



Lincoln Legal Briefs

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

January — March 2005

Number 73

Book Edition Reaches Major Milestone

On March 8, 2005, the editorial staff discussed the last case presentation chapter for the selective book edition. Susan Krause, the case editor for *McDaniel et al. v. Correll et al.*, led the discussion of revisions to the chapter. This case, which pitted brothers against sisters in a legal battle over the last will and testament of William McDaniel, lasted from 1855 to 1863.

The completion of *McDaniel et al. v. Correll et al.* marks the conclusion of the project's editorial work in preparing all fifty-five chapters of the selective book edition. Work on individual chapters began late in the spring of 2000, and the project's editors have completed approximately one chapter per month since that time, a total of more than 3,400 manuscript pages. Editors in teams of two have carefully proofed each document transcription, and

graduate assistants have checked every footnote for accuracy.

Revisions and fact-checking remain for a small number of chapters, and editorial staff members are still at work on introductory materials. Editors are currently finalizing the Biographical Directory, revising the Pleading and Practice essay and the Court Structure essay, and preparing the Introduction and Acknowledgments. Editorial Board members are reviewing a final set of chapters and providing comments on them, and individual editors will make revisions based on those evaluations.

The project remains on schedule to complete editorial work and to transmit the entire manuscript to the University of Illinois Press in the summer of 2005. Editorial, design, and production work at the press is expected to take two years.

Query Leads to Discovery of a New Lincoln Legal Document

In February, Heritage Galleries and Auctioneers contacted the project to obtain information regarding a legal document written by Abraham Lincoln. The manuscript dealer was preparing to sell at auction the document, a plea in the 1852 assumpsit case of *Frazier v. Davis* in the Vermilion County Circuit Court.

Project editors included the case in *The Law Practice of Abraham Lincoln: Complete Documentary Edition* based on a judge's docket book entry of the case, which listed Lincoln

as an attorney for the defendant. However, there were no Lincoln documents in the case file. The discovery of this plea, which is more detailed than most pleas filed in antebellum Illinois law suits, adds much to our understanding of the case and of Lincoln's role in it.

The project appreciates the manuscript dealer's willingness to provide a high-resolution digital image of the document. As editors continue to collect Lincoln papers, manuscript dealers will play an important role in locating items that are not held in libraries and repositories.

Frazier v. Davis

In 1850, Nelson Davis gave a \$200 promissory note to Jonathan Pickard. Pickard then assigned the note to Abram Frazier for the purchase

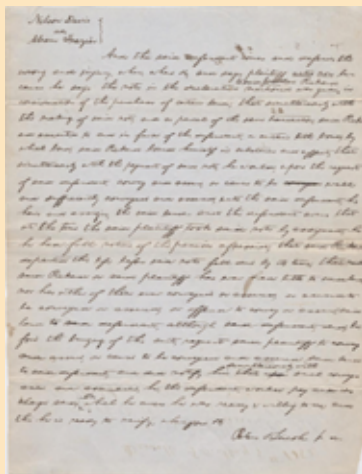


Image courtesy of Heritage Galleries and Auctioneers, Dallas, Texas.

See PLEA on page 2...

PLEA (continued from page 1)

of land. After Davis failed to pay, Frazier retained Danville, Illinois, attorney John H. Murphy and sued in Vermilion County Circuit Court in Danville to collect the note. Murphy filed his client's narratio, which provided details of the debt and the assignment of the note. In antebellum Illinois, promissory notes functioned as currency in the economy, and it was common for individuals to assign notes they held to other individuals to pay their own debts.

On May 10, 1852, Judge David Davis ordered the defendant to enter a plea. Lincoln wrote the plea,

the recently-discovered document, for his client Nelson Davis. Lincoln signed his name and the name of Joseph Peters, a Danville attorney with whom he was working on this case. In the plea, the defendant argued that he had promised the plaintiff that he would satisfy the note. The plaintiff filed a demurrer, which the court overruled and then continued the case to the next term.

On August 6, 1852, the parties reached an agreement, and the plaintiff dismissed the suit. Nelson Davis agreed to pay the court costs of \$3.40.

Project and Staff News

Robert Lawless, a member of the project's advisory board since 1995, resigned in February. He is currently a law professor at the University of Nevada, Las Vegas. A former project volunteer, Lawless has been a staunch supporter of the project for many years. The staff appreciates his ten-year service as an advisory board member.



Adam Schnell

On December 22, 2004, Assistant Editor Christopher Schnell and his wife Tammy Schnell welcomed their first child, Adam Talmadge Schnell.

In January, Stacy McDermott gave a presentation on women's suffrage to fifth graders at Dubois Elementary School

in Springfield. The presentation was part of a series of lectures for the school's living history program.

Also in January, Daniel W. Stowell spoke to K-3 teachers from the Savannah-Chatham County Public Schools in Savannah, Georgia, about Abraham Lincoln. The workshop was part of a collaboration between the public schools and the Georgia Historical Society and is funded by a grant from the U.S. Department of Education.

In February, Stacy McDermott gave a presentation to fifth graders from Iles Elementary School in Springfield. The students were visiting the Lincoln-Herndon Law Office and the Old State Capitol to learn about Abraham Lincoln. The field trip was part of their school's living history program.

McDermott talked to the students about Lincoln's law practice.

On February 28, Research Associate Kelley Boston spoke to Dr. Deborah McGregor's Research and Writing Local History class at the University of Illinois at Springfield. She discussed the types of resources available to students researching local history and shared examples from her thesis research.

On March 21, Assistant Director/Assistant Editor John Lupton, his wife Kathy Le Comte, and their twin daughters Claudia and Lydia welcomed Audrey Clara Lena Lupton to their family.

Donors

The project acknowledges with deep appreciation the generosity of the following contributors:

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Cowls v. Cowls

During the course of editorial discussions about which Lincoln cases the editors would include in the selective book edition, many interesting cases failed to make it onto the final list. *Cowls v. Cowls*, a child custody case from Edwards County that ended up at the Illinois Supreme Court, was one such case. Although this Lincoln case was well-documented and interesting, other cases edged it out of consideration.

Over the next several issues of the *Lincoln Legal Briefs*, the editors will include articles on some of the interesting Lincoln cases that will not be included in the book edition, which is on target for publication in 2007. *Cowls v. Cowls* is the first installment in this series.

Ann Cowls obtained a divorce in the Edwards County Circuit Court in Paris, Illinois, from Thomas Cowls, a physician. The court ordered Thomas Cowls to pay Ann Cowls alimony totaling \$40 annually, but it failed to rule on the custody of the couple's three children. After the divorce, the children remained with Thomas Cowls. In September 1845, Ann Cowls filed a suit in the chancery division of the Edwards County Circuit Court, suing her husband for custody of the two surviving children, six-year-old Mary Jane and three-year-old Thomas.

In her bill of complaint, Ann Cowls argued that Thomas Cowls and his new wife Wilhelmena Cowls were not fit to raise the children. The bill charged that Wilhelmena

has been for a long time past and is now a woman of notoriously bad character, and unqualified in any manner for the proper care and education of the said infant children, who are left entirely under the influence of her

example by the said Thomas: that the said Thomas is himself negligent of the education and moral welfare of the said children, and addicted to excessive & frequent intoxication, and is in the habit of quarreling with the said [Wilhelmena] in the presence of the said children, and driving her from home, that the said Thomas habitually uses profane indecent immoral and vulgar language as well in the presence of the said children as elsewhere, and is in other respects wholly disqualified from educating said children in a respectable & moral manner.

Ann Cowls asked the court to grant her custody of the children and to order Thomas Cowls to pay child support and increase alimony payments to her.

Thomas Cowls retained Charles H. Constable, William Harrow, and Edwin B. Webb and denied the charges. He filed his demurrer, an exception to the plaintiff's charges, and his answer. The court dismissed Thomas Cowls's demurrer, and Ann Cowls dropped her request for additional alimony. When the trial began, the questions before the court were the custody of the children and child support payments. After the testimony of two witnesses and arguments of counsel, the court entered a judgment on April 15, 1846. The court decree granted Ann Cowls custody of the two surviving children and ordered Thomas Cowls to pay \$30 annually for each child's support.

Thomas Cowls prepared for an appeal to the Illinois Supreme Court, filing his bill of exceptions on the same day. This document was necessary in

continued on page 4...

Motion [c. January 1847]

In the Supreme Court
of the State of Illinois.
December Term 1846

Thomas Cowls }
vs }
Ann Cowls }

Appeal from Edwards.

And now comes the appellant and moves the court to admit the record of the proceedings in the court below, in the case of the appellee herein against the appellant herein, for a Divorce, as part of the Record in this cause.

Webb & Lincoln p.q.

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Webb & Lincoln p.q.

Motion Written and Signed by Abraham Lincoln

Image courtesy of the Herndon-Weik Collection,
Library of Congress, Washington, DC.

the legal process to initiate an appeal. Litigants who were dissatisfied with an inferior court's judgment had to document their exceptions to particular rulings of the court. To handle the appeal at the Illinois Supreme Court in Springfield, Thomas Cowls hired Abraham Lincoln and William H. Herndon, who joined Webb as counsel.

On December 25, 1846, Lincoln filed his client's assignment of errors. Thomas Cowls argued that the court had erred in overruling his demurrer, in denying him time to take depositions, in rendering a decree without proof of the plaintiff's allegations, and in issuing the decree granting custody of the children to Ann Cowls.

On January 23, 1847, Lincoln and Webb entered a motion to enter the records of the divorce case into evidence (see page 3 for image and transcription). At the trial, Lincoln argued on behalf of the appellant, Thomas Cowls, and Albert T. Bledsoe represented the appellee, Ann Cowls. On February 9, 1857, the court affirmed the lower court's decision, which granted Ann Cowls custody of the children and ordered Thomas Cowls to pay her \$60 annually for child support. Chief Justice John D. Caton wrote the opinion, which confirmed that a chancery court had the right to interfere in questions of guardianship when it appeared that a parent had failed to provide for the care, safety, and moral education of a child. The court also implemented the "best interests of the child" doctrine, which recognized that it was the special

duty of a republican government to oversee the care and education of children so that they might become useful citizens.

Despite the supreme court's affirmation of the Edwards County Circuit Court's judgment, Thomas Cowls seems to have retained custody of the children and moved them to southern Indiana with himself and his new wife. On April 14, 1847, Ann Cowls filed another bill of complaint in the chancery division of the Edwards County Circuit Court, asking the court to enforce its earlier decision. Alfred Kitchell, her new attorney, asked the court for a writ of attachment, ordering the sheriff to arrest Thomas Cowls and transfer custody of the children from Thomas Cowls to Ann Cowls. The sheriff failed to locate Thomas Cowls.

On September 15, 1847, in an amended bill of complaint, Ann Cowls asked the court to enforce payment of the \$60 annual child support money, which the court did. There is no evidence, however, that the children were living with Ann Cowls at this time. In 1850, the children were living in Evansville, Indiana, with their father and stepmother.

Ann Cowls had availed herself of the remedies available to her to gain custody of her children, and the courts agreed with her charges and granted her custody rights. Ultimately, however, the law was powerless to enforce the judgments of the courts, when Thomas Cowls decided to remove the children from the state.

Stacy Pratt McDermott, Assistant Editor

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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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