

Habeas Corpus and the Courts: Individual Liberties from Joseph Smith to Abraham Lincoln to Guantanamo (A Story and a Play)

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[*Editor's note:* History has been presented through the years in a number of formats in order to convey to the interested observer enlarged meaning and understanding. *Mormon Historical Studies* is pleased to include this portrait of the consequential juxtaposition of Joseph Smith and American legal institutions via the unique presentation of stage play. Jeffrey Walker's innovative delivery of the past is given within the backdrop of a recent (2013) and historic collaboration of legal scholars and historians, including those from the state of Illinois and several LDS Church entities, described below. Received with acclaim by the several audiences that witnessed the production, the relevance of the Mormon past to issues influencing modern American culture is illustrated with acumen. Walker's article gives background to both the circumstances that fostered this inventive portrait and the legal/historical issues of Joseph Smith's use of Habeas Corpus, one of the signal intersections of the Mormon prophet and the society in which he lived.]

Mitt Romney's presidential bids raised interest in Mormonism around the nation, and Mormon history caught the attention of the Illinois Supreme Court Historic Preservation Commission (ISCHPC). In August 2012, one of its organizers, Anne M. Burke, a justice on the Illinois Su-

preme Court, contacted Elder Dallin H. Oaks, a member of the Quorum of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints and a former justice of the Utah Supreme Court, about the ISCHPC's interest in exploring the Mormons' involvement in the Illinois judicial system during the 1840s.

Elder Oaks asked Richard E. Turley Jr., Assistant Church Historian, to follow-up with Justice Burke. Turley in turn contacted me, asking whether I might travel with him to Springfield, capital of Illinois, to discuss possible topics on the Church's early legal affairs in Illinois with Justice Burke and others with the ISCHPC. We arrived in Springfield in early November 2012, where we met John Lupton, the executive director of ISCHPC, who told us that accommodations had been made for us to stay at the Governor's Mansion. As we pulled through the wrought iron gates onto the grounds and the 1855 mansion came into view, I knew that I was about to experience something very unique and special. And I was right.

The ISCHPC was created by the Illinois legislature in 2007 to assist the Illinois Supreme Court preserve the history and documents of its judiciary. In 2011 the ISCHPC partnered with the Abraham Lincoln Presidential Library and Museum (ALPLM) in Springfield to "retry" in a dramatic presentation Mary Surratt's role in conspiring to assassinate Abraham Lincoln. The success of this program led the two to partner again in 2012 to relook at the court proceedings that resulted in the involuntary commitment of Mary Lincoln, President Lincoln's widow, in 1875. Both of these programs received rave reviews from the legal, political, and historical communities. It was with this background that we met with both the ISCHPC and the ALPLM to discuss whether a similar event centering on early Mormon legal events in Illinois was possible. I was excited about the possibility to work with these two prestigious groups.

The Illinois Events

After some discussion we decided to focus our efforts on Joseph Smith's use of habeas corpus to prevent his extradition to Missouri following his time in Liberty Jail. Three attempts were made and Smith was able to defeat each one. I had been researching and writing about these events for the previous couple of years as an adjunct professor at the J. Reuben Law School at Brigham Young University and was therefore dubbed the "expert" for the group. Smith's use of habeas corpus is an important study beyond just its obvious Mormon history interest. Occurring in a unique period of American jurisprudence, the cases allow legal scholars to analyze

THE ILLINOIS SUPREME COURT HISTORIC PRESERVATION COMMISSION AND THE ABRAHAM LINCOLN PRESIDENTIAL LIBRARY & MUSEUM IN CONJUNCTION WITH THE S.J. QUINSEY COLLEGE OF LAW & THE J. REUBEN CLARK LAW SCHOOL PRESENT

An Original Theatrical Production and Panel Discussion



HABEAS CORPUS IN THE COURTS

*Individual Liberties from
Joseph Smith to Abraham Lincoln
to Guantanamo*

Program Announcement.

just how habeas corpus has changed from its foundational use in America. As we reviewed how habeas corpus had evolved from its ancient past to Joseph Smith's time to the present, the discussion turned to how the writ applies to prisoners at Guantanamo Bay, and the modern relevance of the writ became clear.

During the ensuing months various events were held, starting with a roundtable discussion entitled, "Personal Liberty: A Discussion of Habeas Corpus from Joseph Smith to Guantanamo," held in the historic Illinois Supreme Courtroom in Springfield on April 4, 2013.¹ This was followed by a daylong event on September 23, 2013, in Nauvoo, Illinois, where scholars² presented at various historic sites throughout the city. Well over a

¹The following historians, lawyers, and judges participated in the roundtable discussion: Bryan Andreasen (then historian at the ALPLM), Jeffrey Coleman and Thomas Sullivan (partners at Jenner & Block who have represented prisoners at Guantanamo Bay), Leslie C. Griffin (professor of law at the University of Nevada), Lachlin Mackay (director of historic sites, Community of Christ), Richard E. Turley Jr. (assistant LDS Church historian) and Jeffrey N. Walker. Gery Chico, chairman of the Illinois State Board of Education, moderated the panel.

²The following historians presented at Nauvoo that day: Reg Ankrom (executive director, Historical Society of Quincy and Adams County), Susan E. Black (professor of Church history and doctrine, BYU), Ronald K. Esplin (general editor, *The Joseph Smith Papers*), Judge Thomas B. Griffith (Federal Judge, U.S. Court



Play, Habeas Corpus and the Courts, courtesy of Jeffrey W. Walker.

thousand people were present and participated. In the evening, Elder Oaks was the featured speaker at the Nauvoo Visitors Center, filling both auditoriums and the LDS stake center a couple blocks away.

The following day, Illinois Governor Bruce Rauner hosted a luncheon at the Governor's Mansion in Springfield, and that evening the play included here was presented at ALPLM's auditorium in Springfield to a sold-out house. Many dignitaries participated in this two-day event, including Utah Governor Gary Herbert, Former Utah Governor Olene Walker, Illinois Governor Bruce Rauner, Former Illinois Governor James Thompson, Illinois Supreme Court Justices Rita B. Garman (chief justice), Anne M. Burke, and Thomas L. Kilbride, as well as many other state judges and attorneys. More than 200 visitors came from Utah and California alone. The

of Appeals for the District of Columbia), Jeffrey Hancks (professor of Regional and Icarian Studies at Western Illinois University), Lachlin Mackay (director of historic sites, Community of Christ), Carol C. Madsen (emeritus professor of history at BYU), Gordon A. Madsen (editor/lawyer, *The Joseph Smith Papers*), Alex D. Smith (editor, *The Joseph Smith Papers*), John W. Welch (law professor, J. Reuben Clark Law School), and Ron & Lin Yockey (Nauvoo historians).

play was performed again a month later, on October 14, 2013, at the Logan Center for the Arts auditorium on the campus of the University of Chicago.

Following these performances, several meetings and a seminar were held in Springfield with selected 7th to 12th grade teachers to take the materials that were generated during these events and develop a two-week curriculum that would be used throughout Illinois. This curriculum included understanding the Mormon settlements in Illinois in the 1840s, the background of why Joseph Smith used habeas corpus to prevent his extradition to Missouri, what habeas corpus and extraditions mean, and how these experiences can be applied in the students' lives today. It was truly a great experience to work with these dedicated educators in developing these materials. The curriculum may be used in all the middle and high schools in Illinois in the future.

The success of the play resulted in the decision to bring the performance to Utah. Based on the support and leadership of Scott Anderson, president of Zions Bank, the play was performed to a sold-out house at Kingsbury Hall on the campus of the University of Utah and at the Varsity Theater at Brigham Young University on March 25 and 26, 2014, respectively.

The Play

The decision to re-create Joseph Smith's three extradition hearings, when he used writs of habeas corpus, came early on in our meetings. Realizing that the law had changed so dramatically from the 1840s to today, trying to "retry" the events was impossible. Instead, it was decided to have a two-part event. The first would be the performance of a play recreating the three extradition hearings. The second would be a panel discussion about the evolution of the use of habeas corpus in America from the time of Joseph Smith, through its use by Abraham Lincoln, to its modern use by prisoners held at Guantanamo Bay.³ Presented here is only the first

³The panel comprised different individuals at the different performances. At the first performance in Springfield, Illinois, the following panelists participated: Jeffrey D. Coleman (lawyer who represented Guantanamo Bay prisoners), Sue E. Myerscough (Federal Illinois District Judge), Michael A Scodro (Illinois Solicitor General), and Jeffrey N. Walker. Gery Chico, chairman of the Illinois State Board of Education, moderated this panel. At the performance at the University of Chicago, the following panelists participated: Patricia A. Bronte (lawyer who represented Guantanamo Bay prisoners), Sue E. Myerscough, Michael A Scodro, and Jeffrey N. Walker. David A. Straus (professor of law at the University of Chicago



Play, Habeas Corpus and the Courts, courtesy of Jeffrey W. Walker.

part – the play.

I accepted the responsibility to “write the play.” Having never written anything like this before, I simply started writing from the beginning of the Mormon use of habeas corpus. Using extant documents as my base, I structured the history as dialog. The experience when looking at the documents in a narrative format proved enlightening. Instead of the formality of letters, I found discussions. Instead of diary accounts, I found feelings and perspective. Newspaper clippings provided additional context. And legal briefs and opinions became arguments.

The first finished draft was nearly a hundred single-spaced pages. More than a play I had drafted a mini-series. Shortening proved arduous but essential. It was finally cut to something that could be read through in a couple of hours. At that point I was introduced to Dean Corrin, the associate dean of the theater school at DePaul University, who had been brought in to work as the dramaturge. Having never even heard of a dramaturge, I was not sure what to expect. I could have never imaged that

Law School) moderated this panel. At the two performances in Utah, the following panelists participated: Dee Benson (Federal Utah District Judge), Patricia A. Bronte, John A. Lupton (executive director at ISCHPC/historian), and Jeffrey N. Walker. Gery Chico moderated this panel.



Play, Habeas Corpus and the Courts, courtesy of Jeffrey W. Walker.

Dean Corrin would become my closest ally, confidant, and friend on the play. He brought essential skills at not just shortening the play, but refining it into a more understandable and compelling piece. Not having a Latter-day Saint background, Dean Corrin brought an important perspective to the production as well as an unexpected sensitivity to the underlying religious nature of the topic and its characters. His work was essential to the play’s success.

There are, of course, some artistic liberties taken. The audience heard Stephen Douglas as a narrator throughout the play. While he was directly connected to the first and third extradition hearings (the first as the judge and the third as a witness), as well as a personal friend of Joseph Smith, we used him liberally to transition information through the play. Interestingly, Joseph Smith never spoke that we know of during any of the legal proceedings. I believe he chose to not be called on to speak as a testament that these tragic events in Missouri were not about him, but about his people: the Saints who suffered. The third extradition hearing poignantly bears this out as witness after witness testifies about the atrocities that occurred to them in Missouri. Joseph Smith, while mayor of Nauvoo and correspondingly chief judge of the Nauvoo Municipal Court, heard several habeas corpus petitions. I included one of them where the record recounts

his ruling and opinion on the use of the writ. So in the end the audience heard from Joseph Smith.

The play was directed under the skillful direction of Sandy Skinner of the theater department at DePaul University. We decided early not to use either period costumes or sets. Instead the actors wore black pants and white shirts. The set consisted of two library tables, some chairs and a lectern. Each actor, except the one playing Stephen Douglas, played several parts. Subtle props (e.g., a pair of eyeglasses, a hat or cane) were used to change characters. Staging was therefore critical to create different courtrooms and settings. Ms. Skinner was brilliant as director.

We posted auditions with various professional acting companies principally in the Chicago area. While several of the attorneys who were familiar with the prior retrial events by the ISCHPC and the ALPLM tried out, in the end four professional actors were cast.⁴ And they were outstanding. Each dived into their parts and I received emails from them wanting additional background information of their characters. I recall one call where I was told that there was a question as how to pronounce “Moroni.” The final production was tremendous due in large part to these fine actors’ abilities and dedication.

Introductory Essay

In an effort to provide the audience with an overview of the three extradition hearings (or acts in the play) I wrote an introductory essay that was included in the program. This essay is provided here again for essentially the same purpose. You will note that there are no footnotes identifying sources or ancillary comments. For an in-depth academic piece on this topic, I refer you to my article in *BYU Studies* published in 2013 titled, “Habeas Corpus in Early Nineteenth-Century Mormonism: Joseph Smith’s Legal Bulwark for Person Freedom.”⁵ My hope is that the introductory

⁴For the performances in Springfield and Chicago, the following actors (and the parts they played) performed: Nicholas Harazin (Stephen Douglas), Shane Kenyon (Joseph Smith, Thomas Morrison, Justin Butterfield and Samuel Lucas), Michael Kingston (court clerk, Lilburn Boggs, Martin Van Buren, Reynolds Cahoon, Josiah Lamborn, William Clayton, Lyman Wight and Parley P. Pratt), and Ed Porter (Sidney Ridgon, Orville Hickman Browning, Nathaniel Pope and Hyrum Smith). For the performances in Utah, Clayton Stamper replaced Shane Kenyon.

⁵Jeffrey N. Walker, “Habeas Corpus in Early Nineteenth-Century Mormonism: Joseph Smith’s Legal Bulwark for Person Freedom,” *BYU Studies* 52 (Summer

essay in this article can provide you with enough overview to follow the events as they unfold in the play.

Overview Essay: Joseph Smith: Extradition and Habeas Corpus

The Church of Jesus Christ of Latter-day Saints experienced significant persecution during its formative years in the early nineteenth century. Joseph Smith founded the Church in upstate New York in 1830, and before long, the Latter-day Saints or Mormons (as the Church’s members are commonly known) were displaced by mob violence in Ohio, Missouri, and Illinois. While such brutality may appear perplexing today, during the antebellum period of American history, mob rule, sometimes euphemistically called “vigilante justice,” threatened the very fabric of democracy upon which the country was founded. The Latter-day Saints, like many minority groups, found little protection against the will of an often lawless majority. Only after the Civil War did the rights provided to citizens under the federal Constitution begin to be extended to the states, thereby providing increased protection to minority groups.

As the prophetic leader of The Church of Jesus Christ of Latter-day Saints, Joseph Smith sought refuge for his people and redress from the losses they sustained in 1833 in Jackson County, Missouri. When these efforts at redress proved fruitless, the main body of Latter-day Saints settled in other parts of Northwestern Missouri. Mob violence soon threatened them again, however, and this time the Mormons elected to defend their homes, farms, and businesses. Such actions served only to increase the violence against them. Ultimately on October 30, 1838, Missouri Governor Lilburn W. Boggs issued his now infamous “Extermination Order” declaring that the “Mormons must be treated as enemies, and must be exterminated or driven from the state.”

Joseph Smith and more than sixty other Latter-day Saint men and leaders were arrested and charged with crimes associated with the conflict. After a preliminary hearing, known then as a “court of inquiry,” Smith and five of his colleagues were bound over on various charges, including treason. As the main body of the Mormons numbering in the thousands started a forced exodus from Missouri to Illinois, Smith and the other five defendants were held in a jail in Liberty, Missouri. In April 1839, after over four months of incarceration, a Missouri grand jury indicted them. While en route to Columbia, Missouri, pursuant to a change of venue, Joseph

Smith and his colleagues were either intentionally released or escaped custody. They travelled to Illinois to join the rest of their people who had found initial refuge in Quincy and shortly thereafter settled about forty-five miles up the Mississippi River at Commerce (later renamed Nauvoo), Illinois.

Joseph Smith and other leaders traveled to Washington, DC in October-November 1839 carrying more than seven hundred redress petitions from displaced Mormon families seeking damages after being mobbed and driven from Missouri. While such efforts did not result in any relief for them, it did raise the visibility of their suffering to the national stage. In reaction, the Missourians sought to compel the state of Illinois to return Joseph Smith and others to Missouri to stand trial on the indictments stemming from the Mormon conflict in 1838.

The First Extradition Attempt

On September 1, 1840, sixteen months after Smith and his colleagues arrived in Illinois from Missouri, Missouri Governor Boggs sent a requisition to Illinois Governor Thomas Carlin seeking the extradition of Smith and five others to Missouri based on the outstanding 1839 indictments. Ironically, but apparently unknown to the Mormons, these indictments on the motion of the state prosecutor had been dismissed in August 1840 by Boggs's successor, Thomas Reynolds, who at that time of the dismissal was the circuit court judge. Despite the dismissal, when Governor Reynolds took office in January 1841, he continued the efforts to extradite Joseph Smith.

Illinois Governor Carlin issued a warrant for the arrest of Smith and the others based on the requisition from Missouri. A sheriff went to Nauvoo to make arrests, but finding none of the men there he returned the warrant to Governor Carlin. In June 1841 when Carlin learned that Joseph Smith was returning to Nauvoo through Quincy, he sent a sheriff to intercept him. Smith was arrested just outside of Quincy. Smith filed a petition for a writ of habeas corpus to have the legality of the arrest reviewed. Stephen A. Douglas, just twenty-seven years old and newly appointed to the Illinois Supreme Court, was in Quincy and agreed to hear Smith's petition in Monmouth the following Monday.

A panoply of attorneys, including Orville Browning, represented Smith at the hearing. The hearing began by considering a procedural matter, as the underlying indictments from the Missouri courts had not been attached to the arrest warrant as required by law. Because the procedural irregularity could result in further postponement, both sides stipulated

that the indictments existed. Had Smith's counsel investigated this issue fully, they would have discovered that in fact no indictments existed, all of them having been dismissed in August 1840 by the now sitting Missouri Governor Reynolds. Instead, Smith's counsel argued that the indictments supporting the Missouri requisition were obtained by "fraud, bribery and duress," and therefore should be overturned.

Joseph Smith's counsel called four witnesses: Morris Phelps, Elias Higbee, Reynolds Cahoon, and George Robinson. The attorneys for the state of Illinois objected that these witnesses should not be allowed to testify on the merits of the case because the indictments, although missing, sufficiently established the facts required at this stage of the legal proceedings. In the end, Judge Douglas allowed the testimony from these witnesses, as well as several unidentified state witnesses, before ruling on the admissibility of such testimonies.

Judge Douglas delivered his ruling the following morning. Rather than addressing the issue of whether the court could look beyond the facts of the indictments, he based his ruling on a narrow procedural issue, namely the validity of the warrant itself used to arrest Joseph Smith. Douglas held that "the writ once being returned to the executive, by the Sheriff of Hancock County was dead and stood in the same relationship as any other writ which might issue from the Circuit Court and consequently the defendant [Smith] could not be held in custody on that writ." Joseph Smith was discharged and released.

The Second Extradition Attempt

On May 6, 1842, former Missouri Governor Lilburn W. Boggs was shot at his home in Independence, Missouri. Although serious, the injuries were not fatal. A local citizens committee's initial investigation could find no legitimate suspects. Early insinuations about a possible Mormon involvement gained traction in July 1842 with the published claims of dissident and former Nauvoo mayor John C. Bennett, who alleged that Orrin Porter Rockwell, who was in Independence at the time, had committed the crime under the direction of Joseph Smith. While there was never any direct evidence implicating either Rockwell or Joseph Smith and while they both denied any involvement, Boggs' pivotal role in the displacement of the Mormons from Missouri in 1838 during his governorship made him a supposed target of the Mormons.

Boggs fueled this notion of Mormon involvement with an affidavit dated July 20, 1842, stating that he had information leading him to

“believe” that Smith was an accessory before the fact in orchestrating the assassination attempt. Based on this affidavit, Missouri Governor Reynolds issued a requisition for the extradition of Smith and Rockwell from Illinois to Missouri. As a result of this requisition, Illinois Governor Carlin issued an arrest warrant for the two men, and Adams County Sheriff Thomas C. King arrested Smith and Rockwell in Nauvoo on August 8, 1842.

Both Smith and Rockwell immediately petitioned for writs of habeas corpus with the Nauvoo Municipal Court, which was the court with jurisdiction in which the arrests had occurred to have the arrests reviewed. While Sheriff King brought his prisoners to the Nauvoo court, as ordered by the court, he left, taking the original warrant and copies of the petitions with him. His purpose in leaving was to report to Governor Carlin that Smith and Rockwell were now in the custody of the Nauvoo marshal under the control of the Nauvoo Municipal Court. Without the warrant to hold Smith and Rockwell, however, the Nauvoo marshal was required under Illinois law to release the two men. The Nauvoo Municipal Court then continued the return hearings on the writs of habeas corpus. Governor Carlin’s reaction to these actions was to place a bounty on Smith and Rockwell. This resulted in both men going into hiding.

Thomas Ford was elected Illinois governor in November 1842, replacing Carlin. With this change in administration, a delegation representing Joseph Smith traveled from Nauvoo to Springfield in early December to determine, in part, Governor Ford’s disposition regarding the Missouri extradition efforts. After meeting with several prominent attorneys and judges, including Judge Stephen Douglas and Governor Ford, the delegation concluded that if Joseph Smith would voluntarily appear in Springfield, the entire situation could be acceptably resolved. The delegation also met and retained Justin Butterfield, the United States Attorney for the District of Illinois, to represent Joseph Smith in the matter.

Smith and a group of his colleagues arrived in Springfield on December 30, 1842. After several days of preliminary matters, his petition for a writ of habeas corpus was heard before Federal Judge Nathaniel Pope. Justin Butterfield and Benjamin Edwards represented Smith. Illinois Attorney General Josiah Lamborn represented the State of Illinois. Butterfield centered his argument on two points. First, he argued that Smith could not be extradited to Missouri on the claim that he was a fugitive from justice since he had never left Illinois during the period of the alleged crime. Butterfield even had Stephen A. Douglas sign an affidavit in open court that attest-

ed that Douglas was in Nauvoo with Smith at the time Boggs was shot. Second, Butterfield argued that Boggs’ affidavit was legally insufficient to support the basis of the requisition.

The following morning Judge Pope rendered his opinion in open court, ruling in Joseph Smith’s favor and discharging him. Pope found that as a matter of law, the Boggs’s affidavit was the only evidence upon which the Governor of Missouri acted in making the requisition to Illinois. Pope further found that the affidavit was based on Boggs’s belief and did not establish the facts and were otherwise impermissible conclusions of law. Joseph Smith was again freed.

The Third Extradition Attempt

In early June 1843 a new grand jury in Daviess County, Missouri, was empaneled, and Joseph Smith was indicted again for alleged crimes, including treason arising from the 1838 conflict in northwest Missouri. Documents confirm that dissident John C. Bennett was the key orchestrator of these indictments, having communicated both with agents from Missouri and for Illinois Governor Ford.

On June 13, 1843, Missouri Governor Reynolds made his requisition for the extradition of Smith to Governor Ford based on these new indictments. On June 17, 1843, Ford issued an arrest warrant for Smith. Probate Judge Adams, a Mormon, living in Springfield, learned of the requisition and warrant and wrote to Smith in Nauvoo warning him of the anticipated arrest. However, Joseph, his wife Emma, and their children were not in Nauvoo, having travelled to visit Emma’s sister and her family, the Wassons, in Inlet Grove, Lee County, about 180 miles northeast from Nauvoo. Missouri Sheriff Joseph Reynolds and Hancock County Constable Harmon Wilson disguised themselves as Mormon missionaries and arrested Joseph Smith at the Wassons’ home.

With the intent of quickly crossing the Mississippi River to Missouri with Smith, these officials sought to preclude Joseph Smith from speaking with any lawyers or gaining access to any courts. Their efforts resulted in both officials being arrested and charged with false imprisonment, assault, and battery. In Dixon, about 15 miles from Inlet Grove, Joseph Smith and both officials now arrested petitioned for writs of habeas corpus to have their arrests reviewed. The nearest court to hear the petitions was in Ottawa, Illinois, where Illinois Supreme Court Justice John Caton lived. However, en route to Ottawa (sixty miles away) the party learned that Judge Caton was not there. The party then returned to Dixon and,

on June 26, Joseph obtained a second writ, this one “returnable before the nearest tribunal in the Fifth Judicial District authorized to hear and determine writs of habeas corpus.” The group then proceeded south towards Quincy (260 miles away) hoping to have the petitions heard there by Judge Stephen Douglas.

Fearing Sherriff Reynolds and Constable Wilson would attempt to forcibly take Joseph Smith to Missouri, Smith sent word to his friends in Nauvoo for protection. Soon an escort of nearly one hundred Mormon followers met with the party and travelled with them. As the Nauvoo Municipal Court in Nauvoo was significantly closer than traveling to Quincy the party headed to Nauvoo to have the writs heard. There Smith was welcomed home, the streets lined with fellow Mormons cheering and singing. He hosted a dinner for fifty guests at his home, including Sherriff Adams and Constable Wilson. He spoke that evening to thousands at the grove just below the Nauvoo Temple that was under construction.

Joseph Smith’s petition for a writ of habeas corpus was heard the next morning before the Nauvoo Municipal Court, the nearest tribunal with the requisite authority. The hearing was held on the second floor of Joseph Smith’s Red Brick Store on Water Street. Cyrus Walker, a well-known Whig politician, represented Smith. While procedural irregularities existed in the requisition and the case might well have been dismissed on technical grounds, Walker understood that Joseph Smith wanted a hearing on the underlying merits of the claims against him. Walker called key Latter-day Saint leaders who had witnessed the various atrocities that led to the Mormons’ expulsion from Missouri. These witnesses included Hyrum Smith, Lyman Wight, Parley P. Pratt, Sidney Ridgon, and Brigham Young. Their testimonies were printed in the Latter-day Saint newspaper *Times and Seasons*. The Nauvoo Municipal Court in a single sentence discharged Joseph Smith and ordered his release.

The Missourians made no further efforts to extradite Joseph Smith.

The Retrial of the Joseph Smith Extraditions

Playwright by Jeffrey N. Walker

ACT I

Warren County Courthouse, Monmouth, Illinois, June 1841

Scene 1: Prologue	Stephen A. Douglas, Joseph Smith, and Ensemble
Scene 2: Habeas Corpus Hearing	Stephen A. Douglas, Orville H. Browning, Thomas Morrison, and Reynolds Cahoon

ACT II

United States Federal Court, Springfield, Illinois, January 1843

Scene 1: Prologue	Stephen A. Douglas and Ensemble
Scene 2: Second Habeas Corpus Hearing	Nathaniel Pope, Justin Butterfield, Josiah Lamborn, and Stephen A. Douglas

ACT III

Nauvoo Municipal Court, Nauvoo, Illinois, July 1843

Scene 1: Prologue	Stephen A. Douglas and Ensemble
Scene 2: Third Habeas Corpus Hearing	Cyrus Walker, Hyrum Smith, Lyman Wight, and Sidney Rigdon
Scene 3: Summation	Stephen A. Douglas, Joseph Smith, and Ensemble

Cast of Characters (In Order of Appearance)

Stephen A. Douglas (1813–1861), prominent Illinois lawyer and politician. After moving to Illinois in 1833 from New York, Douglas served as a state's attorney from 1835 to 1836. He also worked as a representative to the Illinois legislature, Registrar of the Land Office, and Illinois Secretary of State. In 1841, Douglas was appointed to the Illinois Supreme Court, serving until 1843 when he was elected as a U.S. representative. From 1847 to 1861, Douglas served as a United States Senator. He was the Northern Democratic Party nominee for U.S. President in the 1860 election, losing to Republican Abraham Lincoln. The combination of his short physical stature and his forceful and dominant figure in politics earned him the nickname "Little Giant."

Joseph Smith Jr. (1805–1844), farmer, merchant, banker, developer, judge, newspaper editor, politician, and leader of The Church of Jesus Christ of Latter-day Saints, originally founded on April 6, 1830. He organized communities in New York, Ohio, Missouri, and Illinois. Smith became mayor of Nauvoo and a candidate for president of the United States. In June 1844, he and his brother Hyrum were arrested on warrants for treason and were being held in jail in Carthage, Illinois, when a mob stormed the jail, killing the Smith brothers.

Sidney Rigdon (1793–1876), tanner, farmer, and minister. Rigdon was introduced to Mormonism in late 1830 by Parley P. Pratt while he was en route with Oliver Cowdery, Peter Whitmer Jr., and Ziba Peterson on a mission west to the unorganized Indian Territory. After being released from Liberty Jail with Joseph Smith in 1839, Rigdon accompanied the Mormon leader to Washington, D. C., to seek redress for Missouri grievances. Rigdon served as a member of the Nauvoo city council and as postmaster. Following the death of Joseph Smith, Rigdon moved to Pittsburg where he led a schismatic Church of Jesus Christ of Latter Day Saints, later called the Church of Christ.

Lilburn W. Boggs (1796–1860), merchant and politician. Boggs worked as a bookkeeper, bank cashier, merchant, Indian agent and trader, lawyer, doctor, and postmaster before being elected to the Missouri Senate in 1826. He was elected lieutenant governor in 1832. In 1836, Boggs became governor upon the resignation of his predecessor and served for four years. In 1838, Boggs played a prominent role in the expulsion of the Mormons from Missouri under what was termed his "Extermination Order." On May 6, 1842, he was severely wounded by an assassin. He accused Joseph Smith

of complicity with Orrin Porter Rockwell in perpetrating the crime. Boggs returned to Jefferson City in 1842 and served in the state senate. In 1852, he moved to Napa Valley, California, where he remained until his death.

Orville H. Browning (1806–1881), prominent Illinois lawyer and politician. Browning moved to Quincy, Illinois, in 1831 and was admitted to the bar. He served in the Illinois legislature in the late 1830s. Browning was the principal counsel for Joseph Smith when he was arrested in 1842 for extradition to Missouri. Browning was a delegate to the 1856 convention that laid the foundation of the national Republican Party. After the death of Stephen A. Douglas, Browning was appointed United States Senator. He was appointed Secretary of the Interior by President Andrew Johnson in 1866, and also served as U.S. Attorney General.

Reynolds Cahoon (1790–1861), farmer, tanner, and builder. Cahoon joined what became The Church of Jesus Christ of Latter-day Saints in 1830. He served as a member of the committees to oversee the building of the Kirtland House of the Lord, the Nauvoo House, the Mansion House, and the Nauvoo Temple. In 1848 he emigrated to Utah.

Justin Butterfield (1795–1855), prominent Illinois lawyer. Butterfield was educated at Williams College and admitted to the New York bar in 1812. He settled in Chicago in 1835. In 1841, President William Henry Harrison appointed him as the U.S. district attorney for the District of Illinois. In 1849, President Zachary Taylor appointed him commissioner of the General Land Office. Perhaps his admiration of Daniel Webster was the reason he often attended court dressed "*a la Webster*, in blue dress-coat and metal buttons, with bluff vest." His oratorical skills and wit were legendary. Tragically, at the height of his career, Butterfield suffered a permanent disabling stroke.

Nathaniel Pope (1784–1850), prominent Illinois lawyer and judge. Pope attended Transylvania University in Kentucky, where he graduated with high honors in 1806. He moved to Kaskaskia, Illinois Territory, where he served as secretary of the Illinois Territory from 1809 to 1816. Pope also served as the territorial delegate to the U.S. Congress from 1817 to 1818, Registrar of the Land Office, and U.S. district judge for Illinois from 1819 to 1850. Pope aided in admitting Illinois Territory as a state of the Union.

Josiah Lamborn (1809–1847), Illinois attorney and politician. In the early 1830s he became a leading figure in the anti-Jacksonian wing of the Democratic Party in Morgan County, Illinois. He was described by contemporaries as "an able and brilliant man, but of convivial habits and unscrupulous to such a degree that his name was mixed up with a number

of official scandals.” He was elected Illinois attorney general in 1840 and served until 1843.

William Clayton (1814–1879), bookkeeper and clerk. Clayton joined what became The Church of Jesus Christ of Latter-day Saints in 1837 in Great Britain. In 1840, he and his family emigrated to Nauvoo. He served as a high counselor in the Iowa Stake, recorder and scribe to Joseph Smith from 1842 to 1844, city treasurer, recorder, and clerk of the city council. Clayton was the clerk of the first company of Mormons pioneers to arrive in Utah.

Lyman Wight (1796–1858) worked principally as a farmer. He joined the Mormon Church in 1830. He moved to Jackson County, Missouri, recruited volunteers for the Zion’s Camp mission in 1834, and was elected as colonel of the Caldwell County militia in 1837. He was imprisoned with Joseph Smith in Liberty Jail. In 1844, he campaigned in the eastern states for Joseph Smith as candidate for President.

Hyrum Smith (1800–1844), elder brother of Joseph Smith. Hyrum was among the six original members of the Church of Christ. He served as a member of the committee to supervise the construction of the Kirtland House of the Lord, as assistant counselor in the presidency of The Church of Jesus Christ of Latter-day Saints, as a counselor in the First Presidency, and Church patriarch. While in Illinois, Hyrum Smith was a member of the Nauvoo City Council. He and his brother were murdered while confined in Carthage, Illinois, awaiting due process.

Cyrus Walker (1791–1875), prominent Illinois lawyer. He moved to Macomb, Illinois, in 1833 becoming the second lawyer to locate in McDonough County. He worked as an attorney, judge, and politician. He had a wide reputation as a successful advocate, especially in criminal cases, and practiced extensively in the courts of western Illinois and Iowa.

Samuel Lucas (1799–1868), Jackson County, Missouri, storeowner, militia leader, and politician. He was elected a justice of the Jackson County court in Missouri in 1831. As an active anti-Mormon, he acted as secretary to the Jackson County Citizens Committee, which met to take action against the Mormons. As a general officer in the Missouri militia in 1838, Lucas marched troops to Caldwell County, Missouri, where he took Joseph Smith and other Mormon leaders prisoner, disbanded their armed forces, and conducted a military hearing against Joseph Smith and several other Mormon leaders.

NOTE: As previously noted, the play is performed by four actors. The actors are identified in the following script by the letters A, B, C, and D.

Each actor played multiple roles except actor B who only played Stephen A. Douglas. The role the actor is playing is identified in a notation after their initial, e.g, A (Boggs) – actor A is playing Lilburn Boggs, C (Butterfield) – actor C is playing Justin Butterfield, or D (Rigdon) – actor D is playing Sidney Ridgon. When there is no notation after the actor’s A, B, C or D identification, the actor is playing as part of the ensemble and not a particular role.

(The rapping of a gavel sounds.)

A (Court Clerk)

Oyez, Oyez, Oyez. All persons having business before the Honorable Stephen A. Douglas of the Supreme Court of the great State of Illinois...

B (Douglas)

Yes, that Stephen Douglas.

A (Court Clerk)

All are admonished to draw near and give their attention for the Court is now sitting.

B (Douglas)

Though I wasn’t that Stephen Douglas yet.

A (Court Clerk)

God save the United States and this honorable court.

B (Douglas)

Indeed. This was many years ago. Before my election to the House of Representatives; before my election to represent Illinois in the United States Senate; before the series of debates held during my re-election campaign with my Republican opponent, Abraham Lincoln. You may have heard of those.

A (Court Clerk)

We meet this morning in the Warren County Circuit Courthouse in Monmouth to hear the habeas corpus petition of Joseph Smith Jr.

B (Douglas)

I won re-election after those debates. Had you forgotten that? Look it up on those phone-eye’s you’re always poking at. Then do me the favor of

adjusting them so they won't disturb us.

A (Court Clerk)

This hearing is to review the arrest of Joseph Smith that occurred on June 5, 1841, outside of Quincy by a warrant issued by Governor Thomas Carlin of our good state.

B (Douglas)

This hearing was much earlier in my career. Only twenty-seven, I had recently been appointed as an associate justice of the Illinois Supreme Court.

A (Court Clerk)

The record shows that this warrant was based on a requisition that Illinois Governor Carlin received from Missouri's Governor Thomas Reynolds wherein Reynolds alleged that Mr. Smith was a fugitive from justice in Missouri where he had been indicted for treason.

B (Douglas)

Did you follow that? This is a story about the protections of individual liberties versus the right of a state to enforce its criminal laws by seeking the return of an indicted person located in another state. You'll need to pay attention to the details. This is just the first of three hearings in our story, each involving the use of habeas corpus by Joseph Smith to prevent his extradition from Illinois to Missouri on charges of treason.

A (Court Clerk)

Mr. Smith's petition claims he was unlawfully taken into custody and that the indictment in Missouri against him was obtained by fraud, bribery, and duress.

B (Douglas)

You look confused. I believe that it will be necessary for us to step out of the courtroom and provide you with some contextual information – biographical, historical and technical - if you twenty-first century citizens are to make heads or tails of the discussion at this hearing. If you'll permit me, while I am not on the bench or speaking in any official capacity I will, with the help of these performers, review some events that preceded the commencement of this hearing. Let's begin with an introduction to the petitioner.

C

Joseph Smith, Jr. is the founder of a religion that became known as The Church of Jesus Christ of Latter-day Saints.

B (Douglas)

I play only a supporting role in these events - as I seem to in much of history as you were taught it. I don't intend to invent any incidents to tell this tale, but it may be necessary to invoke literary license for the sake of clarity and in consideration of time. I hope you won't object.

C

The founding of the church dates to a meeting held in Fayette, New York, on April 6, 1830 shortly after the publication of "The Book of Mormon," which Smith said he translated from golden plates given to him by the angel Moroni.

B (Douglas)

I can attest from my encounters that Mr. Smith, who came to be referred to as the Prophet of the Church, had a compelling personality and was a passionate and persuasive speaker. It's not surprising that he quickly attracted a growing group of ardent followers.

D

"I have felt to rejoice exceedingly in what I saw of brother Joseph, for in his public and private career he carried with him the Spirit of the Almighty, and he manifested a greatness of soul which I had never seen in any other man."

A

The growth of the church and controversial statements about existing Christian religions made by Smith...

C (Smith)

They are "abominations in the sight of God."

A

...led to hostility and persecution.

D

In January of 1831, Smith told his followers in New York that it was time

for the believers to gather together.

C (Smith)

“For this cause I give unto you the commandment that you shall go to the Ohio... There I will give unto you my law, and there you shall be endowed with power from on high.”

A

Smith and his followers left behind their property, their livelihoods and the lives they had known to search for safety and spread their faith.

B (Douglas)

Smith was an organizer as well as an orator and effectively supervised the burgeoning Ohio community, developing an organizational structure to support the growing church. But the influx of Mormons and their growing political and economic power, coupled with their distinctive religious beliefs, raised fears from the locals.

D

Deep in the night of March 24, 1832, a mob of fifty men drug Joseph from his home and attacked him.

A & B

“Let us tar up his mouth.”

D

These violent intruders beat him, stripped him and left him battered and covered with tar and feathers.

B (Douglas)

But Joseph returned to his work, continuing to translate scripture, and receiving new revelations.

C (Smith)

“Behold, thus saith the Lord: if your brethren desire to escape their enemies, let them repent of all their sins, and become truly humble before me and contrite. Go to now and flee the land, lest your enemies come upon you; and take your journey into the regions westward, unto the land of Missouri, and after you have done journeying, behold, I say unto you, seek ye a living like unto men, until I prepare a place for you.”

B (Douglas)

But rather than finding peace in Missouri, Smith’s followers met new hostilities. The slave-holding settlers of Missouri feared that the Mormons could tilt the political balance and vote to abolish slavery in their state.

A

“The day is not far distant when the civil government of this county will be in their hands. When the sheriff, the justices, and the county judges will be Mormons, or persons wishing to court their favor from motives of interest of ambition.” (July 20, 1833 Address in Independence, Missouri by committee formed to drive the Mormons from Jackson County, Missouri).

B (Douglas)

These tensions erupted in more violence against Smith’s followers. Homes, farms and businesses were burned. In 1833, leaders of the church were again tarred and feathered.

D

But the Mormons continued their westward migration. In the summer of 1838 a mile long wagon train arrived with Saints following their Prophet from Ohio.

A

These Mormons are “a tribe of locusts that threatens to scorch and wither the herbage of a fair and goodly portion of Missouri by the swarm of emigrants from their pestilent hive in Ohio and New York.” (Samuel Owens)

B (Douglas)

To publicly assert the Saints’ religious freedom as Americans, Smith selected the Fourth of July for the laying of the cornerstone of the temple in Far West, calling it:

C (Smith)

“Our declaration of independence from all mobs and persecutions which have been inflicted upon us time after time until we can bear it no longer.”

B (Douglas)

However, the celebratory nature of the event took a darker turn when Elder Rigdon addressed the crowd:

D (Rigdon)

“We have not only, when smitten on one cheek, turned the other, but we have done it again, and again, until we are wearied of being smitten, and tired of being trampled upon. For from this hour, we will bear it no more, our rights shall no more be trampled on with impunity. . . . That mob that comes on us to disturb us, it shall be between us and them a war of extermination. . . . We this day proclaim ourselves free, with a purpose and a determination that never can be broken-No never!”

B (Douglas)

Rigdon’s call inflamed the fears of the non-Mormons in the audience. With state elections approaching, politicians and newspapers cited his words in threatening speeches and incendiary editorials calling for the expulsion of the Mormons from Missouri.

A

“Suffer the Mormons to vote, you will soon lose your suffrage.” (William P. Penniston)

B (Douglas)

As a group of Mormons approached the polling place in Gallatin on election day in the summer of 1838, a mob attempted to stop them and a brawl broke out. Over the several following weeks, armed vigilante bands organized in the surrounding counties, intent on expelling the Saints from the area.

D

“Mobs began to gather in various places and commenced their hostilities, so much so that we Saints were obliged to shoulder our guns and stand guard day and night.” (Joseph Horne)

B (Douglas)

Hoping that the state would assume a role in the restoration of order, the Mormons sent a delegation to ask for protection from Missouri governor Lilburn Boggs. The governor’s response was brief.

A (Boggs)

“This quarrel is between the Mormons and the mob.” If you have a problem, fight back.

B (Douglas)

So when the Saints who had gathered together at their settlements for safety were attacked by the Missourians, Smith urged them to follow Governor Boggs’ advice and defend themselves.

C (Smith)

“From county to county we have been driven by unscrupulous mobs eager to seize the land we have cleared and improved with such love and toil. We have appealed to magistrates, judges, and the Governor, but there has been no redress for us. If the people will let us alone, we will preach the gospel in peace. But if they come on us to molest us, we will establish our religion by the sword. I will be to this generation a second Mohammed, whose motto entreating for peace was ‘the Qur’an or the Sword!’”

D

That October the conflict escalated into an actual battle at Crooked River between a Mormon controlled militia and the local militia. Both sides suffered casualties. Three were killed – two Mormons and one Missourian.

A (Boggs)

“These events of the most appalling character demonstrate that these Mormons are in the attitude of an open and avowed defiance of the laws and of having made war upon the people of this State.”

B (Douglas)

On October 27, 1838, Boggs issued Missouri Executive Order Number 44:

A (Boggs)

“The Mormons must be treated as enemies, and must be exterminated or driven from the state if necessary for the public peace. - L. W. Boggs, Commander-in-Chief.”

C

Smith and more than sixty other Mormons were arrested and brought before Judge Austin King in Richmond, Missouri.

D

King held a “Court of Inquiry” and bound the Prophet and five of his closest advisors, including his brother, over on various charges, including treason, which was not bailable.

B (Douglas)

With Joseph Smith in confinement, Brigham Young and other elders of the church organized the forced exodus of the Saints from Missouri, to Quincy, Illinois. There a sympathetic town council passed a resolution that read:

D

“Resolved: That the governor of Missouri, in refusing protection to this class of people when pressed upon by an heartless mob, and turning upon them a band of unprincipled Militia, with orders encouraging their extermination, has brought a lasting disgrace upon the state over which he presides.”

B (Douglas)

In April, after enduring nearly five months of incarceration in Liberty, Missouri, the Mormons were finally brought before a grand jury.

C

Presiding was Thomas Birch, Missouri’s prosecutor in the “Court of Inquiry,” now a circuit judge, appointed by Governor Boggs while Smith and his colleagues were being held in Liberty.

B (Douglas)

After they were indicted by the grand jury, Birch granted the Mormons request for a change of venue to secure a fair trial. While en route, the Saints escaped or, as I’ve heard the story, the guards – out of embarrassment over the treatment of the Mormons – turned a blind eye and allowed them to slip away to rejoin their community in Illinois. There they established the city of Nauvoo, which quickly grew to be, after Chicago, the second largest city in the state.

C

Intent on having the story of the harassment and violence his people were subjected to known widely and redressed, Smith traveled to the District of Columbia to meet with President Martin Van Buren. The Prophet hoped that the federal government could better protect the rights of his flock than had the state and municipalities of Missouri.

B (Douglas)

Van Buren’s response was less than Smith had hoped for:

A (Van Buren)

“Your cause is just, but I can do nothing for you; if I take up for you I shall lose the vote of Missouri.”

D

Embarrassed by Smith’s efforts to win redress, Missouri’s new governor, Thomas Reynolds, asked the governor of Illinois to extradite Smith back to Missouri to stand trial.

B (Douglas)

Extradite - the surrender of an alleged fugitive or criminal by one state to another state.

A

Illinois Governor Carlin complied and Smith was arrested.

D

Smith immediately sought a petition for a writ of habeas corpus to have the arrest reviewed.

B (Douglas)

Latin for “to have the body,” the principle of habeas corpus predates the Magna Carta and serves as a safeguard for a person who has been arrested and imprisoned to have that imprisonment reviewed by another court to make sure it was proper.

(The rapping of a gavel sounds.)

A (Court Clerk)

Oyez, Oyez, Oyez. All persons having business before the Honorable Stephen A. Douglas of the Supreme Court of the great State of Illinois...

B (Douglas)

This brings us back to where we began.

A (Court Clerk)

All are admonished to draw near and give their attention for the Court is now sitting. God save the United States and this honorable court.

B (Douglas)

Indeed.

(Now in court.)

This hearing is to review the arrest of Joseph Smith on a warrant issued by Governor Carlin of our good state, based on a requisition he received from Missouri Governor Reynolds alleging that Mr. Smith was a fugitive from justice from Missouri. Mr. Smith's petition claims he was unlawfully taken into custody and that the indictment in Missouri against him was obtained by fraud, bribery, and duress.

D (Browning)

Good morning, your honor. I am Orville Browning, counsel for petitioner Joseph Smith.

C (Morrison)

Your honor, Thomas Morrison, for the State. We have two preliminary matters to bring before the court. First, the record provided to this court does not have a copy of the indictment attached to the warrant as required by statute. We believe it is necessary to continue this matter until the indictment can be located and properly provided.

D (Browning)

Your honor, the petitioner is willing to stipulate that an indictment against Mr. Smith was handed down by a grand jury in Davis County, Missouri in April 1839 for treason.

C (Morrison)

One additional matter, your honor. It appears that counsel for Mr. Smith anticipates calling witnesses to discuss the underlying basis for the indictment. The State believes that such testimony is wholly inappropriate. The only issue properly before this court is whether the procedural requirements for Mr. Smith's arrest have been satisfied. As established under the common law of England, this court should not permit looking behind the warrant into the facts of the case.

D (Browning)

Your honor, to limit the court's inquiry to merely the "form" of the arrest while ignoring the "substance" is simply misdirected. As the American courts have ruled, Habeas corpus would be a mockery if magistrates or other officials used it to oppress and falsely imprison unpopular persons.

B (Douglas)

Thank you. I will reserve ruling on this matter and will allow the parties to present the testimony they desire. Mr. Browning, you may proceed.

D (Browning)

The petitioner's counsel calls Reynolds Cahoon. Mr. Cahoon, are you aware of the circumstances surrounding the charges brought against Mr. Smith for treason by the State of Missouri?

A (Cahoon)

I am. We Mormons were threatened with violence and ultimately extermination.

D (Browning)

Do you know what precipitated this violence?

A (Cahoon)

This started in 1838 when we were forbidden to exercise the right to vote in local elections in Gallatin, Missouri. A fight broke out between the Mormons and those trying to deny them that right. From that time, a mob commenced gathering in that county, threatening the Mormons, who endured numerous acts of violence into the fall of the year.

D (Browning)

What efforts, if any, did Mr. Smith take to stop this persecution?

A (Cahoon)

The Mormons sent petitions for assistance to the Governor of Missouri, but these cries for help went unheeded. Instead, Governor Boggs issued his extermination order. On October 30, a mob with painted faces attacked the Mormon community near Hawn's Mill, killing seventeen Mormon men and boys.

D (Browning)

Did the Mormons ever retaliate over these acts against them?

A (Cahoon)

Not directly, sir. The local militia in Caldwell County, Missouri, where Mormons comprised most of its ranks, was used to protect property and rescue prisoners wrongfully taken from their homes. But this only

increased the violence unleashed against us.

D (Browning)

What role did Mr. Smith play in any of these actions?

A (Cahoon)

At no time did he bear arms or assume command of a militia in any capacity. In fact he attempted to meet with the military leaders to try and find a peaceful solution.

D (Browning)

Were those efforts successful?

A (Cahoon)

As a result of his efforts, he was arrested by Missouri militia leaders, illegally court-martialed, and sentenced to be shot.

C (Morrison)

Your honor, we do renew our objections to all of the testimony of Mr. Cahoon as being beyond the scope of this habeas corpus hearing.

B (Douglas)

Mr. Morrison, your objections are noted.

(He gives CAHOON a “thank you” nod, then turns back to MORRISON.)

Do you have any evidence you wish to present?

C (Morrison)

No, your honor, I would reiterate that I do not think it appropriate to introduce evidence at this type of hearing.

B (Douglas)

Let’s therefore move to closing statements. Mr. Morrison for the State of Illinois.

C (Morrison)

Your honor, I share the horror of the events that Mr. Cahoon has described. Whether they represent an accurate account cannot here be truly decided. And fortunately the law does not require such a determination. All that the law requires is for this court to determine whether the arrest of Mr. Smith in Illinois was proper.

Illinois Governor Carlin issued a warrant for his arrest. Sheriff Thomas King first carried the warrant to Nauvoo, where Mr. Smith resides, but he could not find Joseph Smith and returned the warrant to Governor Carlin. The Governor thereafter learned that Mr. Smith was in Quincy and gave this same warrant to Sheriff Thomas King to arrest him. The facts are undisputed in this regard. We need to follow the law and send Joseph Smith back to Missouri, where he will be tried for treason.

D (Browning)

Mr. Morrison is seeking the antithesis of justice — to send Joseph Smith back to Missouri to be tried for treason. The circumstances of his people being driven from that State with the active participation of the government itself is evidence of how impossible it is for him to obtain justice there. Great God! Have I not seen it? Yes, my eyes have beheld the blood-stained traces of innocent women and children, in the drear winter, who have travelled hundreds of miles barefoot, through frost and snow to seek a refuge from their savage pursuers. ‘Twas a scene of horror sufficient to enlist sympathy from an adamant heart. And shall this unfortunate man be driven into such a savage band, and none dare to enlist in the cause of justice? If there was no other voice under heaven ever to be heard in this cause, gladly would I stand alone, and proudly spend my latest breath in defense of an oppressed American citizen. Thank you, your honor.

B (Douglas)

The circumstances that bring this matter before this court are indeed difficult to hear and even more to comprehend. Fortunately, it is not necessary for this court to so decide to make a ruling in this matter. The State’s argument that the arrest was procedurally proper is mistaken. Returning the warrant to Illinois Governor Carlin after the Sheriff of Hancock County was unable to locate Mr. Smith in Nauvoo rendered the warrant *functus officio*— meaning it was fully used, discharged, and actually dead. Consequently, that warrant could not be properly used again to arrest Mr. Smith. The evidence is undisputed that this same warrant was used again to arrest him. It is this arrest that is the subject of the present hearing. That being the case, this court finds the arrest to be improper and orders the immediate release of Joseph Smith Jr.

D (Browning)

Thank you, your honor.

B (Douglas)

When I stood for election to the House of Representatives, some suggested that my ruling was merely catering to the Mormon vote – something I never received. In fact, though my ruling was legally correct, it was not to Joseph Smith's satisfaction because I ruled on the procedural matters rather than on the merits as he has hoped. Though his freedom was preserved, he did not receive the vindication for his people that he desired.

(The crack of a gunshot.)

A

On May 6, 1842, former Missouri Governor Lilburn Boggs was shot through a window of his home in Independence, Missouri as he read a newspaper in his study.

C

Boggs' wounds were serious, but although one newspaper published his obituary he survived and gradually recovered.

D

Because of the extermination order and Smith's statements of hostility toward Boggs, insinuations of Mormon involvement in the assassination attempt began to circulate.

B (Douglas)

The discovery that a childhood friend of Joseph Smith had been in Independence at the time of the shooting led to allegations by disaffected Mormon John C. Bennett that Orrin Porter Rockwell had acted upon instructions from Mr. Smith.

A

Using Bennett's accusations as support, Boggs prepared an affidavit alleging that he had information that the Mormon prophet was an accessory before the fact in orchestrating the assassination attempt.

B (Douglas)

Once again, Missouri Governor Reynolds issued a requisition for the extradition of Smith from Illinois to Missouri.

C

And once again Illinois Governor Thomas Carlin issued an arrest warrant

for Smith...

D

...this time backed by a reward for his apprehension.

B (Douglas)

Rockwell and Smith were forced into hiding to avoid being retaken on Governor Carlin's bounty. However, the power of electoral change interceded on their behalf when, in the November 1842 elections, Thomas Ford was elected to succeed Carlin as Governor of Illinois.

A

Shortly thereafter representatives of Smith went to Springfield to meet with Governor-elect Ford to determine his position on the second extradition effort by Missouri that kept their prophet in hiding.

B (Douglas)

Ford, a former justice on the Illinois Supreme Court, told the Mormon representatives that he believed that if Joseph Smith voluntarily came to Springfield and had the matter heard that he would be exonerated.

A

The delegation, hearing these words, retained representation for Brother Joseph by U.S. Attorney Justin Butterfield.

B (Douglas)

In those days the U.S. Attorney also maintained a private practice.

C (Butterfield)

I determined the best course of action was not to go to the state court, but to bring the matter on a writ of habeas corpus before the United States Federal Court, sitting in Springfield, where federal judge Nathaniel Pope presided.

D (Pope)

The court convened before me on January 4, 1843. Because of the notoriety of the case the courtroom was so packed that I allowed my daughters, attorney Butterfield's daughter, and their friend, the recently married Mary Todd Lincoln to sit with me on the bench.

A (Lamborn)

Your Honor, Josiah Lamborn, Attorney General for the State of Illinois representing the interest of our great state. With due respect, the state moves that the petition for writ of habeas corpus be dismissed on the grounds that this federal court has no jurisdiction over this matter. As these actions are between two states and are governed by state law, the federal government lacks the power to hear this matter.

C (Butterfield)

Your Honor, Attorney General Lamborn is unfortunately in the dark on this issue. While I have great respect for the bar, I can only find contempt for such a barroom opinion. The right of habeas was so central to the American ideal that it was expressly written into the Constitution itself. The Revolutionary War was won to extract such powers from the Crown. Certainly the founders never intended those powers to be given to a governor. Not only is the federal court the jurisdictionally proper court, it is the exclusively proper court. I hope the Gentlemen of the bar will not give their opinions without reading their books—these outdoor opinions are a disgrace to the profession.

A (Lamborn)

Judge Pope—

D (Pope)

Thank you, counselors. I find the petitioner's arguments persuasive here. When the patriots and wise men who framed our Constitution were in anxious deliberation to form a more perfect union among the states, one great source of discord presented itself to their consideration; fugitives from justice. The Constitution they drafted was to regulate this matter, because of its exemption from the excited passions awakened by conflicts between neighboring states, and its ability alone to establish uniform laws among all the states in those cases.

A (Lamborn)

If I may, Judge Pope—

D (Pope)

Furthermore, Mr. Lamborn, your argument that some greater deference should be given in this case because a governor issued the warrant is misplaced. The Magna Carta established the principles of liberty; the habeas

corpus protected them. It matters not how great or obscure the prisoner, how great or obscure the prison-keeper, this munificent writ, wielded by an independent judge, reaches all. It penetrates alike the royal towers and the local prisons, from the garret to the secret recesses of the dungeon. All doors fly open at its command, and the shackles fall from the limbs of prisoners of state as readily as from those committed by subordinate officers. Mr. Lamborn, your motion to dismiss is denied. Mr. Butterfield, you may proceed.

C (Butterfield)

Thank you, your Honor. I appear before you today under circumstances most novel and peculiar. I am to address the "Pope" . . .

(Bowing to the Judge.)

Surrounded by angels seated with him on the bench. . .

(Bowing to the ladies sitting on the bench.)

. . . in behalf of the Prophet of the Lord.

(He enjoys his formulation.)

The Constitution is clear: Only a person charged with a crime, who "shall flee" from justice can be delivered up to the governor of another state as a fugitive from justice.

A (Lamborn)

Your Honor, whether Smith was in Missouri or Illinois on the day that Boggs was shot is irrelevant. If he prophesied or ordered that Boggs be shot, where should he be tried?

C (Butterfield)

My good colleague Mr. Lamborn misses the point. The issue before this court is not whether a crime has occurred, but whether Missouri can compel the extradition of a person to stand trial in Missouri for an alleged crime from which he did not flee and therefore is not a fugitive. Your Honor, we call the Honorable Judge Stephen A. Douglas.

B (Douglas)

Yes. I, a judge in the first hearing, now called to the witness stand in the second.

A (Lamborn)

We object to Mr. Butterfield's effort to present evidence that goes beyond the facts of the extradition pleadings themselves.

C (Butterfield)

Courts in America, as opposed to those in England, have long held that it is permitted to look behind a writ of habeas corpus in cases prior to judgment. As our learned legal scholar James Kent explained, “Upon the return of the *habeas corpus*, the judge is not confined to the face of the return, but he is to examine into the facts contained in the return”. . . . Otherwise, your Honor, habeas corpus would be a mockery.

D (Pope)

Counselor Lamborn’s objection is denied. Continue, Mr. Butterfield.

B (Douglas)

Having only recently been elected to my first term in the United States House of Representatives, my presence drew a good bit of interest from the assembled spectators.

C (Butterfield)

Judge Douglas, would you consider yourself and Mr. Smith to be close friends?

B (Douglas)

I stop and visit with Mr. Smith, whenever I am passing through Nauvoo, in my travels as I preside for the Fifth Judicial Circuit.

C (Butterfield)

Judge Douglas, you’ve signed an affidavit stating that you observed my client in Nauvoo on May 7, 1842. Could you confirm that for the court?

B (Douglas)

Yes. I arrived in Nauvoo early that afternoon. The Nauvoo Legion was drilling at the grove. Joseph Smith is the General over the Legion. He was reviewing the troops.

C (Butterfield)

Did you speak with General Smith?

B (Douglas)

I had dinner with Joseph Smith and his family.

C (Butterfield)

You then spent the night at the Smith home?

B (Douglas)

I did.

C (Butterfield)

So you were witness to General Smith’s presence in Nauvoo from early afternoon through the remainder of the day on May 7th.

B (Douglas)

That is right.

C (Butterfield)

Thank you, Judge Douglas. No further questions.

D (Pope)

Do you have other witnesses, Mr. Butterfield?

C (Butterfield)

Your Honor, we have here in court the following witnesses who will all substantiate the testimony of Judge Douglas that Joseph Smith was in Nauvoo on May 7, 1842, as well as others who will testify to the fact he had been in Nauvoo since February of 1842. These men include Sheriff J. B. Backenstos, William Law, Henry Sherwood, Theodore Turley, Shadrack Roundy, William Clayton, Willard Richards, John Taylor and William Marks.

A (Lamborn)

Your honor, the state does not believe that it is warranted to hear from all of these witnesses. The state will stipulate that Mr. Smith was not in Missouri in or around May 1842, nor had been in Missouri since his escape from custody in April 1839.

C (Butterfield)

Your Honor, we would object to his characterization that he had escaped from custody. It is our understanding that he and his colleagues were actually released by Sheriff Morgan and that Sheriff Morgan and his deputies were driven out of Daviess County as a result.

A (Lamborn)

Fine. Released.

D (Pope)

Mr. Lamborn, do you have witnesses that you would like to call?

A (Lamborn)

We do not.

D (Pope)

We will then hear Mr. Butterfield's closing argument. Mr. Butterfield.

C (Butterfield)

Thank you, your Honor. Let's look at the pleadings underlying the extradition request. First, an affidavit from former Missouri Governor Boggs; second, the requisition from current Missouri Governor Thomas Reynolds. The affidavit from Governor Boggs is almost entirely conclusions of law rather than statements of facts. Instead of stating facts, Governor Boggs notes his "belief" in certain factual contentions. Such beliefs are insufficient to establish facts as a matter of law. Then you have the requisition. Your Honor, the sole basis for the requisition is the Bogg's affidavit. Yet, the requisition goes beyond the affidavit. The basis, as noted in the requisition, for requesting that Joseph Smith be sent to Missouri is that General Smith had actually "fled" from Missouri thereby becoming a "fugitive" from justice. And the facts as presented by Judge Douglas and others clearly establish that Smith never fled from Missouri. On the date in question Judge Douglas partook of the hospitality of General Smith; instead of fleeing from Justice, Smith was dining with one of the highest court judges in our land. Illinois' Governor Carlin would not have given up his dog on such a requisition. That an attempt should be made to deliver up a man who has never been out of the State strikes at all the liberty of our institutions. His fate today may be yours tomorrow. I do not think the petitioner ought under any circumstances to be delivered up to Missouri. It is a matter of history that he and his people have been murdered and driven from the state. He had better been sent to the gallows. He is an innocent and unoffending man. The difference is this: some people believe in prophecy and others do not. Old prophets prophesied in poetry and the modern in prose.

A (Lamborn)

Your Honor, Justin Butterfield has done an excellent job addressing the wrong issues. The issue truly before this court is whether this federal court on a writ of habeas corpus has the right to abrogate the efforts between two

governors. The state respectfully asserts that it does not. The review of this matter rests squarely between these two governors.

D (Pope)

Thank you, both of you, for your very able legal arguments. Let the court be adjourned so that I may consider my opinion. We will resume in the morning.

B (Douglas)

With that the parties dispersed. U.S. Marshal William Prentice sent a carriage to convey Mr. Smith and his party to the Marshal's home to dine and spend the evening with his family. The Marshal kindly extended invitations for supper also to Mr. Butterfield, Mr. Lamborn, and myself. Judge Pope, engaged in the preparation of his opinion, declined his invitation. Happily, his son William joined us in his stead. All found it to be a very agreeable evening of many interesting anecdotes.

C (Butterfield)

The next morning the courtroom was again packed with many anxious to hear the decision – with the public expression decidedly in favor of the release of Smith.

D (Pope)

Thank you, gentlemen, for your thoughtful arguments, which have been of great assistance to me in the examination of the important questions arising in this case. My decision is based on the affidavit from former governor Lilburn Boggs, which furnished the only evidence on which the governor of Missouri could act. In it Boggs asserts that his accusation that Joseph Smith was an accessory before the fact is based on evidence and information now in his possession, but he fails to enumerate any of said evidence or information in his affidavit. The court is bound to assume that this would have been the course of Mr. Boggs, but that his suspicions were light and unsatisfactory. Mr. Boggs' opinion, then, is not authority. He should have given the facts. With no evidence in the affidavit to support the charges, I find that Mr. Smith must be discharged.

A & C (later joined by D)

AND ARE YOU SURE THE NEWS IS TRUE?

AND ARE YOU SURE HE'S FREE?

THEN LET US JOIN WITH ONE ACCORD,

AND HAVE A JUBILEE.

B (Douglas)

Smith's friends and colleagues were in high spirits at the decision and sang lyrics composed for the occasion as they traveled in caravan back to Nauvoo from Springfield. Smith, though, did not share in their jubilation, frustrated again that the ruling was based on a technicality rather than the merits of the case.

A, C & D

WE'LL HAVE A JUBILEE, MY FRIENDS,
WE'LL HAVE A JUBILEE;
WITH HEART AND VOICE WE'LL ALL REJOICE
IN THAT OUR PROPHET'S FREE

B (Douglas)

But just six months later news from Missouri would again threaten the freedom of the Mormon's leader. A visit with his wife Emma to Lee County, Illinois was interrupted by a messenger from Nauvoo.

A (Clayton)

Brother Joseph, there's a sheriff coming from Missouri to arrest you. That lying John Bennett got the Missourians to re-indict you for treason for defending ourselves from the mobs. Their governor's asking to have you extradited on the old charges. As soon as our horses get some rest and water, we got to get you back to Nauvoo where we can protect you.

B (Douglas)

In nearby Dixon, Illinois, two Mormon missionaries inquired for direction to where their leader was staying, but when Smith answered the door they pointed their pistols at Smith, saying:

D (Reynolds)

Damn you, I will shoot you.

B (Douglas)

It was a sheriff from Missouri and a constable in disguise, sent to arrest Smith. Word quickly spread through town that Smith was being held at gunpoint. As the crowd grew restless outside, a local attorney confronted the sheriff:

A (Attorney)

If that is the way of doing business in Missouri, we have another way of doing it here. We are a law-abiding people and believe that Mr. Smith should have the opportunity of a fair hearing, but if you sir persist in your course, we have a very summary way of dealing with such people.

B (Douglas)

Authorities in Dixon took the sheriff from Missouri and the constable into custody based on charges made by Joseph Smith and all parties slept that night under guard. The next morning writs of habeas corpus were issued on behalf of both Smith and the officials. All began their journey to have their cases heard in Quincy, Illinois, with Brother Joseph in custody of the sheriff and the constable, and the sheriff and constable in the custody of the sheriff of Lee County.

A

The Missouri Sheriff forced Smith to walk, fearful that he would attempt to escape if allowed to ride on horseback. Joseph feared that his captors would try to separate him from the rest of the party and take him back to Missouri.

D

Soon nearly two hundred Mormons dispersed across the countryside searching rivers and road for any sign of their leader. Nearing the Fox River, Smith saw two familiar faces racing toward them on horseback. He turned to the constables and said:

C (Smith)

I am not going to Missouri this time. These are my boys!

B (Douglas)

Smith's attorney, Cyrus Walker, decided they should change course for Nauvoo. Soon the caravan was joined by an escort of one hundred of Brother Joseph's supporters, and it was the sheriff and the constable who now feared for their lives.

D (Reynolds)

We'll never get to Nauvoo alive!

A

The journey that had begun with Smith in custody became a celebration of his freedom. As they entered Nauvoo, the procession was greeted with the firing of cannons, shouts of joy, and the shedding of tears. Smith gave a dinner for fifty of his supporters, and had the Missouri sheriff and the constable from Hancock County seated with him at the head table.

C (Smith)

I have brought them to Nauvoo and treated them kindly. I have had the privilege of rewarding them good for evil. I have set the best before them my house afforded. Is that not the model we have been given for treating our enemies? Restrain your hand from violence against these men.

D

The next day they turned Smith over to the Nauvoo municipal court, and rushed out of town to have their own writs of habeas corpus heard in Carthage, Illinois.

B (Douglas)

Cyrus Walker was confident that he could win the case on procedural grounds as in the previous hearings, but knew that his client wanted a ruling that the underlying charges against him were false, along with having an official record in the court of the persecutions of his people. To tell the story, he called to the witness stand many men from the Latter-day Saints community, including Parley Pratt, Lyman Wight, Sidney Rigdon, Brigham Young and Joseph Smith's brother, Hyrum.

D (Hyrum Smith)

After the fight in 1838 at the Gallatin, Missouri, polling place, Joseph, myself and other Mormon leaders travelled there and had a meeting with Adam Black, the justice of the peace. My brother requested Mr. Black to call together the most influential men of the county.

C (Ridgon)

Accordingly the next day they assembled at the house of Col. Wight and entered into a mutual covenant of peace, to put down mob violence and to protect each other in the enjoyment of their rights.

A (Wight)

But this mutual agreement of peace lasted for but a few days. The mob

began to collect again and commenced making aggressions upon the Mormons and threatening them with utter extinction; saying that they had a cannon and there should be no compromise, only at its mouth.

C (Ridgon)

We then sent our petitions for protection to Governor Boggs. The messengers returned from the Governor, bringing what we saw as the fatal news, that the Mormons could have no assistance.

D (Hyrum Smith)

This brought on an immediate increase in violence against the Saints. Many Saints were obliged to leave their homes and travel to safe havens but many of them had starved to death for want of proper sustenance, and several died on the road there, and were buried by the way side, without a coffin or a funeral ceremony.

A (Wight)

The Mormon members of our Caldwell County militia arrived to stop the fighting, but the mob started up a new plan in Daviess County. After we had agreed to buy their properties, they went to work and moved their families out of Daviess county then set fire to their own houses, and sent runners into all the counties adjacent to declare to the people that the Mormons had burnt up their houses and destroyed their fields.

D (Hyrum Smith)

Many people came to see. They saw the houses burning, and being filled with prejudice, they could not be made to believe but that the Mormons set them on fire. Governor Boggs, having received the reports that the Mormons were burning Davies County, issued his notorious extermination order.

A (Wight)

With the body of the Mormons now in Far West and General Lucas and his Missouri militia surrounding the city, Joseph Smith and other of our leaders were invited to meet with the General to see if a peaceful resolution was possible. We consulted together and agreed to go down. I shook hands with General Lucas and at this moment he brandished his sword with a most hideous look, and said,

B (Officer, General Lucas)

“You are my prisoners, and there is no time for talking at the present, you will march to the camp. Your fate is fixed, the die is cast, your doom is sealed.”

C (Rigdon)

You have to understand that for most of the time we had no idea what we were being charged with. Once we were taken prisoner, we were first informed that we were all to be court-martialed. But General Clark determined that we could not be court-martialed because none of us were in the military. Ultimately we were taken to Richmond, Missouri, to appear before Judge Austin King. No papers were read to us, no charges of any kind were preferred, nor did we know against what we had to plead. Witnesses were called up and sworn at the point of the bayonet and if they would not swear to the things they were told to do, they were threatened with instant death.

D (Hyrum Smith)

In our defense, we gave the court the names of forty persons who were acquainted with all the persecutions and sufferings of our people. The judge made out a subpoena, and inserted the names of those men. In the course of a few days they returned with most all those forty men, and thrust them into jail, and we were not permitted to bring one of them before the court. I heard Judge King say on his bench, in the presence of hundreds of witnesses, that there was no law for Mormons, and they need not expect any. Said he, “if the governor’s exterminating order had been directed to me, I would have seen it fulfilled to the very letter.” The next morning a large wagon drove up to the door, and a blacksmith came into the house with some chains and handcuffs. He said his orders were from the judge, to handcuff us, and chain us together, and that the judge had sentenced us to jail for treason.

He also said the judge stated his intention to keep us in jail until all the Mormons were driven out of the state. We were thrust into prison again and were held there in close confinement for the space of six months. Our food was anything but good and decent. Poison was administered to us three or four times, the effect it had upon our system was that it vomited us almost to death, and then we would lay some two or three days in a torrid, stupid state, not even caring or wishing for life. Come April, we were taken to Davies county, as they said, to have a trial, but when we arrived at

that place, instead of finding a court or a jury, we found another inquisition. The same men sat as a jury in the day time and were placed over us as a guard in the night time. They tantalized and boasted over us, telling us how many houses they had burned, and how many sheep, cattle and hogs they had driven off, and how many rapes they had committed; saying that they lashed one woman upon one of the Mormon meeting benches, tying her hands and her feet fast, and sixteen of them abused her as much as they had a mind to, and then left her bound and exposed in that distressed condition.

This grand jury constantly celebrated their achievements with grog and glass in hand, singing and telling each other of their exploits in murdering the Mormons. After six or eight days the grand jury, (most of whom, by the by, were so drunk that they had to be carried out and into their rooms as though they were lifeless) returned a fictitious indictment, which was sanctioned by Judge Birch, the same Birch who was the prosecuting attorney when we’d been before Judge King in Richmond last November. Because of Judge Birch’s conflict of interest, he moved the case to Columbia, in the middle of the state.

We started from Gallatin the sun about two hours high and went as far as Diahman that evening. There the sheriff showed us the transfer documents, without date or signature, and said that Judge Birch told him never to carry us to Boone county, and never to show the documents; and said he, “I shall take a good drink of grog and go to bed; and you may do as you have a mind to.” Three others of the guard drank pretty freely of whiskey, sweetened with honey; they also went to bed, and were soon asleep, and the other guard went along with us and sold us two horses. We paid for one of them with what clothing we had with us, and for the other we gave our note. Two of us mounted the horses, and the other three started on foot, and we took our change of venue for the State of Illinois.

B (Douglas)

With that, Cyrus Walker began his closing statement, “I know most positively that Joseph Smith has not committed treason in the State of Missouri. I know that the Mormon people were driven out of that State, as well as Joseph Smith, who barely escaped with his life, and all of this in consequence of the extermination order of Governor Boggs. I also know, and so does this court, and every rational man who is acquainted with the circumstances, that Governor Boggs, and Generals Clark, Lucas, Wilson and Gillum, have committed treason upon the citizens of Missouri and did violate the Constitution of the United States, and also the Constitution and

laws of the State of Missouri; and the whole of it was caused by religious bigotry and persecution, because the Mormons dared to worship Almighty God according to the dictates of their own consciences.”

A

The Nauvoo Municipal Court’s ruling was not unexpected. It was one sentence: “After hearing the foregoing evidence in support of said Petition – it is ordered by the Court, that Joseph Smith be discharged for want of substance in the warrant upon which he was arrested, as well as upon the merits of said case, and that he go hence without delay.”

C

The state of Missouri made no further attempt to extradite Joseph Smith. But his fears that if he was jailed again he would be killed proved to be prophetic.

D

Less than a year later, Joseph Smith, his brother Hyrum and several others were charged with the destruction of the printing presses of the *Nauvoo Expositor* after it published its only edition aimed at undermining Smith’s leadership of the church.

C

Illinois Governor Ford assured Smith that he would be safe if he came to Carthage to address the charge. After voluntarily appearing, the Mormons were released on bail, but Joseph and his brother were then charged with treason. Because that charge was notailable, they were held in the Carthage jail.

A

A mob of local militia, with their faces painted, stormed the jail, murdering both Joseph Smith and his brother Hyrum in an upstairs bedroom. Smith was thirty-eight years old.

D

Those that murdered him and his brother were never brought to justice.

B (*Douglas*)

The courts of Illinois that protected Smith from extradition to Missouri failed to protect him from violence in Illinois.

C

Boggs’ extermination order was not formally rescinded until June 25, 1976, 137 years after being signed.

A

WHEREAS, on October 27, 1838, the Governor of the State of Missouri, Lilburn W. Boggs, signed an order calling for the extermination or expulsion of Mormons from the State of Missouri; and

WHEREAS, Governor Boggs’ order clearly contravened the rights to life, liberty, property and religious freedom as guaranteed by the Constitution of the United States, as well as the Constitution of the State of Missouri; and

Expressing on behalf of all Missourians our deep regret for the injustice and undue suffering which was caused by the 1838 order, I hereby rescind Executive Order Number 44, issued by Governor L. W. Boggs.

(Signed) Christopher S. Bond, Governor.

C

The delicate balance between the rights guaranteed the states under Article Four, Section Two of the Constitution:

B

“A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.”

C

Against the rights of the individual guaranteed in Article One, Section Nine:

B

“The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”

C

has been a point of contention and controversy at important junctures of

American history.

B (Douglas)

“The object of the writ of habeas corpus is to ascertain by what authority a person is held in custody; to release him, if no such authority be shown: and to refrain from any molestation of the claimant, if legal authority be produced.”

C

The search for the proper balance continues today, in cases that place controversial individuals and minority groups against the policies and actions of the government.

B

In his role as Chief Judge of the Nauvoo Municipal Court, Joseph Smith, himself, ruled on no less than eight petitions for writs of habeas corpus. At one hearing, when the government’s prosecutor dismissed the applicability of the writ of habeas corpus to the case, Smith responded from both his personal and legal experience:

C (Joseph Smith)

“The United States has no right to trample our laws under their feet. The court is bound by oath to support the Constitution of the United States, and the state of Illinois, and the writ of Habeas Corpus. If this court deny the writ of Habeas Corpus it perjures itself. We have asked for no power. The defendant asked us to investigate; we are bound to do so. Let the federal government kneel on us with their ‘Dragoon’ we are not to be intimidated. I respect the laws of the United States, but will not yield up any right belonging to an individual.

(the end)