

## Chapter Nine

“I Was Losing Interest in Politics and Went to the Practice  
of Law with Greater Earnestness Than Ever Before”:

Mid-Life Crisis (1849-1854)

A colleague at the bar maintained that the years from 1849 to 1854, although apparently “uneventful and even unimportant” in Lincoln’s life, were really those “in which by thought and much study he prepared himself for his great life work.”<sup>1</sup> Indeed, he matured remarkably during those years, passing through a highly successful mid-life crisis.<sup>2</sup> Semi-retired from public life (he campaigned sporadically and desultorily for others but ran for no office himself), the slasher-gaff politico who reveled in sarcasm and ridicule somehow developed into a statesman, a principled champion of the antislavery cause who abandoned the narrow partisanship of his earlier years. To be sure, in the 1837 Lincoln-Stone protest and in his 1849 proposed statute abolishing slavery in the District of Columbia, he had shown interest in the slavery issue, but it had occupied at best a secondary place in his political consciousness. Believing “that God will settle it, and

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<sup>1</sup> [John M. Scott], “Lincoln on the Stump and at the Bar,” undated typescript enclosed in Scott to Ida Tarbell, Bloomington, Illinois, 14 August 1895, Tarbell Papers, Allegheny College.

<sup>2</sup> Michael Burlingame, The Inner World of Abraham Lincoln (Urbana: University of Illinois Press, 1994), 1-19; Herman Belz, “Commentary on ‘Lincoln’s Quest for Union,’” in Gabor Boritt and Norman O. Forness, eds., The Historian’s Lincoln: Pseudohistory, Psychohistory, and History (Urbana: University of Illinois Press, 1988), 249.

settle it right, and that he will, in some inscrutable way, restrict the spread of so great an evil,” he concluded that “it is our duty to wait.”<sup>3</sup>

Between 1849 and 1854, he focused outwardly on his legal career.<sup>4</sup> He later said of those years, “I was losing interest in politics” and “went to the practice of law with greater earnestness than ever before.” By 1854, the legal profession “had almost superseded the thought of politics” in his mind.<sup>5</sup>

Lincoln thought his legal career consisted of two distinct stages, separated by his term in Congress.<sup>6</sup> He had begun the first phase by handling petty cases of debt collection, property damage, land titles, negligence, trespassing livestock, divorce, and slander, from which he earned little, even though he and his partners had an extensive practice.<sup>7</sup> To make ends meet, lawyers in Springfield had to leave the capital during the

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<sup>3</sup> Robert H. Browne, Abraham Lincoln and the Men of His Time (2 vols.; Cincinnati: Jennings and Pye, 1901), 1:285. Browne dates this statement 1854, but if so it must have been very early in that year.

<sup>4</sup> The best study of Lincoln as a lawyer is Mark E. Steiner, An Honest Calling: The Law Practice of Abraham Lincoln (DeKalb: Northern Illinois University Press, 2006), which is based largely on documents unearthed by the Lincoln Legal Papers staff, of which Steiner was director. John A. Lupton, another member of the Lincoln Legal Papers staff, has succinctly described Lincoln’s career at the bar. Lupton, “A. Lincoln, Esquire: The Evolution of a Lawyer,” in Allen D. Spiegel, A. Lincoln, Esquire: A Shrewd, Sophisticated Lawyer in His Time (Macon, Georgia: Mercer University Press, 2002), 18-50. These studies, utilizing the extensive new information unearthed for Martha L. Benner and Cullom Davis et al., eds., The Law Practice of Abraham Lincoln: Complete Documentary Edition, DVD-ROM (Urbana: University of Illinois Press, 2000), (hereafter cited LPAL) have superseded all previous works on the subject. A selection from that massive archive was published in four letterpress volumes as The Papers of Abraham Lincoln: Legal Documents and Cases (Charlottesville: University of Virginia Press, 2007), ed. Daniel W. Stowell et al.

<sup>5</sup> Roy P. Basler et al., eds., The Collected Works of Abraham Lincoln (8 vols. plus index; New Brunswick, N.J.: Rutgers University Press, 1953-55), 3:512, 4:67. In 1861 he allegedly said that in the early 1850s “I was getting on well. I was clean out of politics and contented to stay so; I had a good business and my children were coming up, and were interesting to me.” Henry C. Whitney, Life on the Circuit with Lincoln, ed. Paul M. Angle (1892; Caldwell, Idaho: Caxton Printers, 1940), 435.

<sup>6</sup> Jesse W. Weik, The Real Lincoln: A Portrait, ed. Michael Burlingame (1922; Lincoln: University of Nebraska Press, 2002), 188.

<sup>7</sup> “Statistical Portrait” in LPAL; Harry E. Pratt, The Finances of Abraham Lincoln (Springfield: Abraham Lincoln Association, 1943), 25-29. A practice like that of Lincoln and Stuart was common in antebellum Illinois. Thomas Ford, History of Illinois from Its Commencement as a State in 1818 to 1847, ed. Rodney O. Davis (1854; Urbana: University of Illinois Press, 1995), 55.

spring and fall, when rural counties held court. In the winter and summer, the attorneys would remain in Springfield, appearing before the Illinois State Supreme Court, the Sangamon County Court, and the Federal District Court, as well as justices of the peace.

During the 1850s, lawyering changed dramatically as a fresh chapter in the history of Illinois opened. In 1848, the adoption of a new state constitution, the completion of the Illinois and Michigan Canal, the launching of a rail line connecting Chicago with Galena, and the arrival of a presidential message via the telegraph for the first time – all combined to herald the end of the frontier era.<sup>8</sup> Hastening social and economic change were the rapid expansion of the rail network (from 111 miles in 1850 to 2,790 in 1860) and the doubling of the population (from 851,470 in 1850 to 1,711,951 in 1860). Urban areas grew especially swiftly. In 1850, 29,963 people lived in Chicago; by the end of the decade, that number had reached 109,260. Springfield grew from 4,533 to 9,320 in that same period. Railroads slashed travel time between those cities from three days to twelve hours.<sup>9</sup> The 705-mile Illinois Central Railroad system, begun in 1851, was the world's longest when completed five years later. Because lawyers found more and more business in their own towns, they no longer spent weeks and months traveling from one county seat to another in quest of clients. By the end of the decade, only Lincoln and a couple of others continued attending court throughout the circuit. Simultaneously, night sessions became more common, reducing the opportunities for convivial gatherings after

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<sup>8</sup> Arthur Charles Cole, The Era of the Civil War, 1848-1870 (vol. 3 of The Centennial History of Illinois, ed. Clarence Walworth Alvord; Springfield: Illinois Centennial Commission, 1919), 1-52.

<sup>9</sup> In 1881, Isaac Arnold said that he had “known the December trip [from Chicago to Springfield] to take five days and nights, dragging drearily through the mud and sleet, and there was an amount of discomfort, vexation, and annoyance, about it, sufficient to exhaust the patience of the most amiable.” Isaac N. Arnold, “Reminiscences of the Illinois-bar Forty Years Ago: Lincoln and Douglas as Orators and Lawyers,” paper read before the Bar Association of the State of Illinois, Springfield, 7 January 1881 (pamphlet; Chicago: Fergus, 1881), 8.

dark. Rather than petty cases tried under the common law, more commercial causes (especially those involving railroads) filled the dockets. Attorneys found themselves working for more out-of-state corporations. The law became less a means of resolving local disputes and promoting community harmony than an impersonal mechanism for dealing with the booming industrial and commercial revolutions. Lincoln found the new climate less congenial than the old one.<sup>10</sup>

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It must have been a let-down for Lincoln to return from the glamorous world of Washington to the provincial capital of Illinois and his unprepossessing law office, meagerly furnished with a plain small desk and table, a couch, and a few wooden chairs. The floors were so seldom cleaned that plants took root in the accumulated dirt. As a congressman, Lincoln had distributed seeds to his farmer constituents; from some of the packets that he had brought home from Washington the contents leaked out and sprouted in the office. The windows were equally filthy. The upper and center panels of the office door leading to the hallway were missing, and any nimble visitor could easily have climbed through it. In a crude bookcase stood copies of Blackstone, Kent's Commentaries, Chitty's Pleadings and a few other volumes. Lincoln and Herndon made frequent use of the well-stocked law library at the nearby capitol. Henry C. Whitney thought that "no lawyer's office could have been more unkempt, untidy and uninviting."<sup>11</sup> An insurance underwriter who visited that office in 1858 agreed, stating

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<sup>10</sup> Steiner, Honest Calling, 177.

<sup>11</sup> Springfield correspondence by V. H., July 1867, Cincinnati Commercial, 25 July 1867, excerpted in Wayne C. Temple, "Herndon on Lincoln: An Unknown Interview with a List of Books in the Lincoln & Herndon Law Office," Journal of the Illinois State Historical Society 98 (2005): 34-50; Gibson William Harris, "My Recollections of Abraham Lincoln," Woman's Home Companion, December 1903, 15; Henry

that the “approach was rather discouraging – a miserable little sign, which originally might have cost a dollar and a half, weather-beaten and pock-marked with poor paint, one that in an emergency might do to nail over a rat-hole in an alley, indicated the way to a dirty flight of stairs to the attorney’s roost in an old, dingy building.” At the top of those stairs “you directly entered a long room, destitute of every honest claim to be titled an office. It was a low, black, schooner sort of affair – dusty, dingy, and destitute of ornament, unless the lawyer’s rusty old stove, like the one horse shay, ready to collapse, might be so construed.” The front of the room “was absolutely barren.” In the rear “was a large pine table” on which “were a few law books, scattered in appropriate disorder.”<sup>12</sup>

In these unprepossessing surroundings Lincoln spent many monotonous hours dealing with what he called “the drudgery of the law.”<sup>13</sup> As an Ohio attorney noted in 1849, the “business of a lawyer’s office, generally has as little interest as a merchant’s counting room. Declarations, pleas or demurrers, bills or answers in chancery, petitions in dower or partition, conveyances, depositions, the collection of notes, engross the time of

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C. Whitney, Life on the Circuit with Lincoln, ed. Paul M. Angle (Caldwell, Idaho: Caxton Printers, 1940), 404; “Memories of Lincoln,” interview with John H. Littlefield by C. D. B., Brooklyn Eagle, 16 October 1887. Littlefield studied in the office in 1859 and 1860. This office was in the Tinsley Building on the public square, where Lincoln and Logan had moved in 1843 from a location half a block away. Lincoln and Herndon used offices in that building from 1844 until 1852, when they rented space on the west side of the square in the building that had once housed Joshua Speed’s store. “Lincoln’s Law Offices in the Tinsley Building, 1843-1852,” Lincoln Lore, no. 1579 (September 1969), 1-3; Paul M. Angle, “Where Lincoln Practiced Law,” Lincoln Centennial Association Papers, 1927, 17-42.

<sup>12</sup> J. B. Bennett, “Abraham Lincoln: An Underwriter’s Reminiscences of the Great President,” The Insurance Monitor, January 1887, enclosed in Frank W. Ballard to John G. Nicolay, New York, 12 January 1887, Nicolay Papers, Library of Congress. In 1866, the Rev. Mr. Edwin S. Miller described the Tinsely Building office: “This room with two windows looking westward is about twenty-two feet square. It was furnished when I visited it with book-cases on two sides, and a long pine table in the centre.” Unidentified newspaper, 19 February 1867, typed copy, enclosed in Harry E. Pratt to Willard King, Springfield, 15 October 1952, David Davis Papers, Chicago History Museum.

<sup>13</sup> Notes for a law lecture, Basler, ed., Collected Works of Lincoln, First Supplement, 19.

an attorney.”<sup>14</sup> Gibson W. Harris, who served an apprenticeship in the Lincoln-Herndon law office during the mid-1840s, noted that an “attorney’s ‘den’ is about the last place for genial humor; for, except to a peculiarly constituted mind, the law is a dry and uninteresting study.”<sup>15</sup>

Some of the office drudgery fell to Harris, but most of it was performed by Herndon, who in 1857 described Lincoln as a “hoss” himself as “the runt of the firm and no ‘hoss.’”<sup>16</sup> As the runt, he “‘toted books,’ and ‘hunted up authorities’ for Lincoln,” who “detested the mechanical work of the office.”<sup>17</sup> Herndon claimed that he “made out his best briefs in the largest law cases and . . . Lincoln would argue his case from those briefs and get the credit for them” while the junior partner “was the power behind them.”<sup>18</sup> Attorney Albert Taylor Bledsoe remembered that Herndon, “with creditable zeal and industry, would collect all sorts of cases and authorities” for Lincoln, who “would make his selections, and prepare his arguments.”<sup>19</sup> The junior partner drafted pleadings and other papers for cases in the district courts, while Lincoln wrote them for supreme court

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<sup>14</sup> F. of Circleville, Ohio, “The Profession of the Law,” Western Law Journal 7 (1849): 109.

<sup>15</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, December 1903, 15. Herndon agreed with that assessment of the law. When arguing cases in court, he was often bored. “I am in our Sup[re]m[e] Court hearing discussed the difference between ‘tweedle dee and tweedle dum’ – a fine spun point over an absurdity woven out by some priest 1200 years gone by now,” he complained to a friend in 1859. “I hate the Law: it cramps me: it seems to me priestly barbarism.” Herndon to Theodore Parker, Springfield, 15 January 1859, Herndon-Parker Papers, University of Iowa.

<sup>16</sup> Herndon to Wendell Phillips, Springfield, 12 May 1857, Phillips Papers, Harvard University.

<sup>17</sup> Herndon to Ward Hill Lamon, Springfield, 6 March 1870, Lamon Papers, Huntington Library, San Marino, California. Gibson William Harris testified that Lincoln found the mechanics of the law “more or less irksome.” Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, January 1904, 11.

<sup>18</sup> “Lincoln’s Ingratitude,” Herndon-Weik Papers, Library of Congress.

<sup>19</sup> Albert Taylor Bledsoe, review of Ward Hill Lamon’s biography of Lincoln, The Southern Review 12 (April 1873): 332.

cases.<sup>20</sup> In addition, Herndon managed the office as well as writing wills, mortgages, contracts, deeds, and other documents requiring no litigation. Lincoln drummed up business for the firm with “commendable zeal and alacrity.”<sup>21</sup>

The Lincoln-Herndon partnership, formed in 1844 and lasting till Lincoln departed Springfield in 1861, was harmonious. The two men “never had a cross word – a quarrel nor any misunderstandings – however small.” According to Herndon, when Lincoln “did attach himself to man or woman he was warmly wrapt in the man or woman – nothing but demonstrations of dishonesty or vice could shake him.”<sup>22</sup> When other lawyers tried to supplant Herndon, Lincoln, rebuffed their overtures. Herndon’s fondness for liquor often landed him in trouble and embarrassed his partner, who characteristically overlooked this foible. Herndon said “in his treatment of me Mr. Lincoln was the most generous, forbearing, and charitable man I ever knew. Often though I yielded to temptation he invariably refrained from joining in the popular denunciation which, though not unmerited, was so frequently heaped upon me. He never chided, never censured, never criticized my conduct.”<sup>23</sup>

As senior partner, Lincoln did most of the interviewing and litigating.<sup>24</sup> He would question potential clients closely, trying to divine their motives. If, after patiently considering the facts, he thought the case was fair and winnable, he would say: “My

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<sup>20</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, November 1903, 11.

<sup>21</sup> Joseph Gillespie to Herndon, Edwardsville, 8 December 1866, Douglas L. Wilson and Rodney O. Davis, eds., Herndon’s Informants: Letters, Interviews and Statements about Abraham Lincoln (Urbana: University of Illinois Press, 1998), 508.

<sup>22</sup> Herndon to Caroline Dall, Springfield, 28 October 1866, Dall Papers, Massachusetts Historical Society.

<sup>23</sup> Weik, Real Lincoln, ed. Burlingame, 301.

<sup>24</sup> David Donald, Lincoln’s Herndon (New York: Knopf, 1948), 36-38.

friend you are in the right – [I] can so demonstrate it to the minds of the jury – send home the conviction to the mind of the court its legality and its justice. I have no reasonable doubt of this, but I advise you as a good man to go to your neighbor and say to him what you have done and ask him kindly but firmly to do justice & right. Then if he will not do it I'll make him."<sup>25</sup> He would also advise such clients, "Don't give me your strong points; they will take care of themselves. Tell me your weak points, and after that I can advise what is best to be done."<sup>26</sup>

If potential clients were merely pursuing a community quarrel, or had a weak case, or were acting out of avarice, hate, ill-will or malice, Lincoln would say: "My friend you are in the wrong – You have no justice and no equity with you – I would advise you to drop the matter."<sup>27</sup> James Judson Lord of Springfield once observed Lincoln earnestly say to "a young man, who stood, hat in hand, looking down rather dejectedly," that "there is no reasonable doubt but that I can gain your case for you; I can set a whole neighborhood at loggerheads; I can distress a widowed Mother and her six fatherless children, and thereby get for you six hundred Dollars which you seem to have a legal claim to; but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you. You must remember that some things that are legally right are not morally right. I shall not take your case – but I will give you a little advice for

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<sup>25</sup> William H. Herndon, "Analysis of the Character of Abraham Lincoln," lecture delivered at Springfield, 26 December 1865, Abraham Lincoln Quarterly 1 (1941): 427-28.

<sup>26</sup> Gibson William Harris, "My Recollections of Abraham Lincoln," Woman's Home Companion, January 1904, 14.

<sup>27</sup> Herndon, "Analysis of the Character of Lincoln," 427-28. A student in the Lincoln-Herndon law office recalled hearing the senior partner tell would-be clients, "You have no case; better settle." John H. Littlefield in Everywhere, February 1902, copied in the Los Angeles Times, 9 March 1902.



which I will charge you nothing[.] You seem to be a sprightly, energetic man, I would advise you to try your hand at making six hundred dollars in some other way.”<sup>28</sup>

Lincoln was equally candid when a potential client’s case seemed just but difficult to prove. Then he would say: “My friend – you are in the right but I don’t think your evidences are sufficiently strong, always allowing a little for exaggerations, when so made – to drive conviction home to the minds of the jury: I advise you to compromise; and if you can’t get this and can’t find other and further proofs, I advise you to drop the case.”<sup>29</sup>

Lincoln gave such advice often, for like many other antebellum attorneys, he viewed the role of peacemaker as the lawyer’s principal function.<sup>30</sup> He advised attorneys to “Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man.”<sup>31</sup> About one third of his cases were dismissed, many of them doubtless because of such counsel.<sup>32</sup> Characteristically, he told a client in Menard County: “I understand Mr. Hickox will go, or send to Petersburg tomorrow, for the purpose of meeting you to settle the difficulty about the wheat. I sincerely hope you will settle it. I think you can if you

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<sup>28</sup> Mrs. James Judson Lord in Walter B. Stevens, A Reporter’s Lincoln, ed. Michael Burlingame (1916; Lincoln: University of Nebraska Press, 1998), 188; Dr. James Judson Lord, interview with Herndon, [1865-66], Wilson and Davis, eds., Herndon’s Informants, 469. In the latter source, the informant is misidentified as A. F. Lord.

<sup>29</sup> Herndon, “Analysis of the Character of Lincoln,” 427-28.

<sup>30</sup> Mark E. Steiner, “The Lawyer as Peacemaker: Law and Community in Abraham Lincoln’s Slander Cases,” Journal of the Abraham Lincoln Association 16 (1999), 1-3.

<sup>31</sup> Notes for a law lecture, probably written ca. 1859, Basler, ed., Collected Works of Lincoln, 2:81-82.

<sup>32</sup> Lupton, “A. Lincoln Esquire,” 42.

will, for I have always found Mr. Hickox a fair man in his dealings. If you settle, I will charge nothing for what I have done, and thank you to boot. By settling, you will most likely get your money sooner; and with much less trouble & expense.”<sup>33</sup> He offered similar advice to a man in Canton: “I do not think there is the least use of doing any more with the law suit. I not only do not think you are sure to gain it, but I do think you are sure to lose it. Therefore the sooner it ends the better.”<sup>34</sup> When a student in his office asked why he did not charge clients whose cases were settled out of court, he replied: “They won’t care to pay me; they don’t think I have earned a fee unless I take the case into court and make a speech or two.”<sup>35</sup> His motto was “it is better to get along peaceably if possible” rather than litigate.<sup>36</sup> When John Foutch asked him to sue a dealer who had reneged on an agreement to sell him some cattle, Lincoln told him he had a strong case and then asked how old he was. Discovering that the potential client had just turned twenty-one, Lincoln urged him to drop the matter: “If you start out and win this suit, you will be running to me for a lawsuit every time any little disagreement comes up. John, don’t have it. John, you go home.” Foutch took the advice.<sup>37</sup>

An example of Lincoln’s ingenuity in acting as a peacemaker occurred in the mid-1840s when he was asked to sue a “crack-brained attorney,” John D. Urquhart, for \$2.50.

Lawyers in Springfield helped support the unfortunate Urquhart, who often borrowed

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<sup>33</sup> Lincoln to Abram Bale, Springfield, 22 February 1850, Basler, ed., Collected Works of Lincoln, 2:76.

<sup>34</sup> Lincoln to Haden Keeling, Springfield, 3 March 1859, Basler, ed., Collected Works of Lincoln, 3:371.

<sup>35</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, January 1904, 14.

<sup>36</sup> Lincoln to William Martin, Springfield, 6 March 1851, Basler, ed., Collected Works of Lincoln, 2:102.

<sup>37</sup> Foutch told this story to Judge Volney P. Mooney of El Dorado, Kansas, who in turn told it to his daughter, Corach Mooney Bullock of Wichita; she told it to a reporter. Clipping dated Wichita, Kansas, 12 February 1958, from an unidentified newspaper, Lincoln Museum, Fort Wayne, Indiana. In 1839, Foutch hired Lincoln and Stuart to collect a debt. Foutch v. Thomas et al. (1839), LPAL, case file #03264.

money without repaying it. A newcomer to town named Smith, unaware of the informal charity that kept poor Urquhart afloat, stormed into Lincoln's office one day insisting that he bring suit against Urquhart for a debt of \$2.50. Failing to dissuade the indignant Smith, Lincoln agreed to sue Urquhart but insisted on a \$10 fee, which was promptly given. With this cash in hand, he called on Urquhart, gave him \$5, and brought suit against him for \$2.50. The defendant confessed judgment and paid the \$2.50. "I couldn't see any other way of making things satisfactory to Mr. Smith and all concerned," Lincoln explained.<sup>38</sup>

When another client who wished to sue for a trivial sum rejected advice to drop the matter, saying he wanted to "show the blamed rascal up," Lincoln replied: "My friend, if you are going into the business of showing up every rascal you meet, you will have no time to do anything else the rest of your life."<sup>39</sup>

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In treating slander suits Lincoln was especially active in promoting social harmony.<sup>40</sup> Slander was traditionally a common law offense; in addition, the Illinois legislature had made it punishable with fines up to \$1000. The statute outlawed false accusations of adultery and fornication, and several of Lincoln's eighty-nine slander cases involved such charges.<sup>41</sup> In one, it was alleged that "Mrs. Beatty and Dr. Sullivan

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<sup>38</sup> Gibson William Harris, "My Recollections of Abraham Lincoln," Woman's Home Companion, January 1904, 15. John D. Urquhart was an attorney in antebellum Springfield, but there is no record of this case in LPAL.

<sup>39</sup> Lawrence Beaumont Stringer, "From the Sangamon to the Potomac: More Light on Abraham Lincoln," typescript of an unpublished manuscript, p. 95, Edgar Dewitt Jones Papers, Detroit Public Library.

<sup>40</sup> Steiner, "The Lawyer as Peacemaker," passim.

<sup>41</sup> LPAL, "A Statistical Portrait."

were seen together in Beatty’s stable, one morning, very early, in the very act.”<sup>42</sup> In another, a woman accused a man of boasting that he had known her carnally and claiming that she “has been fucked more times than I’ve got fingers and toes for damned if it aint so big I can almost poke my fist in[.]”<sup>43</sup> Charles Cantrall and his wife alleged that she had been slandered by John Primm, who reportedly stated that “William King screwed Charles Cantrall’s wife twice while he was gone, and before that he crawled in bed with her and her husband and screwed her.”<sup>44</sup> James Ellison, a minister, was accused of having sexual relations with a woman whom he kept in the woods for a time until his wife discovered the secret and ended the affair.<sup>45</sup> One of Lincoln’s clients denounced a woman as “a base whore” and “a nasty stinking strumpet” and said he could “prove it by the Nances. They have rode her in the corner of the fence many a time.”<sup>46</sup>

Bestiality was alleged in some of Lincoln’s slander suits. Newton Galloway declared that William Torrence “caught my old sow and fucked her as long as he could” and “knocked up my old sow and it [is] now bellying down and will soon have some young bills.”<sup>47</sup> Another client of Lincoln’s supposedly “did have sexual intercourse with or carnal knowledge of a cow,” and yet another reputedly “has been caught frigging a bitch.”<sup>48</sup>

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<sup>42</sup> Pleading by Lincoln in case of Beatty et ux. v. Miller et ux. (1845), LPAL, case file #02643.

<sup>43</sup> Narratio, p. 5, in Martin v. Underwood (1857-58), LPAL, case file #01953.

<sup>44</sup> Declaration in Cantrall v. Prim (1849), LPAL, case file #03010.

<sup>45</sup> Ellison v. Bohannan (1839-40), LPAL, case file #02721.

<sup>46</sup> Mitchell et ux. v. Mitchell (1852), LPAL, case file #00673.

<sup>47</sup> Declaration in Torrance v. Galloway (1847-48), LPAL, case file #01595.

<sup>48</sup> Plea in Thompson v. Henline (1851-52), LPAL, case file #01689; plea in Davidson v. McGhilton (1852), LPAL, case file #01753.

Racial prejudice appeared in some slander cases. A client of Lincoln's was accused of "having criminal sexual intercourse" and "open & shameful criminal intercourse & base prostitution" with a black man and "raising a family of illegitimate children by said negro."<sup>49</sup> Another client, William Dungey, alleged that Joseph Spencer had been wrongfully accused him of being a black man.<sup>50</sup> In presenting this case to the jury, Lincoln was, as the one of the opposing counsel recalled, "both entertaining and effective. A dramatic and powerful stroke was his direct reference to Spencer's accusation that Dungey was a 'nigger.' It had a curious touch of the ludicrous by his pronunciation of a word which, instead of detracting, seemed to add to the effect. I hear him now as he said: 'Gentlemen of the jury, my client is not a negro, though it is no crime to be a negro. His skin may not be as white as ours, but I say he is not a negro, though he may be a Moor.'" On Spencer's defense team was Clifton H. Moore, a resident of the town where the case was being tried.<sup>51</sup>

Other offenses that were charged in Lincoln's slander cases included theft, perjury, larceny, forgery, fraud, murder, drunkenness, and operating a whore house.<sup>52</sup> Often Lincoln mediated slander cases. He would sometimes persuade a defendant to admit guilt if the plaintiff would agree to remit the monetary settlement, minus court costs. On other occasions, he persuaded his client to acknowledge the plaintiff's good character and reputation or to convince the plaintiff to drop charges.<sup>53</sup>

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<sup>49</sup> Declaration in Patterson et ux. v. Edwards et ux. (1843-44), LPAL, case file #00804.

<sup>50</sup> Dungey v. Spencer (1855), LPAL, case file #02721.

<sup>51</sup> Lawrence Weldon, "Reminiscences of Lincoln as a Lawyer," in William Hayes Ward, Abraham Lincoln, Tributes from His Associates: Reminiscences of Soldiers, Statesmen, and Citizens (New York: Thomas Y. Crowell, 1895), 246.

<sup>52</sup> LPAL.

<sup>53</sup> Steiner, "The Lawyer as Peacemaker," 14-22.

The most celebrated example of Lincoln's mediation in a slander suit was the case involving a Catholic priest, Charles Chiniquy, proprietor of the community of St. Ann's in Kankakee County. (After the Civil War, Chiniquy was to achieve notoriety by charging that Jesuits had plotted Lincoln's assassination.)<sup>54</sup> In 1855, he was sued for calling the proprietor of a nearby settlement a perjurer. As the trial date approached, the plaintiff and defendant, as well as the two communities where they resided, girded for a bitter fight. Because feeling ran so high, a change of venue was ordered, and the trial took place in Champaign County. Many partisans of the principals flocked there, filling the hotels. The first time the case was tried, it was dismissed when a juror was excused because his child became deathly ill. A second trial ended in a hung jury. Lincoln, who "abhorred that class of litigation," so dreaded the prospect of yet another trial, with all the attendant "trouble, heart-burning and expense," that he "made most strenuous and earnest efforts to compromise the case," and after using "his utmost influence with all parties," ultimately succeeded.<sup>55</sup>

Akin to slander suits were libel cases. In 1851, Lincoln represented his Whig friend and colleague, William H. Fithian, who successfully sued George W. Casseday for falsely claiming that Fithian had abandoned his wife's corpse. The court awarded damages of \$547.90. Thereafter, Casseday declared on his personal property tax schedule

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<sup>54</sup> Joseph George, Jr., "The Lincoln Writings of Charles P. T. Chiniquy," Journal of the Illinois State Historical Society 69 (1976): 17-25.

<sup>55</sup> Spink v. Chiniquy (1855-56), LPAL, case file #01448; Whitney, Life on the Circuit, ed. Angle, 73-75, 144-45. See also Wilson and Davis, eds., Herndon's Informants, 649-50.

that among his possessions was the “character of Dr. Fithian, \$547.90, which I bought and paid for.”<sup>56</sup>

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Lincoln also sought to promote harmony in handling divorces, which he found disagreeable.<sup>57</sup> Toward the end of his life he said: “I learned a great many years ago, that in a fight between man and wife, a third party should never get between the woman’s skillet and the man’s ax-helve.”<sup>58</sup> And yet he and his partners did participate in 145 divorce actions, of which 88 were tried in Sangamon County. That constituted 40% of all such cases heard there between 1837 and 1860. Females brought nearly two-thirds of them. Desertion was the most common complaint alleged by women; few charged their husbands with bigamy, impotence, or felonious conviction. Adultery was alleged more or less equally between the sexes. Lincoln’s willingness to take on so many cases illustrates his solicitude for women, for usually male defendants would not contest a divorce. His motive could hardly have been mercenary, for there was little money to be made; deserter-husbands were hard to find and dun for fees. Moreover, most women who filed for divorce did not have to pay lawyers’ fees and court costs.<sup>59</sup>

His concern for women’s feelings was manifested in the 1838 case of Samuel Rogers vs. Polly Rogers. As counsel for the husband, Lincoln urged him not to persist in

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<sup>56</sup> Fithian v. Casseday (1851), case file #01891, LPAL; Willard L. King, Lincoln’s Manager: David Davis (Cambridge: Harvard University Press, 1960), 81-82; Donald G. Richter, Lincoln: Twenty Years on the Eastern Prairie (Mattoon, Illinois: United Graphics, 1999), 98-110.

<sup>57</sup> Weik, Real Lincoln, ed. Burlingame, 148; Stacy Pratt McDermott, “Dissolving the Bonds of Matrimony: Women and Divorce in Sangamon County, Illinois, 1837-60,” in Daniel W. Stowell, ed., In Tender Consideration: Women, Families, and the Law in Abraham Lincoln’s Illinois (Urbana: University of Illinois Press, 2002), 71-103; Daniel W. Stowell, “Her Day in Court: The Legal Odyssey of Clarissa Wren,” ibid., 204-27.

<sup>58</sup> David Ross Locke, in Allen Thorndike Rice, ed., Reminiscences of Abraham Lincoln by Distinguished Men of His Time (New York: North American Review, 1888), 451.

<sup>59</sup> McDermott, “Dissolving the Bonds of Matrimony,” 94-97.

alleging adultery in the complaint (which he had done originally) because the divorce could easily be won on grounds of desertion.<sup>60</sup> When the court saddled Rogers with heavy alimony payments, he appealed the decision, arguing that his complaint “was muted” simply because of “tenderness to the said defendants [i.e., his wife’s] character.”<sup>61</sup>

Another example of Lincoln’s tender feelings for a woman was a divorce case in Tazewell County. Lincoln’s client was a “very pretty refined & interesting” woman whose husband “was a rather gross, morose, querulous, fault finding, cross, & uncomfortable person, entirely unfitted for the husband of such a woman.” Lincoln “was able to prove the use of very offensive & vulgar epithets applied by him to his wife, & all sorts of annoyances, but no such acts of personal violence assigned [as required?] by the statute to justify divorce. He did the best he could & appealed to the jury to have compassion on the woman & not bind her to such a man & such a life as awaited her, as the wife of such a man. The jury took about this same view of it in their deliberations. They desired to find for her, but could find no evidence which would really justify a verdict for her; and drew up a verdict for the defendant and all signed but one, who when asked to do so, said, ‘gentlemen, I am going to lie down to sleep, & when you get ready to give a verdict for that woman, wake me up, for before I will give a verdict — against her, I will lie here until I rot, & the pis-mires carry me out of the Keyhole.’”<sup>62</sup>

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<sup>60</sup> The wife had been away for over two years. Rogers v. Rogers (1838-39), LPAL, case file #04460; Weik, Real Lincoln, ed. Burlingame, 149; McDermott, “Dissolving the Bonds of Matrimony,” 95-96.

<sup>61</sup> Affidavit of 20 October 1838 by Rogers, in the handwriting of Lincoln, Rogers v. Rogers (1838-39), LPAL, case file #04460.

<sup>62</sup> Grant Goodrich to Herndon, Chicago, 9 December 1866, Wilson and Davis, eds., Herndon’s Informants, 510. Lincoln represented parties in five divorce cases in Tazewell County, none in 1850, when Goodrich said this case took place. LPAL.



Lincoln did not always side with women in such matters; he represented an odious man in a precedent-setting custody case which saw Illinois courts move away from the common law tradition that children were the property of their fathers.<sup>63</sup> Ann Cowls had divorced her husband, Thomas Cowls, who she charged was “negligent of the education and moral welfare of the children, and addicted to excessive and frequent intoxications, and . . . in the habit of quarreling with [the woman he was living with] in the presence of the children, and driving her from home.” Moreover, he “habitually uses profane, indecent, immoral, and vulgar language as well in the presence of the children as elsewhere, and is in other respects wholly disqualified from educating the children in a respectable and moral manner.” After the divorce, he had retained custody of their children, in keeping with common law tradition. Ann Cowls subsequently alleged that her former husband was living “in a state of fornication” with “a woman of notoriously bad character” who was “unqualified in any manner for the proper care of and education” of children. In awarding her custody, the Illinois Supreme Court ignored Lincoln’s arguments and stressed the best-interests-of-the-child doctrine, which was to influence subsequent cases of child welfare in Illinois.<sup>64</sup> In so ruling, the court characterized Lincoln’s client unflatteringly: “Here we have grouped together into one disgusting and revolting picture, those features of a father’s character who has become unworthy of the charge of his own offspring.”<sup>65</sup> This case illustrates Gibson Harris’s observation that in a law office “the tendency to believe in total depravity is depressingly strong, such is the

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<sup>63</sup> Cowls v. Cowls (1845-46), LPAL, case file #01617.

<sup>64</sup> Dennis E. Suttles, “‘For the Well-Being of the Child’: The Law and Childhood,” in Stowell, ed., In Tender Consideration, 54-56.

<sup>65</sup> Dan W. Bannister, Lincoln and the Illinois Supreme Court (Springfield, Illinois: n.p., 1995), 134.

somber light in which human nature frequently shows itself in the confidings of client to counsel.”<sup>66</sup>

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Herndon believed that Lincoln was a better appellate lawyer than circuit court attorney.<sup>67</sup> Trial lawyers, Herndon maintained, must have “quickness – sharpness – versatility of mind – a mind that can move and leap here and there as occasions & contingencies quickly demand and quickly form accurate judgments. Technical, quick, analytic – sagacious – cunning minds – cold, heartless – conscienceless men succeed in the circuit courts in bad cases and good alike.” Lincoln, in his partner’s view, did not fit that description.<sup>68</sup>

Few colleagues at the bar agreed with Herndon’s conclusion. Usher Linder thought Lincoln’s “greatest forte was as a lawyer – and I don[‘]t know whether he was strongest before the Judge or the Jury – I certainly never asked to have him against me.”<sup>69</sup> Isaac N. Arnold considered Lincoln “relatively stronger before the jury than with the Court.” Arnold told fellow attorneys that Lincoln was “the strongest jury-lawyer we ever had in Illinois.” He could “compel a witness to tell the truth when he meant to lie. He could make a jury laugh, and, generally, weep, at his pleasure.” A “quick and accurate reader of character,” Lincoln “understood, almost intuitively, the jury, witnesses, parties, and judges, and how best to address, convince, and influence them.” Lincoln had a knack

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<sup>66</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, December 1903, 15. Herndon observed that a “law office is a dry place for incidents of a pleasing kind.” Herndon to Weik, Springfield, 18 February 1887, Herndon-Weik Papers, Library of Congress.

<sup>67</sup> On Lincoln’s appellate work, see Dan W. Bannister, Lincoln and the Illinois Supreme Court and Lincoln and the Common Law (Springfield: Human Services Press, 1992).

<sup>68</sup> Herndon, “Analysis of the Character of Abraham Lincoln,” 430.

<sup>69</sup> Linder to Joseph Gillespie, Chicago, 8 August 1867, Gillespie Papers, Chicago History Museum.

for “conciliating and impressing every one in his favor.” If visitors unfamiliar with either Lincoln or the case should wander into the courtroom, they would soon find themselves “involuntarily on his side, and wishing him success” for Lincoln’s “manner was so candid, so direct” that “the spectator was impressed that he was seeking only truth and justice.” Arnold never heard any attorney outstrip Lincoln “in the statement of his case. However complicated, he would disentangle it, and present the turning point in a way so simple and clear that all could understand.” In fact, “his statement often rendered argument unnecessary, and often the Court would stop him and say, ‘If that is the case, we will hear the other side.’ He had, in the highest possible degree, the art of persuasion and the power of conviction. His illustrations were often quaint and homely, and always clear and apt, and generally conclusive. He never misstated evidence, but stated clearly, and met fairly and squarely his opponent’s case. His wit and humor, and inexhaustible stores of anecdote, always to the point, added immensely to his power as a jury-advocate.”<sup>70</sup>

Hiram W. Beckwith, who observed Lincoln practice in Danville, also believed that he “had no superior before a jury.” Beckwith called him “an admirable tactician, ready for the surprises and turns of a trial, and quick to change his line of attack or defense as emergency required. He was an adept, both as aggressor and at retort, in the badinage and sparrings of counsel that spice the course of a trial.” When necessary, “he gave and took hard blows, though rarely in anger, and apparently enjoyed the rough and tumble contests at nisi prius.” Because he was careful not to bore juries, he made few notes during a trial. “Notes are a bother, taking time to make, and more to hunt them up

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<sup>70</sup> Arnold, “Reminiscences of the Illinois-bar Forty Years Ago,” 20, 22.

afterward,” he told Beckwith. “Lawyers who do so soon get the habit of referring to them so much that it confused and tired the jury.” For the same reason, he would not read to jurors from statutes or quote authorities; rather, he would turn to opposing counsel or to the bench and say to the jury, “These gentlemen will allow, or the Judge, if need be, will tell you, that the law of the case is thus or so,” and summarize the relevant statute in clear, simple language. According to Beckwith, Lincoln “relied on his well-trained memory that recorded and indexed every passing detail. And by his skillful questions, a joke, or pat retort, as the trial progressed, he steered his jury from the bayous and eddys of side issues and kept them clear of the snags and sandbars, if any were put in the real channel of his case.” Lincoln was not, Beckwith recounted, “emotional and dramatic” like some colleagues on the circuit; he lacked “grace, music; nor were his thoughts set to words . . . in harmonic measure.” His “shrill voice, in its higher tones, his stooping form, and long arms swinging about” made a poor first impression. “But all this either eluded notice, or was quickly forgot in the spell that radiated [from] his wonderful face and in the force of the words that came from his earnest lips.” A casual observer “at once became an interested listener, and Mr. Lincoln’s array of the law and fact was so easy, apt, and original that one was quickly in the drift of his argument and borne on by it fascinated to the end.” Beckwith disagreed with those who maintained that Lincoln “in his earlier career was a mere ‘case lawyer.’” To the contrary, “few, if any, practitioners were better, if as well, grounded in the elementary principles of the law. His knowledge of these, as well as the very reason for them, was so well mastered that he seemed to apply them to individual ‘cases’ as if by intuition.” At that time, “law libraries were limited mostly to text books. Precedents of ‘cases’ reported from the higher courts” were

relatively few. “Personal rights and remedies then lay more in the ‘common law of the land’ and less in statutory enactments. A mere ‘case lawyer’ would have had little chance either with Mr. Lincoln or his associates in the practice.”<sup>71</sup>

Henry C. Whitney thought that only Stephen T. Logan outshone Lincoln on the circuit, and Judge Thomas Drummond considered Lincoln among “the most successful jury lawyers we have ever had in the State [of Illinois].” Whitney recalled that Lincoln offered “clear statements of his facts and points, and argued his cases with great force and frequently with aggressiveness and pugnacity.” In the “rough-and-tumble practice on the circuit, where advocacy was relied on rather than exact knowledge or application of legal principles,” Lincoln was “especially effective.”<sup>72</sup> Orlando B. Ficklin, an attorney in Charleston, reported that Lincoln “was a strong, sensible speaker, of keen discernment, and was at his best before a jury. He could present his points in a stately array. He had a fashion of pointing at the jury with his long bony forefinger of his right hand. There seemed to be something magnetic always about that finger.”<sup>73</sup> That digit seemed to ask, “Don’t you see?”<sup>74</sup> Leonard Swett judged that Lincoln as a trial lawyer “had few equals and no superiors. He was as hard a man to beat in a closely contested case as I have ever met. He was wise in knowing what to attempt and what to let alone. . . . He was wise as a

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<sup>71</sup> Hiram W. Beckwith, “Lincoln: Personal Recollections of Him, His Contemporaries and Law Practice in Eastern Illinois,” Chicago Tribune, 29 December 1895. On Beckwith and his relations with Lincoln, see Richter, Lincoln: Twenty Years on the Eastern Prairie.

<sup>72</sup> Henry C. Whitney, Lincoln the Citizen, vol. 1 of A Life of Lincoln, ed. Marion Mills Miller (2 vols.; New York: Baker & Taylor, 1908), 173; Whitney, Life on the Circuit, ed. Angle, 235; Drummond, speech delivered from the bench of the U.S. Circuit Court in Chicago, undated clipping, Otto Eisenschiml Scrapbooks, University of Iowa.

<sup>73</sup> Stevens, A Reporter’s Lincoln, ed. Burlingame, 163.

<sup>74</sup> S. Wesley Martin, quoted in Charles Washington Moores, “Abraham Lincoln, Lawyer,” Indiana Historical Society Publications 7 (1922): 502.

serpent in the trial of a case, but I tell you I have got too many scars from his blows to certify that he was harmless as a dove.”<sup>75</sup>

James S. Ewing of Bloomington, who often heard Lincoln in court, regarded him as “a master in all that went to make up what was called a ‘jury lawyer.’ His wonderful power of clear and logical statement seemed the beginning and the end of the case. After his statement of the law and the facts in any particular case, we wondered either how the plaintiff came to bring such a suit or how the defendant could be such a fool as to defend it. By the time the jury was selected, each member of it felt that the great lawyer was his friend and was relying upon him as a juror to see that no injustice was done.”<sup>76</sup> His voice “would always command the attention of an audience or of a jury.”<sup>77</sup>

Lincoln’s great height helped him win cases. “No jury could withstand him when he got close to it, with his lank form half bent over and talking as man to man, as if beseeching for a just verdict,” a lawyer recalled. On occasion his dress enhanced his stature. A friend reported that one day Lincoln entered the court room “dressed in a perfectly-fitting suit of the finest black broadcloth, ample and spotless neckwear, polished shoes, and a well groomed black silk hat. His appearance was most impressive and every one felt it. He spoke for nearly two hours in a quiet but very earnest manner. Every word he uttered went strong home, and his enunciation was as clear as a bell. His truly imposing stature, for he looked at least seven feet high, his manner and his clothes, united with what he said, not only won his case but left a memory never forgotten by all

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<sup>75</sup> Lecture by Swett, delivered in Chicago, 20 February 1876, Chicago Times, 21 February 1876. See also Whitney, Life on the Circuit, ed. Angle, 181, for a similar version of this story.

<sup>76</sup> James S. Ewing, speech at Bloomington, 12 February 1909, in Isaac N. Phillips, ed., Abraham Lincoln by Some Men Who Knew Him, ed. Paul M. Angle (1910; Chicago: Americana House, 1950), 39.

<sup>77</sup> Stevens, A Reporter’s Lincoln, ed. Burlingame, 61.

who heard him.” No other lawyer “could carry himself with such a combined effect, and win when he was really interested. He was master of every word, gesture, body movement, and inflection of voice, and it was irresistibly soft and appealing at times, just like that of a woman.” In addition, he radiated a magical ““something”” that spread “a glow over the whole man, which no one has defined.” That “something” he “displayed with a measure and dignity quite on a par with anything he ever did or said.”<sup>78</sup>

Long experience before juries made Lincoln somewhat cynical about them. In 1863 he wrote that “a jury can scarcely be empanelled, that will not have at least one member, more ready to hang the panel than to hang the traitor.”<sup>79</sup>

Judge John M. Scott thought that Lincoln “had many elements essential to the successful circuit lawyer,” for he “knew much of the law as written in the books, and had that knowledge ready for use at all times. That was a valuable possession in the absence of law books, where none were obtainable on the circuit.” In addition, he “knew right and justice and knew how to make their application to the affairs of every day life. That was an element in his character that gave him power to prevail with the jury when arguing a case before them. Few lawyers ever had the influence with a jury, Mr. Lincoln had.” Especially remarkable was his “talent for examining witnesses – with him it was a rare gift. It was a power to compel a witness to disclose the whole truth,” even one “at first unfriendly” would “under his kindly treatment” eventually “become friendly” and “wish to tell nothing he could honestly avoid against him, if he could state nothing for him.”<sup>80</sup>

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<sup>78</sup> Truman H. Bartlett, “The Cooper Institute Portrait of Abraham Lincoln,” pp. 25, 33-34, typescript, Bartlett Papers, Boston University.

<sup>79</sup> Draft of Lincoln’s public letter to Erastus Corning et al., Washington, [12 June 1863], Lincoln Papers, Library of Congress.

<sup>80</sup> Scott, “Lincoln on the Stump and at the Bar.”

Helping to sway jurors was his lack of egotism, a quality at the core of Lincoln's personality.<sup>81</sup> According to Judge Scott, "No lawyer on the circuit was more unassuming than was Mr. Lincoln. He arrogated to himself no superiority over any one – not even the most obscure member of the bar. He treated every one with that simplicity and kindness that friendly neighbors manifest in their relations with each other." This modesty characterized his treatment of judges and juries as well as colleagues. Scott maintained that "before a jury or before a court Mr. Lincoln was always logical and usually seemingly candid. Much of the force of his argument lay in his logical and concise statement of the facts of a case. When he had in that way secured a clear understanding of the facts, the jury and the court would seem naturally to follow him in his conclusions as to the law of the case. His simple and natural presentation of the facts seemed to give the impression, the jury were themselves making that statement. He had the happy and unusual faculty of making the jury believe they – and not he – were trying the case. In that mode of presenting a case he had few if any equals. An attorney makes a grave mistake if he puts too much of himself into his argument before the jury or before the court. Mr. Lincoln kept himself in the background and apparently assumed nothing more than to be an assistant counsel to the court or the jury on whom the primary responsibility for the final decision of the case in fact rested. That mode of arguing a case is most satisfactory – especially with a jury who dislike to be ignored as though they constituted no part of the court."<sup>82</sup>

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<sup>81</sup> See Norman A. Graebner, "Lincoln's Humility," in Ralph G. Newman, ed., Lincoln for the Ages (Garden City, New York: Doubleday, 1960), 384-89.

<sup>82</sup> Scott, "Lincoln on the Stump and at the Bar."



Also useful in winning over juries was Lincoln's legendary talent as a story-teller. Early on he acquired a reputation for that talent. As a young attorney, Lincoln would often drop by the court clerk's office to socialize with colleagues. It was, Milton Hay remembered, "always a great treat when Lincoln got amongst us – we would always be sure to have some of those stories of his for which he had already got a reputation." (Hay read law at Lincoln's office at night and helped him by copying briefs and declarations. A cheerful, tobacco-chewing, imposing figure with a forehead like Daniel Webster's, Hay became a leading member of the Illinois bar.)<sup>83</sup> "Not infrequently Mr. Lincoln would illustrate his legal arguments with an appropriate story or anecdote," Judge Scott recalled. "That line of legal argument with many lawyers would be a most dangerous experiment but it never failed with Mr. Lincoln. When he chose to do so he could place the opposite party and his counsel too for that matter in a most ridiculous attitude by relating in his inimitable way a pertinent story. That often gave him a great advantage with the jury." Scott cited the example of a young attorney who "had brought an action in trespass to recover damages done to his client's growing crops by defendant's hogs. The right of action under the law of Illinois as it was then depended on . . . whether the plaintiff's fence was sufficient to turn ordinary stock. There was some little conflict in the evidence on that question but the weight of the testimony was decidedly in favor of plaintiff and sustained beyond all doubt his cause of action. Mr. Lincoln appeared for a defendant. There was no controversy as to the damage by defendant's stock. The only thing in the case that could possibly admit of any discussion was the condition of plaintiff's fence and

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<sup>83</sup> Milton Hay interviewed by John G. Nicolay, Springfield, 4 July 1875, in Michael Burlingame, ed., An Oral History of Abraham Lincoln: John G. Nicolay's Interviews and Essays (Carbondale: Southern Illinois University Press, 1996), 25-28; Clark E. Carr, The Illini: A Story of the Prairies (8<sup>th</sup> ed.; Chicago: A. C. McClurg, 1912), 138.

as the testimony on that question seemed to be in favor of plaintiff and as the sum involved was little in amount, Mr. Lincoln did not deem it necessary to argue the case seriously but by way of saying something in behalf of his client he told a little story about a fence that was so crooked that when a hog went through an opening in it, invariably it came out on the same side from whence it started. His description of the confused look of the hog after several times going through the fence and still finding itself on the side from where it had started was a humorous specimen of the best story telling. The effect was to make plaintiff's case appear ridiculous and while Mr. Lincoln did not attempt to apply the story to the case, the jury seemed to think it had some kind of application to the fence in controversy – otherwise he would not have told it and shortly returned a verdict for defendant. Few men could have made so much out of so little a story. His manner of telling a story was most generally better than the story itself. He always seemed to have an apt story on hand for use on all occasions. If he had no story in stock he could formulate one instantly so pertinent it would seem he had brought it into service on many previous occasions. It is believed he had never heard before, many of the mirth provoking stories he told at the bar, on the rostrum and elsewhere but formulated them for immediate use. That is a talent akin to the power to construct a parable – a talent that few men possess.”<sup>84</sup>

Lincoln once recited a story while defending a client accused of assault and battery. The fellow had been insulted and bodily attacked by the plaintiff, who was trounced after initiating hostilities. Lincoln “told the jury that his client was in the fix of a man who, in going along the highway with a pitchfork on his shoulder, was attacked by a

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<sup>84</sup> Scott, “Lincoln on the Stump and at the Bar.”

fierce dog that ran out at him from a farmer's door-yard. In parrying off the brute with the fork its prongs stuck into the brute and killed him.

“‘What made you kill my dog?’ said the farmer.

“‘What made him try to bite me?’

“‘But why did you not go at him with the other end of your pitchfork?’

“‘Why did he not come after me with his other end?’

“At this Mr. Lincoln whirled about in his long arms an imaginary dog and pushed its tail end toward the jury. Thus was the defensive plea of ‘son assault demesne’ – loosely, that ‘the other fellow brought on the fight,’ quickly told, and in a way that the dullest mind would grasp and retain.”<sup>85</sup> (This story appeared in a 1739 compilation, Joe Miller's Jests, a copy of which Lincoln received from Judge Samuel Treat, who said that the Springfield attorney “evidently learned its entire contents, for he found Lincoln narrating the stories contained therein around the circuit, but very much embellished and changed, evidently by Lincoln himself.”)<sup>86</sup>

Lincoln told another story when replying to an opposing counsel who had offered two arguments that cancelled each other out. Lincoln said this reminded him of “the cooper who, having trouble in closing up a barrel, put a boy inside to hold the head in place. The plan worked so well that the cooper drove on the hoops and finished the job, forgetting all about the boy or how he was to be gotten out.”<sup>87</sup>

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<sup>85</sup> Hiram W. Beckwith, “Lincoln: Personal Recollections of Him, His Contemporaries and Law Practice in Eastern Illinois,” Chicago Tribune, 29 December 1895.

<sup>86</sup> Paul M. Zall, ed., Abe Lincoln Laughing: Humorous Anecdotes from Original Sources by and about Abraham Lincoln (Berkeley: University of California Press, 1982), 118-19; Treat told this to Henry C. Whitney. Whitney, Life on the Circuit, ed. Angle, 179. Lincoln also told Whitney that John S. Hacker of Union County, whom he had known in the legislature, was the source of almost all his funny stories. Ibid.

<sup>87</sup> Hiram W. Beckwith, “Lincoln: Personal Recollections of Him, His Contemporaries and Law Practice in Eastern Illinois,” Chicago Tribune, 29 December 1895. During the Civil War, Francis B. Carpenter heard

Lincoln also enjoyed relating an account of a client accused of stealing pigs. Offering no defense, he simply instructed Lincoln to argue the case on general principles and not to worry. Despite abundant evidence of his guilt, the man was acquitted by the jury. Puzzled, Lincoln asked for an explanation. Admitting that he had stolen the porkers, the client revealed that he had sold the pigs at cut-rate prices to members of the jury, who feared that if they delivered a guilty verdict, they would have to return the pigs to the rightful owner.<sup>88</sup>

Lincoln was most inclined to tell stories when he and his client stood on shaky ground. He “never indulged in fun when he had a great case – one which he believed was right – then he argued simply but if his case were weak he would tell stories, cover his opponent, the witness etc with ridicule, keep court & jury shrieking with laughter, but when he was sure, he was grave.”<sup>89</sup> An example was his defense of a wealthy, pro-southern colonel who had administered “a severe cowhiding” to an antislavery editor on the streets of Jacksonville. The editor, who brought suit for \$10,000, hired a lawyer who in court “pictured till it could be felt, the odium and disgrace” his client had suffered, “which he declared was worse than death. He wept and made the jury and spectators weep. The feeling in the court house was roused to the highest pitch of indignation against the perpetrator of such an outrage.” Lincoln’s client seemed doomed to pay the huge amount asked for. When Lincoln’s turn to speak came, he “dragged his huge feet off the table on the top of which they had been calmly resting, set them on the floor;

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Lincoln tell this story. Carpenter, Six Months at the White House with Abraham Lincoln: The Story of a Picture (New York: Hurd and Houghton, 1868), 25.

<sup>88</sup> “Notes of a Law Story,” in Herndon’s hand, Herndon-Weik Papers, Library of Congress. This case reportedly was tried in Coles County around 1850.

<sup>89</sup> W. H. Hodge told this to Charles L. Capen, who in turn related it to William E. Barton. Interview with Capen in Bloomington, n.d., Barton Papers University of Chicago.

gradually lifted up and partly straightened out his great length of legs and body and took off his coat.” As he did so, his gaze “very intently” focused on a piece of paper upon the table. “Scrutinizing it closely and without having uttered a word, he broke out into a loud, long, peculiar laugh, accompanied by his most wonderfully funny facial expression.” Everyone in the court room grinned as he laid the paper down, removed his tie, then laughed once again. This produced tittering among the spectators. Continuing to disrobe, he took off his vest, again inspected the paper, and laughed once more. At this point everyone in court “broke out into a long, loud continued roar.” When he finally addressed the court, Lincoln apologized for his undignified behavior and “explained that the damages as claimed was at first written \$1,000. He supposed the plaintiff afterwards had taken a second look at the colonel’s pile and had thereupon concluded that the wounds to his honor were worth \$10,000.” This argument undid the effect of the editor’s attorney and led the jury to award damages of only \$300.<sup>90</sup>

A juryman before whom Lincoln conducted a case recalled that the attorney “knew nearly every juror, and when he made his speech he talked to the jurors, one at a time, like an old friend who wanted to reason it out with them and make it as easy as possible for them to find the truth.” Lincoln “never talked long. In stating a disputed proposition he would say, not, ‘This is the way it is,’ but ‘This is the way it seems to me,’ thus allowing for an honest difference of opinion.”<sup>91</sup>

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<sup>90</sup> Selby v. Dunlap (1853-54), case file #00871, LPAL; A[bram] Bergen, “Abraham Lincoln as a Lawyer,” American Bar Association Journal 13 (1926): 392; reminiscences of Bergen in James L. King, “Lincoln’s Skill as a Lawyer,” North American Review 166 (February 1898): 190-91. As an adolescent, Bergen (1836-1906), who served as Illinois state attorney for the twenty-third district, observed this trial.

<sup>91</sup> Felix Ryan of Lincoln, Illinois, and John Strong of Atlanta, Illinois, quoted in Moores, “Abraham Lincoln, Lawyer,” 509.

Herndon reported that Lincoln before a jury “was awkward, angular, ungainly, odd and, being a very sensitive man, I think that it added to his awkwardness . . . . Sometimes his hands, for a short while, would hang by his side . . . . He used his head a great deal in speaking, throwing or jerking or moving it now here and now there, now in this position and now in that, in order to be more emphatic, to drive the idea home.” He “never beat the air, never sawed space with his hands, never acted for stage effect; was cool, careful, earnest, sincere, truthful, fair, self-possessed, not insulting, not dictatorial; was pleasing, good-natured; had great strong naturalness of look, pose, and act.” As he proceeded, Lincoln “gently and gradually warmed up; his shrill, squeaking, piping voice became harmonious, melodious, musical, if you please, with face somewhat aglow; his form dilated, swelled out, and he rose up a splendid form, erect, straight, dignified.”<sup>92</sup>

When arguing a case before a jury, Lincoln shrewdly conceded much to opposing counsel. A colleague at the bar, James C. Robinson, recalled that Lincoln “had the manner of treating his antagonist with such perfect fairness, as to make the jury and bystanders think that he could not be induced to take advantage of him – a manner which was the hell-firedest lie that was ever acted, because the very fairness he assumed was an ambushade to cover up a battery, with which to destroy the opposing counsel, and so skillfully laid, too, that after it had done its work, only occasionally would the defeated party, and almost never would the uninitiated, discover the deception.” Lincoln, said Robinson, “possessed this power to a degree beyond that of any lawyer I ever knew and he used it to such an extent that it was his very strongest weapon in the trial of a case.”

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<sup>92</sup> Herndon to Truman Bartlett, Springfield, 19 July 1887, Bartlett Papers, Massachusetts Historical Society.

Robinson gave a generalized example of Lincoln's cross-examination technique: "If he were defending a case, after the jury were empanelled, he would give the very closest attention to the opening statement by the plaintiff's attorney – indeed, as if he had never heard of the case before. When the plaintiff's attorney had finished, he would, quite likely, open his statement of the case something after this manner:

"Gentlemen of the jury I have been quite interested in Mr. A's remarks concerning this action. What he says about it is, in the main, correct. It is evident that he has given much study and attention to it – more, I have no doubt, than I have, because I find he is more familiar with the details of it than I am. He has stated several features of the case of which I was not before aware, but my client tells me they are true and whatever is true about this case, gentlemen, I am not here to deny.

"Mr. A. says thus and so, (referring to some leading fact, about which there could be no possible chance of dispute). I am sorry to say, gentlemen, that that is probably true – that the facts in that regard are against us. I wish it were otherwise, but we cannot change the facts; we must take them as they exist. I am not here to make any formal admissions against my client, any more than I am to dispute what I know to be true. I understand that Mr. A. can prove this particular fact by half a dozen respectable witnesses, and, of course, he is prepared to do it. Those witnesses are truthful men and when they have testified to that fact, you may consider it fully proven, for we shall not attempt to contradict or impeach them.

"Mr. A. says thus and so, (another similar fact). That is a thing of which I never heard till he stated it, but, from what my client has since told me, I presume Mr. A. will be able to fully prove that fact, also. He is too good a lawyer to omit the proof upon a

point so strongly in his favor as that. I regret to say that I presume you will find the facts upon that point against us, and whatever figure it cuts in your verdict, we must bear it without grumbling.

“Mr. A. says thus and so, and he has explained to you, at great length, that, therefore, your conclusion upon such and such a point must be against us. Mr. A’s reasoning is perfectly correct – that is, your conclusion upon that proposition will necessarily be against us, if the facts are as he stated them – I might as well admit that, at the outset. But, of course, if the facts are the other way, Mr. A. will not claim that you should find in his favor, upon this branch of the case. Now, just what these facts are, I am not prepared to say. I think perhaps the testimony may not be all one way. If it should be contradictory, and you should believe the version given by our witnesses, the court will tell you and Mr. A. will admit that your finding, upon this point should be in our favor, instead of the plaintiff’s. Bear this in mind, gentlemen, when listening to the witnesses upon this subject, so that your verdict will be in accord with the weight of the testimony.

“Another point emphasized by Mr. A. was thus and so. I have not understood the facts concerning it to be as he states them. Of course, as good a lawyer as Mr. A. would not make such a statement as that unless he had some testimony in support of it. If he establishes that fact to your satisfaction, gentlemen, you must decide this case in his favor. I would not have the face to ask you for a verdict in favor of my client, in the teeth of a fact like that, the controlling force of which I admit, right here. My client tells me, however, that there is no such fact in the case, and when he and my brother A. disagree, I am bound to believe my client, truthful as I know brother A. to be, ordinarily. Of course, my client may be mistaken, but I am rather inclined to think that brother A. has been



misinformed as to this particular fact and if I cannot convince you that my surmise is right, my client will have to take the consequences, serious as they may be. We will trust to luck and hope for the best, anyhow.

“A part of Mr. A’s statement had reference to what he called a question of law. He said that the evidence would show thus and so and that the court would tell you that the law books said that, under proof of that kind, your verdict must be for the plaintiff. That may be the law. I had not thought of that point in the case and have looked it up. It seems that Mr. A. had thought of it and, of course, he has looked it up, carefully. My recollection is that the law is just a little different from what he states it to be. However, that is a question for the judge to pass upon when he gives you your charge. If he charges you as brother A. says, you most certainly will follow his instructions and beat us. But if he should not so charge, brother A. will not claim that you should find for him, upon that point. However, we will leave that question for the court.’

Lincoln would proceed in this fashion, “rehearsing all the facts, apparently conceding every important one to the other side, only in a half-hearted way claiming the benefit of those which were in his favor, and wind up with a statement that all he wanted for his client was that all the facts – no matter whom they affected or how – should be shown and if they did not entitle his client to a verdict, he hoped the jury would decide the other way.”

If opposing counsel “was not thoroughly alert to the situation, or did not know Lincoln’s tactics, he was inclined to overlook the fact that the admissions, so regretfully made by Lincoln, were only as to facts which were the most easily susceptible of proof, that the doubtful points were always carefully guarded with an ‘if’ and he would

frequently think that he had a ‘walk-over.’ Lincoln’s client, under the same impression, would frequently writhe in his chair, as he heard his lawyer seemingly confess judgment in favor of the other side. The jury would settle back in their chairs, thoroughly convinced that here was a lawyer who would not deny facts, who would not take an unfair advantage, who wanted his case tried with fairness and honesty to both sides, who simply wanted justice done, regardless of who won or who lost the case, and they were at once disposed to look with special favor upon any move he might make during the trial.

“But, alas for Mr. A. If, seeing his case so nearly conceded and so mildly contested, he was lulled into inactivity during the trial and failed to close every loophole of escape for the defendant, his awakening to discover the fatality of his omission, of that one of the points which Lincoln had so meekly held in reserve was the controlling element in the case, came after the evidence was closed and too late to retrieve.

“Lawyers who knew him were not deceived in this way, but the average juror could never see anything but his exceeding fairness and innocence in a trial – an innocence like that of a coal of fire in a bag of flax.”<sup>93</sup>

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<sup>93</sup> Anonymous manuscript, doubtless by James C. Robinson, Ida Tarbell Papers, Allegheny College. In this document, the author is identified as a well-known lawyer, a partner of U.S. Senator John M. Palmer, and referred to as “Gov. John Robinson.” He had known Lincoln well at the bar and was a “war Democrat” in Congress during Lincoln’s presidency. His knowledge of Lincoln was intimate and thorough. This description fits James C. Robinson (1824-86), who served in Congress (1859-65), ran for governor in 1864, was a partner of Palmer in the 1880s, and died in Springfield. He was born in Edgar County and moved to Clark County, where he practiced law from about 1850 to 1869. John M. Palmer, ed., The Bench and Bar of Illinois, (2 vols.; Chicago: Lewis, 1899), 1:202-3. Leonard Swett similarly recalled that at the beginning of a trial, when other attorneys would raise objections, Lincoln “would say he ‘reckoned’ it would be fair to let this in, or that; and sometimes when his adversary could not quite prove what Lincoln knew to be the truth, he would say he ‘reckoned’ it would be fair to admit the truth to be so and so. When he did object to the court, after he heard his objections answered, he would often say: ‘Well, I reckon I must be wrong.’” Lincoln behaved in this accommodating fashion for a while, lulling the other side into complacency; then, at a crucial juncture, he would assert himself. “By giving away six points and carrying the seventh, he carried his case, and, the whole case hanging on the seventh, he traded away everything which would give him the least aid in carrying that.” Lecture by Swett, delivered in Chicago, 20 February 1876, Chicago Times, 21 February 1876. See also Herndon, “Analysis of the Character of Abraham Lincoln,” 432, and Jacob Hardin’s account of an 1842 trial at Paris, Illinois, Prairie Beacon (Paris), 29 June 1860, in Richter, Lincoln: Twenty Years on the Eastern Prairie, 51-53.

Most testimony about Lincoln's prowess before juries is reminiscent, and therefore may be tainted by the desire to place the martyr-president in an unduly favorable light. But contemporary evidence tends to support the positive image painted by Herndon, Beckwith, Arnold, Davis, Swett, Robinson, Linder, and others. In 1850, a newspaper in Danville described Lincoln as "rough, uncouth and unattractive," yet possessing "an energy that rather courts opposition than defies it" and "a mind deeply imbued by study, and with the love of legal philosophy." He "lives but to ponder, reflect and cogitate. All the force of a great intellect, all the force of a thoroughly informed understanding, all the might of a determined spirit, are constantly at work. Grasping with ease the points [that seem] to others so intricate, his style of reasoning is profound, his deductions are logical, his investigations are acute." When examining witnesses, "he displays a masterly ingenuity and a legal tact that baffles concealment and defies deceit. And in addressing a jury, there is no false glitter, no sickly sentimentalism to be discovered." He eschewed "a rhetorical display of sublime nothings. Seizing upon the minutest points, he weaves them into his argument with an ingenuity really astonishing. Bold, forcible and energetic, he forces conviction upon the mind, and by his clearness and conciseness, stamps it there, not to be erased." Those were "some of the qualities which place Mr. L. at the head of the profession in this state, and though he may have his equal, it would be no easy task to find his superior."<sup>94</sup>

Nine years later, an editor in northern Illinois reported that "Lincoln tries a suit well. By his genial spirit he keeps the Court, the jury and the opposite counsel in good humor, and sometimes by a comical remark, or a clever joke, upsets the dignity of the

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<sup>94</sup> "May Term of the Urbana Court," Illinois Citizen (Danville), 29 May 1850.

court. He never makes a big fight over a small or immaterial point, but frankly admits much, though never enough to damage his case. In this he differs much from little lawyers, who adhere with unyielding pertinacity to trifles, and make their greatest efforts at nothing.”<sup>95</sup> That same year Lincoln was trying a case in Chicago, where an observer noted that for two hours he “held, as if by magic, the attention of the Court, jury and spectators, in one of the most powerful and convincing arguments that was ever made on any similar occasion. His eloquence is of the genuine and most effective kind, and flows forth as easily as from a never-failing fountain.”<sup>96</sup>

Lincoln was a better jury lawyer under some circumstances than others. Judge David Davis, before whom he tried innumerable cases, deemed Lincoln “a good Circuit Court lawyer,” especially “if he thought he was right.”<sup>97</sup> According to Stephen T. Logan, Lincoln “couldn’t fight in a bad case.”<sup>98</sup> Samuel C. Parks recalled that “at the bar when he thought he was wrong he was the weakest lawyer I ever saw.” Parks cited a criminal case to illustrate his point. An accused larcenist was represented by Lincoln, Parks, and William H. Young. “Lincoln was satisfied by the evidence that he was guilty & ought to be convicted,” Parks related. “He called Young & myself aside & Said ‘If you can say any thing for the man do it – I can[‘]t – if I attempt it the Jury will see that I think he is guilty & convict him of course.’” Without a word, Young and Parks submitted the case to the jury, which was unable to agree on a verdict. Lincoln’s action spared the client a

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<sup>95</sup> Letter by Charles Monroe Chase, Chicago, 6 June 1859, in the DeKalb County Sentinel, n.d., typed copy, Randall Papers, Library of Congress. Chase was serving as a juror in the case of Clark v. Jones, in which Lincoln, along with Melville Fuller and Merriam Bryan, represented the defendant.

<sup>96</sup> Sycamore True Republican, n.d., copied in the Rock Island Weekly Register, 6 July 1859.

<sup>97</sup> David Davis, interview with Herndon, 19 September 1866, Wilson and Davis, eds., Herndon’s Informants, 347

<sup>98</sup> Logan interviewed by John G. Nicolay, Springfield, 6 July 1875, in Burlingame, ed., Oral History Abraham Lincoln, 39.

prison sentence, Parks believed. On another occasion, Lincoln represented a clever fellow in a civil suit and made a solid argument in his defense. When opposing counsel produced evidence refuting that defense, Lincoln absented himself; the judge had him fetched from his hotel. There he said to the court official, “Tell the Judge that I can’t come – my hands are dirty & I came over to clean them.”<sup>99</sup> While defending an accused murderer, Lincoln told his co-counsel, Leonard Swett, that their client was probably not innocent and recommended that they have him plead guilty to manslaughter and hope that the judge would give him the minimum sentence. Swett disagreed, whereupon Lincoln withdrew, saying: “I cannot argue this case because our witnesses have been lying, and I don’t believe them.”<sup>100</sup> Joseph Gillespie insisted that it “was not in his nature to assume or attempt to bolster up a false position. He would abandon his case first.” Gillespie cited an 1839 debt case from which Lincoln withdrew, and his “less fastidious” replacement secured a victory.<sup>101</sup> He was not always so fastidious; Whitney recollected that if in the course of a trial, Lincoln became convinced that his client was untruthful, “he would simply do what he honestly could for success, and no more.”<sup>102</sup>

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On the Eighth Judicial Circuit, which was larger than the state of Rhode Island when Lincoln first began riding it in 1839, jury trials were held in “unkempt court-rooms,

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<sup>99</sup> Samuel C. Parks to Herndon, Lincoln, Illinois, 25 March 1866, Wilson and Davis, eds., Herndon’s Informants, 239.

<sup>100</sup> David Davis was the source of this story; in 1881 he told it to Ratcliffe Hicks. Hicks, letter to The Century Magazine, New York, 10 November 1893, The Century Magazine 47 (February 1894): 638.

<sup>101</sup> Gillespie to Herndon, Edwardsville, 31 January 1866, Wilson and Davis, eds., Herndon’s Informants, 182; Buckmaster for the use of Dedham vs. Beems and Archer, LPAL, case file #L02075.

<sup>102</sup> Whitney, Lincoln the Citizen, 174.

where, ten months in the year, the town boys played at marbles.”<sup>103</sup> (As the population grew, the circuit expanded and then shrank.)<sup>104</sup> When roads became passable in the spring, and again when the summer heat abated in the fall, lawyers teamed up with the state’s attorney and the presiding judge, mounted horses or clambered into buggies to start the 500-mile, three-month trek through the circuit’s many county seats, located mostly in primitive hamlets throughout central Illinois.<sup>105</sup> In each of these villages, the cavalcade would spend anywhere from three days to two weeks, depending on the volume of business. The judge and his entourage reminded one attorney “of a big schoolmaster with a lot of little boys at his heels.”<sup>106</sup> They “generally traveled in a band together, although not always in a compact body. Usually the gait was a fast walk or a slow trot, and frequently the band would be separated into little squads of from two to four, when the monotony of the ride was relieved by conversation and the relation of anecdotes or story-telling.”<sup>107</sup>

Lincoln’s horse was “as rawboned and weird-looking” as its owner.<sup>108</sup> This nag and the buggy it pulled “had the appearance of goods that had been bought two or three times at an administrator’s sale. In storm and in sunshine, in heat and in cold,” Lincoln “traveled around the circuit in that rattling ‘old buggy’ at the slow gait his horse could

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<sup>103</sup> Whitney, Life on the Circuit, ed. Angle, 62-63.

<sup>104</sup> Originally the circuit included nine counties: Livingston, Menard, McLean, Logan, Tazewell, Dewitt, Sangamon, Christian, and Macon. In 1841, six more were added: Moultrie, Mason, Champaign, Woodford, Shelby, and Piatt. In 1845, Edgar County was added and Mason was dropped. In 1853, six counties were removed from the circuit (Moultrie, Edgar, Shelby, Piatt, Christian, and Macon). Four years later it was reduced further when three more counties were lopped off (Sangamon, Tazewell, and Champaign). “Maps,” LPAL.

<sup>105</sup> Whitney, Life on the Circuit, ed. Angle, 62-63.

<sup>106</sup> Frederick T. Hill, Lincoln the Lawyer (New York: Century, 1906), 181.

<sup>107</sup> John Dean Caton, Early Bench and Bar of Illinois (Chicago: Chicago Legal News, 1893), 221.

<sup>108</sup> Whitney, Lincoln the Citizen, 189.

draw it. The speed at which he traveled was always about the same – that was as fast as his old horse could go and that was a very slow pace.” This steed “became about as well known on the circuit as Mr. Lincoln himself.” Traveling thus, Lincoln endured “many hardships” and “much suffering.” One spring day in 1850, shortly after he left Monticello for Urbana with the usual entourage, “a heavy rain began to fall and suddenly it became very cold – unusually cold for that time of the year. The cold was so severe as to cause real suffering. The Judge and the others forming the party had better teams and could have driven away from Mr. Lincoln but they chose to remain with him. Ordinarily the trip could have been made easily in a day, but the roads became heavy and but little progress could be made. All day long the party moved on in the drenching rain. Mr. Lincoln had no wraps other than a light cloth cloak such as was then commonly worn by gentlemen around home when going out in moderate weather. It afforded him no protection either against the heavy fall of rain or the severe cold. It was discovered the town could not be reached before the darkness of night would come on so the party stopped at a farm house and secured entertainment for the night. The host builded a fire in an open fire place with large sticks of wood and around that hospitable fire the party stood to warm themselves, and to dry their clothes for they had no change of raiment with them. Some of the party deemed it prudent to take a stimulant – whiskey – to ward off the effects of the wet and cold but Mr. Lincoln declined to take any, saying he thought he would be quite as well off without it. The others partook of it quite freely during the evening – even after their clothes had become dry. They were no better off next morning – indeed if so well – as Mr. Lincoln who had not participated with them.”<sup>109</sup>

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<sup>109</sup> Scott, “Lincoln on the Stump and at the Bar.”

His clothes as well as his figure gave Lincoln an unusual appearance. He “wore a brown hat with faded nap, a short cloak and sometimes a shawl. His coat and vest hung loosely on his giant frame and his trousers were usually a trifle short. In one hand he carried a faded green umbrella with his name, A. Lincoln, in rather large white cotton or muslin letters sewed on the inside. The knob was gone from the handle and, when closed, a piece of cord was usually tied round it in the middle to keep it from flying open. In the other hand he carried a literal carpet-bag in which were stored the few papers to be used in court, and underclothing enough to last till his return to Springfield.”<sup>110</sup> A Danville resident recalled that in the early and middle 1840s, Lincoln’s “clothes were of the shabbiest, and were most carelessly worn. They were not only untidy and threadbare, but he was actually out at the elbows much of the time, and everybody thought his wife must be at least partly to blame for permitting him to make such an appearance.”<sup>111</sup>

In Lincoln’s brown, high-crowned hat, “he carried many valuable papers such as promissory notes and other important small papers. It was sometimes said of him, he ‘kept his office in his hat.’ That was nearly or quite literally true when he was on the circuit. But that habit was not peculiar with Mr. Lincoln. Other lawyers and perhaps some business men in country towns were in the habit – ridiculous as that habit was – of carrying important small papers such as promissory notes and business letters in their hats when wearing them on the street. Sometimes a lawyer would have the crown of his hat nearly full of his papers. The only fastening was by sticking the ends of the papers

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<sup>110</sup> Whitney, Lincoln the Citizen, 189; Whitney in Weik, Real Lincoln, ed. Burlingame, 191.

<sup>111</sup> Reminiscences of Elizabeth Harmon, Vermilion County Museum, Danville, Illinois, in Richter, Lincoln: Twenty Years on the Eastern Prairie, 88.



under the inside band. In case a sudden gust of wind carried his hat away his papers would be scattered about the street before he could gather them up.”<sup>112</sup>

The antebellum circuit court resembled “a family consultation, presided over by the judge.” Dignity was somehow maintained, even though “there was a freedom and familiarity as of old friends and acquaintances meeting upon a public occasion.”<sup>113</sup> The informality of court proceedings was illustrated by an incident that occurred as Lincoln was addressing a jury in Champaign County. He “had a way of getting close to the jurors and gesticulating with his long arms over their heads. On this occasion a button fastening his suspenders to the trousers gave way while Mr. Lincoln was in the midst of the argument. Mr. Lincoln stopped, looked down to see what had happened, and then said to the jury, ‘Excuse me, gentlemen, for a moment while I fix my tackling.’ He walked over to the woodbox by the stove . . . picked up a splinter, took out his pocket knife and sharpened the splinter to a good point. He thrust the wooden pin through the cloth and fastened the suspenders over the ends. Returning to the jury, he said, ‘Now, gentlemen, I am ready to go on.’”<sup>114</sup> Occasionally decorum was shattered by a drunk; the “most common annoyance in the courtroom came in the form of loud talking and braggadocio from spectators half seas over.” Judges would have the offending parties jailed till they sobered up.<sup>115</sup>

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<sup>112</sup> Scott, “Lincoln on the Stump and at the Bar.”

<sup>113</sup> Ezra M. Prince, ed., Bloomington, Illinois, Republican Convention, May 29, 1856 (vol. 3, Transactions of the McLean County Historical Society [Bloomington: Pantagraph, 1900]), 3:19, 20.

<sup>114</sup> Judge Owen T. Reeves in Stevens, A Reporter’s Lincoln, ed. Burlingame, 49.

<sup>115</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, January 1904, 15.

Judge Samuel H. Treat presided over the Eighth Circuit from 1839 until Lincoln's good friend David Davis replaced him in 1848. Treat, "a quiet, unambitious man" noted for "his urbanity and suavity of manners," was an ardent Democrat.<sup>116</sup> The rotund Davis, on the other hand, adhered faithfully to the Whig party. Born in Maryland in 1815, he attended Kenyon College and Yale law school before settling in Bloomington, Illinois, where he quickly acquired a reputation as "an excellent office and business lawyer" whose "forte lay in collecting claims and adjusting difficulties; also in probate and tax-title matters, and in general out-of-door law business."<sup>117</sup> He was less successful in politics, though he did manage to win a seat in the General Assembly for one term and election as a delegate to the 1847 Constitutional Convention. Both his body and his personality were large. He weighed around 300 pounds and was "a man of great force of character" and unusual "executive ability."<sup>118</sup> Ambitious, vain, fun-loving, industrious, genial, and eager to acquire friends and money, he possessed "a large and active brain, and an immense fund of hard, practical common-sense." He "had no great erudition, and no brilliancy; he did not know, or care for, the philosophy of the law, but he was the incarnation of common-sense and sterling judgment." Because of his "ardent desire to execute even and exact justice," Davis "shunned and abhorred all technicalities and got right down to the essential merits of any law-suit or proposition." On the bench he could be informal, "a model in the way of putting lawyers whom he did not dislike, at their ease." When, however, "he got angry, as he sometimes did, the whole moral atmosphere

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<sup>116</sup> Usher F. Linder, Reminiscences of the Early Bench and Bar of Illinois (Chicago: Chicago Legal News, 1879), 388.

<sup>117</sup> Whitney, Life on the Circuit, ed. Angle, 75.

<sup>118</sup> Thomas J. McCormack, ed., Memoirs of Gustave Koerner, 1809-1896 (2 vols.; Cedar Rapids, Iowa: Torch Press, 1909), 2:540; Scott, "Lincoln on the Stump and at the Bar"; Linder, Reminiscences, 182.

was surcharged with sulphur and lurid sparks: making it uncomfortable for the members of the bar.”<sup>119</sup>

The judge resembled “a bloodhound [who] takes the scent. He never relied on his knowledge of authorities, and never allowed his legal lore to smother his common-sense perception of equity and justice.”<sup>120</sup> He “was much less distinguished for profound legal learning than for his remarkably good common sense,” for he “seemed to look through a case at once and to seize the main points. Brushing away all technicalities and sometimes even the law, he seldom failed to do equity.” Davis was like some physicians who, while “not very eminent in the theory of their profession, hardly ever failed in their diagnosis of the patient’s disease, and were in consequence quite successful. He had become very popular both with the members of the bar and the people of the circuit, for besides being a good judge he was a most affable gentleman.” He “was of a genial disposition, fond of hearing a good story, and a very fine conversationalist.”<sup>121</sup>

An example of Davis’s tendency to take the law into his own hands occurred in Bloomington, where the docket was full of claims cases. To the assembled lawyers and clients eager to make collections, Davis announced: “this court is loaded with cases arising out of the panic. I know these men, they will pay as soon as they can. Court is adjourned to the next term.”<sup>122</sup>

On the bench Davis seemed to one journalist like a man “designed by nature for that particular calling.” Few men appeared “more perfectly cut out for a Judge” or “more

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<sup>119</sup> Whitney, Life on the Circuit, ed. Angle, 65.

<sup>120</sup> Swett, “An Old Friend’s Recollections of David Davis,” Chicago Mail, n.d., copied in the St. Louis Globe-Democrat, 27 June 1888.

<sup>121</sup> Koerner, Memoirs, 2:539-40.

<sup>122</sup> John T. Lillard, son-in-law of Davis, to Harry E. Pratt, Bloomington, 4 December 1929, in Harry E. Pratt, “David Davis, 1851-1886” (Ph.D. dissertation, University of Illinois, 1930), 58n.

completely at his ease in the seat of justice. With the greatest unconcern he goes through his duties, and succeeds in keeping a swarm of lawyers within the bounds of reason; and that, too, without losing his temper – a marvelous performance for a Judge.”<sup>123</sup> While “full of vim and energy on the bench,” after court adjourned for the day, he gathered the attorneys in his room and would “make a night of it, similar to the knights of the Round Table, or the Pickwick Club.” The judge “was an excellent host and entertainer,” as well as “an interesting conversationalist.” Whitney said he “was sedulous to aid in all ways (that involved no pecuniary outlay) young men of parts who came fresh to our bar, and strangers who happened to strike his fancy. He was an efficient and willing mediator in all petty difficulties which arose within the charmed circle of his friends, and his word was social law with all of us. He understood the laws of good breeding and the canons of true politeness as thoroughly as Count d’Orsay, and his sense of propriety was absolute and inflexibly correct. He was an ornament to society, and although his self-appreciation was great, it was no more so than his merits and worth authorized.” In addition, he “was earnest and solicitous to promote the welfare of his friends: – but he was a good hater: and more than willing to let the object know and understand it.” In financial matters, “he was a man of conflicting notions and desires: – he would have been very fond of ostensible generosity – but he was excessively penurious: and thoroughly practical and business-like in small, as well as great, matters.”

Because of Davis’s vanity, Whitney remembered, “Flattery and cajolery went further, and was more effective with him . . . than with any other great man I ever knew . . . From young men he took an interest in, he expected and exacted unremitting and

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<sup>123</sup> “Court and Bar,” Clinton Transcript, n.d., copied in the Bloomington Pantagraph, 12 October 1858.

persistent adulation and servitude.” He was “rich and aristocratic, and with the animus – somewhat disguised, of a patrician” and had a “prodigious ambition,” an “earnest desire for wealth and position,” a “great acquisitiveness” and the “talent to gratify it.”<sup>124</sup>

Usher Linder said Davis was “a very impartial judge” and never meant “to show a preference for one of his lawyers over another,” yet “such was the marked deference he showed to Mr. Lincoln that Lincoln threw the rest of us into the shade.”<sup>125</sup> Such partiality does not manifest itself in the judicial record, however; of the eighty-seven cases Lincoln tried before the judge without a jury, he won only forty.<sup>126</sup>

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Upon arriving at a county seat, Lincoln and the other circuit riders would scarcely have time to dismount before local residents accosted them. For the inhabitants of the county seats, trials provided entertainment and enlightenment. “The courthouse was the center of interest for the mass of people who were generally uncultured and ignorant,” Herndon recounted. “When court commenced people flocked to the county seat to see and to hear and to learn. Eloquence was in demand,” for “the people loved to hear talk – talk.” The attorneys realized this and it “made them ambitious to succeed and conquer.” Most of them were “young and ambitious, struggling each in his way to acquire glory. If a young lawyer made a fine speech and tickled the crowd – was eloquent and gained his case he got the hearty applause of the people & glory too. His fame was fixed at once.” Frontiersmen in the 1830s and 1840s “had no newspapers to tell them daily the history of the world, and hence did not read much but kept their ears & eyes open. Men flocked to

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<sup>124</sup> Whitney, Life on the Circuit, ed. Angle, 83.

<sup>125</sup> Linder, Reminiscences, 182-83. The text reads “difference he showed,” doubtless a misprint for “deference he showed.”

<sup>126</sup> Angle, “Abraham Lincoln: Circuit Lawyer,” Lincoln Centennial Association Papers, 1928, 38.

the court house to hear men talk during court hours & to hear jokes & stories of a night.”<sup>127</sup> The “court house supplied the place of theatres, lecture and concert rooms, and other places of interest and amusement.” There “leading lawyers and judges were the star actors, and had each his partisans.” Thus “crowds attended the courts to see the judges, to hear the lawyers contend with argument, and law, and wit for success, victory and fame.”<sup>128</sup> In 1859, an Urbana local newspaper described the scene when the court was in session: “during the past week, nearly every resident of the county has been in our beautiful city – Courting. The streets have been literally thronged with every imaginable specimen of the genus homo. Lawyers, judges, clients, honorables, prisoners of all bars, and so forth, besides others, have been in attendance at our Circuit Court. Some think, perhaps, that they have not received justice, while others believe they have a little too much of it. Altogether they have had a lively time.”<sup>129</sup> To the country folk, the assembling of the court was a welcome break in the monotony of rural life. “The semi-annual shopping of the country districts was transacted during court week: the wits and county statesmen contributed their stock of pleasantry and philosophy; the local belles came in to see and be seen: and the court house, from ‘early morn to dewy eve,’ and the tavern from dewy eve to early morn, were replete with bustle, business, energy, hilarity, novelty, irony, sarcasm, excitement and eloquence.”<sup>130</sup>

Circuit lawyers, who were usually covered with either mud or dust, made it a point to arrive at a county seat on Sunday evening. Immediately clients would swarm

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<sup>127</sup> Herndon to Mrs. Leonard Swett, Springfield, 20 and 22 February 1890, Swett Papers, Lincoln Presidential Library, Springfield.

<sup>128</sup> Isaac N. Arnold, The Life of Abraham Lincoln (4<sup>th</sup> ed.; Chicago: Jansen, McClurg, 1885), 56.

<sup>129</sup> Urbana Clarion, 29 October 1859, in Pratt, “Davis,” 61.

<sup>130</sup> Whitney, Life on the Circuit, ed. Angle, 63.

about them “eagerly seeking to engage their favorite counsel. No sooner had the attorneys shed their leggings and overcoats than potential clients began offering short accounts of their cases. All “was bustle and excitement” as pleas and answers were prepared, demurrers filed, bills in chancery drawn, and preparations for trial made. All “this heterogeneous mass of business was rushed in upon them in a manner which would have confused any mind not well trained to that mode of practicing law.” Often lawyers were enlisted “to take part in a trial when the jury was already being called, and they must learn the case during the trial itself.” This system “compelled everybody to think quickly and to act promptly.”

At noon on Monday the court usually convened. The early afternoon was consumed in summoning and swearing in the grand and petit jurors and having the grand jury consider indictments.<sup>131</sup> (In election years, the afternoon and evening of the first court day would be devoted to political speeches by the attorneys.)<sup>132</sup> The sheriff chose jurors, who were often the same men from one term to the next, “personal friends of Judge Davis, men of intelligence, sound judgment and integrity whose verdicts rarely had to be set aside.” Cases in default, where one party failed to appear, were quickly disposed of, and testimony was taken in ex parte cases, like uncontested divorces. Around 4 p.m. the court adjourned, to reassemble Tuesday morning at 8. For the rest of the day, Herndon recalled, “we lawyers would take a ramble in the woods – over the prairies – or through the village – anywhere to kill time – take a [card] game of ‘old sledge’ or euchre . . . – in short anything to while away time. On such tramps we would discuss politics –

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<sup>131</sup> Herndon to Mrs. Leonard Swett, Springfield, 22 February 1890, Swett Papers, Lincoln Presidential Library, Springfield; Caton, Early Bench and Bar of Illinois, 223, 132.

<sup>132</sup> David Davis to William P. Walker, 4 May 1844, in Pratt, “Davis,” 53.

talk over our cases.” Egalitarianism prevailed among the townspeople and the sociable lawyers, who put on no airs.<sup>133</sup> Among other things, the attorneys would write poetry for each other’s amusement.<sup>134</sup>

Killing time was particularly difficult when there were few clients. Reminiscing about his early experiences on the circuit, Lincoln said that once in Urbana, “I listened to a French street peddler’s antics . . . half a day once, simply because I had not one particle of business.”<sup>135</sup> He also recalled a time when, in a country town during a court session, a rustic was startled to find several attorneys lounging about the courthouse. Upon asking “what it meant, and if all these lawyers had business there,” he was told: “No, they have not come to court because they have any business here, but because they have no business anywhere else.”<sup>136</sup>

On Tuesday mornings, the attorneys buckled down to work, which was often “meager and uninteresting.”<sup>137</sup> An Urbana newspaper lamented that the court dealt with such unimportant matters as “a dog suit, a wood-stealing Irishman, [and] a half-crazy horse thief.”<sup>138</sup> In Danville, the editor of the Vermilion County Press similarly complained that the court was “always encumbered and overcrowded” with minor cases involving liquor law violations. Their “wearying, troublesome littleness drags out the

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<sup>133</sup> Herndon to Mrs. Leonard Swett, Springfield, 22 February 1890, Swett Papers, Lincoln Presidential Library, Springfield.

<sup>134</sup> Orville H. Browning, Senate speech memorializing Edward D. Baker, Congressional Globe, 37<sup>th</sup> Congress, 2<sup>nd</sup> session, 53 (11 December 1861).

<sup>135</sup> Whitney, Lincoln the Citizen, 191-92.

<sup>136</sup> In 1864, Lincoln told this to Gustavus V. Fox and Charles Henry Davis. Charles Henry Davis journal, 7 May 1864, in Charles Henry Davis, Life of Charles Henry Davis, Rear Admiral, 1807-1877 (Boston: Houghton Mifflin, 1899), 303.

<sup>137</sup> Herndon to Mrs. Leonard Swett, Springfield, 22 February 1890, Swett Papers, Illinois State Historical Library, Springfield; Whitney, Life on the Circuit, ed. Angle, 63.

<sup>138</sup> Our Constitution (Urbana), 18 April 1857.



time of the court, and prevents application to cases of more importance.”<sup>139</sup> In the early years of the circuit, cases usually involved assault and battery, suits on promissory notes, minor disputes, slander, horse trading, petty larceny. Now and then a murder or manslaughter case was tried.<sup>140</sup> In the 1830s and 1840s, the population of Illinois was small, society primitive, land plentiful, employment easy to find, and litigation quite simple. Cases originating in debt often generated other actions: “if a man had an uncollectable debt, the current phrase was ‘I’ll take it out of his hide.’ This would bring on an action for assault and battery. The free comments of the neighbors on the fracas, or the character of the parties[,] would be productive of slander suits.” Similarly, a “man would for his convenience lay down an irascible neighbor’s fence and indolently forget to put it up again – and an action of trespass would grow out of it. The suit would lead to a free fight and sometimes furnish the bloody incidents for a murder trial.”<sup>141</sup> Henry C. Whitney thought it “strange to contemplate that in those . . . primitive days, Mr. Lincoln’s whole attention should have been engrossed in petty controversies or acrimonious disputes between neighbors about trifles; that he should have puzzled his great mind in attempting to decipher who was the owner of a litter of pigs, or which party was to blame for the loss of a flock of sheep, by foot rot; or whether some irascible spirit was justified

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<sup>139</sup> Vermilion County Press (Danville), 5 May 1859, in Richter, Lincoln: Twenty Years on the Eastern Prairie, 230.

<sup>140</sup> Herndon to Mrs. Leonard Swett, Springfield, 22 February 1890, Swett Papers, Lincoln Presidential Library, Springfield.

<sup>141</sup> Milton Hay interviewed by John G. Nicolay, Springfield, 4 July 1875, in Michael Burlingame, ed., An Oral History of Abraham Lincoln: John G. Nicolay’s Interviews and Essays (Carbondale: Southern Illinois University Press, 1996), 25-26.

in avowing that his enemy had committed perjury; yet I have known him to give as earnest attention to such matters, as, later, he gave to affairs of state.”<sup>142</sup>

Such cases yielded meager financial rewards. With little cash to pay lawyers’ fees, pioneers would offer livestock or partial payment plus an I. O. U.<sup>143</sup> In 1840, David Davis complained that after several weeks on the circuit with “considerable business to do,” he had “realized in money but little from it. The practice of the Law in Illinois nowadays, is not a very easy business, and withal not very profitable. I am satisfied that no professional man ought ever to locate himself in a country purely agricultural. It is only where manufacturing or commercial business is done, that a lawyer can expect always to have plenty to do.”<sup>144</sup> Three years later, Davis noted that “practicing law in this prairie state” did not provide “much profit or personal comfort.”<sup>145</sup>

For circuit riders, personal comfort was indeed in short supply during the 1830s and 1840s. As they traversed the prairies on horseback or in home-made conveyances, these lawyers endured many hardships. Gibson W. Harris thought the worst feature of circuit life was “the wretched hotel accommodations. The taverns, invariably so called, were almost always cheerless and uncomfortable. The food, though commonly of good material, was often badly cooked and poorly served. The ‘transient’ of those days could not be sure of finding his hostelry so much as waterproof; more than once I have slept with tiny eddies of snow drifting in upon my bed. The furniture in the guest-chamber rarely comprised more than the bedstead, one or two split-bottom chairs, and possibly a

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<sup>142</sup> Whitney, Life on the Circuit, ed. Angle, 63.

<sup>143</sup> Caton, Early Bench and Bar of Illinois, 51.

<sup>144</sup> David Davis to William P. Walker, Bloomington, 16 November 1840, Davis Papers Lincoln Presidential Library, Springfield.

<sup>145</sup> David Davis to Julius Rockwell, 14 May 1844, quoted in Pratt, “Davis,” 52.

spittoon. The bedding was usually abundant, perchance the bedbugs superabundant. The guests performed their ablutions in a tin basin on the back porch, or on a bench out by the well in the yard, using soft soap, if any soap at all, and wiping on a crash towel that late risers were sure to find too wet for effective service. I distinctively remember washing at the well on morning when the thermometer was thirty degrees below zero, the water freezing on the basin-side as it dropped from my hands.” Sometimes, when taverns were unavailable, lawyers would stay at a farmer’s home. The host usually declared that his guest’s company was compensation enough; the attorney would often pay indirectly, surreptitiously slipping a quarter to one of the host’s children.<sup>146</sup> The attorneys usually had to share beds, and as many as eight of them would occupy a single room. Usher Linder and Lincoln “frequently slept in the same room, and not unfrequently occupied the same bed.”<sup>147</sup> Lincoln also slept with Leonard Swett, who noted that the beds “were always too short.” Swett added that the morning coffee was usually “burned or otherwise bad,” the “food often indifferent,” the “roads simply trails,” the streams were “without bridges, and often swollen and had to be swum,” the “sloughs often muddy and almost impassable, and we had to help the horses when the wagon mired down with fence-rails for pries.”<sup>148</sup>

Once when the caravan of lawyers and judges approached a shallow creek, Lincoln puckishly warned that it was deep and advised his colleagues to strip off their clothes ride their horses across it. Shivering in the cold air, they complied and rode into

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<sup>146</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, January 1904, 15.

<sup>147</sup> Linder, Reminiscences, 183.

<sup>148</sup> Sweet’s speech, “The Life of Lincoln,” delivered at the dedication of the St. Gaudens statue of Lincoln in Chicago, Chicago Times, 23 October 1887.

the water, which barely reached their mounts' fetlocks. Lincoln enjoyed his prank hugely and remarked, "I don't think a bridge across the stream would interfere with navigation!"<sup>149</sup>

Most accounts of life on the circuit, like Whitney's, Swett's, and Harris's, are reminiscent.<sup>150</sup> But Judge David Davis, who presided over the eighth circuit from 1848 to 1862, wrote numerous letters describing vividly that peripatetic existence. In 1851, he reported to his adored wife that the "tavern at [Mt.] Pulaksi [population 350] is perhaps the hardest place you ever saw. A new landlord by the name of Cass, just married – every thing dirty & the eating Horrible. Judge Robbins, Lincoln, Stuart & every body else from Springfield [were there]. The old woman looked as we would suppose the witch of Endor looked. She had a grown daughter, who waited on the table – table greasy – table cloth greasy – floor greasy and every thing else ditto. . . . Waiting among greasy things. Think of it. I wonder if she ever washed herself. I guess the dirt must be half an inch thick all over her." Conditions were just as bad in Clinton (population 760), Davis said: "I found out that Mrs. Hills' was a dirty place – plenty of bedbugs, &c, &c." In 1848, Davis complained: "This thing of traveling in Illinois, and being eaten up by bed bugs and mosquitoes . . . is not what it is cracked up to be." The oppressive summertime heat of central Illinois occasionally lasted into the fall. In September 1851, Davis observed that "Holding Courts in such weather has exhausted lawyers, jurors, witnesses & Judge too. If such weather continues, . . . the prospect in Pekin will be anything but agreeable.

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<sup>149</sup> T. W. S. Kidd, lecture given in Washington, in Washington correspondence by Frank G. Carpenter, 14 January, Cleveland Leader, n.d. [probably 1883], clipping in scrapbook, Frank G. Carpenter Papers, Library of Congress.

<sup>150</sup> Surviving documentary evidence tends to support Whitney's recollections. He and Lincoln participated together in seventy-one cases, usually representing the same clients. John A. Lupton, "Abraham Lincoln and His Informal Partners on the Eighth Judicial Circuit," Lincoln and His Contemporaries: Papers from the Fourteenth Annual Lincoln Colloquium, Springfield, 1999 (Springfield: Lincoln Home, n.d.), 97-98.

Mosquitoes prevail there, and a body will have to be in a constant state of warfare.” From Pekin he reported that the “weather throughout the week . . . has been as hot as ever. I have wilted down a good deal. The sand in Pekin is a foot deep and the place horribly dusty.” The next stop on the circuit offered little relief: “The tavern at [Metamora in] Woodford [county] is miserable.” At Paris, the shire town of Edgar County, things were not much better: “I have been quartered in about the meanest tavern you ever saw. . . . The floors dont look to have been scoured for a quarter of a century.” The food was “wretched & rooms dirty. This Kentucky cooking, just as the middling classes in Kentucky know how to prepare, is hardly fit for the stomach of a horse.” At Charleston in Coles County, Davis found the “houses generally frame, some log, rarely [with] any whitewash or paint – in fact the village looks like a southern village and the people are Kentuckians & have a slipshod appearance . . . . We had a poor tavern – everything looked nasty at Charleston.” Rain could make life miserable for the lawyers and judge. One day in 1852, Davis told his wife how he and his companions waited for a ferry to convey them across the Sangamon River: “Could not cross. For 2 hours staid in rain, waiting for Ferryman. Swam the horses, took the buggy over straddle a canoe.” Davis informed his brother-in-law that “Bad roads, broken bridges, swimming of horses, and constant wetting, are the main incidents in western travel.”<sup>151</sup> Especially bothersome were the slews, “miniature swamps, miry and sticky, and extremely difficult to cross with teams and wagons.”<sup>152</sup>

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<sup>151</sup> King, Davis, 77, 75, 82, 85, 78; David Davis to Julius Rockwell, 14 May 1844, quoted in Pratt, “Davis,” 52.

<sup>152</sup> Carr, The Illini, 47.

Understandably, most circuit riders complained bitterly about these hardships. Lincoln, however, did not, as Leonard Swett testified: “I rode the Eighth judicial circuit with him [Lincoln] for eleven years, and . . . I never heard Mr. Lincoln complain of anything.”<sup>153</sup> Gibson W. Harris also recalled that “Lincoln was not given to complaining. As I look back over it, the equanimity with which he accepted the rougher features of traveling the circuit seems astonishing.”<sup>154</sup> Herndon had a similar recollection: “As to what Mr Lincoln ate – it made no difference to him – he sat down and ate as it were involuntarily, saying nothing: he did not abuse the meal ie what he ate – did not praise it – did not compliment the cook nor abuse her: he sat down and ate and asked no questions, and made no complaints. I have seen him do this . . . on the circuit for years . . . Mr Lincoln was the most perfect gentleman that I ever saw to his host – wife and servants – and to all around and about him on the Circuit: he never complained – was never captious as to how he was served or treated. Others would growl – complain – become distressed, and distress others – with the complaints and whine about what they had to eat – how they slept – and on what and how long – and how disturbed by fleas, bed bugs or what not. Remember to travel on the circuit from 1837 to 1856 was a soul’s sore trial . . . . I have slept with 20 men in the same room – some on bed ropes – some on quilts – some on sheets – a straw or two under them; and oh such victuals – Good God! excuse me from a detail of our meals.”<sup>155</sup>

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<sup>153</sup> Sweet’s speech, “The Life of Lincoln,” delivered at the dedication of the St. Gaudens statue of Lincoln in Chicago, Chicago Times, 23 October 1887.

<sup>154</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, January 1904, 15.

<sup>155</sup> Herndon to Isaac N. Arnold, Springfield, 24 October 1883, Herndon Collection, Chicago History Museum.

Very occasionally Lincoln would voice displeasure with the food. He once remarked wryly, “Well – in the absence of anything to Eat I will jump into this Cabbage.”<sup>156</sup> Allegedly he told a host, “if this is coffee, the please bring me some tea, but if this is tea, please bring me some coffee.”<sup>157</sup>

Lincoln did not complain much because he loved life on the circuit.<sup>158</sup> In explaining why he turned down an offer to become a partner with the Chicago attorney Grant Goodrich, Judge Davis told an interviewer that Lincoln “gave as a reason that he tended to Consumption – That if he went to Chicago that he would have to sit down and Study hard – That it would Kill him – That he would rather go around the Circuit . . . than to sit down & die in Chicago. In my opinion I think Mr Lincoln was happy – as happy as he could be, when on this Circuit – and happy no other place. This was his place of Enjoyment. As a general rule when all the lawyers of a Saturday Evening would go home and see their families & friends at home Lincoln would refuse to go home.”<sup>159</sup> Just as Lincoln was unique in avoiding home on weekends, he was one of the very few who traveled the entire circuit each spring and fall. Most attorneys stayed close to home, attending only those circuit courts in counties adjacent to their own.<sup>160</sup> Lincoln, Swett, Lamon, and Davis, the only ones to make the complete circuit, “constituted substantially one family,” Swett recalled. “We journeyed together along the road, slept in the same

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<sup>156</sup> David Davis, interview with Herndon, 20 September 1866, Wilson and Davis, eds., Herndon’s Informants, 350.

<sup>157</sup> Carl Sandburg, Abraham Lincoln: The Prairie Years (2 vols.; New York: Harcourt, Brace, 1926), 2:297.

<sup>158</sup> Robert H. Wiebe, “Lincoln’s Fraternal Democracy,” in John L. Thomas, ed., Abraham Lincoln and the American Political Tradition (Amherst: University of Massachusetts Press, 1986), 25-28.

<sup>159</sup> David Davis, interview with Herndon, 20 September 1866, Wilson and Davis, eds., Herndon’s Informants, 349.

<sup>160</sup> Whitney, Lincoln the Citizen, 188; Swett, “An Old Friend’s Recollections of David Davis,” Chicago Mail, n.d., copied in the St. Louis Globe-Democrat, 27 June 1888.

cabin or small hotel at night, breakfasted, dined, and supped together every day, and lived as intimately and in a manner as friendly as it is possible for men to live.”<sup>161</sup> Even after railroads connecting Springfield with most of the county seats were completed in the mid-1850s, Lincoln seldom returned home on weekends.

Other lawyers were happy on the circuit despite the bad food, dirty hostelries and other irritants. “If the business on our circuit was meagre, the good cheer and conviviality were exuberant,” Whitney remembered; “and if we did not make much money, our wants ‘were few and our pleasures simple,’ and our life on the circuit was like a holiday.”<sup>162</sup> The attorneys drank whiskey, played cards, danced, held mock trials, engaged in fist fights and wrestling matches, held horse races, ran foot races, and gambled. Anyone failing to join in such merriment was shunned.<sup>163</sup> “Ah! What glorious fun we had!” wrote Usher Linder.<sup>164</sup>

On the circuit Lincoln helped enliven evenings, when the attorneys and townspeople would often gather for story-telling. He was so funny that his auditors would yell, shout, whoop, and hurrah as their sides shook with laughter. “Such was Lincoln’s past-time & glory on the circuit: it was his Heaven and his home his Hell,” Herndon testified.<sup>165</sup>

Back in Springfield, Lincoln also convulsed visitors to his law office. In 1846, Gibson W. Harris, then studying law there, told a sick friend: “I wish you co[uld] be in

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<sup>161</sup> Lecture by Swett, delivered in Chicago, 20 February 1876, Chicago Times, 21 February 1876.

<sup>162</sup> Whitney, Life on the Circuit, ed. Angle, 63.

<sup>163</sup> Herndon to Isaac N. Arnold, Springfield, 24 October 1883, Herndon Collection, Chicago History Museum; Caton, Early Bench and Bar of Illinois, 222, 51.

<sup>164</sup> Linder, Reminiscences, 183.

<sup>165</sup> Felix Ryan quoted in Moores, “Abraham Lincoln, Lawyer,” 505; Herndon to “Mr. N,” Chinkapin Hill, Illinois, 4 February 1874, in the Grandview, Indiana, Monitor, 15 March 1934; Herndon to Isaac N. Arnold, Springfield, 24 October 1883, Herndon Collection, Chicago History Museum.



the office about two hours, to hear Lincoln tell his tales and anecdotes, of which he has any amount[.] I think you would laugh yourself well in that length of time. I sometimes have to hold my sides at times, so convulsed with laughter, as to be almost unable to keep my seat. I have seen a dozen or more, with their hands on their sides their heads thrown back, their mouths open, and the tears coursing down their cheeks, laughing as if they would die, at some of Lincoln's jokes."<sup>166</sup> Lincoln's puns as well as his jokes provoked guffaws. One evening he asked Judge John Dean Caton, "if it is true, as has been stated, that all three of you [supreme court] judges came from Oneida county, New York?" When informed that it was so, Lincoln replied: "I could never understand before why this was a One-i-dea court."<sup>167</sup> Lincoln loved to tell about a minor case he tried in 1858 at Bloomington. The young opposing counsel was "very sensitive about being beaten" and thus "manifested unusual zeal and interest" in the case. The presentation to the jury went well into the night, and the anxious young attorney could scarcely sleep. The next morning he arrived early at the court house, where he learned to his chagrin that he had lost. When Lincoln asked him about his case, the young man, with a "lugubrious countenance and melancholy tone," replied: "It's gone to h—I."

"'Oh well' said Mr. L. 'then you'll see it again.'"<sup>168</sup>

Lincoln also relished describing an episode that took place during his 1858 senatorial campaign against Stephen A. Douglas. After giving a speech in a small town, Lincoln was asked by a local physician of the Democratic persuasion if he could reply.

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<sup>166</sup> Gibson W. Harris to George Williams, Springfield, 31 October 1846, in Roger D. Bridges, ed., "Three Letters from a Lincoln Law Student," Journal of the Illinois State Historical Society 66 (1973): 87.

<sup>167</sup> Caton, Early Bench and Bar of Illinois, 185, 228.

<sup>168</sup> J. D. Wickizer to Herndon, Chicago, 25 November 1866, Wilson and Davis, eds., Herndon's Informants, 424; lecture by Swett, delivered in Chicago, 20 February 1876, Chicago Times, 21 February 1876.

Upon acceding to this request, Lincoln was approached by a lame man who said, “don’t you answer him. He and I live here. I am enough for him; let me answer him.” When the doctor finished, the lame man limped to the speaker’s stand and responded so sharply to the doctor’s remarks that he leaped up, enraged, and shouted: “That’s a lie.” The spectators anticipated a fight, but to everyone’s surprise the speaker calmly replied, “Doctor, I’ll take anything from you but your pills.”

More angry than ever, the physician retorted: “I thank you. I am not a pill peddler. I have quit practicing medicine.”

The lame man smilingly observed, “Ah, you have, have you? Well, then, the country is safer than I thought it was.”<sup>169</sup>

Sometimes Lincoln joked in the courtroom itself. One day he hastened into court and announced to the judge, who was quietly wrapping up business, that “he desired to make a single motion of great importance to his case at that particular stage of the proceedings, which accounted for his somewhat hurried entrance into the room and anxiety to get the attention of the judge.” Approaching the bench, he said: “May it please your Honor, I am like the Irish sailor, and beg your Honor to excuse me for this hurried interruption.”

“On condition,” replied the judge, “that you explain your analogy to the Celtic sailor.”

“Well,” said Lincoln, “an Irish sailor was overtaken at sea by a heavy storm, and he thought he would pray but didn’t know how, so he went down on his knees and said:

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<sup>169</sup> Lecture by Swett, delivered in Chicago, 20 February 1876, Chicago Times, 21 February 1876; Whitney, Life on the Circuit, ed. Angle, 181.

‘Oh, Lord, you know as well as meself that it’s seldom I bodder ye, but if ye will only hear and save me this time, bedad it will be a long time before I bodder ye again.’”<sup>170</sup>

Lincoln liked to describe the misadventures of John Moore, a bibulous Illinois state treasurer who, after drinking to excess one night, tried to drive home in his cart drawn by two steers. As he passed through a wooded grove, one of the wheels hit an obstacle, dislodging the yoke ring and freeing the steers, which ran off. Moore, who had fallen asleep, awoke the next morning, surveyed the scene, and declared: “If my name is John Moore, I’ve lost a pair of steers; if my name ain’t John Moore, I’ve found a cart.”<sup>171</sup>

Thanks to his storytelling and his good nature, Lincoln’s “presence was a joy to all.”<sup>172</sup> Everywhere he went on the circuit, “he brought sunshine. All men hailed him as an addition to their circle. He was genial; he was humorous.”<sup>173</sup> A resident of a county seat on the Eighth Circuit recalled that whenever Lincoln arrived for a court session, “as he alighted and stretched out both his long arms to shake hands with those nearest to him, and to those who approached – his homely face, handsome in its broad and sunshiny smile, his voice touching in its kindly and cheerful accents – everyone in his presence felt lighter in hear and became joyous. He brought light with him.”<sup>174</sup>

Lincoln could amaze as well as amuse his colleagues. Whitney recalled that even though “he was one of the most amiable and courteous of associates in a case, yet he pursued his own independent course in his share, whatever it was, of its management, nor

<sup>170</sup> T. W. S. Kidd, “Town Crier,” *Ida Tarbell Papers*, Allegheny College.

<sup>171</sup> Richard Price Morgan, address at Pontiac, Illinois, 12 February 1909, in Phillips, ed., Lincoln by Some Men Who Knew Him, ed. Angle, 71-72.

<sup>172</sup> Caton, Early Bench and Bar of Illinois, 185, 228.

<sup>173</sup> Linder, “Reminiscences of the Late President Lincoln,” *Washington Sunday Chronicle*, 23 April 1865.

<sup>174</sup> “Personal Reminiscences of the Late Abraham Lincoln by a contributor to the ‘Bulletin,’” *San Francisco Daily Evening Bulletin*, 22 April 1865. The author lived in one of the county seats on the Eighth Judicial Circuit and claimed that he knew Lincoln “in his intercourse with men in several counties of the State.”

would he reveal his designs in the least degree to his colleagues.” Often Whitney consulted with Lincoln, getting “no hint from him as to his views or designs about the case.” Once Swett and Whitney sat in the back of a courtroom “utterly astonished at the cruel mode in which he applied the knife to all of the fine-spun theories we had crammed the jury with.”<sup>175</sup> Swett “never knew him in trying a law-suit to ask the advice of any lawyer he was associated with,” nor could Gibson W. Harris recall “a single circumstance tending to show that he was influenced in his judgment or his conduct by any of his associates.”<sup>176</sup>

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Lincoln made good friends on the circuit, for it was, as David Davis put it, “impossible for a body of intelligent gentlemen to associate together, day by day, six months of the year, without becoming attached to each other and without mutual benefit. There was a generous rivalry, but it evoked no envious spirit. It was an era of good feeling, and friendships were formed which lasted for life.”<sup>177</sup> Lincoln grew fond of many of his colleagues, including Usher Linder, a fellow Kentuckian famous for his prowess as a story-teller and for his surpassing eloquence before a jury.<sup>178</sup> As a young man, Linder adhered to the Democratic party, then switched over to the Whigs for more than a decade, and finally returned to his earlier loyalty, becoming a close ally of Stephen A. Douglas. In 1864, Linder wrote Lincoln saying: “I am constrained to believe friend Lincoln that

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<sup>175</sup> Whitney, Lincoln the Citizen, 174-75.

<sup>176</sup> Swett to Herndon, Chicago, 17 January 1866, Wilson and Davis, eds., Herndon’s Informants, 167; Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, January 1904, 13.

<sup>177</sup> David Davis, “Memorial Address on Hon. John T. Stuart,” quoted in Pratt, “Davis,” 52.

<sup>178</sup> On Linder, see Charles H. Coleman, Abraham Lincoln and Coles County, Illinois (New Brunswick: Scarecrow Press, 1955), 114-24.

you have ever cherished the kindest feelings for me, as I know I have for you, and although we have been often thrown in opposition to each other I think there has never been any thing said by either that has left a pang behind.”<sup>179</sup> Lincoln greatly admired his oratorical skill. Once when they were jointly defending an accused criminal, Linder recommended that they use delaying tactics to protect their client’s interest. Judge Davis had ruled that the case must be concluded by that night. After dinner, Lincoln began a judicial filibuster but found he could not hold forth longer than an hour. Linder stepped in and spoke for three hours, discoursing on a multitude of topics, including a forty-five minute disquisition on the prosecuting attorney’s whiskers. Lincoln “said he never envied a man so much as he did Linder on that occasion. He thought he was inimitable in his capacity to talk interestingly about everything and nothing, by the hour.”<sup>180</sup> In 1856, when Linder’s teenage son shot and wounded another young man, Lincoln volunteered to represent him gratis, an offer which brought tears to the eyes of the distraught father. During the Civil War, Linder’s son, who had joined the Confederate army, was released from prison camp at Lincoln’s request.<sup>181</sup>

Linder had his detractors. He could be violent; in 1859, he assaulted a fellow attorney in open court, pummeling him with his fists.<sup>182</sup> Archibald Williams, a Quincy attorney, called him “a loathsome drunkard regardless alike of truth and decency.”<sup>183</sup>

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<sup>179</sup> Linder to Lincoln, Chicago, 26 March 1864, Lincoln Papers, Library of Congress.

<sup>180</sup> Joseph Gillespie’s introduction to Linder, Reminiscences, 12-18.

<sup>181</sup> Linder, “Reminiscences of the Late President Lincoln,” Washington Sunday Chronicle, 23 April 1865; Coleman, Abraham Lincoln and Coles County, 117-22.

<sup>182</sup> Coleman, Abraham Lincoln and Coles County, 120.

<sup>183</sup> Williams to Justin Butterfield, Springfield, 10 December 1849, Records of the Department of the Interior, Appointments Division, Central Office Appointment Papers, 1849-1907, box 32, Record Group 48, National Archives, College Park, Maryland. On Linder’s drunkenness, see Coleman, Abraham Lincoln and Coles County, 124.

Lincoln admired Williams, whom he called “the most natural and most learned” as well as the “strongest-minded and clearest headed” lawyer of his acquaintance.<sup>184</sup> Like Stephen T. Logan, Williams dressed shabbily, so much so that once a clerk at a hotel where he was staying accosted him, mistakenly thinking he was a derelict, and asked: “Pardon me, sir, but are you a guest of this hotel?” In reply, Williams expostulated: “Hell, no! I am one of its victims. I am paying five dollars a day!”<sup>185</sup> The tall, angular, and awkward Williams resembled Lincoln, according to Usher Linder, who said “for ugliness of face and feature,” Williams “surpassed Mr. Lincoln.” Lincoln, who appointed Williams U.S. District Judge for Kansas, had become quite friendly with Williams while they served together in the General Assembly.<sup>186</sup>

Kirby Benedict, a “quick, earnest, impulsive,” “easy, graceful, and fascinating,” “kind, affable, and courteous” Democratic lawyer in Decatur, was another favorite of Lincoln’s.<sup>187</sup> Linder knew “from Lincoln’s own lips that he enjoyed Benedict’s society hugely.” As president, Lincoln declined to remove Benedict from the chief justiceship of the New Mexico territory, to which Franklin Pierce had appointed him. Lincoln explained “that he had enjoyed too many happy hours in his society, and he was too good and glorious a fellow for him to lay violent hands upon; that he could not find it in his heart to do so, and he wouldn’t.”<sup>188</sup> When told that the judge had a drinking problem, Lincoln replied: “I know Benedict. We have been friends for thirty years. He may imbibe to

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<sup>184</sup> Whitney, Life on the Circuit, ed. Angle, 196; Linder, Reminiscences, 239.

<sup>185</sup> Benjamin P. Thomas, Abraham Lincoln: A Biography (New York: Alfred A. Knopf, 1952), 59.

<sup>186</sup> Linder, Reminiscences, 238-39.

<sup>187</sup> “May Term of the Urbana Court,” Illinois Citizen (Danville), 29 May 1850;

Aurora Hunt, Kirby Benedict, Frontier Federal Judge (Glendale, California: Arthur H. Clarke, 1961), 44-47.

<sup>188</sup> Linder, Reminiscences, 201, 203.

excess, but Benedict drunk knows more law than all the others on the bench in New Mexico sober. I shall not disturb him.”<sup>189</sup>

Benedict’s drinking habits were not unusual on the Eighth Circuit. An editor in Danville observed that the Illinois bar “has great legal talent, but it has also the most drunken lawyers of any bar on the face of the earth.”<sup>190</sup> The state’s attorney for the circuit, David B. Campbell, was often too intoxicated to perform his duties. When Usher Linder thrice appeared at court inebriated, Judge Davis threatened to ban him from the circuit.<sup>191</sup>

Edwin B. (“Bat”) Webb, a “good natured, kind and gentlemanly” attorney from southern Illinois, was “a devoted friend” to Lincoln, who “returned with interest” that friendship. A leading Whig whom Lincoln greatly admired, Webb was known as an exceptionally hospitable host with “refined and elegant manners” and the epitome of “honesty and honor.” In court, he showed that “he understood the science of pleading well.” He and Lincoln served together in the legislature and campaigned for Whig presidential candidates in the 1840s. Webb was admired in the General Assembly “for his good sense, good nature, sterling integrity, fine talents and thorough knowledge of parliamentary procedure.”<sup>192</sup>

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<sup>189</sup> Ralph Emerson Twitchell, Old Santa Fe: The Story of New Mexico’s Ancient Capital (Santa Fe: Santa Fe Mexican Press, 1925), 351. Unsuccessful attempts were made in 1864 to remove Benedict. Lincoln to Edward Bates, Washington, 28 January 1864, Roy P. Basler and Christian O. Basler, eds., The Collected Works of Abraham Lincoln: Second Supplement, 1848-1865 (New Brunswick: Rutgers University Press, 1990), 89; Benedict to Lincoln, Santa Fe, 6 March 1865, Lincoln Papers Library of Congress.

<sup>190</sup> Danville Independent, 15 May 1856, quoted in Lavern Marshall Hamand, “Ward Hill Lamon: Lincoln’s ‘Particular Friend’” (Ph.D. dissertation, University of Illinois, 1949), 50.

<sup>191</sup> Richter, Lincoln: Twenty Years on the Eastern Prairie, 152-53.

<sup>192</sup> Linder, Reminiscences, 266-67; Joseph Gillespie, annotation on verso of Webb to Gillespie, Carmi, Illinois, 6 December 1854, Gillespie Papers, Chicago History Museum.

David Davis “loved and admired Lincoln,” who in turn was “more intimate with him than with any other man,” Gustave Koerner recalled. Lincoln, in Koerner’s opinion, was “kind, just, and, very often, too indulgent to his friends, but those persons for whom he really entertained strong feelings of friendship could be counted on the fingers of one hand. Judge Davis, however, to my certain knowledge was one of them.”<sup>193</sup> Their friendship flourished even though few men differed more in their appearance and temperament.<sup>194</sup> Davis had a “positive, decisive character” while Lincoln’s was “suave and more yielding.”<sup>195</sup> Lincoln was indifferent to money and lived modestly; Davis was a shrewd investor who became rich. Lincoln’s sartorial insouciance was legendary; Davis was something of a Beau Brummel. Davis was five inches shorter and a hundred pounds heavier than Lincoln. The judge had attended college and law school; Lincoln had spent less than twelve months in frontier blab schools. The two did share some things in common: they were devoted to the Whig party; each had “an integrity of character that was immovable in its steadfastness;” they both “were princes of geniality and capital story-tellers.”<sup>196</sup> Judge John M. Scott believed that the two “were greater because of their close association and had the benefit of each others peculiar qualities.” Lincoln “planned and looked far into the future to discover what the end of a proposed measure would be,” while “Davis with his abrupt energy and impulsive purpose to overcome all opposition, carried into effect much of what Lincoln devised.” Neither of them “would ever have occupied the exalted positions they did, had it not been for the helpful influence each

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<sup>193</sup> Koerner, Memoirs, 2:539-40.

<sup>194</sup> Scott, “Lincoln on the Stump and at the Bar.”

<sup>195</sup> Swett, “An Old Friend’s Recollections of David Davis,” Chicago Mail, n.d., copied in the St. Louis Globe-Democrat, 27 June 1888.

<sup>196</sup> Scott, “Lincoln on the Stump and at the Bar;” Swett, “An Old Friend’s Recollections of David Davis,” Chicago Mail, n.d., copied in the St. Louis Globe-Democrat, 27 June 1888.



exerted for the other. Lincoln knew Davis' great powers and that a close alliance with him was necessary to him in developing his own plans and purposes." Davis possessed "much ability to organize political forces and nothing afforded more gratification than to exercise his powers in that direction on behalf of Mr. Lincoln in whom he then saw or thought he saw evidences of his coming greatness." Whereas "Lincoln knew better what ought to be done in political matters," Davis "knew better how to do it." Lincoln, "always quiet and most deliberate in all he said and did concerning grave political questions," contrasted sharply with Davis, who "was vehemently impulsive, forceful and resolute in effort to accomplish that which was planned for him to do or in whatever he purposed himself to do."<sup>197</sup>

Davis, Lincoln and Leonard Swett were known as "the great triumvirate" on the circuit. Swett, a leading criminal lawyer, enjoyed immense popularity, for he was charming, magnetic, eloquent, generous, unselfish, entertaining, and a devoted friend. When trying a jury case, Lincoln preferred him as his partner to all others, seeming "to lean on him, and to say in effect, 'I am all right now that Swett is with me.'" As president, Lincoln did not appoint him to an office "because Swett was too near to him; and he was fearful that he would be censured."<sup>198</sup>

The only thing like a formal partnership Lincoln had outside Springfield was with Ward Hill Lamon, a tall, stout, hard-drinking, humorous, earthy Virginian, who practiced in Danville.<sup>199</sup> Friends described him as "chivalrous, courageous, generous," and "a

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<sup>197</sup> Scott, "Lincoln on the Stump and at the Bar."

<sup>198</sup> "Court and Bar," Clinton Transcript, n.d., copied in the Bloomington Pantagraph, 12 October 1858; Whitney, statement for Herndon, [1887?], Wilson and Davis, eds., Herndon's Informants, 648; Whitney, Life on the Circuit, ed. Angle, 85-88.

<sup>199</sup> On 6 July 1853, the Iroquois Journal (Middleport) ran the following ad: "Abram Lincoln, Springfield, W. H. Lamon, Danville, LINCOLN & LAMON, Attorneys at Law, having formed a co-partnership, will

reckless, dashing, pleasant, social, good looking fellow, an admirable singer, free with money and fond of comic stories,” a “brave man” and “a fine boxer” who “was proud of his Herculean frame.” No student, he probably never read a book from cover to cover in his entire life. Lamon drummed up business and Lincoln tried the cases.<sup>200</sup> Lincoln “trusted Lamon more than any other man.” Lamon’s “fascinating manners could not help making him troops of friends.”<sup>201</sup> A reporter thought him “the most jolly moral philosopher of the day.”<sup>202</sup> In Vermilion County, at the extreme eastern end of the circuit, Lincoln teamed up with Lamon, eighteen years his junior, on more than 150 cases.<sup>203</sup> Their quasi-partnership lasted from 1852 to 1857, when the younger man was elected prosecutor of the Seventeenth Judicial Circuit and moved to Bloomington.<sup>204</sup> Each day after court adjourned, Lamon entertained Lincoln and the other attorneys, supplying a pitcher of liquor to slake their thirst. When he had drunk enough to loosen up, Lamon would be asked by Lincoln or Davis to provide music. He obliged by singing minstrel

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practice in the Courts of the Eighth Judicial Circuit, and the Superior Court, and all business entrusted to them will be attended to with promptness and fidelity.” Even though they were partners, at least nominally, Lincoln and Lamon occasionally were opponents in court, and Lincoln sometimes collaborated with other Danville lawyers. Lupton, “A. Lincoln, Esquire,” 38. See also Richter, Lincoln: Twenty Years on the Eastern Prairie.

<sup>200</sup> Richard Yates to Schuyler Colfax, Springfield, 9 February 1861, Abraham Lincoln Collection, Beinecke Library, Yale University; Leonard Swett in “Our New York Letter,” New York correspondence, 6 February, Indiana Journal (Indianapolis), 10 February 1879.

<sup>201</sup> Clint Clay Tilton, “Lincoln and Lamon: Partners and Friends,” Transactions of the Illinois State Historical Society (1931): 178-79; David Davis to Lincoln, Bloomington, 28 January 1861, Applications and Recommendations for Office, 1861-1869, Appointment Papers, General Records of the Department of State, Record Group 59, National Archives, quoted in Hamand, “Ward Hill Lamon,” 42.

<sup>202</sup> “Court and Bar,” Clinton Transcript, n.d., copied in the Bloomington Pantagraph, 12 October 1858.

<sup>203</sup> LPAL. On Lincoln’s practice in Vermilion County, see Richter, Lincoln: Twenty Years on the Eastern Prairie.

<sup>204</sup> Tilton, “Lincoln and Lamon: Partners and Friends,” 178.

tunes and off-color ditties. During his presidency, Lincoln appointed Lamon marshal of the District of Columbia and used him as a bodyguard and a troubleshooter.<sup>205</sup>

One day during a break in a trial, Lamon tore the seat of his pants during an informal wrestling match. He returned to the court house without having a chance to repair the damage, cutting a comical figure before the jury. As a joke, one attorney circulated a subscription to raise money to buy a new pair of pants for Lamon. Most of his colleagues wrote their names and pledged absurd amounts to the fund, but when the document reached Lincoln, he did not follow suit. Rather he wrote his name and the following message: “I can contribute nothing to the end in view.”<sup>206</sup>

Another humorous episode occurred after Lamon charged a big fee to represent a man who served as conservator for his deranged, well-to-do sister. When a bounder sought to wed the young woman for her money and remove the conservator, her brother hired Lincoln and Lamon to thwart the attempt. After winning the case, the attorneys received \$250, an amount set by Lamon. When Lincoln discovered the size of the fee, he told his partner: “this is all wrong. The service was not worth that sum. Give him back at least half of it.” Reluctantly Lamon complied. Davis, observing this transaction disapprovingly, blared out a rebuke heard by all present: “Lincoln, I have been watching you and Lamon. You are impoverishing this bar by your picayune charges of fees, and the lawyers have reason to complain of you. You are now almost as poor as Lazarus, and if you don’t make people pay you more for your services you will die as poor as Job’s turkey!” When a leading member of the bar applauded this pronouncement, Lincoln

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<sup>205</sup> Weik, Real Lincoln, ed. Burlingame, 217-20; Tilton, “Lincoln and Lamon: Partners and Friends,” 189-228.

<sup>206</sup> Ward Hill Lamon, Recollections of Abraham Lincoln, 1847-1865, ed. Dorothy Lamon Teillard (2<sup>nd</sup> ed.; Washington: privately printed, 1911), 16-17.

retorted: “That money comes out of the pocket of a poor, demented girl, and I would rather starve than swindle her in this manner.” Lincoln did not want his firm to be known as “Catch ‘em and Cheat ‘em.” That evening Davis summoned Lincoln before his moot tribunal, known as “The Ogmathorial Court” (a Davis neologism). He was convicted and slapped with a fine, which he paid good-naturedly. Then he “kept the crowd of lawyers in uproarious laughter until after midnight.”<sup>207</sup>

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This was not an isolated instance, for Lincoln charged notoriously low fees.<sup>208</sup> After successfully representing a client in a complicated slander suit, Lincoln asked for \$25. “We were astonished,” recalled opposing counsel, “and had he said one hundred dollars it would have been what we expected. The judgment [\$600] was a large one for those days: he had attended the case at two terms of court, had been engaged for two days in a hotly-contested suit, and his client’s adversary was going to pay the bill. The simplicity of Mr. Lincoln’s character in money matters is well illustrated by the fact that for all this he charged twenty-five dollars.”<sup>209</sup> In 1856, he wrote a client saying: “I have just received yours of the 16<sup>th</sup>, with check on Flagg & Savage for twenty-five dollars. You must think I am a high-priced man. You are too liberal with your money. Fifteen dollars is enough for the job. I send you a receipt for fifteen dollars, and return to you a ten-dollar bill.”<sup>210</sup> When Lincoln billed the Chicago banking firm of George Smith and Company a mere \$25 for trying and winning their case, the head of the firm thanked John

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<sup>207</sup> Lamon, Recollections, 17-19.

<sup>208</sup> See, for example, a case described by Henry Rickel, recalling what his father, a Springfield friend and client of Lincoln, had told him, Cedar Rapids, Iowa, Evening Gazette, 6 February 1909.

<sup>209</sup> Weldon, “Reminiscences of Lincoln as a Lawyer,” 246.

<sup>210</sup> Lincoln to George P. Floyd, Springfield, 21 February 1856, Basler, ed., Collected Works of Lincoln, 2:332-33.

W. Bunn for recommending Lincoln, saying: “We asked you to get the best lawyer in Springfield and it certainly looks as if you had secured one of the cheapest.”<sup>211</sup> After offering advice to a young man about collecting a debt, Lincoln refused to accept any money for the consultation. When the client insisted “that he should be allowed to make some present” as compensation, Lincoln replied: “when you go down stairs just stop at the stationers, and send me up a bottle of ink.”<sup>212</sup> For collecting \$2000 for a client who had lent that sum to a deadbeat, Lincoln charged a fee of only \$2.<sup>213</sup>

In his notes for a law lecture, Lincoln stressed that the “matter of fees in important, far beyond the mere question of bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. As a general rule never take your whole fee in advance, nor any more than a small retainer. When fully paid beforehand, you are more than a common mortal if you can feel the same interest in the case as if something were still in prospect for you, as well as for your client. And when you lack interest in the case the job will very likely lack skill and diligence in the performance. Settle the amount of fee and take a note in advance. Then you will feel that you are working for something, and you are sure to do your work faithfully and well. Never sell a fee note – at least not before the consideration service is performed. It leads to negligence by losing interest in the case, and dishonesty in refusing to refund when you have allowed the consideration to fail.”<sup>214</sup>

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<sup>211</sup> Moores, “Abraham Lincoln, Lawyer,” 520-21. After lecturing in Pontiac, Lincoln refused to accept more than \$10, exclaiming: “For Heaven’s sake don’t give me any more; ten dollars is all it is worth.” Reminiscences of Robert D. McDonald, *ibid.*, 521-22.

<sup>212</sup> “More of Old Abe’s Peculiarities,” New York Daily News, 16 November 1861.

<sup>213</sup> Statement of Scott Rodman of Bloomington, Illinois, made to William E. Barton, 9 February 1923, Barton Papers, University of Chicago. Rodman’s father was the client.

<sup>214</sup> Basler, ed., Collected Works of Lincoln, First Supplement, 20.

In the 1860 presidential contest, Lincoln’s small fees were cited as evidence of his admirable character. The Boston Campaign Atlas and Bee reported that “Poor men, who have the misfortune to do with courts, come to Lincoln, who has never been known to exact an exorbitant fee, and whose demands are always proportioned to their property. There is a record of a case which he gained for a young mechanic, after carrying it through three courts, and of his refusal to receive more than a comparative trifle in return.”<sup>215</sup>

It is impossible to determine just how much Lincoln earned from the practice of law, but a fee book that he kept while in partnership with John Todd Stuart and another one kept by Herndon for the years 1845-47 shed some light on the matter. They show that most cases yielded \$10 for circuit and supreme court work and \$20 for cases in the U.S. courts. With Stuart and Herndon, Lincoln split fees evenly; with Logan, he received one third of the fees. In partnership with Stuart from 1837 to 1841, he averaged about \$1,000 annually; with Logan as his partner, his income rose about 50%. By the late 1850s, he earned approximately \$4,000 to \$5,000 a year.<sup>216</sup> Compared with other lawyers in Springfield, Lincoln was not especially prosperous. According to the census of 1860, he ranked twelfth of the seventeen attorneys in terms of assets. (Of the 414 Springfield households listed in the census, the Lincolns’ ranked 127<sup>th</sup>.) The five lawyers who owned less than he did – including Herndon – were much younger, averaging thirty-two; Lincoln was then fifty-one.<sup>217</sup>

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<sup>215</sup> Campaign Atlas and Bee (Boston), 7 July 1860.

<sup>216</sup> Lupton, “A. Lincoln, Esquire,” 34; Pratt, Finances of Lincoln, 25-57.

<sup>217</sup> I am deeply grateful to attorney and historian Richard Hart of Springfield, who compiled these data and generously shared them with me.

Though Lincoln seemed relatively insouciant when it came to setting fees, he was not careless about collecting them. He once said that he had earned \$2500 one year “but found that the collection of fees was a difficult proposition.”<sup>218</sup> After winning a case for one client, Lincoln wrote him: “as the Dutch justice said when he married folks, ‘Now vere ish my hundred tollars.’”<sup>219</sup> On at least seventeen occasions he sued for unpaid fees.<sup>220</sup>

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Lawyers in antebellum Illinois had to blaze legal trails, for there were few precedents to guide them. Many years after the Civil War, Henry C. Whitney said that practicing law “was more difficult then than now by reason of the dearth of authority, and of the method then in vogue of reasoning out cases upon primordial and original principles.”<sup>221</sup> During the 1840s and 1850s in Illinois, county seats changed location and the law changed its contours. The General Assembly had given legal status to the English common law, but it was not clear what elements of that corpus were relevant to frontier America. Herndon lavished praise on the early bar of Illinois: “To make wise laws – to administer justice and organize thoughts – customs – habits into laws required talent of the highest order and thorough study. Every thing had to be blocked out anew and made to fit our modes of thought.” Attorneys then “had to think deeply.”<sup>222</sup>

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<sup>218</sup> George W. Shaw, “Personal Reminiscences of Lincoln,” Geneseo, Illinois, News, n.d., copied in the Pekin Daily Post-Tribune, 16 May 1911.

<sup>219</sup> Lincoln to Andrew McCallen, Springfield, 4 July 1851, Basler, ed., Collected Works of Lincoln, 2:106.

<sup>220</sup> Steiner, Honest Calling, 71-72.

<sup>221</sup> Whitney, Lincoln the Citizen, 188.

<sup>222</sup> Herndon to Mrs. Leonard Swett, Springfield, 22 February 1890, Swett Papers, Lincoln Presidential Library, Springfield.

On the circuit, Lincoln read and thought deeply after his return from Congress in 1849. He carried books with him on the circuit, among them Euclid’s geometry, the Bible, Shakespeare, and volumes of poetry, including Burns and Poe. In the evening he would often fetch a candle and read well into night.<sup>223</sup> In 1860, he wrote that during the previous decade he had “studied and nearly mastered the Six-books of Euclid.”<sup>224</sup> Herndon, who often slept in the same bed with Lincoln while on the circuit, marveled at his partner’s concentration: “How he could maintain his mental equilibrium or concentrate his thoughts on an abstract mathematical proposition, while Davis, Logan, Swett, Edwards, and I so industriously and volubly filled the air with our interminable snoring was a problem none of us could ever solve.”<sup>225</sup> Lincoln’s love of geometry led him to try squaring the circle. Herndon recalled seeing him engaged in that endeavor “so deeply absorbed in study he scarcely looked up when I entered.” Amidst “a quantity of blank paper, large heavy sheets, a compass, a rule, numerous pencils, several bottles of ink of various colors, and a profusion of stationery,” he labored to the point of exhaustion for two days on the insoluble problem.<sup>226</sup>

Lincoln was a teacher manqué, eager to share what he learned. One day in Clinton, after mastering one of Euclid’s propositions, he eagerly explained it to a hostler.

He learned from people as well as well as teaching them. Leonard Swett called Lincoln

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<sup>223</sup> John Todd Stuart, interview with Herndon, 20 December 1866, Wilson and Davis, eds., Herndon’s Informants, 519.

<sup>224</sup> Basler, ed., Collected Works of Lincoln, 4:62.

<sup>225</sup> William H. Herndon and Jesse W. Weik, Herndon’s Lincoln, ed. Douglas L. Wilson and Rodney O. Davis (1889; Urbana: University of Illinois Press, 2006), 194. See also Herndon to Weik, 25 October 1885, Herndon-Weik Papers, Library of Congress. Not all attorneys had Lincoln’s forbearance. When David Campbell told Kirby Benedict to find another bunkmate, Benedict asked: “What is your objection to sleeping with me?” Campbell replied: “Darn you, I never did sleep with you but I have lain with you. To sleep with you would be impossible. You snore like a Cyclops and your breath smells of mean whiskey.” Hunt, Benedict, 42.

<sup>226</sup> Weik, Real Lincoln, 240.



the “most inquisitive man I have known,” one for whom “life was a school, and he was always studying and mastering every subject which came before him.” On the circuit, “he would perhaps sit with the driver, and before we got to our journey’s end he would know all the driver knew. If we stopped at a cross-road blacksmith-shop, he would sit by the blacksmith over his forge and learn how to make nails; walking along the sidewalk of a country town, he would see a new agricultural implement set out on the walk, he would stop, and before leaving learn what it would do, how it would do it, and what it was an improvement upon.”<sup>227</sup>

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Effective as he was before juries, Lincoln was even more successful on the appellate level. For cases in the Federal Courts and the Illinois Supreme Court, he had time enough to prepare carefully. “He was then a number one lawyer,” Herndon recalled.<sup>228</sup> Henry C. Whitney also thought that Lincoln shone most brightly when he had plenty of time to get ready. He was, Whitney said, “an uneven lawyer” whose “best results were achieved as a result of long and continuous reflection; the various elements of a case did not group themselves in apt and proper position and order in his mind on first impression; hence he was not as self-reliant in a new case as in one he had fully discussed and decided in his own mind, and his first impressions in a case were not his best ones.”<sup>229</sup>

Lawyers practicing far from Springfield regularly asked Lincoln to handle cases they wished to appeal to the Illinois Supreme Court. Just after he returned from Congress,

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<sup>227</sup> Swett in Rice, ed., Reminiscences of Lincoln, 467; Swett’s speech, “The Life of Lincoln,” delivered at the dedication of St. Gaudens’ statue of Lincoln in Chicago, Chicago Times, 23 October 1887.

<sup>228</sup> Herndon, “Analysis of the Character of Abraham Lincoln,” 430.

<sup>229</sup> Whitney, Lincoln the Citizen, 182-83.

that tribunal, which had been meeting exclusively in Springfield, began holding sessions at Ottawa and Mt. Vernon as well as at the capital. Now and then, Lincoln would travel to the former town to attend the Supreme Court, but most of his work before that body took place in Springfield. In the 1840s he averaged about forty supreme court cases annually until the fall of 1847, when he left Illinois to serve in Congress. In the 1850s, he had fewer cases, but they involved higher stakes. Of the 5,173 documented cases that he and his partners participated in, 411 were tried in the Illinois Supreme Court. All of them were civil rather than criminal, primarily involving the ownership of horses and other animals.

The most lucrative cases concerned iron horses. He represented the Illinois Central Railroad (52 cases), the Chicago, Alton & St. Louis (7 cases), Alton & Sangamon (7 cases), Chicago & Mississippi (6 cases), Ohio & Mississippi (2 cases), the Tonica & Petersburg (4 cases), and the Wabash Valley (1 case). On behalf of individuals, he sued or defended clients against the Tonica & Petersburg (3 cases), Great Western (25 cases), Terre Haute & Alton (23 cases), Chicago, Alton & St. Louis (3 cases), the Illinois River (3 cases), Sangamon & Morgan (2 cases), the Peoria & Hannibal (1 case), and the Chicago, Burlington, Quincy (1 case).<sup>230</sup> The only corporation that gave him a regular retainer was the Illinois Central, which he represented in several dozen cases. Most of them involved simple questions and were tried in lower courts. As part of his retainer agreement, he pledged not to represent clients suing the Illinois Central. In 1854, when a farmer asked him to bring suit against that railroad, Lincoln refused because, he explained to the corporation's general solicitor, "as I had sold myself out to you, I turned

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<sup>230</sup> Banister, Lincoln and the Illinois Supreme Court, 17-18, 65, 72-94.

him over to Stuart.”<sup>231</sup> On another occasion, he reversed that sequence when a farmer whose cow had been killed by a train asked him to sue the railroad. Upon learning of this potential suit, the company tried to hire Lincoln; he turned down the offer and represented the farmer, who won a liberal settlement.<sup>232</sup> Approximately 4% of Lincoln’s total case load involved railroads.<sup>233</sup>

The antebellum supreme court of Illinois had a grave responsibility, as one of its members recalled: “The jurisprudence of the State was then in its infancy. We were then laying down rules which were to be followed by those who should come after us, and it was of the greatest importance, not only to ourselves, personally, but to the profession generally, that these rules should be such as to bear the test of time and of the closest scrutiny.”<sup>234</sup> That challenge was especially marked in railroad cases, where no common law existed to guide courts.

Lincoln helped establish important precedents in this area. One notable example dealt with stock subscribers who reneged on their pledges. To raise capital, railroad corporations issued stock which many Illinoisans, eager to have the tracks pass near or through their property, agreed to purchase. In time, some subscribers changed their minds and refused to pay.<sup>235</sup> In Barrett v. Alton and Sangamon Railroad Company (1851), one of Lincoln’s first railroad cases, James A. Barrett maintained that when he agreed to buy thirty shares of the company’s stock, the rail line was projected to cross his property;

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<sup>231</sup> Lincoln to Mason Brayman, Springfield, 31 March 1854, in William D. Beard, “Lincoln and the Illinois Central Railroad,” Lincoln Herald 92 (1990): 16.

<sup>232</sup> Reminiscences of George Hartley, Chicago Daily News, 28 January 1909.

<sup>233</sup> Lupton, “A. Lincoln, Esquire,” 22; LPAL, “A Statistical Portrait.”

<sup>234</sup> Caton, Early Bench and Bar of Illinois, 83.

<sup>235</sup> Dan W. Banister, “The Quintessential Antebellum Supreme Court of Illinois: A History of That Period in Illinois as Told by its Justices,” unpublished typescript, 2002, pp. 272-81.

later, when the company changed the route (but not the termini), Barrett understandably lost his enthusiasm and declined to honor his pledge. Lincoln, representing the railroad in both the circuit and the supreme courts, won at both levels. His principal argument was that “Legislation and adjudication must follow, and conform to, the progress of society.”<sup>236</sup> Six years later, he represented Charles Sprague, who reneged on his pledge to purchase \$50,000 worth of stock in the Illinois River Railroad. The court found against Sprague, observing that it “nowhere met with a more satisfactory exposition of the general principle of the law, governing the respective rights of corporations and individual stockholders therein, as connected with the subject, than in the case of Barret v. The Alton and Sangamon Railroad Company.”<sup>237</sup> In 1859, Lincoln met with a similar defeat when the supreme court ruled that his client, Daniel Earp, must honor a pledge to buy stock in the Terre Haute and Alton Railroad Company.<sup>238</sup> The court again cited the Barrett case, saying that if what it had ruled there “has not shown satisfactory reasons for the rule of law which we hold on this subject, we despair of doing so now.”<sup>239</sup> Thus was Lincoln twice hoist with his own petard.

Lincoln helped set another precedent in the 1857 case of Illinois Central Railroad Company v. Morrison and Crabtree, which dealt with the obligations of common carriers to insure their freight. The plaintiffs alleged that the railroad company had been grossly negligent in transporting 400 head of their cattle; some of the livestock had died in transit and many others lost an unusual amount of weight. Lincoln, along with Henry C.

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<sup>236</sup> Basler, ed., Collected Works of Lincoln, 2:459; LPAL, case file #02160; Banister, “Quintessential Antebellum Supreme Court of Illinois,” 273; William D. Beard, “‘I Have Labored Hard to Find the Law’: Abraham Lincoln for the Alton and Sangamon Railroad,” Illinois Historical Journal 85 (1992): 209-20.

<sup>237</sup> LPAL, case file #02489; Banister, “Quintessential Antebellum Supreme Court of Illinois,” 275.

<sup>238</sup> LPAL, case file #00980; Banister, “Quintessential Antebellum Supreme Court of Illinois,” 279.

<sup>239</sup> Banister, Lincoln and the Illinois Supreme Court, 78.

Whitney and O. B. Ficklin, successfully defended the corporation before the supreme court, which agreed with Lincoln’s argument that the common law (which held the carrier strictly liable for goods lost or damaged in its care) had to be modified to take into account the dramatic changes wrought by railroads. Carriers could limit their liability and in effect cease to act as insurers by reducing their rates in return for the shipper’s agreement to waive the right to sue.<sup>240</sup>

The most lucrative case Lincoln tried, Illinois Central Railroad vs. McLean County, Illinois and Parke, better known as the McLean County tax case, involved the power of counties to tax the corporation.<sup>241</sup> In 1851, the General Assembly had granted the railroad a charter stipulating that its property would be exempt from taxation; in return, it would pay the state a percentage of its gross receipts.<sup>242</sup> Some counties wished to challenge the state’s action, which they regarded as an unconstitutional usurpation of their authority to tax. In the summer of 1853, Champaign County officials discussed the matter with Lincoln. He was subsequently approached by the corporation, which was being taxed by McLean County. Since Champaign County had made the first overture, he told the clerk of its circuit court: “The question, in its magnitude, to the Co[mpany] on the one hand, and the counties in which the Co[mpany] has land, on the other, is the

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<sup>240</sup> LPAL, case file #00708; Banister, “Quintessential Antebellum Supreme Court of Illinois,” 288, 291; Banister, Lincoln and the Illinois Supreme Court, 81-83.

<sup>241</sup> LPAL, case file #01655; John J. Duff, A. Lincoln: Prairie Lawyer (New York: Rinehart, 1960), 312-18.

<sup>242</sup> John F. Stover, History of the Illinois Central Railroad (New York: Macmillan, 1975), 28-29. It is possible that Lincoln helped lobby the legislature for the charter. Anthony Thornton, who served in the General Assembly in 1851, recalled many years later that “Lincoln and several members of the Legislature were engaged by the Illinois Central Railroad Company to obtain the charter for the company.” Thornton’s statement dated 30 August 1904, “The Illinois Central Lines during the Civil Conflict, 1861-65,” Illinois Central Magazine, June 1913, pp. 15-16. Robert Rantoul of Massachusetts allegedly secured passage of the charter for some Eastern capitalists over the objections of Lincoln, who had been hired by Western capitalists. Lincoln reportedly told Rantoul’s son in 1863 about that struggle and “added with a laugh and slapping his lank thighs, ‘Your father beat me, he beat me!’” Biographical sketch of Robert Rantoul, Jr., typed copy, box 47, Illinois Central Railroad Archives, Newberry Library, Chicago.

largest law question that can now be gotten up in the State; and therefore in justice to myself, I can not afford, if I can help it, to miss a fee altogether.” Indeed, the stakes were high for both the counties and the corporation; the former anticipated a large tax windfall and the latter dreaded the prospect of having to pay property taxes above and beyond its levy to the state government in each of the two dozen countries through which its rails passed. If the county would pay him roughly what the corporation would, then Lincoln would feel obliged to work for it.<sup>243</sup> The judge of the Champaign County Court urged that “no time is to be lost in securing the services of Mr. Lincoln,” but nothing came of his initiative.<sup>244</sup> In October, Lincoln therefore accepted the offer of the corporation, which gave him a \$200 retainer.<sup>245</sup>

In cooperation with Mason Brayman, a Springfield attorney working for the railroad, and with James F. Joy of Detroit, the general counsel of the Illinois Central, Lincoln filed suit to block McLean County’s attempt to tax the corporation. The county agreed to have the case dismissed by the circuit court in order to appeal it to the supreme court expeditiously. There, in 1856, Lincoln and his colleagues prevailed, after arguing the case twice. Lincoln’s brief cited the landmark 1819 case of McCulloch vs. Maryland and two dozen others.<sup>246</sup> It ranks as one of the most persuasive and complex briefs Lincoln ever penned.<sup>247</sup>

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<sup>243</sup> Lincoln to Thompson R. Webber, Bloomington, 12 September 1853, Basler, ed., Collected Works of Lincoln, 2:202.

<sup>244</sup> John B. Thomas to Thompson R. Webber, “at home,” 15 September 1853, John W. Starr, Lincoln and the Railroads: A Biographical Study (New York: Dodd, Mead, 1927), 61.

<sup>245</sup> Lincoln to Mason Brayman, Pekin, 3 October 1853, Basler, ed., Collected Works of Lincoln, 2:205.

<sup>246</sup> The text is reproduced in Emanuel Hertz, Abraham Lincoln: A New Portrait (2 vols.; New York: Liveright, 1931), 2:675-81.

<sup>247</sup> Hertz, Lincoln: A New Portrait, 2:681.

In 1859 and 1860, Lincoln argued another important tax case, The People v. Illinois Central Railroad, which involved an attempt by State Auditor Jess K. Dubois, a close friend of Lincoln, to sue the company for underpayment of taxes. Dubois ignored Lincoln's advice not to bring suit. Lincoln, in his final case before the supreme court, successfully defended the corporation, arguing that the state had assessed the company's property incorrectly. In its decision, the court ruled that taxes should be levied on the actual, not prospective, value of property.<sup>248</sup> An Illinois Central official later said, "This was a case of considerable importance and it was largely due to the efforts of Mr. Lincoln that judgment was rendered in favor of the company."<sup>249</sup>

In 1859, Lincoln defended the Illinois Central against the claim of Wilson Allen, who charged that the railroad had inadvertently created a stagnant pond that had injured his family's health. Lincoln maintained that the matter had been settled in 1854 and that the company had paid Allen the amount awarded by the court. Eventually, after Lincoln had become president, the Illinois Supreme Court endorsed his argument.<sup>250</sup>

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Though David Davis may have declined to resort to technicalities, Lincoln did not.<sup>251</sup> In 1849, he represented a client who had guaranteed an appeal bond that the original debtor failed to pay. In the Illinois Supreme Court, Lincoln argued that the guarantor need not honor the bond because of a minor discrepancy between the wording

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<sup>248</sup> The People v. Illinois Central Railroad (1859-60), LPAL, case file #02468. This complex matter is discussed in Charles Leroy Brown, "Abraham Lincoln and the Illinois Central Railroad," Journal of the Illinois State Historical Society 36 (1943): 139-63; G. S. Boritt, "Was Lincoln a Vulnerable Candidate in 1860?" Civil War History 27 (1981): 34-37, 39-40; and Sandra K. Lueckenhoff, "A. Lincoln, a Corporate Attorney and the Illinois Central Railroad," Missouri Law Review 61 (1996): 420-25.

<sup>249</sup> Starr, Lincoln and the Railroads, 69.

<sup>250</sup> Illinois Central Railroad v. Allen (1859-63), case file #00770, LPAL.

<sup>251</sup> John P. Frank, Lincoln as a Lawyer (Urbana: University of Illinois Press, 1961), 52-57.

of the bond and the original judgment, which the debtor had appealed. Both documents indicated that the debtor owed \$909.41, but Lincoln maintained that the bond was invalid because the original judgment against his client specified that he must pay \$909.41 plus \$7.50<sup>3</sup>/<sub>4</sub> costs, whereas the appeal bond, guaranteeing that the debt would be paid if the appeal failed, stipulated that the debtor must pay \$841.54 in debt and \$58.87 in damages (total \$909.41) plus costs (amount unspecified). The court sensibly ruled that because the difference in wording was so minor and the amount owed was exactly the same in both documents, the guarantor of the bond must pay up.<sup>252</sup>

In the 1857 murder case of The People v. Bantzhouse, Lincoln took advantage of a newly appointed state's attorney, James B. White, who failed to note that homicide cases must be tried within two consecutive terms of a court. As counsel for the accused, Lincoln moved for a continuance and a change of venue. When White did not object, Lincoln successfully moved for dismissal on the grounds that the speedy trial rule had been violated.<sup>253</sup>

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Of all the many cases Lincoln handled in his twenty-four years at the bar, none was more important than Hurd v. The Rock Island Bridge Company, better known as the Effie Afton case, tried in September 1857 before the U.S. Circuit Court in Chicago, Justice John McLean presiding.<sup>254</sup> The previous year a river-packet, the Effie Afton, had

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<sup>252</sup> Pearl and Holland v. Wellman and Wellman, LPAL, case file #01242; Frank, Lincoln as a Lawyer, 52-54; Banister, Lincoln and the Common Law, 133.

<sup>253</sup> Lupton, "A. Lincoln, Esquire," 37; The People v. Bantzhouse, LPAL, case file #00824.

<sup>254</sup> Duff, A. Lincoln: Prairie Lawyer, 332-45; Charles J. Lynch, Jr., "Lincoln and the Effie Afton Bridge Case," in Clyde C. Walton, Jr., ed., The Bollinger Lincoln Lectures ([Iowa City]: State University of Iowa Libraries, 1953), 46-67; Elwin L. Page, "The Effie Afton Case," Lincoln Herald, vol. 58, no. 3 (Fall 1956): 3-10.



crashed into a pier of the first railroad bridge thrown across the Mississippi River (linking Davenport, Iowa, and Rock Island, Illinois). Both the ship and the draw span of the bridge caught fire and were destroyed. Alleging that the bridge materially obstructed navigation, the ship's owner, Jacob S. Hurd, sued the bridge company for \$50,000. The case became a cause celebre, pitting the river towns, principally St. Louis, against rail hubs, notably Chicago. The suit jeopardized the future of western railroads, for it might lead to the prohibition of all bridge construction over the Mississippi.

Norman B. Judd, an eminent railroad attorney engaged by the bridge company, suggested that it also hire Lincoln, whom he described as “one of the best men to state a case forcibly and convincingly that I ever heard, and his personality will appeal to any judge or jury hereabouts. I heard him first at the waterways convention . . . in Chicago back in 1847.” The Springfield lawyer, said Judd, was the only man “who can without doubt win that case.”<sup>255</sup> Lincoln spent months in preparation, carefully inspecting the bridge site and the relevant documents. (His job was made easier by his experience arguing an earlier case involving similar circumstances, Columbus Insurance Co. v. Peoria Bridge Company, in which he represented insurers who had paid for damage sustained by a canal boat that had struck the pier of a bridge over the Illinois River. Unlike the Effie Afton case, he represented the accusers of the bridge company.)<sup>256</sup>

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<sup>255</sup> Rock Island Railroad, “Seventieth Anniversary Brochure,” (1922), p. 19, quoted in Duff, A. Lincoln, Prairie Lawyer, 129; L. O. Leonard, “The Founders and Builders of the Rock Island: Article 3, Abraham Lincoln,” Rock Island Magazine, February 1926, 5.

<sup>256</sup> LPAL, case file #05071.

Lincoln visited Davenport where the son of the bridge engineer took him to the pier head and answered many questions about the currents and related matters.<sup>257</sup>

In his closing speech to the jury (preserved thanks to the shorthand reporting of Robert R. Hitt, who would cover Lincoln's debates with Stephen A. Douglas the following year), Lincoln demonstrated a formidable command of the details of the case. He argued that "the current of travel" moving east and west had as much right to protection as that flowing north and south; that a substantial amount of traffic crossed the bridge; that the rail line, unlike the river, was an all-weather highway for commerce; that the pilot of the ship had not exercised reasonable skill and care; that one of the ship's two paddle wheels had stopped working as it passed through the draw; and that it was unreasonable to expect railroad companies to dig tunnels beneath the Mississippi or to erect suspension bridges high above it.<sup>258</sup> An observer recollected that "Lincoln's examination of witnesses was very full and no point escaped his notice. I thought he carried it almost to prolixity, but when he came to his argument I changed my opinion. He went over all the details with great minuteness, until court, jury, and spectators were wrought up to the crucial points. Then drawing himself up to his full height, he delivered a peroration that thrilled the court-room and, to the minds of most persons, settled the case."<sup>259</sup> A follow attorney called this case "the one in which his powers were exhibited

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<sup>257</sup> Benjamin B. Brayton, Jr., to Hilon A. Parker, Davenport, Iowa, 10 February 1903, Parker Papers, Clements Library, University of Michigan; B. B. Brayton, "The Crossing of the River: The Turning Point for the Railroad and the West," Davenport Democrat and Leader, 22 October 1905.

<sup>258</sup> Speech to the jury, Chicago, 22 and 23 September 1857, Basler, ed., Collected Works of Lincoln, 2:415-22.

<sup>259</sup> Colonel Peter A. Dey, an engineer on the Mississippi and Missouri Railroad, in Hill, Lincoln the Lawyer, 260-61n.

to the most advantage.”<sup>260</sup> Another said, “I have always considered it as one of the ablest efforts I ever heard from Mr. Lincoln at the bar. His illustrations were apt and forcible, his statements clear and logical, and his reasons in favor of the policy (and necessarily the right) to bridge the river, and thereby encourage the settlement and building up of the vast area of fertile country to the west of it, were broad and statesmanlike.”<sup>261</sup> After dividing nine to three in favor of the bridge company, the jury was dismissed. In 1862, the case ended when the U.S. Supreme Court overturned a lower court order to remove a portion of the bridge.<sup>262</sup>

In 1857, the firm of Lincoln and Herndon tried another celebrated railroad case, St. Louis and Chicago Railroad v. Dalby, which has been hailed as “probably the most far-reaching case” Lincoln ever had before the supreme court.<sup>263</sup> In fact, Herndon, not Lincoln, tried the case in both the circuit and the supreme courts.<sup>264</sup>

Another area where the common law remained silent was the liability of municipalities for negligence. Lincoln helped establish an important precedent in the 1853 case of Browning v. the City of Springfield, which involved his friend and colleague at the bar, Orville H. Browning.<sup>265</sup> While walking the streets of the capital one

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<sup>260</sup> Grant Goodrich to William H. Herndon, Chicago, 9 December 1866, Wilson and Davis, eds., Herndon’s Informants, 511.

<sup>261</sup> Reminiscences of Wells H. Blodgett, Ida M. Tarbell, The Life of Abraham Lincoln (2 vols.; New York: McClure, Phillips, 1902), 1:276.

<sup>262</sup> LPAL, case file #02289.

<sup>263</sup> Albert A. Woldman, Lawyer Lincoln (Boston: Houghton Mifflin, 1936), 175.

<sup>264</sup> LPAL, case file #01027; William D. Beard, “Dalby Revisited: A New Look at Lincoln’s ‘Most Far-reaching Case’ in the Illinois Supreme Court,” Journal of the Abraham Lincoln Association 20 (1999): 1-16. The case “set a precedent for liability of corporations for assaults against persons, which is still the law in Illinois and other civilized areas.” Paul J. Beaver, “Lincoln’s Political Rise in Logan County, Illinois,” The Lincoln Newsletter, vol. 12, no. 3 (February 1982), quoted in Banister, Lincoln and the Illinois Supreme Court, 91.

<sup>265</sup> Browning v. Springfield (1853), LPAL, case file #02794.

day, Browning fell and broke his leg. Alleging that the city had failed to keep its streets in proper repair, he hired Lincoln to sue for damages. After losing in the circuit court, he won before the supreme court, which ruled that in the absence of common law provisions to cover the case, a set of guidelines should be followed “based upon sound sense in accordance with strict morality, and keeping pace with the progress of improvements of the age.”<sup>266</sup>

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Lincoln practiced extensively in the Federal Courts in Illinois once he was admitted to do so in 1842. About 7% of his total case load consisted of trials at the federal level, where he, not Herndon, did virtually all the litigating.<sup>267</sup> The Federal Courts handled disputes among citizens of different states. Residents of other states trying to collect sums larger than \$500 from Illinoisans would often hire Lincoln to bring suit in Federal Courts. The extent of his practice there is impossible to determine, for the Chicago fire of 1871 consumed most of the Illinois federal records prior to 1855. The surviving documents indicate that Lincoln was involved in 332 federal cases, in addition to the 72 bankruptcy actions he and Logan handled in the brief period when the federal bankruptcy law was in effect (1842-43).<sup>268</sup> Many of those cases, like most of the ones he dealt with in the state court system, involved debt collection. In 1841, David Davis reported that in Illinois “the great business of lawyers is the collection of debts – and there being always more of every thing else than of money here, the business is not a very

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<sup>266</sup> Bannister, Lincoln and the Illinois Supreme Court, 57.

<sup>267</sup> LPAL, “A Statistical Portrait”; Donald, Herndon, 47.

<sup>268</sup> LPAL, “A Statistical Portrait”; Harry E. Pratt, “Lincoln and the Bankruptcy Law,” Illinois Bar Journal 31 (1943): 201-6; Paul M. Angle, “Lincoln in the United States Court, 1855-1860: New Light on His Law Practice,” Lincoln Centennial Association Bulletin, September 1, 1927, 1, 5-6; Duff, A. Lincoln, Prairie Lawyer, 221-42.

easy one; hence clients are continually writing – to keep up a running correspondence with whom – occupies about half of one’s time.”<sup>269</sup> Debt litigation comprised 55% of Lincoln’s total case load; matters pertaining to inheritance, 15%; foreclosing on mortgages, 7%; criminal law, 5%; railroads, 4%; divorce, 3%; slander, 2%; medicine, less than 1%; miscellaneous, 8%.<sup>270</sup>

The sums involved in federal cases were often large and therefore yielded handsome fees. In 1859, Lincoln received \$1,500 for his work in Beaver v. Taylor & Gilbert, where he successfully argued that his clients deserved title to acreage in southern Illinois.<sup>271</sup> That same year, he billed N. H. Ridgely \$500 for handling a real estate matter.<sup>272</sup> Another major case, the last that Lincoln tried in Federal Court, also involved a real estate dispute. In Chicago, a large tract of alluvial land had been formed when the Federal Government ordered a channel dug across two parcels of lakefront land owned by different parties. This misnamed “Sandbar case” (Johnston v. Jones and Marsh) dragged on for years. At the fourth trial of the matter, lasting eleven days in the early spring of 1860, Lincoln successfully defended his client’s claim and received a \$350 fee.<sup>273</sup> One of Lincoln’s co-counsel, Van H. Higgins, said after the trial that “he had no idea before of what a great lawyer he [Lincoln] was.”<sup>274</sup>

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<sup>269</sup> Davis to Julius Rockwell, Bloomington, 10 February 1841, David Davis Papers, Lincoln Presidential Library, Springfield. Cf. Lawrence M. Friedman, A History of American Law (New York: Simon and Schuster, 1973), 269-70.

<sup>270</sup> Lupton, “A. Lincoln, Esquire,” 22, 40; LPAL, “A Statistical Portrait.”

<sup>271</sup> LPAL, case file #02334.

<sup>272</sup> N. H. Ridgely to Lincoln, Springfield, 14 April 1856; Lincoln and Herndon to Ridgely, Springfield, 29 May 1859, Illinois State Journal (Springfield), 24 January 1909. According to the latter document, the case was Law v. Gibson.

<sup>273</sup> LPAL, case file #02337.

<sup>274</sup> Whitney, Life on the Circuit, ed. Angle, 234.

Lincoln handled over 130 ejectment cases involving disputes over land ownership.<sup>275</sup> Jonathan H. Cheney of Bloomington recalled that in 1853, when he explained to Lincoln a thorny case he wished to bring, the attorney “talked about the case, making every point clear, so clear, indeed, that I wondered why I had come. It seemed as if every one should have understood the case. Lincoln concluded by saying I had good title to the land.” When asked his fee, Lincoln replied, “I reckon if it is worth anything, it is worth \$10.”<sup>276</sup>

In Federal Court, Lincoln and his partners were involved in two dozen patent cases. “His mind was eminently practical,” Judge Thomas Drummond recalled, “even of a mechanical turn, and he tried a difficult patent cause with a skill, clearness, and success which excited admiration.”<sup>277</sup> At Chicago in 1850, he successfully argued a case, Parker v. Hoyt, involving infringement of a patented water wheel.<sup>278</sup> Lincoln’s co-counsel, Grant Goodrich, recalled that he “always regarded this as one of the most gratifying triumphs of his professional life.” Lincoln “took a great interest in the case. He had tended a saw-mill for some time, & was able in his arguments to explain the action of the water upon the wheel, in a manner so clear & inteliggible, that the jury was enabled to comprehend the points in that line of defense. It was evident he had carried the jury with him, in a most Masterly argument, the force of which could not be broken by the reply of the opposing Counsel.” Goodrich said Lincoln “had a great Mechanical genius, could understand

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<sup>275</sup> Lupton, “A. Lincoln, Esquire,” 40.

<sup>276</sup> Stevens, A Reporter’s Lincoln, ed. Burlingame, 53.

<sup>277</sup> Drummond, speech delivered from the bench of the U.S. Circuit Court in Chicago, undated clipping, Otto Eisenschiml Scrapbooks, University of Iowa.

<sup>278</sup> Parker v. Hoyt (1849-55), LPAL, case file #12330.

readily the principles & mechanical action of machinery, & had the power, in his clear, simple illustrations & Style to make the jury comprehend them.”<sup>279</sup>

Another patent case took Lincoln to Cincinnati in 1855 for a major trial involving the McCormick Reaper Company, which brought suit against the John H. Manny Company of Rockford, Illinois.<sup>280</sup> Because the case was originally scheduled to be tried in Illinois before Judge Thomas Drummond, Manny hired Lincoln as associate counsel, paying him a retainer of \$1000 to keep McCormick from employing him.<sup>281</sup> Lincoln’s name was suggested because he knew Judge Drummond and because the firm wanted to have local talent on the legal team. The lead attorney for Manny, George Harding of Philadelphia, wished to hire Edwin M. Stanton of Pittsburgh as his partner in the case and was unenthusiastic about Lincoln. Reluctantly he dispatched an associate, Peter Watson, to consult with the Springfield attorney. When Watson knocked on the door of the house at Eighth and Jackson Streets, Mary Lincoln poked her head out of a window and asked, “Who is there?”

Watson explained that he had come from Philadelphia to see her husband.

“Business or politics?” she queried.

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<sup>279</sup> Grant Goodrich to Herndon, Chicago, 9 December 1866, Wilson and Davis, eds., Herndon’s Informants, 510.

<sup>280</sup> McCormick v. Talcott et al. (1854-55), LPAL, case file #02341; Harry Goldsmith, “Abraham Lincoln, Inventions and Patents,” Journal of the Patent Office Society 20 (January 1938): 5-33; Emerson Hinchliff, “Lincoln and the ‘Reaper Case,’” Journal of the Illinois State Historical Society 33 (September 1940): 361-65; “The Manny Reaper: Some Background Information on the Case of McCormick v. Manny, 1855,” Lincoln Lore (June 1964): 1-4; Robert Henry Parkinson, “The Patent Case that Lifted Lincoln into a Presidential Candidate,” Abraham Lincoln Quarterly 4 (September 1946): 105-22.

<sup>281</sup> Letter by Mary Manny Tinker, Rockford, Illinois, 21 [sic] July 1896, Rockford Register-Gazette, 20 July 1896. In an obituary of Wait Talcott, at that time business manager of the Manny Company, it was reported that Lincoln’s retainer was \$1000. The Farm Implement News (Chicago), December 1890, reprinted in the issue of 23 July 1896, 18.

“When told it was business, she (Mrs. Lincoln) indicated her satisfaction by the modified tone in which she shouted, ‘Abe, there is a man wants to see you on business.’”

Dressed casually, Lincoln opened the door and invited Watson into the parlor, which his guest found unprepossessing. As Harding related, “Watson was satisfied that he was not the associate we wanted, but, after some conversation, concluded that Lincoln had qualities which might be rather effective in that community, that it would be unwise to incur his hostility by turning him down after consulting him, and paid him a retainer (at which he seemed much surprised), arranged for quite a substantial fee to be paid at the close of the litigation, and left him under the impression that he was to make an argument and should prepare himself for it.”

When Watson reported back to Harding, they agreed that Lincoln would not in fact help present the argument but that Stanton would be hired to do so and that Lincoln would be sidetracked. They did not tell the Springfield lawyer of this altered plan. When the trial was moved from Chicago to Cincinnati, to suit the convenience of Justice John McLean, who was to preside instead of Drummond, the need for Lincoln’s services as “local talent” disappeared. Instead of letting him go, Harding and Watson allowed him to continue writing his brief.<sup>282</sup> Lincoln did so and looked forward to jousting with some of the finest legal minds in the country. When he arrived in the Queen City he was surprised to learn that he would not help present the argument. The sophisticated Watson and Harding were taken aback when they first beheld their co-counsel, “a tall, rawly boned, ungainly back woodsman, with coarse, ill-fitting clothes, his trousers hardly reaching his

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<sup>282</sup> Harding told this to Parkinson in 1876. Parkinson, “The Patent Case that Lifted Lincoln into a Presidential Candidate,” 113-15. See also George Alfred Townsend, “They Snubbed Lincoln,” Cincinnati Enquirer, n.d. [1884], copied in an unidentified newspaper, clipping collection, Lincoln Museum, Fort Wayne, Indiana, and Harding’s recollections given in a talk in the spring of 1895 at a smoker of the Sharswood Law Club, typescript, Henry B. Rankin Papers, vol. 9, Lincoln Presidential Library, Springfield.



ankles, holding in his hands a blue cotton umbrella with a ball on the end of the handle.” After being introduced, Lincoln suggested that they proceed to the court “in a gang.” Stanton drew Harding aside and said, “Let that fellow go with his gang. We’ll walk up together.” And so they did, snubbing Lincoln. At the courthouse, Stanton emphatically announced that only he and Harding would be arguing their client’s case. Harding recalled that Stanton “managed to make it plain to Lincoln that we expected him to withdraw, and, upon his offering to do so, he was taken at his word instantly, and treated as no longer connected with the case.”<sup>283</sup>

Throughout the trial, Harding and Stanton continued to snub their associate. When Lincoln asked Watson to present Harding a copy of the argument he had laboriously prepared, the Philadelphia attorney returned it unopened. Ralph Emerson, an officer of the Manny Company and the one who suggested that Lincoln be hired, said that the Springfield attorney “felt that he had been ‘tricked’ out of the case & the transaction deeply affected him. He said McLean was not friendly to him & he felt he had been shabbily treated all around.”<sup>284</sup> (McLean had not invited him to a dinner where the other counsel were guests.)<sup>285</sup> Emerson recalled that “when it was decided that he should not take part in the argument, he invited me to his room to express his bitter disappointment, and it was with difficulty that I persuaded him to remain as counsel during the hearing.”<sup>286</sup> Watson also urged him to stay on. (According to Mrs. Manny, “it required no

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<sup>283</sup> Harding’s recollections in Parkinson, “The Patent Case that Lifted Lincoln into a Presidential Candidate,” 115-16.

<sup>284</sup> William M. Dickson to Jesse W. Weik, Cincinnati, 17 April 1888, Wilson and Davis, eds., Herndon’s Informants, 655.

<sup>285</sup> Harding in Parkinson, “The Patent Case that Lifted Lincoln into a Presidential Candidate,” 116.

<sup>286</sup> Ralph Emerson to the editor of McClure’s Magazine, Chicago, 15 May 1896, Tarbell Papers, Allegheny College.

little management on the part of Watson to reconcile Lincoln to the situation.”)<sup>287</sup>

Harding recalled that “in all his experience he had never seen one man insult another more grossly, and that too without reason, than Stanton insulted Lincoln on that occasion.” Stanton “conducted himself toward Lincoln in such a way that it was evident that he, Stanton, thought Lincoln was of no importance, and deserved no consideration whatever from himself, and he refused to talk with him, and told Harding that it was shameful that such a low-down country lawyer should be sent to associate with them.” Stanton “refused to walk with Lincoln or to be seen on the street with him.” In court, Stanton “refused to talk with, or say anything to Lincoln, but utterly ignored him, even refusing to take from Lincoln’s hands one of the models used in the case.”<sup>288</sup> Stanton, who referred to Lincoln as a “giraffe” and a “long-armed baboon,” once rudely jerked Lincoln by the coattails and told him to step aside as lawyers examined the reapers on display.<sup>289</sup> Thereafter, Stanton “did not attempt to conceal his unkind feelings” toward Lincoln until he was appointed secretary of war in 1862.<sup>290</sup> (Later Stanton allegedly said, “What a mistake I made about that man when I met him in Cincinnati.”)<sup>291</sup>

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<sup>287</sup> Letter by Mary Manny Tinker, Rockford, Illinois, 21 [sic] July 1896, Rockford Register-Gazette, 20 July 1896.

<sup>288</sup> William B. H. Dowse to Albert J. Beveridge, Boston, 16 October 1925, Beveridge Papers, Library of Congress. From 1878 to 1890, Dowse worked in Harding’s New York office.

<sup>289</sup> Duff, A. Lincoln: Prairie Lawyer, 323; Donn Piatt in Benjamin P. Thomas and Harold M. Hyman, Stanton: The Life and Times of Lincoln’s Secretary of War (New York: Alfred A. Knopf, 1962), 66; Benjamin Rush Cowen, Abraham Lincoln: An Appreciation by One Who Knew Him (Cincinnati: Robert Clarke, 1909), 10-12. Cf. George Alfred Townsend’s interview with Harding, clipping marked “Globe 11-9-1909,” Lincoln Museum, Fort Wayne, Indiana.

<sup>290</sup> Harding told William B. H. Dowse that in 1862, Lincoln asked: “Whom, in your opinion Mr. Harding, should I appoint Secretary of War?” Harding replied: “I have in mind only one man, but I know you could not and would not appoint him after the outrageous way he has insulted you and behaved towards you in the Reaper case and while you were running for the Presidency.” “Oh, you mean Stanton. Now, Mr. Harding, this is not a personal matter. I simply desire to do what will be the best thing for the country. If you think Stanton is the right man I will appoint him Secretary of War.” William B. H. Dowse to Albert J. Beveridge, Boston, 10 October 1925, Beveridge Papers, Library of Congress.

<sup>291</sup> Report of a statement by Harding, n.d., typescript, Ida M. Tarbell Papers, Allegheny College.

According to William Martin Dickson, at whose home Lincoln stayed, his houseguest “was deeply grieved and mortified.” All during the trial, as he sat on the sidelines while Stanton argued the case, Lincoln “seemed to be greatly depressed, and gave evidence of that tendency to melancholy which so marked his character.” As he left town, Lincoln told his hostess: “You have made my stay here most agreeable, and I am a thousand times obliged to you; but in reply to your request for me to come again I must say to you I never expect to be in Cincinnati again. I have nothing against the city, but things have so happened here as to make it undesirable for me ever to return here.”<sup>292</sup>

Lincoln stayed on, however, and closely observed the proceedings. He was fascinated by the dueling high-powered attorneys: “The argument of that case was a revelation to him. He had never seen anything so finished and elaborated, and so thoroughly prepared. With the exception of Stanton’s brutal treatment of him, it was a fine exhibition of accomplished lawyers conducting a great trial. He took it all in.” He sat directly behind Harding as the Philadelphian held forth, “following every word, and by the expression of his face and by his apparently unconscious gestures, emphasizing every point.”<sup>293</sup> He allegedly “said that he was glad he could see such a case conducted by such lawyers. It had taught him much.”<sup>294</sup>

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<sup>292</sup> W. M. Dickson, “Abraham Lincoln at Cincinnati,” Harper’s New Monthly Magazine 69 (June 1884): 62.

<sup>293</sup> Ralph Emerson quoted in Parkinson, “The Patent Case that Lifted Lincoln into a Presidential Candidate,” 121; Ralph Emerson, “Mr. & Mrs. Ralph Emerson’s Personal Recollections of Abraham Lincoln” (pamphlet; Rockford, Illinois: privately printed, 1909), 5, 7. Parkinson interviewed Emerson in 1892. Parkinson to Albert J. Beveridge, Chicago, 28 October 1925, Beveridge Papers Library of Congress.

<sup>294</sup> Robert Henry Parkinson’s sister-in-law reported that Parkinson had heard this from someone who had spoken to Lincoln (doubtless Emerson) shortly after the trial ended. Mary W. Parkinson to Albert A. Woldman, Reading, Massachusetts, [ca. 1936], Woldman Papers, Western Reserve Historical Society, Cleveland.

When Lincoln received a check for his services, he returned it, saying he had not made the argument and deserved no more than he had been given as a retainer. The check was once again sent to Springfield with the explanation that Lincoln had prepared a case and was entitled to a fee as though he had delivered it. Lincoln accepted both the argument and the money.<sup>295</sup>

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Though 95% of the documented cases that Lincoln and his partners handled were civil, they participated in several trials for murder and assault with intent to murder.<sup>296</sup> One of the more controversial murder cases was that of Isaac Wyant, who attacked his neighbor Ason Rusk with a knife. In self-defense, Rusk shot his assailant in the arm, which was subsequently amputated. Thirsting for revenge, Wyant in 1855 shot Rusk to death in cold blood. Lincoln helped prosecute the case. (He served as prosecutor sometimes when the state's attorney was absent and he was appointed in his place; at other times he was hired by interested parties to assist the prosecutor, who was often young and inexperienced.)<sup>297</sup> Leonard Swett, who defended Wyant with the novel insanity plea, won despite Lincoln's best efforts. Later, when informed by authorities at the state insane asylum that Wyant was truly deranged, Lincoln expressed regret for having prosecuted him so vigorously.<sup>298</sup> Lincoln helped prosecute another murder case,

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<sup>295</sup> Hardin in Parkinson, "The Patent Case that Lifted Lincoln into a Presidential Candidate," 117.

<sup>296</sup> "Statistical Portrait," LPAL.

<sup>297</sup> Woldman, Lawyer Lincoln, 162-63.

<sup>298</sup> The People vs. Wyant (1857), LPAL, Case file #01676; King, Davis, 92-93; Duff, A. Lincoln, Prairie Lawyer, 304-8; "The Insanity Defense in Lincoln's Illinois," Lincoln Lore (January 1982): 1-4; Allen D. Spiegel, "Abraham Lincoln and the Insanity Plea," Lincoln Herald 97 (1995): 60-70; Allen D. Spiegel and Florence Kavalier, "Abraham Lincoln, Medical Jurisprudence, and Chloroform-Induced Insanity in an 1857 Murder Trial," Lincoln Herald 98 (1996): 139-46; Spiegel, A. Lincoln, Esquire, 206-21.

The People v. Denton and Denton. The defendants, James and George W. Denton, accused of murdering their brother-in-law with axes, were found not guilty.<sup>299</sup>

One murder case so fascinated Lincoln that he published a long, unsigned account of it. James H. Matheny called it “the most remarkable trial that ever took place in Springfield.” It “served to impress upon the public mind of Sangamon county the fact that circumstantial evidence, no matter how strong it may appear, is never infallible.”<sup>300</sup> Lincoln, Logan, and Baker defended Archibald and William Traylor, who were charged with the murder of Archibald Fisher. A coerced confession from a brother of the accused men, along with suspicious circumstantial evidence, seemed to establish their guilt. Some residents of Springfield were in the mood to lynch the alleged felons. After the prosecution offered what seemed an airtight case, Lincoln called only one witness, who testified that Fisher was alive and staying with him, sound in body if not in mind; he suffered from amnesia and could not recall where he had been recently. The case was dismissed.<sup>301</sup>

According to Governor Thomas Ford, “in all cases of murder arising from heat of blood or in [a] fight it was impossible to convict. The juries were willing enough to convict an assassin or one who murdered by taking a dishonorable advantage, but otherwise if there was a conflict and nothing unfair in it.”<sup>302</sup> That proved untrue in the case of William Fraim, a client of Lincoln’s who was convicted of stabbing to death an

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<sup>299</sup> People v. Denton and Denton (1846-47), LPAL, case file #00382.

<sup>300</sup> Matheny in an unidentified newspaper clipping, Pasfield Scrapbook, Illinois State Historical Library, Springfield, quoted in Duff, A. Lincoln, Prairie Lawyer, 81-82.

<sup>301</sup> The People v. Traylor and Traylor (1841), case file #04765, LPAL. Lincoln’s account of this bizarre case was published anonymously in the Quincy Whig in 1846. Basler, ed., Collected Works of Lincoln, 1:371-76. See also Lincoln to Joshua Speed, Springfield, 19 June 1841, ibid., 1:254-58.

<sup>302</sup> Ford, History of Illinois, ed. Davis, 55.

opponent in a drunken brawl. He was hanged after Lincoln had exhausted all legal remedies.<sup>303</sup>

In 1859, Lincoln represented Melissa Goings, a seventy-seven-year-old woman accused of murdering her husband; she claimed she had acted in self-defense. During a recess in the trial, she fled Illinois, eventually winding up on the Pacific coast. When the court bailiff said that Lincoln had suggested she flee, he replied: “I didn’t run her off. She wanted to know where she could get a good drink of water, and I told her there was mighty good water in Tennessee.”<sup>304</sup>

In another murder case tried in 1859, Lincoln’s client, Thomas Patterson, was found guilty of manslaughter in the death of Samuel DeHaven.<sup>305</sup> The deceased had, while drunk, tried to buy a hatchet on credit at Patterson’s store. When Patterson refused him, the enraged DeHaven picked up a spade and approached the storekeeper, who flung a two-pound lead weight at Dehaven, killing him. Lincoln and Leonard Swett were unable to persuade the jury that the well-to-do Patterson, who had many friends, acted in self-defense.<sup>306</sup> According to Whitney, who was part of the defense team, Lincoln made “a very poor” closing speech. Whitney thought that Patterson, whom he characterized as

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<sup>303</sup> The People v. Fraim (1838-39), LPAL, case file #01846; Duff, A. Lincoln, Prairie Lawyer, 63-64; “The Only Murderer Defended by Lincoln Who Was Hanged for His Crime,” Lincoln Lore (September 1959): 1-3.

<sup>304</sup> People v. Goings (1859), case file #01800, LPAL; Lupton, “A. Lincoln, Esquire,” 41. In 1863, Lincoln ascribed this advice to Usher F. Linder; in that version of the story, the defendant who received the advice was a man accused of stealing a hog. Michael Burlingame and John R. Turner Ettliger, eds., Inside Lincoln’s White House: The Complete Civil War Diary of John Hay (Carbondale: Southern Illinois University Press, 1997), 64 (entry for 18 July 1863).

<sup>305</sup> People v. Patterson (1858-59), LPAL, case file #01488; Harry E. Pratt, “Lincoln Defends Tom Patterson,” Illinois Bar Journal, October 1940, 56-60; King, Davis, 93-94; Whitney, Life on the Circuit, ed. Angle, 466-67; Richter, Lincoln: Twenty Years on the Eastern Prairie, 228-29.

<sup>306</sup> David Davis, interview with Herndon, 19 September 1866, Wilson and Davis, eds., Herndon’s Informants, 347.

“a worthless doggerly keeper,” was guilty of murder.<sup>307</sup> He recalled that “Swett was a most effective advocate, and when he closed in the afternoon I was full of faith that our client would be acquitted. Lincoln followed the next morning, and while he made some good points the honesty of his mental processes forced him into a line of argument and admission that was very damaging. We all felt that he had hurt our case. In point of fact our client was convicted and sent to the penitentiary for three years. Lincoln, whose merciless logic drove him into the belief that the culprit was guilty of murder, had his humanity so wrought upon that he induced the Governor to pardon him after he had served one year.”<sup>308</sup> David Davis, who presided at the trial, recollected that Lincoln “was on the wrong side – wanted to compromise – Swett said no – L was so conscious that he did not do much good.”<sup>309</sup>

In his best-known case, the “Almanac Trial,” Lincoln defended an accused murderer, William “Duff” Armstrong, twenty-four-year-old son of his good friends from New Salem days, Hannah and Jack Armstrong.<sup>310</sup> In September 1857, the defendant, who “had always been a wild sort of youngster, though not malicious,” was accused of killing James Preston “Pres” Metzker, a twenty-eight-year-old father of three.<sup>311</sup> Along with

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<sup>307</sup> Whitney to Herndon, Chicago, 27 August 1887, Wilson and Davis, eds., Herndon’s Informants, 632-33; Whitney, statement for Herndon, [1887?], ibid., 650.

<sup>308</sup> Weik, Real Lincoln, ed. Burlingame, 195.

<sup>309</sup> David Davis, interview with Herndon, [1866], Wilson and Davis, eds., Herndon’s Informants, 529.

<sup>310</sup> People v. Armstrong (1857-58), LPAL, case file #00800; reminiscences of Duff Armstrong in “Duff Armstrong’s Trial,” Washington correspondence by Walter B. Stevens, 17 December, St. Louis Globe-Democrat, 20 December 1888; John Evangelist Walsh, Moonlight: Abraham Lincoln and the Almanac Trial (New York: St. Martin’s, 2000); J. N. Gridley, “Lincoln’s Defense of Duff Armstrong: The Story of the Trial and the Celebrated Almanac,” (pamphlet; Illinois State Historical Society, 1910); William H. Townsend, “Lincoln’s Defense of Duff Armstrong,” American Bar Association Journal 11 (1925): 81-84; Albert J. Beveridge, Abraham Lincoln, 1809-1858 (2 vols.; Boston: Houghton, Mifflin, 1928) 1:560-71.

<sup>311</sup> Thomas S. Edwards in [John Hay], Springfield correspondence, September 1860, Providence Journal, 19 September 1860, in Michael Burlingame, ed., Lincoln’s Journalist: John Hay’s Anonymous Writings for the Press, 1860-1864 (Carbondale: Southern Illinois University Press, 1998), 11.

several other young men, including Armstrong, Metzker had been drinking on the outskirts of a camp meeting near Hiawatha in Mason County. Around 10 p.m., the drunken Armstrong lay down to sleep not far from the impromptu bars that were a common feature at camp meetings. Suddenly the much taller and stronger Metzker, also intoxicated, awoke him and picked a fight. After they battled, Metzker similarly provoked twenty-seven-year-old James Norris. Not long thereafter, Armstrong and Norris attacked him. The latter clubbed Metzker from behind, fracturing his skull. Armstrong was accused of hitting Metzker in the eye with a kind of black jack called a slung-shot. Somehow Metzker managed to climb aboard his horse and ride home, where he died three days later.

Norris and Armstrong were arrested, jailed in nearby Havana, and indicted for murder. Armstrong's family hired the local firm of Dilworth & Campbell, which successfully moved for a change of venue. Unfortunately for Norris, his court-appointed attorney failed to do so; in November he was swiftly tried, convicted of manslaughter, and sentenced to eight years at hard labor. It seemed entirely likely that Armstrong would meet a similar fate when he faced trial in Beardstown that same month. Milton Logan, foreman of the jury in Armstrong's case, recalled that the "feeling against Armstrong was very strong indeed. I may say the case of the defense looked almost hopeless."<sup>312</sup> The public came to view him "as a fiend of the most horrible hue," for each "improper incident" in his life – "each act which bore the least semblance of rowdyism – each school-boy quarrel – was suddenly remembered and magnified." The possibility of a

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<sup>312</sup> Milton Logan, interviewed in a dispatch datelined Boone, Iowa, 5 September [1905], unidentified clipping, Lincoln Museum, Fort Wayne, Indiana.



lynching hung heavy in the air.<sup>313</sup> Compounding the Armstrongs' woes, Jack suddenly died in November, leaving Hannah a poor widow.

Lincoln was informed of the family's plight by one of the Clary's Grove gang, Thomas S. Edwards, who recalled the occasion: "I set down and told him all about the boy's fix and the widder's trouble, and asked what could be done. He set there a minute, pushing his gold specks up into his hair, looking kind o' serious at the floor. I imagined that, like the balance of the lawyers, he was thinking about his fee." Edwards assured Lincoln that he would be paid. The attorney then "looked up, smiling quietly, a way he has got, more with his eyes than his mouth, and says: 'You Ed'ards! you ought to know me better than to think I'd take a fee from any of Jack Armstrong's blood.' Then he laid his hand on my shoulder in his old fashion, and says: 'Why, bless your soul, I've danced that boy on my knee a hundred times in the long winter nights by his father's fire, down in old Howard. I wouldn't be worthy to take your hand, Tom, if I turned on him now. Go back and tell old Hannah to keep up a good heart, and we will see what can be done.'"<sup>314</sup> A letter from Hannah explaining the situation may have been delivered by Edwards.<sup>315</sup>

In November, while in Beardstown representing a client, Lincoln called on Armstrong's lawyer, Caleb J. Dilworth of Havana. "When we reached Beardstown," Dilworth recalled, "I found Mr. Lincoln there on other business. During the day he came to me and said that Mrs. Armstrong had come to him and asked him to assist in the trial

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<sup>313</sup> "Thrilling Episode in the Life of 'Abe Lincoln,'" Cleveland Leader, n.d., copied in the Independent Democrat (Concord, New Hampshire), 7 June 1860. The author attended the trial. This account was reproduced in Joseph H. Barrett, Life of Abraham Lincoln (New York: Moore, Wiltach & Baldwin, 1865), 63-66.

<sup>314</sup> Tom Edwards in Lincoln's Journalist, ed. Burlingame, 11. The dialect reproduced here resembles that used in a letter he wrote to Lincoln in 1861. Thomas S. Edwards Sr. to Lincoln, Sheffield, Illinois, 10 January 1861, Lincoln Papers, Library of Congress.

<sup>315</sup> Hannah Armstrong, interview with Herndon, [1866], Wilson and Davis, eds., Herndon's Informants, 526; Walsh, Moonlight, 134-35.

of the case, and that if it came off while he was there he would do so if I was willing. Of course I was glad to have him try the case. He not being acquainted with the facts, that night we met in a room with the witnesses, and he examined them.”<sup>316</sup> When the prosecution won a continuance, Lincoln had more time to prepare his defense. He visited with Hannah at her home in Mason County, traversed the scene of the crime, inspected records of the Norris trial, unsuccessfully requested that Armstrong be released on bail, and interviewed witnesses.<sup>317</sup>

One of those witnesses, Nelson Watkins, had been drinking with the others on the fatal night. He owned the home-made slung-shot that Armstrong had allegedly used to strike and kill Metzker; it had been discovered close to the scene of the crime. Armstrong denied ever having possession of it. Shortly after the trial, Watkins told juror John T. Brady “that Mr. Lincoln . . . questioned him about the sling shot, and asked how it happened to be lost, and then found near the spot where Metzker was killed.” Watkins somewhat implausibly stated that he had gone to sleep under a wagon and had placed the weapon on its frame; the next morning he had forgotten about it, and it evidently fell off the wagon as it passed near the crime scene. Watkins then confided to Brady that “he told Mr. Lincoln that he (Lincoln) did not want to use him (Watkins) as a witness, as he knew too much, and he began to tell Lincoln what he knew, and Mr. Lincoln would not allow him to tell him anything and said to Watkins: ‘All I want to know is this: Did you make that sling-shot? and did Duff Armstrong ever have it in his possession?’ Watkins said he

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<sup>316</sup> J. McCan Davis, “The Armstrong trial,” manuscript, Ida Tarbell Papers, Allegheny College.

<sup>317</sup> Allen T. Lucas, Peoria Sunday Star, 6 July 1929; Albert J. Beveridge to Allen T. Lucas, Beverly Farms, Massachusetts, 4 August 1925, copy, Beveridge Papers, Library of Congress; reminiscences of A. P. Armstrong, brother of Duff Armstrong, Daily Illinoisan-Star (Beardstown), 12 February 1916. The application for bail was made and denied on November 19, 1857. Gridley, “Lincoln’s Defense of Duff Armstrong,” 17.

replied: ‘On cross-examination they may make me tell things I do not want to tell.’”

Lincoln assured him that he would not be questioned about any subject other than the alleged murder weapon. Watkins further confided to Brady “that Duff Armstrong killed Metzker by striking him in the eye with an old fashioned wagon hammer and that he saw him do it.”<sup>318</sup> It is not clear how Lincoln could guarantee that Watkins would not be asked damaging questions during cross-examination.

Armstrong’s trial took place in Beardstown on May 7, 1858. During jury selection there were so many challenges that only four of the first batch of candidates were chosen. The remaining jurors came from a second panel of fifty. During this drawn-out process, Lincoln took care to accept only young men.<sup>319</sup> Lincoln’s co-counsel called this “a fine stroke; for Lincoln rightly figured that a jury of old men would be farther removed from the defendant in point of sympathy and not so susceptible to the pathetic appeal which it was his purpose to make.”<sup>320</sup> The dozen men finally chosen ranged in age from twenty-four to thirty-eight.<sup>321</sup>

One of the witnesses, William A. Douglas, recalled that he and the others “were kept out of the court-room until called to testify. I happened to be the first witness called and so heard the whole trial. When William Killian was called to the stand, Lincoln asked his name.

“‘William Killian,’ was the reply.

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<sup>318</sup> Gridley, “Lincoln’s Defense of Duff Armstrong,” 21.

<sup>319</sup> Milton Logan, interviewed in a dispatch datelined Boone, Iowa, 5 September [1905], unidentified clipping, Lincoln Museum, Fort Wayne, Indiana.

<sup>320</sup> William Walker, in J. McCan Davis, “Armstrong Trial,” Ida Tarbell Papers, Allegheny College.

<sup>321</sup> Walsh lists the jurors and their ages. Moonlight, 117-19.

“‘Bill Killian?’ Lincoln repeated, in a familiar way, ‘Tell me, are you a son of old Jake Killian?’

“‘Yes sir,’ answered the witness.

“‘Well,’ said Lincoln, somewhat aside, ‘You are a smart boy if you take after your dad.’”<sup>322</sup>

Killian and Douglas helped “remove some erroneous impressions” about the character of Armstrong, “who, though somewhat rowdyish, had never been known to commit a vicious act.”<sup>323</sup> Lincoln also called an expert witness, Dr. Charles E. Parker, who testified that both of Metzker’s skull injuries could have been caused by the blow Norris had administered to the back of the victim’s head. Lincoln summoned eyewitnesses to testify that Armstrong and Norris had not colluded and that Armstrong used only his fists against Metzker. Watkins swore that he owned the slung-shot and that Armstrong had never possessed it.

Then Charles Allen, the prosecution’s chief witness, took the stand. According to jury foreman Milton Logan, the questioning went something like this:

Q. Did you see Armstrong strike Metzker?

A. Yes.

Q. About how far were you from where the affair took place?

A. About forty feet. I was standing on a knoll or hill looking down at them.

Q. Was it a light night?

A. Yes, it was.

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<sup>322</sup> Tarbell, Lincoln, 1:272.

<sup>323</sup> “Thrilling Episode in the Life of ‘Abe Lincoln,’” Cleveland Leader, n.d., copied in the Independent Democrat (Concord, New Hampshire), 7 June 1860.

Q. Any moon that night?

A. Yes, the moon was shining almost as bright as day.

Q. About how high was the moon?

A. About where the sun would be at 10 o'clock in the day.

Q. Are you certain there was a moon that night?

A. Yes, sir; I am certain.

Q. You are sure you are not mistaken about the moon shining as brightly as you represent?

A. No, sir; I am not mistaken.

Q. Did you see Armstrong strike Metzker by the light of the moon and did you see Metzker fall?

A. I did.

Q. What did Armstrong strike him with?

A. With a sling shot.

Q. Where did he strike Metzker?

A. On the side of the head.

Q. About what time did you say this happened?

A. About 11 o'clock at night.<sup>324</sup>

Another juror remembered that "Lincoln was very particular to have him [Allen] repeat himself a dozen or more times during the trial about where the moon was located" and "was very careful not to cross Mr. Allen in anything, and when Allen lacked words to

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<sup>324</sup> Milton Logan, interviewed in a dispatch datelined Boone, Iowa, 5 September [1905], unidentified clipping, Lincoln Museum, Fort Wayne, Indiana. Allen's account was supported by one Henry Sutton, who did not testify at the trial but shared his recollections with a reporter in 1909. Earnest E. East, "Story of Lincoln's 'Doctored Almanac,'" Peoria Sunday Star, 14 February 1909.

express himself, Lincoln loaned them to him.”<sup>325</sup> Foreman Logan recalled that the prosecutor had gone over the same ground, elicited the same testimony, and “seemed well pleased with the results. . . . With this testimony unimpeached conviction for Armstrong seemed certain.”<sup>326</sup>

But the tide turned when Lincoln produced an 1857 almanac showing that the moon, instead of being high overhead at 11 p.m., when Metzker was attacked, was low on the horizon and due to set within an hour. The assistant prosecutor, J. Henry Shaw, reported that he had spoken with several members of the jury who recollected “that the almanac floored the witness.”<sup>327</sup> One of them recalled that “the prosecuting attorney very strongly objected, and Judge [James] Harriott asked to see it [the almanac]. The Judge examined it, and then passed it to the prosecuting attorney, and after he examined it Mr. Lincoln passed it to the foreman of the jury, and the jurors looked it over.” It “led the jury to the idea that if Allen could be so mistaken about the moon, he might have been mistaken about seeing Armstrong hit Metzker with a slung-shot.”<sup>328</sup> (According to a local attorney, “Allen’s general reputation in the vicinity of Oakford for truth and veracity was exceedingly bad.” Thompson McNeeley, a noted criminal lawyer in Petersburg who served as a U.S. Representative, often told friends “that Allen would swear to anything in a trial and would work on either side of the case very nicely.”)<sup>329</sup>

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<sup>325</sup> John T. Brady in Gridley, “Lincoln’s Defense of Duff Armstrong,” 19.

<sup>326</sup> Milton Logan, interviewed in a dispatch datelined Boone, Iowa, 5 September [1905], unidentified clipping, Lincoln Museum, Fort Wayne, Indiana.

<sup>327</sup> J. Henry Shaw to Herndon, Beardstown, 22 August 1866, Wilson and Davis, eds., Herndon’s Informants, 316.

<sup>328</sup> Brady in Davis, “Armstrong Trial,” Tarbell Papers, Allegheny College; Brady in Gridley, “Lincoln’s Defense of Duff Armstrong,” 19.

<sup>329</sup> Allen T. Lucas to Albert J. Beveridge, Chandlerville, Illinois, 2 October 1925, Beveridge Papers, Library of Congress.

Lincoln's closing speech was a tour de force. Because of the sultry heat on that late summer day, he removed his coat, tie, and vest; as he proceeded, one of his suspenders slid from his shoulder. Juror John T. Brady recalled that "this 'backwoods' appearance" made Lincoln "about as homely, awkward appearing [a] person as could be imagined; but all this was forgotten in listening to his fiery eloquence, his masterly argument, his tender and pathetic pleading for the life of the son of his old benefactor."<sup>330</sup> Another juror recalled that Lincoln began by "saying he appeared before us without any expectation of reward; that the prisoner's mother, Hannah Armstrong, had washed and mended his worn shirts and clothes and done for him when he was too poor to pay her, and that he stood there to but partially try and pay the debt of gratitude he owed her. He carried us with him as if by storm and before he had finished speaking there were many wet eyes in the room."<sup>331</sup> Duff Armstrong said that Lincoln "did his best talking when he told the jury what true friends my father and mother had been to him in the early days, when he was a poor young man at New Salem. He told how he used to go out to Jack Armstrong's and stay for days; how kind mother was to him, and how, many a time, he had rocked me to sleep in the old cradle."<sup>332</sup> An observer reported that "in words of thrilling pathos Lincoln appealed to the jurors as fathers of sons who might become fatherless, and as husbands of wives who might be widowed, to yield to no previous impressions, no ill founded prejudice, but to do his client justice."<sup>333</sup> Juror Brady recollected that "[t]ears were plentifully shed by every one present; the mother of Duff

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<sup>330</sup> Brady in Gridley, "Lincoln's Defense of Duff Armstrong," 20.

<sup>331</sup> Milton Logan, interviewed in a dispatch datelined Boone, Iowa, 5 September [1905], unidentified clipping, Lincoln Museum, Fort Wayne, Indiana.

<sup>332</sup> Duff Armstrong, interviewed by J. McCan Davis, Los Angeles Times, 7 June 1896.

<sup>333</sup> "Thrilling Episode in the Life of 'Abe Lincoln,'" Cleveland Leader, n.d., copied in the Independent Democrat (Concord, New Hampshire), 7 June 1860.

Armstrong . . . wore a large sun bonnet, her face was scarcely visible, but her feelings were plainly shown by her sobs.”<sup>334</sup> The assistant prosecutor said that Lincoln’s story of his New Salem days was “told so pathetically that the jury forgot the guilt of the boy.” Lincoln wept, for his “sympathies were fully enlisted in favor of the young man, and his terrible sincerity could not help but arouse the same passion in the jury. I have said it a hundred times, that it was Lincoln’s speech that saved that criminal from the Gallows.”<sup>335</sup> Lincoln’s co-counsel, William Walker, thought the concluding fifteen-minute segment of that address “was as eloquent as I Ever heard, and Such was the power, & earnestness with which he Spoke, that jury & all, Sat as if Entranced, & when he was through found relief in a gush of tears. I have never Seen Such mastery Exhibited over the feelings and Emotions of men, as on that occasion.”<sup>336</sup>

In his speech, Lincoln probably incorporated points he made in the following proposed instructions to the jury: “That if they have any reasonable doubt as to whether Metzker came to his death by the blow on the eye or the blow on the back of the head, they are to find the defendant not guilty, unless they further believe from the evidence, beyond all reasonable doubt, that Armstrong and Norris acted in concert against Metzker, and that Norris struck the blow on the back of the head. That if they believe from the evidence that Norris killed Metzker, they are to acquit Armstrong unless they also believe from the evidence, beyond a reasonable doubt, that Armstrong acted in concert with

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<sup>334</sup> Brady in Gridley, “Lincoln’s Defense of Duff Armstrong,” 20.

<sup>335</sup> J. Henry Shaw to Herndon, Beardstown, 22 August 1866, Wilson and Davis, eds., Herndon’s Informants, 316; 333; J. Henry Shaw in Gridley, “Lincoln’s Defense of Duff Armstrong,” 20.

<sup>336</sup> William Walker to Herndon, Havana, 3 June 1865, Wilson and Davis, eds., Herndon’s Informants, 22-23. In 1860, an observer of Lincoln’s closing speech said “he drew a picture of the perjurer [Allen] so ghastly and horrid, that the accused actually reeled from the court room.” Another observer denied that account emphatically. New York Tribune, 3 June 1860; letter to the editor from an unidentified correspondent, Petersburg, 14 June 1860, Chicago Times, n.d. copied in the Illinois State Register (Springfield), 26 June 1860.



Norris in the killing or purpose to kill or hurt Metzker.”<sup>337</sup> The judge thought that the “Almanac may have cut a figure – but it was Doct Parker[’]s testimony confirming Lincoln[’]s theory – the Court Saw this –”<sup>338</sup>

But, curiously, when the jury withdrew, three members voted to acquit and nine to convict. As they deliberated, however, the effect of Lincoln’s speech, along with the damaged credibility of the chief prosecution witness and Dr. Parker’s testimony, eventually led to a unanimous verdict of not guilty.<sup>339</sup> One juror said that he and his colleagues “thought Allen was telling the truth. I know that he impressed me that way, but his evidence with reference to the moon was so far from the facts that it destroyed his evidence with the jury.”<sup>340</sup>

When the verdict came down, Lincoln was out of the court room. As he was returning there, he encountered the jurymen, who warmly congratulated him as if he were an old friend.<sup>341</sup> Hannah Armstrong was also absent, having withdrawn to await the outcome. When informed of the good news, she was naturally overjoyed and hastened to shake hands with the jury, the court, and Lincoln. “We were all affected,” she recalled, “and tears streamed down Lincoln’s Eyes.” He told her, “I pray to God that W[illia]m may be a good boy hereafter – that this lesson may prove in the End a good lesson to him

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<sup>337</sup> Document #20690, jury instructions, People vs. Armstrong, case file #00800, LPAL.

<sup>338</sup> James Harriott, undated interview with Herndon, Wilson and Davis, eds., Herndon’s Informants, 704.

<sup>339</sup> Milton Logan, interviewed in a dispatch datelined Boone, Iowa, 5 September [1905], unidentified clipping, Lincoln Museum, Fort Wayne, Indiana. Juror Brady’s recollection was different: “We were out less than an hour; only one ballot was taken, and that was unanimous for acquittal.” Gridley, “Lincoln’s Defense of Duff Armstrong,” 20. But as Walsh asks sensibly, “If the ballot [jury?] was without disagreement, and but a single ballot taken, what occupied the hour?” Walsh, Moonlight, 152.

<sup>340</sup> Brady in Gridley, “Lincoln’s Defense of Duff Armstrong,” 19.

<sup>341</sup> Davis, “Armstrong Trial,” Ida Tarbell Papers, Allegheny College.

and to all.”<sup>342</sup> He told Duff: “Go home and be a good boy, and don’t get into any more scrapes. That is all I ask of you.”<sup>343</sup> (Soon thereafter Lincoln helped Hannah Armstrong fend off attempts to take from her the land she had inherited from her husband.)<sup>344</sup>

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In dealing with his fellow attorneys, Lincoln was “a number one gentleman,” “kind – tender – polite and courteous” to all, especially to young members of the bar.<sup>345</sup> Gibson W. Harris recalled that Lincoln’s “courtesy to young practitioners was little less than proverbial, and it was never more gracious than when he was the opposing counsel. He had a happy knack of setting them at ease and encouraging them to put forth their best efforts. In consequence they all liked him.”<sup>346</sup> Lincoln’s popularity with young attorneys “was not run after, but . . . followed,” and they “went to him a great deal.”<sup>347</sup> No fledgling lawyer “ever practiced in the courts with Mr. Lincoln who did not in all his after life have a regard for him akin to personal affection.”<sup>348</sup>

In 1851, one such tyro, James Haines, was associated in a case with Lincoln, who urged him to make the opening speech in defense of their client. Startled by this

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<sup>342</sup> Hannah Armstrong, interview with Herndon, [1866], Wilson and Davis, eds., Herndon’s Informants, 526.

<sup>343</sup> “Interesting Story of Lincoln’s Defense of Duff Armstrong,” based on reminiscences of Duff’s brother A. P. Armstrong, Daily Illinoisan-Star (Beardstown), 12 February 1916.

<sup>344</sup> Lincoln was elected president while this matter was pending. He recommended a lawyer named Harrington to defend Mrs. Armstrong, which he did successfully. “Interesting Story of Lincoln’s Defense of Duff Armstrong,” based on reminiscences of Duff’s brother, A. P. Armstrong, Daily Illinoisan-Star (Beardstown), 12 February 1916.

<sup>345</sup> Herndon, “Analysis of the Character of Abraham Lincoln,” 434.

<sup>346</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, November 1903, 11.

<sup>347</sup> Elihu B. Washburne in Rice, ed., Reminiscences of Lincoln, 16-17; Whitney to Herndon, Chicago, 27 August 1887, Wilson and Davis, eds., Herndon’s Informants, 630. Henry C. Whitney thought Lincoln was more active than passive in establishing a friendship with him: “it seemed as if he wooed me to close intimacy and familiarity, at once.” Whitney, Life on the Circuit, ed. Angle, 54.

<sup>348</sup> John M. Scott, “Lincoln on the Stump and at the Bar.”

suggestion, the nervous Haines expressed the wish that Lincoln take the lead. In a “kind, gentle, and tactful manner,” Lincoln placed his hand on Haines’s shoulder and said: “No, I want you to open the case, and when you are doing it talk to the jury as though your client’s fate depends on every word you utter. Forget that you have any one to fall back upon, and you will do justice to yourself and your client.” That, Haines averred, was “a fair sample of the way he treated younger members of the bar.”<sup>349</sup>

Lewis H. Waters received similar treatment when he and Lincoln tried a case together. Though much older than Waters, Lincoln insisted that the young man act as lead counsel and wrote out instructions which he urged Waters to copy and submit to the court as his own handiwork.<sup>350</sup> Another beneficiary of such kindness was Joe Blackburn, who argued a case before the U.S. Circuit Court in Chicago when he was only nineteen years old. Lacking experience, he was understandably anxious and delivered only a few confusing remarks. As he prepared to return to his seat, Lincoln rose and endorsed the tyro’s motion so convincingly that the court sustained it. When opposing counsel protested against this meddling, Lincoln replied “that he claimed the privilege of giving a young lawyer a boost when struggling with his first case, especially if he was pitted against an experienced practitioner.”<sup>351</sup> Similarly, James R. Hosmer, in the midst of his first important case, got bogged down in a mass of technicalities. While floundering, he was told by Lincoln: “Young man, I know more about this sort of thing than you do; let us see if I can’t help you out.” After receiving guidance from the veteran attorney, young

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<sup>349</sup> Hill, Lincoln the Lawyer, 186-87; The People v. Hawley (1851-52), LPAL, case file #01119.

<sup>350</sup> Unidentified newspaper article, quoted in Nelle S. Mills to French Quinn, Kansas City, Missouri, 8 July 1925, enclosed in French Quinn to Albert J. Beveridge, Decatur, Indiana, 20 July 1925, Beveridge Papers, Library of Congress.

<sup>351</sup> “Joe Blackburn and Mr. Lincoln,” undated clipping from the Chicago News, Lincoln Museum, Fort Wayne, Indiana.

Hosmer was able to win his case.<sup>352</sup> “I remember with what confidence I always went to him,” recollected Lawrence Weldon. One time when he approached Lincoln with a paper he could not understand, the older man said: “Wait until I fix this plug of my ‘gallis’ and I will pitch into that like a dog at a root.”<sup>353</sup>

Lincoln also helped Leonard Swett in his early days at the bar. In Danville one day, Lincoln received an appeal from a friend whose son was accused of murder. Instead of taking the case, he told Swett, “here is a chance to distinguish yourself.” When the young attorney protested that he was “unknown to the parties and they would not be satisfied with the change,” Lincoln insisted. Swett complied and won an acquittal.<sup>354</sup>

No other lawyer was so willing to assist junior colleagues at the bar. William H. Somers recalled that in 1857, when he was first elected a county clerk, Lincoln congratulated him heartily, a gesture that, said Somers, “was so in contrast with that of the other members of the bar that it touched me deeply and made me, ever afterwards, his steadfast friend.”<sup>355</sup>

Lincoln’s solicitude for young attorneys was doubtless rooted in his own experience as an aspiring lawyer, when John Todd Stuart had been so kind to him. Jonathan Birch speculated plausibly that “somehow – probably because of the recollection of his own early struggles – his heart seemed especially filled with sympathy

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<sup>352</sup> Edmund R. Terry to the New York Herald, Brooklyn, 11 February, New York Herald, 12 February 1921.

<sup>353</sup> Tarbell, Lincoln, 1:247.

<sup>354</sup> Address of Weldon at the meeting of the Chicago bar, 1 December 1889, Swett Papers, Lincoln Presidential Library, Springfield.

<sup>355</sup> Somers to S. S. McClure, El Cajon, California, 1 November 1895, Ida Tarbell Papers Allegheny College; Somers to James R. B. Van Cleave, El Cajon, California, 7 December 1908, in Rufus Rockwell Wilson, ed., Intimate Memories of Lincoln (Elmira, New York: Primavera Press, 1945), 100.

and concern for the young man whose footsteps took him in the direction of the law.”<sup>356</sup>

Memories of his own law studies led him to visit young men poring over Blackstone, Chitty, et al. One of them, William Walker, remembered with fondness Lincoln’s “great kindness and generous sympathy for the young men, who were struggling night and day, to reach a place at the bar.” Lincoln would greet these students cheerfully, peruse their volumes, test their knowledge, and play games with them.<sup>357</sup>

Lincoln would occasionally test their knowledge formally, in the capacity of a bar examiner. He began examining Jonathan Birch by asking what books he had read. When the young man complied, Lincoln said: “Well, that is more than I had read before I was admitted to practice.” He then told “a story of something that befell him in a county in southern Illinois where he once tried a case in which he was pitted against a college-bred lawyer who apparently had studied all the books and was very proud of the accomplishment. The court and all the lawyers were profoundly impressed by the man’s wonderful store of learning, but it was all lost on the jury. ‘And they,’ said Lincoln, laughingly, ‘were the fellows I was aiming at.’” He resumed the exam, asking questions that Birch found “calculated to test one’s memory,” but “bore faint relation to the practice of law.” Birch remembered that Lincoln “fired his questions at me somewhat rapidly, scarcely giving me time to answer properly, and never indicating by look, word, or gesture whether I was right or wrong.” Abruptly Lincoln ended the exam, wrote out a recommendation for a license, then offered some advice about future study which, Birch

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<sup>356</sup> Jesse W. Weik, ed., “A Law Student’s Recollection of Abraham Lincoln,” Outlook, 11 February 1911, 312.

<sup>357</sup> Osborn H. Oldroyd, ed., The Lincoln Memorial: Album Immortelles (New York: G. W. Carlton, 1883), 213.

recalled, “was about the first thing that had been said to indicate that the entire proceeding was, after all, an examination to test the applicant’s ability to practice law.”<sup>358</sup>

Like Herndon, these young men were in effect surrogate sons to Lincoln, whose paternal streak was deep and broad.<sup>359</sup> Gibson W. Harris recollected that he “took undisguised pleasure in fathering many of us younger persons, including some already in their thirties.”<sup>360</sup> Congressman R. R. Hitt, who covered Lincoln as a shorthand reporter in the 1850s, confided to his journal that “he treated me with the utmost kindness, almost like a father.”<sup>361</sup> In 1860, the influential newspaperman Joseph Medill told Lincoln, his senior by fourteen years, “I have spoken to you with all the sincerity and truthfulness of a son writing to his father.”<sup>362</sup>

Young attorneys were not the only beneficiaries of Lincoln’s kindliness. Herndon reported that he “was kind and courteous to the court at all times. He was kind and tender of a witness’ feelings and was always respectful of sheriffs – principals & deputies and under officials of the court.”<sup>363</sup> Lincoln’s courtesy did not always extend to disgruntled clients. When Henry C. Whitney asked him to deal with one, Lincoln replied: “Let him howl.”<sup>364</sup> Once a client spurned his advice, saying: “I will be d[amne]d if I do.” Lincoln, “in the same spirit,” responded: “I will be d[amne]d if I attend to your suit if you

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<sup>358</sup> Weik, ed., “Law Student’s Recollection of Lincoln,” 312-13.

<sup>359</sup> Burlingame, Inner World of Lincoln, 73-91.

<sup>360</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, December 1903, 15.

<sup>361</sup> R. R. Hitt, Journal, 274, Hitt Papers, Library of Congress. The date for this entry is unclear, but probably sometime between November 1860 and February 1861.

<sup>362</sup> Joseph Medill to Lincoln, Washington, 18 December 1860, Lincoln Papers, Library of Congress.

<sup>363</sup> Herndon, “Analysis of the Character of Abraham Lincoln,” 432.

<sup>364</sup> Whitney, Lincoln the Citizen, 176.

don't.”<sup>365</sup> In 1853, Lincoln snapped at a client who sullenly complained about the verdict in a fraud suit, which awarded him some money. Lincoln then “became angry. ‘You old fool,’ he cried, ‘you’ll keep on until you won’t get a cent.’”<sup>366</sup>

Nor was Lincoln always gentle with opposing counsel. According to Leonard Swett, any attorney “who took Lincoln for a simple-minded man would very soon wake upon on his back, in a ditch.” When lawyers “went at him to joust him from his position and take away his weapons,” Lincoln “arose like a lion wakened from his lair. His stooping form straightened, his angular features acquired force and expression, his eye flashed, all his powers of logic, sarcasm, and ridicule were aroused, and rejecting all compromise, he fought it out on that line until he was routed or until he carried the day.”<sup>367</sup> One day attorney Amzi McWilliams shouted “No! No!! No!!!” at a client of Lincoln’s, prompting Lincoln to shout back, “Oh! Yes! Yes!! Yes!!!” while staring “daggers at McWilliams, who quailed under Lincoln’s determined look.”<sup>368</sup> When Usher Linder interrupted Lincoln repeatedly as he was presenting his client’s case, and the judge refused to stop the disruptions, Lincoln grew exasperated and shook his fist at his opponent and declared angrily: “I did not bother you in your plea, and if the court cannot protect me I can protect myself. Now, sir, we’ll have no more of this.”<sup>369</sup>

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<sup>365</sup> Henry McHenry to Herndon, Petersburg, Illinois, 29 May 1865, Wilson and Davis, eds., Herndon’s Informants, 15.

<sup>366</sup> George M. Angell’s reminiscences, in an undated clipping marked “originally in the Crickfield Bros. Papers,” reminiscence files, folder 7, Abraham Lincoln Association Files, Lincoln Presidential Library, Springfield. This was the case of Webster v. Rhodes & Angell, LPAL, case file #00982; History of Logan County, Illinois, Together with Sketches of its Cities, Villages, and Towns, Educational, religious, Civil, Military, and Political History, Portraits of Prominent Persons, and Biographies of Representative Citizens (Chicago: Inter-state Pub. Co., 1886), 327.

<sup>367</sup> Lecture by Swett, delivered in Chicago, 20 February 1876, Chicago Times, 21 February 1876.

<sup>368</sup> Whitney, Lincoln the Citizen, 178.

<sup>369</sup> Undated memo by J. S. S., William E. Barton Papers, University of Chicago. This was evidently in the case of Miller et al. v. Turner, LPAL, case #00718 (1842-46).

Lincoln once grew irritated when an attorney for the other side challenged potential jurors by asking if they were acquainted with Lincoln, who in turn asked members of the jury pool if they knew the opposing attorney. When the judge admonished him, saying: “Now, Mr. Lincoln, you are wasting time. The mere fact that a juror knows your opponent does not disqualify him.’

“No, your Honor,” Lincoln replied ironically, “but I am afraid some of the gentlemen may not know him, which would place me at a disadvantage.”<sup>370</sup>

One day opposing counsel used a Latin quotation and “turned to Mr. Lincoln, with whom he had only a slight acquaintance and said: ‘That is so, is it not, Mr. Lincoln?’” Lincoln “startled the gentleman and brought a smile on the face of the judge by his humorous reply: ‘If that’s Latin you had better call another witness.’”<sup>371</sup> On another occasion, attorney Halsey O. Merriman corrected Lincoln’s grammar and poked fun at his lack of education. “I never went to college,” Lincoln replied. “While my friend Merriman was getting his education, I was splitting rails at 25 cents a hundred with these hands.”<sup>372</sup>

In court, Lincoln occasionally used his knack for clever puns to deflate other lawyers. When opposing counsel once claimed that “he could bring a man to prove an alibi,” Lincoln quipped: “I have no doubt you can bring a man to prove a lie by.”<sup>373</sup>

A young attorney with “an exceedingly glib tongue” patronized Lincoln during a trial. His forbearance exhausted, Lincoln “told the jury that the young man reminded him

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<sup>370</sup> Reminiscences of Lawrence Weldon, in Hill, Lincoln the Lawyer, 7.

<sup>371</sup> Kidd, “Town Crier,” Ida Tarbell Papers, Allegheny College.

<sup>372</sup> George W. Shaw, “Personal Reminiscences of Lincoln,” Geneseo, Illinois, News, n.d., copied in the Pekin Daily Post-Tribune, 16 May 1911.

<sup>373</sup> Lincoln told this story sometime during the Civil War, probably in 1863. Burlingame and Ettliger, eds., Hay Diary, 77 (entry for [July-August 1863]).



of an old mud scow that used to run on the Sangamon river. Its engine was a rather weak affair and when they blew the whistle the wheels would stop, and Mr. Lincoln thought that the young man was in a somewhat similar condition, that when he was using his tongue so vigorously, his brain failed to work.”<sup>374</sup>

More gently Lincoln poked fun at Stephen T. Logan, “who was extremely careless, almost slatternly, in his dress and manners.” Opposing his former partner, Lincoln found himself on the brink of defeat. To rescue his case, he appealed to the jury: “My learned friend [Logan] has made an able speech to you. He has analyzed the testimony with his accustomed acuteness and skill, and laid down to you the law with his usual ability and confidence. And I am not going to assert, positively, that he is mistaken, either as to the law or the evidence. It would not become me to do so, for he is an older and better lawyer than I am. Nevertheless I may properly make a suggestion to you, gentlemen of the jury. And now I ask you, and each of you, to look, closely and attentively, at my friend, the counsel on the other side, as he sits there before you, – look at him all over, but especially at the upper part of him, and then tell me if it may not be possible that a lawyer who is so unmindful of the proprieties of this place as to come into the presence of his Honor and into your presence, gentlemen of the jury, with his standing collar on wrong-end-to, may not possibly be mistaken in his opinion of the law?” This query elicited uproarious laughter when it was observed that indeed Logan had fastened his collar so that its two points were “sticking out behind, like horns.”<sup>375</sup>

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<sup>374</sup> Henry Rickel, recalling what his father, a Springfield friend of Lincoln, had told him, Cedar Rapids, Iowa, Evening Gazette, 6 February 1909. A similar version of this story, allegedly told by Daniel Voorhees, is given in Emanuel Hertz, ed., Lincoln Talks: A Biography in Anecdote (New York: Viking, 1939), 44. Another version appears in Alexander K. McClure, Lincoln’s Yarns and Stories (Chicago: John C. Winston, n.d.), 30.

<sup>375</sup> Newton Bateman, Abraham Lincoln: An Address (Galesburg, Illinois: Cadmus Club, 1899), 11-13.

Even though he teased him on that occasion, Lincoln had such respect for Logan that he would sometimes refer potential clients to him. In the early 1850s, when an Ohio lawyer asked him to sell some land in Illinois owned by a minor in the Buckeye State, Lincoln in vain looked through Joseph Story's Conflict of Laws, acknowledged his ignorance of the relevant statute, and pointed to Logan's office, saying: "For the first time has the question of the right of a foreign guardian to come into our courts to sell the lands of his non-resident wards, situated in this State, been presented to me. I hoped that 'Story' would help me solve it. He does not, and I cannot give you an opinion without further examination; you are in a hurry to return home and I will give you the best advice that I can." He led his guest to the door and pointed to a nearby building, saying: "That is the office of ex-Judge Logan; go to him; if there is a man in Illinois who can give you an opinion at once, he is the man; I am not."<sup>376</sup>

On another occasion he told a potential client to seek out John Todd Stuart, explaining that "he's a better lawyer than I am."<sup>377</sup> These episodes illustrates what Joseph Gillespie said of Lincoln's humility: "It required no effort on his part to admit another man's superiority."<sup>378</sup>

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In the courtroom, Lincoln generally appeared relaxed and unruffled. "No matter how eventful or exciting a trial was," Henry C. Whitney said, "he remained entirely calm, unexcited, imperturbable; you could not discern by his manner that he had the slightest

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<sup>376</sup> Reminiscences of Hon. J. G. Gest, Xenia, Ohio, Torchlight, n.d., copied in the New York Times, 27 February 1888.

<sup>377</sup> Stringer, "From the Sangamon to the Potomac," 129. The potential client was Dr. G. W. Angell of Logan county, who told Stringer about this conversation.

<sup>378</sup> Joseph Gillespie to Herndon, Edwardsville, 31 January 1866, Wilson and Davis, eds., Herndon's Informants, 187.

tinge either of trepidation or enthusiasm, but he remained inflexible and stoical to the last.” One day in a significant railroad case which Whitney was arguing with Lincoln’s help, opposing counsel scored so many points that Whitney expressed some unease to his partner. “All that is very easily answered,” Lincoln remarked, and when he addressed those points, he blew them away “as easily as a beer-drinker blows off the froth from his foaming tankard.”<sup>379</sup>

For all Lincoln’s equanimity, when “provoked he was capable of terrible passion & invective.”<sup>380</sup> Judge Thomas Drummond noted that at times Lincoln did not seem “at all remarkable,” but “let him be thoroughly roused – let him feel that he was right and that some principle was involved in his cause – and he would come out with an earnestness of conviction, a power of argument, and a wealth of illustration that I have never seen surpassed.”<sup>381</sup> A good example was his conduct in the 1843 case of Regnier v. Cabot and Taylor, during which he excoriated a defendant who had besmirched the reputation of a young woman school teacher. A colleague called Lincoln’s speech “as bitter a Philippic as was ever uttered.”<sup>382</sup> Eliza Cabot successfully sued Francis Regnier, charging that he had publicly declared that one Elijah Taylor “has Rogered her” and that he “has got skin there [from Eliza Cabot] as much as he wanted.”<sup>383</sup> Cabot ultimately won a judgment of \$1600.

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<sup>379</sup> Whitney, Lincoln the Citizen, 176-77.

<sup>380</sup> Samuel C. Parks to Herndon, Lincoln, Illinois, 25 March 1866, Wilson and Davis, eds., Herndon’s Informants, 239.

<sup>381</sup> Ward H. Lamon, The Life of Abraham Lincoln: From His Birth to His Inauguration as President (Boston: James R. Osgood, 1872), 315; Parker v. Hoyt (1849-55), LPAL, case file #12330.

<sup>382</sup> Samuel C. Parks to Herndon, Lincoln, Illinois, 25 March 1866, Wilson and Davis, eds., Herndon’s Informants, 239.

<sup>383</sup> Declaration in Regnier v. Cabot and Taylor, LPAL, case file #00158.

Judge John M. Scott recalled an 1850 case in which “a witness gave most disgusting testimony against Mr. Lincoln’s client.” Lincoln “turned upon the offending witness a torrent of invective and denunciation of such severity as rarely ever falls from the lips of an advocate at the bar. In the same case he suddenly changed his manner of speech and became as tender and gentle as he had just been severe and violent. His client was an orphan girl that had been betrayed to her ruin. His words in defence of that friendless girl as she sat alone in the midst of strangers were gentle, beautiful, and full of tenderest pathos.”<sup>384</sup>

In a similar case, Lincoln “bore down savagely” during his closing speech in Dunn v. Carle, during which the married defendant “had been using extraordinary exertions to procure testimony, to prove that the woman had permitted the embraces of other men.” Lincoln came to believe that the defendant and his witnesses were lying and “went at them, [and] crushed them.” Lincoln held up to ridicule one of the witnesses, S. H. Busey, who intimated that he was a ladies’ man: “there is Busey – he pretends to be a great heart smasher – does wonderful things with the girls – but I’ll venture that he never entered his flesh but once & that is when he fell down & stuck his finger in his [anus].”<sup>385</sup>

Lincoln ridiculed another witness who referred to himself as J. Parker Green. To discredit him, Lincoln asked: “Why J. Parker Green? . . . What did the J. stand for? . . . John? . . . Well, why did n’t the witness call himself John P. Green? . . . That was his name, was n’t it? . . . Well, what was the reason he did not wish to be known by his right

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<sup>384</sup> Scott, “Lincoln on the Stump and at the Bar.”

<sup>385</sup> David Davis, interview by Herndon, 19 September 1866, Wilson and Davis, eds., Herndon’s Informants, 347-48; Davis to his wife, Urbana, 1 May 1851, Davis Papers, Illinois State Historical Library, Springfield; Whitney to Herndon, Chicago, 27 August 1887, Wilson and Davis, eds., Herndon’s Informants, 630; Dunn v. Carle (1850-51), LPAL, case file #01340.

name? . . . Did J. Parker Green have anything to conceal; and if not, why did J. Parker Green part his name in that way?” Green became an object of scorn, helping Lincoln to win his case.<sup>386</sup> (During the Civil War, when an Iowa Congressman recommended for office a man named H. Clay Caldwell, Lincoln said he would not appoint anyone who “parted his name in the middle.” He relented when it was explained that Caldwell employed only the initials H. C. when signing his name.)<sup>387</sup>

Lincoln’s indignation knew no bounds in the case of Rebecca Thomas, the poor widow of a Revolutionary War veteran whose case he tried gratis.<sup>388</sup> Her agent, Erastus Wright, had in Lincoln’s view charged too much for winning a pension. The notes for his speech to the jury read: “No contract. – Not professional services. – Unreasonable charge. – Money retained by Def’t not given by Pl’ff. – Revolutionary War. – Describe Valley Forge privations. – Ice – Soldier’s bleeding feet. – Pl’ffs husband. – Soldier leaving home for army. Skin Def’t. – Close.”<sup>389</sup> In speaking of this trial, David Davis recollected that when Lincoln “attacked Meanness & littleness – vice & fraud – he was most powerful – was merciless in his Castigation.”<sup>390</sup> So he was with Wright. According to Herndon, when his partner recounted how Wright had taken advantage of the widow, he “rose up to about 9 f[ee]t high – grew warm – then eloquent,” attacking “as with a thunderbolt the miscreant who had robbed one that helped the world to liberty.” Herndon never recalled

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<sup>386</sup> Reminiscences of Adlai E. Stevenson, in Hill, Lincoln the Lawyer, 219-20.

<sup>387</sup> Pacific Commercial Advertiser, n.d., copied in the New York Sun, 29 May 1908.

<sup>388</sup> Thomas v. Wright (1846), case file #04728, LPAL; Paul H. Verduin, “A New Lincoln Discovery: Rebecca Thomas, His ‘Revolutionary War Widow,’” Lincoln Herald 98 (1996): 3-11.

<sup>389</sup> Wilson and Davis, eds., Herndon’s Lincoln, 213.

<sup>390</sup> David Davis, interview with Herndon, 20 September 1866, Wilson and Davis, eds., Herndon’s Informants, 350.

seeing Lincoln “so wrought up.”<sup>391</sup> (Lincoln acted as pension attorney for several other clients in addition to Mrs. Thomas, but not gratis.)<sup>392</sup> In Todd v. Ware, Lincoln again excoriated Wright, accusing him of lying. While discussing the endorsements on some promissory notes, Lincoln said of Wright: “he manifestly prevaricates – manifestly attempts to cheat his conscience and his God, with the mere literal import of his language, while [which?] he substantially and intentionally falsifies to the court.”<sup>393</sup> Lincoln also skinned Wright in the 1846 congressional campaign.<sup>394</sup>

A lying witness could also provoke Lincoln’s wrath. As Herndon put it, “woe be to him, if Mr. Lincoln took the notion in his head that the man was swearing to a willful lie. Whips of scorpions in a man’s conscience could be no worse. To flee from Mr. Lincoln and conscience was impossible in the witness. In this condition I have seen the witness on the stand turn pale – & tremble, great big drops of sweat – drops of agony stood out all over the man’s face.”<sup>395</sup> One witness who aroused Lincoln’s ire was a physician offering expert testimony. After the doctor had made “some very extreme statements,” Lincoln asked him how much money he was receiving for his participation in the trial. The large amount amazed the jurors. Lincoln then “rose, turned, and, stretching out his long right arm and forefinger, . . . cried in a shrill voice, overflowing with the hottest indignation: ‘Gentlemen of the jury, big fee, big swear.’”<sup>396</sup>

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<sup>391</sup> Herndon to Weik, Springfield, 12 November 1885, Herndon-Weik Papers, Library of Congress.

<sup>392</sup> John A. Lupton, “Abraham Lincoln: Pension Attorney,” The Lincoln Newsletter 24 (1996): 1, 7-8.

<sup>393</sup> Lincoln’s amended bill in Todd v. Ware, case file #5877, LPAL.

<sup>394</sup> James Gourley, interview with Herndon, [1865-66], Wilson and Davis, eds., Herndon’s Informants, 452.

<sup>395</sup> Herndon, “Analysis of the Character of Abraham Lincoln,” 432-33.

<sup>396</sup> Thomas Wesley Shastid, paraphrased in Thomas Hall Shastid, My Second Life: An Autobiography (Ann Arbor: George Wahr, 1944), 62n.

Unscrupulous lawyers also felt the sting of Lincoln's wrathful denunciation. In 1847 at Tremont, juror George W. Minier observed Lincoln argue on behalf of an elderly gentleman who had sold oxen to two young men named Snow, taking their note in payment. When he tried to collect from them, they refused to pay, saying they were minors when the note was written and therefore could not, under the law, be held accountable for contracts they had signed. According to Minier, Lincoln believed that the lads had swindled the old man on the advice of their counsel, and so he "slowly got up, and in his strange, half erect attitude, and clear, quiet accent, began, 'Gentlemen of the jury, are you willing to allow these boys to begin life with this shame and disgrace attached to their character? If you are, I am not.'" He then quoted Iago's speech about reputation from Othello ("Good name in man or woman . . .") unbending to his full height, "and looking upon the Snow bros. with the compassion of a brother, his long right arm extended toward the opposing counsel," he said: "Gentlemen of the Jury, these poor, innocent boys would never have attempted this low villainy, had it not been for the advice of these lawyers." Since they were now over twenty-one, the brothers should either pay what they owed or return the oxen. After delivering "a scathing rebuke to those who thus belittle their profession," he concluded: "and now, gentlemen, you have it in your power to set these boys right before the world." The jury found for the old man.<sup>397</sup>

When discussing facts before a jury, Lincoln usually avoided "playing to the pit" but rather "confined himself closely to his case."<sup>398</sup> In preparing for trial, he paid close attention to the arguments that opposing counsel might make. He told Schuyler Colfax

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<sup>397</sup> Reminiscences of George Minier, 1882, in Oldroyd, ed., Lincoln Memorial, 187-89; Arnold, Lincoln, 85-87.

<sup>398</sup> Whitney, Lincoln the Citizen, 177. See also Herndon, "Analysis of the Character of Abraham Lincoln," 427-33.

that “he habitually studied the opposite side of every disputed question, of every law case, of every political issue, more exhaustively, if possible, than his own side. He said that the result had been that in all his long practice at the bar he had never once been surprised in court by the strength of his adversary’s case – often finding it much weaker than he had feared.”<sup>399</sup>

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Though he was intensely ambitious, Lincoln never aspired to be a judge or a state’s attorney. Occasionally, however, he did serve as a temporary judge on the circuit.<sup>400</sup> In the antebellum period, Illinois allowed lawyers to substitute for judges who were unavoidably absent. When David Davis needed someone to pinch-hit for him, he usually chose Lincoln, who “never presided at a trial unless the attorneys for both parties consented, and that they were generally glad to do so, for in this way delays were avoided and the clients and witnesses accommodated when Davis was unavailable to hold court.” On the bench Lincoln showed his usual tact. Once “some young attorneys attempted to embarrass him with technical devices in a case in which there was no real defense. Lincoln heard them with the utmost good nature and patience, and finally, when they had kept up their tactics for a whole day, he gave a decision in favor of the plaintiff, and wrote the direction for judgment in such form that there was no possible chance for an appeal. ‘But how are we to get this up to the Supreme Court?’ asked one of the attorneys when he found himself cornered. ‘Well, you’ve all been so smart about this case,’

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<sup>399</sup> Colfax in Rice, ed., Reminiscences of Abraham Lincoln, 333-34.

<sup>400</sup> Harry E. Pratt, “‘Judge’ Abraham Lincoln,” Journal of the Illinois State Historical Society (1955): 28-39.



answered Lincoln, calmly, ‘that you can find out for yourselves how to carry it up’; and that ended the matter.”<sup>401</sup>

As a judge, Lincoln did not play favorites. In April 1858 at Urbana, his friend Henry C. Whitney and other attorneys were trying to postpone action on a creditor’s note. Whitney claimed that he had in a timely fashion submitted a demurrer to the court clerk, who could not find it. Lincoln, after listening to the heated argument about the supposed filing, denied Whitney, saying: “Demurrer overruled if there ever was one,” implying that he did not believe Whitney and thought he was merely trying to delay matters.<sup>402</sup>

To a newly-named judge who asked how to conduct himself on the bench, Lincoln replied: “There is no mystery in this matter . . . ; when you have a case between neighbors before you, listen well to all the evidence, stripping yourself of all prejudice, if any you have, and throwing away if you can all technical law knowledge, hear the lawyers make their arguments as patiently as you can, and after the evidence and the lawyers’ arguments are through, then stop one moment and ask yourself: What is the justice in this case? and let that sense of justice be your decision. Law is nothing else but the best reason of wise men applied for ages to the transactions and business of mankind.”<sup>403</sup>

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Lincoln was ideally situated to be a lobbyist, for he lived in Springfield, served four terms in the legislature, and had a large circle of politically well-connected friends. There is some evidence that he served in that capacity. In 1853, he received \$25 from the

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<sup>401</sup> Lawrence Weldon in Hill, Lincoln the Lawyer, 188-90.

<sup>402</sup> William H. Somers to James R. B. Van Cleve, 7 December 1908, in Pratt, “‘Judge’ Lincoln,” 36; King, Davis, 95-97.

<sup>403</sup> Herndon, “Lincoln the Lawyer,” Herndon-Weik Papers, Library of Congress.

from the commissioners of the Illinois and Michigan Canal for opposing legislation compensating a mill owner for alleged damages done to his business by the canal.<sup>404</sup> That same year he told John A. Rockwell that he had managed to get Rockwell's coal mining charter passed by the senate but failed to do so in the House for want of time. He would, if desired, try to get it passed at the next session.<sup>405</sup> The following year he lobbied against the Atlantic and Mississippi Railroad, which had long been trying to win legislative approval to construct a line with a terminus at what became known as East St. Louis.<sup>406</sup> Lincoln may have been acting at the behest of the Illinois Central, which did not welcome competition.<sup>407</sup>

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Not everyone entertained a high opinion of Lincoln's legal ability. Dr. Allen B. Clough, who observed him before the court in Champaign County, said: "I have seen and heard 'Old Abe' at the legal bar, (and other kinds) in this county during every term of the Circuit Court since the Spring of '57, and I never saw him do a good thing yet in his profession, and I have seen him whipped several times by young lawyers of no pretensions. . . . He has great clownish wit, ready for a joke on any occasion[, a] good memory, therefore he readily copies from others, – has a large base of brain but small

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<sup>404</sup> Wayne C. Temple, "A. Lincoln, Lobbyist," Journal of the Abraham Lincoln Association 21 (2000): 35-43; Ronald S. Vasile, "Another Look at Lincoln as a Lobbyist," For the People: A Newsletter of the Abraham Lincoln Association, vol. 4, no. 4 (Winter 2002), 1, 4-5.

<sup>405</sup> Lincoln to John A. Rockwell, Springfield, 15 February 1853, Basler, ed., Collected Works of Lincoln, 2:191-92.

<sup>406</sup> Lincoln to Joseph Gillespie, Springfield, 11 February 1854, Basler, ed., Collected Works of Lincoln, 2:211-12.

<sup>407</sup> Frank, Lincoln as a Lawyer, 26.

perceptive faculties.”<sup>408</sup> William Herndon’s brother Elliott, an attorney in Springfield and a fervent Democrat, thought Lincoln “had no mind [not] possessed by the most ordinary of [men]. . . . I never [knew him to] thoroughly understand any [thing in law].”<sup>409</sup>

Another Democratic attorney in Springfield, George Edmonds, who became the first territorial judge of Utah, singled out “lack of application” as Lincoln’s greatest fault as a lawyer. He “was a lazy man” who “absolutely refused to put more than the minimum of time on any case that he might be interested in. He used to come into the state library at Springfield, and we would see him try to study the cases and make notes of precedents, and so on but he couldn’t keep at it long at one time. He would slam down the books and come over to tell us funny stories. That doesn’t mean that he slighted his work. He didn’t need to study so much as the rest of us, because he could grasp the essentials of the argument in an instant. Things that other lawyers could not see through without great difficulty were perfectly clear to him at once. Still, he was not a great lawyer.”<sup>410</sup>

One case in which he had clearly not done his homework involved his father-in-law, Robert Smith Todd, who tried to pay off a debt in depreciated currency. When the note holder sued, Lincoln represented his in-laws. At the trial, he called a witness whose testimony badly hurt Todd’s case. If Lincoln had properly prepared the witness, or had not called him at all, Todd might well have won; as it was, he lost.<sup>411</sup>

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<sup>408</sup> Allen B. Clough to Andrew Clough, Tolono, Illinois, 21 August 1860, Clough Papers, Chicago History Museum.

<sup>409</sup> Elliott B. Herndon, statement for William H. Herndon, [1865-66], Wilson and Davis, eds., Herndon’s Informants, 459-60.

<sup>410</sup> Chicago Journal, 12 February 1909. Edmonds quit his judgeship in Utah in 1854. In 1860 he was reported in Springfield. That year he served as secretary of the State Democratic Convention.

<sup>411</sup> Todd v. Ware, case file #5877, LPAL; Frank, Lincoln as a Lawyer, 32-36.

Three years later, in the case of Rogers v. Dickey, Lincoln again blundered, failing to mention relevant law in his initial pleading, then doing so in an appeal for a rehearing. The case involved a debtor with two creditors, each of whom had won a judgment against him. The question arose as to which creditor was entitled to the debtor's property. Lincoln's client had the better argument, but the state supreme court ruled against him because Lincoln did not refer to in his original pleading important cases that he later cited in his request for reconsideration. If he had earlier called attention to the precedents included in his appeal for a rehearing, he would probably have won.<sup>412</sup>

Even his friends acknowledged that Lincoln was “not what might be called an industrious lawyer.”<sup>413</sup> Gibson W. Harris reported that “as a formal student Lincoln struck me as actually lazy. Days of leisure came frequently, and on such he might sometimes be seen sitting in his chair, with his feet on the office table, reading the office copy of Burns or Byron. He would read for an hour or more, then close the book and stretch himself at full length on the office lounge, his feet projecting over the end of it, hands under his head and eyes closed, and in this attitude would digest the mental food he had just taken.”<sup>414</sup> Similarly, Herndon recalled that “Lincoln never read much law – and never did I see him read a law book through and no one else ever did.” Lincoln often spent the morning on things other than his practice. When he arrived at the office around 9 a.m., Herndon reported, “the very first thing he did was to pick up some newspaper, if I had not hidden them, and read them aloud, much to my discomfort: he would spread

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<sup>412</sup> Rogers v. Dickey (1843-44), LPAL, case file #04418; Frank, Lincoln as a Lawyer, 47-51; Banister, Lincoln and the Common Law, 78-79.

<sup>413</sup> Weldon in Rice, ed., Reminiscences of Lincoln, 200.

<sup>414</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman's Home Companion, December 1903, 15.

himself out on the sofa – one leg on a chair – another on the table or stove.” On occasion Lincoln “would read something in the papers and that would suggest to him an idea and he would say – [‘]that puts me in mind of a story that I heard down in Egypt in Ills;[‘] and then he would tell the story and that story would suggest another and so on. Nothing was done that morning. Declarations – pleas – briefs & demurrers were flung to the winds. It was useless to attempt to read anymore that morning.”<sup>415</sup> Lincoln also wrote aloud, as it were. “I write by ear,” he told Gibson W. Harris. “When I have got my thoughts on paper, I read it aloud, and if it sounds all right I just let it pass.”<sup>416</sup>

Unlike other lawyers, Lincoln kept no commonplace book of reported court decisions and “never followed up the decisions of the supreme courts.”<sup>417</sup> Instead, when seeking authorities and precedents, he relied heavily on digests and treatises that summarized cases.<sup>418</sup>

Lincoln could “go off ‘half-cocked’” at times. In 1856, while he and Whitney were trying an important land case in Champaign County, Whitney expressed fear that they would lose because Henry Dickerson was to testify against their client. Lincoln said “we’ll beat that easy enough for Henry Dickerson has served a term in the Penitentiary.” Whitney was amazed, for, as he recalled, Dickerson “was one of our highest citizens: never heard of the Penitentiary.”<sup>419</sup> Whitney also recalled with astonishment that Lincoln did not realize that a suit on a foreign judgment could not be defended as if it were a suit

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<sup>415</sup> Herndon to Weik, Springfield, 18 February 1887, Herndon-Weik Papers, Library of Congress.

<sup>416</sup> Gibson William Harris, “My Recollections of Abraham Lincoln,” Woman’s Home Companion, January 1904, 13.

<sup>417</sup> Whitney, Life on the Circuit, ed. Angle, 122; Wilson and Davis, eds., Herndon’s Lincoln, 216.

<sup>418</sup> Mark E. Steiner, “Lincoln’s Continuing Legal Education,” Lincoln Herald 95 (1993): 12-17.

<sup>419</sup> Whitney to Herndon, n.p., 23 June 1887, Wilson and Davis, eds., Herndon’s Informants, 616; the case was Dean v. Kelly et al. (1857-58), LPAL, case file #01334.

brought in Illinois.<sup>420</sup> Lincoln also blundered while arguing a case before the state supreme court, “reading from a reported case, some strong points in favor of his argument. Reading a little too far, and before becoming aware of it, he plunged into an authority against himself. Pausing a moment, he drew up his shoulders in a comical way, and half laughing, went on, ‘There! there! may it please the Court; I reckon I’ve scratched up a snake.’”<sup>421</sup>

“I have seen him lose cases of the plainest justice, which the most inexperienced member of the bar would have gained without effort,” reported Herndon, who concluded that his partner, taken all in all, “was a 2d rate lawyer. A great lawyer is one who is the master of the whole law – and who is ever ready to attend in a masterly way all cases that come before him right or wrong – good or bad – ready or not ready, except ever ready through his legal love and his own sagacity.” Rhetorically he exclaimed, “What – make a great lawyer of a man who never read law much!” David Davis stated that Lincoln “could hardly be called very learned” and that “he read law books but little, except when the cause in hand made it necessary.”<sup>422</sup>

In the January 1860 term of the Illinois Supreme Court, the firm of Lincoln and Herndon suffered an embarrassing series of reverses, losing nine of ten cases, largely because of incompetence. Since Lincoln was preoccupied with his Cooper Institute

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<sup>420</sup> Whitney, Life on the Circuit, ed. Angle, 233.

<sup>421</sup> Mason Brayman quoted in an undated memorandum by his daughter, Mrs. Mary Brayman Gowdy, Ida Tarbell Papers, Allegheny College.

<sup>422</sup> Wilson and Davis, eds., Herndon’s Lincoln, 210; Herndon to Weik, Chicago, 9 December 1886, Herndon-Weik Papers, Library of Congress.

speech and other matters related to the impending presidential campaign, it is likely that he had little to do with those cases.<sup>423</sup>

Though he may not have been responsible for this dismal showing, earlier Lincoln had more than one occasion to apologize for running a sloppy office and for negligence. In such an untidy office as that of Lincoln and Herndon, papers were easily mislaid. Atop a package of letters, newspapers, pamphlets, and other miscellaneous documents Lincoln placed a label stating, “When you can’t find it anywhere else look into this.”<sup>424</sup> In 1850 he wrote to a client expressing keen embarrassment: “I am ashamed of not sooner answering your letter, herewith returned; and, my only apologies are, first, that I have been very busy in the U.S. court; and second, that when I received the letter I put it in my old hat, and buying a new one the next day, the old one was set aside, and so, the letter lost sight of for a time.”<sup>425</sup> Four years later he sent an equally apologetic missive to Milton K. Alexander: “It pains me to have to say that I forgot to attend to your business when I was in Clinton, at Court in May last. Your best way would be to address me a letter at Clinton, about the time I go there to court in the fall (Oct. 16th. I think) and then it will be fresh, & I will not forget or neglect it.”<sup>426</sup>

Another example of negligence dates from 1846, when Lincoln filed an affidavit concerning the case of Chancey v. Jackson in which he said he received a letter from R. J. Hamilton asking him to attend to that case; that he “considered himself engaged to do so, and in good faith intended to do the same; that having considerable other, and earlier

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<sup>423</sup> Banister, Lincoln and the Illinois Supreme Court, 165-69.

<sup>424</sup> Basler, ed., Collected Works of Lincoln, 8:424.

<sup>425</sup> Lincoln to Richard S. Thomas, Springfield, 27 June 1850, Basler, ed., Collected Works of Lincoln, 2:80.

<sup>426</sup> Lincoln to Alexander, n. p., [13 June 1854], Basler, ed., Collected Works of Lincoln, 2:218-19.

business in said court, he lost sight of the case; and the judgment therein, as it seems, was reversed for want of a joinder in error.” Lincoln added that he “had no actual knowledge of a rule being taken in the case for joinder in error, or of the reversal for want of joinder, until this morning.” He “believes that appellee, through said Hamilton, relied for attention to the case, exclusively on the affiant, and therefore had no other attorney nor attendants.”<sup>427</sup> That same year, the New York attorney William M. Evarts asked Cyrus Edwards “to see Lincoln and ask him why he does not remit the \$125.00 he collected as dividend on stock of the Alton Fire Insurance Co. for my client. . . . I know he has collected it but I cannot find out from him why he does not remit it.”<sup>428</sup>

In 1838, Lincoln apologized to Levi Davis, saying that the firm of Lincoln and Stuart “received yours of the 2nd. inst. by due course of mail, and have only to offer in excuse for not answering it sooner, that we have been in a great state of confusion here ever since the receipt of your letter . . . . We beg pardon for our neglect in this business; if it had been important to you or your client we would have done better.”<sup>429</sup>

It is difficult to estimate with precision Lincoln’s stature as a lawyer. One technique for doing so is to compare the number of cases won and lost, where possible.<sup>430</sup> Even where such statistics can be generated, as in Lincoln’s appearances before the Illinois Supreme Court, the won-lost yardstick is misleading, for it fails to account for the degree of difficulty involved in each case. Some apparent losses may have been victories in substance. If, for example, Lincoln’s client were sued for \$1000 and the jury found for

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<sup>427</sup> Affidavit dated 9 February 1846, in Frank, Lincoln as a Lawyer, 18.

<sup>428</sup> Quoted in Nelson G. Edwards to William E. Barton, Lexington, Virginia, 15 January 1927, Barton Papers, University of Chicago.

<sup>429</sup> Lincoln to Levi Davis, Springfield, 15 March 1838, Basler, ed., Collected Works of Lincoln, 1:116.

<sup>430</sup> Paul Angle made such a tabulation. “Abraham Lincoln: Circuit Lawyer,” Lincoln Centennial Association Papers, 1928, 38-39.



the plaintiff but awarded damages of only \$1, the defendant, though technically a loser, would probably have been more than satisfied with his attorney. The true test of his ability would be to assess cases on their merits, judging how well Lincoln did compared to what most lawyers would have done.<sup>431</sup>

Such judgments are necessarily subjective and difficult to make in hindsight. Even with the abundant documentary evidence that has been unearthed concerning Lincoln's career at the bar, the challenge is still formidable. Those documents, though numerous, shed little light on his arguments before juries.<sup>432</sup>

Lawrence Weldon thought that Lincoln "could not perhaps be called a great lawyer, measured by the extent of his acquirement of legal knowledge. He was not an encyclopedia of cases, but . . . in the clear perception of legal principles, with natural capacity to apply them, he had very great ability."<sup>433</sup> A juror in an 1859 case argued by Lincoln said that he "is not a great lawyer but a good one." His opposing counsel, Norman Purple, "in intricate questions, is too much for him. But when Purple makes a point, which cannot be logically overturned, Lincoln avoids it by a good-natured turn,

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<sup>431</sup> Frank, Lincoln as a Lawyer, 57-69; "A Statistical Portrait: Interpreting Lincoln's Success as an Attorney," LPAL.

<sup>432</sup> The editor of the Lincoln Legal Papers, a massive documentary edition released in 2000, pointed out that in the era "before court reporters and verbatim transcripts, the documentary records of trials can be frustratingly meager. A few pleading documents may outline the main contours of charges and countercharges, accusations and defenses. They must be used with care, as attorneys prepared these documents within an adversarial system to provide the best arguments for their side, not an objective statement of facts. Dozens of other documents may simply record that the court continued a case until the next term or that a particular person appeared in court to be a witness. Not only do such 'witness affidavits' fail to provide any information about what the witness said, they do not even offer conclusive proof that the person testified at all. They merely declare that the person had appeared in court to be a witness if called upon and should be reimbursed for their time and traveling expenses. Very rarely is there any indication of what testimony was offered in the case unless it was recorded in the written affidavit of a person who was not present to give oral testimony. Of more than fifty-one hundred cases documented by the Lincoln Legal Papers, only two have anything approaching a modern transcript of a trial, both prepared by newspaper reporters rather than court officials." Daniel W. Stowell, review of John Evangelist Walsh's Moonlight, Journal of the Abraham Lincoln Association 24 (2002): 73.

<sup>433</sup> Weldon, "Reminiscences of Lincoln as a Lawyer," 241-42.

though outside the issue. Lincoln’s chief characteristics are candor, good nature, and shrewdness. He is a gentleman throughout. I wish I could add – the scholar. He possesses a noble heart, an elevated mind, and the true elements of politeness.”<sup>434</sup>

Henry C. Whitney said of Lincoln’s record on the circuit that he “was not more than ordinarily successful for a first-class lawyer.”<sup>435</sup> He “did not stand at the head of the bar, except as a jury lawyer,” another contemporary observer and admirer of Lincoln acknowledged. “Before the Court he was inferior, both in argument and influence, . . . to such men as Judge [Joel] Manning, Judge Purple, and Mr. [Elihu N.] Powell.”<sup>436</sup>

Attorney George B. Foster of Peoria thought “Lincoln was a practical lawyer, neither great nor above the average.”<sup>437</sup> He certainly did not belong to the tribe of legal giants like Reverdy Johnson, Daniel Webster, David Dudley Field, and other attorneys celebrated for their profound learning and ability to affect history in actions before the U. S. Supreme Court.<sup>438</sup> (Lincoln did present one case, a highly technical one, before that tribunal.)<sup>439</sup> Informants for the nation’s leading credit rating agency described him in

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<sup>434</sup> Letter by Charles Monroe Chase, Chicago, 6 June 1859, in the DeKalb County Sentinel, n.d., typed copy, Randall Papers, Library of Congress. Chase was serving as a juror in the case of Clark v. Jones, in which Lincoln, along with Melville Fuller and Merriam Bryan, represented the defendant.

<sup>435</sup> Whitney, Life on the Circuit, ed. Angle, 235.

<sup>436</sup> “Personal Reminiscences of the Late Abraham Lincoln by a contributor to the ‘Bulletin,’” San Francisco Daily Evening Bulletin, 22 April 1865.

<sup>437</sup> Foster told this to Ernest E. East sometime after 1908. Memo by East, 16 February 1934, East Papers, Bradley University.

<sup>438</sup> Frank, Lincoln as a Lawyer, 168-73.

<sup>439</sup> The case he argued before the court, Lewis v. Lewis, involved determining whether the statute of limitations had expired in a land case. Lincoln also submitted a brief in another Supreme Court case and was involved in three others. Of the many cases he handled in the U.S. District Court, at least nine were appealed to the Supreme Court, though he did not argue them in Washington. John A. Lupton, “Basement Barrister: Abraham Lincoln’s Practice before the U.S. Supreme Court,” Lincoln Herald 101 (1999): 47-58.

1856 as “a G[oo]d man & to be relied on,” and two years later as “prompt efficient and skillful.”<sup>440</sup> In sum, Lincoln was a highly capable but not outstanding lawyer.

Lincoln offered characteristically modest estimates of his stature as an attorney. In 1860, while discussing the political antecedents of a Pennsylvania leader, he said “I suppose we could say of General Cameron, without offence, that he is ‘not Democrat enough to hurt him.’ I remember that people used to say, without disturbing my self-respect, that I was not lawyer enough to hurt me.”<sup>441</sup> Likening himself to swine scavenging acorns in a forest, he once said: “I’m only a mast-fed lawyer.”<sup>442</sup> He was “aware of his inferiority as a lawyer” and always ready to acknowledge it “with a smile or a good natured remark,” which endeared him to his colleagues.<sup>443</sup>

It is hard to assess the importance of Lincoln’s legal career in shaping his political life. Certainly his widespread practice on the Eighth Circuit helped acquaint him with many voters, and his uncanny ability to read public opinion was enhanced by that experience. The friends he made on the circuit (among them David Davis, Leonard Swett, and John Todd Stuart) lent invaluable assistance in promoting his political fortunes. His work as a legal draftsman doubtless contributed to his ability to write terse, precise prose and to think through such difficult legal subjects as emancipation and habeas corpus. His knowledge of human nature was deepened by widespread contact with all sorts of people in court and out, and his powers of persuasion were enhanced. His God-given talent as a

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<sup>440</sup> Ann M. Scanlon, “Dun & Bradstreet’s Credit Rating of Abraham Lincoln,” Lincoln Herald 77 (1975): 124.

<sup>441</sup> Thurlow Weed Barnes, Life of Thurlow Weed including His Autobiography and a Memoir (2 vols.; Boston: Houghton Mifflin, 1884), 1:610-11.

<sup>442</sup> Titian J. Coffey in Rice, ed., Reminiscences of Lincoln, 240.

<sup>443</sup> “Personal Reminiscences of the Late Abraham Lincoln by a contributor to the ‘Bulletin,’” San Francisco Daily Evening Bulletin, 22 April 1865.

logician was honed during his twenty-four years at the bar. In his practice, he helped settle innumerable disputes, a task he performed regularly in the White House. In all these ways, Lincoln's legal career helped prepare him for greatness as president.<sup>444</sup>

But that greatness rested largely on his moral vision, which was little fostered by an adversarial legal system in which he acted as a hired gun. Such a system can easily promote moral insensitivity, a kind of ethical agnosticism. Fortunately for the nation, it did not do so in his case.

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From 1849 to 1854, Lincoln did not entirely abandon interest in politics, though he showed little concern compared to what he had demonstrated in the previous seventeen years or the subsequent eleven. In June 1850, he refused to sign a call for a rally in support of the fateful compromise measures pending in Congress.<sup>445</sup> In 1852, he injected some political content into his eulogy on Henry Clay.<sup>446</sup> After quoting the Great Compromiser's eloquent defense of the American Colonization Society, Lincoln offered his own biting commentary on slavery: "Pharaoh's country was cursed with plagues, and his hosts were drowned in the Red Sea for striving to retain a captive people who had already served them more than four hundred years."<sup>447</sup> (This concern for divine punishment for the sin of slavery was to reappear in one of his greatest state papers, the second inaugural address.)

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<sup>444</sup> Lupton, "Lincoln and His Informal Partners on the Eighth Judicial Circuit," 99.

<sup>445</sup> Illinois State Register (Springfield), 21 September, 25 October 1858.

<sup>446</sup> Mark E. Neely, Jr., "American Nationalism in the Image of Henry Clay: Abraham Lincoln's Eulogy on Henry Clay in Context," Register of the Kentucky Historical Society 73 (1975): 31-60.

<sup>447</sup> Basler, ed., Collected Works of Lincoln, 2:132.

During the presidential campaign of 1852, he spoke occasionally on behalf of the Whig standard bearer, Winfield Scott, for whom he served as an elector. As he observed in his 1860 autobiographical sketch, however, “he did something in the way of canvassing, but owing to the hopelessness of the cause in Illinois, he did less than in previous presidential canvasses.”<sup>448</sup> The speech that he did give illustrated the immaturity of the pre-1854 Lincoln. In it, he resorted to the ridicule and sarcasm that had characterized most of his early political utterances. It was prompted by Stephen A. Douglas, who had attacked Scott while praising the Democratic presidential nominee, Franklin Pierce of New Hampshire. Responding to the Little Giant, Lincoln engaged in a lawyerlike quibble over the meaning of the word “with,” denounced “the utter absurdity” of Douglas’s arguments, and compared Pierce to a Springfield militia leader who rode at the head of his men “with a pine wood sword, about nine feet long, and a paste-board cocked hat, from front to rear about the length of an ox yoke, and very much the shape of one turned bottom upwards; and with spurs having rowls as large as the bottom of a teacup, and shanks a foot and a half long.” Lincoln pictured the Democratic standard bearer complying with the rules of the Springfield militia, which stipulated that “no man is to wear more than five pounds of cod-fish for epaulets, or more than thirty yards of bologna sausages for a sash.” Scott should fear, said Lincoln, that some day he would be attacked by Pierce “holding a huge roll of candy in hand for a spy-glass; with B U T labeled on some appropriate part of his person; and with Abrams’ long pine sword cutting the air at imaginary cannon balls, and calling out, ‘boys there’s a game of ball for you,’ and over all streaming the flag, with the motto, ‘We’ll fight till we faint, and I’ll treat

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<sup>448</sup> Basler, ed., Collected Works of Lincoln, 4:67.

when it's over.” He also criticized Pierce for expressing hostility to the fugitive slave act of 1850 and likened him to a mulatto.<sup>449</sup>

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This was the last such crude partisan address that Lincoln would deliver. Between 1849 and 1854, while sitting on the political sidelines and devoting himself outwardly to the practice of law, Lincoln inwardly was undergoing a profound transformation, successfully wrestling with the challenges of midlife. Little documentation of his inner life survives; he kept no diary, seldom wrote revealing personal letters, and confided few of his innermost thoughts to anyone. Yet he was clearly trying to come to grips with the questions that many men address, consciously or unconsciously, as they pass from the first half of life to the second half during their early forties: What do I really want from life? Is the structure of my life so far truly satisfactory? What kind of legacy do I wish to leave? Have I paid too much attention to the demands of the outer world and conformed too much to its pressures? What do I hope to accomplish with the rest of my days? What do I really care about most? What are my basic beliefs? How have I failed to live up to the dream I formed many years ago? How can I realistically modify that dream? Have I suppressed parts of my personality that now need to be developed? How shall I deal with the uglier aspects of my personality? How have I behaved in a destructive fashion, and how have I in turn been affected by the destructiveness of others? Have I chosen the right career and the right spouse?

Introspection of this sort is often triggered by a sense of failure, which Lincoln

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<sup>449</sup> Speech of 14 and 26 August 1852, Basler, ed., Collected Works of Lincoln, 2:135-157.

clearly suffered from.<sup>450</sup> A Democratic newspaper contemptuously observed that “Lincoln is undoubtedly the most unfortunate politician that has ever attempted to rise in Illinois. In everything he undertakes, politically, he seems doomed to failure. He has been prostrated often enough in his political schemes to have crushed the life out of any ordinary man.”<sup>451</sup> As a political ally noted, Lincoln had plenty of setbacks to brood over: “He went into the Black Hawk war as a captain, and . . . came out a private. He rode to the hostile frontier on horseback, and trudged home on foot. His store ‘winked out.’ His surveyor’s compass and chain, with which he was earning a scanty living, were sold for debt. He was defeated in his first campaign for the legislature – defeated in his first attempt as a candidate for Congress. Four times he was defeated as a candidate for Presidential Elector, because the Whigs of Illinois were yet in a hopeless minority. He was defeated in his application to be appointed Commissioner of the General Land Office.”<sup>452</sup> It was painful for Lincoln to reflect on these setbacks, for he was “keenly sensitive to his failures,” and the mere mention of them made him “miserable,” according to Herndon.<sup>453</sup> “With me, the race of ambition has been a failure – a flat failure,” he lamented in his mid-forties.<sup>454</sup> Reflecting on his legal career, he said “I am not an

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<sup>450</sup> Carl Jung, Mysterium Coniunctionis: An Inquiry into the Separation and Synthesis of Psychic Opposites in Alchemy, in The Collected Works of C. G. Jung, ed. Herbert Read, Michael Fordham, and Gerhard Adler (21 vols.; New York: Pantheon Books, 1953-79), 14:546, 171.

<sup>451</sup> Our Constitution (Urbana), 4 July 1857.

<sup>452</sup> John G. Nicolay, “Abraham Lincoln,” speech of 14 April 1894, Nicolay Papers, Library of Congress.

<sup>453</sup> Herndon to Jesse W. Weik, Springfield, 7, 10 January 1886, Herndon-Weik Papers, Library of Congress.

<sup>454</sup> Fragment on Douglas, [December 1856?], Basler, ed., Collected Works of Lincoln, 2:382-83. In this document, Lincoln compares his failure with Douglas’s success. In an 1852 campaign speech at Peoria, Lincoln “said that he had been told . . . that Judge Douglass was coming here, & that he would skin me; – Well, perhaps he would; Douglass had got to be a great man, & strode the earth. Time was when I was in his way some; but he has outgrown me & [be]strides the world; & such small men as I, can hardly be considered as worthy of his noting; & I may have to dodge & get between his legs.” Speech at Peoria, 17

accomplished lawyer. I find quite as much material for a lecture, in those points where I have failed, as in those wherein I have been moderately successful.”<sup>455</sup> In 1855, he remarked “with much feeling” that “men are greedy to publish the success of [their] efforts, but meanly shy as to publishing the failures of men. Men are ruined by this one sided practice of concealment of blunders and failures.”<sup>456</sup>

Lincoln worried about the legacy he would leave behind. In 1851, he told Herndon: “How hard – oh how more than hard, it is to die and leave one’s Country no better for the life of him that lived and died her child.”<sup>457</sup> Joshua Speed recalled Lincoln uttering a similar lament: “He said to me he had done nothing to make any human being remember that he had lived – and that to connect his name with the events transpiring in his day & generation and so impress himself upon them, as to link his name to something that would redound to the interest of his fellow man was what he desired to live for.”<sup>458</sup>

Lincoln’s obsession with death, which dated back to the demise of his mother and baby brother, became even more acute in his early forties. A heightened awareness of mortality is common among men at that stage of life.<sup>459</sup> In Lincoln’s case it became especially acute when his second son, three-year-old Eddie, died in 1850 after an illness

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September 1852, memorandum (misdated 16 March 1852) prepared by Judge Onslow Peters of Peoria, Lincoln Collection, Chicago History Museum. Seven years later, while riding through Kansas with a Democratic editor, Lincoln told “the early history of Douglas, whom he pronounced a ‘lucky dog.’ The two started in political life together in 1834, Mr. Lincoln being 25 and Judge Douglas 21 years of age.” St. Joseph correspondence by William H. Gill, 8 December, Leavenworth Weekly Herald, 10 December 1859.

<sup>455</sup> Notes for a law lecture, Basler, ed., Collected Works of Lincoln, First Supplement, 18.

<sup>456</sup> Herndon to Jesse W. Weik, [Springfield], 15 December 1886, Herndon-Weik Papers, Library of Congress.

<sup>457</sup> Herndon, “Facts Illustrative of Mr. Lincoln’s Patriotism and Statesmanship,” lecture given in Springfield, 24 January 1866, Abraham Lincoln Quarterly 3 (1944-45): 188-89.

<sup>458</sup> Speed to Herndon, Louisville, 7 February 1866, in Wilson and Davis, eds., Herndon’s Informants, 197.

<sup>459</sup> Daniel J. Levinson, et al., The Seasons of a Man’s Life (New York: Knopf, 1978), 215.



of fifty-two days.<sup>460</sup> Lincoln told a friend that if he “had twenty children he could never cease to sorrow for that one.”<sup>461</sup> A poem, perhaps by Lincoln or Mary, appeared in the Illinois State Journal a week after the boy’s death.<sup>462</sup> Titled “Little Eddie,” it read:

Those midnight stars are sadly dimmed,  
 That late so brilliantly shone,  
 And the crimson tinge from cheek and lip,  
 With the heart’s warm life has flown -  
 The angel of Death was hovering nigh,  
 And the lovely boy was called to die.

The silken waves of his glossy hair  
 Lie still over his marble brow,  
 And the pallid lip and pearly cheek  
 The presence of Death avow.  
 Pure little bud in kindness given,  
 In mercy taken to bloom in heaven.

Happier far is the angel child  
 With the harp and the crown of gold,

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<sup>460</sup> Ruth Painter Randall, Lincoln’s Sons (Boston: Little, Brown, 1955), 28-30.

<sup>461</sup> Lucy Harmon McPherson, Life and Letters of Oscar Fitzalan Harmon (Trenton, N.J: MacCrellish & Quigley, 1914), 11.

<sup>462</sup> Jason Emerson, “The Mystery of ‘Little Eddie,’” Journal of the Illinois State Historical Society 92 (1999): 201-21.

Who warbles now at the Savior's feet

The glories to us untold.

Eddie, meet blossom of heavenly love,

Dwells in the spirit-world above.

Angel Boy - fare thee well, farewell

Sweet Eddie, We bid thee adieu!

Affection's wail cannot reach thee now

Deep though it be, and true.

Bright is the home to him now given

For "of such is the Kingdom of Heaven."

The lad's funeral was conducted by the Rev. Dr. James Smith, who frequently visited the grieving parents and provided what Lincoln gratefully called "loving and sympathetic ministrations."<sup>463</sup> Smith gave them a copy of his 676-page book, The Christian's Defense, which (according to Smith) Lincoln found convincing. Mary Lincoln said her husband's "heart, was turned towards religion" following Eddie's death. Soon after the funeral, the Lincolns rented a pew in the First Presbyterian Church, where Smith served as pastor.<sup>464</sup>

The following year, Lincoln's father passed away. As Thomas lay dying in Charleston, a day's journey from Springfield, Lincoln rejected his deathbed appeal for a

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<sup>463</sup> McPherson, Life and Letters of Oscar Fitzalan Harmon, 11.

<sup>464</sup> Mary Todd Lincoln to James Smith, Marienbad, 8 June 1870, Justin G. Turner and Linda Levitt Turner, eds., Mary Todd Lincoln: Her Life and Letters (New York: Alfred A. Knopf, 1972), 567-68; James Smith to Herndon, Dundee, 24 January 1867, Wilson and Davis, eds., Herndon's Informants, 549; Wayne C. Temple, Abraham Lincoln: From Skeptic to Prophet (Mahomet, Illinois: Mayhaven, 1995), 37-44; Thomas Lewis, "New Light on Lincoln's Life," Frank Leslie's Weekly, 16 February 1899, 134-35, in Rufus Wilson, ed., Intimate Memories of Lincoln, 131-132.

visit. Coldly Lincoln wrote his stepbrother, John D. Johnston, to tell their father “that if we could meet now, it is doubtful whether it would not be more painful than pleasant.”<sup>465</sup>

Lincoln neither attended Thomas’s funeral nor arranged for a tombstone to mark his grave.<sup>466</sup>

In some men, the painful questioning that often occurs at midlife can lead to despair; in others it produces stagnation. But it can also be a creative if turbulent period in which inner psychological growth takes place and leads to profound self-realization. Out of the crucible of midlife introspection can emerge an awareness of one’s own identity and uniqueness that breeds self-confidence and inspires confidence in others. A hallmark of such psychologically maturity is an ability to overcome egotism, to avoid taking things personally, to accept one’s shortcomings and those of others with equanimity, to let go of things appropriate for youth and accept gladly the advantages and disadvantages of age. People able to meet these challenges successfully radiate a kind of psychological wholeness and rootedness that commands respect. They evolve into the

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<sup>465</sup> Lincoln to John D. Johnston, Springfield, 12 January 1851, Basler, ed., Collected Works of Lincoln, 2:97.

<sup>466</sup> Coleman, Lincoln and Coles County, 134-41. Lincoln talked about marking the site with a stone. According to Augustus H. Chapman, with whom Lincoln spoke at length in January 1861, “Mr Lincoln said he intended to have the grave enclosed and suitable Tomb Stones erected over his Fathers grave & requested me to ascertain what the cost would be & he would furnish Dennis Hanks the money to have it done. Said he would furnish an inscription for the Tomb-[stone, such] as he wished inscribed on it, Said he would do it as soon as he got time for me then to see the marble dealer & write him the cost & he would furnish Dennis the Mony to have it all done just as he wished.” Augustus H. Chapman to Herndon, Charleston, Illinois, 8 October 1865, Wilson and Davis, eds., Herndon’s Informants, 136. See also The History of Coles County (Chicago: Lebaron & Co., 1879), 423-24. In 1867, Mary Todd Lincoln told her mother-in-law that the president “a few weeks before his death mentioned to me, that he intended that summer, paying proper respect to his father’s grave, by a head & foot stone.” Mary Todd Lincoln to Sarah Bush Lincoln, Chicago, 19 December 1867, Turner and Levitt Turner, eds., Mary Todd Lincoln, 465. George T. Balch stated that as president, Lincoln sent money to have a tombstone put on his father’s grave, but that it was not done; so Balch’s father, George B. Balch, raised money by writing and delivering poetry about Lincoln and used the proceeds to mark the grave of Thomas Lincoln. George T. Balch, recalling the words of his father, George B. Balch, paraphrased in Dr. W. H. Doak, Martinsville, Illinois, to his nephew, Dr. W. D. Ewing of Cambridge, Ohio, [1 February 1923], Terre Haute, Indiana, Star, 11 February 1923. Lincoln’s failure to carry out his plans suggests a deep estrangement from his father, despite his pious intentions.

unique individuals that they were meant to be.<sup>467</sup>

Clearly Lincoln became such a person. Lincoln resembled the archetypal Kentuckian described by Ralph Waldo Emerson in a lecture which the future president admired. The Sage of Concord said that men from the Bluegrass State proclaim by their manners: “Here I am, if you don’t like me, the worse for you.”<sup>468</sup> During the final eleven years of his life he impressed people with what Herndon called “that peculiar nature . . . which distinguishes one person from another, as much to say ‘I am myself and not you.’”<sup>469</sup> Joshua Speed, his closest friend, said that “if I was asked what it was that threw such charm around him, I would say it was his perfect naturalness. He could act no part but his own. He copied no one either in manner or style.”<sup>470</sup> Lincoln “had no affectation in any thing,” Speed reported. “True to nature[,] true to himself, he was true to every body and every thing about and around him – When he was ignorant on any subject no matter how simple it might make him appear he was always willing to acknowledge it – His whole aim in life was to be true to himself & being true to himself he could be false to no one.”<sup>471</sup> In 1859, a perceptive friend noted that what Lincoln “does and says is all his own. What Seward and others do you feel that you have read in books or speeches, or that it is a sort of deduction from what the world is full of. But what Lincoln does you feel to be something newly mined out – something above the ordinary.”<sup>472</sup> Admiral David

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<sup>467</sup> Levinson, et al., Seasons of a Man’s Life, passim.

<sup>468</sup> Lincoln recalled this to Emerson when they met at the White House on January 31, 1862. John McAleer, Ralph Waldo Emerson: Days of Encounter (Boston: Little, Brown, 1984), 569-72, in Garry Wills, Lincoln at Gettysburg: The Words that Remade America (New York: Simon and Schuster, 1992), 104.

<sup>469</sup> Herndon, “Lincoln Individually,” Herndon-Weik Papers, Library of Congress.

<sup>470</sup> Speed, Reminiscences of Lincoln, 34.

<sup>471</sup> Speed to Herndon, Louisville, 6 December 1866, Wilson and Davis, eds., Herndon’s Informants, 499.

<sup>472</sup> Nathan M. Knapp to O. M. Hatch, Winchester, Illinois, 12 May 1859, Hatch Papers, Lincoln Presidential Library, Springfield.

Dixon Porter, who knew Lincoln in the Civil War, thought he “had an originality about him which was peculiarity his own.”<sup>473</sup> John Littlefield recalled that Lincoln “was a very modest man in his demeanor, and yet gave you an impression of strong individuality. In his freedom of intercourse with people he would seem to put himself of a par with everybody; and yet there was within him a sort of reserved power, a quiet dignity which prevented people from presuming on him, notwithstanding he had thrown down the social bars. A person of less individuality would have been trifled with.”<sup>474</sup> John W. Forney, an influential newspaper editor who saw Lincoln often during his presidency, recalled that he “was a man of the most intense individuality, so that his capacity to stand alone, and, in a measure, outside of others, was one of the hidden forces of his character.”<sup>475</sup>

Lincoln’s highly evolved sense of his own identity lent him what some called “psychic radiance.” His good friend and political ally Joseph Gillespie observed him in 1858 as residents of Highland, Illinois, flocked around him: “there was some magnetic influence at work that was perfectly inexplicable, which brought him & the masses into a mysterious correspondence with each other.” As time passed, Gillespie recalled, that “relation increased and was intensified to such an extent that afterwards at Springfield I witnessed a manifestation of regard for Mr. Lincoln, such as I did not suppose was

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<sup>473</sup> David Dixon Porter, Incidents and Anecdotes of the Civil War (New York: Appleton, 1885), 283.

<sup>474</sup> John H. Littlefield, “Recollections of One Who Studied Law with Lincoln,” William Hayes Ward, ed., Abraham Lincoln, Tributes from His Associates: Reminiscences of Soldiers, Statesmen, and Citizens (New York: Thomas Y. Crowell, 1895), 204-5.

<sup>475</sup> Forney interviewed in the Washington Evening Star, 27 June 1891.

possible.”<sup>476</sup> That magnetic influence was generated by Lincoln’s voice and presence. An Illinois congressman remembered that Lincoln “personally won men to him, and those who came in contact with him felt the spell and submitted to its thralldom, led by the invisible chords of his marvelous power. . . . As well might the hasheesh-eater attempt to analyze its seductive influence as for those who felt the spell of Lincoln’s voice and presence, to say where and what it was.”<sup>477</sup> In 1859, a Wisconsinite marveled at Lincoln’s voice, which “had something peculiarly winning about it, some quality which I can’t describe, but which seemed to thrill every fiber of one’s body.”<sup>478</sup> Two years later, an Ohioan had a similar reaction: “to see Lincoln was to feel closely drawn to him. His personal appearance and his manner, so perfectly natural, absolutely free from anything like ostentation, and yet so manly, made very one feel instinctively that he was preeminently a man of the people.”<sup>479</sup> Like others, Henry C. Whitney was hard put to identify Lincoln’s special quality. Though Lincoln was “awkward and ungainly,” Whitney said, “there nevertheless was in his tout ensemble an indefinable something that commanded respect.”<sup>480</sup> In February 1861, John Hay reported that when Lincoln addressed the New Jersey General Assembly, and asked its members “to stand by him so long as he did right,” there “was a peculiar naiveté in his manner and voice, which produced a strange effect upon his audience. It was hushed for a moment to a silence which was like that of the dead. I have never seen an assemblage more thoroughly

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<sup>476</sup> A document in Gillespie’s papers, quoted in Josephine G. Prickett, “Joseph Gillespie,” Transactions of the Illinois State Historical Society for the Year 1912 (publication no. 17 of the Illinois State Historical Library), 108.

<sup>477</sup> Reminiscences of James A. Connolly, Peoria, Illinois, Journal, 11 February 1910.

<sup>478</sup> Reminiscences of Peter van Duchene, Milwaukee Free Press, 3 February 1909.

<sup>479</sup> Smith Stemmed, Personal Reminiscences of Abraham Lincoln (Minneapolis: William H. M. Adams, 1928), 10-11.

<sup>480</sup> Henry C. Whitney, “Abraham Lincoln: A Study from Life,” Arena 19 (1898): 466.

captivated and entranced by a speaker than were his listeners.”<sup>481</sup>

In 1863, Jane Grey Swisshelm, a Radical critic of Lincoln’s administration, called on him in Washington “with a feeling of scorn for the man who had tried to save the Union and slavery.” But quickly she was “startled to find a chill of awe pass over me as my eyes rested upon him. It was as if I had suddenly passed a turn in a road and come into full view of the Matterhorn. . . . I have always been sensitive to the atmosphere of those I meet, but have never found that of any one impress me as did that of Mr. Lincoln, and I know no word save ‘grandeur’ which expresses the quality of that atmosphere.”<sup>482</sup>

That sense of grandeur impressed an Illinois railroad conductor, who often observed leading politicians on his train. He considered Lincoln “the most folksy of them. He put on no airs. He did not hold himself distant from any man.” Yet “there was something about him which we plain people couldn’t explain that made us stand a little in awe of him. . . . You could get near him in a sort of neighborly way, as though you had always known him, but there was something tremendous between you and him all the time.”<sup>483</sup>

The modesty that accompanied Lincoln’s grandeur was genuine. Like anyone who has truly come to grips with his or her own dark side – and Lincoln had a streak of cruelty which had marred his conduct toward political opponents in his earlier years – he cherished no exalted self-image.<sup>484</sup> “I am very sure,” he told a friend one day in the White House, “that if I do not go away from here a wiser man, I shall go away a better man, for

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<sup>481</sup> [John Hay], Philadelphia correspondence, 21 January, New York World, 22 February 1861, in Burlingame, ed., Lincoln’s Journalist, 38.

<sup>482</sup> Swisshelm in Rice, ed., Reminiscences of Lincoln, 413.

<sup>483</sup> E. J. Edwards, quoting the conductor, Gilbert Finch, then retired and residing in Connecticut, New York Times, 24 January 1909.

<sup>484</sup> On Lincoln’s cruel streak, see Burlingame, Inner World of Lincoln, 149-55.

having learned here what a very poor sort of a man I am.”<sup>485</sup> To a delegation of clergy who called at the Executive Mansion, he declared, “I may not be a great man – (straightening up to his full height) I know I am not a great man.”<sup>486</sup>

This lack of egotism, a hallmark of psychological maturity, impressed John Hay, who confided to his diary in 1863, “While the rest are grinding their little private organs for their own glorification the old man is working with the strength of a giant and the purity of an angel to do this great work.”<sup>487</sup> When he used the first-person singular pronoun, it did not seem egocentric. James Russell Lowell, remarking on Lincoln’s “unconsciousness of self,” noted that he “forgets himself so entirely in his object as to give his I the sympathetic and persuasive effect of We with the great body of his countrymen.” Such humility enabled Lincoln to relate to his constituents easily, so that, in Lowell’s words, “when he speaks, it seems as if the people were listening to their own thinking aloud.”<sup>488</sup>

Such psychological maturity, such profound humility, combined with self-awareness and self-confidence, equipped Lincoln to lead the North to victory in the Civil War. Horace White, a young Republican leader in Illinois, marveled at how “Lincoln quickly gained the confidence of strangers, and . . . their affection as well. I found myself strongly drawn to him from the first . . . . This personal quality, whose influence I saw growing and widening among the people of Illinois from day to day, eventually

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<sup>485</sup> Noah Brooks, “Personal Recollections of Abraham Lincoln,” Harper’s New Monthly Magazine, July 1865, in Michael Burlingame, ed., Lincoln Observed: Civil War Dispatches of Noah Brooks (Baltimore: Johns Hopkins University Press, 1998), 211.

<sup>486</sup> Undated statement by a Dr. Parker, in John G. Nicolay’s hand, Nicolay-Hay Papers, Lincoln Presidential Library, Springfield.

<sup>487</sup> Burlingame and Ettlinger, eds., Hay Diary, 69 (entry for 31 July 1863).

<sup>488</sup> James Russell Lowell, “Abraham Lincoln,” The Writings of James Russell Lowell (12 vols.; Cambridge: Riverside Press, 1890-92), 5:208.



penetrated to all the Northern States . . . . It was his magical personality that commanded all loyal hearts. It was his leadership that upheld confidence in the dark hours of the war and sent back to the White House the sublime refrain, ‘We are coming, Father Abraham, three hundred thousand more.’”<sup>489</sup>

In a less fully conscious and psychologically mature man, envy, jealousy, self-righteousness, false pride, vanity, and the other foibles of ordinary humanity would have undermined Lincoln’s ability to maintain Northern unity and resolve. That task required forgetfulness of self, and such forgetfulness – the ability to overcome the petty tyranny of the ego – developed only after Lincoln had wrestled long and hard and successfully with the challenges of midlife.

Thus it was that in 1854, when Lincoln reentered the political world wholeheartedly, he was a changed man. No more would he ridicule and belittle his opponents. No more would he travel the political low road of narrow partisanship. The partisan politico was about to emerge from his semi-retirement as a true statesman.<sup>490</sup>

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<sup>489</sup> Horace White, Abraham Lincoln in 1854 (Springfield: Illinois State Historical Society, 1908), 21.

<sup>490</sup> Burlingame, Inner World of Lincoln, 1-19.