



THE COTTAGE COURIER

Vol. 19

www.lincolncottage.org

Spring 2013



From the Director

Dear Friends,

“What did you think about the movie?” At this point, folks don’t even bother saying the title. For months now, I’ve been asked, often rhetorically, if Spielberg’s “Lincoln” has had a dramatic impact on visitation and general interest here. Of course, if you have seen it—perhaps even at our recent screening of “Lincoln” in the Cottage with The George Washington University—you know the film does not cover Lincoln’s time at the Cottage. It did, however, serve as a reminder for the general public that the Emancipation Proclamation was not a magic wand. There was a lot more that had to be done—and

still needs to be done—to end slavery. Fewer people are aware that due to the elements of the Proclamation that dealt with black enlistment, Lincoln and his colleagues had to rewrite the laws of warfare. Perhaps what we really need is a Lincoln miniseries, where each episode weaves a vivid back story on how a document came to be during the Lincoln administration. While we’re waiting to pitch that idea, don’t miss our featured article by Scholarly Advisor Burrus Carnahan on Lincoln and the Lieber Code, which codified American military law.

More important than the numbers—and yes, we did see a bump in visitation—are the conversations the movie has sparked. It has created a new, shared language about Lincoln’s character. Regardless of whether or not they’ve seen the movie, visitors comment on having enjoyed the complex character presented on visits to the Cottage, from folksy anecdotes and resolute decisions, to words of tenderness, grief, strife, and so much more that happened here. Screening “Lincoln” with our friends at The George Washington University was just another way to bring people to meet the true Lincoln.

In that spirit, we are excited to announce the first International Youth Summit of Students Opposing Slavery. In our first year of the Summit, a couple dozen young people from DC and abroad will convene here at President Lincoln’s Cottage to develop ways they can work together to end slavery globally and make a positive impact in their world today.

Through the preservation of Lincoln’s beloved Cottage and our thought-provoking programs and initiatives, we continue to spread hope and inspiration with Lincoln’s big ideas. We couldn’t accomplish any of this without you, our supporters, friends, and advisors.

Let us know what you think!

Thank you,

Erin Mast

EMast@savingplaces.org

A Lincoln

PRESIDENT LINCOLN’S COTTAGE
AT THE SOLDIERS’ HOME



A Site of the
National Trust for
Historic Preservation

IN THIS ISSUE

Page 2: Site Rentals, Birthday Parties

Page 3: Memorial Day 2013, *Can You Walk Away?*

Page 4: Children’s Books, Youth Naturalization

Page 5: Preservation Report, Planned Giving

Page 6: *Lincoln and the Lieber Code*, by Burrus M. Carnahan

Memorial Day 2013

See page three for details

"The 1st of July, we go out to the Soldiers' Home, a very charming place ... to pass the summer."

-Mary Lincoln

Celebrate your next event at the Cottage, Mary's beloved retreat!

Click [HERE](#) to learn more about our site rental opportunities.



Birthday Parties At the Cottage

President Lincoln's Cottage provides a fun and unique birthday experience for children! A Lincoln's Hat birthday party rental lasts two hours and includes an interactive tour, hat-making activity, and time for a birthday celebration! Click [HERE](#) to learn more.

Memorial Day 2013

Join us at the Soldiers' Home as we honor the men and women who served in our military



On Monday May 27th, a wreath laying ceremony will take place at the U.S. Soldiers' and Airmen's Home (USSAH) National Cemetery to remember our fallen soldiers. Sailors from the USS Abraham Lincoln will participate in the ceremony. Then, enjoy the rare opportunity to take a guided tour of the USSAH National Cemetery (predecessor of Arlington National Cemetery). Guided tours of the Cottage will be offered on the hour from 10 til 3. Enjoy the beautiful grounds and cool breezes on this historic hilltop after your tours with a picnic lunch!

In the afternoon, our partners at the National Park Service and the Illinois State Society are presenting a program downtown at Logan Circle, to commemorate the contributions of John A. Logan, a Civil War general who led the movement to make Memorial Day a national holiday.

Wreath laying at Logan Mausoleum, Soldiers' Home National Cemetery, 10:00 am

Guided Tours of Soldiers' Home National Cemetery, 10:45 am, 12:30 pm

Ceremony at Logan Circle, 2:00 pm

Wreath laying ceremony, cemetery tours, and Logan Circle ceremony are all FREE and open to the public.

RESERVATIONS REQUESTED: For more information and to register, visit www.lincolncottage.org/MemorialDay2013

CAN YOU WALK AWAY?

**MODERN SLAVERY:
HUMAN TRAFFICKING
IN THE UNITED STATES**

*Exhibit catalogs now available
in store and online*



New Children's Books in our Museum Store!

The perfect additions to a summer reading list.

Purchase on your next visit or shop online today.



Youth Naturalization Ceremony



(Credit: Win McNamee, Getty Images)

We were reminded of the democratic ideals and freedom Lincoln and his contemporaries were fighting for when we hosted a second annual Youth Naturalization Ceremony for the U.S. Citizenship and Immigration Services on April 30. Twenty children from 15 countries took the oath of citizenship in the Emancipation Room of the Cottage. The press beautifully captured the excitement and emotion of the day in stunning photos. Our staff favorite, pictured here, was featured in The Washington Post. Lincoln believed this country could serve as a beacon of hope for people around the world, and the Youth Naturalization celebration brings that national purpose into sharp focus.



Preservation Report: *The Vestibule Project*

During the Cottage restoration in 2007, evidence of decorative painting meant to look like walnut paneling was discovered on the walls of the vestibule. A paint analysis report suggests it was exposed or possibly painted during Lincoln's time.

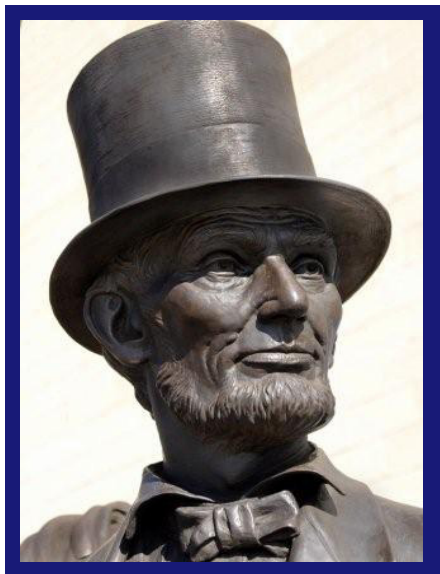
Thanks to a generous grant from the National Trust for Historic Preservation, we were able to commission conservator Catherine S. Myers of Myers Conservation in Philadelphia, PA, to document the existing conditions and perform the delicate task of stabilizing the painted surface while consolidating the disaggregated plaster and reattaching loose plaster to the brick substrate. Areas where the plaster is completely lost will be filled with a plaster that matches the original in composition. The project is expected to begin in June of 2013.

A second phase, presently unfunded, involves addressing remaining moisture issues, additional paint analysis to more fully understand how the vestibule looked during Lincoln's time, and a discussion of how those finishes may be displayed.

Interested in learning more about this project? Do you wish to support the second phase? Contact Jeffrey Larry, Preservation Manager, at JLarry@savingplaces.org.

Pictured above: Vestibule walls in 2007 after discovery of decorative painting. The dark brown areas represent the rails and stiles of the dado with the lighter area in the middle representing a panel.

What will be your legacy?



As a private non-profit, President Lincoln's Cottage depends on donations and bequests. You can help ensure this powerful place is here for generations to come by leaving a bequest in your will.

For more information about using your will to protect President Lincoln's Cottage and the big ideas of freedom and equality that live here, please contact John Davison, Associate Director for Development, by calling 202-829-0436 x31225 or emailing JDavison@savingplaces.org.

“A Contribution ... to the Stock of Common Civilization”: President Lincoln and the Lieber Code

By Burrus M. Carnahan

In 1863 America was still isolationist. Even a treaty as innocuous as the 1864 Geneva Convention, intended to protect wounded soldiers in wartime, was so controversial that the United States failed to ratify it until 1882, and only then after a six-year publicity campaign led by Clara Barton and other prominent Americans.¹

It may be surprising, therefore, that in April 1863 President Lincoln approved an official document that would prove to have worldwide impact on the development of international law well into the twentieth century. General Orders Number 100, “Instructions for the Government of Armies of the United States in the Field,” was issued by the War Department on April 24, 1863, after “having been approved by the President of the United States.” General Orders Number 100 gave the officers and soldiers of the United States Army official guidance on the international laws and customs of war as they existed in the middle of the nineteenth century.²

Such guidance was badly needed. At the start of the Civil War, there were around 16,000 officers and soldiers in the U.S. Army. By the end of the War a million men were under arms, and during the course of the War more than two million would serve in the Union armies for some period.³ Regular officers learned the laws of war at West Point, from professional reading or on the



Lieutenant J.B. Washington (left), with Captain George A. Custer, a classmate at West Point, after his capture at Fair Oaks in 1862. As graduates of West Point, Captain Custer and Lieutenant Washington knew more than most Civil War soldiers about the laws of war.

Courtesy Library of Congress.

job during the war with Mexico. However, in the vastly expanded Civil War army, most officers were appointed from civilian life and knew nothing about the laws and usages of war, or whether to apply them to the Confederates.

For officers in the field in the first year of the War, the situation was even more confusing because the Lincoln administration failed to provide guidance on how to treat captured Confederate soldiers or hostile civilians and their property. The reasons for this official silence were political. President Lincoln never regarded the Confederate States of America as a legitimate government. He and his cabinet were concerned that formally treating Confederate soldiers and sailors as prisoners of war, and according them

other privileges under the laws of war, would be regarded by neutral nations, and opposition politicians in the North, as a step towards recognizing Confederate independence. The government of Jefferson Davis naturally took the opposite position, insisting that the Confederacy was a sovereign nation, entitled to all the rights of an independent country under international law.

The gap in guidance from the top left U.S. officers to their own devices, with predictably inconsistent results. Some Union officers in Missouri and Virginia, for example, assumed they should apply the international laws of war, and referred to captured Confederates as “prisoners of war” as early as May 1861.⁴ On the other hand, as late as November of that year, Major General William T.

Sherman, commanding Union troops in Kentucky, believed his men could detain enemy personnel only under Kentucky state treason laws.⁵ In late June 1861, Major General George B. McClellan, in command of the U.S. forces in Ohio, prepared to invade the pro-Union counties in Western Virginia. As part of his preparations he telegraphed Army headquarters for policy guidance on how to deal with different categories of prisoners. *"I beg leave to ask for instructions as to what disposition is to be made of prisoners of the following classes respectively: First. Prisoners taken in battle. Second. Prisoners who have been in the secession army and have deserted or been discharged. Third. Spies. Fourth. Guerrillas. Fifth. Prisoners who without taking up arms themselves have been active and influential in inducing others to take up arms."*⁶ The War Department never replied.

The Lincoln administration was finally forced to formulate a policy on captured soldiers when Confederate Lt. Colonel Pegram offered to surrender to McClellan's forces on condition he and his men be treated as prisoners of war. McClellan again urgently requested guidance – were they prisoners of war, to be kept in military custody in accordance with the laws of war, or suspected traitors to be turned over to the U.S. Marshal? This time the War Department answered that they should be treated as prisoners of war.⁷ Despite the administration's official policy of non-recognition, the international laws and customs of war would be applied to members of the Confederate regular army.

The treatment of Pegram's men established a precedent that would be gradually but inexorably extended. Through a combination

of domestic political pressure, international pressure from neutral countries, and Confederate threats of retaliation, by the beginning of 1862 the U.S. government was, as a practical matter, extending all the international laws and customs of war to Confederate armed forces and to Southern civilians in occupied territory. This change was eased when one of the country's leading experts on the laws of war, Dr. Francis Lieber of Columbia University, advised Attorney General Edward Bates that the U.S. government could apply the international laws of war to Confederate soldiers and sailors as a humanitarian matter, without according political legitimacy to their purported government.⁸ The change in policy exacerbated the problem noted earlier – few Union officers in the Civil War had any knowledge of those laws and customs.



Francis Lieber.
Courtesy Library of Congress

Major General Henry Halleck, appointed commanding general of the U.S. Army in July 1862, was one

of the first officials to notice this problem.⁹ An 1839 graduate of West Point, Halleck turned out to be a poor general, but a sound administrator and lawyer. While in command of the Department of the Missouri, General Halleck had faced wide-spread guerrilla warfare. Soon after taking command in Washington, Halleck asked Dr. Lieber, who had earlier advised Attorney General Bates, for his views on the legal status of guerrillas and other irregular fighters for the Confederacy. The result was a sixteen page pamphlet called *Guerrilla Parties Considered with Reference to the Laws and Usages of War*.¹⁰ General Halleck was so pleased with it that he ordered 5,000 copies printed and distributed to Union commanders in the field.¹¹ When Dr. Lieber later suggested that the government prepare a more general document on the laws and usages of war,¹² Halleck had him appointed to a board with four generals "to propose amendments or changes to the Articles of War, and a code of regulations for the government of armies in the field, as authorized by the laws and usages of war."¹³ The generals focused on revising the Articles of War, while Lieber drafted the document that became, after slight revisions by the four generals as well as General Halleck, General Orders Number 100, "Instructions for the Government of Armies of the United States in the Field." To this day it is commonly referred to as the "Lieber Code."

Francis Lieber (1798-1872) was ideally suited to draft a code summarizing the law and usages of war. A Prussian by birth, he fought in the last campaign of the Napoleonic Wars, and was badly wounded at the battle of Namur.

He fled the autocratic Kingdom of Prussia due to political persecution, eventually settling in Boston where he formed contacts with prominent New England intellectuals, including Supreme Court Justice Joseph Story and future Senator Charles Sumner. Unable to find an academic position in the North, in 1835 he accepted an appointment as professor of political economy at South Carolina College (now University of South Carolina), despite his personal opposition to slavery. In 1855 he was finally able to return to the North when he was appointed a professor at Columbia College, later Columbia University, in New York. While in South Carolina, he collected a massive body of research materials on political philosophy and international law. These would later become the basis of the Lieber Code.¹⁴ When the Civil War broke out Lieber's oldest son, who had remained in South Carolina, joined the Confederate army and was mortally wounded at the battle of Williamsburg. Lieber's two younger sons joined the Union army, and one lost an arm at the Battle of Fort Donelson. For Dr. Francis Lieber, compliance with the laws and usages of war was not a purely academic matter.

The Lieber Code gave Union officers legal and policy guidance on many of the issues they would face in the field, including treatment of prisoners of war, dealing with civilians and civilian property in hostile areas, and handling spies and guerrillas. It remained the U.S. Army's official guide to the laws and usages of war until 1914.

While important in the United States, the Lieber Code may have had

its greatest impact at the international level. In 1874 Czar Alexander II of Russia convened a conference of fifteen countries in Brussels, Belgium, to codify and reform the laws and usages of land warfare. Alexander was a reformer who had abolished serfdom in 1861, two years before Lincoln's Emancipation Proclamation (a point of pride for Russians to this day). He succeeded his father during the Crimean War, which Russia lost to Britain, France and Turkey. During that war, Western European critics had charged Russian soldiers with numerous atrocities.¹⁵ Czar Alexander may have seen sponsorship of the Brussels conference as a way to restore the reputation of his country as a humane and civilized power.

The Czar's government asked Johann Bluntschli, a Swiss professor at the University of Heidelberg, to prepare a draft treaty (later known as the Brussels Declaration) for the Brussels conference to consider.¹⁶ Professor Bluntschli was a friend and admirer of Francis Lieber, and

based his draft on the Lieber Code. While the Declaration of Brussels never entered into force as a treaty, it formed the basis of the Convention on Land Warfare, a binding treaty adopted by a conference sponsored by Czar Alexander's grandson, Czar Nicholas II, at the Hague, Netherlands, in 1899, and later updated at a second Hague Conference in 1907.¹⁷ By 1899, U.S. isolationism had weakened. The United States attended both Hague Conferences and ratified both Hague Conventions. The present 1949 Geneva Convention on Civilians in Time of War and Convention on Prisoners of War both supplements and updates the 1899 and 1907 Hague Conventions, which are in turn based on the Lieber Code approved by President Lincoln in April, 1863.¹⁸ Francis Lieber's work during the Civil War has thus become, as he had hoped, "a contribution by the U. S. to the stock of common civilization."¹⁹



Battle of Fort Donelson, where one of Dr. Francis Lieber's sons lost an arm.
Courtesy Library of Congress

Mr. Carnahan is a Foreign Affairs Officer at the US Department of State and a Professorial Lecturer in Law at The George Washington University in Washington, D.C. His JD degree is from Northwestern University (1969) and he holds an LLM from the University of Michigan (1974). From 1969 to 1989 he served as a Judge Advocate in the US Air Force, specializing in international legal issues. From 1974 to 1978 he was an Associate Professor of Law at the US Air Force Academy. The author of two books and numerous articles on Abraham Lincoln, international law, and the law of war, he has spoken on Lincoln and his era at the Abraham Lincoln Institute Symposium at the National Archives, the Gettysburg College Civil War Institute, the Filson Historical Society in Louisville, Kentucky, and many other venues. He is a member of the President Lincoln's Cottage Scholarly Advisors Group.

END NOTES

¹Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, 22 August 1864, in *The Laws of Armed Conflict*, pp. 213-16 (Dietrich Schindler and Jiri Toman, eds., 1981); Clara Barton National Historic Site, pp. 35-46 (National Park Service Handbook no. 110, 1981).

²Instructions for the Government of Armies of the United States in the Field, General Orders No. 100, War Department, Adjutant General's Office, Washington D.C., April 24, 1863, War of the Rebellion: Official Records of the Union and Confederate Armies (U.S. Gov't Printing Office, 1880-1901) (hereinafter *Official Records*), series III, vol. 3, pp. 148-64; also in *The Laws of Armed Conflicts*, supra note 2, pp. 3-23 (Dietrich Schindler and Jiri Toman, eds. 1981).

³See David J. Eicher, *The Longest Night: A Military History of the Civil War* pp. 58, 785 (2001); "Union Army" and "United States Army" in Bryon Farwell, *The Encyclopedia of Nineteenth Century Land Warfare*, pp. 835-37 (2001).

⁴See, e.g., Asst. Adjutant General (AAG) Williams to Colonel Bowen, May 18, 1861, in *Official Records*, series II, vol. 3, p. 1; AAG Fry to Mr. Johnson, June 27, 1861, *Official Records* series II, vol. 2, p. 12.

⁵See General Sherman to General Ward, November 27, 1861, *Official Records* series II, vol. 2, pp. 125-26.

⁶McClellan to Scott, June 28, 1861, *Official Records*, series II, vol. 2, p. 14.

⁷McClellan to Townsend, July 13, 1861, *Official Records* series II, vol. 3, p. 9; General Scott to General McClellan, July 14, 1861, *Official Records* series II, vol. 3, pp. 10-11.

⁸See Frank Freidel, Francis Lieber, *Nineteenth Century Liberal* p. 320 (1968 reprint of 1947 ed.). See also p. 314 for Lieber's advice to Bates that the United states could impose a blockade on the South without recognizing the Confederate government.

⁹See John F. Marszalek, *Commander of All Lincoln's Armies: A Life of General Henry W. Halleck* pp. 166-67 (2004).

¹⁰Francis Lieber, *Guerrilla Parties Considered with Reference to the Laws and Usages of War* reprinted in Richard Hartigan, supra note 1, pp. 31-44 (1983).

¹¹See John F. Marszalek, supra note 10, p. 167.

¹²See Lieber to Halleck, November 13, 1862, in Richard Hartigan, supra note 1, pp. 79-80.

¹³Paragraph 5, Special Orders No.

399, War Department, Adjutant General's Office, Washington D.C., December 17, 1862, in *Official Records*, series III, vol. 2, p. 951. The Articles of War, ch. 20, 2 Stat. 359-372 (1806) (repealed 1951), were the military code enacted by Congress under its power "To make Rules for the Government and Regulation of the land and naval forces" of the United States, U.S. Constitution, Article I, section 8, clause 13. The Articles of War gave the Army legal authority to conduct courts-martial and defined military offenses subject to court-martial jurisdiction.

¹⁴See Frank Freidel, supra note 9, pp. 24-52, 66-76, 117-127.

¹⁵See Orlando Figes, *The Crimean War: A History*, pp. 221-22; 270-72 (2011).

¹⁶Project of an International Declaration concerning the Laws and Customs of War, August 27, 1874, in *The Laws of Armed Conflicts*, supra note 2, pp. 25-27.

¹⁷Convention (II) with Respect to the Laws and Customs of War on Land, July 29 1899, in *The Laws of Armed Conflicts*, supra note 2, pp. 57-92; Convention (IV) respecting the Laws and Customs of War on Land, October 18 1907, in *The Laws of Armed Conflicts*, supra note 2, pp. 57-92.

¹⁸Convention (III) relative to the Treatment of Prisoners of War, 12 August 1949, article 135, in *The Laws of Armed Conflicts*, supra note 2, pp. 355-425; Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949, article 154, in *The Laws of Armed Conflicts*, supra note 2, pp. 427-487.

¹⁹Lieber to Halleck, May 20, 1863, in Richard Hartigan, *Lieber's Code and the Law of War*, p. 108 (1983).