

## ADDRESS

### ABRAHAM LINCOLN: A LAWYER “FOR THE AGES”

*From the Prairie to the Presidency—And Beyond*

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## INTRODUCTION

In her marvelous book, *Team of Rivals*, Doris Kearns Goodwin comments on how, by the turn of the nineteenth century, Abraham Lincoln's name had become known worldwide—even in remote areas.<sup>1</sup> She tells the story of Leo Tolstoy who, in 1908, was in a remote area of the North Caucasus, talking about the great men in the history of the world, when he was interrupted by a tribal chieftain and asked to talk about Lincoln. In recounting this incident, Tolstoy commented: “Lincoln was a humanitarian as broad as the world. He was bigger than his country—bigger than all the Presidents together. . . . His genius is still too strong and too powerful for the common understanding.”<sup>2</sup>

Ulysses S. Grant opined that “incontestably” Lincoln was “the greatest man I ever knew.”<sup>3</sup> Like tributes have continued to this day and so, I believe, we can fairly claim that Lincoln was our greatest President. And, in fact, more books have been written about Lincoln than any figure other than Jesus Christ and perhaps Napoleon.

But most of what is known about Lincoln, and certainly that which is most celebrated, concerns a relatively small part of his fifty-six-year life, i.e., the last four years—from February 1861 through 7:22 a.m. on April 15, 1865—when his Secretary of War, Edwin M. Stanton, pronounced that “[n]ow he belongs to the ages.”<sup>4</sup> During this tumultuous four-year period—when through the Civil War the United States was able to wrench itself from the shackles of its Great Original Sin, however equivocally and tentatively—Lincoln ascended, seemingly from out of nowhere. During this period, he penned and delivered some of the most immortal words in the history of the English language. For example, in the *Gettysburg Address*, November 19, 1863:

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1. DORIS KEARNS GOODWIN, *TEAM OF RIVALS: THE POLITICAL GENIUS OF ABRAHAM LINCOLN* (2005).

2. *Id.* at 747–48.

3. *Id.* at 747.

4. *Id.* at 743.

It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they here gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that, government of the people, by the people, for the people, shall not perish from the earth.<sup>5</sup>

And in the *Second Inaugural Address* on March 4, 1865:

With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan—to do all which may achieve and cherish a just, and a lasting peace, among ourselves, and with all nations.<sup>6</sup>

But how was this rather crude, physically awkward “prairie lawyer”<sup>7</sup> with no formal education to speak of, able to formulate such thoughts, assume such awesome responsibilities, and lead this Nation in its time of utmost peril? It is on these questions that I hope to shed some additional light.

## I. STATE OF THE ART: LINCOLN THE LAWYER (1836–1860)

### *A. A Consensus of Historians: Lincoln's Three Most Important Cases*

Historians have not ignored the fact that Abraham Lincoln practiced law in Central Illinois from mid-1836 to 1860—from age twenty-seven to fifty-one—when he left Springfield to assume the presidency. Under any measure, this period had to be *the* critical period of his development—some twenty-four years. The nineteenth century's version of Goodwin, Ida M. Tarbell, in her seminal biography, *The Life of Abraham Lincoln*, deftly covers this period,<sup>8</sup> and her discussion

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5. *Id.* at 583, 586.

6. *Id.* at 697, 699.

7. JOHN J. DUFF, *A. LINCOLN: PRAIRIE LAWYER* (1960).

8. 1 IDA M. TARBELL, *THE LIFE OF ABRAHAM LINCOLN* 241–78 (1900).

of Lincoln's important cases is particularly insightful.<sup>9</sup> Likewise, Senator Albert Beveridge, in his probing and highly readable (but unfinished) biography of Lincoln, devotes two full chapters and over one hundred pages to a description of Lincoln's years as a lawyer.<sup>10</sup> He too identifies and discusses what he believes to be the important cases that Lincoln was involved in, and his list is similar to Tarbell's,<sup>11</sup> as are those of Carl Sandburg<sup>12</sup> and David Donald.<sup>13</sup> And the lists of all four of these eminent historians include the following cases:

1. The *McLean County* tax case against the Illinois Central Railroad (1855);<sup>14</sup>
2. The *McCormick Reaper* patent case (1855);<sup>15</sup>
3. The *Rock Island Bridge* ("Effie Afton") case (1857);<sup>16</sup>

Two of these three cases<sup>17</sup> are also prominently featured and reported on in the recently published four-volume set, *The Papers of Abraham Lincoln: Legal Documents and Cases*.<sup>18</sup>

9. *Id.* at 258–78. Tarbell's list, although it has been expanded over time, has generally withstood the test of time. On her list were: *Bailey v. Cromwell*, 3 Ill. (3 Scam.) 70 (1841); *Illinois Central Railroad Co. v. McLean County*, 17 Ill. 290 (1886); *McCormick v. Manny (McCormick Reaper)*, 15 F. Cas. 1314 (C.C.N.D. Ill. 1856) (No. 8724); the *William ("Duff") Armstrong* murder case; the ("*Peachy*") *Quinn Harrison* murder case; and the *Rock Island Bridge ("Effie Afton")* case. *Id.*

10. 1 ALBERT J. BEVERIDGE, ABRAHAM LINCOLN 1809–1858, at 494–607 (1928).

11. *Id.* at 575–606. Importantly, Beveridge adds another crucial case in which Lincoln served as trial counsel: the so-called *Matson Slave* case. *See id.* at 392–97.

12. CARL SANDBURG, ABRAHAM LINCOLN: THE PRAIRIE YEARS AND THE WAR YEARS 123–30 (1954) (one volume). Sandburg, like Beveridge, spent considerable ink recounting and analyzing Lincoln's role in the 1847 *Matson Slave Case*. *Id.* at 87–88.

13. DAVID HERBERT DONALD, LINCOLN 154–57 (1995).

14. 17 Ill. 290 (1886); 1 BEVERIDGE, *supra* note 10, at 583–93; DONALD *supra* note 13, at 155–56; SANDBURG, *supra* note 12, at 123–24; 1 TARBELL, *supra* note 8, at 258–60.

15. 15 F. Cas. 1314 (C.C.N.D. Ill. 1856) (No. 8724); BEVERIDGE, *supra* note 10, at 575–82; DONALD, *supra* note 13, at 185–87; SANDBURG, *supra* note 12, at 125; TARBELL, *supra* note 8, at 260–66.

16. BEVERIDGE, *supra* note 10, at 598–605; DONALD, *supra* note 13, at 157; SANDBURG, *supra* note 12, at 124–25; TARBELL, *supra* note 8, at 275–78. The Chicago fire of 1871 destroyed the court records for this case. David A. Pfeiffer, *Bridging the Mississippi: The Railroads and Steamboats Clash at the Rock Island Bridge*, PROLOGUE, Summer 2004, at 47.

17. Except the *McCormick Reaper* case, for reasons which will later become apparent. *See infra* Part II.B.2.

18. *See* 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES 373 (Daniel W. Stowell ed., 2008) [hereinafter PAPERS OF ABRAHAM LINCOLN]; 3 *id.* at 308.

Why do I say that these three cases are Lincoln's "most important" cases? Over one hundred years ago, Tarbell gave the answer:

It is worth notice, too, that [Lincoln] made his reputation as [one of the best lawyers in Illinois] and tried his greatest cases *before* his debate with Douglas gave him a national reputation. It was in 1855 that the Illinois Central engaged him first as counsel; in 1855 that he went to Cincinnati on the McCormick case; in 1857 that he tried the Rock Island Bridge case. Thus his place was won purely on his legal ability unaided by political prestige. His success came, too, in middle life. Lincoln was forty years old in 1849, when he abandoned politics definitely, as he thought, for the law. He tried his greatest cases when he was from forty-five to forty-eight.<sup>19</sup>

As might be expected, Lincoln had some help along the way from three very influential lawyers.

*B. The Lincoln Legal Papers Project: Does it Change Our View of Lincoln the Lawyer?*

Since 1986 an extraordinary amount of time and effort has been expended by the Lincoln Legal Papers project in Springfield, Illinois, to more fully document the legal career of Abraham Lincoln.<sup>20</sup> As stated by the then-head of the project, Dr. Cullom Davis: "The purpose of The Lincoln Legal Papers is deceptively simple given its magnitude: to reconstruct from all surviving traces the complete documentary record of Abraham Lincoln's quarter-century legal career."<sup>21</sup> This project has resulted in the location, collation, and publication of over *one hundred thousand* documents (or a quarter-million pages). We now know, as Dr. Davis notes, that Lincoln's practice was much more diverse than earlier thought. Importantly, contrary to popular perception, the project has confirmed that Lincoln was "the consummate general practice attorney."<sup>22</sup>

The Lincoln Legal Papers project has uncovered nearly 250 Lincoln cases and over 8,500 documents pertaining to Lincoln's cases.

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19. 1 TARBELL, *supra* note 8, at 278.

20. See, e.g., CULLOM DAVIS, IN SEARCH OF THE MISSING LINCOLN: LINCOLN LEGAL PAPERS, A DOCUMENTARY HISTORY OF THE LAW PRACTICE OF ABRAHAM LINCOLN, 1836-1861, at 2 (1994).

21. *Id.* (emphasis removed).

22. *Id.* at 11.

Mark Steiner, in his article in the February 2009 issue of the *ABA Journal*, further breaks down the numbers as follows:<sup>23</sup>

1. There were 5,173 cases involving Lincoln and his partners;
2. Lincoln and his partners took more than 1,000 cases to jury verdict;<sup>24</sup>
3. Lincoln and his partners handled more than 2,300 cases in Sangamon County;
4. Common law cases made up roughly two-thirds of Lincoln's circuit practice and of those the largest two categories were assumpsit (quantum meruit) (1,240 cases) and debt (667 cases); of the 5,173 cases, 3,170 are indexed under "debtor and creditor";
5. Lincoln and his partners handled *only* 27 murder cases;
6. Lincoln and his partners handled 133 cases involving railroads, representing various lines 71 times and opposing them 62 times;
7. Lincoln and his partners handled more than 400 appeals before the Illinois Supreme Court; and
8. Lincoln was involved in at least 340 cases in the federal district and circuit courts.

Dr. Davis sums up the significance of these numbers by asking and answering a rhetorical question: "Do these increased numbers and discoveries alter in any way the conventional portrait of Lincoln as a lawyer? The answer, emphatically, is yes. Step by step, item by item, our search has incrementally and substantially altered the stereotypical picture of lawyer Lincoln."<sup>25</sup> Perhaps more importantly, Dr. Davis concludes that for those twenty-four years, Lincoln "spent much more time practicing law in the courtroom than practicing politics on the stump."<sup>26</sup>

23. Mark E. Steiner, *A Docket That Reflects Then and Now*, 95 A.B.A. J. 39, 39-40 (2009).

24. "Lincoln wasn't a 'litigator' in the modern sense. He was a trial lawyer." *Id.* at 39. Biographer Albert Woldman estimates that Lincoln "must have tried two thousand or more cases during his long career." ALBERT A. WOLDMAN, *LAWYER LINCOLN* 245-46 (Carroll & Graf Publishers, Inc. 1994) (1936).

25. DAVIS, *supra* note 20, at 10.

26. *Id.* As would be expected, the new "discoveries" of the Lincoln Legal Papers project have spawned new books about Lincoln the lawyer. *E.g.*, BRIAN DIRCK, *LINCOLN THE LAWYER* (2007); ALLEN D. SPIEGEL, *A. LINCOLN, ESQUIRE: A SHREWD, SOPHISTICATED LAWYER IN HIS TIME* (2002); MARK E. STEINER, *AN HONEST CALLING: THE LAW PRACTICE OF ABRAHAM LINCOLN* (2006).

Beveridge once pointedly wrote that all of Lincoln's "law cases, little and big, put together do not, on their merits, deserve a line in history and not more than a paragraph in any biography."<sup>27</sup> Although I disagree with the sweeping generality of this statement—and, as is evident from his biography of Lincoln, so (apparently) did Beveridge—there does come a point of having too much information such that there is a risk of distorting the significance of Lincoln's legal career and in the process not seeing the forest for the trees.

## II. FROM THE PRAIRIE TO THE PRESIDENCY: THE UPWARD PROGRESSION OF LINCOLN'S PRACTICE

Obviously, Lincoln's ascendancy to greatness is not solely attributable to the fact that he was an extremely busy and highly successful lawyer. In Lincoln's own time there were a number of such other lawyers—with similar practices and comparable success rates. Moreover, there can be no question that his "other" career—that in politics—put him in a position to be selected as the presidential candidate by the Republican Party in the summer of 1860. So what about his practice of law adds further explanation? What in his practice experience prepared him to deal with the movers and shakers of the eastern establishment? I submit that it was his last ten years in the practice of law—and, more specifically, the five year period from 1852 to 1857—that pushed him from the prairie to the presidency. As Dr. Davis puts it: "Arguing issues of slavery, taxation, economic development and the rights or obligations of corporations in the courtroom gave Lincoln both a rich exposure to the vital public issues of his day, and also intensive practice in the forensic techniques of oratory and debate."<sup>28</sup>

### A. 1836–1847: From Humble Beginnings as a "Prairie Lawyer"

Lincoln became a lawyer in 1836. Likely, he was summarily "examined" by a judge once he was certified as having good character and as morally fit to practice. Lincoln had no formal education beyond grade school: he did not go to college; he did not go to law school.<sup>29</sup>

As we all know, Lincoln began to learn the law as the result of self-study of Blackstone, Chitty, and other legal hornbooks of the era. But Lincoln really learned the law, and certainly how to practice law,

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27. See DUFF, *supra* note 7, at 140–41.

28. DAVIS, *supra* note 20, at 11.

29. See WOLDMAN, *supra* note 24, at 23.

from his mentors. His first real mentor in the law was John Todd Stuart,<sup>30</sup> who had been Lincoln's commanding officer during Lincoln's short and somewhat inglorious military service in the Black Hawk War. Almost immediately after Lincoln moved to Springfield the firm of Stuart & Lincoln was formed. Lincoln was twenty-eight years old at the time. As one biographer has noted: "The fundamental principles of Blackstone and Chitty, together with a fine intellect, ability to marshal facts, power of reasoning, common sense, force of character, tenacity of purpose, ready wit, and a gift of gab, were more than sufficient to make Lincoln a worthy assistant to Stuart."<sup>31</sup> Lincoln's partnership with Stuart was to last four years. Then Stuart, an ambitious Whig, was elected to Congress in 1841, and Lincoln realized that he needed a new partner.

On April 14, 1841, at the age of thirty-two, Lincoln went into partnership with Stephen T. Logan.<sup>32</sup> Judge David Davis, who was later to ride circuit with Lincoln, described Logan as "the greatest natural lawyer of his day."<sup>33</sup> Biographer Albert Woldman described Logan's influence on Lincoln as follows:

[Logan] stood at the very head of the Illinois bar. In his office many leading lawyers were developed, including four future United States senators and three governors of States. Powerful was his influence as a preceptor, and great his faculty for recognizing latent ability. From the viewpoint of Lincoln's advancement in the law, the association with Judge Logan was indeed fortunate.<sup>34</sup>

Woldman further comments: "Stephen T. Logan was perhaps the most constructive influence in Lincoln's life."<sup>35</sup> And Logan had the reputation of being the best *nisi prius* lawyer in the State.<sup>36</sup> Moreover, he force fed the discipline of case study and preparation on Lincoln, and Lincoln learned from him:

[Logan] compelled the junior partner to study the authorities and prepare each case carefully in advance . . . . [Lincoln] observed the intuitive vision with which Logan could see the

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30. *See id.* at 26 (Stuart was Mary Todd Lincoln's cousin).

31. *Id.* at 28.

32. *Id.* at 38-39.

33. *Id.* at 39.

34. *Id.*

35. *Id.* at 40.

36. *Id.*

strong point in his own case or the weak one of his opponent; how logically and tersely he stated his points to the court; and how with the same terse logic, the same hugging of the point of his case . . . .<sup>37</sup>

During his short partnership with Logan from 1841 to 1844—some two and a half years—Lincoln participated in thirty-nine Supreme Court cases. Their practice together was successful by all accounts. But for reasons that are not fully known, the partnership dissolved in the late fall of 1844. As Woldman concludes: “The years spent as Logan’s associate were indeed constructive years. They were years of education, training, and discipline. The benefits were to last Lincoln all his days.”<sup>38</sup>

Lincoln then took his third and final partner, the younger (by nine years—he was twenty-five years old), shorter (5 feet 6 inches) Billy Herndon. By then Lincoln was a relatively well-known, well-liked, and well-respected trial lawyer practicing in Springfield and throughout what was then the Eighth Judicial Circuit. Lincoln and Herndon formed their partnership in early 1845. Their office was in a small building located in the center of Springfield—a booming metropolis of roughly three thousand persons—across the square from the State House. There were no paved streets in Springfield; the floor of their office was often caked in mud and rarely swept.<sup>39</sup> People came and went as they chose.

Some facts about Lincoln’s law practice are widely known. It would appear that Lincoln preferred to be in the office rather than at home. He would usually arrive about eight o’clock in the morning and proceed to read at least three newspapers—out loud—often to the irritation of Herndon. After many a day at the office, Lincoln would walk down to the general store, or wherever people were gathering, to share political gossip and, frequently, to regale an audience with well-worn anecdotes, parables, stories, and jokes, for which he had a storyteller’s gift. Herndon, who disliked Mary Todd Lincoln (it was reciprocal), believed that Lincoln’s propensity to be with others stemmed from his difficulties at home.<sup>40</sup>

## 1. LINCOLN, THE CIRCUIT RIDER

Lincoln spent approximately six months every year through the mid-1850s “riding circuit” in the old Eighth Judicial Circuit, which

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37. *Id.* at 40–41.

38. *Id.* at 47.

39. *See* 1 BEVERIDGE, *supra* note 10, at 496, 499.

40. *See id.* at 512.

consisted of the fourteen counties surrounding Sangamon County. The area was roughly the size of Connecticut. This occurred twice each year—in the fall, from roughly September through November, and in the spring, from roughly March through May—after the respective court sessions were over in Springfield. In the first fifteen years of his practice (1837–1847 and 1849–1854), before the railroads revolutionized travel, Lincoln would usually travel with the circuit judge (who beginning in 1848 was Judge Davis) and one or two other circuit-riding lawyers. They would travel by horse or buggy from county courthouse to county courthouse. Sometimes the trip would take a day, sometimes two days, and sometimes three. By Judge Davis’s own testimony, Lincoln was the only one who stayed out the entire three months, refusing to go home for any weekend.<sup>41</sup>

When the contingent arrived at the county seat, court would be in session. The traveling party would be greeted by, among others, lawyers who had worked up their cases or had obtained clients and who sought co-counsel. As the years passed—and certainly by the mid-1940s—Lincoln was much sought after as he rode into town.

This “traveling court” rode through vast, thinly populated, rural areas. The roads were poor, unpaved and unpassable on occasion.<sup>42</sup> The hotels, taverns, or roadhouses were small and uninviting, and on occasion as many as twenty persons would have to share the same room. The food, as a rule, was plain, and sometimes terrible. Often the travelers would have to share beds—except, of course, for Judge Davis (who was 6 feet tall and weighed nearly three hundred pounds).<sup>43</sup>

So what attracted Lincoln to this hard and nomadic existence? Judge Davis would say, as a first point, that Lincoln was able to be away from home.<sup>44</sup> Of course it was also his source of dependable and steady income. But these could not have been reasons enough. In truth, he loved roadwork. Lincoln was a man of contradictions, and the road fed all of these tendencies. By nature, both gregarious and a loner; apparently happy, then sad. He was a storyteller and a humorist; he was a thinker and a worrier. He was regularly afflicted with depression—what he referred to as “the hypo.”<sup>45</sup> As observed by Judge Davis: “In my opinion, Mr. Lincoln was happy, as happy as *he* could

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41. *See id.* at 516.

42. *See id.* at 515.

43. *See* DIRCK, *supra* note 26, at 49.

44. *Id.* at 47.

45. JOSHUA WOLF SHENK, LINCOLN’S MELANCHOLY: HOW DEPRESSION CHALLENGED A PRESIDENT AND FUELED HIS GREATNESS 32 (2005); *see also* 1 BEVERIDGE, *supra* note 10, at 521–26.

be, when on this Circuit, and happy in no other place. This was his place of enjoyment."<sup>46</sup>

Likely, life on the road also fed Lincoln's political ambition. He knew virtually everyone he ran into—from county seat to county seat.<sup>47</sup> As the years passed, his presence in any community became a matter of note—a welcome sight. When he tried cases, he had an audience. At the conclusion of the day, he would attract a crowd to listen to his stories and hear his jokes. By all accounts he was the most popular lawyer on the circuit. As summed up by the eminent Lincoln scholar, David Donald: "To the people on the circuit he became an institution; he was known to nearly every man in central Illinois. With an established reputation for integrity and ability, he could nearly always secure business in any county. Besides, it was good politics to be out among the people."<sup>48</sup>

This combination—home and away, three months here, three months there—roughly describes Lincoln's first ten years of practice. His cases during this period were, for the most part, small in size, large in number, and run of the mill in kind. And had his law career ended in 1847, likely no one would be talking about it today—or about Abraham Lincoln for that matter.

## 2. LINCOLN, THE *NISI PRIUS* LAWYER

Herndon famously stated that Lincoln was "purely and entirely a case lawyer."<sup>49</sup> Was Lincoln a great trial lawyer? Herndon once lectured as follows:

It is said that Mr. Lincoln was an excellent *Nisi Prius* lawyer—i e a good Circuit Court lawyer. To reasonable men he had scarcely a quality of a *Nisi Prius* lawyer, as the world

46. *Id.* at 529.

47. This, of course, on occasion could cause a problem. Beveridge recounts an incident where an opposing lawyer attempted to make an issue out of Lincoln knowing the jury:

'Do you know Lincoln?' the lawyer asked of the jury. The Court said the inquiry was improper.

When his turn came to question the jury, Lincoln asked if the man knew the opposing attorney, and again the judge admonished that such a fact was no disqualification.

'No, your Honor,' Lincoln replied mildly: 'but I am afraid some of the gentlemen may *not* know him, which would place me at a disadvantage.'

*Id.* at 541.

48. DAVID DONALD, *LINCOLN'S HERNDON* 45 (1948).

49. DONALD, *supra* note 13, at 157. To a litigator, this is *not* a criticism.

understands that word. The qualities of a *Nisi Prius* lawyer are—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. . . . *I do not consider it any compliment to Mr. Lincoln to call him an excellent circuit court lawyer.*<sup>50</sup>

But then he added:

Mr. Lincoln was a great lawyer in the Federal Courts—in the Supreme Court of the State of Illinois, and in the Circuit Courts of the State, when he had time to prepare his cases. In the Federal Courts & Supreme Court of this State he did have time and did thoroughly prepare and understand his case. He was then a number one lawyer. In the Circuit Court I place Mr. Lincoln as a third-rate attorney.<sup>51</sup>

Those who knew Lincoln's jury work best, that is, Judge Davis and fellow lawyer Leonard Swett,<sup>52</sup> did not entirely share Herndon's views. Swett once commented: "[Lincoln] was as hard to beat in a closely contested case as any lawyer I have ever met," and noted that if Lincoln had a superior before a jury, he, Swett, did not know him.<sup>53</sup> Similarly:

Lincoln's fellow circuit rider and intimate friend, Henry C. Whitney, testified that "when it came to cases with no well-

50. William H. Herndon, Lecture at Rutledge & Davison's Commercial College (Dec. 26, 1865), in *Analysis of the Character of Abraham Lincoln*, 1 ABRAHAM LINCOLN Q. 403, 429-30 (1941) (emphasis added).

Lincoln once retorted to Herndon:

You see, this blade at the point travels rapidly, but only through a small portion of space till it stops; while the long blade of the jack-knife moves no faster but through a much greater space than the small one. Just so with the long, labored movements of my mind. I may not emit ideas as rapidly as others, because I am compelled by nature to speak slowly, but when I do throw off a thought it seems to me, though it comes with some effort, it has force enough to cut its own way and travel a greater distance.

2 WILLIAM H. HERNDON & JESSE WILLIAM WEIK, HERNDON'S LINCOLN 339 (1890).

51. Herndon, *supra* note 50, at 430.

52. Beveridge notes that Davis, Lincoln and Swett were referred to on the circuit as "the great triumvirate." 1 BEVERIDGE, *supra* note 10, at 515.

53. WOLDMAN, *supra* note 24, at 244-45.

defined precedent, then it was that Lincoln had a powerful advantage [over his adversaries], for he had no superior, certainly, and but very few equals, at our bar in original reasoning. Take it all in all, he had probably only one superior as a lawyer in our circuit—viz: Stephen T. Logan.”

It is impossible to determine his record of victories and defeats in the circuit courts, where he must have tried two thousand or more cases during his long career. But we have the statement of Whitney that Lincoln “was not more than ordinarily successful for a first-class lawyer; he certainly did not succeed in every case . . . he was sometimes defeated, like other lawyers, even in cases that he believed in and did his best to succeed in.”<sup>54</sup>

Although biographers have rightly been skeptical of some of Herndon’s opinions and judgments,<sup>55</sup> it is, in truth, difficult to totally ignore the views and observations of a man who was his partner and closest associate for a period of seventeen years (1844–1861). Moreover, the problem is that despite the extraordinary efforts emanating from Springfield to locate, collate, and analyze every scrap of paper having to do with Lincoln, most of the “primary” evidence which would permit a more authoritative evaluation of Lincoln the lawyer either does not now exist or never did exist.<sup>56</sup> For example, with one truncated exception, there are no transcripts of his trials;<sup>57</sup> there are

54. *Id.* at 245–46 (quoting HENRY C. WHITNEY, *LINCOLN THE CITIZEN* (FEBRUARY 12, 1809, TO MARCH 4, 1861) 173 (1907); HENRY C. WHITNEY, *LIFE ON THE CIRCUIT WITH LINCOLN* 172, 255 (1892)).

55. “Herndon considered that he was ‘possibly as popular a man as Lincoln, and possibly as good a lawyer.’” DONALD, *supra* note 48, at 41.

56. Andrew L. Reisman, Comment, *An Essay on the Dilemma of “Honest Abe”*: The Modern Day Professional Responsibility Implications of Abraham Lincoln’s Representations of Clients He Believed to Be Culpable, 72 NEB. L. REV. 1205, 1207–08 (1993).

Many of the stories relating to cases supposed to have been tried by Mr. Lincoln, which have been told by his biographers and others, cannot now be verified or disproved. . . . [T]he records and files of cases, other than such as found their way into the Supreme Court, contain nothing more than the formal documents. There were in those days no stenographic reports of the proceedings, and accounts given after the lapse of years and solely from memory are not always reliable, however honest the narrator may be.

*Id.* (quoting JOHN T. RICHARDS, *ABRAHAM LINCOLN: THE LAWYER-STATESMAN* 58–59 (1916)).

57. The Lincoln Legal Papers project was sent a “transcript” of the *Peachy Quinn Harrison* murder case that Lincoln co-tried with Stephen Logan and S.M. Cullom. This transcript, however, is not a “verbatim” transcript but more in the nature

no recordings of arguments in appellate courts; and, of course, for the most part we do not—and cannot—know how he dealt with clients in the privacy of his office (although Lincoln did have extensive correspondence with some of his clients).

*B. 1850–1860: Becoming a Lawyer of National Stature*

Lincoln served in Congress in 1848 and 1849. As one commentator notes:

Lincoln's life as a lawyer was thereafter divided into two periods, the one preceding and the one following his term in Congress. His real career and fame in the profession commenced after his return from Washington. Believing himself politically dead, he now turned to law with a devotion and singleness of purpose which never before marked his practice.<sup>58</sup>

By 1851, the Illinois Central Railroad had been chartered by the Illinois Legislature and had begun to lay track, as had other railroads such as the Alton and Sangamon. And here came Lincoln: forty-two years old, in his prime, just out of Congress and strategically located in Springfield (then almost five thousand strong). He was already known to be a fine trial lawyer in the Eighth Circuit of Illinois, possessed of experience and reputation—a well-respected member of the Illinois Bar. To say the least, Lincoln was well positioned to succeed. And succeed he did.

Well known is the fact that Lincoln soon became a “railroad lawyer.” Lincoln had no qualms against representing railroad or corporate interests. Indeed, in one case he went after opposing counsel who sanctimoniously labeled his client a “soulless corporation”:

Counsel avers that his client has a soul. This is possible, of course; but from the way he has testified under oath in this case, to gain, or hope to gain, a few paltry dollars he would sell, nay, has already sold, his little soul very low. But our client is but a conventional name for thousands of widows and orphans whose husbands' and parents' hard earnings are represented by this defendant and who possess souls which

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of a summary. The transcript is published in its entirety in 4 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 137–92.

58. WOLDMAN, *supra* note 24, at 83–84.

they would not swear away as the plaintiff has done for ten million times as much as is at stake here.<sup>59</sup>

Lincoln's career took off with the case of *Barrett v. Alton & Sangamon Railroad*.<sup>60</sup> Here Lincoln argued in the Supreme Court of Illinois that a subscriber to railroad stock could not be allowed to refuse to pay his subscription because the railroad had amended its original charter by changing its route. Lincoln's successful representation of the railroad established the long-standing precedent that charter amendments considered beneficial to the public were not only permissible but could not be asserted as a reason for not paying the subscription.<sup>61</sup> For Lincoln, the *Barrett* case began a new and significant direction for his law career. Railroad case law was in its infancy, and Lincoln was to become a leading railroad attorney in the West.

#### 1. THE MCLEAN COUNTY TAX CASE

One of the most important cases in the history of railroad development in Illinois, and elsewhere, involved the question of whether a county had the authority to tax a railroad whose tracks went through that county's territory.<sup>62</sup> Seeking to tax the Illinois Central Railroad on tracks laid throughout the state, McLean County (as well as several other Illinois counties) brought suit to recover unpaid taxes. After proceedings in the circuit court—in front of Judge Davis—Lincoln was retained on appeal by the Illinois Central Railroad to defend its position that no such tax could be levied in light of its charter. Ultimately, this representation required two arguments in the Illinois Supreme Court. Lincoln pressed a statutory and constitutional argument: the state of Illinois had "created" the Illinois Central Railroad by charter, and that charter had awarded "sole" authority to the state to levy taxes.<sup>63</sup> Multiple taxation by other entities would prejudice the state's ability to levy for the common good, threaten the state treasury (for the benefit of all the people), and potentially cripple

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59. Elmer Smith, Senior Gen. Attorney, Ill. Cent. Ry. Co., Abraham Lincoln: An Illinois Central Lawyer 9 (Feb. 13, 1945) (reading lawyer Henry C. Whitney quotation of Lincoln's argument).

60. 13 Ill. 504 (1851). The *Barrett v. Alton & Sangamon Railroad* case is thoroughly discussed in 2 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 172–210.

61. See WOLDMAN, *supra* note 24, at 173.

62. See *Ill. Cent. R.R. Co. v. McLean Cnty.*, 17 Ill. 290 (1886); see also 1 BEVERIDGE, *supra* note 10, at 584.

63. See 2 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 373–415.

the viability of this important start-up enterprise. Ultimately, the Illinois Supreme Court agreed with Lincoln's argument.<sup>64</sup>

An interesting, and not insignificant, post-script to Lincoln's success in this case was the subsequent suit for his fee.<sup>65</sup> Initially he billed Illinois Central \$2,000 (a sizable fee in those days) for his services. However, that bill was rejected: "Why, *sir*, Daniel Webster would not have charged that much."<sup>66</sup> Lincoln thereafter brought suit for his fee, this time for the increased sum of \$5,000. In support of his application, Lincoln submitted the affidavits of several of the best known and most successful lawyers in Illinois, all of whom attested that his fee was reasonable given the stakes, the difficulty of the issues, and the time spent.<sup>67</sup>

How hard Illinois Central fought this case is a matter of conjecture. In any event, the suit resulted in a jury verdict and judgment in favor of Lincoln in the amount of \$4,800 (\$5,000 less the initial \$200 retainer).<sup>68</sup> Lincoln, as was his practice, split this sum fifty-fifty with Billy Herndon. Significantly, Lincoln himself later asserted that his share—some \$2,400—permitted him essentially to take a leave of absence from the practice during the crucial period of the Lincoln-Douglas debates. That his suit for fees did not result in any particular loss of goodwill is evidenced by the fact that Lincoln thereafter continued to represent the Illinois Central Railroad in cases large and small—including a seminal corporate valuation case.<sup>69</sup>

## 2. THE *MCCORMICK REAPER* PATENT CASE

I would argue that the most transformative case that Abraham Lincoln ever worked on—although he did not say a word in it—was the *McCormick v. Manny (McCormick Reaper)* patent case.<sup>70</sup> One of the most significant inventions of the mid-nineteenth century was the

64. See *Ill. Cent. R.R. Co.*, 290 Ill. at 291. The *Illinois Central Railroad v. McLean County Illinois* case is thoroughly discussed in 2 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 373-415.

65. For a full account of this dispute, see Smith, *supra* note 59, at 16-19.

66. *Id.* at 17.

67. 2 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 410.

68. Smith, *supra* note 59, at 18-19.

69. *Id.* at 19.

70. 15 F. Cas. 1314 (C.C.N.D. Ill. 1856) (No. 8724); see also BENJAMIN P. THOMAS & HAROLD M. HYMAN, STANTON: THE LIFE AND TIMES OF LINCOLN'S SECRETARY OF WAR 63-65 (1962). As Edwin M. Stanton wrote in contemporaneous correspondence: "The case is the most important Patent cause that has ever been tried. . . and more money and brains have been expended in getting it ready for argument, than any other . . . ever has had bestowed upon it." *Id.* at 65.

reaper, invented by Cyrus McCormick in 1834. McCormick eventually consulted a good patent lawyer and that lawyer sought and obtained broad patents to cover his invention and to prevent others from making and marketing infringing machines. But, of course, agriculture being at that time the driver of the economy, and the ability to harvest crops being integral to success, others were thereafter inspired to design, manufacture, and sell their own reapers. The John H. Manny Company of Rockford, Illinois, was one of several such companies, and, as a result in 1854, found itself a defendant in a patent suit brought by the McCormick company, assignee of Cyrus's patents. The suit's initial venue was Chicago in the Northern District of Illinois. Both sides regarded this as a test case.

Manny's patent lawyer was George Harding of Philadelphia, then one of the pre-eminent patent lawyers in the country.<sup>71</sup> Harding was charged with assembling the best possible trial team to defend the Manny Company. Money was no object as the Manny Company was part of a consortium of defendants and potential defendants who agreed to fund the defense.

In his authoritative biography, Beveridge describes the *McCormick Reaper* case as: "The first litigation of great importance in which Lincoln was retained."<sup>72</sup> George Harding was one of the patent lawyers involved in the case. Given its original venue in Chicago, Harding was commissioned to find the best trial lawyer in Illinois to work with the selected patent-trial lawyer, one Mr. Watson from New York City. Lincoln's name had been suggested, and thus Watson traveled to Springfield to meet Lincoln. As Lincoln's office was closed, Watson walked to the Lincoln home and knocked on the door: "'Who is there?' asked a woman sticking her head out of an upper window. Watson said he wanted to see Lincoln. 'Business or politics?' she asked. 'Business,' answered Watson. 'Abe, here is a man who wants to see you on business,' cried the woman in a 'modified tone.'<sup>73</sup> After talking to Lincoln, Watson concluded he *might* be effective, and decided to retain him on the spot, paying him a relatively substantial retainer. The case, however, was transferred to Cincinnati, which as Harding put it, "removed the one object we had in employing Lincoln."<sup>74</sup>

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71. 1 BEVERIDGE, *supra* note 10, at 576. As President, Lincoln would appoint Harding Commissioner of Patents.

72. *Id.* at 575. In his spellbinding write-up of the case, Beveridge heavily relied on the 1876 recount of the trial made by Harding to Robert H. Parkinson. *Id.* at 575-83. As stated by Beveridge: "So full, frank, self-critical is this statement of Harding to Parkinson that it must be accepted as accurate and complete." *Id.* at 576.

73. *Id.* at 577.

74. *Id.* at 578.

With the transfer of venue, Harding decided to utilize a better-known “national” trial lawyer, Edwin M. Stanton of Pittsburgh. Lincoln, however, was not informed of this and—still on retainer—travelled to Cincinnati, having prepared himself to argue the case. Harding’s description of how Lincoln appeared upon his arrival in Cincinnati in September 1855 has to be quoted:

He looked like ‘a tall, rawly boned, ungainly backwoodsman, with coarse, ill-fitting clothing, his trousers hardly reaching his ankles, holding in his hands a blue cotton umbrella with a ball on the end of the handle. I can see distinctly that umbrella and Lincoln standing there with it. [sic]

‘When introduced, we barely exchanged salutations with him, and I proposed to Stanton that he and I go up to the court. [sic]

“‘Let’s go up in a gang,” remarked Lincoln. [sic]

“‘Let that fellow go up with his gang. We’ll walk up together,”‘ said Stanton, aside, to Harding. And ‘we did,’ Harding relates.<sup>75</sup>

From the moment he arrived, Lincoln—soon to be the sixteenth President of the United States—was not only ignored, he was shunned by the Manny trial team. As one of Stanton’s biographers noted

Without question Stanton was rude, snobbish, and supercilious toward the unknown Lincoln. But so was everyone else connected with the case. Harding, for example, never opened the lengthy manuscript which Lincoln had prepared as his contribution. When one of the presiding jurists entertained the counsel on both sides, Lincoln was not invited. Although all the lawyers were staying at the same hotel, none asked Lincoln to share their table, to visit them in their rooms, or to join them on the daily walks to and from the court.<sup>76</sup>

Lincoln, nevertheless, stayed for the duration of the trial. He was entranced, mesmerized, and seated at the back of the courtroom but occasionally pacing. He was not asked to say a word, and he did not do so. He offered to return his retainer, but that was declined.

Legend—or perhaps ugly political rumor—has it that after the trial Stanton referred to Lincoln as a giraffe, monkey, or some other equally

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75. *Id.* at 579.

76. THOMAS & HYMAN, *supra* note 70, at 64.

unflattering pejorative.<sup>77</sup> Whether or not that was true, there is no doubt that Stanton (and the other counsel) not only treated Lincoln with disdain, they clearly did not regard him as a great trial lawyer as of September 1855.

But a funny thing happened to Lincoln the lawyer on the way home from the Cincinnati courthouse. Ralph Emerson—at the time a young partner of Manny—had also been in attendance. Emerson had known Lincoln before the trial, and he asserted that it was he who insisted that Lincoln be hired for the case. In a later interview (fully described by Beveridge<sup>78</sup>), Emerson contended that the trial had an “immediate effect” upon Lincoln. He then quoted Lincoln as follows:

‘I am going home to study law! I am going home to study law!’ he exclaimed repeatedly, as he and Emerson walked from the court room down to the river when the hearing had ended. Emerson said that that was what he had been doing. ‘No,’ Lincoln replied, ‘not as these college bred men study it. I have learned my lesson. These college bred fellows have reached Ohio, they will soon be in Illinois, and when they come, Emerson, I will be ready for them.’

From that time on, insists Emerson, who often heard Lincoln thereafter, his style and manner of speech and argument improved greatly and steadily — the result, as the old manufacturer stoutly contended throughout his long life, of Lincoln’s connection with the celebrated patent case of *McCormick vs Manny et al.*<sup>79</sup>

### 3. THE *EFFIE AFTON* CASE

The last case I want to talk about is that of *Hurd v. Rock Island Bridge Co.*, also known as the *Effie Afton* case. In my opinion, *this* was Lincoln’s greatest case. It was a case that had everything in it: enormous stakes, highly charged political issues, complex facts, sophisticated technical issues, issues of credibility, big-time lawyers, etc. The case constituted a titanic clash between two competing modes of transportation and commerce: steamboats versus railroads, the old versus the new—with all of the related industries supporting each mode of transportation. It was also a battle between cities: St. Louis, the old hub of riverboat traffic, versus Chicago, the new hub of rail traffic.

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77. *Id.* at 65–66.

78. 1 BEVERIDGE, *supra* note 10, at 580–82.

79. *Id.* at 582.

The Rock Island Bridge was completed in April 1856. In early May 1856, the *Effie Afton*, a 430-ton, 230-foot-long side-wheel steamboat owned by Jacob Hurd, was bound for St. Paul and approached the bridge. The swift current and high winds made steering difficult. The *Effie Afton* was carrying three hundred-fifty tons of cargo worth more than \$115,000 and two hundred people, including seventy-five deck passengers.<sup>80</sup>

On May 6, after getting into an accident while backing out of a wharf, the *Effie Afton* entered the east draw of the Rock Island Bridge. Immediately the starboard side of the steamboat swung into the long pier of the bridge, and the collision of the steamboat and the bridge resulted in a fire, followed by total destruction of the boat and substantially all of its cargo and partial destruction of the bridge. All passengers, however, survived.<sup>81</sup>

In October 1856, the owners of the *Effie Afton* sued the Rock Island Bridge Company in Chicago in the U.S. Circuit Court for the Northern District of Illinois. Initially, Lincoln was not retained by either side. The case was continued until the spring of 1857 and came before the Court on July 7, 1857. U.S. Supreme Court Justice John McLean and Circuit Judge Thomas Drummond (the same judges who had presided over the *McCormick Reaper* patent case) presided. On that same day, Lincoln appeared as an additional attorney on the case, and the first thing he did was to seek another continuance.<sup>82</sup>

The trial commenced on September 8, 1857, presided over by McLean. It was, in fact, a *cause célèbre*, widely covered by newspapers throughout the Midwest. At the trial, the lawyers for the *Effie Afton* took the position that the “peculiar manner” in which the bridge was built changed the current flow and “obstruct[ed] the navigation of the stream.”<sup>83</sup> They pointed to what they considered an inordinately large number of accidents involving the new bridge as proof of its bad design. They sought damages in excess of \$200,000. The defense, on the other hand, blamed the accident on the “grossest negligence” of the captain of the *Effie Afton*.<sup>84</sup> They charged that he engaged in a race to get to the bridge with another boat which caused the *Effie Afton* to enter at the wrong point; and that once it struck the pier, the captain failed to take the required action to right its course.<sup>85</sup>

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80. 3 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 308–12. The *Effie Afton* was worth \$50,000 but only had \$15,000 of insurance. *Id.* at 313.

81. *Id.* at 312–13.

82. *Id.* at 313–16.

83. *Id.* at 329.

84. *Id.* at 332.

85. *Id.* at 327, 332.

The opening arguments of counsel for both sides were highly charged: defense counsel (not Lincoln) underscored the political nature of the controversy—the fight between river traffic and rail traffic—and the adverse consequences to commerce if the plaintiff were to prevail. The trial lasted eleven days. It included the testimony of riverboat pilots, bridge engineers, bridge builders, and civil engineers (on currents).<sup>86</sup> As Beveridge noted, the *Chicago Press* reported that:

‘[S]cores of witnesses were examined and depositions read. Some of the witnesses were men of eminent positions in society, and the greater part were scientific experts.’ A model of the steamboat, another of the bridge, and many maps were exhibited. The questions involved were complicated — currents, proper location of piers, right methods of bridge construction, skill in running steamboats, and the like. The conflict in the testimony was direct and extensive.<sup>87</sup>

Final arguments lasted another four days, and resulted in a 9-3 hung jury. Lincoln’s final argument was recounted in newspaper reports, essentially verbatim.<sup>88</sup> Lawyer John Duff aptly described it:

The argument, with its concise summarization of weeks of testimony, is worthy of consideration in some detail, for it clearly shows the acuity with which Lincoln grasped every implication of the evidence. Absent, here, were the *gaucheries* which crept into some of his jury appeals before the circuit courts; throughout, his self-restraint is manifest. Reasoning well and slowly, Lincoln defended his client’s position with resourceful logic, assembling an arsenal of temperate, cogent arguments which had prophetic savor; he sensed that if the case were won by the river interests, the extensions of railroads westward and the liberation of the great West would be seriously delayed, and, conversely, if the defendant prevailed, the cinder-strewn change would open the way to almost limitless possibilities of expansion.<sup>89</sup>

And so, by the end of 1857, Lincoln had done it all—and as noted by Tarbell, he had fully established his reputation as a lawyer *before* he

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86. *Id.* at 336–59.

87. 1 BEVERIDGE, *supra* note 10, at 601.

88. 3 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 359–65.

89. DUFF, *supra* note 7, at 341–42.

had obtained any cognizable standing as a politician.<sup>90</sup> Thus, as Dr. Davis notes:

When Lincoln finally suspended practice at age 51, in the midst of his 1860 presidential campaign, he had achieved material success, personal self-confidence, political benefit, and professional stature. Widely known and highly regarded throughout the West for his skill as both a trial and an appellate attorney, he even had attracted favorable notice among the nation's legal elite along the east coast, due to his impressive record suing and defending railroads. At his prime Lincoln left the profession that had sustained and shaped him, but he carried those lawyerly habits and values through the presidential years. Consequently, in assessing his quarter-century of legal practice, it is fair to conclude that Abraham Lincoln came closer to being a Daniel Webster of the West than a penny-ante prairie pettifogger.<sup>91</sup>

*C. Help Along the Way: Three Lawyers Who Made a Difference*

In 1850, Abraham Lincoln—in his *Notes on Practice of Law*—started out with a humble self-evaluation: “I am not an accomplished lawyer. I find quite as much material for a lecture, in those points wherein I have failed, as in those wherein I have been moderately successful.”<sup>92</sup> These “notes,” of course, were written prior to what I would label as Lincoln's five year “growth spurt”—from 1852 to 1857. But, as evidenced by his reaction to the lawyers in the *McCormick Reaper* patent case, Lincoln probably continued to believe his self-evaluation—perhaps with some justification.

Lincoln was a very private man. No one, with the possible exception of his wife Mary, could claim to have *really* known Lincoln: not Billy Herndon,<sup>93</sup> not David Davis, not Leonard Swett—the three lawyers who knew him best. Lincoln never really took anyone into his confidence. He was reticent, careful, and, often times, inscrutable. His writings and speeches offer little insight into what he really thought of other lawyers, or, indeed who he admired as a lawyer.

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90. 1 TARBELL, *supra* note 8, at 278.

91. DAVIS, *supra* note 20, at 12.

92. Abraham Lincoln, *Notes on the Practice of Law*, in ABRAHAM LINCOLN: SPEECHES AND WRITINGS 1832–1858, at 245, 245 (Don E. Fehrenbacher ed., 1989).

93. Billy Herndon always called him “Mr. Lincoln.”

But, taking a cue from Doris Kearns Goodwin,<sup>94</sup> this is not to say that we cannot determine who Lincoln admired, and, more to the point, who most influenced Lincoln's career as a lawyer. As with my list of his three most important cases, I have my list of the three most important lawyers to Lincoln the lawyer. They are: (1) Stephen P. Logan, perhaps Lincoln's most influential mentor; (2) David Davis, also Lincoln's mentor, but, perhaps more importantly, his fellow road warrior and longtime friend; and, perhaps surprisingly, (3) Edwin M. Stanton—the same Stanton who shunned Lincoln in Cincinnati.

#### 1. STEPHEN P. LOGAN, ESQ.

I have already made the case for my contention that Logan was the most influential mentor in Lincoln's career. The clues are plentiful; Lincoln was the right age for a mentor. The skills and characteristics that have been identified as making Logan a great lawyer were the skills and characteristics later identified with Lincoln.<sup>95</sup> But perhaps most importantly, Logan was a great lawyer by all accounts. Lincoln obviously knew this and learned from him, even after their partnership dissolved. Throughout his career, Lincoln continued to work with, or against, Logan as co-counsel and as opposing counsel.

#### 2. THE HONORABLE DAVID DAVIS

I have several times alluded to Judge Davis—that larger than life figure who was so much a part of Lincoln's legal life from 1849 through 1861. As stated in *The Papers of Abraham Lincoln*:

During his tenure on the Eighth Judicial Circuit, Davis presided over more than 1,685 cases that Lincoln argued on the circuit between 1849 and 1860. During 1854 and 1858, Davis actively campaigned for Lincoln's election to the U.S. Senate, and in 1860, he served as Lincoln's campaign manager for nomination as the Republican presidential candidate.<sup>96</sup>

I think it is fair to say that David Davis loved Abraham Lincoln, and, conversely, Lincoln loved Davis. To illustrate, Tarbell recounted the following story told by one of the clerks of court:

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94. See generally GOODWIN, *supra* note 1.

95. *Id.* at 8; WOLDMAN, *supra* note 24, at 39–47.

96. 4 PAPERS OF ABRAHAM LINCOLN, *supra* note 18, at 342.

“I was never fined but once for contempt of court,” says one of the clerks of the court in Lincoln’s day. “Davis fined me five dollars. Mr. Lincoln had just come in, and leaning over my desk had told me a story so irresistibly funny that I broke out into a loud laugh. The judge called me to order in haste, saying, ‘This must be stopped. Mr. Lincoln, you are constantly disturbing this court with your stories.’ Then to me, ‘You may fine yourself five dollars for your disturbance.’ I apologized, but told the judge that the story was worth the money. In a few minutes the judge called me to him. ‘What was the story Lincoln told you?’ he asked. I told him, and he laughed aloud in spite of himself. ‘Remit your fine,’ he ordered.”<sup>97</sup>

And as chronicled by Beveridge: “The Judge used his power to the utmost to advance the fortunes of those he liked, and of all the lawyers who practised in the Eighth Circuit Lincoln was his favorite. Perhaps no other man had greater influence on Lincoln . . . .”<sup>98</sup>

Judge Davis was to accompany the president-elect to Washington in the famous train trip through Philadelphia and Baltimore. Then, as President, Lincoln appointed Judge Davis to the U.S. Supreme Court in 1862.

### 3. THE HONORABLE EDWIN M. STANTON

In light of how Stanton treated Lincoln in Cincinnati, it may be surprising to put Stanton on the list of the most influential lawyers in Lincoln’s legal career. But Lincoln obviously saw something in Stanton that he both respected and admired, and as with Logan, Lincoln sought to learn from Stanton.

It is a fitting postscript to this Address to note—in Paul Harvey’s words—the “rest of the story.”<sup>99</sup> It is beautifully told by Goodwin:

Until the moment of Lincoln’s death, Stanton’s “coolness and self-possession” had seemed “remarkable” to those around him. Now he could not stop the tears that streamed down his cheeks. In the days that followed, even as he worked tirelessly to secure the city and catch the conspirators, “Stanton’s grief was uncontrollable,” recalled Horace Porter,

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97. 1 TARBELL, *supra* note 8, at 246.

98. 1 BEVERIDGE, *supra* note 10, at 514.

99. See PAUL AURANDT, PAUL HARVEY’S THE REST OF THE STORY (Lynn Harvey ed., 1997).

"and at the mention of Mr. Lincoln's name he would break down and weep bitterly."

While Stanton's raw grief surprised those who had seen only his gruff exterior, John Hay understood. "Not everyone knows, as I do," he wrote Stanton, "how close you stood to our lost leader, how he loved you and trusted you, and how vain were all the efforts to shake that trust and confidence, not lightly given & never withdrawn. All this will be known some time of course, to his honor and yours."<sup>100</sup>

#### CONCLUSION

So it is my thesis that Lincoln did not simply "hatch" from the Prairie in 1861—despite contemporaneous and politically inspired suggestions that he did. Rather, by the time he gave his crucial speech at the Cooper Institute in New York City on February 27, 1860—the speech that catapulted his political candidacy for President—he had become a lawyer of significant renown and national reputation. What is the ultimate proof? Dr. Davis has noted that at the conclusion of his Cooper Institute speech he was offered—on the spot—the position of General Counsel of the New York Central Railroad by its president, Erastus Corning, for an annual salary of no less than \$10,000 per year. And as Dr. Davis notes: "With such a lofty income, the leading legal job with the nation's most prominent railroad, and an office in Manhattan, Lincoln without doubt would, at age 51, have joined that inner circle, the apex of the American Bar. But by then his eyes were on a different prize . . . ."<sup>101</sup>

Lincoln's last request to Herndon, as he left Springfield for Washington to assume the presidency, was to keep the old "Lincoln & Herndon" sign on their office so that when he returned it could be business as usual. Lawyer John Duff concludes his book with the following:

Good Friday, April 14, 1865, was a gentle spring day. Late that afternoon Mr. and Mrs. Lincoln went for a ride in an open barouche driven by a team of matched black mares. The President, though tired, was in relaxed good humor. Gone were the cares of war. Though the task of reconstruction lay ahead, he had a vision of a generous peace that would help

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100. GOODWIN, *supra* note 1, at 743.

101. Cullom Davis, *Abraham Lincoln and the Golden Age of American Law*, in BULLETIN OF THE 52ND ANNUAL MEETING OF THE LINCOLN FELLOWSHIP OF WISCONSIN 19 (Historical Bulletin No. 48, Apr. 12, 2009).

mightily in the process. With completion of his term of office, they would perhaps take a trip to Europe, after which “We will go back to Illinois, and I will open a law office at Springfield or Chicago, and practice law, and at least do enough to help give us a livelihood.” While they talked of a future that wasn’t to be, a demented actor was surveying the layout of the State Box at Ford’s Theatre.<sup>102</sup>

#### SALUTATION

In his short-form biography of Lincoln, Carl Sandburg notes: “On a paper written by a lawyer, with too many words and pages, [Lincoln] remarked, ‘It’s like the lazy preacher that used to write long sermons, and the explanation was, he got to writin’ and was too lazy to stop.’”<sup>103</sup>

Lincoln might well have said that same thing about this Address.

I thank you for your time and attention. It is indeed an honor to be here.

John S. Skilton, May 7, 2010

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102. DUFF, *supra* note 7, at 369–70.

103. SANDBURG, *supra* note 12, at 129.