive disposition" called the murder a "horrible spectacle; doubly horrible that it should have occurred on the 4th of July,

[38] John Tucker's murder in the July 4, 1845 Indianapolis riot is covered in the *Indiana State Journal*, July 9, 1845, and the *Indiana State Sentinel*, July 10, 1845, August 14, 1845, and August 21, 1845; Dunn, *Greater Indianapolis,* 241-42. See also Thornbrough & Riker, *The Diary of Calvin Fletcher, 1844-1847*, Vol. 3, 164-65, 172. Fletcher was appalled by Tucker's murder and took it upon himself, in company with Alfred Harrison, an Indianapolis merchant, to secure the legal services of Smith and Morrison in order to ensure that justice be done to Tucker and his family. Tucker was a hired hand on the farm of Samuel Henderson, Indianapolis' first postmaster and mayor. He had once been a slave in Kentucky, but had earned his freedom and settled in Indianapolis. Oliver Hampton Smith was born October 23, 1794 near Trenton, NJ and died March 19, 1859 in Indianapolis. Smith came to Indiana in 1817, served in the state legislature and then later as a United States congressman and senator. Smith was an able and highly respected Whig politician and lawyer. His *Early Indiana Trials and Sketches*, published in 1858, is a valuable source of information on early Indiana legal and political history.

a day which of all others should be consecrated to purposes far different from a display of angry and vindictive passion and brutality. All good men will reflect upon it with deep regret."[39] Dunn maintains that Tucker's murder "had a sobering effect on the whole community, and, notwithstanding the general development of feeling on the negro question through political agitation, there is no record of any further serious mistreatment of negroes in Indianapolis before the Civil War." Not only did this kind of tragedy reinforce the arguments of temperance advocates, who recognized the role of alcohol in the riotous behavior, but Tucker's murder also contributed to the gradual development of a more sympathetic attitude toward the community's black residents.[40]

While Indianans may have been antislavery in the abstract, they could be quite intolerant of the expression of any ideas that smacked of abolition. Opponents of abolition or emancipation without expatriation warned that the state would be inundated with free blacks who could not be integrated into society to the advantage of either race. Abolitionists were often threatened, intimidated, and mobbed. Local rowdies often interrupted their meetings, shouting insults or profanities, hurling rotten eggs or brickbats, and wielding clubs. The abolitionists themselves were not averse to exciting crowds with inflammatory and abusive rhetoric, though Western abolitionists were generally less radical and more respectful of an audience's sense of social propriety than were the New England abolitionists. Indeed, it can be argued that New England abolitionists of the Garrisonian school retarded the antislavery movement in the West because of their vitriolic denunciations and harsh epithets uttered against anyone who opposed their doctrines. The abolitionists of the Neel's Creek Anti-Slavery

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[39] *Indiana State Journal*, July 9, 1845; *Indiana State Sentinel*, July 10, 1845.

[40] Dunn, *History of Greater Indianapolis,* 242. See also Indiana Department of Correction – Prison South (Jeffersonville) records at Indiana State Archives. Nicholas Woods appears in a descriptive list of convicts, age twenty-two, six feet tall, dark hair, dark eyes, dark complexion, born in Ohio, occupation a laborer, received into the prison August 21, 1845 and pardoned August 20, 1848.

Society in Jefferson County, Indiana recognized the futility of these kinds of verbal assaults and in 1839 resolved "That the use of harsh and opprobrious epithets against slaveholders by abolitionists is injurious to the cause of emancipation."[41] The abolitionists of Indiana would have to pursue a different methodology in order to give their cause credibility. The road was a hard one to travel where so many of the state's residents were Southern natives or descendants of Southern migrants.

One incident which illustrates just how explosive the propagation of abolition sentiments could be during the antebellum period in Indiana was the Pendleton riot in September 1843. The New England Anti-Slavery Society in 1843 under the direction of William Lloyd Garrison resolved to hold a series of 100 conventions across several states, including Indiana, in order to further the antislavery cause. Several agents of the society were sent to Indiana, including the fugitive slave turned abolition lecturer, Frederick Douglass. The abolitionists' convention tour in Indiana carried them through several towns in east-central Indiana, including Cambridge, Pendleton, Noblesville, Jonesboro, and Richmond. The strength of the antislavery movement in Indiana was located in the southeastern, east-central, and northeastern portions of the state; most Hoosiers still bitterly opposed abolitionists, and identified them with Eastern radicals like Garrison, who was considered an infidel and an anarchist. In his *Life and Times*, Frederick Douglass recalled that at Pendleton

> It was found impossible to obtain a building in which to hold our convention, and our friends, Dr. Fussell and others, erected a platform in the woods, where quite a large audience assembled. … As soon as we began to speak a mob of about sixty of the roughest characters I ever looked upon ordered us, through its leaders, to "be silent," threatening us, if we were not, with violence. We attempted to dissuade them, but they had not come to parley but to fight, and were well armed. They tore down the platform on which we stood … . I attracted the fury of the mob, which laid me prostrate

[41] *Minute Book of Neel's Creek Anti-Slavery Society, 1839-1845*, Indiana State Library. The resolution is dated January 26, 1839.

> on the ground under a torrent of blows. Leaving me thus, with my right hand broken, and in a state of unconsciousness … .[42]

Douglass was rescued by a Quaker couple and given medical treatment. However, the broken bones in his hand were not properly set and he never regained "its natural strength and dexterity." One of the assailants at Pendleton was convicted of rioting and imprisoned, but shortly thereafter was pardoned by Indiana's Whig governor, Samuel Bigger. A few weeks later in Richmond, Douglass and the abolitionists were again attacked, though "evil-smelling eggs" seemed to be the weapon of choice and no one was seriously injured.[43]

The Indiana press, though deprecating mob violence, was hardly sympathetic with the abolitionists. The state's leading Whig paper, the *Indiana State Journal*, asserted that the "band of Abolition Lecturers", one of whom was black, "assaulted the public patriotism by invidious contrasts of this country with those of Europe" and insulted the people's view of social propriety by the impudent display of a negro [Douglass], who was repeatedly "seen publicly gallanting a white woman in an open carriage and in public walks, in the full gaze of the community." The editor asserted "To the propagation of any truth, moral or political, in a proper way, we have no objection. To the abstract discussion of slavery, or of emancipation, as a question of policy or humanity, we do not demur."[44] However, Douglass' "impudence" in lecturing an audience on the evils of slavery and appearing as a social equal among whites inspired a volatile reaction from many Hoosiers. The Whig *Wayne County Record* after the abolition convention in Richmond charged that many of the abolitionists "court the crown of martyrdom, and we have no doubt the Negro Lecturer at Richmond was one of this character. According to this paper,

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[42] Frederick Douglass, *The Life and Times of Frederick Douglass, From 1817 to 1882.* Edited by John Lobb (London, England: Christian Age Office, 1882), 287-88.
[43] Ibid., 280-88; *Indiana State Journal*, November 14, 1843; *Richmond Palladium*, October 7, 1843.
[44] *Indiana State Journal*, November 14, 1843.

Douglass "abused in the most bitter terms, all whose views did not comport with his own," and his "slang incensed the people."[45] The Whig *New Castle Indiana Courier*, however, decried the mob violence in Pendleton and defended the abolitionists' quiet and peaceful proceedings. According to this editor, the meeting was "assailed by a gang of lawless and uncivilized ruffians armed and disguised, who proceeded to acts of wanton and wicked violence upon the persons assembled." Calling the affair a "gross outrage," the *Courier* defended the right of free discussion and called for the punishment of all those involved.[46] The attacks on the abolitionists and the contrasting accounts of the press illustrate just how explosive the subject of emancipation was in antebellum Indiana.

Despite the obstacles faced by Indiana's abolitionists, however, we find in a survey of the state's antislavery history that the movement was not as moribund as some historians have alleged. Charles Osborn, described by William Lloyd Garrison as "the father of all us Abolitionists," spent nearly two and half decades in Indiana and was probably the first reformer to demand the immediate and unconditional abolition of slavery in the United States.[47] He was born August 21, 1775 in Guilford County, North Carolina and moved to Tennessee about 1805, when he entered the ministry among the Society of Friends, or Quakers. He organized the Tennessee Manumission Society, which advocated the principles of immediate and unconditional emancipation, a radical doctrine during this time period. In 1816, Osborn came north and settled in Mt. Pleasant, Ohio, a town along the Ohio River known today for being the birthplace of Civil War general Ulysses S. Grant. At Mt. Pleasant, Osborn edited and published the first newspaper advocating immediate and unconditional emancipation, a sheet called the

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[45] *Richmond Palladium*, October 7, 1843 (quotes the *Wayne County Record*)
[46] Ibid. (quotes the *New Castle Indiana Courier*).
[47] George W. Julian, *The Rank of Charles Osborn as an Anti-Slavery Pioneer* (Indianapolis: Bowen-Merrill Company, 1891), 29.

Philanthropist. Benjamin Lundy, who later became such an important influence in Garrison's life, assisted Osborn in the publication of the paper and was certainly inspired by Osborn's radical abolitionism. The *Philanthropist* was published from August 29, 1817 until October 8, 1818; afterwards, Osborn sold the paper and moved to Wayne County, Indiana.

Osborn traveled extensively across the United States and Europe promoting abolition. In 1833, he was chosen as Indiana's delegate to the World Antislavery Convention in London, but was unable to make the trip due to poor health. The Indiana Yearly Meeting proscribed Osborn and other abolitionists for their radicalism in 1842, resulting in the organization of the Society of Anti-Slavery Friends, of which Osborn became a member. Osborn proclaimed the sin of slaveholding and the impropriety of using the products of slave labor. He opposed colonization vehemently because it postponed the freedom of the slaves and placed conditions in its way. After a short residency in Cass County, Michigan, Osborn returned to northern Indiana, and died in Porter County on December 29, 1850. He lived long enough to see passage of the Fugitive Slave Law of 1850, but not the healing of the schism in his beloved Society of Friends over the slavery question. Osborn, a well-traveled and highly influential Quaker minister and reformer, spent most of his years in Indiana and was one of the most important figures in the history of abolition in the United States.[48]

The Reverend James Duncan, of whom we know very little, authored one of the earliest antislavery tracts in Indiana in 1824. His *Treatise on Slavery,* published in Vevay, Switzerland County, presented both moral and constitutional arguments against slavery and his condemnation of slaveholders was eclipsed only by William Lloyd Garrison's harangues in the *Liberator*. Duncan's avowed purpose in writing the little book was to "persuade all that are

[48] Ibid.; Ruth Anna Ketring, *Charles Osborn in the Anti-Slavery Movement* (Columbus: The Ohio State Archaeological and Historical Society, 1937); See also *Journal of that Faithful Servant of Christ, Charles Osborn* (Cincinnati: Achilles Pugh, 1854).

engaged in the business of holding their fellow creatures in a state of unmerited involuntary slavery, that they are guilty of a crime, not only of the highest aggravation, but one, that if persisted in, will inevitably lead them to perdition." He also attempted to prove that slavery was "a heinous sin, condemned by the word of God, and repugnant to the law of nature." Anticipating William Henry Seward's "Higher Law" argument, Duncan asserted that slavery violated the moral law or law of nature, and that this law was superior to any civil law. He defined the moral law as a transcript of the divine character, forbidding all sin as being contrary to the holy nature of God, and binding all men to the performance of every duty relating to God, and every duty relating to men. The moral law was communicated to humanity through the Bible and through the "book of nature," or God's creation. Duncan maintained that "The supreme rule of duty must be the moral law, but not the civil law, neither ought civil requisitions to be regarded, if found to be contrary to the moral law." Civil laws which did not conform to the law of nature or the moral law were sinful and ought not to be obeyed.[49]

Duncan was unsparing in his criticism of slavery and slaveholders. He declared that the slaveholder "ought to be viewed with the same abhorrence, and treated with the same contempt as the most atrocious thief, robber, or buccaneer, that ever infested sea or land, or disgraced human nature." In his estimation, "the character of a real slaveholder assimilates more nearly to that of the devil than any popish persecutor of which we have any knowledge from history." The institution of slavery degraded both slaveholder and slave and ultimately led to the eternal damnation of both. Duncan's biblical argument against slavery was based on Old

[49] James Duncan, *Treatise on Slavery* (Vevay: Indiana Register Office, 1824). Duncan's book was reprinted in 1840 in New York by the American Anti-Slavery Society. Interestingly, Indiana Supreme Court Judge Jesse Lynch Holman endorsed Duncan's book in its introduction, stating Duncan's "force of argument" deserved "the attention of all inquirers after moral truth, and justly merits the patronage of the public." Holman's recommendation is surprising given the judicial conservatism regarding slavery, the rendition of fugitive slaves, and the rights of blacks that then existed in the state. Duncan's son Alexander was a Democratic congressman from Ohio for several terms, and also served in the Ohio State Legislature.

Testament references and Jesus' words in Matthew 7:12: "Do to others whatever you would like them to do to you," otherwise known as the Golden Rule. Not only was slavery prohibited by the Bible and inconsistent with Christian living, but the founding principles of the nation were also incompatible with the institution of slavery. The Declaration of Independence and the Constitution were antislavery documents, and Duncan argued that it was the duty of the people to elect representatives who would use their influence for emancipation. In maintaining the supremacy of the moral over the civil law, Duncan advocated resistance to the Fugitive Slave Law, citing Deuteronomy 23:15 to support his position: "If slaves should escape from their masters and take refuge with you, you must not hand them over to their masters." Duncan's elaborate arguments against slavery anticipated the ideas of later, more prominent abolitionists and he was a pioneer in the advocacy of unconditional, immediate emancipation. [50]

A militant minority of Hoosiers followed Duncan's directive to resist the Fugitive Slave Law, of whom Levi Coffin was the most notable example. Coffin was a North Carolina Quaker who came to Indiana in 1826 and settled in Newport, Indiana, where he opened a mercantile business. Coffin and his wife Catherine resided in Newport for over two decades, relocating to Cincinnati in 1847, where they opened another retail business selling only goods produced by free labor. In the two decades that the Coffins resided in Indiana, they assisted nearly 2,000 fugitives in their quest for freedom. Frustrated slaveholders dubbed Coffin the "President of the Underground Railroad" because of their inability to track slaves once they had passed into Coffin's hands. The protagonist in Harriett Beecher Stowe's *Uncle Tom's Cabin*, Eliza Harris, who heroically skipped across the Ohio River by hopping from one ice chunk to another while carrying her small child, was taken in by the Coffins and assisted on her journey to Canada.[51]

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[50] Ibid.
[51] Richmond, *Reminiscences of Levi Coffin*, 69-82, 98-101.

There were many other Hoosiers who participated in the workings of the Underground Railroad, an informal network of "stations" or friendly homes where fugitives could find shelter and material assistance. Not only were white abolitionists prominent in this work, but free blacks themselves played a crucial role in guiding and assisting their brethren to freedom. Stephen S. Harding, a Ripley County attorney and abolitionist, asserted that $50,000 worth of slaves was carried on his horse Tartar from his station in Milan to the next station northeast in Manchester. Harding was twice the Indiana Liberty Party's candidate for lieutenant governor and later played a conspicuous role in the formation of the Republican Party in the state. There were many others who were active agents and conductors in the Underground Railroad in Indiana, including the Quaker William Beard, of Union County, whom one historian described as "perhaps the greatest figure in the antislavery movement in Indiana," next to Levi Coffin.[52] While historians disagree about the significance of the Underground Railroad, the approximate numbers of fugitives actually assisted on their trek to Canada, and whether antislavery whites or free blacks provided the most assistance in the movement, there seems to be enough anecdotal evidence to support the contention that at least several thousand slaves were successfully escorted through Indiana, into Michigan and finally onto Canada.[53] Providing assistance to beleaguered fugitives in their race for freedom was a very tangible way for Hoosier abolitionists to undermine slavery and achieve the lofty goal of emancipation.

The growth of the antislavery movement in Indiana was occasioned by the organization of antislavery societies in the 1830s and 1840s. The Presbyterians were the first to organize an antislavery society in 1836 as members of the Sand Creek Presbyterian Church formed the Decatur County Anti-Slavery Society. About the same time, another society was formed at

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[52] Miller, "The Antislavery Movement in Indiana," 158-59.
[53] Ibid., 154-70; Wilbur H. Siebert, *The Underground Railroad: From Slavery to Freedom* (Mineola, NY: Dover Publications, 2006).

Hanover College, a Presbyterian school, near Madison, Jefferson County. In the late 1830s and early 1840s antislavery societies were organized in Wayne, Hamilton, Henry, Morgan, Madison, and Jefferson Counties. The Neel's Creek Anti-Slavery Society was organized in Jefferson County on January 5, 1839 under the leadership of the Reverend Lewis Hicklin, a Methodist minister. The society's constitution outlined several objectives:

> The objective of this Society shall be the entire abolition of slavery in the United States. While it admits that each state in which slavery exists has, by the Constitution of the United States, the exclusive right to legislate in regard to its abolition in said state, it shall aim to convince all our fellow-citizens by arguments addressed to their understandings and consciences, that slave-holding is a heinous sin in the sight of God, and that the duty, safety and best interests of all concerned require its immediate abandonment without expatriation. The Society will also endeavor, in a Constitutional way, to influence Congress to put an end to the domestic slave- trade, and to abolish slavery in all those portions of our common country which come under its control, especially in the district of Columbia – and likewise to prevent the extension of it to any state that may hereafter be admitted to the Union.

The society also aimed to "elevate the character and condition of the people of color." The members of the Neel's Creek Anti-Slavery vowed to labor for the restriction of slavery at least to its present limits, the principle which would later become the *raison de' etre* of the Republican Party. In 1841, the society pledged to petition the Indiana General Assembly for an amendment to the state's fugitive slave law so "as to secure an immediate trial by Jury to every person in this state in all cases where his or her liberty is in question." They also asked for a repeal of the law criminalizing the harboring or employing of fugitive slaves. Finally, the Jefferson County abolitionists asserted that "two principles as antagonist [antagonistic] as those of Liberty and slavery can not long exist in the same government" and that "American freedom is no longer a question of geography or color that the principles of Abolition must prevail or the great body of the American people must be Slaves." In the last two resolves, these forward-thinking

reformers anticipated Lincoln's *House Divided* speech by nearly two decades, and also embraced a theme that would be oft-repeated in the 1850s by Republicans – that American slavery not only harmed blacks, but also threatened the liberty of white Americans. The antislavery societies ultimately declined in activity and influence as the abolitionists turned from moral suasion to political action in the 1840s; however, they were an important factor in augmenting the growth of antislavery sentiment in the state.[54]

Possibly in response to the formation of antislavery organizations throughout the state and to the increasing agitation of the slavery question, the Indiana General Assembly approved a joint resolution on January 29, 1839, declaring "That any interference in the domestic institutions of the slaveholding states of this Union (without their consent) either by Congress or the state legislatures, is contrary to the compact by which those states became members of the Union," and "That any such interference is highly reprehensible, unpatriotic, and injurious to the peace and stability of the union of the states."[55] While the antislavery movement was beginning to gain traction in Indiana, the state's lawmakers considered the agitation of the slavery question paramount to treason because it threatened sectional peace. Loyal devotees of the Union and the Constitution could not countenance the radical abolition position of immediate and unconditional emancipation. Even during the height of the sectional crisis in the 1850s, many Indiana legislators still stubbornly maintained that colonization provided the best hope for adjusting the difficulties between the races. The Indiana General Assembly's emphatic statement disavowing any interference with Southern institutions drew praise from the Kentucky State Legislature, which resolved on February 23, 1839 that the Indiana declarations deserved "the most decided and unqualified approbation of this Legislature, and are such as

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[54] *Minute Book of Neel's Creek Anti-Slavery Society*; Miller, "The Antislavery Movement in Indiana," 65-75. Miller found records of 34 antislavery societies in Indiana.
[55] *Laws of Indiana*, 23rd sess., 1838-1839, 353.

might have been expected from our enlightened, liberal, and patriotic, sister State."[56] These expressions of interstate esteem and cooperation of course came before the territorial conflict began to tear the nation apart; however, over a decade later, Republicans would still insist on noninterference with Southern institutions, limiting their political objectives to the prevention of the extension of slavery beyond its present limits.

While Indiana legislators tried to keep a lid on the agitation of the slavery question by unequivocally pledging the state to a policy of noninterference with Southern slavery, the fugitive slave problem continued to provoke animosity between the free and the slaveholding states. On February 3, 1837, the Kentucky General Assembly passed a resolution complaining about the loss of fugitive slaves in Ohio, Indiana and Illinois and requesting that the governor open a correspondence with the governors of those states on the subject. According to Kentucky legislators, "many of the citizens of this State have sustained much inconvenience and some of them serious loss, by reason of the elopement of their slaves into the States of Ohio, Indiana and Illinois; that they are furnished when there with facilities of concealing themselves therein, or of passing under concealment through these states into the territories of his Britannic Majesty, whereby they become irreclaimable by their owners." The legislature went on to recommend that the offending states enact laws calculated to restrain their people from performing practices "so exasperating in its effects upon the minds and feelings of the people of the slave-holding States."[57] Indiana Governor Noah Noble laid the Kentucky resolution before the next session of the legislature and defended the state's record regarding the protection of Southern rights:

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[56] *Acts of Kentucky*, 1838-1839, 390-391.
[57] Ibid., 1836-1837, 353-354.

> Upon all questions connected with the institution of slavery, the citizens of this State have been exempt from excitement. Ever mindful of the duties which devolve on her as a member of the great family of American States, united under a common government, and bound together by past recollections, by an identity of origin and community of general interests, the State of Indiana has religiously abstained in her principles and her policy from every act that could be construed into a disposition to tamper with, or disregard the domestic institutions of her sister States. By a reference to our laws on the subject, it will be seen that they have been shaped with a view to protect the interests and rights of the citizens of those States where slavery has been established, and to furnish all just facilities for the reclamation of that species of property.[58]

The governor confessed his "inability to point out other or more efficient means of redress" and no additional legislation was passed on the subject of fugitive slaves.[59] Though Governor Noble asserted that Hoosiers had been "exempt from excitement" on questions pertaining to slavery, subsequent fugitive slave cases would begin would change this scenario, increasing antislavery sentiment in the state and disrupting interstate harmony.

In the spring of 1844, Singleton Vaughn, a Saline County, Missouri slaveholder, traveled to Hamilton County, Indiana to recover three fugitive slaves, Sam and Mariah Burk and their daughter.[60] Vaughn had purchased the slaves in Missouri on April 26, 1836, unaware that the family had previously spent time in Warren County, Illinois with a previous owner. In April, 1837, Vaughn's slaves absconded, evaded capture, and arrived safely in Adams Township, Hamilton County, Indiana, where they were befriended by the community. The western portion of Hamilton County included several Quaker settlements and there was a significant antislavery sentiment in this area of the county. Sam and Mariah adopted an alias, going by the names of John and Louan Rhoads, and acquired a small cabin and tract of land. By a chance circumstance, Vaughn discovered the whereabouts of his slaves and in the company of several friends from

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[58] *Indiana House Journal*, 22nd sess., 1837-1838, 23-24.
[59] Thornbrough, "Indiana and Fugitive Slave Legislation," 216-17.
[60] Singleton Vaughn was born in Kentucky, and died in Benicia, Solano County, CA December 27, 1890. Census records show he was a farmer and by 1852 he was living in Solano County, CA.

Missouri, traveled to Indiana, secured a warrant from "Squire Tyson," a justice of the peace in Strawtown, Hamilton County, and with the assistance of a constable, attempted to arrest his slaves.[61] Strawtown was probably just the place to find a justice of the peace who sympathized with Vaughn's pursuit of his runaways. The town's main attraction was a race track, it abounded with groggeries, and had "a most unenviable reputation for evil and bad conditions," the majority of the early citizens being described as lawless.[62]

Vaughn and his posse surrounded the Burks' cabin and demanded their surrender under cover of darkness, but were refused. The confrontation captured the attention of the Burks' neighbors, who came to their assistance and "expressed a strong interest in behalf of the slaves, and that they should not be taken from the neighborhood." The contending parties finally agreed that the Burks' would be escorted to Noblesville and given a fair trial to determine their status. The fugitives were placed in a wagon and the company traveling with the runaways increased to about 150, most of whom were sympathetic with the plight of the Burks family. When the group reached a fork, one road leading to Westfield and the other to Noblesville, the driver of the wagon suddenly raced toward Westfield and escaped with the Burks. Vaughn and his fellow slave hunters had been outwitted and he never saw his slaves again. He later sued Owen Williams in federal court for $500.00, the penalty prescribed for assisting in the rescue of a fugitive slave by the Fugitive Slave Act of 1793. Williams had allegedly assisted in the escape of the Burks, though there were many others that played more conspicuous roles – in fact, there was no evidence that Williams was directly involved in the slaves' escape, though he certainly

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[61] Squire Tyson was probably Samuel Tyson who appears in the 1850 Hamilton County, IN census, living in White River Township, age 43, born Pennsylvania, and a farmer. Census records show that Tyson relocated to Lawrence County, KS.

[62] John F. Haines, *History of Hamilton County, Indiana: Her People, Industries, and Institutions* (Indianapolis: B.F. Bowen & Company, 1915), 251-52, 494-501; *Vaughn* v. *Williams* case summary, LexisNexis *Academic* database; *Indiana State Sentinel*, May 29, 1845.

was present when it happened and sympathized with the fugitives' plight. Judge John McLean, who heard the case in the United States District Court in Indianapolis in May 1845, lectured the jury that "Every one of the one hundred and fifty persons who were present at the forks of the road, and who encouraged the rescue, is responsible to the plaintiff." However, McLean also asserted that the slaves' previous residence in Illinois had made them free, and therefore, Owens, the defendant, was not subject to any penalty under the Fugitive Slave Act. The jury concurred and Owens was acquitted. According to the Democratic *Indiana State Sentinel*, "The trial lasted two days and a half, and created great excitement." The case is another example of antislavery Hoosiers flaunting the law and taking direct action on behalf of fugitive slaves.[63]

Another case in which Hoosiers took direct action to assist a fugitive slave took place in Bristol, Elkhart County in the fall of 1847. Thomas Harris, the fugitive slave of Joseph Addison Graves of Boone County, Kentucky, absconded in September of 1846, settled in Bristol, and went to work for S.P. Judson, the town's proprietor. In the summer of 1847, Graves and two associates, Hugh P. Longmore and Elisha W. Coleman, discovered the slave's whereabouts, obtained an arrest warrant from a justice of the peace, arrested Harris and brought him before a local magistrate, David W. Gray. The Kentucky slaveholder's attempt to recover his runaway, however, created an upheaval in the community. Harris' friends attempted to interfere with the slave's rendition, causing a "noise and tumult which gave to the affair the characteristics of a riot." Justice of the Peace Gray dismissed Graves' claim and discharged Harris because the warrant by which the fugitive was arrested was insufficient since it had been signed by a justice of the peace and not the clerk of the circuit court as required by the Indiana fugitive slave law. Harris immediately departed for parts unknown, while Graves, Longmore and Coleman were arrested and indicted for riot. They were convicted at the April 1848 term of the Elkhart Circuit

[63] Ibid.

Court and fined $130.00 each. The indignant Kentuckians, finding slave-hunting to be an unprofitable endeavor in Indiana, appealed their case to the Indiana Supreme Court where their conviction was overturned in May 1849. Justice Thomas L. Smith, a New Albany Democrat who had been appointed to the bench by Indiana Democratic Governor James Whitcomb in 1847, wrote the opinion for the Court in *Graves, etal* v. *The State* and asserted that the Fugitive Slave Act of 1793 was constitutional and that according to the *Prigg* decision, "the power of legislation, in relation to fugitives from labor is exclusively in the national legislature; and when congress has exclusive power over a subject, it is not competent for state legislation to add to the provisions of congress on that subject."[64] Therefore, the Indiana fugitive slave law was unconstitutional and the Kentuckians' conviction of riot was in error. The Graves-Harris fugitive slave case in Elkhart County certainly offered little comfort to slaveholders and provides another illustration of Hoosiers hostility to the fugitive slave law.[65]

The Supreme Court of Indiana overturned another conviction on November 24, 1852, citing the unconstitutionality of Indiana's statute on fugitives from labor. Luther Addison Donnell, an abolitionist in Decatur County, was convicted for inducing the escape of and

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[64] Horace E. Carter, *Reports of Cases Argued and Determined in the Supreme Court of Judicature of the State of Indiana, May 1847 to November 1849*, Vol. 1 (Indianapolis: Merrill & Field, 1870, 2nd ed. by Edwin A. Davis), 400; Linda C. Gugin & James E. St. Clair, eds., *Justices of the Indiana Supreme Court* (Indianapolis: Indiana Historical Society Press, 2010), 37-39. This source provides biographical information on Justice Thomas L. Smith.

[65] Joseph Addison Graves was born November 15, 1814 in Kentucky and died March 19, 1867 in Kenton County, KY. He was a resident of Boone County, KY in the 1850 census, age 35, born Kentucky, occupation a farmer, listed as "Jos. A. Graves." According to a Kentucky history, Graves was a "faithful officer of the law, the model farmer, " and "a man of thorough business qualifications" in Boone County. See W.H. Perrin, J.H. Battle & G.C. Kniffin, *Kentucky: A History of the State* (Louisville: F.A. Battey & Company, 1887), 804-06. Elisha W. Coleman died November 7, 1874 in Kenton County, KY of a nervous disease, aged 52 and a farmer. He appears in the 1850 Kenton County, KY census, age 28, born in Kentucky and a farmer. Hugh P. Longmore [Longmoor] was born June 7, 1826 in Kentucky and died August 10, 1878 in Kenton County, KY. Longmore appears in the 1850 Kenton County, KY census, age 24, born in Kentucky, occupation a livery stable keeper, listed as "H.P. Longmore"; also see Order Book 4, pages 446-47 and 463-64 in the Elkhart County Clerk's Office for entries regarding the cause against Graves, Coleman and Longmore.

secreting "a certain woman of color, called Caroline," the slave of George Ray of Trimble County, Kentucky. Caroline and her four children had absconded from Ray in the fall of 1847, and with the help of Underground Railroad operators, had made it to Clarksburg, in Fugit Township, Decatur County. In Clarksburg was an African-American settlement where fugitives were succored and Fugit Township was home to many abolitionists. Ray offered a $500.00 reward for the fugitives and vigorously pursued his "property," tracking the runaways to Decatur County. Woodson Clark, a reputed slave catcher and friend of George Ray's, lived in Fugit Township and accidentally discovered Caroline and her children hiding in an abandoned house near the African-American settlement in Clarksburg. Clark pretended to befriend the fugitives and moved them to his son's farm nearby, locking them in a fodder house, until he could arrange for their transportation back to Kentucky. Meanwhile, the abolitionists and the African-Americans began to spread the alarm and plot the rescue of the beleaguered captives. Luther Donnell, a leader in the Underground Railroad in Decatur County, first traveled to Greensburg to obtain a writ of *habeas corpus*, hoping to have the writ served on Clark and secure the release of the fugitives legally. The writ was granted and served on Clark, but a search of his property revealed no trace of the fugitives. Clark was greatly offended and vowed vengeance on Donnell.[66]

Abolitionists now suspected that Caroline and her children were being held on Woodson Clark's son's farm and surreptitiously made a search, where they found the fugitives in the fodder house. They immediately developed a plan to move the frightened captives to the next station on the Underground Railroad. Donnell denied that he was an active participant in the

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[66] Albert G. Porter, *Indiana Reports of Cases* (Indianapolis: Austin H. Brown, Printer, 1853), 480-81; Lewis A. Harding, ed., *History of Decatur County, Indiana: Its People, Industries, and Institutions* (Indianapolis: B.F. Bowen & Company, 1915), 398-407. Harding's work includes the reminiscences of William Hamilton, who participated in the rescue of Caroline and her children along with Donnell. A short antislavery history of Decatur County, including the Donnell case, also appears in the *Greensburg News* issues of February 6, February 13, February 20, and February 27, 1914.

liberation of the fugitives, but a later account by William Hamilton, one of Donnell's abolitionist co-laborers, gives Donnell a prominent role in the escape plot. Caroline and her children were successfully transported via the Underground Railroad to Canada. In the fall of 1848, Luther Donnell was indicted and arrested for assisting the escape of George Ray's slaves. The case was continued until March 1849, when he was convicted under the Indiana fugitive slave law, and fined fifty dollars plus court costs. Ironically, Woodson Clark was on the grand jury that indicted Donnell and had his revenge by testifying against him. Donnell appealed his conviction to the Indiana Supreme Court, and Judge Samuel E. Perkins, writing the opinion for the Court, reversed the judgment, stating succinctly that "The section of the statute of our state upon which this indictment was grounded, according to the decision in *Prigg* v. *Pennsylvania* (1842) is unconstitutional and void. The conviction upon it was, therefore, erroneous."[67] George Ray, cheated out of his slaves, sued Donnell in the United States Circuit Court for damages and was awarded a judgment of $2,500.00 for his costs and the value of Caroline and her four children. A Decatur County history dramatically called the Donnell case "one of the most exciting legal contests ever held in the state" and asserted that the affair's "effect on the popular mind was rather unfavorable to the slave-catching interests here, and caused many who had before been indifferent toward the anti-slavery agitators to take a decided stand for or against that issue."[68] The plight of fugitive slaves, and the legal harassment of those who tried to help those escaping bondage, often did result in the increase of anti-slavery sentiment in the community. Dramatic, exciting and contentious, fugitive slave episodes made slavery a tangible issue for Hoosiers,

[67] Porter, *Indiana Reports of Cases*, 481.
[68] Harding, *History of Decatur County, Indiana*, 406; *Free Territory Sentinel*, October 17, 1849. This issue includes an account of the case and a letter from Donnell. The *Sentinel* was edited by Rawson Vaile and published in Centerville, Wayne County. It was a free soil Democratic paper.

removing it from the abstract to the concrete, and often resulted in increasing the antislavery sentiment in the community.[69]

One of the state's most sensational fugitive rescues occurred in South Bend in the fall of 1849. South Bend was the county seat of St. Joseph County, located along the Indiana-Michigan border. Politically, St. Joseph County was a Whig and later Republican stronghold, and many of the county's residents possessed a strong aversion to the institution of slavery. On October 9, 1847, David Powell, his wife Lucy, and their four children, Lewis, Samuel, George, and James, slaves of John Norris, a War of 1812 veteran who lived in Boone County, Kentucky, just across the Ohio River from Lawrenceburg, Indiana, absconded and successfully made it to Cass County, Michigan, where Powell purchased a small farm and the family established a quiet residence. Nearly two years later, Norris and a party of eight accomplices tracked the fugitives to their home in Cass County and on the night of September 27, 1849, forcibly arrested Lucy Powell and her sons Lewis, George and James. Fortuitously, David Powell and son Samuel had been absent from home and were not captured by the slave hunters. The Norris party quickly departed with their human prey before an alarm could be given to the neighbors and headed toward Kentucky. Not long after the kidnapping of the Powells, however, their Cass County friends were alerted to the situation and Wright Maudlin immediately went to intercept the Kentuckians, overtaking them near South Bend. Maudlin went to South Bend attorney Edwin Bryant Crocker and the

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[69] William McCoy Hamilton was born November 26, 1822 in Indiana and died February 25, 1905 in Decatur County, IN. He appears in the 1850 Fugit Township, Decatur County, IN census as a single man, age 26, living with parents Cyrus and Polly Hamilton, who were natives of Kentucky. Luther Addison Donnell was born July 6, 1809 and died January 16, 1868 in Decatur County, IN. In 1850, Donnell is living in Fugit Township, Decatur County, IN, age 41, a farmer, and was born in Kentucky. The 1850 Decatur County, IN census shows that Woodson Clark was a farmer, born in Virginia, age 60 and living in Fugit Township, listed as “Woodsen Clark.” Caroline and her children were hidden by Clark in his son’s fodder house (Richard Clark). Richard Clark also testified against Donnell – he appears in the 1850 Fugit Township, Decatur County, IN census, age 30, a farmer, and born in Kentucky. Richard Clark was born September 22, 1820 and died February 8, 1903 in Decatur County, IN.

two of them obtained a writ of *habeas corpus* from the probate court of Judge Elisha Egbert. Russell Day, the deputy sheriff of St. Joseph County, along with several South Bend citizens served the writ on Norris and his party. Though the Kentuckians at first seemed disposed to resist this interference by force, Norris was ultimately persuaded to come back into town, file a return to the writ and validate his claim to the fugitives' service. In the meantime, "the report having spread abroad that a party of kidnappers with their captives were in the vicinity, the whole town was aroused , and the people in a high state of excitement, were running about, anxiously inquiring into the matter."[70]

Norris secured Jonathan Allee Liston, a native of Delaware, and Thomas Stilwell Stanfield, just recently the Whig candidate for lieutenant governor in Indiana, as counsel to prosecute his claim while the Powells were placed in the custody of the sheriff until the outcome of the hearing before Judge Egbert. The fugitives were represented by the native New Yorker, Edwin B. Crocker, who in a few years would become a founding member of the California Republican Party, and Albert G. Deavitt, later Judge of the St. Joseph County Circuit Court. Crocker and Deavitt argued that since Norris had not obtained a certificate of removal as required in the Fugitive Slave Act of 1793, he had not proved his claim to the service of the

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[70] *The South Bend Fugitive Slave Case, Involving the Right to a Writ of Habeas Corpus* (New York: American Anti-Slavery Society, 1851). This tract provides a detailed exposition of the case - quote is found on page two. *History of St. Joseph County, Indiana* (Chicago: Charles C. Chapman & Company, 1880), 547-52, 618-26; Timothy Edward Howard, *A History of St. Joseph County, Indiana*, Vol. 1 (Chicago: The Lewis Publishing Company, 1907), 202-06. The slaveholder, John Norris, was born in Hartford County, MD on April 13, 1791. He served with Commodore Matthew C. Perry, and while on board the *Caledonia*, fought in the engagement on Lake Erie, September 10, 1813 during the War of 1812. Norris died in Petersburg, Boone County, KY January 5, 1879 - see obituary in the *Lawrenceburg Press,* January 9, 1879. Edwin Bryant Crocker, one of the attorneys for the Powells, was born April 26, 1818 in New York and died June 24, 1875 in Sacramento, CA. Crocker was not only an outstanding attorney, but was later named as an associate justice of the California Supreme Court during the Civil War and served as lead counsel for the Central Pacific Railroad. Shortly after the South Bend fugitive case, Crocker relocated to California where he became a leading figure in the formation of the state's Republican Party. Judge Elisha Egbert was born in 1806 in New Jersey and died November 4, 1870 in South Bend. He served continuously as probate judge and judge of the Common Pleas Court from 1834 until his death. He was a fixture in the legal profession in Northern Indiana.

Powells, and therefore the captives should be discharged. Norris' attorneys rebutted that their client could arrest his slaves anywhere and take them out of the state without verifying his claim before any judicial tribunal - essentially arguing for the right of recaption. In Judge Egbert's opinion, Norris had not complied with the provisions outlined in the act of 1793 and therefore he ordered the Powells discharged.[71]

Judge Egbert's ruling in favor of the fugitives provoked a violent reaction from Norris and the Kentuckians, who immediately, while Egbert was still sitting on the bench, grabbed the Powells and drew their weapons, threatening to shoot anyone who interfered. Jonathan Liston, Norris' attorney, leapt upon a table and bitterly harangued the stunned courtroom crowd, encouraging his client's party to use violence if necessary and stating that they would be fully justified in doing so. Liston's violent behavior disgraced the dignity of his profession and did much to exacerbate the already heightened state of feeling. Norris and his party were finally convinced to lay down their arms and prosecute their claim lawfully, and the Powells were again remanded into the sheriff's custody pending further litigation. While the contentious hearing was taking place in the St. Joseph County courthouse, a large body of armed blacks, many of whom were fugitives themselves, traveled from Cass County, Michigan to South Bend to rescue the Powells by force if necessary. After the initial hearing, a series of suits and countersuits

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[71] Jonathan Allee Liston was born January 28, 1806 in St. George's Hundred, DE and died in Southport, Marion County, IN on October 15, 1881. Liston studied law under Oliver H. Smith in Wayne County and briefly represented St. Joseph County in the state legislature. Shortly after the South Bend fugitive case, Liston relocated to Indianapolis, where he would later represent another slaveholder in an important fugitive slave case - see obituary in *Indianapolis Journal*, October 17, 1881. Thomas Stilwell Stanfield was born in Logan County, OH October 17, 1816 and died in South Bend on September 12, 1885. Stanfield was an early St. Joseph County pioneer, studied under Judge Elisha Egbert, served in the Indiana State Legislature and was later elected as a circuit court judge in St. Joseph County. Stanfield was a Whig and then subsequently a Republican - see obituary in the *South Bend Tribune*, September 14, 1885. Albert G. Deavitt was a native New Yorker and died September 1, 1858 in Saratoga Springs, NY - see obituary in the *St. Joseph Valley Register,* September 9, 1858. The sheriff of St. Joseph County, Lott Day, Jr., a Democrat, was a friend of Liston's and attended the inauguration of President James Buchanan in 1857. He was one of a large number of people poisoned at a Washington D.C. hotel and never totally regained his health. He died in 1882 in Oakland, CA.

were inaugurated and warrants were issued for the arrest of Norris and his men for assault and battery and for riot, for which they posted bail. The legal wrangling and the show of force by South Bend citizens as well as the Powell's African-American allies from Cass County, Michigan finally convinced Norris to give up the fight and return home empty-handed. The embittered slaveholder later commenced a damages suit in the United States Circuit Court in Indianapolis against several South Bend citizens, including Edwin B. Crocker, the Powell's attorney, and in May 1850 was awarded $2,856.00 for the value of his slaves and the cost of his legal expenses in South Bend.[72]

Indiana's first case under the recently enacted Fugitive Slave Act of 1850 occurred in New Albany and was a most bizarre event that captured the attention of newspapers all over the country.[73] New Albany shared intimate economic and social ties with Louisville, just across the Ohio River, and was an unlikely place for the rendition of fugitive slaves to create a sensation. New Albany, according to the editor of its leading paper, was a community less tainted with abolitionism than any other in the free states.[74] On November 11, 1850, an Arkansas slaveholder, Dennis Trammell, claimed as his slaves three persons in New Albany who appeared to be white.[75] The alleged fugitives included a woman about fifty-five years old, her daughter, about thirty-five years of age, and a grandson who was about seven or eight. The boy attended the public school with the other white children and was never suspected of having a particle of African blood. The *New Albany Ledger* observed that "No trace of negro or Indian blood is discernible in the oldest woman nor in the boy. Some few of those who have seen the

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[72] *The South Bend Fugitive Slave Case*, 15.
[73] See for example the article on the case in the *National Era*, a paper published in Washington D.C.
[74] *New Albany Ledger*, November 27, 1850. The Democratic *Ledger* was edited by Phineas M. Kent and John B. Norman.
[75] Dennis Trammell was born January 7, 1807 in Kentucky and died April 23, 1872 in Sebastian County, AR. The 1850 Arkansas census shows him living in Crawford County, occupation a farmer, born in Kentucky, age 43, listed as "Tramel."

other woman think there is a slight resemblance to the Indian in some of her features, but a large majority are of the opinion that she also is of purely white origin."[76] The unfortunate family was jailed pending the outcome of a hearing and the eldest woman was examined by physicians, who determined that there was no African blood in her veins. Trammell "proved" his claim before New Albany Justice of the Peace Jared C. Jocelyn, and then on a writ of *habeas corpus* the case went before Judge Huntington of the United States District Court in Indianapolis. Huntington, who had recently lectured a jury on the necessity of enforcing the Fugitive Slave Law, promptly sided with the slaveholder and ordered the United States Marshal of Indiana to escort the "slaves" to Louisville, Kentucky and hand them over to Trammell.[77]

The Democratic *Ledger* protested "We suppose Judge Huntington's decision is in accordance with the *law*, but not with justice. Our citizens exhibited a good deal of feeling when the facts became known – not because of any general sympathy for fugitive slaves, but because they believe that persons of the Anglo-Saxon race have been unjustly deprived of their liberty."[78] Having failed to secure the freedom of the "fugitives" in court, some of New Albany's leading citizens raised a subscription to purchase the family's freedom from Trammell, who demanded $600.00. The New Albany committee raised the required sum and purchased the white family's freedom from Trammell. The *Ledger* asserted "We hope never to hear of another such a case as this. For persons pronounced white by nineteen-twentieths of all who see them, to be carried away captive and held in slavery, is something revolting to the feelings of every American citizen."[79] Indianan's sympathies were aroused in this case, not only because of the injustices of the Fugitive Slave Law, but because the law's victims were white. Frederick

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[76] *New Albany Ledger*, November 12, 1850.
[77] Ibid., November 25, 1850 (quotes the *Indiana State Journal* in an article titled "Judge Huntington's Charge").
[78] Ibid., November 30, 1850.
[79] Ibid., December 2, 1850.

Douglass's *North Star* astutely observed that "complexion is no security for freedom even in the nominally free States of our country."[80] The *Indiana Statesman* exclaimed "If so great an outrage can be perpetrated under this law, who will not raise his voice against the bloody bill?" The editor of this free-soil Democratic paper correctly reasoned that if whites could be dragged into slavery under the auspices of the fugitive bill, what security was there for free African-Americans?[81] The New Albany fugitive slave case, the first to arise under the Fugitive Slave Act of 1850 in Indiana, did nothing to endear Hoosiers to the law's merits and in fact loudly reinforced initial impressions of the act's injustices.

During Indiana's late territorial period and first years of statehood, Hoosier lawmakers demonstrated a genuine concern for the protection of free blacks from kidnapping by unscrupulous Southern slave hunters. In an effort to preserve interstate harmony, however, Indiana's politicians replaced the 1816 "Act to Prevent Manstealing," which provided a jury trial for fugitives, with the 1824 "Act relative to Fugitives from Labour," which expedited the hearing of fugitive cases and provided a jury trial only on appeal. The 1824 act was more favorable to slaveholders, and combined with the state's black laws, made Indiana an inhospitable destination and place of abode for fugitive slaves and free blacks alike. The state's economic and social ties with the South, as well as the Southern origin of so many of its residents, retarded the growth of antislavery sentiment. However, the persecution of abolitionists and free blacks at the hands of angry mobs, the organization of antislavery societies in the 1830s and 1840s and the contentious fugitive slave issue began to reshape public opinion on topics pertaining to slavery. In the cases of the Rhoads family in Hamilton County, Thomas Harris in Elkhart County, Caroline and her children in Decatur County, the Powells in South Bend, and the

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[80] *North Star*, December 5, 1850 (this paper was published in Rochester, NY).
[81] Charles H. Money, "The Fugitive Slave Law of 1850 in Indiana," *Indiana Magazine of History* 17, no. 3 (September 1921): 270-72. Money quotes the *Indiana Statesman* on page 272.

"white" family in New Albany, slave owners trying to reclaim their runaways came up empty. Dennis Trammel agreed to sell the family he claimed in New Albany, and George Ray and John Norris were generously compensated by a federal court for the loss of their slaves in Decatur and St. Joseph Counties. However, Singleton Vaughn and Joseph Graves not only lost their slaves in Hamilton and Elkhart Counties, but the fruitless attempt at reclamation cost them valuable time and significant expense. The cases illustrate that slave hunting in Indiana could be a difficult proposition and it became increasingly more troublesome to reclaim fugitives as the nation careened toward civil war. In the decade of the 1850s, several well-publicized fugitive slave cases contributed mightily to the evolution of feeling regarding slavery and the sectional crisis.

CHAPTER THREE
JOHN FREEMAN AND THE DESTRUCTION OF FINALITY

In the summer of 1846, while the Mexican-American War was raging, President James K. Polk, anticipating victory in the conflict, requested a congressional appropriation of two million dollars with which to negotiate the purchase of Mexican territory. In the subsequent debate over the appropriation, an obscure, first-term representative, Pennsylvania Democrat David Wilmot, offered an amendment to the appropriations bill that gave him a place in history, but also unlocked a Pandora's box that provoked sectional hatred, disrupted party politics, and sent the nation headlong toward civil war. The Wilmot proviso, introduced August 8, 1846, demanded "that, as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico … neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime, whereof the party shall first be duly convicted." The amendment narrowly passed the House, ominously along sectional lines, but was later rejected by the Senate and the appropriations bill died with it. The debate over the proviso, or congressional prohibition of slavery in the territories, portended a titanic political struggle that could potentially tear the Union apart.[1]

Near the end of Polk's term, Democrats were struggling to maintain party unity under the stress of the territorial imbroglio. Free soil Democrats were still bitter over the nomination

[1] David M. Potter, *The Impending Crisis*, *1848-1861.* Completed and edited by Don E. Fehrenbacher (New York: Harper & Row, 1976), 18-23.

of Polk over Van Buren in the 1844 presidential canvass, and Polk had alienated Western Democrats by vetoing a rivers and harbors bill and by negotiating an Oregon Treaty with Great Britain that recognized the territory's boundary at the 49th parallel north, rather than the fifty-four forty parallel, which was earnestly desired by Western expansionists. Northern Democrats, who had supported the annexation of Texas, felt betrayed by Southern Democrats, who endorsed Polk's retreat on the Oregon question. As the 1848 presidential race approached, Whigs and Democrats cast about for an "available" candidate who could transcend sectional differences and unite their respective parties. The Whig *Indiana State Journal* made the astounding revelation that "A large number of our voters are Abolitionists, conscientiously opposed to voting for a slave holder," and demanded a candidate sound on the slavery question.[2] However, in an effort to boost the party's Southern strength, the Whigs nominated Mexican war hero, Zachary Taylor, a Louisiana slaveholder. Democrats nominated Michigan Senator Lewis Cass, a proponent of popular sovereignty, as their standard bearer. Neither of the nominations was acceptable to the free soilers, who demanded congressional prohibition of slavery in the newly-acquired territories from Mexico. Disgruntled Democrats, including a faction of New Yorkers known as "Barnburners," anti-slavery Whigs, and former Liberty Party men coalesced behind a Wilmot proviso platform, organized the Free Soil Party, and at the Buffalo Convention in August 1848, nominated Martin Van Buren as their presidential candidate. The coalition that formed the Free Soil Party around the principle of the non-extension of slavery foreshadowed a future, more powerful combination, the Republicans, who would also doggedly insist on keeping slavery out of the territories.[3]

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[2] Roger Van Bolt, "Hoosiers and the Eternal 'Agitation,' 1848-1850," *Indiana Magazine of History* 48, no. 4 (December 1952): 334.
[3] Potter, *The Impending Crisis,* 78-80.

Abolitionists were certainly sanguine about the direction of events in the late 1840s as they gathered defectors from the two major parties into the free soil movement, even if they recognized that there was little chance of winning the election. As the free soilers seemed to hold the balance of power, Northern Whigs and Democrats both were effusive in their antislavery professions in an effort to keep the antislavery men in their parties from bolting. In a close contest, Zachary Taylor won the presidential contest in 1848 and earned the unenviable job of resolving the nation's dilemma over slavery in the territories. Indiana narrowly had cast its vote for Lewis Cass in the presidential election. Cass had embraced popular sovereignty as a solution to the territorial problem, but just months after the election Indiana Democrats endorsed congressional prohibition of slavery in the territories. At their state convention held in Indianapolis on January 8, 1849, Democrats resolved "That the institution of slavery ought not to be introduced into any territory where it does not now exist," and "That inasmuch as New Mexico and California are, in fact and in law, free territories, it is the duty of Congress to prevent the introduction of slavery within their limits."[4] Indiana Whigs met in convention on January 3, 1849 in Indianapolis and resolved "that the extension of slavery over the newly acquired territories ought to be prohibited by law."[5] A year later, the Indiana General Assembly adopted a resolution instructing the state's senators and representatives "to cast their votes, and extend their influence, to have ingrafted upon any law that may be passed for the organization of the territory recently acquired from Mexico, a provision forever excluding from such territory slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the party has been duly convicted."[6] Both Indiana Whigs and Democrats committed themselves to

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[4] *Indiana State Sentinel*, January 11, 1849.
[5] Thomas J. Engleton, "The Reaction Against the Anti-Slavery Efforts in Indiana, 1849-1852" (master's thesis, University of Notre Dame, 1949), 3.
[6] *Laws of Indiana*, 34th sess., 1849-1850, 246-247.

congressional prohibition hoping to undermine the appeal of the free soilers and retain the support of the antislavery element within their parties.

President Taylor recognized that the Wilmot proviso was particularly obnoxious to the South and hoped to organize the Mexican cession without imposing congressional prohibition. Taylor, however, was no slavery expansionist. He hoped that the residents of New Mexico and California would immediately form constitutions prohibiting slavery and apply for statehood, bypassing the territorial stages of development, and allowing Congress to admit them as free states. The Whigs lacked the votes in Congress to push through Taylor's plan, however. Meanwhile, Southerners threatened secession if the proviso was passed by Congress. Southern threats of disunion gave conservative Northern Democrats the leverage they needed to "rescue" their party from free soilers and insist on organizing the territories on a popular sovereignty basis. They insisted that if Congress passed the proviso, it would destroy the Union. Since there was no chance that the president's plan for the Mexican cession would be adopted, Congressional leaders were forced to hammer out their own adjustment that would pacify both sections of the nation.

On January 29, 1850, Senator Henry Clay introduced a plan of adjustment which called for the admission of California as a free state, the organization of the remainder of the Mexican cession without restrictions or conditions on slavery, the enactment of a new fugitive slave bill, the abolition of public slave auctions in the capital, and the settlement of the Texas-New Mexico boundary dispute. After months of angry and bitter debate, the Senate derailed Clay's omnibus legislative package on July 31, 1850 and the physically weakened and exhausted "Great Compromiser" left Washington to recuperate at Newport, Rhode Island. Democratic Senator Stephen A. Douglas, chairman of the Committee on Territories, then adroitly pushed through

Clay's proposals individually through the Senate and the bills were later approved by the House. The Compromise of 1850 included the following provisions: Texas surrendered its claim to the eastern portion of New Mexico in exchange for federal assumption of its state debt, the territories of Utah and New Mexico were organized with popular sovereignty, even though Utah and a small portion of New Mexico were north of the Missouri Compromise line, the slave trade was banned in Washington D.C., California was admitted as a free state, and the South was given a stronger fugitive slave bill. The Senate passed the Fugitive Slave Act of 1850 in a largely sectional vote on August 23 by a vote of 27-12 and the House followed suit on September 13 in a vote of 109-76. Millard Fillmore, who became president after Taylor's death on July 9, signed the bill into law on September 18, 1850.[7]

The antislavery movement seemed to be making great strides in the late 1840s; however, the threat of Southern secession frightened many Northerners away from support of congressional prohibition of slavery in the territories. After passage of the Compromise bills, the nation breathed a collective sigh of relief as the awful specter of disunion and civil war had seemingly been narrowly averted. The Fugitive Slave Law, however, had aroused the vehement opposition of many Northerners. Michael C. Garber, editor of the Democratic *Madison Courier* declared: "We don't, can't like it. It is repugnant to all the feelings of a man living in a free State. … should we hear a cry for help to catch a fugitive from bondage, we would turn one deaf ear and blind eye."[8] Garber's outspoken criticism of the law incurred the wrath of Indiana's proslavery Senator Jesse D. Bright, a resident of Madison. Bright controlled Indiana's Democratic machine and subsequently had Garber read out of the party for his opposition to

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[7] Michael F. Holt, *The Fate of Their Country: Politicians*, *Slavery Extension, and the Coming of the Civil War* (New York: Hill & Wang, 2005), 67-82; Holman Hamilton, *Prologue to Conflict: The Crisis and Compromise of 1850* (New York: W.W. Norton & Company, 1966), 141-42, 159-61.
[8] *Madison Courier*, October 23, 1850.

the law. Indignation meetings were held throughout the state to express opposition to the law. The radical Garrisonian Henry C. Wright was making a tour of Eastern Indiana shortly after passage of the law and addressed several meetings. Citizens in Economy, Wayne County, vowed "That we will not obey this law."[9] In Howard County, outraged Hoosiers resolved to "use all peaceable means in our power for repeal of said iniquitous law [Fugitive Slave Law], and while it remains in force we will regardless of consequences refuse to obey its requisitions."[10] In Fayette County, residents declared "That we view the Fugitive Slave law, passed by our recent Congress, as an act of high and daring tyranny, founded in injustice, a direct violation of the law of God, a national odium, and an insult of the most infamous and unbearable kind that can be offered to freemen. … we will not assist (if called upon) in capturing or securing a fugitive slave under this act, though the penalty for refusing should deprive us of all our possessions, and incarcerate us between dungeon walls." [11] Those who opposed the law objected that it suspended the writ of *habeas corpus*, denied a jury trial, made the federal government a slave-catching machine at taxpayer expense, offered a "bribe" to the commissioners for sending an alleged fugitive into slavery, and finally that the law required citizens to assist in the capture of runaways, if so requested by federal marshals.

After this initial outburst of feeling against the law, however, a pro-Compromise reaction gradually engulfed Indiana and antislavery agitation became very unpopular. Most Hoosiers came to accept the law, not because they liked it, but because they believed the law's enforcement was necessary for sectional peace and the preservation of the Union. The *Indiana State Journal* unenthusiastically endorsed the law: "We desire that the agitation of the question should cease – that the law should be given a fair trial and if it only secures the object

[9] *Indiana True Democrat*, November 22, 1850.
[10] Ibid.
[11] *National Era*, November 21, 1850.

of the constitution without unjust requirements at the hands of the people of the free states, then let it remain as it is."[12] The *Wabash Courier* of Terre Haute supported the law, not for its individual merits, but because "Something must be conceded to the necessities of the times."[13] The *Logansport Democratic Pharos* pleaded for obedience to the law:

> The newspapers of the abolition stripe have endorsed resolutions and the cry is "Let slip the dogs of war." This is all wrong – wrong from beginning to end and an hour of cooler reflection will tell these extremists so. If it is a bill of evils and outrages, what is the remedy? Certainly not forcible resistance. Our object is not a defense of the fugitive slave law, for in many of its provisions it is unjust. But, we are utterly opposed to anything that looks at a violation of law.[14]

Union meetings were held throughout the state to support the Compromise measures and condemn slavery agitation. The delegates to the Indiana Constitutional Convention in 1851 detoured from its legislative purpose to express its support of the Compromise measures in the following resolutions:

> WHEREAS, the Congress of the United States, passed at its last session, a series of Acts, commonly called the compromise measures and including the law for the reclamation of fugitive slaves; and
>
> WHEREAS, certain misguided individuals in this and other free States, have expressed their determination to resist the fugitive slave law; Therefore, be it
>
> Resolved, That in the opinion of this Convention, the common sentiment of the people of Indiana sustains and endorses, in their general features and intention, the said series of compromise measures passed by Congress, and recognizes in the success of these measures, an earnest of security and perpetuity to our glorious Union.
>
> Resolved, That whatever may be the opinions of individuals as to the wisdom or policy of any of the details of the fugitive slave law, it is the duty of all good citizens to conform

[12] *Indiana State Journal*, May 10, 1851.
[13] *Wabash Courier,* November 16, 1850.
[14] *Logansport Democratic Pharos*, November 6, 1850.

> to its requisitions, and to carry out, in good faith, the conditions of that compromise on the subject of domestic slavery, which is coeval with the Federal Constitution.[15]

Abolitionists were no longer voters to be wooed, but "misguided individuals," or worse, traitors to be reviled and muzzled. Whigs and Democrats tried to outdo each other in their professions of devotion to the Compromise and the Union, and both parties abrogated their former antislavery professions. In 1849, Indiana Whigs and Democrats had endorsed congressional prohibition of slavery in the territories, yet by 1852 the parties were committed to the Compromise and denounced abolitionism as treasonable fanaticism.

Fortunately for the abolitionists, an Indianapolis fugitive slave case in the summer of 1853 awakened Hoosiers to the dangers and injustices of the Fugitive Slave Law of 1850 and contributed to a revival of antislavery sentiment which would ultimately result in the formation of a new political party committed to the non-extension of slavery. The arrest, incarceration, trial and ultimately the discharge of John Freeman, a well-respected free black living in Indianapolis, blatantly revealed how easily unprincipled slave hunters could snatch free blacks into bondage, and also seemingly illustrated just how eagerly state and federal officials served the slaveholding interest. John Freeman's case received national publicity, and the event proved to be of immense propagandistic value to abolitionists, who fervently sought to discredit the Fugitive Slave Law and energize the free soil movement.

Freeman had come to Indianapolis from Monroe County, Georgia in 1844. He deposited $600.00 in the bank on his arrival, and through thrift and hard work had acquired a small farm and a restaurant. Aside from farming, Freeman also worked as a painter and whitewasher. He married a servant girl by the name of Letitia, who had been working in the family of the Reverend Henry Ward Beecher, then pastor of the Second Presbyterian Church of Indianapolis,

[15] Engleton, "The Reaction Against the Anti-Slavery Efforts in Indiana, 1849-1852," 50.

but soon to gain nationwide renown as an antislavery minister of the Plymouth Church in Brooklyn, New York. John and Letitia Freeman had three children, and they lived on north Meridian Street in a log cabin. Mrs. Jane Merrill Ketcham, wife of Freeman's attorney John Lewis Ketcham, remembered that the Freemans were "honest, industrious, clean, good tempered and much respected." The Freemans had earned considerable respect in the community, respect not usually afforded to African-Americans in antebellum Indianapolis.[16]

The first day of summer, June 21, 1853, was a hot, but pleasant day in Indianapolis. Pleasant Ellington, of Platte County, Missouri, arrived in the city and filed an affidavit with William Sullivan, a United States Commissioner for the District of Indiana. The affidavit specified that John Freeman, now a resident of Marion County, was his escaped slave "Sam." The affidavit also stated that Sam, alias John Freeman, had escaped from Ellington while he was living in Kentucky in March 1836. On the claim of Ellington, Commissioner Sullivan issued a warrant for the arrest of Freeman, which was executed by Constable James H. Stapp, acting Deputy Marshal of the United States under the special appointment of the Commissioner. The abolitionist *Indiana Free Democrat* disgustedly described Freeman's arrest:

> The manner of Freeman's arrest and the insolence of the claimant had no tendency to prevent excitement. The cowardly officers who arrested him, did so by resorting, as usual in such cases, to falsehood and deception. They represented to him that he was required to go to the office of a Justice of the Peace to give testimony in a case wherein another colored man was a party. The unsuspecting man accompanied them to the office of Esq. Sullivan, the United States Commissioner. Stopping for a moment at the office of Mr. Ketcham, which is adjoining the Commissioner's office, he was there apprehended and hurried before Commissioner Sullivan. There was great reluctance to give Freeman opportunity to consult counsel. Mr. Ketcham, appearing as one of his counsel, demanded opportunity to consult his client in private, and he was reluctantly permitted to take Freeman into his office for this purpose. The consultation had continued but a few minutes before the claimant, with his posse, called at the door,

[16] Jane Merrill Ketcham Reminiscences, John Lewis Ketcham Collection, Indiana Historical Society, Indianapolis.

> (which was locked) and became quite clamorous for his intended victim. Shortly after the door was opened by Mr. K., [Ketcham] officer Stapp and his assistants seized Freeman with a ferocity that would have done honor to tigers, and then hurried him downstairs and to the Court House, to which place the Commissioner had adjourned the hearing.[17]

Jane Merrill Ketcham remembered that news of Freeman's arrest spread like wildfire throughout the city. The manner of Freeman's arrest aroused the ire of many of the most prominent citizens of Indianapolis. Calvin Fletcher, president of the State Bank, recorded in his diary on that day: "This arrest has produced considerable excitement. … I have already had some unpleasant words with our officers who have taken secretly a part with the Slaveholders. I wish not to prom[en]ade a disregard of the law and constitution but if the owners refuse as I am told they do to take a fair price for him I shall not feel greved [grieved] if he escapes."[18]

Immediately after his arrest, several of the city's most talented lawyers, John Lewis Ketcham, John Coburn, and Lucien Barbour, agreed to represent Freeman in his freedom suit. John Lewis Ketcham, whose estate was located at the corner of Merrill and Alabama Streets in Indianapolis, was born in Shelby County, Kentucky on April 3, 1810, and came to Monroe County, Indiana as a young boy. He graduated from Indiana University in Bloomington, and moved to Indianapolis about 1833, where he studied law under the tutelage of Judge Isaac Blackford. Ketcham was admitted to the bar shortly after coming to Indianapolis, where he began a very successful law practice. Ketcham was an elder of the Second Presbyterian Church during Henry Ward Beecher's pastorate, and was the guiding spirit behind the formation of the Fourth Presbyterian Church in Indianapolis. He married Jane Merrill, the oldest daughter of Samuel Merrill, Indiana's first State Treasurer, and first president of the Indianapolis and

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[17] *Indiana Free Democrat*, June 30, 1853.
[18] Jane Merrill Ketcham Reminiscences; Paula Corpuz, Dorothy L. Riker, & Gayle Thornbrough, eds., *The Diary of Calvin Fletcher*, *1853-1856*, Vol. 5 (Indianapolis: Indiana Historical Society, 1977), 80-81.

Madison Railroad. Politically, Ketcham identified strongly with the free soil wing of the Democratic Party. The *Indianapolis Journal* declared that Ketcham's "reputation as a lawyer was gained more by his readiness and force as a speaker than his erudition or industry. He possessed decided talents for oratory, and we have seen few men who could meet an unexpected call with appropriate remarks so well-worded, so gracefully introduced, so pleasingly delivered as he."[19]

John Coburn was born October 27, 1825 in Indianapolis, the son of Henry P. and Sarah (Malott) Coburn. Henry P. Coburn, a graduate of Harvard, had to come to Indiana in 1816 and opened a law practice in Corydon, the first state capital. He moved to Indianapolis in 1824, continued his law practice, served as clerk of the Indiana Supreme Court, and engaged in a number of other civic pursuits. The old Coburn home was located on East Ohio Street in Indianapolis, not far from the residence of Henry Ward Beecher. Young John Coburn was early influenced on the subject of Negro slavery by long talks with the Reverend Beecher. Following in the footsteps of his father, Coburn took up the practice of law, graduating from Wabash College in 1846. In 1851 he was elected as a Whig representative to the Indiana State Legislature, and in the following year, was one of the presidential electors on the Whig ticket. At the time of the Freeman trial, Coburn was recognized as a rising star in the legal profession and as a Whig politico.[20]

Lucien Barbour was born in Canton, Connecticut on March 4, 1811, the son of Giles and Mary (Garrett) Barbour. He was one of twelve children, and as he described it, grew up in "middling circumstances." He graduated from Amherst College in 1837, and came to Indianapolis later that same year. Barbour, a Democrat, served as United States District

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[19] *Indianapolis Journal*, April 21, 1869 (Ketcham obituary).
[20] *Biographical Record of Prominent and Representative Men of Indianapolis and Vicinity* (Chicago, Beers & Company, 1908) 40-42, 88-91.

Attorney for the District of Indiana during the Polk and Fillmore administrations, and in 1843 wrote a treatise on the laws of the state which became a standard work used by Indiana attorneys. In 1852 Barbour was appointed by the Indiana State Legislature as one of three commissioners to draft a civil code for the state. He was described as a man of "great industry, steady energy, and of the most sterling integrity." The Freeman case may very well have contributed to Barbour's political metamorphosis since he later joined the People's Party in the political revolution of 1854.[21]

The claimant in the case, Pleasant Ellington, hired Indianapolis legal stalwarts Jonathon A. Liston and Thomas D. Walpole to prosecute his claim. Liston had represented the slaveholder John Norris in the South Bend fugitive slave trial in 1849, and public outrage over his passionate defense of the master's claim and irresponsible courtroom demeanor had allegedly forced him to take his business elsewhere. He subsequently relocated to Indianapolis in 1851, opened a successful practice and became one of the best known men of the Indiana Bar, ranking with the leading lawyers of the country. Liston's associate, Thomas D. Walpole, was a prominent attorney from Hancock County who had served several terms in the Indiana House of Representatives and Senate. Only a year before Freeman's trial, Walpole had abandoned his long-time affiliation with the Whigs and joined the Democratic Party. He was described as "quick and clear in his perceptions … and ingenious in his management of the points of his case. As an advocate before a jury, he was very successful. His knowledge of human nature enabled him to read his auditory at a glance, and few could withstand the charm of his eloquent periods."[22]

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[21] Lucien Barbour Autobiography, August 31, September 1, 1858, Indiana Historical Society, Indianapolis; *Indianapolis Journal*, July 20, 1880 (Barbour obituary).

[22] *South Bend and the Men Who Have Made It* (South Bend, IN: The Tribune Printing Company, 1901), 22; *Indianapolis Journal*, October 17, 1881 (Liston's obituary); *Indianapolis Sentinel*, October 12, 1863

The claimant, Pleasant Ellington, had migrated from Greenup County, Kentucky to Ridgely, Platte County, Missouri in 1838. A Platte County history noted that he "became a merchant and the most enterprising man in the settlement."[23] The Indianapolis newspapers erroneously reported that he was a Methodist minister, although he did donate the land for a Methodist church in Ridgely. Ellington evidently still harbored a grudge over Sam's escape, even after nearly two decades, for a journey to Indianapolis from near Kansas City required no small amount of time and expense. While Freeman was apprehended easily enough, Ellington's hopes for a summary process and painless rendition were very quickly disappointed. Freeman's counsel was determined to use every legal means to prove their client's claim to freedom. They procured a writ of *habeas corpus* commanding Deputy Marshal Stapp to deliver Freeman to the Marion County Circuit Court of Judge Stephen Major. Upon the return of the writ of *habeas corpus*, Freeman's counsel asked for time to plead the return and consult with their client. The court instructed the sheriff, into whose custody Freeman had been delivered, to give counsel the opportunity to consult with their client. The case was adjourned until following morning, June 22.[24]

When the court reconvened the next morning, Freeman's counsel protested that they had not been given enough time to prepare their pleas to the return of the writ of *habeas corpus*. Judge Major gave them until the afternoon of the same day to prepare their pleas. In the afternoon, Ketcham, Barbour, and Coburn prepared seven pleas and filed a wealth of documentation in support of the freedom of their client. Two of the pleas challenged the

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(Walpole's obituary); Charles W. Calhoun, Alan F. January, Elizabeth Shanahan-Shoemaker, & Rebecca A. Shepherd, eds., *Biographical Dictionary of the Indiana General Assembly, 1816-1899* (Indianapolis: Indiana Historical Bureau, 1980), 407.

[23] William M. Paxton, *Annals of Platte County, Missouri* (Kansas City: Hudson-Kimberly Publishing Company, 1897), 843.

[24] *Indiana Free Democrat*, June 30, 1853.

authority of Commissioner Sullivan to issue a warrant for the arrest of Freeman, as well as the authority of Deputy Marshal Stapp to carry out the warrant. Another plea asserted that Ellington, now a citizen of Missouri, "had no right to reclaim Freeman as owing him service in Kentucky; the laws of Kentucky forbidding the importation of slaves into that state. … It was urged that the fugitive could not be governed by the law of Missouri, and the master had forfeited the right of reclamation by removing." The meat of the defense's case, however, rested on their assertion that the state had the right to determine the facts of the case – whether Freeman really was the escaped slave of Ellington. Concerned that Freeman would not receive fair treatment at the hands of Commissioner Sullivan, a native Marylander, they hoped to have the facts of the case determined by Judge Major. According to the Fugitive Slave Law of 1850, commissioners were not obligated to admit evidence from the accused fugitive. This important plea began a legal battle between the contending parties over whether the state court of Judge Major, or the court of United States Commissioner Sullivan would hear and determine the facts of the case.[25]

Aside from the pleas filed by Freeman's counsel, numerous papers and receipts were brought forth in support of Freeman's freedom. As evidence of his freedom, certificates from Brunswick County, Virginia and Walton County, Georgia were provided to the court. Georgia law required that free persons of color were appointed guardians. Freeman's guardians in Georgia had been Creed M. Jennings and Warren J. Hill. Freeman had moved from Brunswick County, Virginia to Walton County, Georgia about 1832. A certificate was submitted dated March 15, 1831 stating Freeman was a free resident in the state of Virginia, and was signed by Langley B. Jennings, father of Creed Jennings. One document proved that Creed M. Jennings had been appointed Freeman's guardian on February 22, 1832 by the Walton County, Georgia

[25] Ibid.

Superior Court. Another document dated January 9, 1837 showed that Warren J. Hill was appointed guardian for John Freeman, a free man of color. Creed M. Jennings, Freeman's former guardian, had moved from Georgia to Alabama. Freeman's counsel provided a certified statement from Warren J. Hill, dated May 20, 1844 and filed in Walton County, Georgia, verifying that "John Freeman, is a free man of color, lawfully emancipated, has been a resident of this county for the space of twelve years or more, and is a man of steady habits and honest character. Therefore, he is privileged to trade for himself, and it is hoped will not be molested."[26] Another piece of evidence submitted in support of Freeman's free status was a certificate dated June 9, 1838 from Monroe, Walton County, Georgia, declaring

> John Freeman, the bearer of this, by profession a painter, disposed to seek employment in the adjacent counties, begs to be recommended to those strangers who may be disposed to employ him, which I do most cheerfully, as I consider deserving patronage, the confidence and patronage of a liberal community, and can recommend him as pretty well skilled in his profession, and of honest, industrious, and steady habits, and recommend him to a kind and hospitable reception among those he may chance to go among.[27]

The certificate was signed by Freeman's guardian, Warren Hill, and another witness. Numerous other business receipts were filed showing that Freeman had traded for himself. Finally, Freeman's counsel submitted an indenture between Hill and John P.H. Briscoe, dated January 15, 1844, contracted for the sale of Freeman's lot in the village of Monroe, Walton County. Shortly after this sale, Freeman removed to Indianapolis. Astonished at the documentary evidence provided by Freeman's attorneys, Ellington's counsel asked the court for time to

[26] Ibid.
[27] Ibid.

inspect the papers and to prepare responses to the pleas. Judge Major adjourned the hearing until the next day.[28]

Thursday, June 23, the court heard arguments on the matter of the jurisdiction of the case. Jonathon Liston, counsel for Ellington, opened up the proceedings arguing that Freeman's pleas were irrelevant because they set up matters over which the state had no jurisdiction. The question for the state court to decide was simply whether Freeman was now properly in the United States' jurisdiction, and if so then the state court's authority was at an end. Liston supported his contention with the legal precedent established in *Prigg,* which had declared that on the subject of fugitive slaves, Congress had exclusive jurisdiction. Lucien Barbour objected, however, that the *Prigg* ruling was not applicable to the Freeman case because the identity of the accused was in dispute (as opposed to being the admitted slave of the claimant). Joseph G. Marshall, who had joined Freeman's defense team, followed Barbour and made a "clear and forcible speech in favor of the jurisdiction of the Court (Judge Major's court) in this case." Marshall was one of the most well-known and highly respected attorneys in the state as well as a leading Whig politician. He was born in Fayette County, Kentucky on January 18, 1800, the son of a Presbyterian minister. He graduated from Transylvania University and came to Indiana in 1828, settling at Madison and opening up a lucrative law practice. Marshall served as probate judge and represented his county in the state legislature for several terms. He was the Whig nominee for governor in 1846, but was narrowly defeated by Democrat James Whitcomb, and in 1852 he lost his bid for a congressional seat to Democrat Cyrus L. Dunham.[29] Mrs. Jane Ketcham remembered that her husband had a higher opinion of Marshall than any other man at the bar, and compared his courtroom demeanor to that of a lion. Marshall did not disappoint

[28] Ibid.
[29] William Wesley Woollen, *Biographical and Historical Sketches of Early Indiana* (Indianapolis: Hammond & Company, 1883), 432-48.

his audience. He declared that the state had the right to determine who her citizens were and how the question of citizenship should be tried. The state had the right to protect her citizens from illegal and improper restraint by virtue of her sovereignty. His argument for the state's jurisdiction of the case created great excitement among the spectators. At one point he was interrupted by Judge Major and asked to proceed in a less declamatory manner. After Marshall finished his argument, John Coburn followed and elaborated on the idea of *habeas corpus*, *Prigg* v. *Pennsylvania* (1842), and the law of Kentucky regarding the importation of slaves. [30]

In his opinion, Judge Stephen Major found the position of Freeman's counsel untenable for several reasons. He wrote that the state of Indiana had surrendered part of her sovereignty with regard to the reclamation of fugitive slaves. The case of *Prigg* had settled the question of jurisdiction over fugitive slaves "in favor of the exclusive jurisdiction in the United States, and that no State Legislation can control it, and consequently no State officer, unless he is vested with authority, by act of Congress, can exercise any jurisdiction over the question of freedom or slavery." After citing several legal authorities and cases in support of his opinion, he closed his remarks with the following statement:

> I am at a loss to discover what difference it can make to Freeman, to have the question, whether he was a freeman or owed service to Ellington, investigated before me rather than before Commissioner Sullivan. Commissioner Sullivan will hear the evidence that can be adduced for and against Freeman – I could do no more. I am satisfied that I have not got the slightest shadow of an authority to enter into such an investigation. Commissioner Sullivan has, and is fully competent to do it, and will, I have no doubt, extend to Freeman, in the investigation, all the latitude that I would, and therefore nothing could be gained by my investigating the subject instead of Commissioner Sullivan.[31]

[30] *Indiana Free Democrat*, June 30, 1853.
[31] Ibid.

Despite this setback, Freeman's counsel had not exhausted their legal options. After Judge Major rendered his opinion on the jurisdiction of the case, they attacked the validity of Commissioner Sullivan's authority. A document was produced by Ellington's counsel showing that William Sullivan had been appointed a commissioner under the act of Congress by the circuit court of the United States in June 1850. Freeman's attorneys objected to the admission of this evidence because it did not specify the powers to be exercised under the appointment, nor was the appointment made under the Fugitive Slave Law of 1850, but prior to its enactment. The record verifying Sullivan's appointment as United States Commissioner was finally admitted. It was also shown that William Sullivan had been elected Justice of the Peace in October 1851; Freeman's counsel argued that both state and federal constitutions forbade the holding of two offices of trust by the same person. On June 25, Judge Major ruled that he could not investigate the question of whether William Sullivan was really a commissioner. Freeman's counsel had pursued every legal angle to keep their client's case in the state court, but without success. Their legal strategy was not simply focused on keeping the suit before the state court, but also, by focusing on technicalities, extending the litigation period so that Ellington's attempt at reclamation would be time-consuming and expensive. This was a common abolitionist strategy in fugitive cases – discouraging slave hunting by making it a costly endeavor. Disappointed by Major's rulings, the defense would now have to trust Commissioner Sullivan to give them the opportunity to present their case. John Freeman was subsequently remanded to the custody of the Marshal of the United States for the District of Indiana, John L. Robinson.[32]

John Larne Robinson was born May 3, 1814 in Mason County, Kentucky. He moved to Rush County, Indiana and engaged in the mercantile business at Milroy. He served as Rush County Clerk from 1841 to 1845. Robinson was then elected as a Democrat to the Thirtieth,

[32] Ibid.

Thirty-first and Thirty-second Congresses (March 4, 1847 – March 3, 1853), serving as Chairman of the Committee on Roads and Canals. After the expiration of his congressional term, he was appointed Marshal of the Southern District of Indiana by President Franklin Pierce. Robinson was a violent Democratic partisan, an intimate friend of Democratic political boss Jesse D. Bright and a notorious Northern doughface according to his political opponents. Ironically, Robinson had voted against the Fugitive Slave Act of 1850 while in Congress; however, he believed passionately in the zealous enforcement of the fugitive law as an absolute necessity to the preservation of the Union. Robinson was not in Indianapolis at the time of Freeman's arrest, but arrived in the city a few days later to take custody of Freeman.[33]

After Freeman was delivered to Marshal Robinson by the Marion County sheriff, the parties of the suit reconvened in the court of Commissioner Sullivan. Jonathon Liston requested that the cause be continued for two weeks to allow his client to take depositions to establish his claim, whereupon John Ketcham made a motion that his client receive security against costs accrued in making his defense, reasoning that "the Fugitive Slave Law contemplated a fair investigation. This would call for the taking of depositions and large expenditures of money; not only by the claimant, but also by the alleged fugitive. Suppose after the accumulation of heavy costs, this claim should be defeated, and the prisoner released, who shall pay these costs?" Even if Freeman should be fortunate enough to win his case, his legal fees threatened to ruin him financially. Ketcham quite logically concluded that his client was "entitled to be made safe. He is forced to make the costs, and if the claim was false, he should have security against him

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[33] *Biographical Directory of the United States Congress, 1774-present*. http://bioguide.congress.gov/scripts/biodisplay.pl?index=R000343; John L. Robinson aligned himself with the Bright or proslavery faction of the Indiana Democracy. He was reappointed United States Marshal for the District of Indiana by President Buchanan in 1858 and held this position until his death, March 21, 1860, at his home in Rushville, Rush County, IN. See Woollen, *Biographical and Historical Sketches of Early Indiana*, 315-320.

who compelled him to make them." This request by Freeman's counsel for security against costs was treated with contempt by Ellington's attorneys. Thomas Walpole asserted that Freeman had no right to introduce any evidence to show his freedom. The trial to determine the question of freedom or slavery, if tried at all, must be done in the slave states. The Fugitive Slave Law's defenders always asserted that the fugitive could get a jury trial in the state from which the slave had escaped, but such an assertion was more fantasy than reality. Although unwilling to grant Freeman security for costs, Ellington's attorneys were willing to grant him thirty days to prepare his defense. This latitude on the part of claimant's counsel probably indicated a desire on their part to allay the feelings of an aroused Indianapolis citizenry. In fact Walpole declared that these thirty days would be "days of sorrow to his client – days of mobs and riots & c." Commissioner Sullivan took the question of security for costs under advisement and perhaps feeling the heat of an outraged public, generously gave the parties nine weeks from June 27 to prepare for trial. This extended time was crucial to Freeman's defense as his counsel would have to travel extensively to find additional proofs of their client's freedom.[34]

Freeman's lawyers' attempt to get their client released on bail, however, while the case was continued, were unavailing. They offered a note payable by the state bank in sixty days in the amount of $1,600.00 as security against damages to the claimant, a bond in the amount of $4,000.00 signed by some of the most prominent citizens of Indianapolis to indemnify Ellington, and even offered to enter into a recognizance for any sum the claimant cared to make. This was very generous, they argued, when Freeman's worth as a slave (because of his age) could only be $600.00 to $800.00. John Ketcham claimed that every citizen of Indiana had the right to be admitted to bail, in any case not a capital offense. He told the court "it was necessary that Freeman be admitted to bail to accomplish the purpose for which the court granted a

[34] *Indiana Free Democrat*, June 30, 1853.

continuance. He must be taken to Georgia to be identified – to prove himself to be what the law of nature designed him – a free man." Thomas Walpole, counsel for Ellington, argued that the commissioner had no judicial authority, but only ministerial. Therefore, counsel for claimant objected that Freeman be released on bail, and they refused to accept the $1,600.00 note, the bond, or any recognizance from the defense. Commissioner Sullivan decided that he did not have the authority to release Freeman on bail. Marshal Robinson, fearing a rescue attempt, also threatened to move Freeman to the county jail in Madison. Rumors had circulated throughout the city that unless Ellington consented to accept a reasonable offer for Freeman, there would be a rescue attempt. Calvin Fletcher, president of the state bank, recorded in his diary on June 27 that he had gone to see Rawson Vaile, the editor of the *Indiana Free Democrat*, about raising money to tender the marshal against Freeman being taken away. Fletcher does not say if any amount was ever offered the marshal, but the journal entry is evidence of how Freeman's situation attracted the concern of important men in Indianapolis. The marshal decided to keep Freeman in Indianapolis, but ludicrously forced the prisoner to pay three dollars a day for a guard to keep him from being rescued. Robinson's callousness toward Freeman and servility toward Ellington the slave owner incurred the wrath of the press, who dubbed the marshal "Ellington's watch dog."[35]

Critical to proving Freeman's free status was the taking of depositions from those who knew him prior to his arrival in Indiana. For this purpose, John Ketcham traveled to Virginia and Georgia. Prior to leaving the state, Freeman's attorneys wrote letters to Monroe, Georgia to ascertain the veracity of their client's claims. Leroy Pattillo, the Postmaster of Monroe, Georgia, replied to Ketcham on July 6, 1853 and provided compelling evidence to support Freeman's claims:

[35] Ibid.; Corpuz, Riker & Thornbrough, *The Diary of Calvin Fletcher*, *1853-1856*, Vol. 5, 84-85.

> Dear Sir – Mr. William W. Nowell, the clerk of our county court, has just handed me your letter of the 22d June, with the request that I should answer it, as I was better acquainted with John Freeman, the person enquired about, than he was. I replied to a letter of Mr. John Coburn of your place yesterday, on the same subject. I have lived in this place ever since January, 1826, and was well acquainted with John Freeman from the time he came in here in 1831, till he left in 1844. I may be mistaken about the time he came – at any rate, it was in 1831 or 1832 – but I think it was 1831. He had free papers, which were recognized by the judges of the inferior court of this county, and a certificate was granted him. Col. John P. Lucas was clerk at that time, if I recollect. Colonel Lucas wrote a bolder and plainer hand than I do. He died of apoplexy or paralysis since then. John Freeman went with him to the Florida war in 1836. John Freeman is of medium size, well made, and a black negro. There are hundreds of persons in this county who could testify that he came to this place as early as 1831, or '32, and remained here all the while except his trip to Florida in the spring of 1836, and one or two other times when he was absent for a few days on business for Creed M. Jennings and others. Creed M. Jennings lives now in Wetumpka, Alabama. He made his home with Mr. Jennings for several years after he came to this place. His statements that you speak of are true, and there can be no doubt but that the claim set up by the man from Missouri is fraudulent and can be proved to be so by any reasonable number of our most respectable citizens.[36]

Ketcham's wife recollected that her husband was sun struck in Richmond, Virginia, but managed to push on to Georgia on horseback in the terrible heat of the summer. Ketcham reached Monroe, Georgia on July 13, 1853 and began interviewing former acquaintances of Freeman. He found everything in that community as Freeman had described it, and by conversing with the citizens of Monroe was able to substantiate his client's claim to freedom.

Ketcham learned that Freeman had come to Monroe, Georgia in 1831 as a free man. Freeman had lived in Monroe from 1831 until 1844, his only absence occurring in the spring of 1836 when he traveled with a volunteer company as a cook to Florida to participate in the Second Seminole War. Ketcham obtained the testimony of an officer in the volunteer company that they left Monroe in March, 1836 and were gone about two months. The slave owner Ellington maintained that Sam or Freeman had escaped from him in March 1836 from Greenup

[36] Charles H. Money, "The Fugitive Slave Law of 1850 in Indiana," *Indiana Magazine of History* 17, no. 2 (June 1921): 188.

County, Kentucky, an assertion that Ketcham had now proved to be false based on the officer's testimony. Barbour and Coburn also forwarded a daguerreotype of Freeman to Ketcham, which he showed to the citizens of Monroe. Freeman's former friends recognized the picture and pronounced it to be an excellent likeness. Ketcham interviewed Freeman's former guardian, Warren J. Hill, who pronounced all of the certificates in Freeman's possession to be genuine. The attorney's visit had been a complete success and he was especially grateful for the hospitality and cooperation shown to him by the citizens of Monroe, Georgia, who showed a genuine concern regarding Freeman's plight:

> I must here tender to those southern gentlemen whose acquaintance I made, and who expressed their interest in Freeman's behalf, my kind regards. And, especially, the citizens of Monroe, for the promptness with which they afforded me every facility to forward the object of my visit. And I am under special obligation to Hon. Warren J. Hill, who gave me the hospitality of his house, and who took a deep interest in Freeman's matters. Judge Hill is a whole-hearted southerner, highly esteemed by all his neighbors, and was nominated by the Democratic party for the State Senate, just before I got to Monroe.

Ketcham was even able to persuade several of Freeman's former friends to come to Indianapolis to testify on his behalf, including the Postmaster of Monroe, Leroy Pattillo.[37]

John Ketcham described Pattillo as a "man highly esteemed by all his town." Ketcham did not intimate to anyone that he was bringing Pattillo to Indianapolis to identify Freeman. After arriving back in Indianapolis on Thursday, July 21, Ketcham notified opposing counsel, Liston and Walpole, that he had brought someone from Monroe, Georgia to identify Freeman. Both counsels, Pattillo, and a number of other Indianapolis citizens, assembled at the jail to see Freeman, and Ketcham described the emotional scene:

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[37] Jane Merrill Ketcham Reminiscences; *Indiana Free Democrat*, July 28, 1853 (quotation from Ketcham); Leroy Pattillo was born October 4, 1797 in Georgia and died July 14, 1859 in Monroe, Walton County, GA. He appears in the 1850 Walton County, GA census as a merchant.

> After shaking hands with him [Freeman], I told him to look about and see if there were present any strangers whom he could name. He ran his eye deliberately over the company, and at last it rested on the Georgia gentleman. It was riveted for a moment, and then, with a bound, he seized him, exclaiming, "O, Massa Pattillo, is dis you?" The kind-hearted old gentleman was overcome, and he and Freeman mingled their tears together.

Thomas Walpole questioned Pattillo about himself and Freeman, and must have realized at this point that his client's accusations against Freeman were false. Pattillo's positive identification of Freeman proved Ellington to be at best, grossly mistaken, and at worst, a base liar.[38]

John Ketcham was not the only member of Freeman's counsel traveling to procure evidence. John Coburn traveled to Greenup County, Kentucky, and Samuel Merrill, Ketcham's father-in-law, traveled to Canada to obtain evidence. Both Merrill and Coburn were looking for the real Sam who had escaped from Ellington. Coburn was able to trace Sam to Salem, Ohio, where he learned the runaway went by the name of William McConnell. Coburn found men in Salem who knew William McConnell and his marks. Their description of him matched that of Sam given in the affidavits filed by Ellington and his witnesses. It was also learned that Sam or William McConnell, had fled to Fort Malden, near Amherstburg, Canada, just across the Detroit River from Michigan, upon passage of the Fugitive Slave Law of 1850. Mrs. Jane Ketcham remembered that her father, Samuel Merrill, had the honor of finding the real Sam in Canada, sitting in front of his cabin writing poetry. Coburn later prevailed upon Henry A. Mead, a relative of Ellington's, and James Nichols, both slaveholders and men of standing and wealth from Greenup County, Kentucky, to accompany him to Canada to identify the real Sam. Mead and Nichols were well acquainted with Sam, his history and identifying marks. Mead and Nichols both recognized Sam at his home in Canada and they met as old friends, conversing freely about Ellington and their former acquaintances. Both Mead and Nichols in their

[38] *Indiana Free Democrat*, July 28, 1853

depositions taken at Indianapolis stated that they were confident that the real Sam lived in Canada.[39]

While Freeman's attorneys were traveling, taking depositions and procuring valuable evidence, Ellington provided witnesses to support his claim. On July 25, Ellington brought to Indianapolis three witnesses to identify Freeman as his slave. The marshal was telegraphed by Jonathon Liston, who requested that he supervise an examination of Freeman's body. The witnesses had been unable to identify Freeman based on his general appearance, and now it was requested that they be able to see his whole body to look for marks or scars. Freeman's counsel protested against this indignity, but was rebuffed by Marshal Robinson, who ordered Freeman to strip his clothing in front of Ellington's witnesses. Robinson would not allow Freeman's counsel to be present unless they consented to the examination, which they refused to do. The *Indiana Free Democrat* reported sarcastically that Freeman's "back, legs, and other portions of his person were examined for marks by which to recognize him, and it is reported that the witnesses are *now* prepared to swear that Freeman is Ellington's slave." Marshal Robinson was severely condemned by the press for forcing Freeman to strip and allowing such an examination. The *Indiana Free Democrat* angrily censured Robinson for his conduct:

> Reader, what think you of such proceedings? Could you conceive that such an outrage could be committed under the direction of a civil officer, in the "high noon of the nineteenth century," and in a country boasting of its civilization, christianity, and refinement? Is there a citizen of Indianapolis – is there a citizen of the country, whose blood does not boil at the perpetration of such indignities? … But has the Marshal the least authority for such a disgraceful proceeding? Infamous as is the Fugitive Slave law, does it require any such duty of him? Does he not perform his whole duty under that law when he keeps securely the alleged fugitive? Does that law require him to shut out from his heart all sympathy for Freedom, and to offer every possible facility for kidnapping? Throughout this whole case, so far, the Marshal has seemed to regard himself as the special agent of the claimant, and has, apparently, taken great pleasure in furnishing him every possible facility to make out his case, and has thrown almost every

[39] Jane Merrill Ketcham Reminiscences; Money, "The Fugitive Slave Law of 1850 in Indiana," 189-90.

> conceivable obstacle in the way of the defense. Of such conduct let the public pronounce judgement.[40]

The *Madison Banner* also bitterly denounced the reviled marshal:

> This, we take it, is rather an extraordinary mode by which to establish the identity of a man. The body of a beast, that has never been shielded from the eye by artificial clothing, may very properly be identified by unnatural marks on any part of its body; but it will surely seem strange that so many men, who profess to have been well acquainted with Freeman of course, or they would not of all others have been chosen as witnesses by Ellington, should seek other marks of identification than the features and countenance. And what is as strange as the conduct of those men, is the fact that John L. Robinson, the marshal, a man who ought to have some little respect for his State, even if he has none for himself, would permit such proceedings as have never been heard of elsewhere than perhaps in the quarters of the detested men whose ostensible occupation is to buy and sell human flesh. Ellington and his men may have a motive – the former to satisfy thirst for gain and an effort to relieve himself of the odium that will attach to him if Freeman shall be proven to be a free man after the affidavit that he is his slave, and the latter it may be a bribe; but none can be seen for Robinson, unless it be a natural hate of justice or a penurious desire to obtain the *five dollars* that he will lose if Freeman is not returned to slavery.[41]

In his diatribe against the Compromise measures delivered in Congress, George W. Julian had asserted that the fugitive slave law might very well be enforced with "alacrity" in some portions of Indiana and in Robinson's case, he was prophetic.

The trial to decide Freeman's fate was set for August 29, 1853 by Commissioner Sullivan. As July gave way to August, the preponderance of the accumulated testimony overwhelmingly supported Freeman's claim to freedom. Leroy Pattillo, who had come all the way from Monroe, Georgia to testify for Freeman, had left Indianapolis and returned home. He wrote a letter from his home in Monroe to John Ketcham dated August 8, 1853, in which he reported "Some four or five of our most respectable citizens who have known John Freeman from the time he came to this place will go to Indianapolis and will probably reach there on Friday or Saturday before

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[40] *Indiana Free Democrat*, July 28, 1853.
[41] *Indiana Free Democrat*, August 4, 1853 (*Madison Banner* quotation).

John's trial. … There is a great deal of interest felt here for John." Not only were his friends from Monroe, Georgia coming to his aid, but his former guardian, Creed M. Jennings had also heard of Freeman's predicament. Jennings came from Wetumpka, Alabama (near Montgomery) to Indianapolis to meet and testify for Freeman. The *Indiana State Journal* described the heartwarming reunion between Jennings and Freeman:

> Freeman was not informed that Mr. Jennings was in the city or anything else in relation to the intended visit. The prisoner was shaking hands with the others when he observed the stranger; he rushed toward him, grasped his hand with emotion, fell on his knees, and exclaimed "God bless you Massa Jennings!" He then turned around and observed to the spectators that Massa Jennings knew he didn't lie, and that he was not a slave, or something to that effect. The spectators were strongly moved and we are informed that Mr. Jennings could not repress the tear of feeling and sympathy.[42]

John Ketcham anxiously wrote to his sister-in-law, Julia Merrill, in New Berlin, Pennsylvania on August 12, 1853: "I am on my way to Richmond Virginia to gather up more testimony in Freeman's case – with the truth on our side we shall yet have hard fighting." More optimistically, he later wrote Julia that "We can hardly fail of success." Not only had Freeman's attorneys proven that their client had been free since at least 1831, but they had been able to conclusively prove that Ellington's real slave, Sam, was now living in Canada. They had traveled extensively and taken the necessary depositions to secure their case, and they were confident of success. They had the preponderance of evidence on their side, as well as the support of public opinion.[43]

Throughout the summer of 1853, newspapers all over Indiana editorialized on the trial of John Freeman. The editors of some of the state's leading papers often made bitter, yet amusing, accusations toward each other, and argued vehemently over the merits of the case

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[42] *Indiana State Journal*, August 26, 1853.

[43] Pattillo to Ketcham, August 8, 1853, Ketcham to Merrill, August 12, 1853, August 22, 1853, John Lewis Ketcham Collection, Indiana Historical Society, Indianapolis.

and the Fugitive Slave Law. The *Indiana Sentinel*, the voice of the Indiana democracy, took a middle course regarding the trial. The editor of the *Sentinel*, William J. Brown, spent much of his time trying to vindicate himself over a misunderstanding that took place between him and Jonathon Liston, attorney for Pleasant Ellington. During the initial proceedings in the court of Judge Major, Liston alluded to a rumor that unless Ellington accepted a reasonable offer for Freeman, there would be a rescue attempt made by citizens of Indianapolis. One of Freeman's attorneys, Lucien Barbour, disputed the fact and demanded to know Liston's source. Liston reluctantly gave the name of William J. Brown, editor of the *Sentinel*, whereupon Barbour exclaimed that unless he could trace his information to some other person than Brown, he pronounced it untrue. This remark brought forth applause from an apparently anti-Democratic crowd of spectators that had gathered at the court.

Because his veracity had been questioned, Brown was compelled to vindicate himself. He was accused by the Whig *Indiana State Journal* and the *Madisonian*, a Southern-rights Democratic paper, of planning a rescue attempt. Actually, Brown was not guilty of inciting a rescue attempt, but was simply passing on to Liston the rumors that had been circulating on the street. Even the Democratic *Sentinel*, by no means sympathetic with free blacks in general or resistance to the fugitive slave law conceded:

> There were great, and honest doubts in the minds of this community, whether Freeman was a slave. He had resided here for ten or twelve years – by his industry he had accumulated property; he had married a wife, and was the father of many children. He claimed to be a free man. We desired that he might have time to establish that fact, if it was true. If he is a slave, we confess that we would prefer to see his owner receive a fair price for him, to taking him back to slavery.[44]

[44] *Indiana State Sentinel*, July 28, 1853.

Brown again expressed compassion for Freeman's dilemma by asserting that "None would desire to see this man dragged from his home, his wife, and his little ones, after his owner shall refuse a fair compensation for him. Brown also, however, declared that "We have an orderly people at Indianapolis – a law-abiding people. A vast majority desire to see the laws executed."[45] Brown was probably accurate in his assessment of public opinion regarding the enforcement of the fugitive slave law in Indiana; however, the Freeman case at least inspired doubts in many citizens about the efficacy of the law, and in others it became another example of Southern aggression on Northern rights. For many Hoosiers, the Freeman case provided their first exposure to the inner workings of the law and the gross injustice perpetrated on Freeman not only undermined the credibility of the Fugitive Slave Law, but also discredited the law's defenders, Indiana Democrats.

At the other end of the political spectrum were editors like William Culley of the *Madisonian*, who denounced William J. Brown of the *Sentinel* for his allegedly compromising attitude on the enforcement of the Fugitive Slave Law:

> We see him [Brown] acting *spokesman* – not Speaker – for a small body of abolitionists in the capital of Indiana, if not aiding and abetting in their designs to rescue an alleged fugitive from justice, unless his alleged master would consent to sell him for such a price as *they* might dictate! "I tell you," said this spokesman to the counsel for the plaintiff, "that your client *must* sell the negro, if proven to be his slave, for a fair price, or THERE WILL BE A RESCUE!!" Here there is not only a connivance with the abolitionists in their plans to rob the master of his property, and to throw a firebrand into the midst of a peaceable community, manifested, but there is a blow menaced against both the fugitive law of Congress and the law of Indiana against the admission and succor of blacks in this State.[46]

The *Madisonian* was a short-lived paper started by the Brights in the summer of 1851 after they had lost control over the *Madison Courier*, edited by Michael G. Garber. The paper expressed

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[45] Ibid; July 7, 1853.
[46] *Indiana State Sentinel*, July 21, 1853 (*Madisonian* quotation).

the sentiments of the proslavery Southern wing of the Indiana Democracy, and was typical of several papers along the state's southern tier of counties along the Ohio River. The *Madisonian* folded after the Democratic defeat in the 1854 state elections.

The *Indiana Free Democrat*, edited by Rawson Vaile, was the organ of the free soil wing of the Indiana democracy, and covered the Freeman trial more extensively than the other papers. Vaile was very critical of the manner in which the Fugitive Slave Law was being enforced. He condemned Commissioner Sullivan for not admitting Freeman to bail, and abused Marshal Robinson for his role in the examination of Freeman's stripped body. He called the case "a disgrace to the State." Even the renowned Presbyterian minister, the Reverend Henry Ward Beecher, formerly of Indianapolis but now a resident of New York, joined the chorus of protests. He wrote an article published in the *Indiana Free Democrat*, in which he castigated the Fugitive Slave Law. He exclaimed:

> This American people have laws within which men may violate every sentiment of humanity, smother every breath of Christianity, outrage the feelings of a whole community, crush an innocent and helpless family, reduce a citizen of universal respect and proved integrity to the level of a brute, carry him to the shambles, sell him forever away from his church, his children, and wife; all this may be done without violating the laws of the land – nay, *by* the laws, and under the direction of a magistrate![47]

Beecher of course had a personal interest in the case because Freeman's wife, Letitia, had formerly been a family servant and of course the Beechers were well-known for their abolitionism. Beecher's sister, Harriett Beecher Stowe, was the author of *Uncle Tom's Cabin,* a book that was widely circulated in Indiana. [48]

Pleasant Ellington, no doubt feeling the case slipping away from him, had one more ruse in his bag of tricks. Shortly before the trial, Ellington, who had returned home while the

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[47] *Indiana Free Democrat*, August 4, 1853.
[48] Ibid., August 11, 1853 (Vaile quotation).

case was pending, returned to Indianapolis with his son, hoping that he could identify Freeman. Ellington's son visited Freeman in jail, representing himself as coming from Georgia and being well-acquainted with him there. However, Freeman offered no recollection of the man. Ellington's son tried to convince Freeman that they had known each other in Georgia, but Freeman was insistent that they had never met. Therefore, young Ellington was unable to testify that Freeman was his father's slave. Unable to use his son's testimony, or refute the impressive amount of evidence contradicting his claim, Pleasant Ellington on the advice of his counsel decided to abandon his attempt at reclamation the weekend before the trial. Freeman was released from jail on Saturday, August 27, 1853, ending the difficult three-month ordeal. Ellington, hoping to avoid any claims for damages, slipped out of town on foot by night to a station south of Indianapolis on the Madison and Indianapolis Railroad, and took the cars back to Missouri. The trial set for August 29 never occurred, Commissioner Sullivan having dismissed the case. It was an anticlimactic ending to a remarkable case. The people of Indianapolis, and indeed the whole state, rejoiced at the outcome of the case.[49]

In the immediate aftermath of the case, resolutions were made, public meetings were held, and newspapers offered their appraisal of the summer's events. On Monday afternoon, August 29, the day that had been set for the trial, a public meeting was held at Masonic Hall in Indianapolis to consider the recent extraordinary events. George W. Julian, hoping to use the event to increase antislavery sentiment, spoke at length on the dangers of the Fugitive Slave Law. Julian cheerfully recollected:

> On the day of the trial Ellington became the fugitive, while Freeman was preparing his papers for a prosecution for false imprisonment. The large crowd in attendance was quite naturally turned into an antislavery meeting, which was made to do good service in the way of 'agitation.' The men from Georgia were on the platform, and while they

[49] Ibid., September 1, 1853; Money, "The Fugitive Slave Law of 1850 in Indiana," 192.

> were complimented by the speakers on their love of justice and humanity in coming to the rescue of Freeman, no quarter was given to the Northern serviles and flunkeys who had made haste to serve the perjured villains who had undertaken to kidnap a citizen of the State under the forms of an atrocious law. The meeting was very enthusiastic, and the tables completely turned on the slave-catching faction.[50]

Freeman's supporters turned the Masonic Hall gathering into an antislavery meeting and the crowd, composed of free soilers, "Hunker Whigs and Democrats" adopted the following resolution: "That as the act of Congress, commonly called the Fugitive Slave Law, has here, and in many other parts of the country, been the occasion of great injustice, wrong and suffering; and as these things will be likely to continue, as necessary fruits, so long as it remains upon the statute-book, and especially as it requires and justifies wrong, in many of its provisions, it ought to be immediately repealed."[51] What's so revealing about the resolution is that it was apparently approved of by Whigs and Democrats who had previously preached obedience to the law.

The *Indiana State Journal* optimistically predicted that the cooperation between Northerners and Southerners occasioned by the Freeman case augured well for the future of the Union:

> The five Southern gentlemen who came here to testify on behalf of JOHN FREEMAN, left yesterday, highly delighted with their visit, and all they noticed among us. Two of them, being anxious to know more of our State, directed the *Journal* to be sent to them for one year. Whenever there shall be more intercourse between North and South, there will be less talk about a dissolution of the Union. One railroad connecting North and South will do more to bind the Union together than all the resolutions that could be adopted in a day.[52]

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[50] George W. Julian, *Political Recollections, 1840 – 1872* (Charleston, SC: BiblioBazaar, 2008), 92-93.
[51] *National Era,* September 15, 1853 (Letter from Samuel W. Ritchey).
[52] *Indiana State Journal*, August 31, 1853.

That same evening at the Masonic Hall, the black citizens of Indianapolis held a meeting and adopted several resolutions. The resolutions condemned Ellington and Marshal Robinson, and advocated the repeal of the Fugitive Slave Law. They expressed gratitude to Ketcham, Coburn, and Barbour for their tireless efforts on behalf of Freeman, and thanked Freeman's Southern friends who had come to his aid. They also expressed joy "at the great change in the public sentiment of this State in the past two years, anxiously hoping that our friends may go on in their efforts until every law which militates against us may find no place in the statute books of Indiana."[53] The meeting's resolves illustrate that a change in public sentiment was occurring in Indiana, even if it was yet politically impotent. The Freeman case certainly contributed to the growing feeling against the perceived aggressions of the Slave Power and reinforced Hoosiers' dislike of the Fugitive Slave Law.

Freeman's discharge from the custody of Marshal Robinson certainly didn't stop the steady stream of editorial comment on the case. Most editors offered sympathy for Freeman and disdain for the Fugitive Slave Law, or at least the manner in which the law was executed. The obvious injustice done to Freeman was apparent to the majority of Hoosiers. Even the *Fort Wayne Sentinel*, one of the leading Democratic papers of the state, offered this analysis:

> Freeman the colored man, who has been claimed as a slave by a Methodist preacher from St. Louis, named Ellington, has been released, having so clearly and incontestably proved that he was not the man sought, that the reverend slave catcher was compelled to give up his victim. Freeman's counsel are going to commence a suit against Ellington – damages laid at $10,000. A more flagrant case of injustice we have never seen and he is richly entitled to most exemplary damages.
>
> It appears to us, that if in such cases the persons swearing to the identity of the accused, and seeking to consign a free man to slavery, were tried and punished for perjury, a wholesome lesson would be given, which might prevent much injustice to free persons of color.

[53] *Indiana Free Democrat*, September 1, 1853.

> The fugitive slave law evidently needs some amendment to give greater protection to free persons of color. As it now stands almost any of them might be dragged into slavery. If Freeman had not had money and friends he must inevitably have been taken off into bondage.
>
> Any poor man, without friends, would at once have been given up and taken away, and it was only by the most strenuous exertions that he was rescued. A law under which such injustice can be perpetrated, and which holds out such inducements to perjury, is imperfect, and must be either amended or repealed. The American people have an innate sense of justice, which will not long allow such a law to disgrace our Statute books.[54]

The *Indiana State Sentinel*, whose editor William J. Brown had expressed the hope that Freeman, if proved to be a slave, could at least be purchased in order to save him from bondage, refused to criticize the Fugitive Slave Law. Brown perplexingly credited the law with saving Freeman from being kidnapped by deducing that "had the fugitive slave law not been passed, Ellington could have seized Freeman and carried him out of the state, and sold him as a slave, without any process of law whatever." The fact that Freeman's case had been given process by law and investigated was proof to the editor that the rights of the accused were secure.[55] Brown ignored the fact that the Fugitive Slave Law did not allow any judicial process for the accused, nor contemplate an investigation of the facts of the case. Only through the beneficence of Commissioner Sullivan, who was probably influenced by the high state of feeling in the city, were Freeman's attorneys given the opportunity to gather evidence and defend their client. The *Brookville Democrat* disgustedly reported that Freeman, "over whom so much fuss has been made by the free-soilers, has been released from confinement in the jail of Marion County. We hope his friends will now be satisfied that he is at liberty, and cease the eternal cry of persecution of the colored race. Ellington, the claimant, could not prove the identity, and the claim was abandoned." The editor of course neglected to tell his readers that Ellington had

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[54] *Indiana State Journal*, September 8, 1853 (*Fort Wayne Sentinel* quotation).
[55] *Indiana State Sentinel*, September 8, 1853.

repeatedly falsely sworn and with the connivance of the United States Marshal, nearly succeeded in carrying into bondage a free man.

Newspapers around the state rejoiced that Freeman had been set free, but also expressed outrage that Freeman had been forced to remain in jail while the case was continued. Editors also unleashed their resentment of Ellington, and poured contempt on Marshal Robinson, who was declared by one paper to be an "obsequious doughface."[56] The Free Democrats of Rush County, where Robinson lived, accused the marshal of "prostituting his high and respectable office to the detestable crime of kidnapping" and requested President Pierce to remove Robinson from the office of Marshal of the State of Indiana.[57] Although Ketcham, Coburn, and Barbour volunteered their legal services, the costs of procuring evidence and other court fees nearly bankrupted Freeman. The falsely accused man's financial losses did not go unnoticed by the press, and editors complained viciously about the merits of a law that could force such hardship upon an innocent man. Freeman later sued Ellington and Marshal Robinson for damages, but received no remuneration for his losses. He was awarded damages in the amount of $2,000 from Ellington, a sum which was never paid, and Freeman's suit against Robinson was ultimately dismissed by the Indiana Supreme Court because of a lack of jurisdiction (Freeman's suit was commenced in Marion County, while Robinson was a resident of Rush County).

The case of John Freeman was by far the most important fugitive slave trial in Indiana. There are several extraordinary aspects of the case which give it a remarkable significance in Indiana political history. Freeman had lived in Indianapolis nearly a decade, had started a family, formed friendships, and had gained the confidence of the whole community. His

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[56] Ibid., September 22, 1853 (*Brookville American* quotation).
[57] *National Era,* October 6, 1853.

situation was unique in this period of Indiana history for most Hoosiers were deeply prejudiced and this feeling was reflected in the laws of the state. Most African-Americans had not attained the level of respect and influence that had been conferred on John Freeman. Freeman was well-acquainted with many of the state's most prominent families – the Ketchams, the Merrills, the Fletchers, the Beechers, and others. These important personalities came to his aid and saved him from being remanded to slavery. Not only had Freeman gained a level of respect not usually afforded to Indianapolis blacks in the antebellum period, but he also had many friends in the South. It would seem very unlikely that Southern slaveholders would travel many miles to testify for an accused fugitive. However, Leroy Pattillo journeyed 1,740 miles, leaving a sick family at home, to help his former friend. Creed M. Jennings, Freeman's former guardian, came all the way from Elmore County, Alabama to help Freeman, a testament to the intimate relationship they had previously shared. Finally, the cooperation of Henry Mead and James Nichols, slaveholders from Greenup County, Kentucky, was critical to Freeman's defense. It is primarily due to them that Ellington's real slave Sam was identified in Canada. The tireless efforts of Freeman's attorneys, the influence of prominent Indianapolis residents, and Freeman's Southern friends all gave the alleged fugitive a much better chance of maintaining his freedom, despite the unjust workings of the law. Without these crucial influences, it is likely that a free man would have been remanded to slavery. Neither should we discount the importance of public feeling during the case, which likely influenced Commissioner William Sullivan to continue the case until both legal parties could procure the evidence needed to support their claims – he showed a disposition to get to the truth, instead of simply taking Ellington's affidavits at face value and summarily sending Freeman to Missouri.

In addition to the unique circumstances surrounding the Freeman trial, the case had a very significant impact on Indiana's antebellum political scene. Significantly, the Freeman trial revived a seemingly decaying antislavery movement in the state and began the process of eroding Hoosiers' acceptance of the Compromise measures as a final adjustment of the slavery dilemma. Less than a year later, the Kansas-Nebraska Act would cause a realignment of political loyalties in the state and inaugurate a new era of party strife. According to George W. Julian, the arbitrary enforcement of the Fugitive Slave Law of 1850 aroused people who had previously been unmoved by the slavery question.[58] The *Brookville American*, a Whig paper, admitted that the "Fugitive Slave case in Indianapolis has largely increased the anti-slavery feeling in Indiana."[59] After discussing the indignities perpetrated on Freeman, the *New Castle Democratic Banner* stated that "such occurrences as these must necessarily add much strength to the organization of the free soil party. They are strong weapons and will not be suffered to rust in their hands. The advocates of the 'finality' of the fugitive slave law will lose much ground in consequence of the proceedings in the Freeman case."[60]

Attorney Oliver H. Smith, who had previously served as a Whig in the United States House of Representatives and Senate, in his *Early Indiana Trials and Sketches*, published in 1858, was the first Indiana historian to interpret the significance of the Freeman affair. After summarizing the case, Smith, who had on several occasions represented slaveholders in fugitive slave hearings, professed that "This case presents much for reflection; it shows the great caution that should be observed on the part of slave-holders in pursuit of fugitives, in making affidavits, and the vast importance of the commissioner issuing the writ, giving full time to the parties after the arrest to get the proof of identity before a certificate is obtained. While it is right and

[58] Julian, *Political Recollections*, 100.
[59] *Indiana Free Democrat*, September 22, 1853 (*Brookville American* quotation).
[60] Ibid., August 11, 1853 (*New Castle Banner* quotation).

proper, that the Constitution and laws should be enforced in such cases, it is highly important that every safeguard should be thrown around the free man of color."[61] Another Indiana historian proclaimed that the Freeman case

> aligned people against it who were formerly for it. It brought home to the people as nothing could, or ever had done before, the fact that innocent people were likely to be drawn again into the shackles of slavery, an institution which they had come to hate and which they thought wrong anywhere and especially contrary to democracy. Not only was one part or one section of the state brought to realize the wickedness and injustice of the law, but from every part of the state newspapers commented on the case and scored the law.[62]

Jacob Piatt Dunn unequivocally declares that the Freeman case "was a large factor in the carrying of the State by the People's Party in 1854."[63] Hoosiers had never been enthusiastic about the slave-catching business, but Freeman's persecution at the hands of the slave catchers made the enterprise even more repulsive to the state's citizens. A brief notice in the *National Era,* an antislavery paper, declared during the course of the Freeman proceedings that "The press in Indiana do not favor negro catching. The editor of the Rising Sun *Republican* is in favor of every man catching his own negro. He thinks that the business is 'too low for a decent man to stoop to.'"[64] The importance of the Freeman ordeal is that it demonstrated very clearly how the fugitive slave law could be perverted by unsavory slave hunters in order to drag free men into bondage. The law failed to provide the necessary safeguards for the protection of free African-Americans. One Indiana historian thought the case merited discussion "from the fact that it displayed upon the part of certain public officers an overzealous effort to rob a man of his

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[61] Oliver H. Smith, *Early Indiana Trials and Sketches* (Cincinnati: Moore, Wilstach, Keys & Company, 1858), 279.
[62] Money, "The Fugitive Slave Law of 1850 in Indiana," 197-198.
[63] Dunn, *Indiana and Indianans: A History of Aboriginal and Territorial Indiana and the Century of Statehood*, Vol. 1 (Chicago & New York: The American Historical Society, 1919), 508.
[64] *National Era*, August 11, 1853.

freedom."[65] This of course was a reference to Marshal Robinson, his associates, and their fervor to serve the slaveholder. Also, cases such as these increased antislavery feeling and reinforced Hoosiers' growing conviction that the Slave Power was determined to nationalize slavery and subvert the liberty of Northern freemen, thus sowing the seed for the growth of a new political party.

[65] Max R. Hyman, ed., *Hyman's Handbook of Indianapolis* (Indianapolis: M.R. Hyman Company, 1897), 74.

CHAPTER FOUR
BENJAMIN WATERHOUSE AND ANTI-NEBRASKA

The 1852 national and local elections had seemingly revealed the utter futility of the Whig Party, the apparent impotence of the Free Soil movement, and the unity and dominance of the Democratic organization. The elections were generally interpreted as a mandate for "finality," or a faithful adherence to the 1850 Compromise measures, and a desire on the part of most Americans for an end to antislavery "agitation." However, at the Free Soil Convention in Indianapolis on May 25, 1853, George W. Julian, the Indiana Free Soil Party standard bearer and antislavery devotee, encouraged the party faithful by reviewing the achievements and progress of the antislavery movement, not only nationally, but in Indiana. Regarding the Whigs and the Democrats as the bulwarks of slavery, he rejoiced at the demise of the Whigs and predicted the subsequent ruin of the Democratic Party. "We should rejoice in the hopeless prostration of one of these parties, and the morbid growth and dropsical condition of the other." Julian also credited the Fugitive Slave Law as a contributing factor in the renewing of antislavery zeal and in the progress of the movement: "And our Fugitive Slave Act itself, with all its villainy, not only has the credit of giving birth to 'Uncle Tom,' but of extending and vitalizing a great system of subterranean railroads, all the lines of which are now striking larger dividends than at any time since the formation of the government."[1] The agents of Julian's "subterranean railroad" were

[1] George W. Julian, *Speeches on Political Questions, 1850-1868* (Westport, CT: Negro Universities Press, 1970), 85, 101. Julian's work was originally published in 1872. His remarks are from a speech given in Indianapolis on May 25, 1853 titled "The State of Political Parties."

particularly active in Indiana's northeastern corner, a region known for its strong antislavery fervor.

When the notorious Article Thirteen of Indiana's 1851 Constitution was approved in a separate referendum by the voters, only four counties had voted against excluding Negroes from entering the state. Three of these counties, Elkhart, LaGrange and Steuben, are located in this northeastern area of the state, along the Indiana-Michigan border. Many of the early pioneers in this section of the state had emigrated from New England and the Mid-Atlantic States, and they brought with them their evangelical religion and powerful antislavery convictions. These early pioneers included the Waterhouse family, who came from New York and settled in the counties of northeast Indiana and southeast Michigan. Benjamin Baldwin Waterhouse, a War of 1812 veteran, was born in Connecticut, and raised in Otsego, New York. He brought his family to Milford Township of LaGrange County in the mid-1830s, purchased a large tract of land and became a prosperous farmer. Waterhouse, whose antislavery zeal was perhaps only exceeded by his Methodism, would in the early 1850s, along with a small coterie of Orland, Indiana abolitionists, become the focus of another fugitive slave case that would agitate the public mind and help shake Hoosiers' confidence in the "finality" of the slavery question.[2]

Before the dust had settled in the John Freeman fugitive slave case in Indianapolis, another Indiana fugitive episode was taking shape that would result in the state's first prosecution under the Seventh Section, the portion of the bill dealing with the punishment of those who obstructed the execution of the Fugitive Slave Law of 1850. At the heart of what would eventually come to be known as the Waterhouse case were Hoosiers' activities on the

[2] Waterhouse appears in the 1850 LaGrange County, IN census, living in the town of "Millford," occupation a farmer with real estate valued at $3,010. He was a native of Connecticut, with wife Hariet and children, Chauncy G.R., Emma and Artemisa. Donald F. Carmony, *The Indiana Constitutional Convention of 1850-1851* (Indianapolis: IBJ Book Publication in association with the Indiana Supreme Court, 2009), 94-95.

legendary and mysterious (some historians would say mythical) Underground Railroad. Ohio State University professor Wilbur H. Siebert published the first authoritative history of the Underground Railroad in 1898 and identified three major lines in Indiana - an eastern, middle, and western route. The eastern route, by far the most active since it traversed through the region of the state heavily populated by Quakers, began at Cincinnati, Ohio, crossed the state line at Richmond, and extended north through Winchester, Portland, Decatur, Fort Wayne, Auburn and into Michigan, the line generally running parallel with the Indiana-Ohio border. Marvin B. Butler, who was a "conductor" (transported fugitives from one station to the next) on this line and whose mother, Mary Butler, was a "station-master" (harbored and concealed fugitives in her home) wrote an account of Underground Railroad activities in Northeast Indiana in *My Story of the Civil War and the Underground Railroad*, published in 1914. Butler's description of the eastern route is the same as Siebert's, except that he identified the stations north of Fort Wayne as Kendallville, Salem Station (the Butler farm), Orland, Coldwater, Michigan, and Battle Creek, Michigan. From Battle Creek, there were two main lines used to get the fugitives into Canada. One line traveled northeast through Lansing, Flint, and from there directly east, crossing the St. Clair River at Port Huron and into Sarnai, Canada. The other route, more commonly used, led directly east through Jackson, Ann Arbor, across the Detroit River and into Windsor, Canada. Butler, who served as a lieutenant in the 44th Indiana Infantry during the Civil War, was a correspondent of Siebert while the professor was preparing his book and provided first-hand testimony of Underground Railroad operations in the northeast corner of Indiana. Butler recalled a "Mr. Waterhouse, one of the 'operators' living on the 'Old Plank Road' some twelve miles north of Kendallville" and asserted that the Butler farm was "substituted for

the Waterhouse station" after Waterhouse had been arrested for violating the Fugitive Slave Law in the fall of 1854.[3]

The "Mr. Waterhouse" recalled by Marvin B. Butler was of course, Benjamin Baldwin Waterhouse, sometimes simply called "Baldwin" or referred to as "B.B. Waterhouse." Waterhouse's farm, situated in the southeast part of LaGrange County near the Brushy Prairie settlement in Milford Township, served as a station on the Underground Railroad and was located about 12 miles directly north of Kendallville, in Noble County (today, just southwest of the intersection of CR E 400 S and SR 3). Several Whitford families in the Kendallville area harbored fugitives and conducted them to stations further north. Augustus H. Whitford, a native of New York, settled southeast of Kendallville, in Allen Township, purchased a government tract in 1838 and harbored, concealed, and assisted fugitives on their trek to freedom. Whitford's brother, Stutley Whitford, who had become rich panning for gold in California, returned to Indiana and built an extravagant mansion a few miles north of Kendallville and used his home, which still exists today, as a station on the Underground Railroad. Augustus Whitford's farm was about fifteen miles southeast of Benjamin

[3] Wilbur H. Siebert, *The Underground Railroad: From Slavery to Freedom* (Mineola, NY: Dover Publications, 2006), 137-138; Marvin B. Butler, *My Story of the Civil War and the Underground Railroad* (Huntington, IN: United Brethren Publishing, 1914), 182. Butler was born February 13, 1834 in Grand Isle County, VT, the son of Daniel and Mary (Prentice) Butler. The Butlers emigrated from Vermont to Salem Township, Steuben County, IN in the late 1830s, where shortly afterwards, the father, Daniel, died. The widow, Mary Butler, with the help of her children, ran the farm and began using it as an Underground Railroad station in the early to mid-1850s. Marvin B. Butler died June 17, 1914 and is buried at the Block Cemetery in Salem Center, Steuben County, IN. His manuscript was published posthumously. A letter is in the Siebert Collection at the Ohio Historical Society from M.B. Butler to Wilbur H. Siebert dated February 7, 1896 from Salem Center, IN (Steuben County) which gives particulars of Butler's involvement with the Underground Railroad. The letter also names Butler's brother, Henry P., and cousin, Seymour S. Butler, as Underground Railroad conductors.

Waterhouse's home in LaGrange County, while his brother Stutely's magnificent residence was about half way in between.[4]

The next Underground Railroad station north of the Waterhouse residence was about twenty miles northeast in Orland, Mill Grove Township, in the northwestern corner of Steuben County and less than two miles from the Indiana-Michigan border. The distances between the stations roughly correspond to M.B. Butler's statement that "The stations in our state were, if convenient, placed from ten to fifteen miles apart, so that when the roads were good, thirty miles could be driven in one night, if bad, the conductor would stop at a by-station."[5] Orland, known in pioneer days as the "Vermont settlement," because most of the early settlers had immigrated to the area from Vermont, was located thirteen miles northwest of Angola, the Steuben County seat, and home to many abolitionists and Underground Railroad agents. The antislavery fervor of these transplanted New Englanders made Orland and Mill Grove Township a center of Whig and Free Soil strength. Indeed, after the Republican Party absorbed most of the Whigs and free soilers in 1854, Steuben County gave heavy Republican majorities in subsequent elections. The influence of New England and antislavery is also illustrated by the vote which Steuben County tallied on the question of Negro exclusion in 1851, when the Hoosiers in this county overwhelmingly rejected this discriminatory legislation by a 592-257 count. Orland also became an educational center of some importance. The Orland Academy, later renamed the Northeastern Indiana Literary Institute, was founded under the auspices of the Baptist church in 1850 and offered students in northeast Indiana an advanced curriculum

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[4] Augustus Hall Whitford appears in the 1850 Noble County, IN census, listed as A.H. Whitford, age 46, born NY, farmer, married with several children, and living in Allen Twp. Hall came to Noble County from Wayne County, OH and purchased a 240-acre government tract on August 20, 1838. He sold his farm in Noble County and headed for Nebraska in 1856, dying en route on July 17, 1856. He was buried at the Jameson Cemetery in Cass County, IA. *History of Cass County, Iowa* (Springfield, IL: Continental Historical Company, 1884), 801.

[5] Butler, *My Story of the Civil War and the Underground Railroad*, 183.

beyond that which was available in the common schools of the period. From the earliest days of settlement, the early pioneers began to organize churches and by 1840, Baptists, Methodists, and Presbyterians had all formed congregations. The antislavery ardor exhibited by these Hoosiers was motivated largely by their understanding of and commitment to biblical precepts. The town of Orland and Mill Grove Township, then, became a progressive agricultural community wherein religion, education, and antislavery were intertwined. Not surprisingly, Orland also became an important stop along Indiana's Underground Railroad.[6]

On August 11, 1853, two slaves, Tom and Jim, belonging to Lexington, Kentucky attorney Daniel McCarty Payne and a slave named Alfred, belonging to Martin W. Roberts of Trimble County, Kentucky, absconded from a Kentucky farm just below Madison, Indiana, where they had been hired out to a man named Likens. The three slaves were all in their early 20's and may have been brothers. Payne immediately came to Indiana in search of his slaves, traveling through Madison, Napoleon (Ripley County), Clarksburg (Decatur County), and finally to Richmond, where he lost all trace of them. Tom, Jim, and Alfred made it safely to Windsor, Canada, just across the Detroit River, with the assistance of Underground Railroad agents. Undeterred, Daniel Payne continued the search for his slaves and in the fall of 1853 traveled to Detroit, Michigan, where he learned that they were staying in Windsor, Canada. The slave owner then devised several plans by which he hoped to decoy the slaves back across the Detroit River so that he could arrest them and take them back to Kentucky. The *Indiana Free Democrat* gleefully reported Payne's futile attempt, however, to recapture his slaves:

> He [Payne] accordingly set to work to accomplish this purpose, by endeavoring to entice some of them over under pretense of giving them free papers; but failing in this, he offered ten dollars to any man who would get one of the fugitives to step on board the ferry boat; but finally he bought a bottle of whiskey, supposing that if he could get one

[6]*History of Steuben County, Indiana* (Chicago: Inter-State Publishing Co., 1885), 314-38, 455-56, 495-506.

> of them drunk he might be induced to accompany him; but just as he was in the act of offering the bottle to one of them, he was seized by a number of the fugitives, stripped, and a hundred lashes applied to his bare back, by one of the slave-whips brought from a southern plantation. The blows were applied by a former slave of Payne's, whose mother had been brutally flogged by him. Served him right.[7]

After the thrashing at the hands of his former slaves, Payne finally gave up the slave hunting business. Embarrassed by his ignominious defeat, he pretended to be too ill with "rheumatism" to return to Kentucky for a number of days.[8]

Unfortunately for the fugitives, Dr. Madison Marsh, the United States Deputy Marshal , was also a resident of Orland, Indiana. Marsh was one of the early pioneers of Mill Grove Township and a preeminent physician of the state. A loyal Democrat, Marsh served several terms in the state legislature in the 1840s, representing the counties of Steuben, DeKalb and Noble in the House of Representatives and the Senate. Like most Hoosier Democrats, Marsh was loath to see the issue of slavery threaten national unity and believed in a rigid enforcement of the Fugitive Slave Law. As the Benjamin Waterhouse case would illustrate, Marsh was willing to go to extraordinary lengths to enforce the law and punish those who disregarded it. Caroline Newton, an Orland abolitionist, recalled in a letter to Siebert, the Underground Railroad historian, that "The United States deputy marshal resided in Orland, obliging people there to be extremely careful how they conducted their business."[9] After the escape of Daniel Payne's slaves in the summer of 1853, Dr. Marsh began to gather evidence against several abolitionists in an attempt to prosecute them for violating the Fugitive Slave Law. His fact-finding efforts

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[7] *Indiana Free Democrat*, December 8, 1853 (story originally published in the *Michigan Free Democrat*).
[8] Laura S. Haviland, *A Woman's Life Work: Labors and Experiences of Laura S. Haviland* (Chicago: C.V. Waite & Company Publishers, 1887), 209-10. Haviland was an abolitionist teaching at a school for freedmen in Windsor at the time of the Daniel Payne's beating and gives a detailed account of the story. According to Haviland, the three escaped slaves were brothers, though this alleged fact isn't mentioned in any of the official documents of the Waterhouse trial or any other source.
[9] Caroline Newton to Wilbur H. Siebert, July 13, 1896. Newton's letter is in the Siebert Collection at the Ohio Historical Society in Columbus, OH.

resulted in several indictments and arrest warrants for Benjamin B. Waterhouse of LaGrange County, and Samuel Barry, Sullivan U. Clark, and Denison Fox of Orland, Steuben County, Indiana. These abolitionists were charged with violating the Seventh Section of the Fugitive Slave Act of 1850. The Seventh Section of the 1850 Act declared that any person who "knowingly and willingly" obstructed, hindered, or prevented a claimant from arresting a fugitive, or aided and abetted, harbored or concealed a fugitive "so as to prevent the discovery and arrest of such person" would potentially be subject to a fine of $1,000 and imprisonment of up to six months. An injured claimant or slaveholder could also sue anyone who had hindered the execution of the law for civil damages in the amount of $1,000 for each slave lost. Deputy Marshal Madison Marsh, irritated at the flagrant disregard for the law by his neighbors in Orland and in LaGrange County, endeavored to punish these abolitionists to the full extent of the law.

Barry, Clark, Fox and Waterhouse were all indicted at the November term of the District Court of the United States for the District of Indiana and the court issued warrants for their arrest on December 13, 1853. Deputy Marshal Marsh served the warrants on Barry, Clark, and Fox the first week of January, 1854, just as Stephen A. Douglas was introducing his controversial Nebraska bill to the Senate. Barry and Clark were held to a $500.00 bond for their appearance in Indianapolis at the May term of the district court; Fox was also ordered to appear at the same time, but for reasons unknown wasn't required to post bail. Barry, Clark, and Fox were residents of Orland, Steuben County and were all prominent, enterprising citizens of the township and well-known abolitionists. Barry was born in New York about 1787, but had emigrated to Indiana from Vermont in the 1830s. He was one of the earliest settlers of Mill Grove Township and one of its leading and progressive citizens. He opened the first store in Orland in 1836 and was "a devoted friend of churches and schools." He was an active supporter of the Baptist Church and

one of the "fathers" of the Orland Academy, later the Northeastern Literary Academy. According to a Steuben County history, Barry was "ten to twenty-five years ahead of most people" and took advanced ground on the slavery issue. Sullivan U. Clark was born July 11, 1813 in Windham County, Vermont and came to Indiana in the spring of 1836. A devout Methodist, he built the first hotel in Orland, ran a tailor's shop and manufactured carriages and wagons. Clark had also recently served as a justice of the peace in Mill Grove Township. Denison Fox was born on October 13, 1807 in Massachusetts and was an Orland shoemaker. He was one of a large family of Foxes that had settled in Mill Grove Township by 1840, and several of the Foxes allegedly assisted fugitives via the Underground Railroad. Deputy Marsh served the arrest warrant on Benjamin Waterhouse on March 4, 1854, and he too was required to post a $500 bond for his appearance before the district court at its May term to answer the indictment brought against him.[10]

Robert Clark Stewart, a Fremont, Indiana (Steuben County) blacksmith, wrote to the *Anti-Slavery Bugle* describing the neighboring community's reaction to the arrests of the abolitionists:

> Perhaps a word or two would not be out of place in regard to the antislavery sentiment that exists in the northeastern part of Indiana. Some of the laws of our State would disgrace the regions of darkness. But there are many true and noble hearted friends of the slave here. Those who bid defiance to the law of 1850. They will feed the hungry, clothe the naked, and give aid and comfort to the fugitive flying to a land of liberty. Yet in our midst we have those that will stoop to the lowest depths of degradation, and are guilty of acts that would make the devil himself recoil. I speak especially of an individual whose name is Madison Moss [Marsh], of Orland, Steuben Co., who actually solicited

[10] *Steuben Republican*, September 4 and September 11, 1878. Clark died in Orland, August 29, 1878 and is buried at Mill Grove Cemetery in Orland. Samuel Barry died in 1855 in Illinois. Denison Fox died December 27,1863 and is buried at Mill Grove Cemetery in Orland. *History of Steuben County, Indiana*, 495-506; United States Census Records also give personal information on Clark, Barry, and Fox - see 1850, 1860, and 1870 Steuben County, IN records; Records of the United States District Court, Southern District of Indiana, Indianapolis Division, General Records (1819-1958), Mixed Case Files (1838-1913), National Archives, Chicago, IL.

> the office of United States Deputy Marshal, for the purpose of feasting his fiendish appetite upon the liberty and property of one of the noblest and best citizens of Orland. He has been the means of causing to be arrested, Barry and Clark and Fox, who are held to appear before the United States District next, to answer for doing what God says all shall do, feed the hungry and clothe the naked. The inhabitants hereabouts are exasperated to the highest pitch, against the miscreant. Such conduct cannot be tolerated in a land professing so much liberty.[11]

Stewart's assertion that Madison Marsh solicited the position of United States Deputy Marshal in order to prosecute the town's abolitionists is intriguing, but there is no other evidence to suggest this. A later history of the region, however, gives a possible explanation for Dr. Marsh's vindictiveness, explaining that the Orland abolitionists often paraded slaves in front of Dr. Marsh's residence in order to irritate him. This assertion contradicts Caroline Newton, quoted earlier, who claimed that the Orland abolitionists had to be very secretive on account of Dr. Marsh's presence in the community. In his letter to the *Bugle*, Robert Stewart mentions the anticipated arrival of Stephen and Abby (Kelly) Foster, the fanatical lecturers of the American Anti-Slavery Society, who were then on a speaking tour in the region. Mrs. Caroline Newton recalled that the arrest of the Orland abolitionists "raised a storm of indignation in the community, mass meetings were held, able speakers gave their time and talent to raise money to help … . The deputy marshal was burned in effigy."[12] Even as the debate over and subsequent passage of the Kansas-Nebraska Act took center stage in the growing sectional divide over slavery, the Fugitive Slave Act continued to agitate the public mind. At a meeting in Cadiz in Henry County, a Free-Soil stronghold, Hoosiers unanimously adopted a resolution that read "That as men and Christians, we not only look upon the Fugitive Slave Law as unconstitutional, but its requirements in direct opposition to the positive claims of the Bible; its

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[11] *Anti-Slavery Bugle*, April 15, 1854. The article is titled "An Indiana Kidnapper," and is a letter from R.C. Stewart of Fremont, Steuben County, IN.

[12] Caroline Newton's letter to Wilbur H. Siebert, July 13, 1896, Siebert Collection, Ohio Historical Society, Columbus, OH.

atrocity is apparent in the fact that it offers a bribe to violate the *golden rule*, and other requirements of the Savior."[13] On January 7, 1854, the Free Democratic League of Monroe County, in the south-central portion of the state, adopted a resolution declaring "the Fugitive Slave Law of 1850 unconstitutional, unwise and of no use to the South, but particularly odious to the North, for offering a bribe to the Court, setting aside the writ of *habeas corpus*, and taxing us to recover the property of the slaveholder, with which he tells us we have nothing to do."[14]

Samuel Barry, Sullivan Clark, Dennison Fox and Benjamin Waterhouse appeared May 25, 1854 before Judge Elisha Mills Huntington, who presided over the United States District Court for the District of Indiana, held at Indianapolis. Judge Huntington was widely known among the Indiana bar and described as "courteous, dignified, urbane," and "universally respected". He had earlier been appointed by President William Henry Harrison as Commissioner of the General Land Office, served as a state representative, and circuit prosecutor and judge in the Terre Haute district. President John Tyler appointed him United States District Judge for the District of Indiana in 1841 to fill the vacancy left by the death of Judge Jesse Lynch Holman. Huntington was a conservative Whig who would later join the Democrats after the death of the Whig Party. In 1860, he would represent Indiana as a delegate to the Democratic National Convention in Charleston and support Stephen A. Douglas for president. At his death in 1862, the Democratic *Indianapolis Sentinel* declared that "No one surpassed him in devotion to the Constitution and the Union. He eschewed sectionalism. His idea of loyalty was devotion to the Constitution, and an honest and unreserved fulfillment of all the obligations it required."[15] The *Sentinel's* eulogy really explains Huntington's transition from the Whigs to the Democrats. He undoubtedly would

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[13] *Indiana Free Democrat*, January 12, 1854. The meeting at Cadiz, Henry County, occurred on December 31, 1853.
[14] Ibid., January 26, 1854.
[15] *Indianapolis Sentinel*, October 30, 1862 (Huntington's obituary).

have viewed the developing People's Party, later the Republicans, as a sectional party that threatened the dissolution of the Union, and he would have favored a rigid enforcement of the Fugitive Slave Law, however odious the act might be. The return of fugitives was a constitutional obligation owed to the South by the free states - national unity should not be threatened by any sentimental or philanthropic feeling for African-Americans. During the New Albany fugitive slave proceedings shortly after passage of the Fugitive Slave Law of 1850, Huntington had lectured a jury on the necessity of strictly enforcing the law and fulfilling constitutional obligations.

United States Attorney Benjamin Morris Thomas of Vincennes, a 44-year old Philadelphia native, prosecuted this first case in Indiana under Seventh Section of the Fugitive Slave Act of 1850. Thomas had come to Indiana about 1835, opening a law practice in Williamsport, the county seat of Warren County, near the Indiana-Illinois border. Within a few years he moved to Vincennes, where he was subsequently appointed by President Franklin Pierce as the District Attorney for Indiana. He was opposed by the abolitionists' defense team of George W. Julian, Godlove S. Orth and Edward H. Brackett. Orth was born April 22, 1817 in Lebanon, Pennsylvania and practiced law in Lafayette, Indiana. He had served in the state senate and was a Whig presidential elector in 1848. He later joined the Know-Nothings and finally the Republicans, serving as a Republican congressman from Indiana during the Civil War and afterwards. Edward H. Brackett, a New York native, was Orth's legal partner in Lafayette and was known as an "exhaustive" lawyer according to one Tippecanoe County history, perhaps because of his meticulous preparation and thoroughgoing elucidation of the points of a case. The abolitionists' counsel was as good a team as could have been assembled. Julian of course

took a special interest in fugitive cases, and Orth would become one of Indiana's leading statesmen in the Civil War era.[16]

While the grand jury's indictments charged the abolitionists with harboring, concealing, and aiding and abetting fugitives' escape on specific dates, they were otherwise vague and uncertain in the details. The names of the alleged fugitives and their owners were unknown. Nor could it be shown that any of the owners were or had been in active pursuit of the fugitives. The defense seized upon the weakness of the prosecution's evidence and moved that the Court quash all the indictments because the state from which the fugitives fled was unnamed, neither the names of the claimants nor the fugitives were given, and because the Seventh Section of the Fugitive Slave Act of 1850 required that the aiding, abetting, assisting, harboring or concealing had to be done "so as to prevent the discovery and arrest of such person [fugitive]." If it could not be proven that the owners were indeed actively searching for the fugitives, then the defendants' alleged actions could not be construed to have prevented the discovery and arrest of the fugitives, or so Julian and company insisted. After the defense entered the motion to quash the indictments, "an animated debate ensued" with "Brackett and Julian defending the motion with marked ability." This bizarre prosecution in which so little seemed to be known about the alleged offenses received editorial comment from the *Indiana Free Democrat*, which perplexingly explained: "These cases are very peculiar. There is perfect vagueness and uncertainty throughout. Almost everything is 'to the Grand Jurors unknown.' No slave hunter

[16] Benjamin Thomas Morris resigned his position as District Attorney of Indiana in 1855 and relocated to Chicago, where he joined a law partnership. He died October 31, 1864 in Vincennes, IN and is buried at Calvary Catholic Cemetery in Chicago, Cook County, IL. Personal information on Thomas, Julian, Orth, and Brackett can of course be found in the United States Census Records for the years 1850-1900. *Biographical Record and Portrait Album of Tippecanoe County, Indiana* (Chicago: Lewis Publishing Company, 1888), 241. Edward H. Brackett relocated to Chicago after the Waterhouse trial and opened a practice. He died there on March 29, 1883 and is buried at Greenbush Cemetery in Lafayette, Tippecanoe County, IN. Godlove S. Orth died December 16, 1882 in Lafayette, and is buried at Greenbush Cemetery in Lafayette, Tippecanoe County, IN.

followed the supposed fugitives on to our soil. The whole business is of northern parentage, and furnishes another proof of the corrupting power of slavery over our people."[17] Judge Huntington agreed with the defense that the indictments were too vague, that there simply wasn't enough evidence to sustain the charges; he therefore quashed the indictments and all charges against Barry, Clark, Fox and Waterhouse were dismissed. Judge Huntington did not issue his decision in writing, nor did he address the primary argument of the defense, that the presence of the owner on free soil, in active pursuit of the absconding slave, was necessary to constitute him a claimant within the meaning of the Fugitive Slave Act. This point, argued so vehemently by the defense, was left open for a future decision. This first prosecution under the Seventh Section of the Fugitive Act of 1850 in Indiana, then, resulted in a victory for the abolitionists and ended somewhat anticlimactically.[18]

The *Indiana Free Democrat* scornfully remarked that "The cheerfulness and alacrity displayed by Marshal Robinson in endeavoring to secure the conviction of these men, justly entitle him to the appellation, which has been bestowed upon him, of the 'Ellington watch-dog.'"[19] This was of course a reference to Robinson's seemingly unremitting efforts on behalf of the Missouri slaveholder Pleasant Ellington, who falsely accused John Freeman of being his escaped slave. Indiana editors with free-soil proclivities sharply criticized Robinson, who again became an object of scorn and ridicule. The former congressman and recently appointed United States marshal displayed an indefatigable energy on behalf of Southern slaveholders in the recapture of their runaway slaves. Marshal Robinson's deeds and intemperate remarks in the

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[17] *Indiana Free Democrat*, May 25, 1854.
[18] Ibid., June 8, 1854; *Liberator*, June 9, 1854. A letter written May 27, 1854 by "M.T.E." about the case and about the political situation in Indiana is published in this issue.
[19] *Indiana Free Democrat*, June 8, 1854.

spring and summer of 1854 amply supplied the political opposition with election campaign fodder.

While Samuel Barry, Sullivan Clark and Dennison Fox, the Orland abolitionists, were never again charged with violating the Fugitive Slave Law, immediately after Judge Huntington's dismissal of the charges, District Attorney Thomas, Marshal Robinson, and Deputy Marshal Marsh began to gather additional evidence to again charge Benjamin B. Waterhouse with violating the act. Within a week after the original indictments were quashed, another grand jury had been empanelled and a new, more detailed, indictment, with several counts, was issued charging Waterhouse again of violating the Seventh Section of the Fugitive Slave Act of 1850. The substance of the various counts in the indictment was that Waterhouse had harbored and concealed the fugitive slaves of Mortimer [Martin] W. Roberts (Alfred) and Daniel M. Payne (Tom and Jim), thereby preventing their discovery and arrest. It seems that Thomas, Robinson, and Marsh were determined to make an example of Waterhouse, and at least get one conviction out of the affair. The extraordinary lengths that the United States authorities in Indiana would ultimately be willing to go to enforce the act lends support to Elizabeth Varon's contention that "The Fugitive Slave Act of 1850 legitimized and lent immediacy to an argument that abolitionists had long been making – that Northerners were complicit in the slave system. Northern outrage at the law, in turn, legitimized a long-standing argument of the South's proslavery vanguard – that Northerners could not be trusted to keep their promises."[20] Robinson and Marsh were determined to prove that Northerners could be trusted to enforce the act faithfully and fulfill its constitutional obligations. One Hoosier, after describing the

[20] Elizabeth R. Varon, *Disunion! The Coming of the American Civil War, 1789-1859* (Chapel Hill: University of North Carolina Press, 2008), 235.

successful defense of the abolitionists in the May 25 hearing, cynically remarked to the *Liberator*:

> But the patriotism of the Old Line Democratic Robinsonians [John L. Robinson] was not to be dampened thus, and whilst I am writing, a new Grand Jury has been empanelled - new indictments are being prepared, and a Deputy Marshal has been dispatched to the Southern Empire to search out the lost masters of her slaves; with slaves, color, age and sex unknown … Of the *smelling* qualities of this *master*-hunter [referring to Marshal John L. Robinson], I cannot speak, not having the honor of his acquaintance; but have no doubt, remembering somewhat indistinctly the case of a certain Ellington, and John Freeman, that deserved success will crown his noble efforts in the cause of the slavocracy, and that ultimately he will *scent* out the master or masters, mistress or mistresses, who for months have suffered the loss of ten valuable slaves thus quietly, and without a murmur.[21]

During the summer of 1854, while Indiana was a stir with political excitement over passage of the Kansas-Nebraska Act, Deputy Marshal Madison Marsh traveled hundreds of miles to summon witnesses and procure additional testimony against Benjamin Waterhouse.

Marsh and Robinson both later defended their conduct in Waterhouse's subsequent trial in the fall of 1854, explaining their efforts to find the evidence requested by the district attorney. When questioned by Waterhouse's counsel regarding their unusual zeal in summoning witnesses and gathering evidence, Robinson retorted that he merely "executed the process deemed important by the United States Attorney, and appointed Marsh my Deputy; this is all, giving up all the business entirely to him. I furnished the $50; don't understand the law to enjoin on me to go out of the state; consider it my duty to ferret out offenses, and it is a common practice to furnish facilities for doing so." Robinson and Marsh secured the reluctant cooperation of two key witnesses, Wellington Payne, the son of Daniel McCarty Payne, who had lost his slaves Tom and Jim, and ironically Cyrus Fillmore, a prosperous LaGrange County farmer and the brother of ex-president Millard Fillmore, who had signed the Fugitive Slave Act of 1850

[21] *Liberator*, June 9, 1854. See letter from "M.T.E." written May 27, 1854 from Indianapolis.

into law. Daniel Payne of course had made a determined effort to recapture Tom and Jim, traveling from Lexington, Kentucky to Windsor, Canada, where he was roundly abused by his ex-slaves, courtesy of a plantation whip. After this abortive attempt, the elder Payne had no interest in pursuing the matter further. However, Wellington Payne, son of Daniel Payne, reluctantly agreed to go to Canada to identify his father's slaves. Fillmore had witnessed Benjamin Waterhouse traveling with the fugitives in Orland in the late summer of 1853. According to Wellington Payne, "Dr. Marsh, the Deputy Marshal, summoned me – Mr. Robinson, the Marshal, got me to go to Canada and take Fillmore with me – Robinson told me my expenses would be fixed." Cyrus Fillmore, described as a modest, unassuming man, was unenthusiastic about collaborating with United States authorities in the prosecution of Waterhouse. He did not want to go to Canada, but finally consented after Marshal Robinson urged him to do so. According to Deputy Marshal Marsh, "Fillmore and Payne had not firmness enough to go [to Canada]. I told them I believed the men were guilty, and was very willing to go and bring them to justice. I went to the Marshal and he gave me $50. I went into Kentucky with process, and afterwards into Michigan after Canright as a witness." Hiram Canright, a resident of Kinderhook in Branch County, Michigan, was another important prosecution witness. [22]

Near the end of June, 1854, Wellington Payne and Cyrus Fillmore traveled to Windsor, Canada to find Alfred, Tom and Jim. They had no intention of trying to bring the fugitives back, but only wanted to positively identify the fugitives and obtain information about the role Benjamin Waterhouse had played in their escape. According to Payne, he and Fillmore found Tom in the Windsor barracks, sick in bed. Upon seeing his former owner, Tom exclaimed, "How do you do, massa?" Payne described the short visit: "told him [Tom] I called to see him, but not

[22] *Indiana Free Democrat*, December 14, 1854. The transcript of the trial was provided by Julian & Brackett, counsel for defense. It was originally published in the *Indiana State Journal*, December 13, 1854, and then copied in the December 14 issue of the *Indiana Free Democrat*.

to take him back – he made no reply – only stayed five or ten minutes as I feared the negroes who were gathering outside."[23] The dilapidated Windsor barracks, erected during a previous war, had become a refuge for destitute fugitives from the states. Cyrus Fillmore described the barracks as "very filthy" and "not well lighted", and according to the *National Era* there was much suffering and poverty among the fugitives living in the barracks.[24] Observations such as these reinforced the conviction among Southern propagandists that blacks fared much worse in freedom than under the master's paternalistic care. The district court, acting upon the new indictment drawn up at the end of May and the district attorney's newly acquired evidence, issued another arrest warrant for Benjamin Waterhouse on July 5, 1854. Deputy Marshal Marsh served the warrant on October 18, just after the momentous 1854 election, wherein Waterhouse was held to a $500.00 bond for his appearance before Judge Huntington at the November term of the district court.[25]

The hearing against Waterhouse commenced on Wednesday, November 29, 1854 and the final arguments were given on Saturday, December 2. District Attorney Thomas was assisted by Richard Wigginton Thompson, who had formerly served in the Indiana General Assembly and in the national Congress. Thompson, a Virginia-born Terre Haute resident, had been an ardent Whig, and subsequent Know-Nothing. He was a conservative and like many Hoosier Democrats, believed in a faithful execution of the Fugitive Slave Law, whatever the law's imperfections might be. Thompson, though no slavery apologist, was devoted to the Union and believed abolitionism to be synonymous with disunionism. In a reminiscence of the 1856 presidential election in Indiana, George W. Julian remarked that Thompson, "then the professed

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[23] Ibid.
[24] Ibid.; *National Era*, August 7, 1851.
[25] *United States* v. *Benjamin B. Waterhouse* case file, Records of the United States District Court, Southern District of Indiana, Indianapolis Division, General Records (1819-1958), Mixed Case Files (1838-1913), National Archives, Chicago, IL.

champion of Fillmore, but in reality the stipendary of the Democrats, traversed that region [Southern Indiana] on the stump," and "denounced the Republicans as 'Abolitionists,' 'disunionists,' and 'incendiaries.'"[26] Thompson supported the Constitutional Union ticket in the 1860 presidential election, and only later during the Civil War did he finally transfer his political allegiance to the Republicans. Julian and Brackett, as they had earlier in the year, defended Waterhouse in this second hearing. There were a total of nine witnesses in the trial, including Marshal Robinson, Deputy Marshal Marsh, Wellington Payne, Cyrus Fillmore, Hiram Canright, Andrew Lunstrum, John Waterhouse (nephew of defendant), Chauncey Waterhouse (son of defendant), and a Mr. Roberts.[27] Lunstrum was an Orland blacksmith and why he was summoned is a mystery since he testified that he knew absolutely nothing about the case. All of the others summoned were material witnesses whose testimony was likely to influence the outcome of the trial. The *Indiana State Journal* offered the most detailed account of the hearing against Waterhouse, providing its readers with a partial transcript of the judicial proceedings. The prosecution was able to produce compelling evidence that Benjamin Waterhouse had indeed assisted the escape of three slaves, transporting the fugitives from his home in LaGrange

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[26] George W. Julian, *Political Recollections, 1840-1872* (Charleston, SC: BiblioBazaar, 2008), 105.

[27] John Waterhouse, nephew of Benjamin Baldwin Waterhouse, was the son of John and Polly (Hugunin) Waterhouse, born 1810 and died April 9, 1887 in Branch County, MI. He appears in the 1850, 1860, 1870, and 1880 Branch County, MI census records, living in Kinderhook, born New York, and a farmer. Asa Waterhouse was the son of John and Polly (Hugunin) Waterhouse, brother of John Waterhouse, nephew of Benjamin Baldwin Waterhouse, born in Oswego County, NY, March 24, 1823 and died in Coldwater, Branch County, MI, August 24, 1885. Asa appears in the 1850 Branch County, MI census, as a farmer, living in Kinderhook. In the 1860, 1870, and 1880 Branch County, MI census records, Asa Waterhouse is living in Coldwater. Chauncey Waterhouse, son of the defendant, Benjamin B. Waterhouse, was born March 1827 in New York and died 1917 in Noble County, IN. He is buried at Lake View Cemetery, Kendallville, Noble County, IN. He was a prosperous Noble County farmer, living near Kendallville and appears in the 1850 LaGrange County, IN census living with his parents. He is also in the 1870, 1880, 1900, and 1910, Wayne Township, Kendallville, Noble County, IN census records. The Mr. Roberts who testified at the trial was likely Daniel Hibbard Roberts, born November 16, 1819 in New York and died January 10, 1906 in Steuben County, IN. He was a dry goods merchant in Orland and is buried at Jackson Prairie Cemetery, Orland, Steuben County, IN. Andrew Lundstrum was an Orland blacksmith, born in Sweden about 1800 and died in 1880 He is buried in an unmarked grave at Mill Grove Cemetery in Orland and appears in the 1860, 1870, and 1880 Steuben County, IN census records.

County to Kinderhook, Branch County, Michigan. The fugitives were then escorted further north, to the next Underground Railroad station, by Asa Waterhouse, Benjamin Waterhouse's nephew. The absconding slaves were later proven to be Alfred, Tom, and Jim – Alfred belonging to Martin W. Roberts of Trimble County, Kentucky and Tom and Jim belonging to Daniel McCarty Payne of Lexington, Kentucky.[28] All the fugitives safely reached Windsor, Canada West (as it was known then), just across from Detroit, Michigan. The cities of Windsor and Detroit were separated only by the Detroit River, a narrow strait connecting Lake St. Clair and Lake Erie and two and half miles at its widest point.

Cyrus Fillmore offered damning testimony against Waterhouse. According to Fillmore, in the latter part of August 1853, he "was standing on the steps of a public house in Orland, and some colored folks with defendant drove up in a two horse buggy, one of the negroes driving – asked defendant if he was on the underground railroad; he said yes, and that he had three fine fellows, and enquired for Capt. Barry, I told him of Clark, who was also an abolitionist, and he finally drove up there." Fillmore understood the Underground Railroad "to mean a concern got up to run away fugitives." Fillmore's reference to "Capt. Barry" and "Clark" were of course Captain Samuel Barry and Sullivan U. Clark, both abolitionists who were acquitted of violating the Seventh Section of the Fugitive Slave Act of 1850 earlier in the year. Fillmore was confident that one of the Negroes he saw with Waterhouse in Orland was the "Tom" that he and Payne had visited in Windsor, Canada, though he couldn't positively say for sure. What is so intriguing

[28] Martin W. Roberts is referred to as "Mortimer W. Roberts" in the *United States* v. *Benjamin B. Waterhouse* case file at the National Archives in Chicago. Roberts apparently never made an effort to reclaim his slave Alfred – he didn't participate in the Waterhouse trial. He appears in the 1850 Trimble County, KY census, age 30, born Kentucky, son of John and Elizabeth R. Roberts, a farmer, and real estate worth $36,500. In 1860, Roberts is again in Trimble County, age 40, born in Kentucky, living with his parents John and Elizabeth Roberts, a farmer, real estate worth an astonishing $86,800 and personal property worth $6,100. In 1880, Roberts is living in Shepherdsville, Bullitt County, KY, age 60, born in Kentucky, a physician, living with servants Mary and Grant Green. He died September 9, 1890 of a morphine overdose in Louisville, KY and is buried at Cave Hill Cemetery.

about Fillmore's testimony is that Waterhouse allegedly made no attempt to hide the fact that he was running off fugitives, nor did he apparently make any serious effort to conceal his human cargo from the watchful eyes of the United States Deputy Marshal, Madison Marsh, who lived in Orland. Waterhouse's incaution seems to contradict Caroline Newton's assertion that the Orland abolitionists had to be very careful because of Dr. Marsh's presence in their community. Either Waterhouse was so brash as to be unconcerned about the consequences of being caught, or perhaps because of his Christian faith he refused to lie and was uncomfortable in conducting his business clandestinely.[29]

Hiram Canright, a native of New York and farmer living in Kinderhook, ten miles from the Indiana-Michigan state line in Branch County, Michigan, testified that he saw Waterhouse bring three slaves to the house of John Waterhouse, Benjamin's brother, where they then were taken by Asa Waterhouse to another place. Canright stated that in a later conversation, Waterhouse declared that he "did not consider the Fugitive law a law, and that he had but little property to spend, but he was willing to spend it in defiance of the law; said he would run off all the slaves he could." Waterhouse's own nephew, John Waterhouse, testified that he also saw the defendant with the fugitives at his father's home in Kinderhook. A Mr. Roberts, likely the Orland dry goods merchant Daniel Hibbard Roberts, corroborated Fillmore's testimony about seeing Waterhouse in Orland with the fugitives.[30]

The jury was confronted with contradictory testimony from Deputy Marshal Madison Marsh and Benjamin Waterhouse's son, Chauncey Waterhouse. Marsh asserted that when he arrested Waterhouse in October, the defendant "said he never took any negroes off but those he took through Orland; his son Chancey [Chauncey] in his presence, said the name of one was

[29] *Indiana Free Democrat*, December 14, 1854.
[30] Ibid.

Tom, and the three belonged to Mr. Payne of Ky. Def. did not say whether this was so, but said he would tell me all about it, but I stopped him and told him I did not want to be a witness against him." Marsh claimed that Chauncey Waterhouse stated that the fugitives "belonged to the man who got whipped in Canada" and that Waterhouse stated that "he would swear false before he would do anything to punish a man for violating the fugitive law." Chauncey Waterhouse swore that Marsh's testimony was false, and denied "that I ever said I would perjure myself sooner than have any man punished under the fugitive law." Despite such denials, the preponderance of evidence seemed to prove Benjamin Waterhouse's guilt in aiding and assisting the escape of Martin W. Robert's and Daniel M. Payne's slaves, Alfred, Tom and Jim.[31]

Throughout the trial, the opposing counsel engaged in spirited and animated debate, and "the cause was conducted with unusual zeal and ability on both sides." The trial consumed a total of about nine hours over several days. According to the *Indiana State Journal,* Richard W. Thompson "spoke over three hours, much the larger portion of his speech being a regular old-fashioned diatribe on 'the Union,' having nothing whatever to do with the facts of the case." Julian and Brackett challenged the sufficiency of the indictment because it did not aver that the escape of the fugitives was without the license and against the will of the owners, nor did the indictment show that the owners were in actual pursuit of the alleged fugitives. They also contended that it was necessary for Payne to produce an authentic bill of sale in order to prove ownership under the rule requiring the best evidence. Finally, they objected to the use of Tom's testimony, not only because it was hearsay, but because according to the Fugitive Slave Act, Negro testimony was inadmissible; also, in Indiana, Negro testimony was inadmissible in any case involving a white person. Judge Huntington ruled against each of these objections. The

[31] Ibid.

Court decided that the use of the word "escape" in the indictment was sufficient to show that the slaves had left against the will of their owners. Also, even if it could not be shown that the owner had been in pursuit of the slave, the mere act of harboring made the party liable under the Seventh Section of the Act, just as it did under the Fourth section of the Act of 1793. Huntington also maintained that parole evidence (the testimony of Wellington Payne) was sufficient to prove ownership, and that a slave in Kentucky, when found in Indiana, "where the law presumes every man free, is nevertheless *prima facie* a slave, and it lies upon the party denying it to controvert that presumption." The *Journal* remarkably asserted that in his charge to the jury, Judge Huntington

> told the jury, in a somewhat deprecatory tone, that if they should find the defendant guilty, there was a discretion in the court to make the imprisonment moderate, and in the county jail, instead of the penitentiary of the State! The Judge also thought proper to express his regret that the counsel for the defendant should have indulged in any severity of language towards the Marshal and his Deputy, whom he kindly took under his judicial wing, in a way to indicate that his succor was needed, and that some of the shot of defendant's counsel had taken the desired effect.[32]

As so often occurred with well-publicized fugitive trials such as *United States* v. *Benjamin B. Waterhouse*, the partisan press offered different versions of the same event. Richard W. Thompson, who assisted the prosecution, would later vehemently deny a portion of the *Journal's* account through the editorial columns of the *Cincinnati Gazette*. Judge Huntington would also later feel compelled to offer an explanation for his rulings throughout the trial.

The jury retired on Saturday evening, December 2, and returned with a verdict on Tuesday, December 5, 1854. It found Benjamin B. Waterhouse guilty on the third count of the indictment. In this count, the grand jury had charged that Waterhouse did "knowingly, willingly and unlawfully harbor and conceal two male persons of color being slaves, the one known by

[32] Ibid.

the name of Tom and the other known by the name of Jim, the former being about twenty three years of age, and the latter about twenty years of age, and both being then and there fugitives from service and labor from Kentucky." The third count of the indictment also specified that the slaves belonged to Daniel M. Payne. Waterhouse wasn't convicted of harboring or concealing Alfred, the slave of Martin W. Roberts of Trimble County, Kentucky, because of insufficient evidence. Roberts did not participate in the trial, apparently making no effort to reclaim Alfred. While the jury did convict Waterhouse, they seemed to be at some pains to do so. The jurors addressed a startling note to the court stating "that the evidence in said case amounts to a bare conviction under the law; that this is not an aggravated case, therefore We recommend the Defendant to the favorable consideration of the Court." Recognizing Waterhouse's probable guilt, the jury convicted him of violating the Fugitive Slave Law but was none too enthusiastic about punishing the aged defendant. On being asked if he had anything to say as to why sentence should not be pronounced, Waterhouse said nothing. Judge Huntington, "in consideration of the age of the defendant, and the peculiar circumstances of the case, " assessed Waterhouse a fifty dollar fine and ordered that he be confined in the custody of the marshal for the space of one hour. Benjamin Waterhouse had evidently resigned himself to his fate and perhaps thought it pointless to make any statement before sentencing. He might very well have used the opportunity to rail against the fugitive slave law, or his perceived injustice of the case, but he chose to be a silent martyr for the abolitionist cause. His quiet demeanor must have impressed favorably upon the court and perhaps accounted for his almost nominal punishment. According to Thompson, Judge Huntington stated “that as Mr. Waterhouse was an old and respectable man, and seemed to be acting from conscientious motives, he was inclined to be as lenient as he could be consistently with his duty.”[33] Huntington could have fined

[33] *Cincinnati Gazette*, January 9,1855. See also *United States* v*. Benjamin B. Waterhouse* case file.

Waterhouse as much as $1,000 and sent him to the state penitentiary for six months, so his sentence was incredibly lenient. According to the Seventh Section of the Act of 1850, Waterhouse was also liable to a civil action in the amount of $1,000 for each slave lost, but there is no record of Daniel M. Payne filing a suit against Waterhouse.

The Waterhouse case elicited comment from newspapers throughout the North. Articles on the trial appeared in the *Boston Telegraph*, William Lloyd Garrison's *Liberator*, the *Anti-Slavery Bugle*, published in New Lisbon, Columbiana County, Ohio, the *Cincinnati Gazette*, the *Cleveland Leader*, the *National Era*, published in Washington D.C., and even in the *Provincial Freeman*, a sheet published and edited by blacks in Toronto, Canada West (Ontario). New England abolitionist Samuel J. May published a compendium of fugitive slave cases and incidents in 1861 titled *The Fugitive Slave Law and Its Victims* and included the Waterhouse affair. In Indiana, the *Indiana Free Democrat,* the abolitionist *Fort Wayne Standard*, and the free soil *Indiana State Journal* provided the most extensive coverage of the case. *The Indiana State Sentinel*, the leading Democratic organ of the state, was conspicuously silent, except for the editor's publication of a card from Judge Huntington rebutting a portion of the *Journal's* account of the case and explaining the court's rulings on several important legal questions. Fugitive slave cases were covered routinely in the Northern press and became valuable propaganda in the hands of the abolitionists. As Larry Gara has pointed out, "Fugitive Slave Law incidents and the uses abolitionists made of them contributed immensely to the growing antislavery sentiment in the North."[34] The controversial Waterhouse case with its share of peculiarities not only attracted national attention, but also contributed to the growing antislavery movement in Indiana. Because the beleaguered Waterhouse was given such a light sentence, the case was

[34] Larry Gara, *The Liberty Line: The Legend of the Underground Railroad* (Lexington: University of Kentucky Press, 1996), 127.

heralded as an antislavery victory. The *Indiana Free Democrat* boasted that "the public will very likely regard the proceeding as a virtual triumph of the defendant, and that the act of 1850 is so odious in its features that even when men are convicted of its violation, there is a controlling indisposition on the part of the people of Indiana to enforce its penalties. Certainly the case gives little 'aid and comfort' to those who think the rigid enforcement of the law necessary to 'save the Union.'"[35] One Centerville resident wrote that the result of the case was "considered by every body as a thorough judicial farce. So far as it has any bearing, it will be taken as an utter discomfiture of the 'hunters of men' upon the soil of Indiana – as a triumph of, and encouragement to, the underground railroad."[36] Commenting about a report on the Underground Railroad which appeared in the *Cleveland Plain Dealer,* the *Fort Wayne Standard* sardonically remarked that "We reckon the South will get tired of inquiring for its stockholders [Underground Railroad operatives] here at the North soon if their inquiries continue to end as they have in the case of Waterhouse, Booth and Ryecraft."[37] Sherman Booth and John Ryecraft had recently participated in the rescue of the fugitive Joshua Glover in Milwaukee, Wisconsin, and following a series of legal suits, the Wisconsin Supreme Court had declared the Fugitive Slave Law of 1850 to be unconstitutional.

Northern editors castigated Marshal Robinson and Deputy Marshal Marsh for their dogged efforts in securing Waterhouse's conviction. In fact, this was the most maddening aspect of the entire incident for abolitionists – Northerners had perpetrated the outrage rather than Southern slave hunters. The *Cincinnati Gazette* contemptuously asserted: "It is, we believe, a new feature in our criminal jurisprudence, for the Government to pay the owner of lost property for his time and expense in hunting it up, and also to furnish men at the public

[35] *Indiana Free Democrat,* December 14, 1854.
[36] *Fort Wayne Standard*, January 4, 1855.
[37] Ibid., February 15, 1855.

expense to aid him in the search."[38] While antislavery enthusiasts were relieved over Waterhouse's token punishment from the district court and could appreciate the propaganda value of the case, they were also alarmed at Northerners' seeming obeisance to Southern dictates. Rawson Vaile, the fiery editor of the *Indiana Free Democrat,* earnestly challenged his readers:

> Now, reader, what do you think of your Marshals ransacking the whole country to look up evidence at your expense to convert men into chattels? We say, at your expense, for who supposes these men paid these expenses out of their own funds. It comes from the National Treasury, and you have to foot the bill. … And will we continue to place such men in power, men who make it their business to hunt up the human chattels, the soul chattels of the Nabobs of the South? Men who will even go to the slaveholder and urge him to claim his fugitive property, who, but for his interference, would not trouble themselves about it. Think of this, reader, ponder the relation which you stand to these cases.[39]

Writing in the same vein, another outraged Hoosier declared that the most damning fact was

> No slaveholder, no southern man have we to blame for the outrage. To show their devotion and "alacrity" in the service of the slave power, and to fill their pockets with money in return for such services have these Government officials instituted and carried through this prosecution, costing the United States many thousands of dollars, and resulting only in a barren triumph, which has already perished in their grasp.
>
> The truth is, we must begin a reformation here at the North – in Indiana – before we can, with a good grace, condemn the peculiar institution of the south, for we chiefly sustain it, and its spirit exists and bears rule among us. More specifically does this appear to be the case in our own State.
>
> The mortifying and alarming baseness of northern servility has made a rapid growth in Indiana. Slaveholders make their hunting tours into the State, seize whom they please, drag off their game, shut it up in jail, advertise and then escape is impossible.[40]

The Republican *Cleveland Leader* exclaimed:

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[38] *Cincinnati Gazette*, December 15, 1854.
[39] *Indiana Free Democrat*, December 21, 1854.
[40] *Fort Wayne Standard*, January 4, 1855.

> What a case! Government officials pressing slave owners and hirelings to hunt down a freeman and failing, continuing to hunt up evidence to effect that object; a court using all its influence to perfect the outrage. Not only is Indiana traversed to get the testimony needed, but Canada! and worse yet, the men engaged in it, even Cyrus Fillmore, were paid for their expense and trouble. It is intolerable that such a case should occur in any Free State, and shows how much is to be done ere we can have a manly and fearless North.[41]

The *Gazette* severely censured Cyrus Fillmore, the chief witness for the prosecution, for his role in the affair:

> Mr. Cyrus Fillmore must have a very low estimate of the duty which he, as the brother to the ex-president of the United States, owes to the public or private character of our chief magistrates, when he, for the paltry pittance of "three dollars, and expenses paid," would consent to become a mere slave-hunter. There is not a gentleman in the whole South, if asked to do it, but would indignantly scorn the connection. … In our life's experience we have known many mean Northern dough-faces; but, all things considered, they were brave and honorable compared men in comparison to the Indiana Fillmore.[42]

Robinson, Marsh and Fillmore, however, were staunchly defended by Richard W. Thompson, who submitted his own version of the Waterhouse trial, disputing several of the *Journal's* assertions about the controversial proceedings. Regarding the marshal and deputy marshal, Thompson declared that they had "done their duty and nothing more. They are gentlemen of high and unblemished honor, who have discharged their official obligations in this case, with signal fidelity, and we have fallen upon evil times if such fidelity to the public and to an existing law is to be repaid with contumely and reproach." Thompson also complimented Judge Huntington by stating that "no Judge could have borne himself more honorably or more justly."[43] The divergence of opinion regarding Judge Huntington's adjudication of the various

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[41] *Indiana Free Democrat*, December 21, 1854 (quotes the *Cleveland Leader*).
[42] *Cincinnati Gazette*, December 15, 1854.
[43] Ibid., January 9, 1855.

legal questions brought forth, the sufficiency of the evidence, and the ramifications of the trial itself are not surprising considering the political differences of those directly involved. The conservative Know-Nothing and former Whig Thompson believed that Northerners' execution of the Fugitive Slave Law was a constitutional obligation and that upon its enforcement depended the safety of the Union itself. Those with free soil or abolition sympathies, however, believed the Fugitive Slave Act of 1850 a violation of Northerners' rights, to say nothing of the injustice enacted upon alleged fugitives.

The year 1854 witnessed a dramatic political realignment, not only nationally, but also in Indiana. Though both Whigs and Democrats had committed themselves to the "finality" of the Compromise of 1850 measures, Stephen A. Douglas's Kansas-Nebraska bill, which he introduced in January, 1854, rekindled the slavery controversy and led to the formation of the Indiana People's Party, the forerunner of the state's Republican Party. Previous to the introduction of this bill, Indiana had been reliably Democratic, casting its vote for the Democratic presidential nominee in every election between 1816 and 1852, with the exception of 1836 and 1840, when a favorite son, William Henry Harrison, captured the state. Since 1843, a Democratic governor had served the state and the Democrats also held the vast majority of congressional seats in the decade of the 1840s and in the early 1850s. The Kansas-Nebraska Act, passed easily by the Senate on March 4 and then after months of acrimonious debate, by the House of Representatives on May 22, was signed into law by President Franklin Pierce on May 30, 1854. The act was certainly one of the most important pieces of legislation ever passed by Congress considering its consequences for the nation. Most Hoosiers opposed the extension of slavery in the Western territories, and to many, it appeared that the Kansas-Nebraska Act, by repealing the Missouri Compromise and organizing Kansas and Nebraska on a popular

sovereignty basis, was simply a sinister scheme to make slave states out of territory that had previously been dedicated to freedom.

Senator Douglas, as well as many other leading Democrats, believed that unless the Missouri restriction were evaded, that the territories west of Iowa and Missouri, but above the thirty-six degrees thirty minutes line, could never be organized. The admission of California as a free state had already upset the delicate balance in the Senate between the slave and the free states; Southerners were deeply concerned about the growing political power of the North and would resent and try to prevent the admission of additional free states. Many Northern Democrats believed that even if the territorial legislatures were given the authority to accept or reject slavery, that the law of nature would prevent slavery from establishing a foothold in these regions – that the geography and climate were against the establishment of a plantation culture. In other words, popular sovereignty wasn't a plot to extend slavery, but rather the recognition of the principle that the people have the right to determine their own laws and institutions. For Democrats, popular sovereignty was a time-honored principle of abstract right, while for their political opposition that coalesced into the People's Party in the summer of 1854, it was an attempt to extend slavery and keep white freemen out of the territories. For the would-be Republicans of Indiana, the Missouri Compromise became "sacred," but Democrats claimed that the Compromise of 1850, by legislating popular sovereignty into the New Mexico and Utah Territories, had enacted a new political principle that superseded the Missouri Compromise.

The portion of the Louisiana Purchase organized into the territories of Kansas and Nebraska by Douglas' bill had much more relevance for Hoosiers than did the distant territories of Utah and New Mexico. More Hoosiers migrated to Kansas in the 1850s than settlers from any other state, save Missouri. Whether Kansas became a slave or a free state, then, was a

subject of great importance to many Hoosiers, and the "atrocities" from "bleeding Kansas" that constantly appeared in the Indiana press became a political boon to the burgeoning Republican Party. In the spring and summer of 1854, a movement was afoot to combine all the various factions that were opposed to the Democratic Party – prohibitionists, abolitionists, nativists and the antislavery extensionists. Though the Kansas-Nebraska Act specifically declared that its purpose "was not to legislate slavery into any territory or state, and not to exclude it therefrom, but to leave the people perfectly free to regulate their domestic institutions in their own way," to many Northerners, Hoosiers included, the Democratic Party appeared to be bowing to the dictation of their Southern masters and using popular sovereignty as a device to create slave states out of territory previously declared free by the Missouri Compromise. Lew Wallace, then a young Democratic lawyer, recalled that in the campaign of 1854 the "*isms,* despised and unassimilated though they were, had fighting force in quantity much greater than we were willing to allow them, and in their midst the old party was like a whale assailed at the same time by many boats harpooning it from every direction; the best it could do was to fluke water and blow." Wallace himself was struggling to find his way politically. He possessed a strong prejudice against the abolitionists, whom he considered fanatics and disunionists, yet he could not defend the institution of slavery and he resented the arrogance of Southern braggadocios. As for the Fugitive Slave Law, Wallace later recalled that "my sympathies would side with the fugitive against his master. In all nature there was nothing more natural than the yearning for freedom. I saw him, look where I please, a hunted creature groping blindly along seeking the betterments he had heard of as in store for him up somewhere under the north star." Yet despite his hatred of slavery and the Fugitive Slave Law, Wallace could not overcome his hatred of abolitionists, inspired partly by the intemperate actions of the Garrisonians, or his fear of

disunion, and he remained a Democrat for a few years longer. He came to the conclusion that observance of the laws [Fugitive Slave Law] was a first duty. "Their propriety might be questioned – their impropriety might be agitated – they were always subject to repeal – but while they endured, social good and the life of the republic required every citizen to submit to them."[44] Many conservative Hoosiers found themselves in this moral quandary – they hated slavery and the encroachments of the Slave Power as epitomized by the Fugitive Slave Law, but they loved the Union and believed that the agitation of the slavery issue would destroy the unity of the nation.

Indiana Democrats, led by the political "boss" Senator Jesse D. Bright, fell into line on the Kansas-Nebraska Act, and support of the measure was made a party test at the Democratic State Convention, held in Indianapolis on May 24, 1854. The state Democratic platform not only endorsed the Kansas-Nebraska Act, but took aim at the temperance movement and the Know Nothings. While they deprecated intemperance and advocated "legislative interposition," for the evil's restraint and correction, Democrats opposed any law authorizing "the searching for or seizure, confiscation, and destruction of private property. They also condemned "any organization, secret or otherwise that would aim to disrobe any citizen, native, or adopted, of his political, civil, or religious liberty."[45] The platform left many Democrats unhappy, not the least of whom was Oliver Perry Morton, who in the not too-distant future would become a leader of the new Republican Party. After the Kansas-Nebraska Act was endorsed by a large majority in the convention, Ben Edmonson, a delegate from Dubois County, offered a resolution to expel all anti-Nebraska delegates from the convention. The resolution was carried and Morton, along with other anti-Nebraska Democrats, were thus driven from the convention

[44] Lew Wallace, *An Autobiography* (New York: Harper & Brothers, 1906), 231-241.
[45] William E. Henry, *State Platforms of the Two Dominant Political Parties in Indiana, 1850-1900* (Indianapolis: William B. Burford Press, 1902) 9-10.

amidst boos and hisses, and ultimately from the party itself. Neither did the vague and hesitating resolution on the temperance question please many Maine-law Democrats, who precipitously left the party.[46]

Throughout the 1854 campaign, Democrats were vulnerable to the charges of their political enemies that they were a proslavery and pro-whiskey party. Democratic attacks on the Protestant clergy, especially the Methodists, did the party incalculable harm. The Methodists were the largest Protestant denomination in the state and Methodist clergy exercised a considerable influence among Hoosiers. United States Marshal John L. Robinson, the inveterate "Old Line" Democrat, not only took a special interest in hunting fugitive slaves, but also took aim at the Methodist clergy, whom he called “itinerant vagabonds” and the “malign, evil spirits of the times.”[47] Democrats resented what they perceived as the intrusion of ministers in political matters – the Protestant clergy were overwhelmingly anti-Nebraska. Then there was Indiana Democratic Senator John Petit, who delivered a stinging three-hour oration in support of the Kansas-Nebraska Act on February 20, arguing that Thomas Jefferson’s assertion that all men were created equal in the Declaration of Independence was a “self-evident lie.” The senator raged, “Tell me, sir, that the slave in the South, who is born a slave, and with but little over one half the volume of brain that attaches to the northern European race, is his equal, and you tell me what is physically a falsehood.”[48] The partisan press made the most of these kinds of ill-tempered remarks, which contributed to the state Democratic defeat in 1854. Only five years before, Indiana Democrats in their state platform had resolved “that the institution of slavery ought not to be introduced into any territory where it does not now exist,” and “that inasmuch

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[46] William D. Foulke, *Life of Oliver P. Morton*, Vol. 1(Indianapolis: Bowen-Merrill Company, 1899), 38-39.
[47] *Western Christian Advocate*, June 7, 1854. See letter written by Rev. William W. Hibben from Milroy, IN.
[48] *Congressional Globe*, 33rd Cong., 1st. sess., Appendix, 212-221.

as New Mexico and California are, in fact and in law, free territories, it is the duty of Congress to prevent the introduction of slavery within their limits."[49] Having once declared for congressional intervention to prevent the spread of slavery, the party was now forcefully advocating non-intervention in Kansas and Nebraska and the newly formed People's Party made the most of this inconsistency.

Under the leadership of John D. Defrees, Schuyler Colfax, Cyrus M. Allen, and Henry S. Lane, disaffected Democrats, Maine-law prohibitionists, abolitionists, Know-Nothings, and former Whigs all coalesced in the summer of 1854 to form a new political party dedicated to the prevention of the extension of slavery. John Defrees was a former Whig and had been a South Bend newspaper editor. He had served several terms in the Indiana General Assembly and owned and edited the *Indiana State Journal*, the leading Whig paper of the state. According to Lew Wallace, "a wiser, shrewder politician there was not in the state." Schuyler Colfax had been a protégé of Defrees in South Bend and owned and edited the *St. Joseph Valley Register*, the most important Whig organ of northern Indiana. Colfax had been a member of the 1851 state constitutional convention and in 1854 ran for Congress as a representative from the Indiana Ninth District, which included his home county of St. Joseph. Colfax was a rising star in what would later be the Republican Party – he was an excellent speaker and writer. Cyrus Allen was "one of the leading lights in the legal profession of Vincennes in the latter half of the nineteenth century," and was a personal friend of Abraham Lincoln's. Allen's unique contribution to the People's movement lay in party management and his services were especially needed in southwest Indiana, a bastion of the Democracy. The face of the new party was the popular Henry Smith Lane, a former Whig Congressman and Indiana legislator. Lane had practiced law in Crawfordsville, raised a company of volunteers to serve in the Mexican War and was promoted

[49] *Indiana State Sentinel*, January 11, 1849.

to lieutenant colonel of the First Indiana Regiment. Lane was eloquent, amiable, and persuasive – he could "stump" with the best of Indiana's political stars. Former Whigs were the core of the People's movement, but Whig leaders such as Defrees understood that it would be better if it appeared that the coalition was a Democratically-led endeavor. In this respect, Michael C. Garber, former Democrat and editor of the *Madison Courier* was an invaluable ally. Garber played an important role in organizing the first People's county convention in Madison on June 13, 1854, where delegates recommended a state convention for July 13, 1854, the anniversary of the Northwest Ordinance of 1787, the act which organized the Northwest Territory and dedicated it to freedom. About the same time, Anti-Nebraska Democrat Jacob P. Chapman, editor of the Indianapolis *Chanticleer*, issued a call in his paper for a mass meeting to be held on July 13, 1854 in Indianapolis to meet the present crisis, and thus the People's movement appeared to be a Democratically-led revolt.[50]

The Democratic *Sentinel* predicted that the highly anticipated, self-styled People's Convention, would be composed "almost entirely of old line Whigs, Free Soilers, Abolitionists, Native Americans, and such Democrats as have deserted their party on account of a failure to obtain office, in the State, or under the National Administration. … The Convention, in short, will be nothing more nor less than a regular Whig mass meeting, supported by its two great auxiliaries, Native Americanism and Abolition. It will contain more political curiosities than have ever been aggregated for political purposes."[51] The paper also contemptuously referred to the meeting as the "great mongrel convention" and confidently asserted that "nobody believes that

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[50] Lew Wallace, *An Autobiography*, 231-41; Berry R. Sulgrove, "Obituary Sketch of John D. Defrees," *Indiana Magazine of History*, 2, no. 1 (March, 1906) 147-150; *History of Knox and Daviess Counties* (Chicago: Goodspeed, 1886), 306-07, biographical sketch of Cyrus McCracken Allen; Charles Zimmerman, "The Origin and Rise of the Republican Party in Indiana from 1854 to 1860," *Indiana Magazine of History*, 13, no. 3 (September 1917): 232.

[51] *Indiana State Sentinel*, July 12,1854.

the jarring elements of the so called 'People's Mass Meeting' can ultimately combine, even for the purposes of plunder. Abolitionism, Free Soilism, Native Americanism, Maine, and Anti-Maine Law Liquor Lawism, and all the other isms hatched in the fruitful laboratory of fanaticism in general, will separate and individualize like the original elements of a chemical compound, just so soon as the question of the offices shall be determined, as it must be, in favor of one or other of these factions."[52] One of the Democratic campaign strategies was to constantly identify the People's movement with Know-Nothingism and abolitionism, terms which were generally odious to many Hoosiers. Know Nothings of course sought to minimize the influence of foreigners and Catholics in government and abolitionism was a term synonymous with disunion and fanaticism in the eyes of many Indianans.

The Fusion or People's Convention held in Indianapolis on July 13, 1854 was a rousing success and a new political party was born. Though the various factions of the new political compound in some cases professed contradictory principles, "the various isms themselves had a cohesiveness. They were born of a common parent, the Protestant Church, which had spawned temperance, antislavery and anti-Popery."[53] What all had in common was anti-Democracy, anti-Nebraska, and a desire for temperance legislation. The People's Party platform asserted "that we are uncompromisingly opposed to the extension of slavery" and called for a "Judicious, Constitutional and Efficient Prohibitory Law, with such penalties as shall effectually suppress the traffic in intoxicating liquors as a beverage." The Fusionists also condemned the attacks on the Protestant ministry, maintained that opposition to the extension of slavery was the fixed policy of the founding fathers, and called for a restoration of the Missouri Compromise.[54] George W.

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[52] Ibid., July 13, 1854.
[53] Roger Van Bolt, "Fusion Out of Confusion, 1854" *Indiana Magazine of History*, 49, no. 4 (December 1953): 381.
[54] Henry, *State Platforms of the Two Dominant Political Parties in Indiana, 1850-1900*, 10.

Julian was on the resolutions committee and offered a minority report with much stronger language, declaring that the repeal of the Missouri Compromise released the North from its duty of acquiescing in and obeying the Compromise of 1850, while hinting at the obnoxious Fugitive Slave Law. The convention, however, not yet ready to abandon the "finality" of the Compromise of 1850, took a more moderate position and rejected Julian's minority resolutions report. Julian called the platform "narrow and equivocal," but the coalition leaders had a very difficult task in harmonizing the discordant elements into a potent political force. The party's later success justified the political strategy of moderation for the antislavery movement in Indiana had not yet progressed to the point where the electorate would have supported an "abolition" party.[55]

The 1854 elections centered on the congressional and state legislature races. If the People's Party could capture the state legislature, they would be able to choose a senator in 1855 after the expiration of John Petit's term. The fall election would also be a referendum on Hoosiers' support for their congressional representatives who had voted for the Kansas-Nebraska Act – would the Democrats who supported the act be returned to office? Of Indiana's eleven congressional representatives, ten of them were Democrats and seven of them (Smith Miller, William H. English, James H. Lane, Cyrus L. Dunham, Thomas A. Hendricks, John G. Davis, and Norman Eddy) had voted for the bill. Indiana's only Whig representative, Samuel W. Parker, voted against the bill and Democrats Daniel Mace and Andrew J. Harlan also voted against it. Democrat Ebenezer M. Chamberlain was not present to vote on the bill, but informed his constituency that had he been present he would have voted against it. As the campaign progressed, Democrats became more discouraged about the probabilities for their success and

[55] Zimmerman, "The Origin and Rise of the Republican Party in Indiana from 1854 to 1860," 236; Julian, *Political Recollections*, 98.

appealed to Indiana's "national Whigs" to help them defeat the abolitionists, the epitaph applied to all Fusionists.

The *Indiana State Sentinel* hysterically warned Democrats shortly before the election:

> Our opponents are not the members of the old Whig party; every man belonging to that once proud organization who still loves the memory of a Clay, or admires the eloquence of a Webster, will be with us; we are opposed, not by patriots, not by national men, but by a combination of the most unscrupulous factions that ever labored to subvert the fair fabric of liberty and dissolve the common bonds of the Union. … Remember that the leaders of the opposition are the bold and reckless repudiators of law and order, who spit upon the constitution, mock at the warning advice of the Father of his Country, and hate, with a cordial hatred, every liberal principle and every liberal man. They have publicly proclaimed that they are ready to break down all the barriers which have hitherto protected society, and open the flood-gates of universal anarchy. They do not recognize our brethren of the South as possessing any rights under the constitution and would gladly dissolve our glorious confederacy in order that they might be separated from them.[56]

Democrats viewed the People's Party as a sectional party whose members' alleged higher law doctrine would undermine the Constitution, lead to anarchy and ultimately destroy the Union. The *Sentinel's* "bold and reckless repudiators of law and order" rhetoric was a veiled reference to abolitionists' violation of the Fugitive Slave Law, a constitutional provision which Democrats believed that Northerners were bound to uphold. The *Journal* taunted the *Sentinel's* dramatic appeal and partisan invective: "You want a big voice to go up in favor of constitutional liberty, do you! That is, we suppose, for the liberty to sell just as much whisky as you please, and to make as many slave States as you can find territory out of which to make them." The *Journal* asserted that the only questions to be determined in the election were whether the repeal of the Missouri Compromise would be endorsed and whether members of the state legislature, opposed to a prohibitory liquor law, would be elected.[57]

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[56] *Indiana State Sentinel*, October 5, 1854.
[57] *Indiana State Journal*, October 7, 1854.

The result of the October 10, 1854 election was a resounding victory for the People's Party. The new party elected their state ticket by about 13,000 votes. The contested state offices included those of State Secretary, State Auditor, State Treasurer, Judge of the Supreme Court, and the Superintendent of Public Instruction. The next state legislature would have a Senate of twenty-six Democrats and twenty-four Fusionists, while the House of Representatives would have forty-three Democrats and fifty-seven Fusionists. On joint ballot, the People's Party would have a majority of twelve. This was important because Indiana Senators were usually elected in a joint convention of both the Senate and the House; therefore, the Fusionists would be able to elect a Senator, replacing Democrat John Petit whose term would expire in 1855. The results of the congressional races were even more astounding. Only Democrats Smith Miller and William English, in the First and Second Districts, which included Indiana's southern tier of counties, were sent back to Washington for the Thirty-Fourth Congress. In the other nine Indiana districts, the Fusionists captured the seats - William M. Dunn, Will Cumback, David P. Holloway, Lucien Barbour, Harvey Scott, Daniel Mace, Samuel Brenton, and John U. Pettit all defeated their Democratic opponents. Lucien Barbour defeated Thomas A. Hendricks in the Sixth District, which included Marion County. Barbour, of course, had been one of John Freeman's counsel in the notorious Indianapolis fugitive slave case of 1853. Indiana's congressional races followed a national trend. Of the forty-four Northern Democrats who had voted for the Kansas-Nebraska Act, only seven won reelection. In the Congress that passed the Kansas-Nebraska Act, Northern Democrats held ninety-one seats in the House; in the North's congressional elections of 1854 and 1855, Democrats lost sixty-six of the ninety-one seats. The Democratic Party would in subsequent elections be reduced to a minority of the Northern electorate.[58]

[58] Michael F. Holt, *The Fate of Their Country* (New York, NY: Hill & Wang, 2004), 109; Zimmerman, "The

Indiana Democrats attributed their devastating defeat to the defection of anti-Nebraska and temperance Democrats, and to the pernicious influence of the Know-Nothings. They might well have blamed Jesse Bright and his party managers for making support of the Kansas-Nebraska Act and anti-Maine-lawism tests of party orthodoxy, thus driving many from the party who had been lifelong Democrats. Many Indiana Democrats were growing restless under the domination of Bright and an intraparty feud was beginning to evolve - a factional quarrel that would later rent the party in two during the Lecompton controversy. Indiana Fusionists on the other hand attributed their success to Hoosier's weariness of the corruption in the Democratic Party, the desire of the people to teach their representatives that the public will should be obeyed on all questions, and the feeling that the Democratic State Platform did not represent the will of rank and file Democrats, especially the slavery and temperance planks.[59]

Though the party presses ignored the fugitive slave issue as a reason for defeat or victory, the fugitive slave cases in Indianapolis in 1853 and 1854 certainly contributed to the growth of antislavery sentiment in the state and to the perception that Southern masters, assisted by Northern doughfaces, were attempting to subvert the rights of Northern freemen. Fugitive slave cases, such as the Freeman and Waterhouse trials, made the slavery question tangible for many Hoosiers in a way that even a Kansas-Nebraska Act couldn't do. Without disputing the fact that the Kansas-Nebraska Act was the spark that ignited the Indiana (and Northern) political revolution in 1854, the Fugitive Slave Law and the injustices it occasioned, illustrated so aptly in the Freeman and Waterhouse cases, began the process of eroding Hoosiers' support for the "finality" of the Compromise of 1850 measures. During the political tumult of 1854, a convention of Wabash County, Indiana Democrats pledged not to support any

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Origin and Rise of the Republican Party in Indiana, 1854 to 1860," 244-45.

[59] Zimmerman, "The Origin and Rise of the Republican Party in Indiana from 1854 to 1860," 245.

candidate who did not stand for the repeal of the Fugitive Slave Law. For many Hoosiers, the Kansas-Nebraska Act, a betrayal of a time-honored sectional settlement in the Missouri Compromise, ended obligations to abide by the execrable fugitive slave law.[60] Michael Holt has written that "The Republican Party had emerged because of northern outrage at a specific event - passage of the Kansas-Nebraska Act. For the party to grow, it needed further evidence of Slave Power aggressions against the North. "[61] Draconian attempts to enforce the Fugitive Slave Law by United States officials, as well as brutal kidnappings by unscrupulous slave hunters, continued to provide the needed evidence for Northern antislavery sentiment to grow and crystallize into a powerful political force.

[60] Van Bolt, "Fusion out of Confusion, 1854," 376.
[61] Holt, *The Fate of Their Country*, 115.

CHAPTER FIVE
WEST, FUGITIVE SLAVE LAW VIOLENCE AND LECOMPTON

The People's Party had won an astounding victory in the 1854 Indiana state elections. The fusionists captured nine of eleven congressional seats, as well as the state legislature. Abolitionists, Know-Nothings, temperance advocates, and anti-Nebraska men had coalesced to defeat a common enemy, the Democrats. However, in 1856, the Indiana People's Party, plagued by factionalism and an underdeveloped party organization, suffered reverses at the polls. The fusionists had enthusiastically ratified the Republican platform drafted in Philadelphia and endeavored to persuade the voters that it was "the right and duty of Congress to prohibit in the territories those twin relics of barbarism, polygamy, and slavery."[1] Meanwhile, the Democrats campaigned for the "non-interference by Congress with slavery in state and territory, or in the District of Columbia."[2] General John C. Fremont, the Republican candidate, was soundly defeated in Indiana by Democratic nominee James Buchanan by a vote of 118,670 to 94,375. Indiana Republicans, or fusionists, blamed the Americans for their defeat. However, former President Millard Fillmore, the American candidate, had only garnered 22,386 votes.[3] Even had the Republicans and Americans been able to join forces, their combined votes would not have defeated Buchanan. The Republican candidate for governor, Oliver Perry Morton, ran a close race against Democrat Ashbel Parsons Willard, but lost by nearly 5,000 votes. The

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[1] Thomas McKee Hudson, *The National Conventions and Platforms of All Political Parties, 1789-1904* (Baltimore: The Friedenwald Company, 1904), 98.
[2] Ibid., 92.
[3] Roger Van Bolt, "The Rise of the Republican Party in Indiana, 1855-1856," *Indiana Magazine of History* 51, no. 3 (September 1955): 213, 216.

fusionists also lost the state legislature and six of the eleven congressional seats. Though disappointed by the political setback of 1856, Republicans did not despair of ultimate success. George W. Julian asserted that the antislavery cause "had constantly gathered strength from the audacity and recklessness of slave-holding fanaticism, and it continued to do so." [4] As the 1856 elections indicated, Hoosiers would need more evidence of Slave Power aggressions before the political revolution begun in 1854 would destroy the dominance of the Democratic Party.

In late November and early December, 1857, while the nation's attention was drawn to affairs in Kansas, another Indianapolis fugitive slave trial would agitate the slavery question, arouse hostility to the Fugitive Slave Law, and contribute to the growth of the Republican Party. The alleged fugitive, who was variously called West, Weston or Wesley, had been captured in Naples, Illinois and brought to Indianapolis en route to Frankfort, Kentucky. Austin Woolfork Vallandingham, a prominent Frankfort physician, claimed West as his slave and had sent his agent, Hezekiah S. Ellis, a Frankfort innkeeper, along with his son, George R. Vallandingham, to reclaim the fugitive. Little is known about West. His date of birth is unknown, but he was estimated to be in his twenties during his trial. West had escaped from Louisville, Kentucky in 1854 and had been living in Jacksonville, Illinois for several months prior to his capture. Later while testifying before the United States Commissioner, Vallandingham asserted that West had not been taken before a court in Illinois to establish proof of ownership, "as the people said it was unnecessary." [5] While the slave hunters had little trouble arresting and escorting the fugitive through Illinois, Indianapolis abolitionists made West's rendition much more difficult.

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[4] George W. Julian, *Political Recollections*, *1840-1872* (Charleston, SC: BiblioBazaar, 2008), 107.
[5] *Indiana State Sentinel*, December 5, 1857; *Indiana State Journal*, December 2, 1857. Witness testimony is given in both of these issues.

The West fugitive slave case lasted nearly two weeks and involved an exceedingly complex array of legal actions, a rescue attempt, and then finally an effort at sabotage. The case began when abolitionists petitioned for a writ of *habeas corpus*, which was served on Ellis and the slave party while they were waiting on the evening train for Louisville, Tuesday, November 24. The writ commanded them to appear before Judge David Wallace, Marion County Court of Common Pleas. Wallace was an immensely popular public figure, a former state representative, lieutenant governor, governor, and congressman. He was a delegate to the Indiana Constitutional Convention of 1850 before his election as Judge of the Common Pleas Court. Known for his affability, simplicity, honesty, and fair-mindedness, Wallace was the patriarch of a well-connected Indianapolis family.[6] His son Lew Wallace would later become a Civil War general and author the famous novel, *Ben Hur.* Judge Wallace discharged West, but the claimant immediately had him arrested by United States Deputy Marshal Jesse Duncan Carmichael, and taken before United States Commissioner, John H. Rea, for trial. According to the *Indiana State Sentinel*, "There was considerable excitement among the colored population with regard to this arrest. The boy, West, is well known to the African residents of Indianapolis, and they talked pretty strongly of attempting his rescue."[7]

The slave owner Vallandingham was represented by the brothers, Robert L. and Thomas D. Walpole, sons of Luke Walpole, one of the first merchants of Indianapolis. Robert Walpole was a noted and successful Indianapolis attorney and Thomas Walpole had previously represented Pleasant Ellington in the John Freeman case. The Walpoles were zealous and loyal Democrats and despised abolitionists, whom they regarded as traitors to the Union. They were assisted by two other lesser known Indianapolis attorneys, Joseph T. Roberts, a native of New

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[6]*Indiana State Journal*, September 6, 1859 (David Wallace's obituary).
[7]*Indiana State Sentinel*, November 26, 1857.

Jersey, and Kilby Ferguson. Representing the fugitive West was an impressive array of abolitionist lawyers, including the indefatigable George W. Julian, John Coburn, who had assisted John Freeman several years earlier in his successful suit for freedom, Henry W. Ellsworth of Massachusetts, the son of Henry Leavitt Ellsworth, the first Commissioner of the United States Patent Office, and Sims A. Colley, a native of Kentucky and an inveterate foe of slavery. Vallandingham's legal team hoped to secure a warrant for West's extradition to Kentucky as quickly and efficiently as possible, or to "maintain the laws" as they would have argued. The abolitionist attorneys were committed to securing West's freedom, but failing this they at least desired to make slave-hunting an expensive proposition in Indiana. Over the next couple of weeks they would file several suits in order to frustrate Vallandingham's attempt to remove the fugitive from the state. After listening to the attorneys' opening remarks, Commissioner Rea granted a short continuance until Friday, November 27, to allow West's defense to meet with their client and prepare their case.[8]

When the hearing before the commissioner commenced, the counsel for West immediately attacked the documentation filed to support Vallandingham's claim to West's service and moved to quash the warrant by which he was arrested. The documents which were purported to be issued by the Court in Franklin County, Kentucky for the identification and capture of the fugitive were without the proper seals and certificates. Coburn argued that there was nothing in the affidavit filed to secure West's arrest showing that he was Vallandingham's slave at the time of his escape. Julian even objected that there was no such state as "Kentuck", referring to a misspelling in one of the documents presented by Vallandingham. The confusion

[8]Ibid; *Indiana State Journal*, November 28, 1857; *Indiana State Sentinel*, October 12, 1863, (Thomas D. Walpole's obituary); *Indianapolis Herald*, March 27, 1867, (Robert L. Walpole's obituary); *Hartford Courant*, August 17, 1864 (Henry Ellsworth's obituary); *Indianapolis Journal*, May 21-22, 1869 (Sims Colley's obituary).

over the fugitive's name (West, Weston, or Wesley) cast doubt on Vallandingham's claims. From such "material and trifling" objections, Julian quickly moved onto weightier matters. He argued that the commissioner was obliged to consider two questions: did the Negro owe service or labor in Kentucky at the time of his escape and secondly, did he escape into Indiana without the consent of his master? From the beginning, the abolitionist attorneys hoped that they could obtain a full hearing, investigation, and adjudication of the merits of West's claim to freedom. Vallandingham's attorneys maintained that this proceeding was not a judicial proceeding, but rather the commissioner only needed to determine the identity of the fugitive. The commissioner's powers were merely ministerial, not judicial, and all proceedings before him relative to fugitives were to be summary in nature. It was up to the courts of Kentucky to determine whether the fugitive had a valid claim to freedom. The abolitionist attorneys argued that West would never get a fair trial in Kentucky. The hearing was then adjourned until the following day, Saturday, November 28.[9]

On the second day of the hearing before Commissioner Rea, Robert L. Walpole responded to Julian on the motion to quash the proceeding. He denied that he was an apologist or vindicator of slavery, but simply demanded the faithful execution of the laws regarding the return of fugitive slaves. Julian repeated his previous arguments, "technically talking with reference to the papers." Commissioner Rea refused to quash the proceedings and decided to hear testimony establishing the identity of the fugitive and Vallandingham's claim to the alleged fugitive's service. Coburn then filed an affidavit stating that by consent of Vallandingham, West was hired upon Ohio and Mississippi River steamers, and that while employed on these boats, had landed at Madison, New Albany, Evansville, and various places in Illinois. West had worked on the steamers *S.F.J. Trabue, Lucy Robinson,* and the *Blue Wing.* Coburn asserted that West

[9]*Indiana State Sentinel*, November 28, 1857; *Indiana State Journal*, November 28, 1857.

was entitled to his freedom because he had landed in a free state and asked for a continuance of the case in order to obtain testimony. If the abolitionists were given time to gather evidence and additional testimony, they would be able to make a compelling case for West's freedom. Commissioner Rea then adjourned the court until Monday, November 30. [10]

The abolitionist attorneys' legal strategy was directed at getting the court to grant more than a summary hearing of the case. When the court reconvened, Coburn repeated his argument that West was free by virtue of his coming into a free state with the consent of his owner, and again requested a continuance in order to give time for the defense to obtain evidence. From the abolitionist perspective, a continuance would not only give the attorneys time to gather documentation to support West's claim to freedom, but it would also make reclamation a more costly and time-consuming endeavor for the slaveholder. If the alleged fugitive could not be saved from bondage, then the abolitionists at least would make the slave's rendition more costly than the slave's value. In this way, they could discourage slave hunting, whatever the law might say. Coburn argued that a state had the right to determine the status of blacks residing within its territory, a position sustained by the Supreme Court in *Strader* v. *Graham* (1851), and most recently affirmed in the Dred Scott decision. West was not a fugitive slave, but was made free by coming into a free state with the consent of his owner, and could only be returned to a state of slavery if he voluntarily returned to Kentucky. Because West was apprehended in Illinois and brought into Indiana, the laws of Indiana should take precedence over those of Kentucky. According to Indiana's first constitution: "There shall be neither slavery nor involuntary servitude in this State, otherwise than for the punishment of crimes, whereof the party shall have been duly convicted, nor shall any indenture of any negro or mulatto

[10] *Indiana State Sentinel*, November 30, December 5, 1857; *Indiana State Journal*, November 30, December 2, 1857.

hereafter made and executed out of the bounds of this State be of any validity within the State." Therefore, West should be entitled to his freedom.

Thomas Walpole replied to Coburn's argument that the Commissioner's powers were ministerial, not judicial. The only question to be decided by the Commissioner was the identity of the fugitive. According to Walpole, "The question of freedom or slavery could not be determined before a Commissioner any more than the guilt or innocence of a person charged with a crime. The Constitution of the U.S. would never place in the hands of one man the freedom or slavery of an individual. Such a question must be determined by a jury in a competent Court."[11] Vallandingham's attorneys, perhaps recognizing that a convincing case could be made for West's freedom, never responded to the abolitionists' legal arguments, but relentlessly protested against the judicial authority of the Commissioner. Not surprisingly, West's counsel objected to this argument. Abolitionists decried the Fugitive Slave Law for many reasons, but a primary objection was that the alleged fugitive was denied a jury trial in the state where he was apprehended. As Julian had argued previously, it was a fantasy to believe that a fugitive could get a fair trial in a Southern court. Julian argued in support of the judicial powers of the Commissioner and in favor of a continuance of the case. The abolitionist attorneys desperately wanted to get a full hearing on the merits of West's actual case for freedom in a Northern court.[12]

After entertaining arguments for several days regarding the court's jurisdiction, Commissioner Rea announced his decision to an anxious courtroom audience. According to the *Indiana State Journal,* "The Commissioner overruled the motion for a continuance of the trial on the ground maintained by the counsel for the claimant [Vallandingham] – that his powers were

[11] *Indiana State Journal*, December 1, 1857.
[12] Ibid; *Indiana State Sentinel*, December 1, 1857.

ministerial and not judicial, and that all proceedings before him must be of a summary nature."[13] Vallandingham's attorneys then proceeded to call several witnesses who asserted that West was indeed an escaped fugitive belonging to Austin W. Vallandingham of Frankfort, Kentucky. Witnesses included Hezekiah S. Ellis, Vallandingham's agent enlisted to pursue and capture West, George R. Vallandingham, the claimant's son, Vallandingham himself, and two of Vallandingham's acquaintances from Frankfort. The evidence provided by the witnesses seemed to confirm West's identity, and West had allegedly admitted to being Vallandingham's slave when he was captured in Illinois. The Commissioner's refusal to grant a continuance all but insured that the fugitive would be turned over to Vallandingham and taken back to Kentucky.[14]

Sensing the hopelessness of their cause, West's sympathizers decided that extralegal action was needed to secure the fugitive's freedom. On the morning of Wednesday, December 2, Deputy Marshal Carmichael led West from the jail and placed him in a buggy, which would transport him to the Hall of Representatives for the day's hearing. While Carmichael was unhitching his horse, the desperate fugitive leaped from the buggy and ran to a horse which West's supporters had provided him for the purposes of escape. He quickly mounted the horse and took off in the direction of North Western Christian University, on the northwest side of Indianapolis. Carmichael pursued him in hot chase, firing toward West in an effort to get him to stop. West was a poor rider, had mounted the wrong horse, and after hearing Carmichael's shots quickly dismounted and ran off into a wooded area near the university. Recognizing the apparent futility of further resistance, West surrendered to Carmichael and was subsequently brought to the Hall of Representatives, about a half hour late from the scheduled time for the

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[13] *Indiana State Journal*, December 2, 1857.
[14] Ibid; *Indiana State Sentinel*, December 2, 1857.

hearing. The *Indiana State Journal* noted that "West appeared weary and thirsty after his violent exercise, and drank freely of cold water after coming into the Hall. The Deputy Marshal appeared, also, somewhat fatigued after his ride." According to George W. Julian, the escape attempt was premeditated, though it was poorly planned and executed. He wryly observed: "This is the only felony in which I was ever involved, but none of the parties to it had any disposition whatever to confess it at the time."[15] Newspaper accounts give the impression that West's attempted escape was a spontaneous, opportunistic event and no accusations or charges were ever brought against anyone for violating the Fugitive Slave Law.[16]

After Deputy Marshal Carmichael brought West to the court, the final day of the hearing before Commissioner Rea was commenced and the attorneys presented their final arguments. As the hearing progressed, the abolitionists' rhetoric became increasingly caustic. Failing to win the argument, the abolitionists let loose a barrage of invective. Julian assailed the evidence provided by the claimant in the case, calling it vague, unsatisfactory, and inadmissible hearsay. He insisted that a bill of sale was necessary to prove Vallandingham's legal right to West. He again repeated the argument that West should be free because he had come into Indiana and Illinois with the consent of his master. Julian accused the Commissioner of prejudice in favor of the slave hunter, attacked the Fugitive Slave Law, and reviewed the alleged aggressions of the Slave Power since the formation of the federal Constitution. This last argument was standard Republican fare, and was used quite effectively in the political campaigns leading up to the Civil War. Republicans were convinced that Southerners, with the help of a stacked Supreme Court, intended to nationalize slavery.

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[15]Julian, *Political Recollections,* 111.
[16]*Indiana State Sentinel*, December 3, 1857; *Indiana State Journal*, December 3, 1857.

According to the Democratic *Sentinel*, Julian's argument was an "incendiary harangue" and no epithet was spared, but rhetoric, abusive and insulting even, was lavishly indulged in." Julian, who frequently engaged in hyperbole, emphatically declared that "The fugitive act was a Godless law, it was an unutterably infernal law; and if its provisions were carried out generally it would drag down God Almighty from his throne, and inaugurate the reign of the Devil upon the earth. There was not a doctrine taught by Jesus Christ which was not derided and trampled under foot by the law."[17] Sims Colley followed Julian with an impassioned speech against slavery and slave hunting. He "regarded a slave hunter as one of the most graceless, despicable and hell-deserving among men." Colley also sniped at Commissioner Rea when he declared "It might as well be told to him that there was an honest devil as to say that this had been a fair, open, honest and *bona fide* trial."[18] He scoffed at the idea of West getting a fair trial in Kentucky, and like his predecessors, criticized the evidence establishing the claimant's right to the fugitive. Thomas D. Walpole closed the day's remarks by again reiterating that this hearing was ministerial, not judicial, that the proceedings were preliminary, not final, and that the Commissioner had no authority to try the question of freedom or slavery – "All that the Commissioner had to determine was the identity of the negro, and whether a probable and reasonable claim had been made out against him." Walpole rebuked Julian for his impudent remarks toward the Court and finished his appeal by reminding the Commissioner of his "plain" duties. Commissioner Rea recessed the Court and advised that his decision would be forthcoming the next day.[19]

If the abolitionist attorneys were less than confident about the outcome of the hearing, they by no means had exhausted all of their legal options. On Wednesday evening, after the

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[17] *Indiana State Sentinel*, December 3, 1857.
[18] *Indiana State Journal*, December 3, 1857.
[19] Ibid; *Indiana State Sentinel*, December 3, 1857.

conclusion of the hearing before Commissioner Rea, Samuel Williams, a black saloonkeeper in Indianapolis, acting on the advice of West's attorneys filed an affidavit charging Austin Vallandingham with kidnapping. The affidavit asserted that it was the intention of Vallandingham to take West out of the state without first establishing any legal claim to him as his property or slave. Vallandingham was arrested and held to bail in the sum of $1500. The Walpoles covered Vallandingham's bond, secured his release and prepared for the kidnapping hearing, which was set for Thursday, December 3. The kidnapping case would be held before Indianapolis Mayor William John Wallace, not to be confused with David Wallace, Judge of the Marion County Court of Common Pleas. The same attorneys who argued in front of Commissioner Rea also represented their respective clients in the kidnapping case. John S. Tarkington, Marion County Prosecutor, joined the abolitionist attorneys in presenting the kidnapping case before Mayor Wallace.[20]

Vallandingham's attorneys filed pleas of abatement asserting that the warrant was mistakenly issued upon an affidavit made by a negro, that said Negro had come into the state since the first of November, 1851, in contravention of the Constitution and laws of Indiana, and that Williams, the Negro, was not a competent witness since this was a case involving a white person. They argued that the case be dismissed because the proper oath, by a person competent to make an oath against a white man, was not made. Attorney Henry W. Ellsworth responded to the pleas by arguing that "it was competent for negroes to make affidavits against white persons, and that the statute barring their evidence in Court did not exclude their testimony on preliminary examinations."[21] He made a distinction between filing an affidavit informing the state that an offense had been committed, and testifying in an actual cause

[20]*Indiana State Sentinel*, December 3, 1857; *Indiana State Journal*, December 4, 1857.
[21]*Indiana State Journal*, December 4, 1857.

involving white persons. Robert L. Walpole responded to Ellsworth's position by maintaining that "the filing of the affidavit by the negro Williams was testimony in a cause where a white man was an interested party, and thus illegal and incompetent." He contemptuously accused Mayor Wallace of trespassing on the rights of his client by issuing an arrest warrant based on the testimony of a Negro and a harsh exchange of words ensued between Wallace and Walpole. Walpole haughtily retorted that "he knew his rights as an attorney, and would not submit to have them trampled on by any sympathetic feeling for the negro race."[22] Thomas D. Walpole then came to the support of his brother:

> A vagrant negro, instigated by others, if this affidavit was allowed, might put in jeopardy the rights, privileges and immunities of any white man. His Honor himself would, by any decision affirming this negro's oath, put himself in the power of any strolling African. This was a government of white men; constructed for their own happiness; and no negro; no vagrant and strolling negro, in defiance of the Constitution and laws coming into the commonwealth, could infringe on the rights of the citizen.[23]

The Walpoles were outraged that their client had been arrested on kidnapping charges because of an affidavit made by a black resident. They correctly maintained that the Indiana Constitution prohibited African-Americans from giving testimony in a case involving a white person, unless by the consent of the parties interested.

The question that presented itself to Mayor Wallace was did the filing of an affidavit amount to giving testimony in a suit? Sims Colley closed the hearing on the pleas of abatement, responding to the Walpoles, and attacking Vallandingham for attempting to "kidnap" West. Colley's passionate and fiery oration caused the *Indiana State Journal* to muse: "we should think he had been a Methodist preacher in his early life, and an active participator in excited

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[22] Ibid.
[23] *Indiana State Sentinel*, December 4, 1857.

revivals."[24] While the case was pending, the *Indiana State Sentinel* pleaded "We wish simply, as every good citizen must wish, to see the supreme law of the land carried out practically and triumphantly vindicated."[25] The Democratic position was that enforcement of the Fugitive Slave Law was critical to preserving sectional harmony, and in this position the party undoubtedly had the approbation of many Hoosiers. Democrats accused Republicans, or "black abolitionists," of trying to destroy the Union by advocating a false or misguided philanthropy and of trying to trample on the constitutional rights of Southern slave owners.

Friday, December 4, was the day of decision for the hearing pending before Commissioner Rea. If the people of Indianapolis had trouble keeping up with this legal tug-of-war between the abolitionists and the slave hunters, the newspapers were faring but little better. The *Journal* exasperatingly reported "Such a complication of suits, affidavits, and arguments, we never heard of in any similar case, or any case at all."[26] Before an anxious and attentive crowd assembled in the Hall of the House of Representatives, Commissioner Rea delivered his decision remanding the fugitive West to his master, Austin W. Vallandingham. Commissioner Rea agreed with the claimant that his duties were ministerial and that he had only to determine the identity of the fugitive and whether a reasonable claim had been made to the fugitive's service. He asserted that a certificate of extradition issued by a commissioner under the act of 1850 was not conclusive: "If the decision on such an inquiry should fix the seal of slavery on the fugitive, I should hesitate long – notwithstanding the weight of precedent – without the aid of a jury to pronounce his fate. But the inquiry is preliminary, and not final."[27] Commissioner Rea emphatically denied that his decision was rendered to serve the interests of

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[24] *Indiana State Journal*, December 4, 1857.
[25] *Indiana State Sentinel*, December 5, 1857.
[26] *Indiana State Journal*, December 5, 1857.
[27] *Indiana State Sentinel*, December 5, 1857.

the slave power, and argued that he had nothing to do with the abstract principles of slavery. If the Fugitive Slave Law were "injudicious or oppressive," it should be repealed or modified by the people's elected representatives. Before Commissioner Rea's decision had been rendered, Vallandingham had filed an affidavit stating that if West were remanded to him, he feared mob violence in taking his fugitive back to Kentucky. The Commissioner then authorized Deputy Marshal Carmichael to summon a *posse comitatus* to aid him in the discharge of his duties. Carmichael then selected forty men as deputy marshals to assist in taking West to Kentucky.[28]

Vallandingham must have been relieved to have won his argument before Commissioner Rea, but before there was any time for celebration Marion County Sheriff John Foudray served Deputy Marshal Carmichael with a writ of *habeas corpus* requiring him to appear before Judge David Wallace of the Marion County Court of Common Pleas in the afternoon to answer why he held West in his custody. Wallace's Common Pleas Court was, of course, where this drama had started over a week earlier. The marshal answered the Court by affidavit, stating that the United States Commissioner had issued a certificate giving him the custody of West for the purpose of delivering the fugitive to his claimant, Austin W. Vallandingham, in the State of Kentucky. John Coburn asked the Court to grant time for West's counsel to examine the return or affidavit made by the marshal. By this time, Vallandingham and his counsel were becoming exasperated with the legal harassment and tempers were nearing the breaking point. Thomas D. Walpole replied to Coburn's request for time by promising that, notwithstanding anything the Court might do, that Vallandingham and his slave were leaving for Kentucky that evening. Walpole denied that Wallace's Court had any authority over the decision by the United States Commissioner and he threatened to have the abolitionist attorneys in jail within the day if they continued to interfere with the rendition of West to his

[28]Ibid; *Indiana State Journal*, December 5, 1857.

lawful claimant. The abolitionist attorneys replied that if the marshal tried to remove West from Indianapolis that evening, "he would find, probably, Jordan a hard road to travel."[29] Judge Wallace granted West's counsel time to examine the affidavit filed by Carmichael and adjourned the Court until the next morning. Despite earlier threats, the Walpoles and Carmichael reluctantly decided to submit to Judge Wallace's order to appear the next day. [30]

The wrangling over the interplay between federal and state authority was a constant theme in fugitive slave cases from the moment Congress passed legislation on the subject. The rendition of fugitive slaves produced the odd scenario of Southerners arguing for the supremacy of federal law, while abolitionists insisted on state sovereignty. In the early days of Indiana statehood, Hoosier lawmakers had asserted a concurrent legislative authority with Congress on the subject of fugitive slaves and had enacted the state's own rendition process to supplement the national law. However, after *Prigg* v. *Pennsylvania* (1842), Indiana courts consistently ruled that fugitive slave legislation was the exclusive jurisdiction of Congress and that state courts could not interfere judicially with the master's right to recover his property.

Meanwhile, the same day that Commissioner Rea granted the certificate to remand West to Vallandingham, and, while the *habeas corpus* hearing in Judge David Wallace's Court was pending, Mayor Wallace made a decision on the motion to quash the pleas of abatement filed by Vallandingham's counsel in the kidnapping case. The pleas stated that the affidavit by which Vallandingham had been arrested for kidnapping was invalid because the affidavit had been filed by Samuel Williams, a Negro. Wallace ruled against Vallandingham on the pleas of abatement, asserting that "Being a witness is one thing, and simply filing an affidavit is another and different thing." He differentiated between the acts of filing an affidavit and testifying as a

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[29] *Indiana State Sentinel*, December 5, 1857.
[30] Ibid; *Indiana State Journal*, December 5, 1857.

witness in a cause, which was clearly prohibited by the Indiana Constitution. He cited Indiana Judge David McDonald in his decision: "In all cases, both civil and criminal, where affidavits are necessary, either for the institution of a suit, or its continuance, or for any other purpose whatever, such affidavit may be made by an Indian, a negro, or mulatto."[31] Hoping to follow up on this victory, Henry Ellsworth then made a motion for the continuance of the trial for thirty days, hoping to gain time to gather evidence and subpoena witnesses. Wallace, however, refused to grant the continuance and adjourned the Court until the next day. As of Friday evening then, December 4, there were two pending hearings yet to be decided in this continuing legal battle between the two antagonists. Mayor Wallace would hear evidence in the kidnapping charge against Vallandingham and then Judge David Wallace of the Common Pleas Court would entertain the *habeas corpus* proceedings against Deputy Marshal Jesse D. Carmichael, both on Saturday morning, December 5. The abolitionists were beginning to run out of options for saving West from slavery. The next day would be decisive. Still, the *Journal* could not help ridiculing the pace of West's transit from Illinois to Kentucky: "If he [West] makes the same time all the way home he may possibly eat a Christmas dinner on the plantation about the year 1860."[32]

On December 5, opposing counsel appeared before Judge David Wallace in the Common Pleas Court to argue the *habeas corpus* cause. Coburn denied the allegation in the return made by the marshal that West was a slave, asserting that West was entitled to his freedom by virtue of his previous sojourn in free territory with the permission of his master. He maintained that West had had no chance to get a fair trial before the Commissioner and that the certificate of extradition was granted on insufficient grounds. Julian argued that "in

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[31] *Indiana State Journal*, December 5, 1857; *Indiana State Sentinel*, December 5, 1857.
[32] *Indiana State Journal*, December 5, 1857.

addition to the decision of a federal Court, under the Fugitive Act, an adjudication upon the facts, for the protection of all citizens, must be also made by the State authorities."[33] In characteristic fire-breathing fashion, Julian "denounced all persons pursuing their slaves into free States as kidnappers and scoundrels, against whom the State of Indiana had a right to protect her citizens." In reply to Julian's philippic, Thomas D. Walpole retorted that Julian was "a liar and a dirty dog."[34] Other than reading the United States Commissioner's warrant of extradition, Walpole made no other argument before Judge Wallace – he rested his case on the supremacy of federal law and was confident that he need not respond to abolitionist arguments which had well nigh been exhausted. Judge Wallace sided with the slave owner. He ruled that he could not discharge West from the lawful custody of the United States Marshal. According to Wallace,

> A United States Commissioner had concurrent jurisdiction with a Judge of the United States Circuit Court. The law made it so, and it was not for him to determine whether or not the law was right and proper. With that law, and with the Act under which the arrest of West as a fugitive from labor was made, no matter how odious it might be, he had nothing to do except be governed by it in his official action. If the laws were wrong, appeals should be made to the legislative branches of government. The Courts had to deal with the laws as they found them.[35]

Wallace, a Republican, was therefore unwilling to embrace the state's rights argument of West's attorneys, and undermine the commissioner's authority by re-trying the case. However, one gets the sense from his wording that he had no enthusiasm for enforcing the law. George W. Julian rhetorically asked Judge Wallace's Court "Was it not the common opinion of the people that the fugitive slave law was an odious enactment?"[36] The majority of Hoosiers had little

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[33] *Indiana State Sentinel*, December 7, 1857.
[34] *Indiana State Journal*, December 7, 1857.
[35] Ibid.
[36] Ibid.

sympathy for the law, though they may have avoided overt resistance to its enforcement. The sight of a ragged, dirty, helpless fugitive, wearing chains and irons, being escorted by heavily armed guards elicited an empathetic emotional response from many Hoosiers, and gave credence to Republican charges that a Slave Power conspiracy could and would subvert the rights of Northern freemen.

After Judge Wallace rendered his decision Saturday morning in the *habeas corpus* trial, there yet remained the kidnapping proceedings before Mayor Wallace. West's attorneys, however, decided that without time to find witnesses and gather additional information, it was useless to proceed to trial. Henry Ellsworth ordered a *nolle prosequi* for the State, dropping the kidnapping charges and finally ending the efforts to secure West's freedom. The *Journal* remarked that "Mr. Vallandingham appeared highly pleased with the result, and lost no time in getting out of the Mayor's office to make his arrangements to leave for Kentucky."[37] The anticlimactic end to the kidnapping case was proof to the *Sentinel* of "the maliciousness of the whole prosecution on the part of those pretending to act in the name of the State of Indiana."[38] With all legal proceedings at an end, it only remained for Vallandingham to take his fugitive back to Kentucky, with the assistance of Deputy Marshal Carmichael and the forty deputy marshals, sarcastically referred to by the *Journal* as the marshal's "guard of honor."

On Saturday evening, December 5, Carmichael, with the aid of his posse, escorted West, chained about the wrists and ankles, from the Palmer House, which served as the Democratic headquarters, to the Union Station Depot to board the Jeffersonville train. The taunts and jeers between the two rival partisan papers in Indianapolis not only illustrated differing perceptions of the fugitive slave case itself, but also revealed the antagonistic positions of Republicans and

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[37]Ibid.
[38]*Indiana State Sentinel*, December 7, 1857.

Democrats regarding the Fugitive Slave Law and the sectional crisis. The Republican *Journal* sarcastically reported:

> Pious Democrats anxious to distinguish themselves, took charge of the train while it remained in the depot. They were particularly desirous to have everything constitutional.
>
> A large crowd was present to see the exit of West out of the city. No demonstration was made toward preventing the Marshal and his posse from putting the negro aboard the train. Smiles of contempt played upon the faces of many who were witnessing the loyalty of the distinguished posse of the Marshal. As the train moved out of the depot at 7:20 for Louisville, it was remarked that the law was sustained and the constitution vindicated. Niggers, old liners, and the constitution, now and forever. Amen![39]

Of course the Democratic *Sentinel's* version of West's departure from Indianapolis was slightly different:

> There was an immense crowd assembled in and around the Union depot, composed in part of free niggers and their allies, the black abolitionists. But when the train moved off an universal shout went up from those on hand whose determined purpose it was to see that the laws were maintained at whatever hazard. Not a movement was made by any malcontents, notwithstanding the loudly uttered threats previously, to interfere in any way with the legitimate action of the constituted authorities.[40]

Dillard Ricketts, the president of the Jefferson Railroad, as well as Carmichael and the other guards, feared that a rescue would be attempted, or that the train would be molested on its journey to Louisville. Ricketts came to Indianapolis to oversee personally the precautions for the trip and he posted guards for twenty miles beyond Indianapolis to prevent free blacks or abolitionists from sabotaging the train. He also instructed the engineer to proceed slowly for the first ten miles out of the city, fearing obstructions on the track. After proceeding about

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[39] *Indiana State Journal*, Monday, December 7, 1857.
[40] *Indiana State Sentinel*, Monday, December 7, 1857.

three miles, the engineer discovered a "a huge pile of rails and cross ties being placed upon the track, evidently to cause an accident to the train." After another mile, another pile of greater magnitude was found, and one passenger surmised that had the train been traveling at the usual speed and hit the obstruction that the travelers would have met with "inevitable destruction." According to this same passenger, "After clearing the track the second time, Conductor Walkup [Andrew E. Walkup] stepped upon the platform of the baggage car to let off the brake, and was immediately dealt a severe blow over the head with a missile, evidently in the hand of some Black Republican sympathizer in ambush." The train, however, finally reached Louisville safely and West was lodged in the Louisville jail.[41]

The next day, Sunday, December 6, Vallandingham escorted West back to his home in Frankfort, and the *Frankfort Commonwealth* observed:

> Dr. Vallandingham reached home yesterday having in charge the runaway negro, West. West declares that he never ran away, but was merely playing "hookey" for a short time, intending to return in the course of a few more years; the Dr., however is rather doubtful about the matter. Dr. Vallandingham has had a hard time among the Abolitionists of Indiana, and deserves credit for his perseverance in maintaining his rights. He reports that he found many friends in Indiana, and is convinced that there is yet conservatism enough in the North to rebuke the spirit of fanaticism and to execute the laws of the land.[42]

The pursuit of West had taken Vallandingham and his agents through the states of Kentucky, Illinois and Indiana, and according to the *Sentinel,* had cost the owner $750.00 just to get West through the courts in Indianapolis.[43] Vallandingham's total costs in recapturing West most certainly would have exceeded $1,000 with newspaper advertisements, agents' and witnesses'

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[41]Ibid, December 8, 1857; *Louisville Courier*, December 7, 1857; *Louisville Journal*, December 7, 1857.
[42]*Frankfort Commonwealth*, December 8, 1857.
[43]*Indiana State Sentinel*, December 8, 1857.

fees and expenses, and personal travel expenses. The heavy financial and time commitments involved in capturing a runaway slave often exceeded the value of the slave; however, the pursuit of runaways for slave owners was often more about a principle than a material interest. As Larry Gara has written, "many Southerners came to look upon the acceptance of the Fugitive Slave Law as a test of the compromise, and those north and south who defended the compromise itself pointed out that the significance of the law was not a matter of its practical results, but of the principle implied in its enactment."[44] The enforcement of the Fugitive Slave Law, then, was a test of Northern fidelity to the 1850 deal and the Constitution.

Throughout the West fugitive slave case, partisan editors attempted to provide objective coverage of the numerous hearings, decisions, and related events, though their editorial slant was often quite obvious. After West had been remanded to Vallandingham, the rival Indianapolis papers assessed, analyzed, and interpreted the fugitive slave controversy in ways that revealed their political sympathies. Both papers taunted each other, letting loose a barrage of invective that revealed the depth of contemporary opinion regarding the return of fugitive slaves. The editor of the Democratic *Sentinel* triumphantly declared "The laws of the United States, the laws of the State of Indiana, despite the overt resistance, in the guise of legal forms, of Black Republicans, Abolitionists and fanatics, have been maintained and authoritatively carried out." The abolitionist traitors, according to the *Sentinel*, were determined to trample upon the constitutional rights of Americans coming from another section of the Union, thereby risking secession and civil war. They cared nothing for the rights of property, the public peace, the Constitution, or even the hardships of the slave. George W. Julian, who was guilty of "open rebellion against the government," was especially singled out for

[44]Larry Gara, *The Liberty Line: The Legend of the Underground Railroad* (Lexington: University of Kentucky Press, 1996), 127-28.

opprobrium. Julian, the Democratic organ declared, deserved "five years in the penitentiary, at least, under the provisions of the Fugitive Slave Law." Commissioner Rea was commended for discharging his duty "faithfully and impartially" and Judge David Wallace was praised for his "able, compact, learned, and elegantly expressed judicial opinion" in the *habeas corpus* hearing.

The Walpoles, however, received the greatest approbation from the editor, who asserted that it was only due to the brothers' determined commitment to law and order "that the streets of Indianapolis, filled by an inflamed and reckless mob, did not run with blood." Whatever difficulties attended the capture and return of the fugitive slave, at least "the people of Kentucky, of the South, and of every portion of the confederacy North, East, and West, now know that the laws, State and Federal, are impartially administered in Indiana." For Democrats then, the West fugitive slave case demonstrated to the rest of the nation that Hoosiers were committed to protecting the constitutional rights of Southern slave owners. By resisting traitorous abolitionists, Democrats were defending the Constitution and preserving sectional harmony. While stopping short of praising slave hunters or the institution of slavery, they could still congratulate themselves that they were a bulwark for the Union. Democrats also hoped to use the recent fugitive slave case to discredit Republicans by connecting them to fanatical abolitionists, whose political agenda might very well inaugurate civil war.[45]

While Democrats hoped to link Republicans with radical abolitionists, Republicans charged Democrats with being co-conspirators with the Slave power. The *Journal* responded to the *Sentinel's "*partisan view" of the West case by asserting: "From beginning to end, it [the *Sentinel*] has thirsted for enslavement of the defendant. It has threatened, and slandered, and played the toady for the slaveholder from the first." Editor Defrees spoke for many Republicans when he declared:

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[45]*Indiana State Sentinel*, December 7, 1857.

> Of fugitives and the Fugitive Slave Law, we have expressed our opinion often and freely. While that infamous law is upon the statute book, let it be obeyed. The owner should take his slave, if the law awards it, without resistance. But it is the right of free citizens, and it is due to the sovereignty of the State herself, that no man shall be taken as a slave without a full conformity to every tittle of the law. … The lawyers who stood by the negro last week, without the hope of a fee, and solely as guardians of the rights of our citizens, did a good work.[46]

For Republicans then, this controversy was about defending the state's sovereignty by protecting a citizen's rights against Democrats who ignored "the plainest principles of justice" in order to placate Southern slaveholders. Republicans became the defenders of state's rights and Democrats extolled the virtues of federal power.

A petty squabble between the editors of the Indianapolis papers occurred after the conclusion of the case involving a "dirty shirt" worn by West throughout the hearings. The *Sentinel* thought that the abolitionists should have replaced the fugitive's ragged clothing. For the editor of this Democratic paper, this oversight was proof that abolitionists were really driven by malice toward the slave owner than compassion for the slave. The Republican *Journal* chided in response that some white men wore shirts that were no better than that worn by West, yet the *Sentinel* offered no sympathy for them. Editor Defrees concluded: "That paper [the *Sentinel*] and its party [Democratic] have no sympathy for white men unless they own negroes, and none with negroes unless they are some white man's chattels. A man must be either a slaveholder or a slave in order to be entitled to the respect or sympathy of the democratic party."[47]
Republicans had to walk a political high wire when it came to free blacks, fugitive slaves, and the institution of slavery itself. The Republican Party included former Democrats, Whigs, Know-Nothings, and abolitionists, and there was a wide range of opinion regarding blacks within the

[46] *Indiana State Journal*, December 8, 1857.
[47] Ibid., December 8, 1857.

party. Abolitionists were gradually becoming more respectable, but it was still political suicide to advocate anything approximating equality between the races or to express too much sympathy for the plight of either slaves or free blacks. Despite this political reality, Republicans still expressed outrage at what they perceived to be a gross injustice in the Fugitive Slave law and at the numerous aggressions of the Slave Power – a list that included the Compromise of 1850, the Kansas-Nebraska Act, the attack on Senator Sumner, the Dred Scott decision and now the Lecompton Constitution.

The Fugitive Slave Law and fugitive slave cases had great propagandistic value for the abolitionists and the Republicans and contributed significantly to the growing antislavery movement in Indiana and the North generally. In another editorial on the West case, the *Journal* referred to the surrender of West to Vallandingham as "an outrage," to the "cruel and infamous law" [Fugitive Slave Law], and finally to "the iniquity of that Fugitive Slave Law."[48] The rendition of West also inspired a sermon delivered by the Reverend James Barlow Simmons of the First Baptist Church of Indianapolis on the biblical text "Whatsoever ye would that man should do unto you, do ye even the same unto them," otherwise known as the Golden Rule [Mathew 7:12]. In the crowded church, parishioners heard Simmons preach on the immorality of slavery and the encroachments of the Slave Power, and declare that "If the man West had come to his house he would not have given him up; he would have suffered the penalties of his country's laws first." Simmons closed his sermon by confidently expressing that Providence would "bring good out of the evil which men had recently been guilty of in our city."[49] Barlow was one of those "political preachers" whom the Bright Democrats despised. In the mid-nineteenth century, evangelicals exerted a powerful influence on the culture and were prime

[48]Ibid., December 9, 1857.
[49]Ibid., December 10, 1857.

agents in the molding of public opinion. Nothing illustrated so dramatically the harsh realities of slavery or the haughty arrogance of the pursuing slave hunter than the workings of the Fugitive Slave Law. Republican editors systematically used fugitive stories to demonstrate the aggressiveness of Southern slavery and how the institution threatened the liberties of white Northerners.

Not only did the West fugitive slave case receive extensive coverage from the local press, but newspapers around the state, the Midwest, and the country reported on the event. Updates on the case appeared in antislavery papers such as Garrison's *Liberator* and Gamaliel Bailey's *National Era*.[50] Samuel J. May's 1861 *The Fugitive Slave Law and its Victims* included a summary of the West case. [51] Despite the widespread attention given to the case by contemporaries, historians have largely ignored it. Charles Money completed the most thorough examination of the case in his article "The Fugitive Slave Law in Indiana." He described the West case as the second most important or significant case in Indiana in the decade prior to the Civil War [second only to the Freeman case in 1853]. According to Money, "The abolitionists were growing in number and were as active as ever. The churches of all denominations were now busy opposing the fugitive law. Ministers were urging opposition to the law and were picturing the horrors of slavery. The West case increased the heat of the flame."[52] More recently, Dean Kotlowski analyzed Hoosier responses to fugitive slave cases and concluded that the West case, far from illustrating Hoosier's hostility to the Fugitive Slave Law, actually demonstrated just how apathetic Hoosiers were toward most fugitives. He asserts that only the abolitionists took an interest in assisting West and that the fugitive's defense team failed to

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[50] *National Era*, December 17, 1857; *Liberator*, December 11, December 25, 1857.
[51]Samuel J. May, *The Fugitive Slave Law and its Victims* (Freeport, NY: Books for Libraries Press, 1970), 88-89.
[52]Charles H. Money, "The Fugitive Slave Law of 1850 in Indiana," *Indiana Magazine of History* 17, no. 3 (September 1921): 269.

elicit much public support. He maintains that "Public officials might have reconsidered their decisions had the people of Indianapolis demanded West's release."[53] Kotlowski, however, primarily used the pro-Southern and Democratic *Indiana State Sentinel* to support his position. Both rival Indianapolis papers reported on several occasions that the West hearings generated much interest from the public and the threat of a public disturbance seemed a genuine possibility. Those responsible for remanding West to his owner, however, inadvertently assisted the antislavery cause because they gave abolitionists more ammunition to discredit the Fugitive Slave Law and to show the domineering, aggressive spirit of the Slave Power. More than a week after West's rendition, the *Journal* continued to assault the Fugitive Slave Law. After reviewing the "atrocities" of the law, the leading state Republican organ declared:

> If there must be a fugitive law, it ought to be slightly human. It should provide for jury trials, for continuance to get evidence, for bail, for change of venue, for security for costs, and for appeals. So that it will be impossible for a corrupt or cowardly Commissioner to mistake his duty. Further heavy penalties should be attached to false arrests and imprisonments.[54]

In another article, the Republican paper protested "It is a disgrace beyond all reparation that not even an opportunity was offered in any form for a free man to show here upon on our own soil that he had been emancipated by the act of his master."[55] One might expect to hear this kind of rhetoric from abolitionist periodicals, but it is significant that even conservative Republican papers were reacting so vociferously against the Fugitive Slave Law.

About the time that the West case in Indianapolis was concluded, the New York Supreme Court rendered a decision in *Lemmon* v. *The People* (1852) which contributed

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[53]Dean J. Kotlowski, "'The Jordan is a hard road to travel': Hoosier Responses to Fugitive Slave Cases, 1850-1860," *International Social Science Review* 78, no. 3-4 (Fall-Winter 2003): 78-79.
[54]*Indiana State Journal*, December 16, 1857.
[55]Ibid., December 14, 1857.

significantly to the sectional discord then tearing the nation apart. In the fall of 1852, Jonathan and Juliet Lemmon traveled from their native Virginia to New York in route to a new home in Texas, bringing with them their eight slaves. They planned to take a steamship from the port of New York to New Orleans, this being the fastest and most direct route as there was no steamship service between Virginia and the Gulf Coast. After arriving in New York from Norfolk, Virginia, the Lemmons brought their slaves to their hotel, where they would stay a few days until they could board the next boat for New Orleans. While staying there, a free black named Louis Napoleon took notice of the slaves and petitioned for a writ of *habeas corpus*, which was granted by Judge Elijah Paine of the New York Superior Court. Judge Paine discharged the slaves, sustaining the New York Legislature's 1841 repeal of the "Nine-Months Law," which had allowed nonresidents to enter the state with their slaves for up to nine months. Paine declared that all slaves who touched the soil of New York were free, with the exception of fugitive slaves. With the support of the Virginia Legislature, the Lemmons appealed the case to the New York Supreme Court, though it was another five years before the case was reviewed. The Lemmons' counsel argued that slave transit ought to be allowed as long as there was no attempt to stay in the free state any longer than necessary, while the state's counsel insisted that a state could free any person within its jurisdiction, a principle affirmed in the Dred Scott decision. The New York Supreme Court upheld Judge Paine's decision, asserting that "Comity does not require any state to extend any greater privilege to the citizens of another state than it grants to its own." The *Journal* lauded the New York Supreme Court's decision and lamented that "our courts are so subservient to the contemptible thing [slavery]."[56]

The abolitionists' arguments on behalf of West were essentially the same as those presented in the Lemmon case, but West had been returned to Kentucky as a slave. According

[56] Ibid.

to the *Journal,* the difference in outcome was attributable to the fact that the New York Supreme Court consisted of a Republican majority, while Commissioner Rea in Indianapolis was a Democrat. For Republicans, a politicized Democratic court was part of the Slave Power conspiracy which aimed to nationalize slavery and subvert the rights of Northerners.[57]

Just a few days after the termination of the West fugitive slave trial, President James Buchanan delivered his first annual message to Congress and endorsed the proslavery Lecompton Constitutional Convention's decision to give Kansans the opportunity to vote on the newly drafted "Constitution with slavery" or "Constitution with no slavery." According to Buchanan, the Kansas-Nebraska Act only required the convention to submit the portion of the constitution relating to the domestic institution of slavery to an election. Even if Kansans voted for the constitution without slavery, the rights of slave owners then in the territory were protected. Strictly speaking, then, Kansas would come into the Union as a slave state no matter which way the people voted. For Republicans and many Democrats, this scheme of the Lecompton Convention seemed a subterfuge to defeat the popular will and ultimately make Kansas a slave state. President Buchanan's position seemed to be a reversal of previous Democratic pledges in support of popular sovereignty. The outrage over the Lecompton Constitution immediately overshadowed debate over fugitive slaves and became the hottest political topic in the state. The Republicans made it the key political issue in the 1858 elections, while Democrats were trying to hold their party together. Shortly after the rendition of West, Indiana Republicans and Democrats met in their state conventions to nominate candidates and draft platforms. Republicans declared that the attempt to impose the Lecompton Constitution upon Kansas was "a gross outrage upon the rights of the people of the territory, and calculated

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[57]Ibid.; Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1985), 296-303.

to disturb the peace and harmony of the country," while Democrats pledged support for the legal doctrines enunciated in the Dred Scott decision and expressed confidence in President Buchanan's "ability, integrity, patriotism, and statesmanlike qualities."[58] The Fugitive Slave Law seems conspicuously absent from party platform pronouncements, but then Democrats had nothing to gain from expressing support for the odious law and Republicans were preoccupied with the political boon of Lecompton. Republicans emphatically reasserted the principle of slavery's non-extension into the territories and this was the unifying principle that held the party together. However, the outrageous workings of the Fugitive Slave Law continued to supply the new party with political capital and eat away at this last Democratic stronghold in the North.

[58]William E. Henry, *State Platforms of the Two Dominant Political Parties in Indiana, 1850-1900* (Indianapolis: William B. Burford, 1902), 13-16.

CHAPTER SIX
THE BRANDENBURG AFFAIR - BORDER RUFFIANISM IN INDIANA

Perhaps the most extraordinary case involving a fugitive slave in Indiana was what came to be known as the "Brandenburg Affair" or the "Bell Case." This dramatic sequence of events, which included a slave escape, two kidnappings, a jail break, criminal and civil suits, and finally a theater production, nearly brought the border residents of Indiana and Kentucky to war. Brandenburg, the county seat of Meade County, Kentucky, now sits quietly along the Ohio River, just across the river from the old Morvin's Landing, near Mauckport, in Harrison County, Indiana. Little remains today to remind observers of the town's more flourishing days before the Civil War when it was a place of some economic importance, perhaps the most active river port between Louisville and Owensboro because of the numerous agricultural products grown and shipped from Meade County. The river town was the scene of heavy steamboat and flat boat traffic, as merchants and traders transported tobacco, corn, hay, and various fruits, especially apples to and from the town's wharves. Meade County earned the reputation of being one of the finest fruit-growing regions in the state. A large textile mill, built in Brandenburg in the late 1830s, employed forty to sixty workers, and used slave labor.[1]

Often, Hoosiers and Kentuckians living along the river shared intimate bonds of kinship, but well-established commercial ties also existed between the residents of the two states.

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[1] Mark Ford, ed., *The Brandenburg Story - Featuring Recollections of General John Hunt Morgan's Crossing of the Ohio River, July 8, 1863*, 11-12. This short history of Brandenburg, prepared by the Methodist Men's Club of Brandenburg for the Brandenburg Centennial Celebration in 1963, can be found in the Meade County Public Library in Brandenburg, Kentucky.

Kentuckians traveled to Corydon, the county seat of Harrison County and Indiana's first state capital, to transact business; Indianans would frequently cross over to Brandenburg to purchase supplies or sell their own products. The Brandenburg Ferry transported passengers from one side of the river to the other, and was owned and operated by the David Williamson Bell family.[2]

The Bells, the principal actors in the story, were natives of Washington County, Pennsylvania. David Bell married Elizabeth Wright, the daughter of a Revolutionary War veteran, and the family settled in New Albany, Indiana in 1829. Mrs. Bell's sister, Julia Wright, and a free black, Oswell Wright, also came west with the family. Oswell Wright had at one time been a slave of Elizabeth (Wright) Bell's father, Jeremiah Wright, but had been emancipated by Pennsylvania law. After spending nearly a decade in New Albany, the Bells removed to Harrison County, Indiana in 1838. David Bell purchased a small farm along the Ohio River at Morvin's Landing, near the town of Mauckport, as well as the ferry which operated in that vicinity between the Kentucky and Indiana shores. The Brandenburg-Mauckport connection was a well-known crossing for emigrants moving from East Tennessee, North Carolina, and western Virginia into Indiana and Illinois. Emigrants used the heavily traveled Mauckport-Corydon highway to get into the interior of the state and further West.[3]

Bell built a house not far from the landing facing south toward the river, just above the high water mark, a boundary beyond which the waters never rose. On this farm David Bell's sons, John, Horace, and Charles, grew into young adulthood and learned to plant and plow, cut lumber, ride horses, use guns, swim, and perhaps most importantly, to fight. Horace Bell later

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[2] Matilda Gresham, *Life of Walter Quintin Gresham, 1832-1895*, Vol. 1 (Chicago: Rand McNally & Company, 1919), 78. In this era, the steamboats were almost entirely owned by individuals rather than corporations.

[3] Benjamin S. Harrison, *Fortune Favors the Brave: The Life and Times of Horace Bell, Pioneer Californian* (Los Angeles: The Ward Ritchie Press, 1953), 13.

recalled that "A boy who could not fight was forced to take a back seat."[4] The Bells were typical Hoosier pioneers in the antebellum period - adventurous, rugged individualists, proud, aggressive, and even prone to violence when their interests were threatened. Having come from the East, however, David Bell recognized the importance of a good education and the Bell children were sent across the river to Brandenburg for schooling. Horace Bell, who would become the central figure in the Bell drama, studied Latin, was a voracious reader and had a gift for story-telling and writing. His favorite book was Parson Weems' *The Life of General Francis Marion* - not so surprising for Bell's life was characterized by a passion for adventure, excitement and even fighting. In 1849, John Bell, the oldest of David Bell's sons, caught the gold rush fever and hurried to California to find his fortune. A year later, at the age of 20, Horace left the family farm and also journeyed to California to strike it rich.[5] Charles Bell, the youngest of the Bell children, spent much of his youth with Aunt Julia, who had come to Harrison County with the Bells and married Dr. Andrew M. Jones of Corydon. Aunt Julia was a fiery abolitionist and Charles was heavily influenced by her political views.[6]

While each of David and Elizabeth Bell's sons became men of action and adventure, none was as colorful, flamboyant, and polarizing as Horace. He was tall and lean, with long blond hair and blue eyes, and his life of daring deeds inspired hatred from foes and praise from admirers. Bell was aggressive, combative, and self-willed - he could be violent in speech and temper. Yet he was generous with friends, a champion of the weak and oppressed, and a bitter foe of injustice. In his youth, he was a miner, an explorer, a ranger, a filibuster with Walker in

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[4] Ibid., 14.

[5] Horace Bell appears in the 1850 United States Census living in Sacramento, CA as a blacksmith. John Bell is living in Placerville, El Dorado County, CA in 1850 and is described in the census as a miner, born in Pennsylvania. He appears in the 1860 El Dorado County, CA census as a miner, born in New Jersey, living in Greenwood Valley. John Bell died June 25, 1890 in Butte County, CA at Indian Springs mine and is buried in an unmarked grave at Chico Cemetery in Butte County, CA.

[6] Harrison, *Fortune Favors the Brave*, 12-16.

Nicaragua, and a Union Civil War scout. Later he became a farmer, a rancher, a lawyer, an editor and an author - Bell became one of the most active, enterprising, and well-known citizens of Los Angeles. Long before Horace was making history in Los Angeles, however, his exploits in an Indiana fugitive slave case made him a highly controversial figure.

The Brandenburg Affair began with the escape of Charles, a skilled blacksmith, and a valuable and trusted slave of Doctor Henry A. Ditto of Brandenburg, Kentucky. Charles was married to Mary Ann, a slave belonging to Andrew Jackson Alexander, a Brandenburg merchant, and the couple lived in a small house owned by Alexander near the Ohio River.[7] Ditto often allowed Charles to cross the river to fish, or to practice his trade for people living on the Indiana side. The slave became acquainted with the Bell family, and on Friday evening, September 25, 1857, Charles Bell and Charles were seen together in the Brandenburg blacksmith shop. The next morning, Saturday, Charles informed his master that he was going to the Indiana side to fish and he was never heard from again. When the next Monday he did not appear in the blacksmith shop, Dr. Ditto realized that Charles had run away. Ditto immediately began the search for his runaway slave by advertising a reward and distributing handbills. Ditto described Charles in the *Louisville Democrat* as a "light copper-colored Negro - about 5 feet 10 inches high, heavy set, with bushy head; is rather knock-kneed, and somewhat inclined to limp on one foot; he is a blacksmith by trade, and about 35 years old; supposed to have on a suit of black cloth clothes and fur cap." The Brandenburg physician offered a reward of $200.00 for Charles' capture in a free state, or $100.00 if taken in any other.[8]

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[7] Andrew Jackson Alexander, born January 1821 and died February 1902 in Louisville, KY. In the 1850 Meade County, KY census, Alexander is listed as a merchant, in the 1860 Meade County, KY census he is listed as a miller and farmer living in Brandenburg. He is buried at Cave Hill Cemetery in Louisville, KY.
[8] *Louisville Democrat*, 10/07/1857.

A party of Kentuckians, or slave hunters, combed the river banks and the countryside, but could find no trace of Charles. Meanwhile, David Bell, the father of Charles Bell, had on the same morning of Charles' escape, left for Louisville in order to cash a draft sent from California by his son, Horace. On the return trip, shortly before reaching home, slave hunters stopped the elder Bell and demanded to know where he had been and for what purposes. Bell responded curtly, "It's none of your business," and his refusal to cooperate immediately made him an object of suspicion. The slave hunters were thwarted in their efforts to find Charles, and the fugitive allegedly reached Canada safely. Matilda (McGrain) Gresham, who has left us a detailed account of the "Bell case," recalled that Horace Bell's service with General Walker, who had legalized slavery in Nicaragua,

> satisfied some of the Kentuckians that the Bells were not Abolitionists, and they were not without friends and partisans among the best people and largest land and slave owners in Meade County. But many of the Kentuckians in 1858 believed and claimed that the Bells not only assisted but had even encouraged the Kentucky slaves to leave their masters. I still share some of the prejudices of that time against the Bells. On the Indiana side it was the belief that no runaway negro was ever denied assistance by the Bells.[9]

Matilda Gresham's husband, Walter Quintin Gresham, was a boyhood friend of Horace Bell and later legal counsel for the Bell family in the litigation which followed Charles' escape.[10]

Shortly after Charles' successful escape, two Jackson County, Indiana residents came forward with information that would lead to the arrest of David and Charles Bell, and Oswell Wright. Clark B. Johnson and Robert Weathers, described as "horse-racing, gambling characters," were both residents of Brownstown. Johnson, who had a low reputation, was a native Kentuckian, married with several children, and farmed and traded for a living. He

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[9] Gresham, *Life of Walter Quintin Gresham*, 80-81.

[10] Walter Quintin Gresham, March 17, 1832 to May 28, 1895, was an Indiana Civil War general and Secretary of State in the second Grover Cleveland administration.

appeared several times as a defendant in Jackson County criminal and civil suits. Robert Weathers was a poor, middle-aged farmer, a native Hoosier, and was also married with children.[11] They later testified that Oswell Wright not only admitted his own role in Charles' escape, but also indiscreetly implicated the Bells. Wright allegedly confided in Johnson that he had taken Charles to Brownstown, where the fugitive caught the train north. According to Weathers' testimony, his wife Eliza had given breakfast to Wright and the fugitive. Johnson wrote to Dr. Ditto and revealed to him all the information that Wright had shared and they hatched a plan to arrest Wright and the Bells for slave stealing. Johnson and Weathers undoubtedly had a pecuniary interest in the case, and were all too willing to collaborate with the Kentuckians in bringing Wright and the Bells to "justice." Johnson traveled to Harrison County, and posing as a horse trader and an abolitionist, entrapped Wright and the Bells with a plan to help Charles' wife, Mary Ann, escape and join her husband. Or, as the *Harrison Democrat* put it, he gained the confidence of the Bells "after laying around for several days, drinking whisky and telling big tales about running off Negroes." According to Johnson, whose veracity was suspect, David Bell admitted his role in Charles' escape and expressed a willingness to help Mary Ann as well.[12]

On the night of Saturday, November 14, the plan to liberate Mary Ann was set into motion. Charles Bell was to get Mary Ann and ferry her to the Indiana side, where Oswell

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[11] Robert Weathers appears in the 1850 United States Census living in Brownstown Township, Jackson County, IN as a farmer, born in Indiana, and real estate valued at $400.00, wife Eliza, children Sarah A., John, Erasmus and Thornton. Weathers died February 21, 1859 near Brownstown before the end of legal proceedings against Wright and the Bells. Eliza Weathers, who was also a witness for the prosecution, died March 9, 1893 in Seymour, Jackson County; Clark B. "Jonson" appears in the 1850 United States Census living in Brownstown Township, Jackson County, IN as a trader, age 38, born Kentucky, real estate valued at $1,600.00, wife Mary A., children Catharine R., Hester A., and Emma E. In 1860, Clark B. Johnson is listed as a farmer in Brownstown, real estate valued at $1,500.00 and personal property worth $400.00. Johnson died between 1870 and 1880, probably in Jackson County, IN.

[12] *Harrison Democrat*, November 17, 1857.

Wright would be waiting with two horses. The Brandenburg authorities, having been informed by Johnson, were waiting for Bell when he came ashore and immediately arrested him, placing him in the jail. The Kentuckians then crossed the river quietly, found two horses on the Indiana riverbank, and subsequently entered the Bell home, where they found David Bell and Oswell Wright reading. After a demonstration of force, the Kentuckians persuaded Wright to give himself up and they took him to the ferry boat that lay at the Bell landing. Wright was unable to produce his free papers as he had apparently loaned them to Charles to assist him in his escape. Charles neglected to return them in the mail as he had promised. According to the *Louisville Journal,* the Kentucky posse then informed David Bell "that there were four horses on the river bank, and, as two of them belonged to him, he had better come along and pick them out, as they wanted to take Wright's horse across. Bell did so, and after they got on the river bank below high water mark, they arrested him also; brought both to Brandenburg, and lodged them in jail."[13] Before the boat swung out into the river, a Kentucky constable read a warrant charging old man Bell and Wright with having stolen Dr. Ditto's slave Charles, and commanding that they be brought before a magistrate in Brandenburg. According to Matilda Gresham, "Kentucky had always claimed jurisdiction over the Ohio River to low-water mark on the Indiana side, and as the river was then low and the boat lay below the low-water line, the pretext was afterwards made that the apprehension was under the warrant."[14]

The Bells' and Wright's arrest was of dubious legality and looked like kidnapping to Hoosiers. The Kentuckians' high-handed tactics created considerable excitement along the river. How could these men be tried in Kentucky for a supposed offense committed in Indiana?

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[13] *New Albany Ledger*, November 18, 1857 (reprints article from *Louisville Journal* titled "Excitement at Brandenburg"); *Harrison Democrat*, November 17, 1857 (also reprints "Excitement at Brandenburg" from the *Louisville Journal*). Notice of the arrest of the Bells and Wright can also be found in the *Cannelton Reporter*, November 14, 1857.

[14] Gresham, *Life of Walter Quintin Gresham,* 82.

Challenging the jurisdiction of the Kentucky court would become a major part of the defense's legal strategy. At least one Hoosier argued that if David and Charles Bell and Oswell Wright were guilty of harboring a runaway slave or aiding in his escape, they have violated the Fugitive Slave Law and should be tried in the United States District Court for the District of Indiana.[15] Section Seven of the Fugitive Slave Act of 1850 read:

> Any person who shall aid, abet, or assist such person so owing service or labor as aforesaid, directly or indirectly, to escape from such claimant, his agent or attorney, or other person or persons legally authorized as aforesaid; or shall harbor or conceal such fugitive, so as to prevent the discovery and arrest of such person, after notice or knowledge of the fact that such person was a fugitive from service or labor as aforesaid, shall, for either of said offences, be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment and conviction before the *District Court of the United States for the district in which such offense may have been committed*, or before the proper court of criminal jurisdiction, if committed within any one of the organized Territories of the United States.[16]

Hoosiers not only challenged the jurisdiction of the Kentucky courts in this case, but also claimed that the Kentuckians' devious plot to catch the alleged slave stealers lacked any legal basis. If the Bells and Wright were guilty of violating the Fugitive Slave Law, they should have been arrested by an Indiana marshal or constable and tried in the state. The Republican *Indiana State Journal* called the deed an "outrageous, lawless act of border ruffianism" and insisted "If Kentuckians suspect Indianians of harboring slaves, let them go the proper way to work and ascertain it, and stop it. There are laws enough, and abominable enough, God knows, for the protection of slave property, and slave owners, without resorting to such means as those which appear to have been used in Mr. Bell's case."[17] The Republican *Wabash Express* of Terre Haute

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[15] *New Albany Tribune*, November 4, 1858.
[16] *The Statutes at Large and Treaties of the United States of America, 1845-1851,* Vol. 9 (Boston: Little, Brown & Company, 1862), 462. See the "List of the Public Acts of Congress" section. Italics in quotation are mine.
[17] *Indiana State Journal*, December 18, 1857 and August 3, 1858.

asked its readers, "Will the North always remain silent and see the laws of the country thus trampled under foot?"[18] The slave hunters' aggressive actions served the cause of the abolitionists again by discrediting the Fugitive Slave Law and reinforcing the growing conviction that slaveholders even threatened the rights of white northerners. As evidenced by the Negro Exclusion Act in Article Thirteen of the 1851 Indiana Constitution, most Hoosiers were unsympathetic with the plight of blacks, but they did object to the assertion of Southern power or Southern dictation. As Larry Gara has pointed out, many Northerners "feared the effect of continued national rule by slaveholding interests on northern rights, on civil liberties, on desired economic measures and on the future of free white labor itself."[19] Not only was the Bells' and Wright's arrest a violation of their civil rights, but the "Kentucky mob's" lawless kidnapping was also a violation of Indiana's sovereignty. It was another of those "brutal acts" referred to by William M. Cockrum, an agent of the Anti-Slavery League, that helped arouse indifferent Hoosiers against the Fugitive Slave Law, slavery, and especially the Slave Power in the decade prior to the Civil War.[20]

In southern Indiana, however, social and economic ties with the South remained very strong. Many of the residents in this part of the state descended from Southern families and their livelihood depended on the cultivation of the Southern markets via the river trade. Indiana's river towns - Madison, New Albany and Evansville - were all important centers of commerce, shipping corn, wheat, and tobacco as well as other manufactured products to the South. According to one historian, the people "who were economically dependent upon the Southern markets had no sympathy for any political theory which threatened the disruption of

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[18] *Wabash Express*, August 12, 1858.
[19] Larry Gara, "Slavery and the Slave Power: A Crucial Distinction," *Civil War History*, 15, no. 1 (March 1969): 6.
[20] William Monroe Cockrum, *History of the Underground Railroad As It Was Conducted by the Anti-Slavery League* (New York: Negro Universities Press, 1969), 12.

this trade by destroying the slave economy of the South."[21] Because of these powerful social and commercial ties, many Hoosiers living along the Ohio River were willing to go to great lengths to preserve the good relations that had always existed between them and their Southern brethren - the Union had to be preserved at all costs.

Southern Indiana's economic dependence on Southern patronage provided a major incentive for Hoosiers in the region to muzzle antislavery agitation and greatly retarded the growth of the Republican Party. As a result, Republicans found themselves branded as abolitionists and disunionists by local political opponents and found Southern Indiana rough terrain for their political doctrines. Indiana Democrats claimed to be a national party and the guardians of the Constitution and the Union - though they were often accused of being proslavery and bowing to the whip of their Southern masters. While the reaction of the Democratic press to the case was more measured and conciliatory, editors like Simeon K. Wolfe of the *Harrison Democrat* still expressed concern over the actions of Kentucky authorities. After questioning the reliability of the informants (Johnson and Weathers) and attesting to the good reputation of the Bells, Wolfe asserted:

> If guilty we have no sympathy for them, unless indeed it is on account of the fact that they were duped by certain base political leaders to feel too lively an interest in the negro race. The fact is, a man who would engage in the nefarious business of running off negroes from their masters is worse than an ordinary thief, for by such conduct he not only commits a wrong upon the master, but also stirs up a bitter sectional strife, which, if general, would lead to the most direful consequences. But in view of the fact that heretofore the best of relations have existed between the people of this county and their neighbors across the river, and that it is desirable that such relations should be continued, we cherish a hope that all parties implicated in this matter will be justly and fairly dealt with. If however this hope shall not be realized, we fear it may give rise to a spirit of retaliation, which would certainly not promote the security of slave property on the borders of Kentucky. Harrison county, to her honor be it said, has never laid any impediment in the way of the Kentucky master reclaiming his fugitive slave –

[21] E. Duane Elbert, "The Election of 1856 in Southern Indiana" (master's thesis, Indiana University, 1958), 73.

> indeed hundreds have been caught and sent back by our citizens. But if for their neighborly conduct heretofore our citizens are to be kidnapped and carried beyond the protection of our laws and punished upon slight and insufficient evidence, we are sure it will materially mar the good feelings heretofore existing between them and their Kentucky neighbors.[22]

While making it clear that Democrats had no sympathy for people who were guilty of violating the Fugitive Slave Law, Wolfe also astutely recognized the potential ramifications of the Kentuckians' blatant disregard for the rights of Indiana citizens. What probably disturbed Democrats the most was the possibility that the affair might provide political ammunition to the abolitionists. As Wolfe recognized, this would not make slave property along the border more secure.

After the arrest of the Bells and Wright, Dr. David Mitchell Jones, cousin to Charles Bell and nephew of David Bell, secured the best counsel available in Harrison County – Republican Judge William Anderson Porter and Samuel H. Keen, both of Corydon.[23] Porter was a Whig-turned-Republican, a staunch supporter of the North during the Civil War who would later at the advanced age of 63 join the Indiana Militia in defending Corydon from John Hunt Morgan's raiders on July 9, 1863.[24] Porter and Keen then obtained the services of Thomas Brooks Farleigh and William Thomas Coale of the Brandenburg bar to assist in the defense.[25] The crime of slave-stealing was particularly heinous to the slaveholders and the procurement of local counsel was

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[22] *Harrison Democrat*, November 17, 1857. Simeon Kalfius Wolfe, born February 14, 1824 in Georgetown, Floyd County, IN, died November 18, 1888 in New Albany, Floyd County, IN. Wolfe was a Corydon attorney, editor of the *Harrison Democrat* from 1857 to 1865, a member of the Indiana State Senate from 1860 to 1864 and a delegate to the Democratic National Conventions in Charleston and Baltimore in 1860.

[23] Judge William A. Porter died January 23, 1884 in Corydon, IN. Samuel H. Keen died March 21, 1864 in Corydon. Dr. David Mitchell Jones was the son of Dr. Andrew M. & Julia (Wright) Jones, a sister of Elizabeth (Wright) Bell.

[24] Frederick Porter Griffin, *134 Years with Three Generations of Porters and Griffins in the Governor's Headquarters* (Corydon, IN: O'Bannon Publishing Company, 1980), 16-17.

[25] William Thomas Coale, 1819-1896, died in Hillsboro, Montgomery County, IL. Thomas Brooks Fairleigh was the son of the Meade County, KY Circuit Court Clerk, William Fairleigh, went on to serve as Colonel of the 26th Kentucky Infantry (Union) and died in November 1890 in Louisville, KY. He is buried at Cave Hill Cemetery in Louisville.

crucial if the defendants were to have any chance of being acquitted. On November 25, 1857, the Meade County, Kentucky grand jury returned five indictments against the Bells and Wright. They were charged with enticing Charles, a slave, to leave his master; with stealing Charles, a slave, from his owner; with enticing a female slave named Mary Ann to leave her owner; with conspiring to run off a slave named Charles; and finally, with conspiring to run off a female slave, Mary Ann. The grand jury returned a sixth indictment against Oswell Wright charging him with furnishing a slave named Charles with forged and false papers. Judges William Alexander and William Hayes, natives of Virginia and slaveholders, set bail at the then enormous sum of $5,000 for both Bells, and $3,000 for Oswell Wright. The Bells did have friends in Meade County and slaveholders Alanson Moremen and Orla C. Richardson expressed an interest in becoming sureties for the Bells; however, the bail amounts were set so high that they were unable to come up with the exorbitant sum required.[26] The Bells and Wright were then remanded to the Brandenburg jail to await trial. The Bells' attorneys and Jesse S. Taylor, Meade County prosecutor, both requested a continuance in order to prepare their case. The continuance was granted on November 27, and the hearing was postponed until the next term of court, which wouldn't be until May, 1858. The prisoners had been illegally arrested or kidnapped, and now were consigned to the Brandenburg jail for at least six months until their cause might be heard.

Meanwhile, outraged over the illegal arrest, the Bells' friends on the Indiana side prepared to rescue the prisoners by force. Colonel William C. Marsh, an old friend of David Bell, raised a large force of men with the intention of crossing the river, storming the Brandenburg

[26] The native Virginian Alanson Moremen, November 18, 1803 to January 29, 1890, built the Glen Fount plantation near Brandenburg, was a large slaveholder and leading citizen of Meade County. Orla Coburn Richardson, another slaveholder and prominent Meade Countian, was born in Whitehall, Washington County, NY on March 18, 1806 and died June 17, 1882 in Meade County. He appears as a farmer in the 1850 and 1860 Meade County, KY Census records. In 1880, Richardson is listed in the Meade County Census as an "ex member of the legislature."

jail, and releasing his friends. Kentucky Governor Charles Slaughter Morehead, a Know-Nothing, sent several companies of the Kentucky Legion to assist in guarding the prisoners, while the Meade County Rangers, a local militia company, provided additional security. Colonel Marsh's expedition, however, never materialized because the boats that were to be used for transporting his men across the river failed to reach Leavenworth, the rendezvous, at the appointed time. Had Colonel Marsh been able to get his men across the river, the likelihood of bloodshed would have been very strong, especially considering the additional forces used to guard the prisoners.

In May of 1858, while attending the Bell court proceedings, Colonel Marsh was murdered in front of the Brandenburg Hotel. Walter Q. Gresham, Horace Bell and Colonel Marsh were standing in front of the hotel when Stanley Young, standing on a balcony above, shot Marsh dead. Considering the turmoil that had occasioned the arrest of the Bells, it was assumed that Marsh's murder was the result of bad feelings generated between the citizens of Harrison County, Indiana and Meade County, Kentucky. However, Stanley Young took advantage of the Bell proceedings to get revenge for an old grievance. Marsh had killed Young's father in self-defense several years earlier, and was acquitted of murder charges. Young immediately escaped and, though indicted for murder by the Meade County grand jury, was never apprehended. That Colonel Marsh's murder was originally thought to have been the result of animosity growing out of the Brandenburg excitement illustrates the intense feelings that existed regarding the arrest and imprisonment of the Bells.[27]

When Horace and John Bell heard the news about their father and brother, they immediately began the long journey home from California to Indiana. They came back by way of Panama, and the Mississippi and Ohio Rivers. John Bell disembarked at Tobacco Landing, the

[27] Gresham, *The Life of Walter Quintin Gresham*, 78-91.

first landing above Brandenburg on the Indiana side, and proceeded to the family farm where his mother had remained since the arrest. Horace Bell landed at New Albany, traveled to Corydon, and hired his boyhood friend, attorney Walter Quintin Gresham, to assist him in getting his aged father and young brother out of jail. The Bell brothers intended to secure the release of their family by legal means, and refused the aid of five hundred men for an invasion of Brandenburg. Gresham and Horace Bell went to Brandenburg to get the Bells released on bond, but the problem of the bail amounts remained. The excessive bail precluded finding any sureties. In response to taunts from Brandenburg residents, Horace Bell promised that failing to get justice in the courts, he and his brother would come in broad daylight and forcibly rescue their father and brother. Lawyer Gresham led a party to Indiana Governor Ashbel P. Willard and asked him to demand the release of the prisoners, but Willard refused to intervene. Willard, like most Democrats, would have had no sympathy for slave stealers, and were he convinced of the justice of the charges brought against the Bells, certainly would have refused to act on their behalf. Violators of the Fugitive Slave Act of 1850 were to "be subject to a fine not exceeding one thousand dollars, and imprisonment not exceeding six months, by indictment *and conviction* [italics mine]."[28] The alleged perpetrators, however, had already spent more time in jail than what the law allowed for aiding the escape of a fugitive - a crime for which they had not yet been convicted. After all legal and political options had seemingly been exhausted, the Bell brothers determined to take matters into their own hands and attempt a forcible rescue.[29]

Frustrated by the pace of Kentucky justice and the intransigence of court officials, Horace and John Bell came up with a plan to rescue their beleaguered relatives. They put out a rumor that they were returning to California and disappeared for awhile. The Kentuckians,

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[28] Fugitive Slave Act of 1850 in *Statutes at Large,* 462.
[29] Gresham, *Life of Walter Quintin Gresham*, 78-91.

sensing that the agitation over the case had come to an end, reduced the guard around the Brandenburg jail. On July 27, 1858, most of the citizens of Brandenburg, including the jailor, George Washington Webb, attended a barbeque at Garnettsville, a few miles upriver. Webb was running for political office and giving a speech at the community picnic. The jail was left in the hands of his wife, and another young man. The Bell brothers decided to make their rescue attempt during the picnic since the jail would be lightly guarded and most of the town's citizens would be gone. Accompanied by a black servant, they crossed the Ohio River in a skiff, a distance of about a mile, and started toward the Brandenburg jail. The *Louisville Journal* explained what happened next:

> Between one and two o'clock in the afternoon, Horace and John, sons of David Bell, having a negro boy, who carried a carpet bag, with them and, without arousing any suspicion, proceeded toward the jail, which was some three hundred yards distant from where they landed. On entering it, they demanded the key of the cell in which their father and brother were confined, and threatened, with revolvers in their hands, to shoot down any one who should resist their demand or raise any alarm. The jailor's wife attempted to escape, but was caught by Horace, when she fainted. On searching the bureau drawer, the keys were found. John then unlocked the cell, released his father and brother, gave each of them a pair of revolvers, and the party then repaired to the river, and crossed it before it became known in the town what had happened. The carpet bag which the boy had carried was full of weapons.[30]

The Indiana papers corrected the *Louisville Journal's* version of the Bells' release from prison by giving an account of the gun battle that took place as the Bells were jumping in their skiff and crossing the river. The *New Albany Tribune* reported: "The father and sons did not escape before an alarm was raised. Some twenty or more men gathered together before they reached the landing and fired at them with guns. The fire was returned, and the Kentuckians finding that the Bells shot rather too sharp, kept clear of them, but fired at them as they were crossing the

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[30] *New Albany Tribune*, August 3, 1858 (reprinted article from *Louisville Journal*).

river."[31] John C. Boling, a young boy living in Brandenburg who witnessed the Bells' escape, remembered years later:

> They [the Bells] went over the hill to the river and got in a skiff and started across. Ben L. Shacklett got a rifle and followed them to the river. I went along with him, being a small boy at the time. Ben Shacklett commenced shooting at them as they pulled away from shore. Horace Bell stood up in the skiff with a pistol in each hand shooting at Shacklett as fast as he could pull the trigger. I was standing near by and the bullets played a regular tune around us. The Bells made their escape, which was one of the most daring ever made in Kentucky."[32]

According to one Harrison County citizen, "some fifteen or sixteen shots were exchanged," but remarkably nobody was hurt.[33] Another resident of Harrison County, Indiana taunted, "The Bells waved their hats before they landed on freedom's soil. The Corncrackers [Kentuckians] are exceedingly mortified that two Hoosiers did most daringly rescue those two prisoners from the county jail of old Meade."[34] Just as Horace Bell had previously promised to a jeering Brandenburg crowd in May, the Bell brothers had rescued the prisoners in broad daylight, without the assistance of an invading army.

The Bells instantly became heroes, and perhaps unwittingly, champions of freedom for many Hoosiers. What began as an ordinary fugitive slave episode unfolded into a series of events evoking pride and vindicating of the virtues of a free society. The Indiana press gushed with praise for the Bells. Milton Gregg, an old Whig-turned- American and editor of the *New Albany Tribune* exclaimed: "We have seldom read in history a more daring feat. ... Just think of it! Two men, Hoosiers at that, walking in the broad light of day into a town of several hundred *blood thirsty* and *chivalrous* Kentuckians, opening their jail, and rescuing prisoners whom they

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[31] Ibid.
[32] Laura Young Brown & Marie Coleman, *The History of Meade County, Kentucky, 1824-1991* (Utica, KY: McDowell Publications, 1991), 123.
[33] *Indiana State Journal*, August 3, 1858.
[34] *New Albany Ledger*, August 18, 1858.

had guarded night and day, for months!!"[35] Gregg asserted that the Bells' actions were "perfectly justifiable, and they are upheld by the whole community on this side of the river."[36] A Harrison County correspondent writing for the *Indiana State Journal* called the jail-break an illustration of "filial affection seldom equalled" and an example of "what two resolute determined men can do when engaged in righting or redressing a wrong."[37] The editor of the *Wabash Express* gave a ringing endorsement of the Bells' courageous deeds:

> The whole company of the Bells, were, on last Saturday, at their farm opposite Brandenburg, and they say they will remain there, and defy the whole of Meade County, Kentucky, to take them. This is the right kind of pluck, and if kidnapping Kentuckians ever again come upon our soil, and take by force any of our citizens, to be tried in that State for a supposed offence [offense], instead of suffering them to remain in the prison for one year, we hope to see a sufficient regiment of Hoosiers assemble, rescue the prisoners, bring them back to our State and then, if they have violated the law, try them by a jury of their peers, and not by a jury of heartless slave-drivers. … We throw up our hat and give three cheers, for the two California Bells.[38]

One Democratic editor, however, objected to the provocative tone of Milton Gregg of the *New Albany Tribune*. Jacob B. Maynard, the editor of the *Cannelton Reporter* (Perry County) and a Southern partisan, protested that the *Tribune's* boasting was in "bad taste, bad spirit" and would have a "tendency to engender unkind feelings." Maynard assailed Gregg and the *Tribune*: "A paper that supports John M. Wilson for Congress, does no violence to its character by publishing such articles, or by vindicating negro thieves generally."[39] John M. Wilson was the Republican

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[35] *New Albany Tribune*, August 9, 1858. Milton Gregg was born December 24, 1804 in North Bend, OH and died January 5, 1859 in New Albany, IN. He was an editor for most of his professional career and served in the Indiana General Assembly and as a delegate to the 1851 constitutional convention.
[36] Ibid., August 3, 1858.
[37] *Indiana State Journal*, August 3, 1858.
[38] *Wabash Express,* August 11, 1858.
[39] *Cannelton Reporter*, August 14, 1858. John M. Wilson was born January 29, 1819 in Maine and died February 28, 1891 in College Hill, near Cincinnati, OH. He appears as a lawyer in the 1850 and 1860 census records. Jacob B. Maynard was born in February 1819 in New York and died July 28, 1902 in Indianapolis, IN. He edited the Democratic *Indianapolis Sentinel* after the Civil War.

candidate for Congress running against incumbent Democrat William H. English in the second congressional district in the fall of 1858. Like most Indiana Democrats, Maynard believed that the execution of the Fugitive Slave Law was essential to preserving sectional harmony and that those who violated the law were traitors and disunionists.

Brandenburg's citizens were shocked and embarrassed over the escape of their prisoners, though they could not help but admire the "bold and fearless act" of the Bell brothers.[40] Judge Collins Fitch, a native New Yorker and wealthy Meade County slave-holding farmer, wrote to Kentucky Governor Morehead a full account of the Bells' escape and asked if the state could offer a reward for the Bells' apprehension. Fitch gave the governor a vivid description of all four Bells, describing Horace as a "verry [very] brazen daring looking man" with a "ferocious look."[41] Other leading Brandenburg citizens sent a petition to the governor, imploring him "to offer as large a reward for the arrest and redelivery of said four Bells as it is possible for you to do. It is possible they will all go or have gone to California."[42] Yet, though the Bell family indeed would scatter in different directions, they remained at least for a few months on the family farm just across the river from Brandenburg.

Given divergent accounts of events in the Kentucky and Indiana papers, it is difficult to sort fact from fiction. According to one Brandenburg citizen:

> After a few days excitement was over, we heard they [the Bells] intended leaving for California, and concluded to let them go in peace, but Horace returned to their homestead on the other side, and saw we were making no effort to arrest him, became saucy by threatening our citizens, and preventing persons from going over on that side without permission. In one instance he wrote an apology to James L. Fairleigh,

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[40] *Louisville Courier*, November 4, 1858.
[41] Letter dated July 31, 1858, Governor Charles S. Morehead Papers, Kentucky State Archives, Frankfort, KY.
[42] Ibid. The letter is only dated 1858, signed by thirty-two petitioners and a notation on the letter says only "not a case for a reward."

> merchant of this place, who sent some hands over for lumber, and he would not allow them to land and get it.[43]

Another Brandenburger explained:

> Bell did return, (Horace) but as it was understood that he was going to sell out and leave, he was unmolested, and staid [stayed] there for weeks, such a thing as his arrest not being thought of. During his sojourn there one of our principal merchants, Jos. L. Fairhigh [James L. Fairleigh], sent hands over after some lumber delivered him on the opposite bank. Horace Bell met them with gun and pistols, ordering them off, and saying, "no one should cross from this side of the river." This he was made to repent of soon after its occurrence by citizens of Indiana who happened to be here, and who felt outraged at the act; and he, the next day, wrote Mr. F. an apology, inviting him over, and offering to assist him with his plank; but in his letter used this remarkable language: "I assure you, Mr. Fairhigh, I can allow no one to come from your side without my permission, as I consider my life threatened," etc.[44]

Stories of Horace Bell's bellicosity are probably not too far from the truth, given what we know about his personality. However, the Kentuckians had already proven that they were not above kidnapping to get "justice" and Bell must have anticipated that some attempts would be made to take him back to Brandenburg. John Bell later defended his brother's actions in a letter to the *New Albany Tribune*:

> The statement that my brother had driven back Kentuckians from the Indiana shore is only true this far: A short time since, after the reward was offered, three men were seen coming across the river opposite my father's place. One of them was a man named Taylor, who aided in kidnapping my father. Not knowing but they intended to try to arrest him, Horace ordered them off (without presenting any arms) and they left in a hurry. The next day, finding they were only after lumber, he made no objections to their coming.[45]

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[43] *Louisville Democrat*, November 2, 1858.
[44] *Louisville Courier*, October 29, 1858.
[45] *New Albany Tribune*, October 30, 1858. Bell's letter also appears in the *Seymour Tribune*, November 11, 1858.

Despite claims to the contrary, the Kentuckians had no intention of letting the Bells alone. Failing to get the governor to offer a reward, some of the residents of Brandenburg raised reward money for the capture of the Bells. Edward S. Crosier, a resident of Laconia in Harrison County, Indiana, sarcastically observed, "The Kentuckians, of course, felt very deeply the rebuke thus given to their boasted chivalry. Their mortification could only be soothed by the apprehension of the actors in their heroic exploit. Their dignity was hurt. The cause of slavery demanded reparation. A reward of fifteen hundred dollars was offered for Major Bell, or two thousand for both the offenders."[46] This reward was soon to bear fruit in the arrest of the most audacious Bell - the "perfect meat axe - fearless and brave," Horace.[47]

On Saturday afternoon, October 23, 1858, Horace Bell, shortly before returning to California, was in New Albany visiting his sister and mother, who were then staying in Louisville. After escorting them to the ferry boat for their return trip to Louisville, Bell headed down Main Street toward the DePauw House to pick up the stage to Corydon. Near the intersection of East Main and Bank Streets, Bell was assaulted and kidnapped by five Louisville policemen, later identified as John Rogers, Sylvester Deshon, Jerry Antell , Thomas Antell, and Joseph Sweeney. Bell's apprehension attracted little attention because most of New Albany's citizens were then attending the county fair. According to the *Tribune*, the "ruffians from Louisville, professing to belong to the police of that city" announced to the few bystanders that they were arresting Bell for "a foul murder" while they hurriedly dragged him to the ferry boat, *Adelaide*, which incidentally was the same boat transporting Bell's sister and mother back to Louisville. Despite

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[46] *Indiana State Journal*, November 2, 1858. Crosier, March 5, 1832 to June 9, 1891, writes on "The Bell War – Adventures of the Troops." Crosier was a young medical student at the time of the Brandenburg Affair and later served as a surgeon in one of New Albany's hospitals during the Civil War. As a resident of Laconia, which was near the Bell farm in Harrison County, Crosier was likely a boyhood friend of Horace Bell. Other accounts give the reward amount as $500.00 for the capture of Horace Bell.

[47] This description of Bell is taken from a Harrison County, IN correspondent of the *New Albany Ledger*, August 18, 1858.

the cries and protestations of Bell's mother and sister, the crew of the *Adelaide* pushed off and started their journey across the river to Louisville.[48] The *Louisville Democrat* described Bell's apprehension: "Before he was secured, he was successful in cutting the clothing off one of the police. He is a powerful man, six feet in height, and proportionately large in frame. After a desperate struggle on his part, he was secured and lodged in jail."[49] Though it was not uncommon for the police of both states to cross state boundaries and arrest criminals without the proper warrants, the practice was generally overlooked because neither state had an interest in protecting rogues. Motivated by the reward money and perhaps a desire to rehabilitate the state's dignity after the embarrassing jail-break, the Louisville policemen's forcible abduction of Bell created a storm of protest from both sides of the river.

In New Albany, the fire bells rang and crowds congregated in the streets and along the wharf. Rumors were circulating that Bell would be hung by Brandenburg authorities and this created the most intense excitement in New Albany. Indiana Governor Ashbel P. Willard, Judge William Tod Otto, and attorney John Steele Davis addressed the crowds at indignation meetings and resolutions were adopted denouncing the gross violation of Indiana's sovereignty.[50] When the *Adelaide* returned to the Indiana side of the river, New Albany authorities arrested Henry

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[48] *New Albany Tribune*, October 25, 1858 (the article is captioned "Kidnapping – Unparalleled Outrage – Great Excitement").

[49] *Louisville Democrat*, October 24, 1858.

[50] Democrat Ashbel Parsons Willard was a resident of New Albany before his election as governor. He was born October 31, 1820 in Oneida County, NY and died in office at St. Paul, MN on October 4, 1860 while on a speaking tour. Republican William Tod Otto was born January 19, 1816 in Philadelphia, PA, practiced law in Indiana and served as a judge in the state. He was a personal friend of Abraham Lincoln, headed the Indiana delegation at the 1860 Republican National Convention and served as Lincoln's Assistant Secretary of the Interior. Judge Otto died in Philadelphia on November 7, 1905. John Steele Davis served in the Indiana state legislature as an ardent Whig. He ran as an independent in the 1860 congressional election and was narrowly defeated by Democrat James A. Cravens. Davis was born November 14, 1814 in Dayton, OH and died July 16, 1880 in New Albany.

Tennison, the boat's pilot, and Dan Taylor, the fireman, as accessories to the kidnapping.[51] The *Louisville Courier* described the chaotic scene in New Albany:

> During the night the excitement in New Albany increased. One of the ferry boats was seized and steam raised, a party proposing to go to Brandenburg to rescue Bell. Couriers on swift horses were dispatched to arouse Bell's neighbors, and parties placed on the roads to interrupt the party carrying Bell to prison. Yesterday the excitement had not abated. The streets and wharves were thronged with people. The churches were deserted. To allay the intense feeling, Gov. Willard, Judge Otto and John S. Davis, used their best efforts. The previous evening the arsenal was broken open to procure arms for a body of men who proposed visiting this city and attacking our jail.[52]

Bell's captors allowed him to write a note which he directed to the office of the *New Albany Tribune* adjoining the DePauw House on East Main Street. Bell explained the circumstances of his abduction and asked for assistance. The *Tribune* sent a dispatch to the Louisville jailor, William K. Thomas, asking if Bell had been lodged in his custody.[53] After confirming Bell's whereabouts, three New Albany citizens formed a committee and proceeded to Louisville to employ counsel and secure Bell's release on a writ of *habeas corpus*. The New Albanians were able to secure the writ around midnight, which was served upon the jailor by the well-known Louisville defense attorney, Nathaniel Wolfe.[54] Before the writ could be served, however, Bell, was placed in the custody of Louisville watchman Delos Thurman Bligh, who stood over six feet in height weighed over 200 pounds, and was very muscular – a man who could match Bell's

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[51] Henry Tennison appears in the 1860 Jefferson County, KY Census, living in Portland (suburb of Louisville), age 27, born in Indiana, wife Julia, age 21, daughter, Flora, age 7, occupation steamboat pilot. There is also a Henry Tennison who enlisted in Co. D, 23rd Indiana Infantry in New Albany, age 19 and a Henry Tennison buried January 1, 1867 at Mound City National Cemetery, near Cairo, IL. No further information has been found on Dan Taylor.

[52] *Louisville Courier*, October 25, 1858.

[53] William K. Thomas died September 1870 in Louisville, and was listed as Louisville jailor in the 1860 Jefferson County, KY Census record.

[54] *New Albany Tribune,* October 25, 1858. Nathaniel Wolfe was born in Richmond, VA October 29, 1810 and died in Louisville, July 3, 1865. Wolfe served as a Kentucky state legislator and argued for Kentucky's neutrality at the beginning of the Civil War. Wolfe County, KY, in the east-central part of the state, was named in his honor.

physical prowess should the prisoner try to escape. Bligh would eventually become Louisville's most famous detective and went by the nickname "Yankee Bligh" because of his Northern birth.[55] Officer Bligh, with the assistance of a heavy guard, transported Bell to the Meade County jail in Brandenburg – back to the very place where Bell had only a few months earlier freed his father and brother.

The kidnapping of Horace Bell touched off a barrage of editorial denunciations, accusations, threats, and demands. The Indiana press, including Democrats, denounced in unmeasured terms the actions of the Louisville police, demanded the release of Bell, and called for the punishment of the rogue officers. Alarmed by the hysterical scene in New Albany and sensing the possibility of an armed invasion, Louisville editors also condemned the violent arrest and seemed perfectly willing to give up the culprits. The *Louisville Courier* reasoned "Violence is not justifiable, even when used in the apprehension of a great culprit, if it is exercised in violation of the law. There is a comity existing between Kentucky and Indiana which should never be disregarded, and we sincerely regret that the actions of officials of this city has created the feeling that we record." The *Courier* had little sympathy for Bell, but objected to the manner of his arrest. The Louisville police officers were not clothed with the proper authority to arrest Bell and therefore were guilty of kidnapping. They had committed an offense against the sovereignty of Indiana by violating her kidnapping law.[56] The *Louisville Democrat* was equally disturbed and called Bell's seizure "a gross violation of the law." According to the *Democrat,* "The men who arrested Bell had no more authority in doing so, than Bell's father and brother had to come to this State and aid and abet slaves to escape." While Bell may have deserved his fate, the Louisville policemen who perpetrated this outrage insulted the laws of Indiana and the

[55] William C. Mallalieu, "Exploits of Yankee Bligh," *The Filson Club History Quarterly* (Louisville, Kentucky), 43, no. 1 (January 1969) 23-29.
[56] *Louisville Courier*, Monday, October 25, 1858.

Constitution, and brought shame to the city of Louisville. The *Democrat* pleaded with Hoosiers not to seek redress by violating Kentucky laws and assured their neighbors that the deed was as much condemned in Louisville as in New Albany.[57] After condemning the act, however, Louisville's Democratic paper provided some justification for the behavior of the city's police by asserting that it had been a common practice along the river by both Indiana and Kentucky police to arrest men without a requisition from the governor. Bell's case though was admittedly different. He was a respected Indiana citizen with enormous standing in the community - not an itinerant scoundrel who had crossed the river in order to evade the law. The Louisville policemen's rash, indiscreet, and irresponsible illegal arrest created such a furor because Bell "had the sympathies of thousands, perhaps, more disposed to applaud than to condemn" the rescue of his aged father and brother who had been confined for months without being tried or proven guilty.[58]

While the Louisville papers sought to allay the intense feelings of irate Hoosiers, Indiana's press demanded immediate redress of the wrong committed against Bell and the sovereignty of the state. The Democratic *New Albany Ledger* judged Bell's kidnapping "one of the grossest outrages ever perpetrated" and exclaimed that "Kentucky owes it to Indiana to deliver up those of her citizens who have trampled upon our State sovereignty. They have committed a high offense against the laws of Indiana, and should not be permitted to escape punishment."[59] The *Washington Democrat* of Salem protested that while Bell had violated the law, "there was a proper manner of procedure through which his punishment might have been reached, and the rights and dignity of both States maintained."[60] The *Evansville Journal*

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[57] *Louisville Democrat*, October 26, 1858.
[58] Ibid., October 29, 1858.
[59] *New Albany Ledger*, October 27, 1858.
[60] *Washington Democrat*, October 28, 1858.

disgustedly observed "It is scarcely possible that such an act of violence could have been perpetrated in any other town in the State, than where it occurred, without meeting prompt resistance. The conduct of the citizens [of New Albany] after the act was publicly known, reflects no credit upon them ... ."[61] Here the *Journal* was referring to the passivity of New Albany citizens while Bell was being dragged to the river. Francis Y. Carlile, editor of the *Journal,* threatened: "If Kentuckians wish to preserve the mutual comity and good faith that has always been observed between the citizens on the opposite shores of the Ohio, they must not let this outrage go unrebuked. It is necessary to their own safety to pass the severest censures upon the act, and bring the authors of it to punishment."[62] The safety of Kentuckians was at stake not only because of Hoosiers' threatened invasion to forcibly rescue Bell, but also because the breakdown of comity between the states would make it much more difficult for Kentuckians to reclaim their runaway slaves. If Kentuckians continued to insult Indiana's laws, Hoosiers would be much less disposed to cooperate in the enforcement of the Fugitive Slave Law. Berry Robinson Sulgrove, editor of the Republican *Indiana State Journal,* justified Bell's actions with the logic that he "had repaid an illegal arrest [the arrest of his father and brother] by an illegal rescue ... ." He demanded:

> The five Louisville officers should at once be required by Governor Willard of the Governor of Kentucky, and the penalty of the law exacted fully. And Bell should be required also, and after his release and return home, if legal steps are taken to hold him accountable for the rescue of his father, he should be given up peacefully and promptly. At the same time the scoundrels who began the series of outrages in the first arrest of

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[61] *Evansville Journal*, October 27, 1858.

[62] Ibid., October 28, 1858. The *Evansville Journal*, edited by Francis Y. Carlile, was considered an opposition paper to the Democratic *Evansville Enquirer.* The *Journal* had originally been a Whig organ, but after the Whig party collapsed the paper advocated the principles of the American party and supported Fillmore for president in 1856. After Carlile sold his interest in the paper in 1859, the *Journal* became a Republican sheet.

> old man Bell should be required by our Governor the very moment Horace Bell is required to be given up by us."[63]

Alarmed by the intensity of public feeling, state officials and editors pleaded for moderation. Governor Willard allegedly promised to make a requisition of the kidnappers if the proper legal steps were taken by the authorities. In New Albany, a Floyd County grand jury indicted Louisville policemen John Rogers, Sylvester Deshon, Jerry and Tom Antle and Joe Sweeney for the kidnapping of Bell and it appeared they would be tried for a felony.[64] The *Indiana State Journal* speculated that the case could well be "a cause of serious collision between the citizens of Indiana and Kentucky."[65] The *Harrison Democrat* lamented that the Bell case "has been a series of illegal acts very much to be deplored by all lovers of law and order; and it furnishes another strong proof of the evil tendency of the times, and the prevalence of that anarchial [anarchical] and mob spirit, which if not reformed, will lead to the worst possible results to the citizens of the border counties of both States. We hold the supremacy of the law above all personal considerations, and any infractions of our State sovereignty is a matter for the State and not for individuals to remedy."[66]

For Democrats on both sides of the Ohio, this case represented an example of the *higher law* of individual conscience at work - individuals taking the law into their own hands, committing illegal acts, disrupting the peace of the community, and creating sectional discord.

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[63] *Indiana State Journal*, October 27, 1858.
[64] Ibid., October 28, 1858. Thomas G. Antle was born in Kentucky on April 8, 1832 and died 12/30/1878 in Louisville. He appears in the 1850 and 1860 Jefferson County, KY Census records as a laborer and policeman. Jeremiah (Jerry) Antle, probably a brother to Thomas G. Antle, was born in Kentucky and died in Louisville, October 31, 1896. He appears in the 1850 and 1860 Jefferson County, KY Census records as a laborer and night policeman. John H. Rogers was born in Tennessee in 1825 and died in Louisville in 1891. He appears in the 1850 and 1860 Jefferson County, KY Census records as a carpenter and night policeman. Joseph Sweeney was born in Kentucky and appears in the 1860 Jefferson County, KY Census record as a policeman. Sylvester Deshon was born in Maine and died May 20, 1900 in Minneapolis, MN. He appears in the 1860 Jefferson County, KY Census record as a lightning rod maker.
[65] Ibid., October 27, 1858.
[66] *Louisville Democrat*, October 28, 1858 (quotes the *Harrison Democrat*).

The *Louisville Democrat* declared "we can't trust the higher law of individual interest and discretion, to do what it is proper and necessary to do lawfully."[67] Democrats censured Republicans and abolitionists (in the minds of Democrats, they were one and the same) for their adherence to the *higher law* of conscience over the law of the land, the Constitution, and alleged that such dependence on individual conscience would lead to anarchy. This conflict between constitutionalism and *higher lawism* was particularly relevant to the Fugitive Slave Law. No matter how odious the law might be, Democrats believed that people were bound to submit to it out of respect for the rights of their Southern brethren and out of devotion to the Constitution. Obeying the Fugitive Slave Law was also necessary to prevent disunion and civil war. The Harrison County editor pleaded with "all peace-loving and law-abiding citizens, to discountenance by word and deed, all acts either designed or calculated to stir up animosity and ill blood between the citizens of the two States."[68]

After the Hoosiers ascertained that Bell was being confined in Brandenburg, Isaac P. Smith, one of New Albany's leading citizens, organized an armed expedition to rescue Bell.[69] The invaders, still fearing that Horace Bell might be hung, left Monday night, October 25, and the *New Albany Tribune* described the departure of the rescuers:

> Shortly after dark a large crowd gathered on the wharf, to see the volunteers off. Muskets were obtained from the Court House, an old swivel loaded, and revolvers and other weapons hunted up. The ferry boat *Adelaide* was taken possession of, and about nine o'clock seventy-five persons, embracing many of our best citizens, embarked for Brandenburg, determined to recover Horace Bell, if they had to wade through blood to accomplish their object.[70]

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[67] Ibid., October 27, 1858.
[68] Ibid., October 28, 1858.
[69] Isaac P. Smith, 1808-1888, a native of New Jersey, appears in the 1850 and 1860 Floyd County census, living in New Albany as a carpenter.
[70] *New Albany Tribune,* October 28, 1858.

The volunteers were organized into squads and a leader was appointed to each squad. The expeditionary force steamed down the Ohio River on the *Adelaide,* ironically the very boat which had sped Horace Bell across the river after his capture, and in the early morning hours of Tuesday, October 26, docked at Tobacco Landing, in Harrison County, just a few miles above Brandenburg. Here another forty volunteers boarded the steamer, putting the Hoosiers' force at just over 100 men. The boat proceeded on down the river a short distance, when sixty men, led by John Bell, Horace's brother, disembarked to march into Brandenburg from behind. The rest of the force remained on the boat, which continued toward Brandenburg. The plan was for the land force to come into Brandenburg from behind and meet up with the rest of the volunteers who would approach the Brandenburg jail from the river. Because of a lack of familiarity with the terrain and the darkness, however, most of the volunteers approaching Brandenburg by land became lost. Only a squad of eighteen Hoosiers reached the heights of Brandenburg, where they waited on the arrival of the *Adelaide* in front of the town with the rest of the force. After determining that the town was thinly guarded, the invaders decided to descend the hills and raid the jail. To their dismay, they discovered that another steamer had previously warned the Kentuckians about the invasion and Sheriff Reuben R. Jones with a heavy guard had taken Bell south to an interior part of the county.[71] Bell had actually been taken to Big Spring, a one-horse town at the extreme southern edge of the county, about sixteen miles distant from Brandenburg.

Once the land force discovered that Bell had been taken to Big Spring, they proceeded to the wharf, crossed over the river in skiffs and met up with the rest of the force on the *Adelaide*. According to the *Tribune*, "A discussion ensued as to the proper steps to be taken. A

[71] Reuben R. Jones was born June 3, 1811 in Kentucky and died May 4, 1895 in Garnettsville, Meade County, KY. He appears as a farmer in the 1850 Meade County Census and in 1860 he is living in Garnettsville, Meade County and listed as the "High Sheriff."

majority were in favor of wreaking instant vengeance upon the town, but better counsel prevailed finally, and a committee was appointed to confer with the citizens, and make a demand for Bell."[72] Brandenburg's citizens, alarmed by the prospect of having their town destroyed, were disposed to negotiate a settlement with the menacing force at the water's edge. Many of the merchants and citizens of Brandenburg had already carried away their goods, expecting that the invasion force would sack the town.

According to Joseph M. Phillips, a Brandenburg merchant, "Walter Q. Gresham made overtures for a settlement, which was promptly sanctioned by the leading slaveholders of Meade County, as they deprecated the actions of the hotheads on their side and feared the complications that might ensue if Bell was detained too long."[73] Gresham, a boyhood friend of Horace Bell, was one of the Corydon attorneys that had earlier tried to get David and Charles Bell released on bail. John Ray Cannon, a New Albany merchant, and Oscar Gregg, son of the *New Albany Tribune's* editor Milton Gregg, took a leading role in negotiating with Brandenburg citizens for Bell's release. According to Edward Crosier, a member of the expedition, Cannon told the Brandenburgers that "the honor of our State had been trampled upon; that they had a large force before the town; that they would blow up the old jail and everything else unless satisfactory terms were made at once."[74] In another account, Cannon and Gregg "stated to them that it was all-important that something should be done, and that speedily, to allay the then existing excitement. If it was not done, civil war would rage along the borders of the two

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[72] *New Albany Tribune*, October 28, 1858.

[73] Gresham, *Life of Walter Quintin Gresham*, 88. Captain Joseph Maxwell Phillips was born November 19, 1828 in Kentucky and died July 18, 1922 in Sedgwick, Harvey County, KS. Phillips appears in the 1860 Meade County, KY census as a farmer, but he was also a Brandenburg merchant. Through various business enterprises, Phillips became a millionaire.

[74] *Indiana State Journal*, November 2, 1858. See Edward S. Crosier's letter to the *Journal* called "The Bell War - Adventures of the Troops."

States, and the good feeling which has so long existed would be broken up."[75] After the Indiana committee explained the gravity of the situation, a spirit of conciliation and cordiality characterized the negotiations between the residents of the two states. The Brandenburg receiving committee, which included Judge William Alexander, Meade County Circuit Court Clerk William Fairleigh, Colonel Alanson Moremen, Colonel Robert B. Buckner, and Dr. Erasmus O. Brown, assured the Hoosiers that Bell would receive "a speedy, fair, and impartial trial."[76] The two sides arrived at a satisfactory agreement which stipulated that Horace Bell would be brought back to Brandenburg, given an immediate hearing, and held to a reasonable bail, which would be given by Meade County citizens. Finally, Brandenburg citizens should petition Governor Morehead to pardon all of the Bells. After achieving this settlement, the Bell expedition came to an end and the Indiana volunteers returned to New Albany on the *Adelaide*. A committee consisting of Cannon, Gregg, and George Austin remained in Brandenburg to make sure the terms were carried out in good faith.[77] Gregg surmised that it was "the wish of nine-

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[75] *New Albany Tribune*, November 2, 1858.

[76] Ibid; Colonel Robert B. Buckner, March 15, 1795 to October 18, 1863, was a War of 1812 veteran and former Louisville merchant. In 1860 he appears in the Meade County, KY census as a "retired merchant." His residence in Brandenburg, on a high bluff overlooking the Ohio River, was used by Confederate General John Hunt Morgan as a headquarters just before the general crossed over into Indiana on his raid. Dr. Erasmus O. Brown was born in Burkesville, Cumberland County, KY February 13, 1817 and died in Louisville, KY in June 1889. He was a physician in Brandenburg and Louisville, and was elected twice to the Kentucky State Legislature in 1855 and 1857 from Meade County. William Fairleigh, April 16, 1797 to September 16, 1865, was the first clerk of Meade County and circuit courts and held the positions for over forty years until his death. In the 1850 Meade County, KY Census, he is living in Brandenburg and serving as the "clerk of the court" and in the 1860 Meade County, KY census he is listed as the "circuit clerk."

[77] John Ray Cannon was born December 5, 1822 in Bloomington, IN and died March 17, 1869 in New Albany, IN. In the 1850 census, he appears as a trader living in Lawrence County, IN and in 1860 he is living in New Albany as a merchant. During the Civil War, Cannon earned the rank of captain and served as a brigade quartermaster. His obituary states that he "was known as one of our [New Albany] most active and enterprising citizens, being always forward in every public work calculated to advance the interests and welfare of the city." See *New Albany Ledger*, March 18, 1869. Oscar Gregg was the son of the editor of the *New Albany Tribune*, Milton Gregg. He was born January 29, 1836 in Indiana and died October 21, 1859 in New Albany. Gregg was only 22 years of age at the time of the Bell kidnapping. See his obituary in the *New Albany Tribune*, October 22, 1859. George H. Austin was the son of wealthy New Albany merchant, John Austin. He was about 25 years of age at the time of the Bell kidnapping and died in New

tenths of the people of this county [Meade] that he [Bell] should have a fair and impartial trial, and be admitted to a reasonable bail, which he [Bell] can easily procure in this place [Brandenburg]." In a letter to the *Tribune*, he reported happily that Bell "seems to be in fine spirits, and says he has been very well treated since his return to Meade county."[78]

After Bell's captors heard of the agreement between the warring parties, they took the prisoner from the Big Spring hotel to Orla Richardson's farm for a hearty breakfast. The Kentuckians, many of whom admired Bell's bravery and record as a soldier and adventurer, did their best to make Bell's stay in the county quite comfortable. Bell would later thank "the high-minded and honorable gentlemen of Meade county for the interest they manifested in my behalf, even *before* they were aware of any demonstration being made in my favor on this side of the river. Especially the ladies of Meade county have my most heartfelt thanks."[79] After breakfast, an armed guard of 300 men escorted Bell to Brandenburg, where he was given a hearing on Thursday, October 28. Judges Enos Keith and David Henry presided at the hearing; William T. Coal, the Brandenburg attorney who had earlier served on David and Charles Bell's defense team, represented Horace Bell, while James D. Percefull argued for the prosecution.[80] The judges set bail at the reasonable sum of $750.00, and required Bell to appear at the November term of the Meade County Circuit Court for his trial. Judge Keith denied "that there was any compromise made with the New Albany mob. They received no assurances or promises except that Bell should be treated humanely, and held amenable to the laws of Kentucky." Keith

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Albany on February 4, 1871. He appears in the 1860 Floyd County, IN Census, living in New Albany and working as a clerk. His obituary states that he "had been many years engaged in business in this city [New Albany]" and that he was a "well known citizen ... a congenial, whole-souled gentleman." See his obituary in the *New Albany Ledger*, February 4, 1871.

[78] *New Albany Tribune*, October 28, 1858.

[79] Ibid., November 2, 1858.

[80] James D. Percefull appears in the 1860 Meade County, KY Census living in Brandenburg as a lawyer, age 45, born in Kentucky.

also asserted that the court set a low bail amount, not out of fear of reprisal, but because of sympathy for the motives which impelled Bell to commit the crime.[81] Notwithstanding Keith's version of events, if the size of the guard escorting Horace Bell is any indication of the existing feeling, then it is clear that Brandenburg's citizens did fear an attack or a forcible rescue attempt. They must have felt some pressure to come to a peaceable settlement with the Indiana force. Alanson Moremen, Joseph M. Phillips, and John R. Cannon became Bell's sureties on his bond. Bell was released, and as the steamer moved off many of the citizens of Brandenburg "gave three cheers for Capt. Bell."[82] Though the Indiana and Kentucky press would continue to spar over the recent series of events, the volatile Bell conflict was resolved peacefully and seemingly to the satisfaction of nearly all involved.

The slavery question and the Fugitive Slave Law were inextricably connected with the illegal arrests of the Bell family, though some newspapers disputed the fact. In response to the claim of the *Louisville Courier* that "excitable spirits in New Albany" had politicized the Bell affair since the slavery question was involved in it, Milton Gregg of the *New Albany Tribune* asserted that the slavery question had nothing to do with the matter.[83] The Democratic *New Albany Ledger* maintained that "in the kidnapping of Horace Bell, we presume no one thought of slavery or anti-slavery in connection with it." The act was denounced in New Albany as an outrage upon the state's sovereignty and a violation of the rights of an Indiana citizen. John B. Norman, the *Ledger's* editor, proudly proclaimed of New Albany:

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[81] *Louisville Courier*, November 4, 1858. Judge Enos Keith was born December 6, 1816 in Indiana and died in 1889 in Meade County, KY. He appears in the 1860 Meade County, KY Census as a farmer. In 1880, he is living in Brandenburg, Meade County and listed as a judge of the county court. David Henry was rumored to have been an abolitionist and during the Civil War was an ardent supporter of the Union. He was murdered by Confederate guerillas on August 23, 1864. He appears in the 1850 and 1860 Meade County, KY Census as a farmer.

[82] *New Albany Tribune*, November 2, 1858.

[83] Ibid., October 30, 1858.

> We presume there is no city in the Union, located in a free State, where there is less disposition shown to favor abolitionism, or a greater willingness to yield to the people of the South, all their just rights, than her. … Our people have done all that could in reason be asked of them to preserve the good understanding which has so happily prevailed along the Ohio river border. They have executed the constitutional compact for the delivery of fugitives not only in letter, but, what is more important, in spirit and in cheerfulness. When satisfied of the claim set up by the master, our citizens have not sought a resort to legal quibbles or expensive lawsuits to obtain delay. To preserve this state of things - so important to Kentucky, and in which we have comparatively so little interest - it is necessary that our over-the-river neighbors should pay some regard to our rights, for we have rights as well as they.[84]

Here again was the veiled threat that if Kentuckians refused to deliver up the kidnappers, they could expect less cooperation from Indianans in the return of fugitive slaves. The *Tribune* was even more emphatic about the consequences of the Bell affair, asserting that "strong Anti-slavery men have been manufactured by hundreds during the past week, and where one fugitive has escaped, there will be hereafter twenty. While slave owners have heretofore been allowed to take away their runaways without trial, they will hereafter be made to prove their property. While Indianians will not assist in running away slaves, they will refuse to aid in catching them as heretofore."[85] The *Evansville Journal* warned "If some reparation be not made for the indignation and wrong done to the sovereignty and people of Indiana in this case, there will be more men turned to abolitionism and Underground Railroad conductors, than has been created by the Greeleys, and the Giddings and their co-laborers. For their own safety and for the preservation of the relations of good neighborhood, the guilty parties in this transaction must atone for the outrage, or the whole State of Indiana will resent it."[86]

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[84] *New Albany Ledger*, November 3, 1858. John B. Norman was born December 23, 1824 in Dartmouth, England and died October 31, 1869 in New Albany. His paper was one of the leading Democratic organs in the state prior to the Civil War.
[85] *New Albany Tribune*, October 30, 1858.
[86] *Evansville Journal*, October 29, 1858.

While the papers insisted that the slavery issue had nothing to do with Bells' illegal arrest, they did admit that the incident had propaganda value for the abolitionists and fueled the antislavery movement. The kidnapping of the Bells increased sectional tension, gave the abolitionists ammunition, and aggravated the fugitive slave problem. Benjamin F. Diggs, editor of the Republican *Randolph Journal,* published in Winchester, Indiana in the east-central part of the state, recounted the long, sordid history of the Bell case, and cynically concluded that "The tender mercies of slaveholders are very cruel. No man is safe so long as Slavery exists and has such diabolical laws to protect it."[87] The Republican *Madison Courier,* edited by Michael C. Garber, facetiously remarked that "The Kentuckians were seeking justice, which, in the language of original democrats, means his nigger. Failing in that they sought revenge, and naturally enough set the laws and vested rights of an 'abolition' State at defiance."[88] Incidents such as the Bell case hurt the Indiana Democratic Party, the party which boasted of its nationalism and commitment to all constitutional obligations. The party increasingly came to be viewed as subservient to Southern slave owners - an image that Republicans of course perpetuated.

After Horace Bell was released, he crossed the river for a brief visit to his mother on the family farm and then proceeded by boat to New Albany where he triumphantly arrived late Friday evening, October 29. A crowd eagerly awaited Bell's return, greeted him as a hero and persuaded him to go to Woodward Hall, New Albany's theater, where a drama was being performed by the Chapman Company in his honor. Nationally renowned actress Susan Denin

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[87] *Randolph Journal*, November 4, 1858. Benjamin F. Diggs appears in the 1860 Randolph County, IN Census as a printer living in Winchester, age 32, born in Indiana. The 1850 Randolph County, IN Census shows Diggs, age 23, working as a salesman.

[88] *Madison Courier*, November 2, 1858. Michael C. Garber, at one time a political ally of Indiana Democratic Party leader Jesse D. Bright, became one of the leading Republican voices in the state prior to the Civil War. He was born April 7, 1813 in Staunton, VA and died April 8, 1881 in Madison, IN.

played the role of Horace Bell in *Horace Bell - the Champion of Freedom*. The *New Albany Ledger* offered a description of the opening night of the theatrical performance:

> Chapman's Varieties - The first night of the drama of "Horace Bell" called together the largest audience ever assembled in Woodward Hall. It was literally packed to its utmost capacity. It was a benefit to be proud of. Miss Denin never received so much or such hearty applause on an occasion of the kind. This drama has some merit, independent of the existing Bell excitement. Its tendencies are to deepen the natural feeling of hatred to oppression, and to inspire a sentiment of heroism to put it down. It was rapturously applauded. Just before the close a scene occurred that beggars description. Mr. Huntington, still in character, stepped forth and announced that Capt. Bell had just arrived, and had kindly consented to appear before them. This announcement was received in silence. Incredulity marked every countenance. The piece closed, and the manager came forward and repeated that Horace Bell would appear before them in a few minutes. The audience were moved, yet not fully convinced. Ten minutes elapsed; the curtain rose, and Miss Denin appeared, as the Goddess of Liberty, leading in Capt. Bell. They were greeted with rounds upon rounds of applause, such as never before reverberated through that hall. Cheers were also given for the committee who negotiated his release, and for the State of Indiana. Capt. Bell was too much overcome with emotion to say more than a few words. The scene ended by Miss Denin singing the soul-inspiring Marseilles Hymn, which called down thunders of applause.[89]

Despite the glowing review of the play by the *Ledger,* this Democratic organ denied that the Bell affair had anything to do with the slavery question or lofty ideal of freedom. But the *Madison Courier* retorted "The difficulty originated about a nigger. If there had been no nigger, no slavery, there would have been no kidnapping of the elder Bell, no necessity of a rescue by the son Horace. It is the old antagonism between Freedom and Slavery." *The New Albany Tribune* dramatically reported that upon Bell's stage appearance "Cheer after cheer arose from the assembled multitude, and it was a long time before the tumult subsided. Such an event, we venture to say, never before occurred within the walls of theater."[90]

The large crowd in attendance at the theater is an indication of just how much the Bell case had excited the public mind as theatrical performances rarely aroused much interest in this

[89] Ibid.
[90] *New Albany Tribune*, November 1, 1858.

era, though *Uncle Tom's Cabin* was very popular and helped the theater to gain respectability. The public enjoyed plays with moral themes and some of the dramas dealt with the contemporary problems of slavery and intemperance. Even the theater became a tool for the propagation of antislavery ideas.[91] *Horace Bell, the Champion of Freedom* was again performed Saturday night in front of a large crowd. The *New Albany Tribune,* however, reported that the play was "a very considerable bore, being badly written and worse performed."[92] The Democratic *Cannelton Reporter* ridiculed the people of New Albany for tolerating "those who dressed up a woman in britches, stuck a feather in her cap, tied a red rag on a broomstick, and made her walk the stage, a la Capt. Belle, for the amusement of the populace, and disgustingly burlesque the whole affair - and worse than all, they made Capt. Bell doff his nobility, and act the part of a clown on stage."[93]

For weeks after Horace Bell's release, the New Albany and Louisville papers continued to debate the recent events which had nearly brought the two states to armed confrontation. Immediately after Bell's kidnapping, the Louisville papers sought to alleviate the indignation and excitability of Hoosiers by condemning the illegal actions of its police. Even after Bell was released, the *Louisville Courier* was still urging Indiana Governor Willard to demand the kidnappers:

> We insist that Governor Willard shall vindicate the honor of Indiana, and the principles of State sovereignty and international law by demanding them from the Governor of Kentucky. Previous outrages have nothing to do with this. We urge this course, because we understand that the Louisville police, almost to a man, declare that they will not serve any warrant, issued against their filibustering brethren on this charge. We are anxious to see how a triangular fight between the Governor of Indiana, the Governor of Kentucky and the independent jail clique sovereignty of Louisville would result. Our

[91] Alexandra Edwards Curry, "Entertainment in New Albany and Madison, 1850-1860: A Chapter in Indiana's Social and Cultural History" (master's thesis, Butler University, 1969), 42-55.
[92] *New Albany Tribune*, November 1, 1858.
[93] Ibid., November 13, 1858.

> own view is, that the Jail Clique has so long controlled Louisville without authority of law, braved the statutes and overridden the courts, that they imagined they could extend their jurisdiction and take the adjacent shores under their puissant protection. For our part, we hope Governor Willard will demand the kidnappers.[94]

The other Louisville papers, however, upon further reflection declared that their policemen were justified in arresting Bell because this had long been a common practice on both sides of the river by Louisville and New Albany officers. The *Louisville Journal* retracted its earlier position that the kidnappers should be punished and apologized to the officers involved.[95] Even the *Louisville Democrat,* tiring of the belligerent tone of the Indiana papers, became more defensive. The editor of the *Democrat*, responding to the "incendiary articles" from the *New Albany Tribune*, wrote a condescending and sarcastic summary of the New Albanians' expedition to Brandenburg, calling it the "Grand Army" and facetiously asserting that "A petition will be presented to the next Congress, to extend the pension laws to the Tribune's marines."[96] This kind of bravado certainly wasn't calculated to ease the tension between the two states. The *Evansville Journal* responded to the *Louisville Journal's* boasting by lecturing: "This is not the tone in which to talk to a community whose soil and rights had been insultingly violated and their feelings wantonly outraged."[97] The *Terre Haute Union,* taking notice of the bitter words being bandied back and forth, pleaded with the feuding editors of the *New Albany Tribune* and the *Louisville Journal* for moderation: "Gentleman, moderation, in all things, is the better policy."[98] Over a year after the illegal arrest of David and Charles Bell and Oswell Wright in southern Harrison County, and for weeks after Horace Bell's release by Brandenburg authorities,

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[94] *Louisville Courier*, November 1, 1858.
[95] *New Albany Ledger*, November 3, 1858. Norman's editorial discusses the *Louisville Journal's* position.
[96] *Louisville Democrat*, October 30, 1858.
[97] *Evansville Journal*, October 28, 1858.
[98] *Terre Haute Union*, November 3, 1858.

Kentuckians and Hoosiers continued to bicker over the case, making the Bell affair the longest running fugitive slave drama in Indiana's history.

While the Kentucky papers defended the illegal kidnapping because of precedent and mocked the efforts of Hoosiers to rescue Bell, the Indiana papers continued to demand the extradition of Bell's kidnappers. John B. Norman of the Democratic *New Albany Ledger* admitted that it had become a common practice for Kentucky officers to come into the state and arrest alleged criminals who had escaped from Kentucky to Indiana; however, he defended Bell's character and asserted that his case was entirely different. Bell was a citizen of Indiana and well known to thousands of people in Floyd and Harrison counties. He was entitled to the protection of Indiana laws and should not be classed with the ordinary horde of thieves, vagabonds and common swindlers who roam the country. Norman blasted the Louisville policemen who kidnapped Bell and declared that they "had no claims upon the leniency of the Indiana authorities, or its citizens. They have outraged our soil and have trampled upon our laws, and we hope may receive the punishment which they so richly deserve."[99] The day after Horace Bell's release, the *New Albany Tribune* rejected the Louisville papers' assertion that precedent justified Bell's arrest and exclaimed "The rascals who kidnapped Horace Bell need not expect to escape upon so flimsy a pretext as this. Until they are delivered up and punished, it is useless for any man or any newspaper to cry peace, peace, for there will be no peace. The outrage against the peace and dignity of the State must be punished. There can be no comity or fraternity between the two States until this is done."[100] In a response to the Louisville papers' pleading for peace, Gregg continued belligerently: "If they [the Louisville papers] were aware of the state of feeling upon this side of the river, they would hardly spend so much time in

[99] *New Albany Ledger*, November 3, 1858.
[100] *New Albany Tribune*, October 30, 1858.

attempting to accomplish that which all the papers south of Mason and Dixon's line could not accomplish. … Until the five outlaws who violated her [Indiana's] peace and dignity have expiated their crime by service in the State's prison, we do not propose to 'shake hands over a dividing river.'"[101] One Indiana citizen, who claimed to represent the common sentiment of the whole community, endorsed the editorial course of the *New Albany Tribune* and hoped "that these Louisville kidnappers will not be suffered to go unwhipt of justice."[102] The *Lafayette Journal* exasperatingly demanded: "Gov. Willard has not yet made any requisition on the Governor of Kentucky for the kidnappers of Bell. We hope sincerely that he will delay action in this work no longer. It is due to the dignity of the State and the demands of justice that the requisition be made. Let it be done at once."[103] Months earlier, however, Governor Willard had refused to intervene after the illegal arrest of David and Charles Bell. Once Brandenburg's authorities released Horace Bell, he was content to let the matter drop. Though he had initially promised to demand the Louisville kidnappers once they had been identified, Willard eventually recognized that demanding their extradition would further agitate a situation that had already come dangerously close to bringing the two states to blows. It is also quite likely that Willard may have believed the Bell family guilty of running off slaves and therefore had little interest in protecting them from Kentucky justice. Despite the cries of certain editors, Horace Bell's release and Governor Willard's subsequent inaction eventually brought quiet once again along the shores of the Ohio.

While the press seemed to cover just about every detail of the Bell case, it all but ignored the fate of Oswell Wright, the free black who had been arrested along with David and Charles Bell in the fall of 1857. Wright had been temporarily removed from the Brandenburg jail

[101] Ibid., November 1, 1858.
[102] Ibid., November 12, 1858.
[103] *Lafayette Journal*, November 9, 1858.

before Horace and John Bell rescued their father and brother, and therefore didn't escape with the Bells. Had Wright been in the jail at the time of the rescue, the Bells would have been presented with an intriguing dilemma. The Bells' actions in freeing their relatives had been hailed as an act of filial duty, but the freeing of Wright might not have elicited such a sympathetic response. The Indiana press's exultant and boastful reaction to the jailbreak undoubtedly would have been more measured had Wright also escaped with the Bells. When asked years later what he would have done had he found Wright in the Brandenburg jail, Horace Bell responded: "I don't know, he was no kin of mine."[104] Since Charles Bell and Oswell Wright were friends however, it is unlikely that Horace and John Bell would have refused to help Wright - if for no other reason than to satisfy their younger abolitionist brother. Despite the valiant attempts of Wright's Kentucky attorneys, the free black was convicted of stealing Charles, Dr. Henry Ditto's slave, at the May 1859 term of the Meade County Circuit Court. He was sentenced to five years in the Kentucky penitentiary in Frankfort. After the completion of his sentence, Wright returned to Corydon where he lived out the remainder of his days. He died a well-respected member of the community in 1875 and the *Corydon Republican* commended "his efforts during the dark days of slavery in assisting his colored brethren to flee from bondage to a land of freedom."[105]

The tumultuous events of the past year scattered the Bell men all over the country. Shortly after his arrest, David Bell was forced to sell his twenty-acre farm along the river, probably to pay for his legal defense, and subsequently relocated to Missouri. Charles Bell remained in Corydon, and at the start of the Civil War enlisted in the 20th Indiana Infantry, rising to the rank of captain. He was killed in front of Petersburg, Virginia in 1864. John Bell returned

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[104] Gresham, *Life of Walter Quintin Gresham,* 87.
[105] *Corydon Republican*, April 1, 1875.

to El Dorado County, California, just east of Sacramento, where he resumed his mining adventures. Horace Bell's celebrity status was short-lived, for he disgraced himself by attacking a woman while on a drunken spree just a few weeks after his release from jail. The *New Albany Tribune,* perhaps embarrassed by its earlier lionization of Bell, unhesitatingly denounced the recent hero's conduct, claiming that the "notoriety seems to have turned his head. He took to drinking, and has committed an offense which will damn him in this community through all time - an offense for which there can be no palliation offered."[106] The *Indiana State Journal* lamented that "it appears we must believe the hero of the great 'kidnapping' affair a very worthless fellow after all."[107] He failed to appear at the November term of the Meade County Circuit Court as previously ordered, and his bail bond was declared forfeited. The Meade County Court rendered a judgment against Bell's sureties, but this was later satisfied by the executive branch of the Kentucky government in accordance with the previous agreement. Horace Bell, now disgraced in his home community, drifted down to Mexico and joined the army of Mexican President Benito Juarez, then fighting a civil war against the reactionary forces of Miguel Miramon. When the American Civil War erupted in 1861, Bell returned to Indiana, enlisted in the 6th Indiana Infantry and then later served as a Union scout under Generals Lew Wallace, Nathaniel P. Banks and Edward R.S. Canby. In November 1860, the Meade County Circuit Court awarded a judgment in favor of Dr. Henry A. Ditto and against David and Charles Bell for $2,000 and a judgment against Oswell Wright for $100.00, but the judgments were never enforced. The cause against Horace and John Bell was not actually stricken from the docket of the Meade County Court until the fall of 1863.[108]

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[106] *New Albany Tribune*, November 23, 1858.
[107] *Indiana State Journal*, December 2, 1858.
[108] Gresham, *Life of Walter Quintin Gresham,* 89; Harrison, *Fortune Favors the Brave,* 86-168; Meade County, KY Order Books, K-M, Kentucky State Archives, Frankfort, KY.

The Bells, though "good Democrats," became reluctant instruments in the cause of antislavery in the state of Indiana.[109] Mrs. Gresham remembered that it was the belief in Corydon that David Bell knew nothing of the plan to help Charles and Mary Ann escape, "but there never was any doubt in the minds of the people that Charlie Bell planned and executed the escape."[110] Charles Bell and Oswell Wright were very likely agents of the Underground Railroad. The elder Bell, and sons John and Horace, however, apparently had little interest in the cause of antislavery and in fact John Bell specifically repudiated the sentiments expressed in the performance of *Horace Bell, Champion of Freedom.* In a letter to the *New Albany Tribune*, he declared "My brother does not approve of the motto: 'Liberty to all men - Freedom to the Slave,' neither do I. The 'nigger question' has nothing to do with the affair so far as we are concerned. Upon that question we have always been conservative."[111] In response to this, the abolitionist *Indiana True Republican* caustically remarked that the Bells "have proved to be base metal - no ring of honest Freedom about them."[112] The antislavery people along the border, however, greatly rejoiced at the outcome of events and the Brandenburg Affair helped reshape Hoosier attitudes toward the Fugitive Slave Law and the institution of slavery. General Lew Wallace reminisced that Horace Bell had a passionate hatred for slavery and slave-holding.[113] Bell's own ideological transformation from a political conservative to one who hated slavery must have been precipitated by the disturbing circumstances endured by his family at the hands of slave owners. During the decade of the 1850s Hoosiers became increasingly sensitive to perceived encroachments of the Slave Power, and the Bell case, which grew out of a violation of the Fugitive Slave Law, had the effect of driving political moderates or conservatives into the

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[109] *New Albany Tribune*, August 3, 1858 (refers to the Bells as "good Democrats").
[110] Gresham, *Life of Walter Quintin Gresham,* 90.
[111] *New Albany Tribune*, October 30, 1858.
[112] *Indiana True Republican*, November 11, 1858.
[113] Lew Wallace, *An Autobiography,* Vol. 1 (New York: Harper & Brothers, 1906), 450.

Republican Party. As the *New Albany Tribune* pointed out, Horace Bell became "the medium through which our citizens sought to vindicate their State sovereignty", and he symbolized Hoosiers' resistance to Southern dictation.[114] The Brandenburg epidosde was so explosive because it involved a violation of the rights of white Northerners, well-respected men in the community, and it reinforced the growing conviction that the power of slaveholders had to be checked. The West fugitive slave case in Indianapolis and the kidnapping of the Bells unfolded just as the Lecompton controversy was agitating the country and provided another impetus to Indiana Republicans' political fortunes. Republicans capitalized on perceived Slave Power aggressions, carrying the state in the 1858 and 1860 elections.

[114] *New Albany Tribune*, November 23, 1858.

CONCLUSION

The subject of fugitive slaves was an emotionally charged issue that proved to be a tremendous source of sectional discord, particularly after passage of the Fugitive Slave Act of 1850. In the decade prior to the Civil War, it became increasingly difficult for slaveholders to reclaim their fugitive slaves because of the growing antislavery sentiment in the Northern free states. At least several Southern states declared that Northern infidelity to national laws on the subject of fugitive slaves was a principle reason which justified their secession after Lincoln's election in 1860. South Carolina's secession convention asserted that Northerners had "encouraged and assisted thousands of our slaves to leave their homes," and that "fourteen of the States have deliberately refused for years past to fulfill their constitutional obligations."[1] Mississippi secessionists alleged that abolitionists had "nullified the Fugitive Slave Law in almost every free State in the Union," and had "utterly broken the compact which our fathers pledged their faith to maintain."[2] Georgians proclaimed that the Fugitive Slave Law "stands today a dead letter for all practicable purposes in every non-slaveholding State in the Union."[3] While conflict over slavery's existence in the federal territories became the salient issue in the intense

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[1] *Declaration of the Immediate Cause Which Induce and Justify the Secession of South Carolina from the Federal Union; and the Ordinance of Secession* (Charleston, SC: Evans & Cogswell, Printers, 1860), 7-9. South Carolina's "fourteen states" that had refused to fulfill their constitutional obligations included Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, Illinois, Indiana, Michigan, Wisconsin, and Iowa. The list only includes thirteen states and Ohio isn't listed. Ohio's omission was probably an oversight in the declaration or its printing.

[2] *An Address Setting Forth the Declaration of the Immediate Causes Which Induce and Justify the Secession of Mississippi from the Federal Union and the Ordinance of Secession* (Jackson, MS: Mississippian Book & Job Printing Office, 1861), 4.

[3] http://avalon.law.yale.edu/19th_century/csa_geosec.asp.

sectionalism that developed after the introduction of the Wilmot Proviso in 1846, the strife concerning fugitive slaves exacerbated the sectional divide and was a critical factor in bringing about the Civil War.

The antislavery crusade developed rather slowly in Indiana. Most of the state's residents before the Civil War were natives of slave states, or had descended from Southern migrants. Southern Indiana possessed important commercial ties with Southern markets by way of the Ohio and Mississippi Rivers; therefore, most Hoosiers were opposed to any activity that might disturb friendly relations with the South. Though the state's first constitution emphatically prohibited slavery, many Indianans were decidedly hostile to the presence of African-Americans. Discriminatory legislation beginning in the territorial period and extending through the Civil War made the state's black residents second-class citizens, if considered citizens at all, and kept them in a politically, socially, and economically degraded position. Hoosiers' unfriendly attitude toward blacks was rooted in the conviction that they were morally and intellectually inferior. Article Thirteen of Indiana's 1851 Constitution, the Negro Exclusion Clause, was the most dramatic legislative expression of Hoosiers' dislike of African-Americans. The exclusion clause, put before the electorate in a separate referendum from the constitution itself, was approved by nearly four out of five voters.

Not only were Hoosiers anti-Negro, but they also hated abolitionists for much of the antebellum period. Abolition meetings were often disrupted by mobs and the Liberty and Free Soil Parties in the 1840s and 1850s enjoyed little success in Indiana. The Pendleton riot in which Frederick Douglass was seriously injured and the mobbing of Indiana Free Soil gubernatorial candidate Andrew L. Robinson, who tried to make an antislavery speech in Terre Haute in the

1852 campaign, illustrate many Hoosiers' aversion to abolition.[4] The effort to silence antislavery radicals or agitators was not only motivated by an antipathy toward African-Americans, but also by a desire to preserve sectional peace. Few Americans were as devoted to the Union and the Constitution as Indianans and they believed that abolitionists threatened the Union's permanency.

Despite the obstacles faced in conservative Indiana, abolitionists increasingly gained ground in reshaping public attitudes regarding the slavery question. Indiana's antislavery activists made the most of the propaganda potential in the fugitive slave issue. The heavy-handed enforcement of the laws of 1793 and 1850 and the kidnapping of free blacks often produced a chord of sympathy toward the hunted fugitive among the previously indifferent. The image of a desperate tattered fugitive in shackles, dragged through the streets, graphically depicted the horrors of slavery in ways that the territorial question never could. As we have seen in the Freeman, Waterhouse, West and Bell fugitive cases, the Indiana press often portrayed fugitive episodes as examples of Southern aggression and evidence of a Slave Power plot to nationalize slavery and destroy the liberty of all Northerners. The president of the Neel's Creek Antislavery Society in Jefferson County articulated this idea in an 1845 address when he protested that "the liberty of the North was already prostituted to slavery and the slave power."[5] In an 1855 letter to his friend Joshua Speed, Abraham Lincoln revealed Northerners' exasperation with the fugitive issue when he wrote: "I acknowledge your rights and my obligations under the Constitution in regard to your slaves. I confess I hate to see the poor creatures hunted down and caught and carried back to their stripes and unrequited toil; but I

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[4] George W. Julian, *Political Recollections*, *1840-1872* (Charleston, SC: BiblioBazaar, 2008), 88.
[5] *Neel's Creek Anti-Slavery Society Minutes*, Indiana State Library, Indianapolis. The President of the society is listed as "Samuel Tilbets," and the date of his address was February 22, 1845. The address was delivered to other members of the society.

bite my lips and keep quiet." In the same letter, Lincoln lectured Speed that he "ought to rather appreciate how much the great body of the Northern people do crucify their feelings, in order to maintain their loyalty to the Constitution and the Union."[6] Lincoln spent the formative years of his youth in Southern Indiana. Like Lincoln, Hoosiers' devotion to the Union may have outweighed their dislike of the Fugitive Slave Law, but most had no enthusiasm for slave hunting. In fact, a militant minority disobeyed the law by assisting fugitives on the Underground Railroad.

The Fugitive Slave Act of 1850 was an explosive piece of legislation that elicited immediate protests from antislavery Northerners. As in other Northern states, the law was decried by abolitionists in Indiana; however, most Hoosiers were willing to acquiesce to the act's demands in an effort to maintain sectional harmony. The Whig *Vincennes Gazette* admonished shortly after passage of the compromise measures that "It seems to be the last hope of the abolitionist faction to raise such a 'hue and cry' against this law [Fugitive Slave Law], as will prevent the carrying out of its provisions, and secure its repeal or modification at the next session of Congress. That these agitators will be foiled in their designs must be apparent. It is a law of the land, a law made by the legal authorities, to carry out a provision of the constitution; therefore, it should not be resisted in its operations, nor will it be by order- loving and Union-cherishing citizens."[7] Vincennes, located in the southwest portion of the state, had served as the territorial capital and had always been a stronghold of the proslavery faction. Indianans never developed a hatred for the law such as that witnessed in Boston; however, as the testimony of William Cockrum reveals, fugitives even found friends in southwest Indiana.

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[6] Marion Mills Miller, ed., *Life and Works of Abraham Lincoln: Letters and Telegrams, Meredith to Yates*, Vol. 9 (New York: The Current Literature Publishing Company, 1907), 190-91. Lincoln's letter is written from Springfield, IL on August 24, 1855.

[7] *Vincennes Gazette*, November 7, 1850.

Cockrum, a member of the Anti-Slavery League, the clandestine organization dedicated to assisting fugitive slaves in their flight to freedom, lived near Princeton and recounts the adventures of many escaping slaves. In east-central Indiana, Levi Coffin, the "president" of the Underground Railroad, assisted nearly 2,000 fugitives to freedom at his home in Newport, Wayne County, and there were many other conductors and agents across the state.

The Fugitive Slave Act of 1850 not only inspired acts of humanitarianism and benevolence toward fugitive slaves, but the injustices of the law also contributed to the political realignment that occurred in the early 1850s. In the 1852 Indiana elections, Whigs and Democrats both campaigned for "finality," or the faithful adherence to the compromise measures as the final adjustment of the slavery controversy. The Democrats carried Indiana in a landslide, winning ten of eleven congressional seats, the gubernatorial and presidential races, and a decisive majority in the state legislature.[8] By 1860, however, the Democrats' political dominance in the state would come to an end. In accounting for the political transformation of the 1850s, Indiana historian Logan Esarey asserted that "The Fugitive Slave Law of 1850 started the trouble. Runaway slaves began to appear on all roads of the state. Gangs of brutal slave hunters were seen in chase or with the captured slaves in handcuffs or chains. Their [Hoosiers] native sympathy for the victims of oppression led many to aid the runaways."[9] Harriet Beecher Stowe's *Uncle Tom's Cabin*, inspired by the Fugitive Slave Law of 1850, also began to work a considerable influence in the state. Stowe's classic came out in the spring of 1852 and "From the very first, the book enjoyed an unprecedented sale in this State [Indiana]. The effect which the story produced was not visible then, but was clearly evident a few years later."[10]

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[8] Dale Beeler, "The Election of 1852," *Indiana Magazine of History*, 12, no. 1 (March 1916): 48-50.
[9] Logan Esarey, *History of Indiana* (New York, NY: Harcourt, Brace & Company, 1922), 223.
[10] Dale Beeler, "The Election of 1852," *Indiana Magazine of History*, 11, no. 4 (December 1915): 304.

The Kansas-Nebraska Act of 1854 triggered the formation of an opposition party consisting of anti-Nebraska Democrats, nativist Know-Nothings, temperance proponents, former Whigs, and abolitionists. Despite George W. Julian's contention that the coalition was a "combination of weaknesses, rather than a union for forces," the new party astoundingly carried the state in the 1854 elections, winning a solid majority in the state legislature and capturing nine of eleven congressional seats.[11] According to the fusionists, Illinois Senator Stephen Douglas' Nebraska bill repealed a "sacred compact," the Missouri Compromise, and threatened to extend slavery into regions previously reserved for freedom. Stowe's dramatic and sympathetic portrayal of the plight of fugitive slaves, and the callous enforcement of the Fugitive Slave Law created a groundswell of animosity toward the perceived aggressions of Southern slaveholders, and also contributed to the political makeover in Indiana. The John Freeman fugitive case in Indianapolis intriguingly occurred only months before the political upheaval in the spring of 1854 and undoubtedly played a role in creating the desire for political change.

The new People's Party which had stormed onto the political scene in 1854 suffered a political setback in the 1856 Indiana elections. Suffering from factionalism and insufficient party organization, the infant party lost six of eleven congressional races and control of the state legislature. The fusionists, however, had reason for optimism. The combined vote of the Republican Fremont and the American Fillmore accounted for over forty-nine percent of the ballots cast in Indiana. Democrat James Buchanan earned just over fifty percent of the vote in Indiana in 1856, while his Democratic predecessor, Franklin Pierce had received over fifty-two percent of Hoosiers' votes in 1852. In the 1856 governor's race, fusion candidate Oliver P.

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[11] Julian, *Political Recollections*, 105; Charles Zimmerman, "The Origin and Rise of the Republican Party in Indiana from 1854 to 1860," *Indiana Magazine of History* 13, no. 3 (September 1917): 244-245.

Morton was narrowly defeated by Democrat Ashbel P. Willard. In 1852, Democrat Joseph Wright had decisively defeated Whig Nicholas McCarty and Free Soil nominee Andrew L. Robinson. The Democratic margins of victory In Indiana in the 1856 presidential and governor's races had been reduced from their 1852 totals.[12] If the fusionists, or Republicans, could attract the majority of the American voters, then the future indeed looked bright. Ironically, there were no significant fugitive slave cases in Indiana in either 1855 or 1856 to arouse the public against the Slave Power. For many Hoosiers, the extension of slavery into Kansas was a distant problem and popular sovereignty or congressional non-intervention remained an acceptable solution to the slavery crisis.

The Lecompton "fraud" divided Democrats in December 1857, provided Republicans a political gift, and hastened the upsurge of Republican strength in the 1858 state elections. When Senator Douglas broke with the Buchanan Administration over the Lecompton Constitution, the Democratic Party divided into pro-administration and Douglas wings. The Kansas Lecompton Constitution was drafted by a proslavery convention and plainly did not represent the will of most Kansans, who were forced to accept the constitution with or without slavery – they could not vote on the constitution itself. Since there were already slaves in Kansas, the state would come in as a slave state whether the voters approved the constitution with or without slavery. The Buchanan Administration's backing of Lecompton did not look like popular sovereignty to Indianans – the expressed will of the antislavery majority had been ignored in favor of a proslavery minority. The effort to force the Lecompton Constitution on Kansans became another assault by the Slave Power on the rights of Northern freemen. In addition to Lecompton, the West fugitive slave case and the kidnapping of the Bells in Southern

[12] See Beeler for 1852 Indiana election totals. See Zimmerman, "The Origin and Rise of the Republican Party in Indiana," 267-269, for 1856 Indiana election totals.

Indiana in late 1857 also incited Hoosiers to resistance against a Slave Power conspiracy hatched to nationalize slavery. Well-publicized fugitive slave cases were public relations nightmares for the slaveholders and contributed to the growth of antislavery sentiment in Indiana. In the 1858 state elections, the Republicans regained control of the Indiana General Assembly and captured seven of eleven congressional seats. John G. Davis, anti-Lecompton Democrat, won a seat in Congress, leaving pro-administration Democrats with only three seats in the national House of Representatives.[13]

The political transformation begun in Indiana in the early 1850s was complete by 1860. Indiana, with its thirteen electoral votes, was considered by both Republicans and Democrats a political prize crucial to victory in the 1860 presidential election. Indiana, along with Illinois, Pennsylvania, and New Jersey, was considered a swing state and both parties poured a great deal of resources into the canvass. The Indiana delegates to the Republican National Convention played a crucial role in the nomination of Abraham Lincoln. The Hoosier delegates, led by gubernatorial nominee Henry S. Lane, and Caleb B. Smith, worked tirelessly for the "rail-splitter" from Illinois. Indiana delegates considered Lincoln a moderate on the slavery question, while William Seward, the pre-convention favorite, was deemed to be too radical an antislavery man to win in Indiana. George W. Julian recalled:

> The delegates from New Jersey, Pennsylvania, Indiana, and Illinois, representing a superficial and only half-developed Republicanism, labored with untiring and exhaustless zeal for the nomination of Mr. Lincoln, fervently pleading for "Success rather than Seward." Henry S. Lane and Andrew G. Curtain, then candidates for Governor in the States of Indiana and Pennsylvania, respectively, were especially active and persistent, and their appeals were undoubtedly effective.[14]

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[13] Charles Zimmerman, "The Origin and Rise of the Republican Party in Indiana," *Indiana Magazine of History* 13, no. 4 (December 1917): 371.
[14] Julian, *Political Recollections*, 118.

On May 18, 1860 at the Republican National Convention in Chicago, Indiana delegates unanimously cast their votes for Lincoln and the former Hoosier on the same day became the Republican nominee for president. The Republicans swept the 1860 fall elections in Indiana, increasing their majority in the state legislature, winning seven of eleven congressional seats, and for the first time electing a Republican president and governor. Lincoln won fifty-one percent of the ballots cast and Republican Henry S. Lane captured fifty-two percent of the votes in Indiana. In just eight years, the Indiana Democracy had frittered away their political dominance, losing control of the state to the fledgling Republicans.[15]

In a detailed analysis of the caning of Massachusetts Senator Charles Sumner by South Carolina Representative Preston Brooks on May 22, 1856, historian William Gienapp concludes that the "assault was of critical importance in transforming the struggling Republican party into a major political force."[16] He maintains that the attack drove many moderates and conservatives into Republican ranks because they began to see that their own rights were being threatened by Southern aggression. Republican appeals based on the immorality of slavery were unappealing to conservatives, especially in the Northwestern states where there existed an intense dislike of African-Americans. Just as Gienapp maintains that the Brooks-Sumner affair provided Republicans political capital, in the same way the brutal enforcement of the Fugitive Slave Law convinced many Northerners that the political power and arrogance of the South had to be checked. The Kansas crisis by itself was not enough to convince Northern voters to desert old party loyalties, especially in a conservative state like Indiana. The Freeman,

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[15] Ibid., 408-09; Reinhard H. Luthin, "Indiana and Lincoln's Rise to the Presidency," *Indiana Magazine of History* 38, no. 4 (December 1942): 385-405. The vote totals for the 1860 Indiana presidential election are as follows: Lincoln, 139,033, Stephen Douglas, 115,509, John C. Breckinridge, 12,294, and John Bell, 5,306. Republican Henry S. Lane defeated Democrat Thomas A. Hendricks, 136,725 to 126,968.

[16] William Gienapp, "The Crime Against Sumner: The Caning of Charles Sumner and the Rise of the Republican Party," *Civil War History* 25, no. 3 (September 1979): 245.

Waterhouse, West and Bell fugitive slave cases not only generated support for beleaguered fugitives, but also convinced many Hoosiers that the Southern encroachment of Northern rights had to be stopped. The Fugitive Slave Law and its victims played a critical role in the metamorphosis of Indiana politics in the decade leading up to the Civil War.

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