Professor's book reveals slavery's role in developing legal defense

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A new book by a Northwestern University School of Law professor tells the stories of three dramatic fugitive slave trials of the 1850s. Each of the trials underscores the crucial role runaway slaves played in building the tensions that led to the Civil War, and the three trials together show how “civil disobedience” developed as a legal defense.

Fugitive Justice: Runaways, Rescuers and Slavery on Trial (Harvard University Press, November 2010) also highlights the role of the lawyers who took on these cases and pioneered the idea of civil rights litigation.

“It’s an untold story, and, as both a lawyer and an American, I wanted to tell it,” said author Steven Lubet, the Williams Memorial Professor of Law and director of the Bartlit Center for Trial Strategy at the School of Law. “The heroes, of course, were the fugitive slaves themselves, who risked their lives for freedom, and that story hasn’t been told very much either. But it is also important that lawyers put their careers on the line to defend fugitives and resisters to slavery.”

Most significantly, Lubet said, the fugitive slave trials revealed the risks fugitives were willing to take to set themselves free. They also showed how much support for fugitive slaves was within the free African-American community in the North.

“Being a free black person in 1854 was difficult enough, and being willing to risk even their own freedom to come to the assistance of other fugitives was remarkable,” said Lubet. “It is a story of courage and

commitment. And those people were supported by white abolitionist allies, who included some of the most daring and inventive lawyers of the era."

The fugitive slave trials also revealed how much slavery dominated both legal and political discourse in the United States -- even in the free states -- and how much the free-state political establishment was committed to protecting the rights of southern slave owners.

"We had judges who quite sincerely would say they were personally opposed to slavery, but the law and Constitution required them to condemn fugitives to be returned to slavery," said Lubet. "It is a conundrum because the evil of slavery should have been obvious by 1859, and yet, in the name of the law, we had free-state judges quite calmly ordering people to go back in chains."

Initially, the lawyers representing the fugitive slaves limited themselves to conventional factual and legal arguments, but as political divisions in the country increased regarding the institution of slavery, the lawyers progressively became more militant in their arguments. By 1859 they were urging judges and juries simply to disobey the law.

"They moved from a position [in 1851] of saying, 'The Fugitive Slave Act is valid and enforceable, but we have a factual defense,'" Lubet said. "By 1859 they were saying, 'To hell with the law.' "

Provided by Northwestern University