



Lincoln Legal Briefs

A Quarterly Newsletter of The Lincoln Legal Papers
A Documentary History of the Law Practice of Abraham Lincoln, 1836-1861

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NHPRC Awards Grant and Subvention

In May, the National Historical Publications and Records Commission (NHPRC) awarded the Lincoln Legal Papers a grant of \$80,746 for the fiscal year beginning July 1, 2006. This grant is the NHPRC's seventeenth consecutive annual award to the project and will be the final grant to support work on the Lincoln Legal Papers, now Series I of the Papers of Abraham Lincoln. This final grant will



support the salary of one assistant editor and part of the

salary of another assistant editor, as the editorial staff completes the final proofreading of the document transcriptions from page proofs and reviews the index for completeness and accuracy.

At the same May meeting, the NHPRC also awarded the University of Virginia Press a subvention grant of \$40,000 for *The Papers of Abraham Lincoln: Legal Documents and Cases*. The grant is the maximum award of \$10,000 per volume for the four volumes to be published simultaneously in the fall of 2007. The University of Virginia Press will use this subvention to defray part of the costs of preparing the manuscript and producing the printed volumes.

Progress on the Manuscript

The Lincoln Legal Papers submitted its 3,200-page manuscript to the University of Virginia Press in the fall of 2005. However, work did not end with the submission of the manuscript. At this point, several important tasks are still in progress, and others remain to be completed.

The press has completed copyediting work on two volumes and continues to work on the third volume. This work has gone quite smoothly, and the copyeditor, Ellen Barber, has done an excellent job of maintaining consistency and accuracy in editorial text and in footnotes. The copyeditor has completed her review of two volumes and is at work on the third and fourth volumes. *The Papers of Abraham Lincoln: Legal Documents and Cases* remains on schedule for publication in 2007.

After the press has completed a copyedited volume and the project has reviewed it, the

manuscript is then ready for design work. The press will prepare page proofs, which will be sent to the project after all copyediting is completed. As with the copyedited manuscript, the project will receive page proofs volume by volume. At that point, staff editors will re-proof the approximately 740 documents in the manuscript. While this task will be time consuming, it is an extremely important safeguard to ensure the accuracy of the document transcriptions.

When the page proofs arrive, a professional indexer will prepare the single index for the four volumes. Project editors will carefully review the indexer's work for accuracy and thoroughness, especially with complex legal terms and actions. When the index is complete and reviewed, the project staff will forward it to the press for typesetting.



Staff and Project News

This spring, graduate assistant Jenifer Maseman, a master's student in English at the University of Illinois at Springfield, finished her tenure with the Papers of Abraham Lincoln. During her time with the project, she was primarily engaged in the effort to edit images of Lincoln documents, managing and archiving digital images that editors have scanned in the field. She also provided assistance with a myriad of clerical tasks as well. This semester, Maseman published a poem in *The Alchemist Review*, a literary publication of the university's English department, and she is spending the summer finishing her Master's thesis, which analyzes oral literary traditions.

In June, Stacy Pratt McDermott received a research grant from the State Historical Society of Iowa. The \$1,000 award will help fund research for her dissertation, which is an analysis of jury service in the antebellum Midwest. As part of the grant, McDermott will submit an article about the institution of the jury in antebellum Iowa to the *Annals of Iowa*, which will publish the article sometime after September 2007. McDermott plans to complete her doctorate at the University of Illinois at Urbana-Champaign in spring 2007.

On March 27, 2006, Dan W. Bannister, a long-time friend of the Lincoln Legal Papers, died. He was eighty-four years old. Bannister was a lawyer and former CEO of Horace Mann Educators Corporation in Springfield, Illinois. In the past, he graciously volunteered his time as a legal researcher for the Lincoln Legal Papers. He wrote briefs of Lincoln's Illinois Supreme Court cases, and that effort was a tremendous help in the early days of the Lincoln Legal Papers project. Bannister was the author of two books, *Lincoln and the Common Law: A Collection of Lincoln's Supreme Court Cases from 1838-1861 and Their Influence on the Evolution of Illinois Common Law* (1992) and *Lincoln and the Illinois Supreme Court* (1994). He was a valued friend and contributor to the project, and the project staff will miss his commitment, his love of history, and his kind manner.

The project acknowledges with deep appreciation the generosity of Michael Devine, who made a donation to the project in memory of John Chapin.

Booth v. Booth

Several months ago, a manuscript dealer offered some new documents from Lincoln legal cases for sale. Two of these new documents establish Lincoln's and his partners' participation in two additional cases in the Sangamon County Circuit Court. One of the cases, *Booth v. Booth*, was a divorce case.

Amasa Booth and Matilda Arnold, both twenty-three years old, married in Sangamon County, Illinois, on November 11, 1858. Amasa Booth was born in Exeter, Maine, and moved to Illinois with his family in 1840. His father was a farmer and a successful wagon-maker. Matilda Arnold was born in Ohio, and in the early 1840s, moved with her family to Illinois, where they farmed in Fayette County. Shortly after their marriage, Amasa Booth, as he described it, "started for California to make some money with which to support his said wife &

himself." He left his wife in a private boarding house in Springfield. Nearly a year later, Amasa Booth returned to Springfield. Shortly thereafter, on December 12, 1859, he hired the firm of Abraham Lincoln and William H. Herndon and filed his bill for a divorce from Matilda Booth on the grounds of adultery and fornication since their marriage.¹

Illinois law regarding divorce had remained largely unchanged from the first statute enacted in 1819. Adultery was one of the specified causes for divorce, which also included impotence, bigamy, desertion, extreme and repeated cruelty, habitual drunkenness, or a felony conviction. The sheriff served a writ to Matilda Booth on January 24, 1860, summoning her to the court scheduled to convene on February 2. Because Matilda Booth did not file an answer to the bill for divorce or enter an appearance, the court deemed her silence as a

To the Honorable the Judge of the
 Circuit Court of Sangamon County
 in Chancery & being the
 Your Oration - Amasa Booth - well
 most respectfully show unto your Honor,
 that on or about the 9th day of Nov
 1855. he married one Matilda
 now Matilda Booth in
 Sangamon County and State of Illinois
 where both Complained and substance
 have lived since their marriage. You
 Oration says that at the time of their mar-
 -riage he believed and
 Matilda was a
 woman; but it is
 after said marriage
 - he for California
 with which to be
 wife & himself - &
 soon after the depar-
 -ture for California
 the purpose of
 desert - Matilda
 she said - or she
 a bad name and
 have illegal connec-
 -tion to your Oration and
 and has abandoned
 illegal & abandoned
 Oration - therefore

**William H. Herndon
 wrote this divorce
 petition and signed
 "Lincoln & Herndon."**

Image courtesy of Heritage
 Auction Galleries,
 Dallas, Texas.

Matilda Booth with having committed
 in the City of Springfield Sangamon
 County and State of Illinois adultery &
 fornication or one or the other under
 the marriage aforesaid and without
 the Consent or Consent of your
 Oration -
 In this case I believe about
 your Oration prays that the charges
 of matrimony - the contract of marriage
 it may be wholly set aside and dis-
 solved and a divorce granted to the
 Complainant and for such further
 orders - Decrees & relief as shall seem
 meet - just & equitable to your Honor
 to the said Matilda & her
 Your Oration
 therefore prays that the said Matilda
 Booth may be made defendant to
 this Bill and that the said Petitioner
 of substance may be one of the
 Honorable Court Master N. Comstock
 N. Honorable C. and that the
 be compelled to answer this Bill,
 though not on oath, as it is well
 known - and after a full
 hearing of this Cause your Oration
 will ever pray -
 Lincoln & Herndon
 Attorneys

present when Mary S. Walker³ detailed numerous occasions on which she witnessed Matilda Booth acting inappropriately. Mrs. Walker had seen Matilda Booth with several different men at various times in the boarding house and she “had no doubt that they did what they should not have done.”⁴

The master in chancery filed his report on February 24, 1860, and Judge Edward Y. Rice⁵ decreed a dissolution of the marriage between Amasa and Matilda Booth. Whether guilty of the charges lodged against her, Matilda Booth was subject to the contemporary society’s ideal of the proper, chaste woman, and vulnerable to accusations of sexual impropriety. Despite her conviction or perhaps because of it, Matilda Booth remarried a few months later, in July 1860. Amasa Booth remarried two years later.⁶

Lincoln’s partner, William H. Herndon, took the lead role in prosecuting Amasa Booth’s case. While Lincoln was still actively involved in cases in early February 1860, by February 24, when the master in chancery filed his report in *Booth v. Booth*, Lincoln was en route to New York to speak at Cooper Union.

*Susan Krause
 Assistant Editor*

confession of the charges. Illinois case law had established in 1852 that the court could not decree a divorce on a bill taken for confessed without proof to sustain the allegations. Antrim Campbell,² the master in chancery for the Sangamon County Circuit Court, took the testimony of six men who commented unfavorably on Matilda Booth’s reputation, one stating that he saw her act “in such way as was unbecoming of a married woman.” Another witness has seen her “promenading with different persons in the evening on the street.” Several of the men also testified that Mrs. Booth had invited them to her room, or “to call around,” and several had done so. Perhaps the most damaging testimony was a deposition from a woman who had lived in the same boarding house as Mrs. Booth. Amasa Booth was

¹ Illinois Statewide Marriage Index, 1763-1900, Illinois State Archives, Springfield, IL; Paul Selby, ed., *History of Sangamon County, Illinois*, 2 vols. (Chicago: Munsell Publishing, 1912), 1059; U.S. Census Office, Seventh Census of the United States (1850), Fayette County, IL, 832; U.S. Census Office, Eighth Census of the United States (1860), Sangamon County, IL, 565; Bill for Divorce, *Booth v. Booth*, filed 12 December 1859, Private Collection; Deposition of Mary S. Walker, 20 February 1860, case file, Sangamon County Circuit Court, Illinois Regional Archives Depository, University of Illinois at Springfield.

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²Antrim Campbell, b. 1817, in New Jersey; d. 11 August 1868. Campbell settled in Springfield, Illinois, in 1837 and began practicing law with his brother, David B. Campbell. He married Ann Forquer on May 12, 1841. In 1849, Campbell received an appointment as master in chancery of the Sangamon County Circuit Court and served in that position until 1861. In 1860, he was a partner in the Springfield law firm of Hay, Campbell, & Cullom. At that time, he owned real property valued at \$18,000 and personal property valued at \$12,000. Gravestone, Oak Ridge Cemetery, Springfield, IL; 1860 Census, Sangamon County, IL, 129; C. S. Williams, comp., *Williams' Springfield Directory, City Guide, and Business Mirror, for 1860-61* (Springfield, IL: Johnson & Bradford, 1860), 64; John Carroll Power, *History of the Early Settlers of Sangamon County, Illinois* (Springfield, IL: H. W. Rokker, 1876; reprint, Springfield, IL: Phillips Brothers, 1970), 170; John M. Palmer, *The Bench and Bar of Illinois*, 2 vols. (Chicago: Lewis Publishing Company, 1899), 1:174.

³Mary S. Walker resided in St. Louis, Missouri, when she gave her deposition. Deposition of Mary S. Walker, 20 February 1860.

⁴*Shillinger v. Shillinger*, 14 Ill. (1852) 146-51; "Divorces," *Statutes of the State of Illinois* (1856), 1:493-95; Summons, 12 December 1859, case file; Decree, filed 24 February 1860, case file; Master in Chancery Report, filed 24 February 1860, case file; Deposition of Mary S. Walker, 20 February 1860, case file, all in Sangamon County Circuit Court, Illinois Regional Archives Depository, University of Illinois at Springfield.

⁵Edward Y. Rice, b. 8 February 1820, in Logan County, Kentucky; d. 16 April 1883, in Hillsboro, Illinois. Rice came to Illinois with his family in 1835. He attended Shurtleff College in Alton, Illinois, studied law, joined the bar in 1845, and settled in Hillsboro. In 1849, voters elected Rice to the Illinois House of Representatives as a Democrat. In 1849, he won election as Montgomery County judge, and in 1853, circuit court judge Charles Emerson appointed him as master in chancery for the Montgomery County Circuit Court. In 1857, voters elected him as judge for the Eighteenth Judicial Circuit, which included Abraham Lincoln's home county of Sangamon. Judge Rice presided in more than 473 cases in which Lincoln was an attorney. Palmer, *Bench and Bar of Illinois*, 2:987-89; *The United States Biographical Dictionary and Portrait Gallery of Eminent and Self-Made Men: Illinois Volume* (Chicago: American Biographical Publishing, 1876), 276-77; *Daily Illinois State Register* (Springfield), 17 April 1883, 3:4; Martha L. Benner and Cullom Davis et al., eds., *The Law Practice of Abraham Lincoln: Complete Documentary Edition*, DVD-ROM (Urbana: University of Illinois Press, 2000).

⁶Decree, filed 24 February 1860; Illinois Statewide Marriage Index, 1763-1900.

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A Project of



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How You Can Help:

•By advising project staff of known or reported Lincoln legal documents in your locality. We are seeking photocopies of any document, record, letter, contemporary printed account, or after-the-fact recollection that relates to Abraham Lincoln's entire law practice, 1836-1861.

•By making a tax-deductible donation to the Abraham Lincoln Association in support of the project. Such gifts provide crucial support in furtherance of the project's objectives.

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