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Abraham Lincoln and the Law

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A Honest Calling: The Law Practice of Abraham Lincoln

Featured Book

Mark E. Steiner, *A Honest Calling: The Law Practice of Abraham Lincoln*
(Northern Illinois University Press, 2006)

Abraham Lincoln's persona was deeply rooted in reverence for law and rationality: "Let reverence for the laws be breathed by every American mother, to the lisping babe, that prattles on her lap – let it be taught in schools, in seminaries, and in college; – let it be

written in Primmers, spelling books, and in Almanacs; – let it be preached from the pulpit, proclaimed in legislative halls, and enforced in courts of justice. And, in short, let it become the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and conditions, sacrifice unceasingly upon its altars." said Mr. Lincoln in his January 1838 speech to the "Young Men's Lyceum in Springfield." In that speech, Mr. Lincoln argued:

"Reason, cold, calculating, unimpassioned reason, must furnish all the materials for our future support and defence. Let those materials be moulded into general intelligence, sound morality and, in particular, a reverence for the constitution and laws; and, that we improved to the last; that we remained free to the last; that we revered his name to the last; that during his long sleep, we permitted no hostile foot to pass over or desecrate his resting place; shall be that which to learn the last trump shall awaken our WASHINGTON." [1]

From the moment that Mr. Lincoln became a lawyer in 1837 until his nomination for President in 1860, the law was the center of Mr. Lincoln's professional life. And Mr. Lincoln's legal colleagues were the center of his political life. The law was Mr. Lincoln's training ground for political argument and presidential leadership. Lincoln biographer Jesse W. Weik wrote: "Although a good lawyer it is doubtful if Lincoln held the law in any higher esteem than his colleagues; in fact, it looked, sometimes, as if he lost sight of its standing or value as a profession and viewed it rather as a vocation – simply as a means of gaining a livelihood. Judges Stephen T. Logan and David Davis were more deeply absorbed in it as a profession, but it was only that it might yield them greater financial returns, because both of them were careful and ambitious men, both accumulating comfortable fortunes." [2]

Mr. Lincoln was "comfortable in the law," noted historian Brian Dirck, who wrote: "He was in his element on the circuit, acting the part of a 'poke-easy' in his office, or putting on one of his well-calculated performances before a jury. In all of the

secondhand accounts of Lincoln's legal career left behind by colleagues', not one hints that Lincoln felt dissatisfaction with his job. He went elsewhere – the statehouse, Congress, and eventually the White House – to feed his ambition. But he used the courthouse to feed his family, and maybe to feed some part of himself, to find a degree of personal security unavailable elsewhere." [3]

Mr. Lincoln prepared for his career by reading Blackstone's Commentaries. Historian Brian Dirck wrote that "The Commentaries were all about logic and order. The point was often not so much the actual legal rules and concepts it contained, but also the habits of thought Blackstone imposed on Lincoln and other law students." [4] Mr. Lincoln was never a dedicated student of book law. "I don't think he studied very much. I think he learned his law more in the study of cases. He would work hard and learn all there was in a case he had in had. He got to be a pretty good lawyer though his general knowledge of law was never very formidable. But he would study out his case and make about as much of it as anybody. After a while he began to pick up a considerable ambition in the law. He didn't have confidence enough at first.," wrote Lincoln's second law partner, Stephen T. Logan. [5] Logan recalled that Mr. Lincoln "was not much of a reader. Lincoln was never what might be called a very industrious reader. But he would get a case and try to know all there was connected with it; and in that way before he left this country he got to be quite a formidable lawyer." [6]

Legal scholar Mark E. Steiner wrote: "Abraham Lincoln was not a diligent student of the law, but when pressed by necessity, he was a sophisticated user of the available sources of legal information. His early legal training and the rapid changes in antebellum law ensured that his legal education continued throughout his law career. Although Lincoln advised would-be lawyers to 'still keep reading' after becoming licensed, Lincoln's reading instead was directed toward the case before him." Steiner noted that "Lincoln's approach to reading law books was typical for a lawyer. Although Herndon noted that "Lincoln's approach to reading law books was typical for a lawyer Lawyers read purposively; lawyers, as legal historian M. H. Hoeflich notes, 'read to

acquire knowledge with a specific end in sight. They seek to find the specific nuggets of information they require for purposes wholly external to the text itself.'" [7]

"The idea that Mr. Lincoln was a great lawyer in the higher courts and a good nisi prius lawyer, and yet that a child or student could manage a case in court better than he, seems strangely inconsistent, but the facts of his life as a lawyer will reconcile this and other apparent contradictions," maintained partner William H. Herndon. "I easily realized that Lincoln was strikingly deficient in the technical rules of the law. Although he was constantly reminding young legal aspirants to study and 'work, work,' yet I doubt if he ever read a single elementary law book through in his life. In fact, I may truthfully say, I never knew him to read through a law book of any kind. Practically, he knew nothing of the rules of evidence, of pleading, or practice, as laid down in the text-books, and seemed to care nothing about them. He had a keen sense of justice and struggled for it, throwing aside forms, methods, and rules, until it appeared pure as a ray of light flashing through a fog-bank." [8]

Mr. Lincoln benefited much more from his second law partnership with Stephen T. Logan than he had with his first with John T. Stuart, who was often away on political campaigns or congressional service in Congress. "The intellectual self-discipline acquired through association with the Spartanlike Logan was to stand Lincoln in good stead through many a trying period in the years ahead," wrote John J. Duff in A. Lincoln: Prairie Lawyer. "It is fair to say that no man contributed more toward bringing Lincoln's natural gifts as a lawyer to their fullest fruition." [9] Lincoln understood his debt. Logan "was the best lawyer in the state, if not in the Northwest, and Lincoln well knew it," wrote Henry C. Whitney in his memoirs. "Had Lincoln been called upon to select a candidate for Supreme Judge to any other administration, he would have selected Logan against the field; earnestly and enthusiastically." [10]

The Eighth Judicial Circuit was a tough but congenial school in which to obtain a legal education. Historian Cullom Davis wrote that "members of the Illinois bar had to deal

with a shifting clientele and unreliable demand. Retainers were rare, so lawyers were constantly seeking new business; that is why many (like Lincoln) tolerated the rigors of circuit riding and the vagaries of a penny ante practice." [11] Fellow attorney Lawrence Weldon wrote: "In 1854 and down to the commencement of the War, the circuit practice in Illinois was still in vogue, and the itinerant lawyer was as sure to come as the trees to bud or leaves to fall. Among these Mr. Lincoln was the star. He stood above and beyond them all." [12] Historian Brian Dirck wrote that "Lincoln was at his best and most comfortable on the circuit: more so than in his office or the pressure cooker of a courtroom. This was true to the extent that, when he was offered a lucrative Chicago partnership in 1862, he turned it down. He begged off by claiming that 'the close application required of him and the confinement in the office would soon kill him.' Herndon then remembered him adding that 'he preferred going around on the circuit, and even if he earned smaller fees he felt much happier." [13]

The benefits of Mr. Lincoln's third and final partnership with William H. Herndon were less scholarly that those he enjoyed with Logan. Historian Charles B. Strozier noted: "Herndon was definitely Lincoln's junior partner, and in ways large and small was constantly reminded of it. Lincoln valued Herndon's loyalty ('I expect everyone to desert me except Billy' he said after losing to Stephen A. Douglas in 1858), while he also kept his partner in his place. Lincoln would sit back in his chair and say, 'Billy, you're too rampant and spontaneous.' Lincoln mocked Herndon's wide, if somewhat superficial, reading and seldom took his advice on anything. He even seemed at times to go out of his way to put Herndon down." [14] Brian Dirck noted that Mr. Lincoln "tolerated Herndon's various eccentricities without complaint." [15] On the other hand, noted historian David H. Donald: "Herndon idealized his partner. He not merely felt grateful to Lincoln; he considered him his mentor, an older man who was a friendly, safe counselor. A man of extremes – indeed, a man who sometimes fell off the edge – Herndon found a steadying influence in his relationship with Lincoln. 'He was,' Herndon explained, 'the great big man of our firm and I was the little one. The little one looked naturally up to the big one.'" [16]

Historian Charles Strozier noted: "One of Herndon's important tasks in the partnership was to keep up the 'Commonplace Book,' or index to relevant precedents for the cases the firm handled. On one side of a large folio page Herndon listed the kinds of cases handled and then opposite it the relevant precedents and often extensive cross-referencing. "Trusts," for example, shows six precedents and a cross-reference to "Real Estate." The types of cases listed are remarkably specific in order to focus the precedent search, that is, "County seat removal," or "Vagrants," or "Burial Ground Dead." It is not an orderly book but it was crucial to the operation of the firm, the heart and soul of the office, and it is all in Herndon's hand. To keep it up-to-date, he spent many hours poring through texts that were kept in the office and others he read under the whale-oil lamp in the State Law Library. The "Commonplace Book" was one key to the success of Lincoln-Herndon and gave substance to the garrulous and often witty arguments Lincoln presented to juries. Herndon was the reader of the firm, it might be said, and Lincoln the thinker." [17]

Mr. Lincoln told Herndon "that he took Herndon in partnership on the supposition that he was not much of an advocate, but that he would prove to be a systematic office lawyer; but it transpired, contrary to his supposition, that Herndon was an excellent lawyer in the courts and as poor as himself in the office," recalled Henry C. Whitney. [18] Contemporary I.M. Short wrote that Herndon "was always honest, sincere and loyal, and Lincoln never had cause to regret the business arrangement he that day went into. Lincoln took him in on equal terms with himself financially, the gains of their earnings being divided equally between them." [19] Mr. Lincoln split the firm's fees equally with Herndon even on those cases where it was clearly Mr. Lincoln's prestige that had attracted the client. They even split their neglect of housekeeping. "The system of business was as slovenly as the office itself: one day, Lincoln suddenly thrust his hands deep into his pantaloons pockets, and fished up two dollars and fifty cents, which he gave to Herndon, saying: 'Here, Billy, is your share of the fee for the suit before Squire.'" According to fellow attorney Henry Clay Whitney, "This transaction had every

semblance of reality and good faith; yet I felt bound somehow to consider it as a bit of pleasantry; and accordingly I said incredulously: 'is that the way this law firm keeps its accounts?' 'That's jest the way,' promptly replied Lincoln: 'Billy and I never had the scratch of a pen between us; we jest divide as we go along:' and Herndon confirmed this statement of an extraordinary occurrence by a nod." [20]

Historian Cullom Davis wrote: "Lincoln's regular affiliation with other lawyers was much more complex and widespread than the three successive partnerships that biographies have been content to portray. Even among those partners there was an intricate division of labor that has escaped careful attention. In addition, he had active affiliations with several dozen lawyers throughout central Illinois." Davis wrote: "The Illinois legal community was interrelated. While Illinois lawyers were not formally organized as a bar group, they were nevertheless a cohesive community in countless and complex ways: by marriage and family; by partnership and affiliation; by community and court venues; and by political parties and factions." [21]

The law also provided political as well as legal associations. Legal scholar Mark E. Steiner wrote: "Lincoln was a Whig before he was a lawyer, and his law practice paralleled his affiliation with the Whig party from the time he was first licensed to practice until 1855. Lincoln shared the Whig enthusiasm for market capitalism and endorsed Whig programs of internal improvements and tariffs that would encourage economic development." Steiner noted: "The Whig Party attracted lawyers because of the congruence between the Whig commitment to order and tradition and the lawyers' attachment to order and precedent." [22] Understandably, Mr. Lincoln's closest associates were not only lawyers but who were also Whig politicians who became Republican leaders men like William H. Herndon, David Davis, Leonard Swett, Henry Clay Whitney, Stephen T. Logan, etc. Law and politics were closely intertwined for Mr. Lincoln.

But Whig ideology did not determine Mr. Lincoln's legal practice, noted Steiner.

"Lincoln as a Whig politician favored a developmental economic agenda, but Lincoln as a Whig lawyer did not advance this agenda every time he entered a courtroom. The primary value Whig lawyers like LIncoln found in the justice system was the maintenance of order. The economics of the law office ensured that Whig lawyers were ready to represent any client because they could hardly afford to do otherwise. Lincoln, for example, believed that railroads were vitally important for economic development in the West, but he never adopted an instrumentalist agenda in railroad litigation. He was ready to sue railroads and to establish precedent that would have hindered his economic vision." [23]

Mr. Lincoln's strongest ally was truth. Without it, he was virtually defenseless, according to fellow lawyers in Illinois. Lawyer Samuel C. Parks wrote that "at the bar when he thought he as wrong he was the weakest lawyer I ever saw." [24] James C. Conkling recalled: "No man was stronger than he when on the right side, and no man weaker when on the opposite. A knowledge of this fact gave him additional strength before the court or a jury, when he chose to insist that he was right. He indulged in no rhetorical flourishes or mere sentimental ideas, but could illustrate a point by one of his inimitable stories, so as to carry conviction to the most common intellect." [25] Lambert Tree said that Leonard Swett "once told me that Lincoln was not worth a cent in a case in which he did not believe. In this connection, he related an incident of Lincoln and himself being appointed by Judge David Davis to defend a man indicted for murder who was supposed to be without means to retain a lawyer. However, the prisoner had friends who were able to raise one hundred dollars for his defense. The money was turned over to Swett, who handed half of it to Lincoln. When they came to consult with the prisoner, Lincoln became convinced that he was guilty and that the only chance of saving his neck was to have him plead guilty and then appear to the court for leniency. This was opposed by attorney Leonard Swett, who was an extremely adroit criminal lawyer. The case, therefore, came to trial, but Lincoln, though present and sitting beside Swett, took no part in it further than to make an occasional suggestion to his associate in the course of the examination of witnesses. The outcome

of the case, thanks to technicalities which unexpectedly appeared, and which Swett was not slow to take advantage of, was that the man was acquitted. When the jury rendered its verdict, Lincoln reached over Swett's shoulder, with the fifty dollars in his hand, and said: 'Here, Swett, take this money. It is yours. You earned it, not I." [26]

Fellow lawyers testified that Mr. Lincoln needed to believe in a case to be effective. Judge David Davis recalled "The framework of his mental and moral being was honesty and a wrong was poorly defended by him. The ability which some eminent lawyers possess of explaining away the bad points of a cause by ingenious sophistry, was denied him. In order to bring into full activity his great powers, it was necessary that he should be convinced, of the right and justice of the matter which he advocated. When so convinced. Whether the cause was great or small, he was usually successful. He read law books but little, except when the case in hand made it necessary, yet he was unusually self-reliant, depending on his own resources and rarely consulting his brother lawyers either on the management of his case or in the legal questions involved. Mr. Lincoln was the fairest and most accommodating of practitioners, granting all favors which he could do consistently with his duty to his client, and rarely availing himself of any unwary oversight of his adversary." [27]

Mr. Lincoln's sense of justice seldom escaped him. Springfield resident A. F. Lord remembered being told by a client: "Mr. Lincoln was Seated at his table listening very attentively to a man who was talking earnestly in a low tone. After the would be Client had stated the facts of his case, Mr. Lincoln replied; Yes, 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 which I will charge you nothing. You see to be a sprightly, energetic man, I would advise you to try your hand

at making six hundred dollars in some other way." [28]

Attorney Henry C. Whitney recalled: "Mr. Lincoln would advise with perfect frankness about a potential case but when it was in esse, then he wanted to win as badly as any lawyer; but unlike lawyers of a certain type he would not do anything mean, or which savored of sharp practice, or which required absolute sophistry or chicanery in order to succeed. In a clear case of dishonesty he would hedge in some way so as not himself to partake of the dishonesty. In a doubtful case of dishonesty, he would give his client the benefit of the doubt, and in an ordinary case he would try the case so far as he could like any other lawyer except that he absolutely abjured technicality and went for justice and victory denued of every integument." [29]

More fundamental than Mr. Lincoln's devotion to the law was his devotion to integrity. One day, Englishman George Hartley "asked Mr. Lincoln what had influenced him in making the law his profession. In answering, he told me about one of his cases. A farmer had lost a cow, which was killed by a railroad train. He engaged Mr. Lincoln to represent him and sue the company for damages. Before he could do this, the company, having received private word of the farmer's move, approached Mr. Lincoln with the proposition that if he would throw over the farmer it would renumerate him handsomely and give him legal work connected with the railroad. I well remember the look of satisfaction in Mr. Lincoln's refusal. 'The company had exposed its hand and I obliged it to reimburse the farmer liberally.'" [30] President Lincoln once told the Rev. Noyes W. Miner "that he would never take a case unless he thought there was merit in it." [31]

Mr. Lincoln's caseload ranged from criminal to corporate, from the petty to the principled. Historian Cullom Davis wrote: "Lincoln had a much larger and more widely diversified general practice than generally recognized. Lincoln was an aggressive and tenacious litigator whose mastery of civil and criminal procedure surfaced frequently. Popular notions about his carelessness and homespun demeanor tend to obscure a

tough streak in his pre-trial and courtroom tactics. Neither flowery nor bombastic, he nevertheless frequently sought continuances, changes of venue, and dismissals on technical grounds when it was to his client's advantage. He could, as historian Robert Bruce aptly put it, 'split hairs as well as rails." [32] Historian Allen C. Guelzo wrote that "in his early years as a lawyer and politician, Lincoln developed a reputation for single-minded aggressiveness. 'I would not compromise the case at any cost,' he advised one client in 1845, 'but let them sue if they will. Even if the main point of the case is against you, there will be so many little breakers in their way, as to prevent their ever getting through safely." [33]

Fellow attorney Lawrence Weldon wrote that "Mr. Lincoln was always respectful and deferential toward the court, and never forgot the professional amenities of the bar. He was a lawyer who dealt with the deep philosophy of the law, always knew the cases which might be quoted as absolute authority, but beyond that contented himself in the application and discussion of general principles. He moved cautiously, and never examined or cross-examined a witness to the detriment of his side. If the witness told the truth he was safe; but woe betide the unlucky and dishonest individual who suppressed or colored the truth against Mr. Lincoln's side." [34]

Legal scholar Mark E. Steiner wrote: "By the 1850s, Lincoln's clients included not only local litigants involved in land disputes or slander cases but also out-of-state business interests, The correspondence with these firms and their lawyers reveals his difficulty in adjusting to the different style of lawyering demanded by market-oriented litigation. Lincoln never fully adjusted to the quickened pace or the impersonal nature of these causes." [35] Mr. Lincoln did not necessarily move as expeditiously or aggressively as such clients expected. Often such clients expected Mr. LIncoln to litigate where he preferred to negotiate. Steiner noted that the Illinois Central Railroad "used LIncoln because of his trial and negotiation skills and his familiarity with the supreme court and elected officials." [36]

Mr. Lincoln did not encourage legal suits but he did encourage settlement out of court. Economic historian Oliver Frayss wrote: "In fact, faithful to his principles, Lincoln discouraged pettifoggery and often proposed amicable arrangements, even if it meant losing fees. Each semester on the circuit, he was approached by a Mr. Gilliland, who claimed to have title to a piece of property and wanted to procure Lincoln's services. Each time, Lincoln listened patiently and kindly before refusing to take the case." [37]Judge Davis recalled that "he would compromise a law suit whenever practical." [38] Steiner noted: "Lincoln always seemed comfortable with the lawyering style demanded by purely local lawsuits. Like most lawyers in small communities, he was keenly aware that the community orientation of those disputes favored mediation and compromise, and he thus tried to serve as a mediator or peacemaker." [39]

Steiner observed that Mr. Lincoln's "slander cases show that he often took advantage of opportunities for mediation and compromise. He was able to resolve many cases by repairing the damage to the plaintiffs' reputation. In several cases, the defendant attested to the good reputation of the slandered plaintiff, which settled the case. In some cases, the defendant consented to a large judgment, which the plaintiff then agreed to reduce to a much smaller sum. In others, the plaintiff, after a jury had awarded damages, agreed to remit most or all of the award. Lincoln acted as a peacemaker and showed sensitivity to what was actually at stake in those cases." [40]

If mediation failed, where Mr. Lincoln excelled was in his understanding of the way juries would react to him and to the evidence. Attorney Lawrence Weldon wrote: "Mr. Lincoln's speeches to the jury were most effective specimens of forensic oratory. He talked the vocabulary of the people, and the jury understood every point he made and every thought he uttered. He never made display for mere display, but his imagination was simple and pure in the richest gems of true eloquence. He constructed short sentences of small words, and ever wearied the mind with mazes of elaboration." [41] In the courtroom, argued Springfield court official Thomas W. Kidd, "His stories always had a point – he used them for a purpose, and learned to use them because he could

accomplish in a few minutes by one of his inimitable stories what would have exhausted hours to clear away by argumentative appliances.[42] One Illinois friend recalled a story his father told him about trial in which "Practically the whole affair hinged on the testimony of a celebrated surgeon.
Lincoln refused to cross-examine any except this last witness. The surgeon had made some very extreme statements, and when he was all through Lincoln said, very slowly and impressively: "Doctor, how much money are you to receive for testifying in this case?"

And those four monosyllables were all he ever said to that jury. They won the case. [43]

Bergin cited Mr. Lincoln's conduct in a case he which he defended "a very wealthy, aristocratic Democrat, one of the chivalry, Colonel Dunlap, in an action for ten thousand dollars damage brought against him by the editor of the opposition, or as many then called it, the abolition paper, on account of a deliberate, carefully planned cowhiding administered by the colonel to the editor on a bright Saturday afternoon in the public square of the town, in the presence of hundreds of the town and country people whom the colonel desired to witness that degrading performance." The editor's attorney, Benjamin Edwards, brought the jury to tears, with his description of the wounds to the editor's body and psyche. Bergin wrote:

"Before all eyes were dried, it came Lincoln's turn to speak. He dragged his huge feet off the table on the top of which they had been calmly resting, set them on the floor; gradually lifted up and partly straightened out his great length of legs and body and took off his coat. While he was removing his coat, I, and all others noticed his eyes were intently fixed upon something on the table before him. He picked up the object, a paper, from the table. Scrutinizing it closely and without having uttered a word, he broke out into a long loud, peculiar laugh, accompanied by his most wonderfully funny facial expression – there never was anything like the laugh or the expression. A comedian might well pay thousands of dollars to learn them – it was magnetic. The

whole audience grinned. He laid the paper down slowly, took off his cravat, again picked up the paper, looked at it again, and repeated the laugh. It was contagious. By that time all in the packed courtroom were tittering or trying to hold in their cachinnations. He then deliberately took off his vest, showing his one yarn suspender, took up the paper, again looked at it and again indulged in his own loud peculiar laugh. Its effect was absolutely irrepressible. The usually solemn and dignified Judge Woodson, the jury and the whole audience could hold themselves no longer, and broke out into a long, loud continued roar; all this before Lincoln had ever uttered a word. I call this acting."

The occasion for his merriment was not very funny, but it was to the point. He apologised to the court for his seemingly rude 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.

The result was to at one destroy the effect of Edwards' tears, pathos, towering indignation, and high wrought eloquence and to render improbable a verdict for more than $1,000. [44]

Historian Brian Dirck wrote: "Lincoln knew that people judged cases as much by their hearts as by their heads. Politically and personally, he believed in the power of reason over emotion. He never liked overt displays of feeling, and he felt that emotions tended to get in the way when men of good will tried to make public policy." Dirck added that "in the courtroom he understood how to manipulate emotions in the name of (legal) reason." [45]

Thomas Kidd wrote: "Mr. Lincoln was, with his honest earnestness, at times a very eloquent lawyer, His arguments were characterized for plain, comprehensive figures, but few fancy flights. He said he seldom left the world to climb the aerial tree of his

own imagination. His general style when before a jury was what you might call the careless, yet earnest style; they were talks – neighborly chats – and he would name the members of the jury, and with those he knew well would seemingly draw his conclusions from their standpoint of reasoning." [46] Kidd noted: "While Mr. Lincoln was a lawyer of acknowledged ability as a case lawyer, and he could command the attention of judge and jurors by the power of his eloquence in its argument; he could at the same time, when inclined to a humorous train of thought, cause the most rigid judge or juror of staid ways, to relax his facial muscles in a laugh by his mirth-provoking humor." [47]

"On the circuit Lincoln cited little of authority; indeed, it seemed to me that he had not much respect for opinions of judges, except for the correct reasoning they presented," wrote attorney Adam Bergin. "He stated the rule and gave the reason of the law as clearly, fully and logically as it appears in the writings of the masters of jurisprudence, and without having seen a decision, generally reached the same conclusion as the Supreme Courts who sat near large libraries with the help of elaborate briefs and with ample time to examine other cases." [48]

Historian Allan Nevins wrote: "Any student of Lincoln's legal career must be struck by the immense variety of cases which he pleaded, the acquaintance his circuit practice gave him with the whole central belt of his rich State, his unvarying industry and competence, and the steadily widening fame of his talents. He appeared in all the State and Federal courts of the area. He dealt with constitutional law, admiralty law, patent law, common law actions, and bills in equity. He was at least once offered an advantageous opening in Chicago. Several State departments, a number of counties, and various towns retained his services." [49] Mr. Lincoln was particularly active in cases before the Illinois Supreme Court and before the U.S. District Courts in Springfield and Chicago. Historian Cullom Davis wrote: "In one peak year, 1845, Lincoln and Herndon had 39 Supreme Court filings. Many of these cases came to him on referral from legal and political acquaintances in all corners of the state. This was a prodigious appellate

caseload." [50]

These appellate cases probably were the most remunerative for Mr. Lincoln, but his bread and butter was always the ordinary civil cases along the Eighth Circuit. Historian Cullom Davis wrote: "The occasional criminal cases were invariably interesting and often sensation, but they comprised less than ten per cent of his trial practice. On the other hand, there has been insufficient attention to his substantial chancery or equity work. Nearly one-third of Lincoln's caseload dealt with estate settlement, land disputes, family matters, and other equity issues. The divorce cases themselves offer a revealing picture of domestic stress in the developing West, and his many slander suits attest to the importance Americans attached to community reputation in a dynamic, egalitarian society." [51]

Journalist Walter B. Stevens observed: "Mr. Lincoln spent about half of the year attending these terms of court away from his home. He continued to attend the eighth circuit terms after other lawyers had ceased to 'ride the circuit.' He was present at the spring terms of the circuit in 1860, a few weeks before his nomination to be president. And after his election it was necessary to for him to visit Bloomington to make disposition of the cases in which he was retained. This peculiarly close relationship of Mr. Lincoln to the eighth circuit bore upon his political as well as upon his legal career. In the eighth circuit he won the reputation of being the best jury lawyer of Illinois. In the eighth circuit he organized the movement which led to the Republican party of Illinois. In the eighth circuit he won the influential and steadfast political friends who brought about his nomination for the presidency." [52]

Mr. Lincoln understood the law and his contemporaries. He also understood the impact of his appearance. Contemporary William H. Somers rejected criticism of Mr. Lincoln's sloppy dress on the circuit. "I never saw him when he was not well, and even fashionably dressed. It is true he wore the proverbial linen duster, but this was for the purpose of protecting his clothes from the dust in warm, dry weather, while riding the

circuit. When he came to Urbana, he sometimes wore the duster; and, if late in arriving at court, hurried to the courthouse without taking it off, but on removing it, he stood before one as a well-dressed man, generally in a broadcloth suit." [53]

There was no greater advocate for Mr. Lincoln's talents than Judge Davis. When Judge Davis was unavailable for his judicial duties, Mr. Lincoln often took his place. And a fair job he did. Court Clerk J. W. Porter noted that "It was the habit of Judge Davis to frequently leave the bench when attacked with headache or indisposition and Call one of the principal attorneys to sit in his place for an hour or two, And he Called upon Mr Lincoln more than any one else to take this place, they being very warm and Close friends." [54] Historian Allen Guelzo wrote: "In 1858 alone, Lincoln filled in as a judge for Davis in ninety-five cases. In between the two circuit sessions each year, he was handling an increasing number of cases in the Illinois Supreme Court in Springfield, in the federal district and circuit courts in Springfield, and (after 1855) in Chicago, where he took on 431 cases. He even served as attorney of record in six U.S. Supreme Court cases between 1849 and 1861."[55]

Around July 1850, Mr. Lincoln wrote some "Notes for a Law Lecture." He began: "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."

"The leading rule for the lawyer, as for the man, of every calling, is *diligence*. Leave nothing for to-morrow, which can be done to-day. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can *then* be done. When you bring a common-law suit, if you have the facts for doing so, write the declaration at once. If a law point be involved, examine the books, and note the authority you rely on, upon the declaration itself, where you are sure to find it when wanted. The same of defenses and pleas. In business not likely to be litigated – ordinary collection cases, foreclosures, partitions, and the like, make all examinations of titles, and note them, and even draft orders and decrees in advance. This course has a triple advantage; it avoids omissions and neglect, saves your labor, when once done; performs the labor out of court when you *have* leisure, rather than in court, when you have not. Extemporaneous speaking should be practiced and cultivated. It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business, if he cannot make a speech. And yet there is not a more fatal error to young lawyers, than relying too much on speech-making. If any one, upon his rare powers of speaking, shall claim exemption from the drudgery of the law, his case is a failure in advance.

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, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity [sic] of being a good

man. There will still be business enough.

Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the Register of deeds, in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession, which should drive such men out of it.

The matter of fees is 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 before hand, you are more than a common mortal if you can feel the same interest in the case, as if something was 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 and dishonesty in refusing to refund, when you have allowed the consideration to fail.

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent *confidence*, and *honors* are reposed in, and conferred upon lawyers by the people, it appears improbable that their *impression* of dishonesty is very distinct and vivid. Yet the impression, is common – almost universal. Let no young man, choosing the law for a calling, for a moment yield to this

popular belief. Resolve to be honest at all events; and if, in your own judgment, you can not be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave." [56]

Despite the closing homily on ethics, Lincoln scholar Brian Dirck noted that Mr. Lincoln spent more time writing about practical matters. Dirck wrote that "Judging by the amount of time he devoted in his notes to how a lawyer should do paperwork, research cases, and collect fees, Lincoln believed the work habits a lawyer displayed when he walked into his office very morning were at least as important as the more exalted matters of ethics and the national perception of the profession. For him there was a subtle ethical content in the ordinary nuts-and-bolts features of a law practice. A good lawyer forthrightly faced the law's drudgery without frill or complaint." [57]

Mr. Lincoln freely imparted his advice to lawyers and would-be lawyers. When a new justice of the peace asked him for advice, Mr. Lincoln told him that "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 argument as patiently as you can; and after the evidence and the lawyers' arguments are through, then stop one moment and ask yourself: what is justice in this case, and let that sense of justice be your decision. Law is nothing else but the best of wise men applied for ages to the transactions and business of mankind."[58]

Cullom Davis wrote: "By 1860 Lincoln was celebrated and admired among his 2,700 Illinois peers, who deferred to him and also referred much work to him. His star standing even spread to neighboring states, where he took several consequential cases."[59] In *Lincoln as a Lawyer*, John P. Frank wrote: "Lincoln was gifted with

extraordinary skill in the organization of materials. However, he was, not, in the legal sense, creative. He was a user of the existing structure of legal ideas rather than an innovator. The great demand on the top lawyers of the mid-nineteenth century was the development of new legal structures for expanding capitalism. Lincoln not only had nothing to do with this movement but, even in the fields of litigation and procedure, he also worked at perfecting established ways rather than at creating new ones."[60] Nevertheless, the legal work Mr. Lincoln did admirably prepared him for the political world of the presidency.

Attorney James S. Ewing wrote that Lincoln "was masterful in a legal argument before the court. His knowledge of the general principles of the law was extensive and accurate, and his mind was so clear and logical that he seldom made a mistake in their application. Courteous to the court, fair to his opponent, and modest and restrained in his assertions, he was certainly the model lawyer." [61] Lincoln scholar John P. Frank wrote that Mr. Lincoln "may not have brought great learning to the practice of law, but Lincoln did have five qualities which were either inherent or highly developed, and these qualities together are so invaluable that the best lawyer in America might well trade all his books for them":

1. "a personality which attracted clients and instilled confidence in juries."
2. "a striking capacity in the organization of material to come clearly to the heart of a matter. Coupled with this was his brevity."
3. "restrained and effective verbal expression."
4. "a peculiarly retentive mind."
5. "he worked."[62]

Historian Brian Dirck wrote that "Lincoln the President tried hard to apply a lawyer's grease to the shrill machinery of war that surrounded him. We see it in his almost desperate appeals to white Southerners for a calm appraisal of their situation, appealing to their feelings the way he would a reluctant jury ("we are not enemies, but friends. We must not be enemies'). We see it in his steadfast refusal to fully identify

with one of the most clanging wheels of all, radical abolitionism, a movement with which he privately sympathized ('I have always hated slavery, I think as much as any Abolitionist') but that he felt compelled publicly to keep at arm's length, lest its passions become his."[63]

Lincoln scholar Frank J. Williams, himself a Rhode Island judge, wrote that Mr. Lincoln's "twenty-four year legal-political career before assuming the presidency taught him six lessons. First, he developed and learned the need for unending energy especially when considering that Lincoln expended equal, concurrent energy in politics. Second, his legal-political career demonstrated that Lincoln had the ability to juggle effectively more than one job at the same time. Third, the study of law and his work in the legislature allowed him to develop and hone his political skills. Fourth, the law allowed him to develop his ability as a public speaker and writer. Fifth, the law also gave him time to reflect on human nature and the broader purpose of democratic life. Ultimately, Lincoln's dual careers provided him the kind of broad background that assured him the potential for growth as a politician, which was always his ultimate goal. It would ensure that not only would he be a commander in chief or an attorney in chief but he would evolve as America's finest political leader. Sixth, his legal casework taught him a great sense of timing, knowing when to undertake an issue directly and when to be Machiavellian."[64]

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References

1. Roy P. Basler, editor, *Collected Works of Abraham Lincoln*,Volume I, p. 112, 115.(Speech to Young Men's Lyceum, January 27, 1838).
2. Jesse W. Weik, *The Real Lincoln: A Portrait*, pp. 140-141.
3. Brian Dirck, *Lincoln the Lawyer*, p. 165.
4. Brian Dirck, *Lincoln the Lawyer*.
5. Michael Burlingame, editor, *An Oral History of Abraham Lincoln*, John G. Nicolay's Interviews and Essays, p. 37.
6. Michael Burlingame, editor, *An Oral History of Abraham Lincoln*, John G. Nicolay's Interviews and Essays, p. 38.
7. Mark E. Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln*, pp. 40-41.
8. William H. Herndon and Jesse W. Weik, *Herndon's Life of Lincoln*, pp. 271-272.
9. John J. Duff, *A. Lincoln: Prairie Lawyer*, p. 94.
10. Henry Clay Whitney, *Life on the Circuit with Lincoln*, p. 409.
11. Cullom Davis, *Abraham Lincoln and the Gold Age of American Law*, p. 8.
12. Lawrence Weldon, *Abraham Lincoln: Tributes from His Associates*,("Reminiscences of Lincoln as a Lawyer"), p. 240.
13. Brian Dirck, *Lincoln the Lawyer*, p. 53.
14. Charles B. Strozier, "The Lives of William Herndon," *Journal of the Abraham Lincoln Association*, Winter 1993, pp. 9-10.
15. Brian Dirck, *Lincoln the Lawyer*, p. 31.
16. David Herbert Donald, "We Are Lincoln Men" *Abraham Lincoln and His Friends*, p. 75.
17. Charles B. Strozier, "The Lives of William Herndon," *Journal of the Abraham Lincoln Association*, Winter 1993, p. 2.
18. Henry Clay Whitney, *Life on the Circuit with Lincoln*, p. 405.
19. I. M. Short, *Abraham Lincoln: Early Days in Illinois: Reminiscences of Different Persons who Became Eminent in American History*, p. 57.
20. Henry Clay Whitney, *Life on the Circuit with Lincoln*, p. 405.
21. Cullom Davis, *Abraham Lincoln and the Gold Age of American Law*, p. 9.
22. Mark E. Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln*, p. 56.
23. Mark E. Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln*, p. 74.
24. Douglas L. Wilson and Rodney O. Davis, editors, *Herndon's Informants*, , p. 238 (Letter from Samuel C. Parks to William H. Herndon, March 25, 1866)

25. Rufus Wilson Rockwell, editor, *Lincoln Among His Friends*, p. 107 (James C. Conkling, Chicago Bar Association, January 12, 1881).
26. Rufus Rockwell Wilson, editor, *Lincoln Among His Friends: A Sheaf of Intimate Memories*, p . 126.(Lambert Tree, Century Magazine, February 1991)
27. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*, p. 69.(David Davis, Address to Indianapolis Bar Association, May 19, 1865).
28. Douglas L. Wilson and Rodney O. Davis, editors, *Herndon's Informants*, p. 469 (A. F. Lord interview with William H. Herndon), ca. 1865-1866).
29. Douglas L. Wilson and Rodney O. Davis, editors, *Herndon's Informants*, p. 732 (Henry C. Whitney interview with Jesse W. Weik , ca. 1887-1889).
30. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*, p. 319(George Hartley, *Chicago News*, January 28, 1909),.
31. Don E. and Virginia E. Fehrenbacher, editors, *Recollected Words of Abraham Lincoln*, p. 330.
32. Cullom Davis, *Abraham Lincoln and the Gold Age of American Law*, p. 9, 12.
33. Allen C. Guelzo, *Abraham Lincoln: Redeemer President*, p. 84.
34. *Abraham Lincoln: Tributes from His Associates*, (Lawrence Weldon, Reminiscences of Lincoln as a Lawyer), pp. 240-241.
35. Mark E. Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln*, p. 160.
36. Mark E. Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln*, p. 137.
37. Oliver Fraysse, *Lincoln, Land and Labor*, p. 161.
38. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln* , p. 70 (David Davis*Indianapolis Daily State Sentinel*, May 20, 1865).
39. Mark E. Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln*, p. 75.
40. Mark E. Steiner, *An Honest Calling: The Law Practice of Abraham Lincoln*, p. 84.
41. *Abraham Lincoln: Tributes from His Associates*, (Lawrence Weldon, "Reminiscences of Lincoln as a Lawyer"), p. 241.
42. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*,(Thomas W. S. Kidd, Bar Association of Sangamon County), April 25, 1893, p. 94.
43. Rufus Wilson Rockwell, editor, *Lincoln Among His Friends*(Thomas Hall Shastid, Nation), February 20, 1929, p. 68.
44. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*,(Abram Bergen, Kansas State Bar Association), 1897, pp. 76-77.
45. Brian Dirck, *Lincoln the Lawyer*, pp.102-103.
46. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*,(Thomas W. S. Kidd, Bar Association of Sangamon County), April 25, 1893, pp. 76-77.
47. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*,(Thomas W. S. Kidd, Bar Association of Sangamon County) , April 25, 1893, p. 90.
48. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*,(Abram Bergen, Kansas State Bar Association), 1897, pp. 73-74.

49. Allan Nevins, *The Emergence of Lincoln*, Volume I, p. 356.
50. Cullom Davis, *Abraham Lincoln and the Gold Age of American Law*, p. 13.
51. Cullom Davis, *Abraham Lincoln and the Gold Age of American Law*, p. 12.
52. Walter B. Stevens, *A Reporter's Lincoln*, p. 32.
53. Rufus Rockwell Wilson, editor, *Intimate Memories of Lincoln*,(Letter from William H. Somers to James R. B. Van Cleave), December 7, 1908, p. 76-77.
54. Douglas L. Wilson and Rodney O. Davis, editors, *Herndon's Informants: Letters, Interviews and Statements about Abraham Lincoln*,(Letter from Jesse W. Porter to Jesse W. Weik), January 14, 1887, p. 600.
55. Allen Guelzo, *Redeemer President* , p. 161.
56. Roy P. Basler, editor, *Collected Works of Abraham Lincoln, First Supplement*, (Notes for a Law Lecture), ca. July 1, 1850, pp. 18-20.
57. Brian Dirck, *Lincoln the Lawyer*, pp. 4-5.
58. Don E. and Virginia E. Fehrenbacher, editors, *Recollected Words of Abraham Lincoln*, p. 243.
59. Cullom Davis, Abraham Lincoln and the Gold Age of American Law, p. 16.
60. John P. Frank, *Lincoln as a Lawyer*, p. 96.
61. Paul M. Angle, editor, *Abraham Lincoln by Some Men who Knew Him*, (James S. Ewing, speech to the Illinois Schoolmasters' Club, Bloomington), February 12, 1909, p.39-40.
62. John P. Frank, *Lincoln as a Lawyer*, p. 97-98.
63. Brian Dirck, *Lincoln the Lawyer*, p. 169.
64. Frank J. Williams, *Judging Lincoln*, p. 37.

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