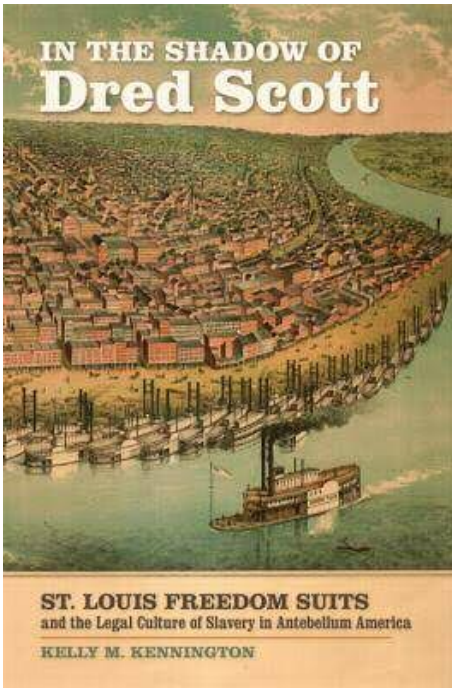

SUING FOR THEIR FREEDOM: Auburn University History Professor Discusses Her New Book, *In the Shadow of Dred Scott*

Kelly Kennington. *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America*. University of Georgia Press, 2017.

The author is interviewed here by Allen Mendenhall.

Kelly Kennington

Kelly Kennington is a historian of slavery in the antebellum American South, with a particular focus on how enslaved persons interact with formal and informal systems of law. Her first book, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (University of Georgia Press, 2017), looks at the cases of enslaved men, women and children who sued for freedom in St. Louis. Dr. Kennington uses these legal suits for freedom to trace the broader legal culture of St. Louis and to argue for the importance of enslaved people's participation in that legal culture. Dr. Kennington's future research interests include the history of violence and law in the slave community.

AM: Thanks for doing this interview. For your book, *In the Shadow of Dred Scott*, which was just published by the University of Georgia Press, you did an extraordinary amount of archival research, including digging through the case files of hundreds of enslaved people, sifting through letters and correspondence, and piecing together execution books and manumission records. On top of that, you reviewed more than 800 state supreme court freedom suits to place your research into a wider context. This process must have shown that Dred Scott's situation was, sadly, not unique.

KK: Thank you for inviting me to share my book with your readers. Yes, my research indicates that hundreds of enslaved men, women and children from all over the United States sued for freedom in the antebellum era. For example, I located almost 20 published opinions of freedom suits in the Supreme Court of Alabama. In the St. Louis Circuit Court, where I completed the bulk of my archival research, nearly 40 percent of the cases resulted in freedom, including the Scott family.

What is unique about their case is that, in their appeal to the United States Supreme Court, Chief Justice Roger Taney not only failed to find for the Scotts' freedom–despite their use of an argument that had previously been successful in Missouri's courts–he also used the case to deny American citizenship to all African Americans. The Scotts' case has become the most famous of the many freedom suits of this period, but they were not unique or unusual until the opinion in their appeal.

AM: What conclusions did you draw as you moved from looking at individual freedom suits in isolation to viewing them as part of a larger pattern or scheme?

KK: My research has always prioritized the experiences of individuals, so my findings center on the importance of law and legal culture to enslaved people in the city of St. Louis. There and elsewhere, enslaved men and women managed to learn about law, access attorneys and bring cases that resulted in freedom at high rates (38 percent in St. Louis). Freedom suits were also significant because of the many additional battles they initiated–both in and out of the courtroom–including related legal disputes, heated conversations and nervous correspondence from slaveholders desperate to maintain their control. As such, African Americans were

active contributors to the legal culture of slavery in antebellum America.

I find that enslaved people had a remarkable ability to transmit information and seek out opportunities to sue in the most advantageous location. The St. Louis example was not unusual, as appellate cases from elsewhere make clear. In addition to finding the existence of a broader legal culture among enslaved individuals than many scholars have recognized, I also argue that judges and juries used these cases to engage in conversations about slavery in their local communities. For this reason, the outcomes of the suits often depended on local conditions and relationships, making it difficult to draw broader conclusions about this type of case outside of the local circumstances of each particular court.

AM: What were some of the legal arguments made by those seeking freedom from enslavement? Were they chiefly constitutional in focus, or were there other bases, say, in contract or property? I would guess many involved manumission laws.

KK: The vast majority of the enslaved plaintiffs in St. Louis argued for freedom based on residence in a free territory or free state, which usually meant Illinois, under the doctrine of "once free, always free" as established in the English case of *Somerset v. Stewart* in 1772. Interstate comity was vital to the successful use of this argument.

An additional set of arguments included disputes over manumissions, such as when a person arranged to buy freedom after a number of years and the slaveholder refused to honor the agreement, or if a slaveholder promised freedom in his or her will, but was in too much debt or the heirs or executors challenged the manumission.

Another group of plaintiffs argued they had always been free, but had been kidnapped and sold into slavery; the most famous of these cases was Solomon Northop, who wrote a memoir that was recently made into the feature film, *Twelve Years a Slave*.

One final argument to mention is the claim that the plaintiff was of Indian ancestry on his or her mother's side, since personal status followed the mother (under the doctrine of *partus sequitur ventrem)* and Missouri and several other states outlawed Indian slavery in the 18th century. There are other grounds used in cases outside of St. Louis, but most of these are based in specific regional legislation, such as laws against moving an enslaved person out of a state for the purpose of sale.

AM: Is it possible to estimate how many of these arguments succeeded and how many failed, or is the research still too fresh in this area?

KK: Yes, we have the numbers for the St. Louis cases, but for the appellate cases, there are too many unknown outcomes for reliable estimates. For purposes of calculating the rates of success in the St. Louis cases, I divided the arguments into three categories: arguments based on residence in a free territory/state; arguments for prior manumission; and arguments for freedom from birth, which includes kidnapping victims and those who claimed Indian ancestry. I compiled the precise numbers in several tables available in the book's appendix. The most successful cases were those based on freedom from birth, where plaintiffs won 49 percent of cases. Residence in free territory resulted in freedom 38 percent of the time, and prior manumission, which included agreements for manumission, resulted in freedom 24 percent of the time.

AM: How did you first become interested in this topic?

KK: I have always been interested in law and history, so I planned to major in history and go to law school after college. While getting my undergraduate degree at Tulane, I took a couple of classes that changed my plans. First, I took visiting Professor Betty Wood's class on "Slavery and Freedom in the Old South," which began my fascination with the ideas of slavery and freedom in the United States, partly because my high school history teachers had not taught me anything about this important topic, but also because I struggled to understand the existence of slavery in a country whose rhetoric had always centered on ideas of liberty. The other class I took was an American legal history class with Dr. Judith Schafer, whose research focused on slavery and the law. Dr. Schafer's course allowed me to see that I could combine my love of law with my love of history.

Dr. Schafer then introduced me to freedom suit research and directed my undergraduate senior thesis on a Louisiana Supreme Court freedom suit, *Eulalie and her children v. Long & Mabry* (1854). In graduate school at Duke, I planned to study slavery in the era of the American Revolution, but then I learned of a federal grant to study freedom suits in St. Louis (because of the importance of *Dred Scott*). I decided to write a master's thesis and then a dissertation studying these cases. The topic allowed me to combine all of my interests–in slavery versus freedom, legal history and the antebellum era–in one book.

AM: Do you think it's important for practicing lawyers today to have an understanding of this period and in particular of the laws of slavery that shaped Southern culture for much of our nation's history?

KK: Absolutely. I think it is important for all Americans to understand slavery because it built much of the wealth and infrastructure of this country, not only in the South, but in all of the U.S.

For attorneys, in particular, understanding the history of African Americans' relationship with the law and with legal authority is key for thinking through how that relationship functions today. I would also expect that a study of legal culture in other times and places is useful for thinking about how the broader population views the legal system today.

I'm sure that modern attorneys will recognize many of the legal forms, arguments and negotiations that make up much of my book. Seeing how these things changed, and how some things have stayed the same, might help lawyers think about the processes of legal development.

AM: Where can readers purchase your book?

KK: It is available on the University of Georgia's website, though it is probably easiest to order through Amazon, who usually has about a 10 percent discount. <

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