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*Habeas Corpus and the Courts:
Individual Liberties from Joseph Smith
to Abraham Lincoln to Guantanamo.*

By Jeffrey N. Walker and Dean Corrin.

Directed by Sandy Shinner.

Varsity Theater, Brigham Young University, Provo, Utah. March 26, 2014.

Reviewed by Jennifer Hurlbut

This production was created as one of a series of annual theatrical events presented by the Illinois Supreme Court Historic Preservation Commission (ISCHPC) and the Abraham Lincoln Presidential Library and Museum (ALPLM). Previous events dramatized a retrial of Mary Surratt for her role in the assassination of Abraham Lincoln and a retrial of Mary Todd Lincoln, who was tried for charges of insanity in 1875.¹ In early 2013, Justice Anne Burke from the Illinois Supreme Court contacted Elder Dallin H. Oaks, a member of the Quorum of the Twelve Apostles and a former Utah Supreme Court Justice, to ask if the Church could assist the ISCHPC in looking at Joseph Smith's legal cases in Illinois.²

Elder Oaks contacted Richard Turley, Assistant Church Historian, who, with Jeffrey Walker, a contributor to the Joseph Smith Papers Project and an adjunct professor at the J. Reuben Clark Law School, met with the ISCHPC and the ALPLM to discuss the project. As Joseph Smith used the writ of habeas corpus on several occasions while in Illinois, the group decided to center its efforts on those cases. Walker, who has studied Joseph Smith's use of habeas corpus,³ was asked to write the script, and Dean Corrin, associate dean of the theater school at DePaul University, became involved as the dramaturge. Walker and Corrin worked together to refine Walker's script into the production.⁴

1. Information about these performances is available at Illinois Supreme Court Historic Preservation Commission, "The Events of the Commission," <http://www.illinoiscourthistory.org/events>.

2. Jeffrey N. Walker to author, email, March 31, 2014.

3. Jeffrey N. Walker, "Habeas Corpus in Early Nineteenth-Century Mormonism: Joseph Smith's Legal Bulwark for Personal Freedom," *BYU Studies Quarterly* 52, no. 1 (2013): 5–97.

4. Walker to author.

Habeas Corpus and the Courts focuses on three trials of Joseph Smith involving the writ of habeas corpus. Each trial dealt with extradition requisitions from Missouri for various alleged crimes. *Habeas Corpus* has now been performed four times, first in Springfield and Chicago (in conjunction with events in Nauvoo), and then in Salt Lake City and Provo, Utah, in 2014. The production is overtly educational and is being featured in high school and college curricula in Illinois. This play is like most theater in that it tells an audience about human experience, but its main goal is clearly didactic. The acting, set, and other aspects of performance were more than sufficient, but they were secondary to the primary purpose of teaching about this moment in Illinois legal history.⁵

For the first segment of the evening, four talented actors narrated and acted out three stories of Joseph Smith's use of habeas corpus in Illinois. These three stories were told in about an hour. The stage set and costuming in this documentary production were intentionally spare, allowing the historical facts to speak prominently and starkly. Each actor played multiple parts, differentiating clearly between the roles with small costume changes and distinct acting styles. Sometimes one would break character to explain the scene directly to the audience. All parts were convincingly and energetically played. I expect that Mormons in the audience were pleased to see Joseph portrayed in a dignified manner, played most often by Clayton Stamper. Actor Nicholas Harazin introduced the three vignettes and explained the importance of these events in American history. The history was also given in the playbill, so that audience members could review the events afterward.⁶

Thanks to excellent direction by Sandy Shinner, the narration and stories moved quickly, presenting the essence of the history without getting bogged down in details. There was an unusual connection between the performers and the audience: I think most of us were fully aware that prominent judges, lawyers, and Church leaders of the past were being portrayed by actors on a stage while their present-day counterparts were in the audience.

The first of the three stories told is set in June 1841. Joseph was arrested outside of Quincy, Illinois, as he returned home from a trip to the East.

5. In keeping with the didactic purpose of the production, the play and panel discussion were recorded. It is anticipated that the production will be made available to the public in the near future.

6. The playbill and other resources are available at <https://byustudies.byu.edu/showTitle.aspx?title=9416>.

The arrest was based on a Missouri extradition requisition stating that Joseph Smith had outstanding indictments in Missouri. Joseph filed a writ of habeas corpus, which was reviewed by Judge Stephen A. Douglas (“Yes, *that* Stephen A. Douglas,” Harazin tells us). Judge Douglas ruled that the arrest from Missouri was faulty (because the warrant had been used before and a new warrant had not been properly re-issued) and released Joseph.

The second case arose in August 1842. This time, Missouri’s request for extradition from Illinois was based on Joseph’s alleged involvement in an assassination attempt on former Governor Lilburn Boggs in May 1842. The requisition stated that Joseph had “fled from justice,” but in fact Joseph was not in Missouri in May 1842 and, therefore, could not have fled from justice. Further, the requisition was based solely on an affidavit from Boggs that proved to be rooted in his beliefs, not on facts. So, again on a technicality, the requisition and arrest warrant were declared improper and Joseph was released.

This piece of history lends itself well to theater, since the original event was quite dramatic. People packed the courthouse in Springfield to see Joseph Smith. Some young ladies—including daughters of the judge, a daughter of the defense counsel, and Mary Todd Lincoln—were allowed to sit on the bench with federal judge Nathaniel Pope. Justin Butterfield, one of Joseph Smith’s attorneys and played by Clayton Stamper (who earlier played Joseph Smith), may have had the best line of the production. Admiring Judge Pope and the row of (invisible) young ladies, he said, “May it please the Court: I appear before you today under circumstances most novel and peculiar. I am to address the ‘Pope’ (bowing to the Judge) surrounded by angels (bowing still lower to the ladies), in the presence of the holy Apostles, in behalf of the Prophet of the Lord.”⁷ When this scene was performed, the actors used it as comic relief, just as Butterfield intended it for his audience in 1842.

The third event occurred in June 1843, when Missouri officials again sought extradition for Joseph’s alleged crimes in 1838. This time, a Nauvoo municipal court heard Joseph’s petition for a writ of habeas corpus. Finally, Mormons were allowed to tell their story in court: Hyrum Smith, Lyman Wight, Parley P. Pratt, Sidney Rigdon, and Brigham Young were

7. Justin Butterfield’s speech was recorded in Isaac Newton Arnold, *Reminiscences of the Illinois Bar Forty Years Ago* (Fergus Printing Co., 1881), 3, quoted most recently in Walker, “Habeas Corpus,” 63.

called upon to testify about persecutions in Missouri. The Nauvoo court ruled in Joseph's favor and ordered his release.

At the end of the play, the actors yielded the stage to a panel of five experts. In the BYU production, the panel consisted of Gery Chico, Dee Benson, John Lupton, Jeffrey Walker, and Patricia Bronte. Chico, a lawyer and chairman of the Illinois State Board of Education, chaired the discussion. Benson, a judge in the United States District Court for the District of Utah, compared 1840s habeas corpus law to today's practice, saying that much of what was covered under writs of habeas corpus in the 1840s is now covered under more sophisticated and particular laws, and a writ of habeas corpus is rarely used in circumstances like those Joseph Smith faced. Lupton, of the ISCHPC, addressed questions regarding Abraham Lincoln, the Civil War, and how Lincoln suspended writs of habeas corpus during the war: it was an emergency action demanded by the needs of Northern troops moving to and from Washington, D.C., which was surrounded by Southern states. Walker addressed questions about Joseph Smith's legal history and the powers of the Nauvoo City Charter. Bronte, a lawyer who has served as habeas corpus counsel for several men detained at Guantanamo Bay since 2005, brought the topic up to the present day. She explained the history of U.S. Congressional law and Supreme Court decisions regarding the status of these prisoners and the dilemma facing U.S. lawmakers and judges: that even though they respect the human rights of all prisoners, no one wants to be responsible for releasing a future terrorist hijacker.

To ascertain whether the production met its goal of teaching the need to understand habeas corpus law and its historic use, I interviewed several first-year BYU law students. All of them expressed that they knew nothing about habeas corpus beforehand and felt the production had successfully given them a good grasp of the law and how it had changed over time. One said she intended to study more on habeas corpus, especially regarding the status of prisoners at Guantanamo. All agreed that the experience taught them much, that law and history go hand in hand, and that all people need to understand history in order to understand the present.

Jennifer Hurlbut is a senior editor at BYU Studies. She earned a BA in international relations at Brigham Young University. She works primarily with the Church history editorial board.