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The Papers of Abraham Lincoln: Legal Documents and Cases. Edited by Daniel W. Stowell, Susan Krause, John A. Lupton, Stacy Pratt McDermott, Christopher A. Schnell, Dennis E. Suttles, Kelley B. Clausing, and R. Dan Monroe. Charlottesville: University of Virginia Press, 2008. 4-volume boxed set. 2,328 pages. Illustrations. Cloth 978-0-8139-2606-3. \$300.00.

Anthony M. Joseph

Lincoln's long career as a lawyer has been as much the subject of winsome anecdote as comprehensive scholarly study—an unhappy balance caused in part by the lack of readily accessible documents bearing on his practice. That problem, however, was remedied in stunning fashion with the publication in 2000 of the massive digital edition of Lincoln's legal papers, *The Law Practice of Abraham Lincoln* (LPAL). The LPAL produced more than 96,000 searchable documents spanning over 5,000 cases and nearly 500 nonlitigation activities through the course of Lincoln's legal career. The present selective letterpress edition in four volumes continues the same tradition of legal and editorial expertise found in the digital edition. Together the two editions should help bring about a great leap forward in Lincoln legal scholarship. With its extensive scholarly apparatus, the letterpress edition in particular provides a unique window onto Lincoln's daily work as a lawyer.

Here, of course, the material is necessarily whittled down. This edition presents forty-nine cases chosen from the digital edition on the basis of “many attributes, including chronology, geography, jurisdiction, subject matter, legal action, the quality of the documentation, the number of Lincoln documents, Lincoln's role, judgment, and, to a lesser extent, the notoriety of the case at the time and since in Lincoln scholarship” (1: xix). A larger number of cases are given brief treatment over the course of three additional chapters, one covering Lincoln's practice in the Sangamon County Circuit Court during its Spring 1842 term and two covering Lincoln on circuit in 1842 and 1852. In addition to the cases, the editors have included chapters on Lincoln's views of lawyering, his legal work outside the courtroom, and his work as a court official. Three appendices explain the structure of the Illinois court system, its pleading and practice, and legal descriptions of land. A biographical directory, a glossary of legal terms, and an effective index round out the fourth and final volume. The legal glossary and the appendix on pleading and practice provide an extensive technical introduction to antebellum law. Properly used, these sections will make the documents vastly more intelligible to readers and researchers alike. Researchers just beginning their forays into American antebellum legal history, whether as Lincoln scholars, Illi-

nois historians, political historians, or legal historians, will find this technical apparatus of enormous value.

Despite the culling of case materials, this edition is remarkable for its breadth. The cases illustrate a great variety of areas of law, including debt, bankruptcy, inheritance, divorce, murder, breach of contract, patents, personal injury, taxation, and slander. Lincoln's work in different venues is also represented, including the Illinois county circuit courts, the Illinois Supreme Court, and federal circuit and district courts held in Springfield. This edition also impresses with its unflagging effort to provide biographical, social, and legal background to the cases. Through commentary, copious annotation, the biographical directory, and the legal glossary, the editors have provided readers and researchers with an abundance of material to contextualize Lincoln's role and the legal issues involved. The degree of biographical detail concerning the litigants as well as the lawyers, judges, and court officers is remarkable. We learn that Samuel Rogers remarried after securing his divorce (1: 48). We discover that Jane Davidson died just a few months after Lincoln helped the father of her illegitimate child avoid paying her child support (1: 398). Illustrations sprinkle the case narratives. Sarah Allsop Tennery gazes at us in an 1884 portrait, years after she won her slander case against John Sturgeon for calling Sarah and her sister whores and adulterers (2: 160, 168). We see the drawing of the "atmospheric churn" at issue in the case of *Lewis v. Moffett* (1848–50) (2: 45) and a diagram of Jonathan Haines's new harvesting machine from the patent infringement case of *Rugg v. Haines* (3: 250). William Duff Armstrong, accused of murder, and his mother, Hannah Armstrong, who asked Lincoln to defend her son, make their disturbing appearances (4: 3, 10, 11). Illustrations of documents in Lincoln's own hand are strangely absent. Nonetheless, no reader or researcher will leave these volumes feeling they have encountered materials lacking in sufficient scholarly adornment.

Legal Documents and Cases does include some editorial decisions that merit scrutiny.

The placement of the more substantive biographies at the end of volume four sometimes puts the information at a considerable distance from where the person is actually mentioned. For example, we first encounter William Florville, "Billy the Barber," on page six in the first volume, and an intriguing photograph of Florville appears on the following page; however, we must turn to volume four, page 349, to read that Florville was a Haitian émigré who became Lincoln's barber in Springfield. On the other hand, the directory does allow the editors to supply very full accounts of the personages once and for all, without the limitations of space imposed by footnotes. On balance, one sees more gain than loss in this arrangement, which is of course found in many other documentary editions.

The editors have also published letters in full even where they only partially bear on the case at hand. In the chapter on *James Bell & Company For the*

Use of Speed v. Hall (1842–43), for example, one of Lincoln’s letters to Joshua Speed, running more than two pages long, addresses a number of additional cases as well as political and personal matters (1: 256–58). One wonders whether it might have been more appropriate to publish only the portion related to the *Bell* case. That raises the question, of course, of where the remainder of the letter could be placed, as the edition does not provide a chapter for Lincoln’s general legal correspondence.

Of greater impact on the organization of *Legal Documents and Cases* is the editors’ decision to intersperse a running commentary for each case among its documents. This method contrasts with the practice of other editions of legal papers, such as the collections for Lord Mansfield, John Adams, Daniel Webster, and the early Supreme Court of the United States, which generally discuss the background to each case in a single, consolidated introduction preceding all the documents. The running commentary does have the advantage of drawing the reader’s eye to the surrounding documents. But the commentary also has the tendency to diminish the impact of valuable scholarly findings, such as the number of each type of case Lincoln tried—information that appears at different points in the commentaries and must be fished out at some inconvenience. The commentaries also tend to repeat information that the reader has just encountered in the documents themselves. In *Rogers v. Rogers*, for example, the judgment indicates that the jury found that Samuel Rogers’ wife Polly “has not been guilty of adultery as charged” (1: 47). The editors add in the summary on the very next page that Rogers and his counsel “did not convince the jury that Polly Rogers was guilty of the charge of adultery” (1: 48). Although such repetition sometimes helps the reader understand the gist of difficult documents, it also sometimes makes the commentary appear perfunctory in striking contrast to the other editorial interventions in the edition. The editors’ decision to place their commentary in a larger font than the documents themselves compounds the problem.

Such criticisms, however, do not substantially detract from the overall impression this edition makes. The legal documents are well chosen and illuminating in surprising ways. They reveal, first, how varied the work of the antebellum lawyer was. Lincoln served as a guardian *ad litem* for minors, as a public prosecutor, and, in more than three-hundred cases, as a temporary judge (4: 274–75, 280). He was called upon to serve on at least five writ-of-inquiry juries, which were used to assess damages in cases of default judgments (4: 272–73). In the numerous cases for which he was an attorney, Lincoln propelled litigation forward. He not only filed pleadings on behalf of his clients, but also drafted jury instructions which he hoped the judge would incorporate into the instructions ultimately delivered to jurors (2: 158–59, 169–70, 238, 274–75). This was not an uncommon maneuver for antebellum lawyers, as the glossary helpfully notes (4: 398). In one case, the famous murder trial of William Armstrong, the judge cer-

tainly used Lincoln's proposed instructions, as they were endorsed "given" (4: 14–15). In a breach-of-contract case, by contrast, the judge explicitly refused Lincoln's proposed jury instruction, and after the jury returned a verdict against his client, Lincoln protested the refusal in a succession of filings (3: 241–43, 244). Lincoln also drafted in his own hand a number of decrees and judgments in cases where the decision from the bench was favorable to his client (1: 130; 2: 85–87, 279–80, 289–90, 300, 348–49; 3: 59–60, 63, 187–88; 4: 134). The editors are undoubtedly correct in concluding that these decrees and judgments formally became the decisions of the courts. Thus when Lincoln, acting as a temporary judge, wrote the judgment in *Peabody v. Roney* (1852), he was only doing, textually speaking, what he had done as a lawyer in many other cases (4: 286).

Even the pleadings themselves prove to be more than mere legal boilerplate dutifully but reluctantly printed. The seduction case of *Grable v. Margrave* (1840–42) demonstrates how the pleadings can help fully illuminate the legal significance of a case. William J. Grable impregnated Melissa Jane Margrave, the unmarried daughter of Thomas Margrave, in 1839. Rather than sue Grable explicitly for the seduction of his daughter, Thomas Margrave followed the path that common-law pleading offered in such cases. In his declaration, the first pleading made by the plaintiff in a common-law case, Margrave became not an aggrieved father seeking to vindicate his daughter's honor but instead a "master" harmed by the expenses and loss of service associated with the pregnancy of his "servant" (1: 241). Indeed, the word "seduction" is not even mentioned in the declaration. Yet Margrave won \$300 in damages, less than the amount he sought but more than his stated financial loss. Hearing the case on appeal in the Illinois Supreme Court, Judge Samuel H. Treat acknowledged that "the loss of service is still the legal foundation of the right to recover" but noted that the common law now permitted the father to recover damages "beyond the mere loss of service" (1: 247). Treat's opinion was already published in the Illinois state reports, but by publishing here both the declaration and the opinion the editors are able to expose the gap between the common law's forms of pleading and its actual rules of decision.

Lincoln himself, of course, emerges from these pages through the case documents he filed as well as in the letters that passed between him and his clients, which are amply represented here. In his recent work, *An Honest Calling: The Law Practice of Abraham Lincoln* (2006), Mark E. Steiner, a former associate editor of the LPAL, describes Lincoln as a lawyer who was willing to represent any side in a case and who trusted the legal system to produce a morally acceptable outcome. These volumes, selective though they are, do convey this impression of Lincoln the lawyer.

The case of *Todd v. Ware* (1843–44) is instructive. This was the only case in which Lincoln represented his father-in-law, John Todd (1: 301). Lincoln initi-

ated the case for breach of contract in 1843, about one year after marrying Mary Todd and shortly after meeting her father for the first time (1: 305). In 1841 Todd had purchased 243 acres of land from Nathaniel A. Ware, agreeing to make three annual payments for the property in “current Bankable Paper receivable in Deposit at the State Bank of Ills. in Springfield.” In early 1842, however, the State Bank of Illinois failed. Todd subsequently made two payments in the bank’s paper, which Ware accepted, but when in May 1843 he tendered the balance in the same currency, Ware refused to accept it. By that time the bank’s money had depreciated to less than half its face value. Todd, however, insisted that the agreement permitted payment in depreciated currency and sued Ware for breach of contract.

In the proceedings that followed, Lincoln went to great lengths on his father-in-law’s behalf. When his bill of complaint was successfully challenged for being “argumentative” and otherwise insufficient, he promptly filed an amendment. He sought unsuccessfully to obtain the notes of debt originally given to Ware. He deposed three of his own witnesses and cross-examined two of the defendant’s. He filed exceptions to some of the questions the defense had asked of witnesses as well as the witnesses’ answers (1: 332–33). He wrote a lengthy brief, one of the few published in this edition (1: 328–32). Ultimately, however, Lincoln’s efforts were to no avail. Judge Samuel H. Treat, in an opinion published here for the first time, determined that the bank’s notes were not truly “bankable” at the time Todd tendered payment and that the notes circulated at a forty-to-fifty percent discount in comparison to those of other institutions. Equity demanded that Todd make payment in better money than that.

Ultimately, this case does much more than show a lawyer serving his client or a son-in-law helping out his father-in-law. Lincoln sought to permit a debtor to pay in depreciated money, an action which Federalists had considered patently unjust in the era of the Founding and which continued to vex and dismay Americans in Lincoln’s time. Lincoln’s posture in the case is explicable on the premise that Lincoln placed virtually complete trust in the moral efficacy of the legal system and believed that his trust fulfilled his moral responsibility.

Or was Lincoln willing to do for John Todd what he was unwilling to do for others? The *Bennett* cases suggest otherwise. Richard Bennett, father of a large family, impregnated Jane Davidson, a woman not his wife. She sought child support from him. With Lincoln’s help, however, Bennett took advantage of an Illinois statutory provision that released a father from his financial obligation to an illegitimate child if he sought custody of the child and the mother refused to grant it. In the Illinois Supreme Court, Justice Norman Purple was “reluctantly compelled to admit” that a father who had the “inhumanity” to demand custody of his illegitimate child “in its helpless and dependent infancy” was indeed released from further financial obligation should the mother refuse. The state legis-

lature revised the law before Purple's opinion was issued, but of course the new provision, which required the father to pay support until the child was three, could not be applied to Bennett. In short, Lincoln had helped loosen Bennett from any underlying ethical obligation both to mother and child. When Davidson died a few months after the decision, the editors poignantly note, "the county paid for her casket and burial" (1: 398).

Nor was Lincoln inclined to be discriminating in cases with clear political implications. When the Illinois Central Railroad sought to enjoin two Illinois counties from taxing its land, Lincoln made himself available as counsel for the counties. When the counties declined, Lincoln offered his services to the railroad, which quickly retained him (2: 384). Ultimately, Lincoln won the case for the railroad and claimed \$5,000 for his efforts, the largest legal fee he ever collected (2: 410). When Stephen Douglas later accused Lincoln of representing the railroad to the detriment of the people of Illinois, Lincoln simply explained that the railroad's charter required the company to pay taxes to the state, not the counties, and that the people's interest was served thereby. He also noted that he had offered his services to the other side and had been declined (2: 413–14). What more need be said? Any notion that he was "on very cozy terms with the Railroad Company, I do not comprehend," Lincoln offered (1: 414).

Lincoln's trust in the legal system, however legitimate, may have masked a lack of zeal for the specific content of the law, whether he saw ethical implications in that content or not. Over time his cases became more important and his reputation grew, but Lincoln was never beyond being caught flatfooted on legal questions that arose. In the murder case *People v. Harrison*, Judge Edward Y. Rice claimed the right to determine the admissibility of dying declarations; Lincoln remarked to his own discredit that he had "never heard of such law" (4: 174–75). In 1860, an indictment drafted by Lincoln was quashed because of a critical omission. Ward Hill Lamon, the public prosecutor for whom Lincoln had written the indictment, asked Lincoln for any legal authorities that might be adduced to revive the indictment. "I will take it as a great favor," Lamon remarked, as "I have more pride in having my Indictments sustained, than in anything else in the practice of law" (4: 278). Lincoln replied vaguely that "Our Statute . . . relaxes the high degree of technical certainty formerly required." If the indictment remained quashed, Lincoln quipped, "it will only prove that my *forte* is as a Statesman, rather than as a Proseccutor" (4: 279).

Lincoln's errors, indeed, did not seem to faze him. To be sure, he was careful to protect his reputation. When his plea in the case of *Dungey v. Spencer* was successfully challenged by a demurrer, Lincoln exclaimed to the opposing attorneys, "Now, by Jing, I will beat you boys!" As one opposing attorney later reminisced, Lincoln wanted to redeem himself for having been "demurred out of court" (3: 145). Yet the correspondence published in this edition shows a Lincoln

who was remarkably candid—even breezily so—in admitting to doubts, omissions, and errors. The legal view expressed by a federal marshal in one case “did not occur to me,” Lincoln acknowledges to one client (3: 221). He tells another that he “took fright” when he became aware that the statute of limitations might have expired on the client’s suit (3: 202). Lincoln states plainly that he “forgot” to pay the taxes on several lots owned by William Florville, “though under promise” to do so (4: 258).

Lincoln scholars will mine this edition for new insights into Lincoln’s legal temperament, his legal philosophy, and the impact his practice had on his political outlook. Studies of Lincoln the lawyer have emerged since the LPAL were published, including Steiner’s as well as Brian Dirck’s *Lincoln the Lawyer* (2000), but undoubtedly these will not be the last. *Legal Documents and Cases*, with its four substantial volumes of material transcribed and contextualized, will encourage scholars to look at Lincoln’s law practice afresh. Previous assessments, some stretching back to the reminiscences of the late nineteenth century, will be influential but not determinative. Was it trust in the legal system that encouraged Lincoln to rely on America’s political system to resolve the sectional dispute? Was it his regard for legal outcomes that inclined him to expect Southerners to accept the political outcome of the election of 1860? It is gratifying to know that this edition puts us on a road to answering such questions more effectively and reliably than ever before.