

**Lincoln's Ability As A Lawyer
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Except for the meticulous scholar, few Americans know much about Lincoln's career as a lawyer. Yet it was his 23 years of arduous experience as a circuit-riding attorney that was the crucible through which he was prepared for the presidency and for statesmanship.

When Abraham Lincoln was admitted to the practice of law in Illinois in 1837, the young state was only just emerging from the conditions of a primitive frontier society. The majority of the pre-Lincoln judges certainly were not learned in the law, and although there were some lawyers of ability, it is extremely doubtful that the rank and file of the earliest Illinois bar knew much more law than the average educated or half-educated layman.¹ One of the first lawyers to move into the Illinois territory was Isaak Darnielle (he left soon for Missouri). It was said of him that he "studied the ladies more than he studied his profession."²

In order to gain some understanding of the manner in which trials were conducted in earliest Illinois, the following amusing incident might be recorded here: In an early trial involving the title to a mill, a somewhat erudite and locally prominent lawyer cited a case from Johnson's New York Reports in support of his argument. The opposing counsel simply evaded the force of this argument by informing the jury that this fellow Johnson was a Yankee peddler who "had gone up and down the country gathering rumors and telling stories against the people of the West and had published under the title of "Johnson's Reports."

He vehemently objected to the mere thought that this "book" should be given any authority or standing in an Illinois court, and he concluded his "rebuttal" with the

¹ See, for instance, the many and amusing anecdotes or episodes connected with the early Illinois bench and bar, as they are related by Ford, *A History of Illinois From Its Commencement as a State in 1818 to 1847* (1854), passim.

² Quoted in 1 Crossley, *Courts and Lawyers in Illinois* 140 (1916).

following remark: "Gentlemen of the Jury, I am sure you will not believe anything that comes from such a source, and besides that, what did this Johnson know about Duncan's Mill no how?" When informed of the true nature of Johnson's Reports, instead of being dismayed by his abysmal ignorance, he vehemently denounced his opponent for his outrageous attempt to insult a sovereign and intelligent Illinois jury by introducing "foreign" law. The jury, in full accord with this argument, found against the lawyer who had dared to pervert local justice by importing alien precedents.³

A Formidable Lawyer

Struggling against these rather riotous and often trying conditions, Abraham Lincoln,⁴ the self-taught lawyer, gradually rose to the forefront in his home state, meeting the many challenges of his chosen profession by growing continually in stature until he achieved the reputation as one of the ablest lawyers in Illinois,⁵ if not the whole West. According to Judge Stephen T. Logan, by close study of each case as it came up he [scil., Lincoln] got to be quite a formidable lawyer.⁶ It is readily conceded by his contemporaries that as a cross-examiner and trial lawyer he had few equals at the Illinois bar.⁷

Lincoln firmly believed that the human mind is best swayed by rational arguments based on information gathered by questions and answers. No matter how complex the issue might be, he always succeeded in disentangling it. Simplicity was probably his strongest point, and his illustrations were often quaint and homely, but always clear and apt, and generally conclusive. As he himself once put it, he never tried "to shoot over the heads of his audience."⁸

Endowed with an inquiring but not wandering mind, with a direct and simple approach to the intellectual problems connected with the proper practice of law, and with the power of documentation and analytical reasoning, with the ability to marshal and organize relevant materials, and with a wonderfully luminous quality of restraint and effective verbal expression, Lincoln became also an outstanding appellate lawyer.⁹ Step by step he acquired an extensive though not particularly lucrative practice¹⁰ in the

³ Gillespie, *Recollections of Early Illinois and Her Noted Men* 21 (1880), in: 13 Fergus Historical Series.

⁴ For literature on "Lincoln, the lawyer," see, Duff, *A. Lincoln, Prairie Lawyer* (1960, and the excellent bibliography cited there; Beveridge, *Abraham Lincoln, 1809-1856*, 2 vols. (1928); Hill, *Lincoln the Lawyer* (1906); Woldman, *Lawyer Lincoln* (1936); Pratt, "The Genesis of Lincoln the Lawyer," 57 *Bulletin of the Abraham Lincoln Society* (1930; Frank, *Lincoln as a Lawyer* (1961).

⁵ Duff, *op. cit.* at 356; Hill, *op. cit.* at 222.

⁶ Quoted in Hill, *op. cit.* at 129.

⁷ See, for instance, King, "Lincoln's Skill as a Lawyer," 166 *North American Review* 186-195 (1898); Frank, *op. cit.*, *passim*.

⁸ See Frank, *op. cit.* at 23 ff., and *ibid.*, at 156. See also *ibid.* at 131.

⁹ See *ibid.* at 68 ff., and 94-95. As to the manner in which Lincoln organized his material, see *ibid.* at 96 ff.

¹⁰ The professional labors of the frontier lawyer, in the main, were ill rewarded. Lincoln, perhaps an extreme example, charged and collected pitifully small fees. For his services in *Samuel Nolan v. John Hunter*--Lincoln drew up the pleadings and took part in the trial before a jury--he charged a mere \$3.50;

Supreme Court of Illinois as well as in the federal courts and the lower state courts.¹¹ Probably no other Illinois lawyer could do so many things and do them so well.¹²

The cases which he argued before federal and state courts covered virtually every conceivable subject of litigation typical of that time.¹³ Lincoln was perhaps the prime example of the all-round lawyer; "If the prodigality of his pleadings is staggering, the range and variety of his cases is scarcely less so."¹⁴ Leonard Swett, himself an accomplished lawyer, averred that he had listened to Rufus Choate and many others of equal standing in the profession, in the trial of cases, but that Lincoln was more impressive than any of them. What Lincoln could not accomplish with a jury, no other need try.¹⁵

Always Loyal to His Client

The human interest element in some of the lesser cases--such as the Wright case in which he represented the widow of a Revolutionary soldier and succeeded in recovering exorbitant fees charged by a grasping and dishonest pension agent; or the Armstrong case in which he procured the acquittal of a man charged with homicide by introducing as evidence an almanac to refute damaging evidence¹⁶-- has succeeded in partly obscuring the many truly important cases which Lincoln handled with great professional skill and telling success.

for his legal services to Menard County, including ten court appearances, he received \$20.00; for taking care of at least fifteen cases for the Illinois Central Railroad during the period of one year, he charged \$150.00; and for arguing a case on appeal before the Illinois Supreme Court he often collected as little as ten, and in some instances only five dollars, per appearance. See also Pratt, *Personal Finances of Abraham Lincoln* (1943), *passim*; Woldman, *op. cit.* at 54; Frank, *op. cit.* at 39-41.

¹¹ To cite just one instance of the number of cases Lincoln handles: during the spring term, 1844, of the Springfield (Illinois) Circuit Court which lasted about two weeks, Lincoln (and his "firm," took care of from one-fifth to more than one-third of all the cases in Springfield. See Donald, *Lincoln's Herndon: A Biography* 43-44 (1948).

¹² For a painstaking analysis of some of Lincoln's cases, see Frank, *op. cit.* at 44-69, *ibid.* at 84-89.

¹³ See Duff, *op. cit.* at 155; and *ibid.* at 148; Woldman, *op. cit.* at 125 ff.; Frank, *op. cit.* at 6-8.

¹⁴ Duff, *op. cit.* at 74.

¹⁵ Richards, *Abraham Lincoln: The Lawyer-Statesman* 21-22 (1916). In the words of Norman B. Judd, himself a prominent and experienced lawyer, "Lincoln was the best man to state a case convincingly that I have ever heard, and his personality will appeal to any judge or jury hereabouts." Quoted from *The Seventieth Anniversary Brochure, Issued by the Rock Island Railroad, 1852-1922* (1922). This brochure contains an account of Lincoln's professional connections with the Rock Island Railroad. The Danville Illinois Citizen gives a good description of Lincoln the trial lawyer: "In his examination of witnesses, he displays a masterly ingenuity...that baffles concealment and defies deceit. And in addressing a jury, there is no false glitter, no sickly sentimentalism to be discovered. In vain we look for rhetorical display.... 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.... Such are some of the qualities that place Mr. L[incoln] at the head of the profession in this State." Quoted in Duff, *op. cit.* at 210. For additional testimonials of Lincoln's prowess as a jury lawyer, see *ibid.* at 170 and 190.

¹⁶ See Woldman, *op. cit.* at 106 ff., and *ibid.* at 111 ff.; Duff, *op. cit.* at 350 ff.

He had a total of 243 cases before the Supreme Court of Illinois,¹⁷ among them some of the most notable cases ever tried before that court; and he appeared twice before the Supreme Court of the United States.¹⁸ His work in the Supreme Court of Illinois, for instance, was marked by meticulous preparation: at all times he had complete mastery over his case, and he was never taken off his guard.¹⁹ A thorough study of his career at the bar shows that contrary to popular belief he was much more than a shrewd but honest "country lawyer." Loyal to his client and faithful to his ideals, he fought for whatever cause he was enlisted in,²⁰ to the best of his ability.²¹

Lincoln, who was never known to have made a single calculated misstatement,²² was a man of uncompromising integrity who refused to render indifferent service to a client whom he was committed to serve.²³ In brief, he was not only a most competent but also a most conscientious lawyer--the highest praise that can possibly be bestowed on a member of the legal profession. Once his services had been enlisted, he spent himself without stint, laboring with indefatigable zeal for the interest of his client.²⁴ He did not hesitate to avail himself of legal technicalities to promote the cause he was representing,²⁵ and he resorted to every legitimate legal device and made full use of every technical advantage to win his case.²⁶ To Lincoln's candor and "fidelity to his convictions can be attributed much of his success at the bar. When a case engaged his moral sense, no matter if the law was against him, his dynamic power of conviction and extraordinary sincerity often enabled him to overwhelm all the technicalities of the law, win over both judge and jury, and secure the verdict."²⁷

¹⁷ See Donald, *Lincoln's Herndon: A Biography* 47 (1948). Included in this number of 243 are cases in which Lincoln's name appears in the court records, but not in the published reports. --As to the number of appellate cases won by Lincoln, see Frank, *op. cit.* at 58-59.--Lincoln also handled numerous cases in the lower courts, especially in the Eighth Judicial Circuit Court of Illinois, the Circuit Court of Springfield, and in the United States District Courts as well as the United States Circuit Court.

¹⁸ In *Lewis v. Lewis*, 48 U.S. (7 How.) 814 (1849); and *Forsyth v. Reynolds*, 56 U.S. (15How.) 379 (1853), where he was attorney on the brief.-- As to the manner in which he handled the case of *Lewis v. Lewis*, see Frank, *op. cit.* at 79-84.

¹⁹ Woldman, *op. cit.* at 38-39, and *ibid.* at 44, 135 ff. 167, 171.

²⁰ Unknown to many historians, Lincoln, in 1847, defended a Southern slaveholder's right to recover his fugitive slaves in Illinois. 2 Coles County Circuit Court Record 191, 196 (1847). Robert Matson had retained Lincoln to recover the slaves, and although the whole affair was probably repugnant to him, the records indicate that of the four lawyers connected with this case, Lincoln gave the only truly professional performance in court. See Chroust, "Abraham Lincoln Argues a Pro-Slavery Case," 5 *American Journal of Legal History* 299-308 (1961).

²¹ Woldman, *op. cit.* at 197. See also *ibid.* at 180.

²² *Ibid.* at 198.

²³ See note 20, *supra*.

²⁴ Duff, *op. cit.* at 138-139; Woldman, *op. cit.* at 182, and *ibid.* at 190 ff.

²⁵ As to instances of Lincoln's use of legal technicalities, see Frank, *op. cit.* at 52-58. Any good lawyer knows the difference between a "mere technicality," the operation of which would only delay the course of justice without any other significant consequence, and a legitimate technical device, which may properly affect the final outcome of the trial.

²⁶ Duff, *op. cit.* at 126; Woldman, *op. cit.* at 192 ff.

²⁷ Woldman, *op. cit.* at 184. See also *ibid.* at 186.

A "Lawyer's Lawyer"

The unreserved esteem in which he was held by the general public no less than the high confidence which he enjoyed among his fellow attorneys is the greatest praise that may be bestowed upon any lawyer. Probably no other lawyer in his time and place was more respected and more admired by his colleagues, neophytes and oldsters alike, than Lincoln. He knew instinctively how to try a case without making it a personal issue between counsels. Curing his long practice at the bar he never made a personal enemy in the profession.²⁸

Such qualities, which require generosity, patience, tact, courtesy, firmness, courage, self-control, and a big-mindedness which few men possess, also guided his conduct in the political arena. Lincoln the lawyer, Lincoln the candidate for high office, and Lincoln the President were essentially the same man.²⁹

The outstanding reputation and trust which he enjoyed among his brethren at the bar was abundantly evidenced by the fact that a substantial part of his law practice came from other lawyers who retained him to handle matters for them either before the Supreme Court of Illinois or in the Eighth Judicial Circuit of Illinois, or who enlisted his services as co-counsel in many important litigations.³⁰ In the truest sense of the term, Lincoln was a "lawyer's lawyer."³¹

Lincoln most definitely possessed the basic qualities and qualifications of a prominent lawyer:³² a remarkable familiarity with the law and its technical aspects, a thorough command of the leading legal doctrines, a thoroughness in preparing and handling cases, an insatiable intellectual curiosity about the law and its operations, an abiding passion for advocacy, a special talent for stating the pertinent legal issues and of getting at the heart of the controversy, a practical and hard-headed approach to every legal problem, a sensitive consideration of others,³³ a profound insight into the deeper

²⁸ Ibid. at 94 ff., and 99.

²⁹ Frank, *op. cit.* at 140.

³⁰ Duff, *op. cit.* at 135; Woldman, *op. cit.* at 33; Frank, *op. cit.* at 7. --A good deal of Lincoln's reference business came from the law firm of Samuel C. Davis, Henry T. Tomlinson, Matthew Boody, and Nathan W. Perkins, of St. Louis, Missouri.

³¹ Woldman, *op. cit.* at 93 ff., and *ibid.* at 126.

³² Of Lincoln's ability as a practicing lawyer, Judge Davis, before whom Lincoln argued many cases, had this to say: "In all the elements that constitute a great lawyer he had few equals...He seized the strong points of a case and presented them with clearness and compactness. His mind was logical and direct...His power of comparison was large...The framework of his mental and moral being was honesty..." Quoted in 2 Nicolay and Hay, *Complete Works of Abraham Lincoln* 140-141, note (1905).

³³ "Mr. Lincoln's courtesy to the young practitioners was little less than proverbial, and he was never more gracious than when he was 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." Gibson, "My Recollections of Abraham Lincoln," *Farm and Fireside*, December 1, 1904. See also Whitney, *Life on the Circuit with Lincoln* 54 (1940). Whitney, who knew Lincoln intimately, likewise extols his kindness and

recesses of the human mind and heart, and a glorious gift of expressing himself concisely and in plain language.³⁴

"Resolve to Be Honest"

It is significant that in a community where straightforward dealing was assumed as a matter of course, Lincoln should have won an enviable reputation for integrity and honor. His refusal to handle a questionable case is perhaps best illustrated by the following incident: "We can doubtless[ly] gain your case for you," he informed a prospective client who wished to retain his services in an action of debt, "we can set a whole neighborhood at loggerheads; we can distress a widowed mother and her six fatherless children, and thereby get for you six hundred dollars to which you seem to have a legal claim, but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you. You must remember, however, that some things legally right are not morally right. We shall not take your case, but we will give you a little advice which we will charge you nothing. You seem to be a sprightly, energetic man. We would advise you to try your hand at making six hundred dollars in some other way."³⁵

"It is because he had the courage and character to uphold the highest standards of the law in daily practice," one of his biographers wrote, "that Lincoln is entitled to a place in the foremost rank of the profession. He lived his ideals and showed them to be practical...."³⁶ Lincoln strongly discouraged pointless litigation and violently denounced any attempt at stirring up litigation, insisting that the most noble function of a lawyer was that of a "peacemaker."³⁷

He outrightly demanded that a pronounced moral tone ought to be infused into the profession, and he exhorted both lawyers and law students always to choose honesty above professional success:

"Let no young man choosing the law for a calling, for one moment yield to this popular belief [scil., that lawyers are necessarily dishonest]. Resolve to be honest at all events; and if, in your own judgment, you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation,

consideration for his brethren at the bar, especially the young and inexperienced lawyers. See also Pratt, "Lincoln in Bloomington," *Journal of the Illinois Historical Society* April, 1936, p. 49. Adlai E. Stevenson, himself a lawyer, reported that Lincoln was "ever the generous, kindly gentleman." *Ibid.*

³⁴ Duff, *op. cit.* at 301; Frank, *op. cit.* at 97-98

³⁵ Quoted in Hill, *Lincoln the Lawyer* 239-240 (1906).

³⁶ *Ibid.* at 241.

³⁷ In some fragmentary notes for a law lecture he stated certain of his ideals as regards professional standards and professional conduct. See 2 Nicolay and Hay, *Complete Works of Abraham Lincoln* 140-143 (1905). "Persuade your neighbors to compromise whenever you can." Lincoln wrote, "as a peacemaker the lawyer has a superior opportunity of being a good man..." *Ibid.* at 142.

rather than one in the choosing of which you do, in advance, consent to be a knave.³⁸

Conclusion

Historians and biographers are prone to overlook and minimize the importance of Lincoln's career at the bar and the decisive influence which the law and legal practice had upon his political career. He was certainly a great deal more than just a skillful, honest lawyer. It has been said, and probably with good reason, that the best training and preparation he had for the Presidency of the United States, after all, were his twenty-three years' arduous experiences as a practicing lawyer in Illinois.³⁹ For law, with its sphere as varied as life itself and as broad as the combined activities of any government, was indeed Lincoln's schoolmaster.⁴⁰

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³⁸ Ibid.

³⁹ See Frank, *op. cit.* at 141-167, especially at 153 and 157.

⁴⁰ Woldman, *op. cit.* at 2.

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