NEH Landmarks of the Underground Railroad **July 2008**

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LESSON PLAN: The Fugitive Slave Law and the case of Joshua Glover

BACKGROUND AND CONTEXT

From the earliest days of the Republic, the issue of fugitive slaves was problematic. In defining the relations between states, the Constitution's framers crafted the following language: "*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" (*Article IV, Section 2, Clause 3). Always contentious, the issue of fugitives intensified after the passage of a new Fugitive Slave Law as one of the provisions of the Compromise of 1850. During the decade prior to the outbreak of the Civil War in 1861, other slavery-related issues figured prominently in the eventual breakdown of unity of the republic, most notably the debate over the spread of slavery into the western frontier. Within the framework of "popular sovereignty," pro and anti-slavery factions fought for control of the regions being carved out of the Louisiana Purchase territory. The Kansas-Nebraska Act of 1854 destroyed the fragile balance struck 34 years earlier between the free and slave states in the Missouri Compromise and directly led to the formation of the Republican Party which dedicated itself to stopping the spread of slavery. It was in this increasingly explosive atmosphere that the Supreme Court handed down the Dred Scott decision in 1857 further inflaming the debate between pro and anti-slavery forces. Regional manifestations of this national debate were being played out in several places at once. Several northern states, for example, passed liberty laws in an attempt to negate the Fugitive Slave Law. Such defiance set the stage for spectacular confrontations involving slave-catchers from the south and northern abolitionists.

In Wisconsin, the arrest and rescue of Joshua Glover and the subsequent legal predicaments of newspaper editor and abolitionist Sherman Booth provide students an instructive window into the volatile pre-Civil War years. The particular lesson presented here can be used in either a Law or US History class and is designed to introduce students to a method of approaching case law, while acquainting them more fully with the legal controversies that resulted from the fugitive slave issue in ante-bellum America. Though a complex case, the Ableman decision of 1859 opens the door to a clearer understanding of the following:

1. The concept of habeas corpus as practiced in the American system of justice, and particularly that state courts could not issue writs of habeas corpus on federal prisoners;
2. Dual Federalism and the assertion of the Supreme Court's appellate jurisdiction over state courts;
3. The importance of judicial interpretation as illustrated by Taney's invalidation of the personal liberty laws of northern states;
4. The debates over nullification prior to the Civil War in both northern and southern states.

In developing this lesson, I drew heavily from H. Robert Baker's book, The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War. (Athens: Ohio University Press, 2006.

LESSON PLAN PROCEDURE

1. Provide direct instruction introducing the general topic and the purpose of the lesson. Go through the definition of habeas corpus.

2. Distribute the Student Handout and allow time for reading the facts of the case. Instruct them to read the facts as if they "are reading a love letter" – in other words, carefully digesting every word.

3. Assign partners and have the older of the two be the one that is going to explain the case to the other. All will have read the case, so the other partner serves as the "listener/questioner" and must ask questions throughout the process to clarify key points of the case. At the conclusion of this task, ask the class if there needs to be clarification on any of the facts or issues.

4. Allow time for reading documents 1-4. This can be done individually or in a jigsaw fashion using groups of 4 with each student responsible for one of the documents. At this point, DO NOT have them read documents 5 and 6.

5. Focus the students back to the question of the case and review the "path" this case traveled in finally reaching the Supreme Court. This would also be a good time to reinforce their understanding of FEDERALISM and the conflicts that can arise between the states and the national government.

6. Divide into groups of 3 and stage a mini moot court. Have one of the students argue for the plaintiff (Ableman). This is the argument for the National Government. Have another argue for the defendant (Booth). This is the argument for the state of Wisconsin. Give each side 2 minutes to present their arguments. The third member of the group acts as judge and is able to ask questions during the presentation of the arguments.

7. Once arguments have been completed, assemble the judges in a separate room (or hallway) and have them decide the case on the merits of the arguments they heard in their groups of 3. Have them report back to the class with their decision.

8. FINALLY, provide the students with the second handout that includes documents 5 and 6 (or present these via a power point application) and go through the reasoning for Wisconsin and the reasoning for the US Government. Have them compare what they are seeing here with the arguments they heard from each other during the mini moot courts. Follow up with discussion of the case for further understanding and/or a written response from students. Here are a few possibilities for discussion questions:

    a. Was Wisconsin justified in its defiance of the federal law? Why or why not?
    b. Why is habeas corpus such an important legal principle in our system?
    c. Was Taney's reasoning in the case logical? Was he justified in the ruling?
    d. How does this case illustrate the "nullification controversy" of this period? (This provides a great opportunity for having students see this concept from a broader perspective)
    e. How does this case illustrate the tension that led to the Civil War in 1861?

SIDEBAR: RATIONALE FOR THE DOCUMENTS THAT HAVE BEEN SELECTED HERE

FROM STUDENT HANDOUT #1

Document 1: Article IV, Section 2 of the US Constitution
It is important for students to see the actual language from the Constitution that provided the legal basis for the Fugitive Slave Laws (1793 and 1850).

Document 2: Portion of the Fugitive Slave Law of 1850
This is the statute that was at the heart of the controversy surrounding Joshua Glover. Section 7 provides clear language related to those that hindered the return of fugitive slaves and the consequences they would face (e.g. Sherman Booth in Wisconsin).

Document 3: Reward Advertisement for Joshua Glover
This illustrates a common practice of slave owners during the ante-bellum period – posting advertisements such as this in the newspapers of the day.

Document 4: A letter calling for anti-slavery conventions
This helps students understand the context of the abolition movement in Wisconsin and is especially relevant for students in Black River Falls, since it is from the local paper of the time.

FROM STUDENT HANDOUT #2

Document 5: Wisconsin's Declaration of Defiance
The arguments that are presented in the Declaration illustrate the reasoning that state legislatures were following as they fought the Fugitive Slave Law during this period.

Document 6: Roger Taney's arguments from Ableman v. Booth
The language excerpted here gets at the heart of Taney's arguments in the decision that went against the state of Wisconsin.

NOTE: This lesson could easily be modified and used as the basis for a document-based question with AP History students.

STUDENT HANDOUT #1

ABLEMAN v. BOOTH (1859): THE FACTS OF THE CASE

Joshua Glover was a slave owned by Banammi S. Garland of St. Louis, Missouri. In 1852, Glover escaped and fled to Wisconsin where he began working at a sawmill near Racine. On 10 March 1854, Glover was playing cards with two black friends and Garland, acting in accordance with the provisions of the Fugitive Slave Act of 1850, appeared at the cabin with two US deputy Marshalls and four other men with the intention of retrieving Glover. A struggle ensued and Glover was badly hurt. He was then handcuffed and taken to a jail in Milwaukee. Abolitionists in Milwaukee, among them Sherman M. Booth, editor of the Milwaukee Free Democrat, learned of Glover's arrest and began planning a rescue of Glover. On the evening of 11 March, a large crowd gathered outside the Milwaukee jail and upon hearing a passionate speech by Booth, broke down the jailhouse door and released Glover and put him on a ship leaving for Canada.

On 15 March, US Marshall Stephen Ableman arrested Booth under a warrant issued by a federal court commissioner and preparations were made for a trial before the US District Court of Wisconsin. On 27 May, Booth filed for a writ habeas corpus claiming that he was being held under an unconstitutional law (Fugitive Slave Act) that denied trial by jury to fugitive slaves, thereby taking their liberty without due process of law. The Wisconsin Supreme Court ultimately agreed and order Booth released. Ableman appealed this decision to the US Supreme Court.

Subsequent to securing his freedom and while the original case was pending, Booth was re-arrested on a new warrant from the US District Court for Wisconsin, tried by jury, convicted, sentenced to one month in jail, and fined $1000. Booth again appealed his case and in February of 1855 the Wisconsin Supreme Court freed him for a second time. The majority declared that the state had the power to protect its citizens from an unconstitutional federal law. The second case was appealed to the US Supreme Court and eventually both Booth cases were combined into one. The Court, under Chief Justice Roger Taney, issued its ruling in March of 1859.

THE QUESTION UNDER CONSIDERATION

Can a state court grant a writ of habeas corpus to a prisoner arrested under the authority of the United States and in federal custody?

DEFINITION OF HABEAS CORPUS

Habeas Corpus, literally in Latin "you have the body" is a term that represents an important right granted to individuals in America. Basically, a writ of habeas corpus is a judicial mandate requiring that a prisoner be brought before the court to determine whether the government has the right to continue detaining them. The individual being held or their representative can petition the court for such a writ.

DOCUMENT 1: US CONSTITUTION: Article IV, Section 2

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.

Source: US Constitution Online
http://www.usconstitution.net/const.html#Article4

DOCUMENT 2: FUGITIVE SLAVE LAW OF 18 September 1850 (Section 7)

SEC. 7. And be it further enacted, That any person who shall knowingly and willingly obstruct, hinder, or prevent such claimant, his agent or attorney, or any person or persons lawfully assisting him, her, or them, from arresting such a fugitive from service or labor, either with or without process as aforesaid, or shall rescue, or attempt to rescue, such fugitive from service or labor, from the custody of such claimant, his or her agent or attorney, or other person or persons lawfully assisting as aforesaid, when so arrested, pursuant to the authority herein given and declared; or 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 offence 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;

Source: US Constitution Online
http://www.usconstitution.net/fslave.html

DOCUMENT 3: REWARD ADVERTISEMENT FOR JOSHUA GLOVER: 1852

RAN away from the subscriber, living 4 miles west of the city of St. Louis, on Saturday night last, a negro man by the name of Joshua, about 38 or 40 years of age, about 6 feet high, spare, with long legs and short body, full suit of hair, eyes inflamed and red, his color is an ashy black. Had on when he went away a pair of black satinet pantaloons, pair of heavy kip boots, an old-fashioned black dress coat, and [?] shirt. He took no clothes with him. The above reward will be paid for his apprehension if taken out of the State, and fifty dollars if taken in the State.

Source: Wisconsin Historical Society Website
http://www.wisconsinhistory.org/turningpoints/tp-021/

DOCUMENT 4: "A CALL FOR ONE HUNDRED ANTI-SLAVERY CONVENTIONS"

To the Friends of Equal Rights:
We, the undersigned, colored men or Wisconsin, more than ever impressed with the aggressive tendency of American Slavery, as reflected from the Supreme Court of the U.S. in the "Dred Scott" decision, as well as in Mr. Buchanan's Silliman letter, and the defeat in this State of the proposition to extend to colored me the "Right of Suffrage," feel it to be our duty to once more appeal to the people of this State for those rights which your fathers declared to be self-evidently just, and inseparable from a great civil government; namely – "That taxation and representation ought to go together," "That governments derive their sole power from the consent of the governed," propose to hold one hundred Anti-Slavery

Conventions, for the purpose of indoctrinating the people of this State into the true principles of Democratic Republicanism.

Our plan of action will be to hold Conventions in each precinct, or community, most favorable to such an object; at which we will offer a free platform, to both friends and foes, for a full and candid discussion of the principle involved in this anti-slavery movement. To carry out the above object, we must cordially ask the counsel and friendly cooperation of anti-slavery men in different parts of the State, who may feel favorably impressed with the practicability and expediency of such a movement, to address Byrd Parker, and H.F. Douglas, Oshkosh, Wis.; George H. Clark, Milwaukee, Wis.; stating – first, the most convenient place in your community for holding the Convention. Whether the friends will interest themselves in getting up the Convention and give publicity to the same – We do hope that every man in the State, that has a tongue to speak and a heart to feel for the wrongs of his fellow man, will deem it his duty to attend these meetings, and lift his voice in earnest condemnation and manly rebuke of the great crime of this nation.

Byrd Parker and H.F. Douglass will attend the entire series of Conventions, life and health permitting, to aid the able and eloquent gentlemen, whose services have already been secured, in revolutionizing public sentiment, and finally redeeming this young commonwealth from that anti-Christian and anti-Republican policy, so dangerous to the welfare of a State and the liberties of the people.

All papers in the State friendly to free discussion are requested to give this a place in their columns.

BYRD PARKER
H. F. DOUGLAS
GEORGE H. CLARK

Oshkosh, Nov. 11th, 1857

Source: Jackson County Banner. 26 November 1857.
Newspaper Archives located at the Jackson County History Room, Public Library, Black River Falls, Wisconsin.

STUDENT HANDOUT #2

DOCUMENT 5: WISCONSIN'S DECLARATION OF DEFIANCE: 19 March 1859

Whereas, The Supreme Court of the United States has assumed appellate jurisdiction in the matter of the petition of Sherman M. Booth for a writ of habeas corpus, presented and prosecuted to final judgment in the Supreme Court of this State, and has, without process, or any of the forms recognized by law, assumed the power to reverse that judgment in a matter involving the personal liberty of the citizen, asserted by and adjusted to him by the regular course of judicial proceedings upon the great writ of liberty secured to the people of each State by the Constitution of the United States:

And, whereas, Such assumption of power and authority by the Supreme Court of the United States, to become the final arbiter of the liberty of the citizen, and to override and nullify the judgments of the state courts' declaration thereof, is in a direct conflict with that provision of the Constitution of the United States which secures to the people the benefits of the writ of habeas corpus: therefore,

Resolved, The Senate concurring, That we regard the action of the Supreme Court of the United States, in assuming jurisdiction in the case before mentioned, as an arbitrary act of power, unauthorized by the Constitution, and virtually superseding the benefit of the writ of habeas corpus and prostrating the rights and liberties of the people at the foot of unlimited power.

Resolved, That this assumption of jurisdiction by the federal judiciary, in the said case, and without process, is an act of undelegated power, and therefore without authority, void, and of no force.

Resolved, That the government, formed by the Constitution of the United States was not the exclusive or final judge of the extent of the powers delegated to itself; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

Resolved, That the principle and construction contended for by the party which now rules in the councils of the nation, that the general government is the exclusive judge of the extent of the powers delegated to it, stop nothing short of despotism, since the discretion of those who administer the government, and not the Constitution, would be the measure of their powers; that the several states which formed that instrument, being sovereign and independent, have the unquestionable right to judge of its infraction; and that a positive defiance of those sovereignties, of all Unauthorized acts done or attempted to be done under color of that instrument, is the rightful remedy.

[General Laws of Wisconsin, 1859, 247, 248.]

Source: State Documents on Federal Relations/ Number 148
http://en.wikisource.org/wiki/State_Documents_on_Federal_Relations/Number_148

DOCUMENT 6: JUSTICE TANEY'S RULING: ABLEMAN v. BOOTH (1859)

The judges of the Supreme Court of Wisconsin do not distinctly state from what source they suppose they have derived this judicial power. There can be no such thing as judicial authority unless it is conferred by a Government or sovereignty, and if the judges and courts of Wisconsin possess the jurisdiction they claim, they must derive it either from the United States or the State. It certainly has not been conferred on them by the United States, and it is equally clear it was not in the power of the State to confer it, even if it had attempted to do so, for no State can authorize one of its judges [62 U.S. 516] or courts to exercise judicial power, by habeas corpus or otherwise, within the jurisdiction of another and independent Government. And although the State of Wisconsin is sovereign within its territorial limits to a certain extent, yet that sovereignty is limited and restricted by the Constitution of the United States. And the powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State judge or a State court, as if the line of division was traced by landmarks and monuments visible to the eye. And the State of Wisconsin had no more power to authorize these proceedings of its judges and courts than it would have had if the prisoner had been confined in Michigan, or in any other State of the Union, for an offence against the laws of the State in which he was imprisoned.

Source: Findlaw for Legal Professionals
http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=62&invol=506