



Lincoln Legal Briefs

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

October — December 2005

Number 76

Local Cartographer Creates Maps for Book Edition

Since September, the Papers of Abraham Lincoln has worked with Tracy L. Garrison to design several maps and diagrams for inclusion in the four-volume book edition. Garrison is a licensed surveyor and the Geographic Information System manager for Sangamon County. He not only brings to the project an expertise in surveying and mapmaking, he also has a genuine interest in local history and nineteenth-century maps. Recently, Garrison undertook a study to identify the exact location of "Musick's Ferry Road," a route Abraham Lincoln surveyed in 1834 in what was then Sangamon County.

The book edition, forthcoming from the University of Virginia Press, will include approximately sixty illustrations. Along with traditional illustrations, such as portraits and early photographs, the editorial staff selected several maps and diagrams for inclusion. The maps will help the readers better understand some of the complex litigation presented in several chapters. For instance, in the chapter covering *Hurd et al. v. Rock Island Bridge Company*, the "Effie Afton" case, legal documents included evidence on

the speed and direction of currents in the Mississippi River at Rock Island, Illinois. To help readers understand the evidence, the editorial staff included a diagram of river currents based on an 1859 study sponsored by the U.S. Army. A project editor located the map at a federal archives repository in Kansas City, Missouri.

With most of the maps, the design team started with a Lincoln-era map from the collections of the Abraham Lincoln Presidential Library. Using a high-resolution digital scan of the historical map, Garrison designed a new map, based on the historical one. This way, the new map included mid-nineteenth-century topography and place names extracted from the historical map, while also including information introduced by the design team.



The map above is an historical map of central Illinois. The map at left is the map Tracy Garrison created from the historical map, showing the routes of the Terre Haute & Alton Railroad and the Ohio & Mississippi Railroad and the proposed route of the Mississippi & Atlantic Railroad between the two established railways.

Staff News

In October, Director Daniel Stowell presented a paper on Lincoln and southern honor at a conference in Florida to honor his Ph.D. mentor Bertram Wyatt-Brown.

Research Associate Erika Nunamaker presented a paper entitled “Fixing the ‘Country School Problem’: Progressive-Era Rural School Reform in Illinois” at the Conference on Illinois History in Springfield on October 27. This paper, which was inspired by work she conducted on one-room schools while working at Dickson Mounds Museum, examined the Sanitation Law of 1915, Illinois’s first statewide effort to upgrade and standardize rural schools, as well as the historical context that inspired the passage of this law and the law’s practical and social implications for rural schoolhouses and their pupils. Also at the conference, Research Associate Kelley Boston and Assistant Director John Lupton served as moderators at two other sessions. One session was “Illinois Educators,” and the other was “County History.”

John Lupton participated in a round-table discussion at Illinois State University about the war-time powers of President Lincoln culminating in the U.S. Supreme Court case of *Ex parte Milligan*, an important case governing civil liberties.

Lupton also was the featured speaker at the Illinois Institute for Continuing Legal Education’s Board of Directors annual meeting. He talked about Lincoln’s travels on the circuit.

Daniel Stowell and John Lupton attended the annual conference for the Association for Documentary

Editing held in Denver. Lupton serves the Association as its treasurer.

In November, Assistant Editor Stacy Pratt McDermott made a presentation to the Civil War Round Table of Chicago when the group traveled to Springfield to visit the Abraham Lincoln Presidential Library and Museum. She discussed Lincoln’s divorce cases and the legal context of divorce in antebellum Illinois.

Assistant Editor Susan Krause talked to the Granville Rotary Club about Lincoln’s law practice in Marshall and Putnam Counties.

Kelley Boston presented a paper entitled “Socialism in Sangamon County” to the Sangamon County Historical Society at Lincoln Library in Springfield. The paper, based on her Master’s thesis, details the story of the Integral Phalanx, a Fourierist socialist community that operated in western Sangamon County in the 1840s.

Graduate Assistant Jenifer Maseman received a Leona Stanford Vollintine Scholarship at the University of Illinois at Springfield. The scholarship is for the 2005-2006 academic year and covers all of her student fees.

Donors

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

Anonymous Donor
Elbert F. Floyd

Fleming v. Rogers and Crothers

This is the fourth installment in a series presenting interesting Lincoln cases that will not appear in the forthcoming four-volume book edition.

During the “great fire” in Bloomington, Illinois, in October 1855, Samuel Fleming suffered two broken legs when he fell from a chimney. Thomas P. Rogers and Eli K. Crothers, two Bloomington physicians, saved Fleming’s legs, but the right leg healed crooked and shorter than the left leg. Fleming agreed to allow the two physicians to reset the left

leg, but stopped them in the middle of the procedure, because he could not endure the pain.

Several months later, Fleming sued Rogers and Crothers in the first medical malpractice suit in the McLean County Circuit Court. During the antebellum period, the practice of medicine was undergoing the process of professionalization. The law was also developing as it kept pace with rapid economic, social, and technological changes. The term “malpractice” had yet to become an entry in the legal dictionaries of the period. In an 1860

publication, entitled *Elements of Medical Jurisprudence*, neither the table of contents nor the index mentioned malpractice.

In the antebellum period, there were few medical malpractice cases, but this legal issue was becoming more prominent. During this time, there were at least twenty-seven malpractice suits before state supreme courts across the country. However, in Illinois, the supreme court had not yet heard an appeal of a medical malpractice suit.

In his case, Fleming charged the doctors with undue care. In the declaration, Fleming's attorneys Asahel Gridley, William H. Hanna, William W. Orme, Leonard Swett, and John H. Wickizer argued that their client:

by reason of the said negligent, unskillful and improper conduct of said defendant and each of them in and about their said employment and retainer the said plaintiff was forced and obliged to and did necessarily expend a large sum of money to wit the sum of \$1000.—for in and about obtaining proper medical and surgical advice and assistance and for nursing and attendance in and about the endeavoring to be cured of his said illness of a broken right thigh and a broken left thigh which had been so prolonged and increased by means of the negligent unskillful and improper conduct of said defendants aforesaid to wit at the County and State aforesaid to the damage of said plaintiff of Twenty the ten thousand dollars wherefore he sues &c.

Rogers and Crothers retained Abraham Lincoln and several other attorneys. The defendants argued that they had not been negligent in Fleming's medical treatment.

On April 9, 1856, Lincoln and John T. Stuart, another attorney for the defendants, filed an affidavit regarding the health of their client Dr. Rogers. In the affidavit, Lincoln wrote:

Affiants further state that, as they are informed and believe, said Rogers is now so unwell as to be unable to attend at the present term of this court, and that affiants believe his

State of Illinois, St. Louis and in manner and
Mr. Leavenworth, 55
I Eli K. Crothers, one of the defendants
in a certain suit pending in the Circuit Court of the
County aforesaid, whereas Thomas P. Rogers is co-defen-
dant, and Samuel Fleming is plaintiff, being first de-
posed, states, or oath that the defendants can not
safely go to trial at the present term, because of the
absence of J. R. Greene who is a material wit-
ness for them; that affiant expects to prove by said
witness that he, witness, is a practicing physician and
surgeon; that witness was present when plaintiff's
limb was first set, and knows that it was properly
set; that at the end of fourteen days witness was
present, saw the limb examined, and saw that
it was right then; that on the twenty-second
day witness was again present when the displace-
ment of the fracture was observed, and, at plain-
tiff's request, a contemplative effort to ~~put~~ come
it was postponed a few days to ascertain if it would
improve without re-breaking. Affiant also expects to
prove by said witness, that the injury was an oblique
fracture, and only involved the cutting of the skin of
being a compound fracture, and that all the premium
admissible was put on the broken bone; that said
defendants can not prove the same facts so fully
by any other witness; that said witness has been
only subpoenaed to attend at this present term;
and that after defendant first learned of his
intention to remove, less than ten days, eleven
before he actually left, so that they could not
give notice and take his deposition in the regu-
lar way—Affiant further states that said witness

Affidavit of Eli K. Crothers

This is the first page of the affidavit of Eli K. Crothers
that Lincoln wrote and filed on September 10, 1856.

The image is courtesy of the Abraham Lincoln Library and Museum, Lincoln Memorial University, Harrogate, Tennessee.

personal presence at the trial is necessary to enable them to conduct the defence of the case properly, and that they are informed and believe there is reasonable hope that said Rogers will be able to attend, and will attend at the next term of this court.

On April 10, the court granted a continuance in the case. Over the next year, Fleming's attorneys subpoenaed numerous witnesses on his behalf, and the court granted another continuance. The trial began

continued on p. 4...

in the spring of 1857. In his arguments, Lincoln concluded that the normal course of treatment in injuries such as Fleming's required amputation, and that Fleming's doctors succeeded by saving his leg. On April 7, the jury empaneled to hear the case failed to reach a verdict, and the court dismissed the jurors and continued the case.

The case then suffered two more continuances before the defendants' attorneys motioned for a change of venue. On December 27, 1857, Judge David Davis ruled on the motion. In the order for a change of venue, the judge wrote:

the said ^defendants^ having presented an affidavit, stating that the inhabitants of M^cLean County are prejudiced against them. So ~~th~~ and that the Plaintiff has an undue influence over the minds of the inhabitants of the said County of M^cLean; and that they have been made acquainted with said facts since the last September Term of this Court. It is therefore ordered by the Court, that the venue in this cause be changed to the County of Logan

With the change of venue to the Logan County Circuit Court in Lincoln, Illinois, the court continued the case until the spring. Fleming and his attorneys filed several depositions and subpoenaed additional witnesses. The physicians each filed their own affidavits, like the one pictured on the previous page, maintaining their innocence of Fleming's charge of medical malpractice.

Finally, on March 15, 1858, the court dismissed the suit by agreement of the parties. Apparently, Fleming had reached a settlement with Rogers and Crothers. This case earned the nickname of the "Chicken Bone Case," because of the argument and visual evidence Lincoln employed to defend his clients. In his summation before the jury in McLean County, Lincoln emphasized the difference in pliability between old and young bones by demonstrating the brittle condition of bones from old chickens. Many Lincoln biographies, especially those that have focused on Lincoln's legal career, have interpreted this case as one that demonstrated Lincoln's skills arguing cases before a jury.

By Stacy Pratt McDermott
Assistant Editor

Sources: Newspaper Clipping, c. April 1857, Bloomington County Historical Society, Bloomington, IL; U.S. Census Office, Eighth Census of the United States, McLean County, IL, 129, 139; Declaration, filed 27 August 1856; Order for Change of Venue, filed 26 December 1857, both in Lincoln Collection, Abraham Lincoln Library and Museum, Lincoln Memorial University, Harrogate, TN; Affidavit of John T. Stuart and Abraham Lincoln, 9 April 1856, Private Collection; Order, 10 April 1856; Common Law Record 6, 368; Order, 10 September 1856, Common Law Record 6, 477; Order, 7 April 1857, Common Law Record 6, 606-7; Order, 15 June 1857, Common Law Record 9, 4; Order, 8 September 1857, Common Law Record 9, 112, all in McLean County Circuit Court, Bloomington, IL; Chester Burns, "Malpractice Suits in American Medicine before the Civil War," *Bulletin of the History of Medicine* 43 (Spring 1969): 41-56; John B. Beck, *Elements of Medical Jurisprudence* (Philadelphia: J. B. Lippincott & Co., 1860); Allen D. Speigel, *A. Lincoln, Esquire: A Shrewd, Sophisticated Lawyer in His Time* (Macon, GA: Mercer University Press, 2002).

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A Project of



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Project Staff:

Daniel W. Stowell, Director/Editor; John A. Lupton, Assistant Director/Assistant Editor; Susan Krause, Assistant Editor; Stacy Pratt McDermott, Assistant Editor; Christopher A. Schnell, Assistant Editor; Kelley Boston, Research Associate; Erika Nunamaker, Research Associate; Carmen Morgan, Secretary; Michael Kelley, Graduate Assistant; Jenifer Maseman, Graduate Assistant.

This project has been supported by grants from the National Endowment for the Humanities, an independent federal agency, and the National Historical Publications and Records Commission.

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.

Please address inquiries and gifts to:

The Lincoln Legal Papers
#1 Old State Capitol Plaza, Springfield, IL 62701-1507
Phone: (217) 785-9130 Fax: (217) 524-6973
E-mail: carmen_morgan@ihpa.state.il.us
Website: <http://www.papersofabrahamlincoln.org>
Printed by authority of the State of Illinois (3.8M—12-05)