BALL STATE UNIVERSITY

HONORS THESIS

THE POPULAR CONCEPTION
OF ABRAHAM LINCOLN
ANALYZED IN TERMS OF HIS
PLEADINGS IN SELECTED COURT CASES

BY

DAVID L. BARRONE

JULY 1977
Abraham Lincoln pursued many occupations in his lifetime: rail-splitter, flatboat crewman, steamboat pilot, store clerk, postmaster, state legislator, congressman, lawyer, and President of the United States. His legal career, which he pursued twenty-three years, was by far, in terms of years, the major occupation of his life. Yet considering the fact that most of Lincoln's adult life was devoted to law, that portion of his life is surprisingly neglected or misconceived in the popular treatment of Lincoln. To ascertain what that common conception is I have examined sixteen books which I think are a fair representation of the general conception of Lincoln. I have found in these readings inaccurate and distorted information on Lincoln's very important professional life.

The American Nation by John Garraty is one of the most deceiving accounts of Lincoln's early life. \(^1\) Garraty writes that Lincoln's "career before the Kansas crisis was undistinguished," that "he had tried few cases of importance," that he was "a typical small town lawyer-politician," and that he was familiarly known as 'Honest Abe'.\(^2\) All of those statements are either misleading or incorrect. Moreover, Garraty says that Lincoln "was admired in Illinois as an expert axman and champion wrestler and was thoroughly at home with the toughs of 'Clary's Grove'."\(^3\) While Lincoln was certainly a strong young man and a wrestler of some local renown in his early life, it is hardly those qualities which made

---


\(^2\) Ibid., pp. 461-62.

\(^3\) Ibid., p. 461.
him leader of the Illinois Whigs and a guest at formal social gatherings in his later life.4

The National Experience by John Blum, Edmund Morgan, Willie Lee Rose, Arthur Schlesinger Jr., Kenneth Stampp, and C. Vann Woodward is another college textbook which is misleading with respect to Lincoln's professional life.5 It contains the statement, "Douglas' challenger for his Senate seat was Abraham Lincoln, a lawyer from Springfield, Illinois, who two years before had abandoned a long and loyal attachment to the Whig party to join the Republicans."6 No mention is made of Lincoln's successful law practice, or of his actions as a corporation counsel for the Illinois Central Railroad. The textbook also contains this description of his character: "People remembered him for his tall frame, his shambling carriage, his plain features. But most of all he impressed his hearers with his sincerity and common sense."7 This narrative paints a "folksy" but inaccurate picture of Lincoln the lawyer. Such an account of Lincoln's early life does not suffice to explain his development from pioneer boy to national hero.

American History: A Survey by Richard Current, T. Harry Williams, and Frank Friedel is another college textbook which omits important information on the pre-presidential years of Abraham Lincoln.8 It describes


6 Ibid., p. 314.

7 Ibid.

Lincoln in this manner, "Lincoln had been the leading Whig in Illinois. He was now the leading Republican in the State, though hardly a national figure--his reputation could not compare with that of the famous Douglas."\(^9\)

That is the only information pertaining to the background of Lincoln in that textbook; it contains no information on his legal career. This type of oversight is indicative of the misunderstanding of Lincoln's career which results if a study of his "prairie years" is eliminated.

American Political and Social History by Harold U. Faulkner is another college textbook which separates Lincoln's legal life from his political life in explaining his career.\(^10\) In discussing Lincoln's return to his law practice after his term in Congress, Faulkner states, "Retiring from politics, Lincoln soon became a leader of the Illinois bar, where he was engaged in an important and lucrative practice when the Kansas-Nebraska Act stirred him again to take an active part in the politics of his state. He was slow, easy going, and lethargic by nature, but his fine intellect could be stirred under pressure to great activity. Neither his honesty, nor his ability could be questioned. Of the shystering trickery so common in law courts Lincoln was amazingly free, and he was known to be a man who would not accept a case unless he was convinced his client was in the right."\(^11\) These facts seem to be essentially correct, but they do not cover accurately the extent of Lincoln's practice. The text does not relate his work for the Illinois Central Railroad, the Rock Island Railroad, the Bank of Illinois, or the Governor of Illinois, nor does it credit him with defending a client whose cause was less than right. Un-

\(^9\)Current et al., p. 357.


\(^11\)Ibid., p. 401.
less a full account of Lincoln's Springfield years is given, one strains to understand his importance in later years in light of his insignificance in earlier years.

The American Pageant by Thomas Bailey is a secondary school textbook which follows the pattern set by the college textbooks in neglecting Lincoln's legal career. Bailey states that "Lincoln's private and professional life was not noteworthy." Later on he proclaims, "After reading a little law, he gradually emerged as one of the dozen or so better known trial lawyers in Illinois, although still accustomed to carrying important papers in his stovepipe hat." The image of Lincoln depicted by these statements is that of an eccentric small-town lawyer who is magically transformed into a winning advocate. The statements do not credit Lincoln with going through a tedious process of studying and learning law to become that successful attorney.

The American Achievement by Richard Brown, William Lang, and Mary Wheeler is another high school textbook which misinterprets the significance of Lincoln before 1858. The authors intimate that Lincoln was an uninfluential politician known only for his honesty. In discussing the Lincoln-Douglas debates, the authors say, "Lincoln at the time was not well known, but he boldly challenged his opponent to a series of debates." In describing the Freeport incident, they say, "Thus, Lincoln,

13 Ibid., p. 430.
14 Ibid.
16 Ibid., p. 303.
who had split rails in his youth, forced Douglas to make a statement that would split the Democratic party in 1860." The emphasis here is on Lincoln the frontier boy, who between 1858 and 1860, had a phenomenal rise from obscurity. One could reasonably infer that before the debates, Lincoln was an average country boy who possessed, but did not use, an unusual degree of intelligence. In this book as well, one strains to understand Lincoln's rise to the presidency.

History: U.S.A. by Jack Allen and John Betts is also a textbook which emphasizes Lincoln's unique character rather than his extraordinary ability. These authors describe Lincoln: "Lincoln usually walked to the meeting place wearing a rusty, high topped hat, an ill-fitting coat with sleeves too short for his long arms, and baggy trousers so short they revealed his dusty boots." This description is interesting, but peripheral to understanding his prominence in Illinois. Also peripheral is the statement that, "Abraham Lincoln, a successful Springfield, Illinois, attorney, was well known across the state for his staunch opposition to the extension of slavery." It is more likely that he was known for his legal work than for his views on slavery in his earlier years. Nevertheless, there is no mention in the book of Lincoln's legal work for corporations and other prominent interests. In relating the debates, the book makes the judgment that "these debates transformed the 'prairie railsplitter' into a nationally known political figure."

17 Brown et al., p. 303.
19 Ibid., p. 277.
20 Ibid., pp. 276-77.
21 Ibid., p. 277.
Here again Lincoln is pictured in the late 1850's as though it were the early 1830's and as if he came from the shadows to be in the national spotlight. This impression severely distorts any interpretation of his development.

American History for Today by Margaret Branson is the final high school textbook to be discussed which ignores Abe Lincoln's legal skills. Branson states, "Lincoln did not make a very good appearance. Lincoln stood six feet four inches tall. His long arms and big hands hung down from a coat that looked as though it had been made for his opponent. That opponent was Stephen A. Douglas, the 'Little Giant,' who stood only about five feet tall." No mention is made of Lincoln's ever having been a lawyer, let alone a good lawyer. It can hardly be true that Lincoln's appearance merits more attention than his legal career; yet she and the other authors I have quoted seem to believe that it does. That belief seems to be common and helps to explain the misinformation on Lincoln's development during his "prairie years".

As these eight texts I have studied are all relatively new, it might be fruitful to examine some older textbooks. It is when comparing the new texts to the old texts that something positive can be said for modern scholarship. While most of the newer texts at least admit that Lincoln was an attorney, some even that he was successful, most of the older books eliminate any reference to Lincoln the lawyer. This finding is especially important when it is realized that the present dominant generation studied textbooks like these latter ones. It is for that reason that I have studied the following older historical textbooks.

23 Ibid., p. 238.
The Making of a Civilization by Charles and Mary Beard contains the assertion about Lincoln that, "He was a man of the soil, the son of poor frontier parents, a pioneer who in his youth had labored in the field and forest, celebrated far and wide as 'Honest Abe, the rail-splitter.'"

In addition to being of dubious historical accuracy, this observation includes no reference to Lincoln's legal career. Indeed, none can be found in the entire book. An image is presented of a farmer, a common man like any other, who achieved the Horatio Alger dream of success. It is an overly emphatic attempt to bring Lincoln down to a level where the simplest of men can identify with him; an astounding attempt for historians with the stature of the Beards. In fact, most people could not identify with the reality of Lincoln since that reality is of an influential, powerful, and prominent Illinois lawyer and politician.

School History of the American People by Charles Robbins is another older text which has no reference to Lincoln's legal career. Robbins sees fit in describing Lincoln to say, "Lincoln was tall and perhaps unseemly; unassuming, he was a man of the people, in whom great shrewdness was combined with an uncommon degree of integrity." Robbins, just as the Beards, thought it necessary to describe Lincoln as a man of the people to the elimination of any discussion of the importance of his legal work. With such a void, it is small wonder the mythical Lincoln is a bundle of contradictions.

26 Ibid., p. 310.
America, Our Country by Smith Burnham and Theodore Jack is another older text which fits the mold of the previous books. While treating the Lincoln-Douglas debates the authors proclaim, "It has been said of Lincoln 'that he did not seek to say merely the thing which was best for the day's debate, but the thing which would stand the test of time and square itself with eternal justice.'" Not only do the authors fail to mention that Lincoln was a lawyer, but they attempt to idealize a man whom many scholars have found opportunistic. Once again, failure to understand or relate the realities of Lincoln's law practice has confused the reality of the man as well for those who think he was an opportunist as for those who think he was an idealist.

History of the United States by William Mace and Frank Bogardus is the only older textbook I found which credits Lincoln with being a lawyer. The pair state: "Lincoln studied law in his spare moments and was elected to the state legislature." Later they write of the Lincoln-Douglas debates that "Lincoln began them as one of the most prominent lawyers in Illinois and ended them with a national reputation." While they are correct in their assertion about Lincoln's legal prominence, they are misleading in the implications they draw from those statements. Those implications

---

28 Ibid., p. 354.
31 Ibid., p. 407.
32 Ibid., p. 410.
are that Lincoln was a reluctant hero who was less than assiduous in his study of law, who was more passive than active in his politics, and who burst upon the national scene with explosive drama. Once more, Lincoln is presented as a man with popular appeal, but not much more—a picture that does not bear close scrutiny.

The popular conception of Lincoln cannot be studied solely from textbooks. To correct that shortcoming, I have studied four books which are aimed at the general reading public rather than a group of students. Alonzo Rothschild's *Honest Abe* is a book of that category which does a great injustice to Lincoln the lawyer. Rothschild attempts to interpret the early life of Lincoln as one of unending pursuit of righteousness, justice, and honesty. Rothschild makes much of the fact that Lincoln immediately divided fees between his partners and himself as though that practice was strictly a matter of Lincoln's conscience rather than simply a matter of convenience. Rothschild also concludes "that Lincoln was utterly incapable of deceiving others and that he never resorted to the meanest of pettifogging," when in fact he did do both.

Rothschild's interpretation gives one the impression that Abraham Lincoln was a lawyer who would take only those cases of which his conscience clearly approved and who could only make pleas which were straightforward, simple, and "right". That interpretation also implies that in every statement, plea, paper, speech, and case that Lincoln was involved

---


34 Ibid., p. 46.


with there is to be found a principle of righteousness, justice, and honesty. None of these implications is supported by an examination of Lincoln's court cases.

Roy Basler's *The Lincoln Legend* is another book which does not contain a study of Lincoln the lawyer. This is an important omission because the book attempts to analyze how biographers, poets, playwrights, journalists, and eulogists have contributed to the establishment of the Lincoln legend. One of the most important aspects of the Abe Lincoln legend should concern his legal career, yet a study or examination of that subject is neglected in Basler's book. Since legend is often confused with fact and since the Basler book omits a crucial part of the Lincoln legend, the widespread ignorance about the realities of Lincoln's law practice is not eliminated by Basler's study of the legend.

*Life Magazine's History of the United States* is another book which can be considered popular in appeal. The book is not inaccurate in the facts it lays before its readers, but it does overemphasize Lincoln's lifestyle and personality. It states: "On April 15, 1837, a gawky lawyer, riding a borrowed horse with all his belongings in two saddlebags, arrived in Springfield, Illinois to open a law office. In the Springfield years, Lincoln pioneered as a corporation lawyer for the new railroads and canal companies, making fees of up to $5,000. He also practiced in small town courts ranging the countryside in his buggy with his legal papers tucked into his frayed silk hat. He met and charmed people all

---


over the state. . . ." Clearly, this passage places as much emphasis on Lincoln's personal quaintness as his legal skill. This emphasis on his awkward appearance, his sense of humor, and his charisma rather than on his technical ability and debating skill implies that he was a lawyer successful because of his quaintness rather than his legal skills—a misleading implication.

Compton's Encyclopedia (1975), likewise gives the popular picture of Lincoln as a country lawyer. The encyclopedia tells us: "He missed his family but loved the easy comradeship of fellow lawyers staying in country inns and delighted in the sharp give and take in court. Wherever he went he could make the jury and the courtroom weep or slap their sides with laughter. Even more important to his success was his reputation for honesty." It is misleading to place more value on Lincoln's honesty than on his knowledge of law in weighing his success as a lawyer. Compton's Encyclopedia refers to Lincoln's corporate law practice as if it were a mere sideline to his major legal work saying, "During this period he successfully handled important cases for the Rock Island Railroad and the Illinois Central Railroad. His most famous case, perhaps, was his victorious defense of 'Duff' Armstrong, who was accused of murder." To call the defense of "Duff" Armstrong Lincoln's most famous case is to confuse courtroom performance with legal skill and to downgrade Lincoln as a lawyer. Thus, even with the essential facts correctly stated, it is still possible to misjudge the qualities which made Lincoln's legal career notable.

39 The Life History of the United States, 4:100.
41 Ibid., p. 284c.
42 Ibid.
The images of Lincoln the lawyer emerging from these popular readings are two. The first is that of a man who had a meteoric rise from local popularity to national fame without any intervening experience in the law. The second image concedes Lincoln's law career, but insists that he was a small-town lawyer who used wit, charm, persuasive oration, a devotion to fairness, and a reputation for honesty to win his cases. The fault with both these images is that they overlook Lincoln's technical knowledge of law, do not credit him with being an excellent jury lawyer, and ignore his ability as a cross-examiner. To miss these essential elements of his law career is to take away from him qualities which most lawyers agree are basic to greatness as a lawyer. To take away from Lincoln those characteristics of professionalism is to strip him from the front ranks of the Illinois bar—a position he is surely entitled to occupy. These popular images of Lincoln as a lawyer, if the authors I have referred to are taken as typical, is sharply different from the conception of Lincoln which emerges from a study of his legal career.

The best criteria for judging Abraham Lincoln's abilities as a lawyer are the precedent-setting legislation he was involved with, the number of cases he was involved with at the appellate level, and the identity of those who retained his services. Lincoln was involved with an extraordinary number of important cases in Illinois law, he was connected with 243 cases appealed to the Illinois supreme court, and his clients included the Illinois Central Railroad; the Rock Island Railroad; the

St. Louis, Alton, and Chicago Railroad; the Alton and Sangamon Railroad; the Bank of Illinois; the Bank of Indiana; the Bank of Missouri; the North American Insurance Company; the Columbus Insurance Company; the City of Springfield; the City of Chicago; the St. Louis merchants, S. C. Davis and Company; the St. Louis financiers, Page and Bacon; Illinois Governor William H. Bissell; and Daniel Webster. The list of clients makes it obvious that Lincoln was retained not just by individuals who were engaged by his personality, but by corporations which were confident of his ability. It is for these corporations and prominent individuals that Lincoln did his most important legal work.

One of Lincoln's most notable early cases, Bailey v. Cromwell (1841), involved a business, though not corporate, interest. It was Lincoln's first legal connection with the slavery question. Cromwell had sold a slave girl named Nance to Bailey and in consideration thereof, received a promissory note from Bailey. Cromwell told Bailey that he would provide a document showing Nance to be an indentured servant, but Cromwell failed to deliver the document. When the note came due, Bailey refused to pay it; therefore, Cromwell sued to enforce payment of the note and won a judgment for $431.97. Lincoln, representing Bailey, appealed to the Illinois state supreme court. There Lincoln advanced the argument that Nance was a person under the laws of Illinois, not property as under the laws of Kentucky. Therefore, Bailey received no consideration for his note since Illinois was a free state where it was illegal to sell a

---

45 Duff, p. 86.
46 Woldman, pp. 56-57.
47 Duff, p. 86.
person. Having received no consideration for his note, Bailey's contract with Cromwell was null and void. The high court adopted this argument in toto, and Lincoln won his first case involving slavery. That this case was not unimportant is evidenced by the fact that the decision has been cited eighteen times by other courts in their decisions. Lincoln won the case not with emotional appeals about the horrors of slavery, but with the purely legal argument that an enforceable contract always involved two-way consideration, which this contract could not legally have in Illinois.

Lincoln was also retained by business interests in Webster and Huntington v. French et al. (1850). The case was important in shaping laws regulating bidding for public property by private interests. The Illinois state legislature had authorized the governor to sell certain state property in Quincy, Illinois, to the highest bidder. The property was advertised according to the new law and sealed bids were accepted until 1 July 1849. After opening the sealed bids the highest specific bid was found to be $21,100 from Webster and Huntington; however, two bidders had sought to circumvent traditional bidding, one by offering to pay $500 above the highest bid and another by offering $601 above the highest bid. The governor awarded the house to French et al., who had offered $601 above the highest bid. Lincoln was retained by Huntington and Webster, whose bid was the highest specific bid, to have a court deliver the Quincy property to them. In Sangamon circuit court, Judge David Davis ruled against the plaintiffs; whereupon Lincoln appealed to

---

48 Duff, p. 86.
49 Hill, p. 118.
50 Illinois Supreme Court Reports, vol. 11, p. 254.
the Illinois supreme court. Lincoln argued before that court that such a bid was "a gambling business--a stock jobbing transaction--an evasion of the law, and a total subversion of the manifest intention of the legislature." He then cited twelve authorities for his position. The combination of convincing logic and citation of precedent convinced the court, for the lower court was overruled and the property was awarded to Lincoln's clients. Lincoln here helped set a precedent for the strict interpretation of bidding laws--a notable development in the laws of the Old Northwest.

One of the first important corporate cases Lincoln argued was Columbus Insurance Company v. Curtenius et al. (1851). The case involved the right of a railroad to construct a bridge over a river, thereby obstructing navigation, but extending the railroad. Lincoln's client, the Columbus Insurance Company, paid a claim to its policyholder because the policyholder had hit a railroad bridge pier while piloting his boat on the Illinois River; thereafter, the company retained Lincoln to bring a suit against the builders of the bridge for the cost of the claim. Lincoln pleaded the common law rule that provided for the ever clear navigation of a stream and he argued that such a bridge was a very unreasonable obstruction. Lincoln was defeated in this case by the facts, but the broader question raised by Lincoln was adopted by the court. The decision negated any right of the legislature

51 Duff, p. 256.  
52 Illinois Supreme Court Reports, vol. 11, p. 257.  
53 Ibid., pp. 256-57.  
54 Ibid., p. 279.  
55 McLean's Reports, vol. 6, p. 209.
to authorize obstruction of any navigable river. Lincoln was beaten only in that the court decided the bridge was not an unreasonable ob-

struction, that being decided by testimony on trial. It is interest-
ing that in this case Lincoln opposed the railroad interests, while in
the later, more memorable, Hurd v. Rock Island Bridge Company case,
Lincoln represented the railroad interests. Nevertheless, the Columbus
Insurance Company case shows that Lincoln was retained early in his ca-

reer by corporations seeking damages in cases involving sophisticated
law, not just by people trying to resolve frontier problems.

An even more important case in the history of corporate law (cited
eleven times in subsequent decisions by the Illinois supreme court) is

Banet v. The Alton and Sangamon Railroad (1852). Lincoln was retained
by the railroad to seek enforcement of a stock subscription by Banet.
Banet owned 4,215 acres of land in an area through which the proposed
railroad would pass. He subscribed to thirty shares of stock in the
railroad at $100 per share, indebted him to the Alton and Sangamon Rail-
road for $3,000. An act of the legislature removed the proposed route
from Banet's property to shorten the road twelve miles, however. Banet
then refused to meet his commitment; whereupon, the railroad retained
Lincoln to bring suit. The verdict was for the railroad, and Banet was
ordered to pay for his stock subscription. Banet appealed to the Illi-

inois supreme court alleging that the change in route was a material al-
teration in the contract for stock and therefore voided the contract.

56 Springfield Illinois State Register, 27 January 1852.
57 Ibid.
58 Illinois Supreme Court Reports, vol. 13, p. 504.
59 Ibid., p. 509.
The high court disagreed. It adopted Lincoln's reasoning that "the location of a public road, does not, in contemplation of law, enter into the consideration of the contract of subscription to the stock of the corporation, and that such subscriptions are made subject to the power of the legislature to change the location of the road..." The court further found that the calls to enforce the contract were made pursuant to that contract; therefore, the court affirmed the judgment of the lower court. The impact of the decision, which prohibited consideration of personal reasons in enforcing a stock subscription, further solidified the corporate position in law by making stock subscriptions enforceable contracts.

In 1853, Lincoln argued another case before the Illinois supreme court for the Alton and Sangamon Railroad, this time as appellant rather than appellee. The case was the Alton and Sangamon Railroad v. William Carpenter and it also was important in its impact. Lincoln lost the case in the Sangamon circuit court and appealed to the Illinois supreme court. The case involved assessing damages to land owned by Carpenter but taken by the railroad under the doctrine of eminent domain. The damages were assessed at $325.96 largely because a special instruction to the jury asked for by Lincoln was not given by the judge. The instruction Lincoln asked the judge to give to the jury required the jury to consider: "That in estimating the damage done to the land by the construction

---

60 Illinois Supreme Court Reports, vol. 13, pp. 509-10.
61 Ibid., p. 514.
63 Ibid.
of the railroad, they are to deduct the advantage which they believe the land will derive from its construction; and, in estimating such advantages, they are not to be confined to the advantages peculiar to this tract of land, but they are to consider as such advantage whatever increased value they may believe the land bears in common with other land beyond what they may believe it would bear if the road was not constructed, nor to be constructed at all; and that if in their opinion, such increased value is equal to, or greater than the damage done, they are to give no damage at all." The Illinois supreme court found that the instruction should have been given and for that reason, reversed judgment. The case was not that difficult in law for the railroad incorporation charter referred to an act of the legislature which provided for much the same way of assessing damages to land taken by a public road. Thus, the foundation for the decision was already furnished by the legislature, but Lincoln had to show that the action was properly guided by that law. The important point is that Lincoln again had a hand in guiding the development of law friendly to corporate expansion. The decision helped free the railroads to expand by not encumbering them with damage suits every time they extended their lines.

Perhaps the most important case Lincoln ever argued was the Illinois Central Railroad v. The County of McLean (1855). The case is one of forty cases which Lincoln argued for the Illinois Central Railroad.

64 Illinois Supreme Court Reports, vol. 14, pp. 189-90.
65 Ibid., p. 192.
66 Ibid., p. 190.
67 Illinois Supreme Court Reports, vol. 17, p. 291.
It is also the case which probably most accurately shows Lincoln's abilities as a lawyer. The question involved was whether the Illinois legislature had the power to make exceptions to the uniformity of taxation rule, thereby eliminating any power of separate counties to tax the railroad. At first glance that question seems unimportant, but an examination of the issue shows otherwise.

In 1850, the United States government ceded 2,500,000 acres of land to Illinois with the proviso that the proceeds from the sale of that land would be applied to the construction of a railroad. A group of Eastern capitalists subsequently organized and incorporated the Illinois Central Railroad. The State of Illinois provided in the charter for the railroad that it would be free from all taxation on the condition that it paid 5 percent of its yearly gross revenue to the state treasury for six years, and 7 percent thereafter. The corporation agreed to these terms and by 1853 it had completed the first section of road from Lasalle in Lasalle County to Bloomington in McLean County. The McLean County authorities quickly levied a tax on the company's property in that county, claiming that the legislature did not have the power to exempt the railroad from county taxes. Lincoln was retained by the Illinois Central upon his own request to fight the suit.69 Also appearing for the railroad were Mason Brayman, solicitor for the railroad, and James F. Joy, general counsel for the railroad. Opposing counsel consisted of Stephen Logan and John P. Stuart, former partners of Lincoln, and Benjamin Edwards, partner of Stuart. The case was dismissed pro forma in the McLean County Court and appealed to the Illinois supreme court.70 Lincoln contended

69 Jaff, p. 313.
70 Ibid., p. 314.
that the legislature did have the power to make exceptions to the rule of uniformity in taxation and to commute the general tax rate on property to a fixed or proportionate sum of the exempted taxpayer's earnings. The case was very difficult, but if the tax had been allowed, it would have permitted all counties to tax the railroad property in that county, resulting in several hundred thousand dollars in taxes.\footnote{Duff, p. 315.} Lincoln argued that this should not happen as it would stem the growth of the railroads, thereby stunting future development. He then found authorities in law to support his contention.\footnote{Illinois Supreme Court Reports, vol. 17, p. 295.} After hearing the case argued twice, Chief Justice Scales, citing many precedents including Pennsylvania and Massachusetts decisions which upheld railroad tax exemptions, handed down an opinion which upheld Lincoln's contention.\footnote{Ibid., p. 297.} Lincoln's argumentation in this monumental case shows that he was among the main shapers of Illinois corporation law, not just a country hick lawyer.

If the McLean tax case is not Lincoln's most important case, then \textit{Durk v. Rock Island Bridge Company} (1857) probably is. More popularly known as the \textit{Effie Afton} case, it settled the issue of building railroad bridges across the Mississippi River which obstructed free navigation on the river. The outcome of the case, which was to allow such obstruction, was contrary to the common law doctrine on navigable waters, and helped to open the trans-Mississippi frontier to settlement since it removed a barrier to East-West migration. Lincoln's argumentation of this landmark case should be particularly valuable in understanding his abilities as a lawyer.
Lincoln's most valuable remarks are found in his closing statement to the jury. He conceded, "St. Louis as a commercial place, may desire that this bridge should not stand, as it is adverse to her commerce, diverting a portion of it from the river..." But he goes on to propose "there is a travel from East to West, whose demands are not less important than that of the river. It is growing larger and larger, building up new countries with a rapidity never before seen in the history of the world." By asserting that this "current of travel" had its rights, Lincoln argued the right to construct a bridge over the river, as long as it was not a material obstruction to navigation, was as basic a right as free navigation on the river. He proceeded to dismantle methodically his opponents' argument that the bridge was an unreasonable obstruction by using deadly logic and facts to prove that the pilots had acted unreasonably and irresponsibly toward the bridge. Thus, alongside the argument that the bridge had its rights to exist, Lincoln placed the argument that it could be avoided with reasonable skill and care. Those two arguments must have had some credence for the trial ended in a hung jury--nine to three for Lincoln's clients with no possibility of agreement. The matter was thereafter settled by the United States Supreme Court.

The importance of this case for Lincoln is twofold. First, it showed his ability to state a question of law clearly and concisely and drive

---

75 Ibid.
76 Ibid.
78 Goldman, p. 173.
toward it logically. Second, it showed the remarkable preparation Lincoln could make by having not only a firm grasp of the facts surrounding a case, but also a mastery of the laws pertinent to it. These are two characteristics that elevate Lincoln's stature as a lawyer to a high level.

The Illinois Central Railroad v. Morrison and Crabtree (1858) is another case which decided a very important issue in the laws of the Old Northwest.\(^7^9\) The case concerned the right of a common carrier to restrict its liability by contract. Morrison and Crabtree contracted with the Illinois Central to transport four hundred cattle from Urbana to Chicago. The contract further provided that the Illinois Central would provide the transportation at a reduced rate, in consideration of which Morrison et al. released the railroad from liability against loss due to all but gross negligence by the company's agents. While the cattle were en route from Urbana to Chicago, a locomotive malfunction resulted in a delay of the train which caused an abnormal weight loss in the cattle. Morrison and Crabtree sued to recover the dollar loss resulting from the large decrease in the cattle's weight, in spite of the liability release. The lower court found for Morrison in the amount of $1,200.\(^8^0\) Illinois Central announced its intention to appeal and retained Lincoln. In the Illinois supreme court, the railroad won.\(^8^1\) Lincoln's argument was one which conceded the common law rule of liability of common carriers, but argued for a new breadth in law to protect an infant corporation from ruin. The court, in reversing the judgment for Morrison, adopted Lincoln's reasoning, saying, "Transportation of livestock in railroad cars, in their

---

\(^7^9\) *Illinois Supreme Court Reports*, vol. 19, p. 136.

\(^8^0\) Duff, p. 266.

\(^8^1\) *Illinois Supreme Court Reports*, vol. 19, p. 14.
motion, is attended with great hazard, against which, if the companies
owning them had no power of protection, irretrievable ruin to them might
be the necessary consequence." The court stated later that "the defen-
dants have paid a valuable consideration for the risks assumed by the
plaintiffs, by accepting reduced rates, and the plaintiffs have had the
full benefit of the reduction." That the decision was important is
affirmed by the fact that other courts, including the United States
Supreme Court, have cited the decision as a precedent to their own. It
is another case to add to the list of precedent-setting litigation
with which Lincoln was involved.

Lincoln did not represent only the railroads, however. In the
People ex rel. Lanphier and Jalker v. Hatch (1859), Lincoln represented
the Governor of Illinois, William H. Bissell, on the part of Hatch,
Bissell's Secretary of State. Bissell retained Lincoln to defend
against a writ of mandamus for a bill in the Secretary of State's office.
A reapportionment bill passed by the legislature had come to the govern-
or's office and had been mistakenly signed by him. Later, the bill
still being in his possession, the governor realized his mistake, vetoed
it, wrote his recommendations on it, and sent it to the Secretary of
State. Two members of the legislature then sought a court order to have
the bill recognized as law since the governor had signed it. Lincoln
argued that since the bill had never left the governor's office, since
he never intended to sign it, and since he had the same right to remedy

82 Illinois Supreme Court Reports, vol. 19, p. 139.
83 Ibid., p. 141.
84 Duff, p. 267.
85 Illinois Supreme Court Reports, vol. 19, p. 283.
a mistake as any other official, the veto was legal. Lincoln's rationale was entirely adopted by the court in upholding the governor's veto. The Illinois supreme court decision, giving the governor the right to correct a mistaken action and validating a bill only after the final action is taken upon it, was a very important precedent for governors. The veto case is another case in which Lincoln used former cases and current laws to make authoritative an argument already reasoned through to a conclusion compatible with his client's interest.

Lincoln did not spend all of his time defending the powerful, however. In St. Louis, Alton, and Chicago Railroad v. Joseph Dalby (1858), Lincoln represented Dalby who sued the railroad for assault and battery because of the actions of its employees. Dalby attempted to buy a ticket at the train station which was cheaper than buying a ticket on the train. Dalby found that the station office was out of tickets. In lieu thereof, the station agent gave a signed note to Dalby which Dalby was to show to the conductor on the train to get the cheaper rate. This Dalby did, but the conductor insisted upon collecting the full amount. When Dalby refused to pay the higher rate, the train conductor and the brakeman tried to eject Dalby and his wife forcibly from the train, and in doing so inflicted "ten or a dozen licks" on Dalby's face. Dalby successfully resisted the pair's efforts to remove him from the train and subsequently he brought suit in Logan circuit court to collect damages from the company. Lincoln was not involved with the case at the circuit court where Dalby won a judgment for $1,000, but became involved with it

36 Illinois Supreme Court Reports, vol. 19, p. 286.
37 Illinois Supreme Court Reports, vol. '9, p. 353.
at the appellate level.\textsuperscript{88} The important questions were two: Can an action of assault lie against a corporation and did the agents show negligence in using excessive force? The railroad contended that an action of assault could not be charged against a corporation, and that the agents acted outside their official capacity in beating Dalby. Lincoln argued that an action of assault could be brought against a corporation, and, using Herndon's research, cited cases and law to support that contention.\textsuperscript{89} Lincoln also argued that the agents were given discretion by the company to exercise authority; therefore, the company was responsible. Again Lincoln cited precedents. The court decided that an action could be taken against a corporation, that the agents were acting within their official capacities, and that they did not reasonably discharge their duties; therefore, the company was ordered to compensate Dalby.\textsuperscript{90} The victory was a notable one by Lincoln for the consumer as it made the corporation responsible for the acts of its duly authorized agents; otherwise no responsibility was attached to either the agents or the company. The case set another important precedent in laws of corporate responsibility in Illinois.

Lincoln's last major case was Johnston v. Jones and Marsh (1860) tried in U. S. District Court for Northern Illinois which was seated in Chicago.\textsuperscript{91} The case is relevant because ownership to land worth half a million dollars on the Lake Michigan shore north of Chicago was at stake.\textsuperscript{92} Lincoln's role in this case is especially important as he was retained by

\textsuperscript{88}Duff, pp. 268-70.
\textsuperscript{89}Ibid., p. 270.
\textsuperscript{90}Illinois Supreme Court Reports, vol. 19, pp. 374-75.
\textsuperscript{91}Duff, pp. 241, 242.
\textsuperscript{92}Chicago Tribune, 5 April 1860.
Jones and Marsh to defend their title to that piece of land. The fact that someone in Chicago would desire to retain Lincoln in a case involving such valued land is strong evidence that Lincoln was a highly regarded lawyer throughout Illinois, not just Springfield. Furthermore, the Chicago Tribune, 5 April 1860, in writing about the case called Lincoln and the other attorneys engaged in the suit, "a distinguished array of counsel." The newspaper also called the case, "one of the most notable trials in the annals of our courts." Such praise should not be dismissed lightly in a study of Lincoln the lawyer.

Lincoln did argue cases in which there was no business interest. Such a case was Browning v. City of Springfield (1556). The case was an action of negligence brought by Lincoln for Browning against the City of Springfield for injuries sustained by Browning in a fall caused by an unrepaired city street. Judge David Davis dismissed the case from the Sangamon circuit court, and Lincoln appealed to the Illinois supreme court. Lincoln argued that it was the statutory duty, under terms of its public charter, for Springfield to keep its streets in repair. Again the court accepted Lincoln's argument. Chief Justice Scottas writing, "Where a specific duty to repair is fully and completely enjoined, and full and adequate powers are provided . . . the obligation is perfect." The decision set an important trend in judicial interpretation of municipal law, so important that today such decisions are commonplace. But in 1856, much direction

---

93 Chicago Tribune, 5 April 1860.
94 Ibid.
95 Illinois Supreme Court Reports, vol. 17, p. 143.
96 Duff, p. 261.
97 Illinois Supreme Court Reports, vol. 17, p. 146.
from lawyers and courts was needed to interpret the law. It is to Lincoln's credit that he was one of those lawyers in Illinois who helped provide that direction and who used his reasoning to shape the application of law. It is further evidence of his stature at the Illinois bar.

More proof of Lincoln's high legal reputation in Illinois can be provided by examining his partnerships and his coverage in the central Illinois press. Lincoln's first partnership was with Major John T. Stuart, whom Lincoln had met in the Black Hawk War and who, as much as anyone, coaxed Lincoln to become a lawyer.\(^98\) The partnership was perfect for Lincoln because the firm was then the busiest in Springfield and because Stuart was soon to be elected to Congress, leaving the whole business to Lincoln to attend to.\(^99\) The combination of a great variety of cases and complete responsibility was good preparation and aided the genesis of Lincoln the lawyer immeasurably in those impressionable first years.

Lincoln's next partnership was with Judge Stephen T. Logan, former judge for the Eighth Judicial Circuit of Illinois.\(^100\) Logan in 1841 had a lucrative practice, a large number of clients, an influential position at the bar, and a reputation as one of the best lawyers in the state.\(^101\) That being the case, Logan probably could have selected anyone from the Illinois bar to be his partner; since he selected Lincoln, that furnishes some measure of Logan's respect for Lincoln's ability. Since four United States senators, three governors, one president, and several distinguished attorneys have come out of Logan's legal partnerships, that furnishes us

\(^98\) Juff, pp. 35-36.
\(^99\) Ibid., pp. 36, 43.
\(^100\) Goldman, p. 36.
\(^101\) Hill, pp. 113-14.
with a reason to respect Logan's belief in Lincoln's ability. In this partnership, Lincoln developed into an attorney with a true appetite for the law. He started studying the law again to be current, he began preparing his arguments in a case before the trial, and he became versed in defining technical legal problems. Some of Logan's preciseness and thoroughness in knowledge and utilization of the law must have rubbed off onto Lincoln, for these characteristics marked Lincoln's later partnership with Herndon. His next partnership was with William H. Herndon, 1844–1861, and marked the first time Lincoln was a senior member in a law firm. After Lincoln's term in congress, he was offered a partnership with Grant Goodrich who had one of the most prominent firms in Chicago, but he turned it down. Thus, all three of Lincoln's partnership offers were with highly respected attorneys in prestigious law firms, a further testimony to his reputation throughout the state.

Newspaper comments on Lincoln's ability are the final relevant criteria to be studied. The Alton Telegraph and Democratic Review of 21 December 1844, in discussing Lincoln's work in U. S. v. Charles Chapman, says the trial "was conducted with great ability on the part of Justin Butterfield, Esq., the United States District Att'y, and Messrs. Logan and Lincoln on behalf of the prisoner." Then on 28 December 1844, the Telegraph and Democratic Review in discussing the sentencing of Chapman states, "His counsel did everything on Earth that men could do for him; but all was in vain." The trial was in 1844 so that these statements

102 Waldman, p. 37.
104 Hill, p. 161.
105 The Alton Telegraph and Democratic Review, 21 December 1844.
106 The Alton Telegraph and Democratic Review, 28 December 1844.
are high praise for Lincoln's earlier practice and abilities. Later in
Lincoln's career the Illinois State Journal of 3 February 1858 wrote
of the People ex rel. Lanphier and Walker v. Hatch, "The argument of
Mr. Lincoln was a most able and clear exposition of the law, and in the
minds of the many disinterested persons who heard it, completely removed
all doubt as to the validity of the Governor's veto." 107 In discussing
the same case, the Illinois State Journal of 17 February 1858 states,
"The St. Louis Republican's correspondent, at Springfield, speaking of
the argument made by Hon. A. Lincoln, in the apportionment veto case,
before the Supreme Court at its late session, says: 'He made one of the
best arguments he ever made, and, although at the time, we differed with
him in his positions, yet candor compels us to admit that he presented
his case in a strong light and with much force." 108 If these articles
are taken as typical, Lincoln enjoyed much favorable press coverage on
his law cases, indicating how much legal ability his contemporaries found
in his argumentation of cases.

To determine what Abraham Lincoln's legal skills were I have examined
court records, contemporary newspaper accounts, articles in journals, and
books on his legal career. The conclusions I have drawn from these sources
are that Lincoln was one of the most respected attorneys in Illinois by
his peers; perhaps the best jury lawyer; certainly one of the busiest, es-
pecially for corporations; probably the most deadly logical; and one of
the most knowledgeable on laws and precedents. In terms of number, variety,

107 Illinois State Journal, 3 February 1858.
and quality of cases as well as success in winning cases, no one in Illinois surpassed Lincoln and few equalled him. Since many of his peers at the Illinois bar went on to occupy prestigious positions in government, though none as influential as the presidency, it is reasonable to assume that the men he equalled or surpassed in position had a great deal of ability themselves. That being the case, it is unreasonable to suppose that Lincoln was only the quaint devotee of folk justice that he is pictured as having been by so many writers. Rather, he was one of those lawyers who study a case until its every issue is known and resolved and who constantly study the law and precedent to the benefit of their clients. Finally, all of the authors I have read on Lincoln the lawyer conclude that Lincoln was one of the best lawyers in the history of Illinois.

The image of Lincoln emerging from a study of his legal career is very different from the image presented in popular readings. The two images cannot easily be reconciled since the popular conception emphasizes his non-legal qualities while the actual image emphasizes his legal abilities. It is distressing to realize that most people believe the popular conception is the actual man. It is that fact more than any other that produces such confusion about Lincoln. If the real person is what I have studied, then it is essential to examine Lincoln's legal career and its development to understand the man and his development. Without such a study, a void is created which perpetuates misunderstanding of Lincoln. It is widely accepted that Lincoln was a great president; to understand his career it needs to be accepted that he was a great lawyer.

Hill, Woldman, Duff, and Frank all agree that Lincoln won nearly all the cases it was reasonable that he might, the percentage being around 66 percent.

Bibliography

I. Books


Illinois Supreme Court Reports. Cases Argued and Determined Before the Supreme Court of the State of Illinois. Springfield, Illinois, 1837-present.


II. Newspapers

Alton Telegraph and Democratic Review, 21, 28 December 1844.


Chicago Tribune, 5 April 1860.

Illinois State Journal, 3, 17 February 1858.

Springfield Illinois State Register, 27 January 1852.