

Lincoln Love

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“WE’LL GO RIGHT ON PRACTICING LAW”: THE LINCOLN LEGAL PAPERS

By Matthew Noah Vosmeier

In Herndon and Weik’s well-known *Life of Lincoln* (1889), William Herndon, Lincoln’s longtime law partner, reported a conversation he held with Lincoln soon before the president-elect left Springfield for Washington in 1861. After sixteen years in partnership, the two men sat in their office to arrange for Herndon to manage unfinished matters. Then, throwing himself down on the old sofa, Lincoln stared at the ceiling for a time. He began to recall incidents from his early practice, including “the ludicrous features of many a lawsuit on the circuit,” and Herndon reported that he “never saw him in a more cheerful mood.” Then, Lincoln “gathered a bundle of books and papers he wished to

take with him and started to go; but before leaving he made a strange request that the sign-board which swung on its rusty hinges at the foot of the staircase should remain. ‘Let it hang there undisturbed,’ he said, with a significant lowering of his voice. ‘Give our clients to understand that the election of a President makes no change in the firm of Lincoln and Herndon. If I live I’m coming back some time, and then we’ll go right on practicing law as if nothing had ever happened.’ He lingered for a moment as if to take a last look at the old quarters, and then passed through the door into the narrow hallway. I accompanied him downstairs. On the way he spoke of the unpleasant features surrounding the presidential office. ‘I am sick of office-holding already,’ he complained, ‘and I shudder when I think of the tasks that are still ahead.’”

The story ends prophetically and dramatically, with Lincoln confessing an “irrepressible” feeling that “he would



The Lincoln-Herndon law office on Fifth Street, on the West Side of the Square, in Springfield, Illinois, as it appeared in Frank Leslie’s Illustrated Newspaper, December 22, 1860.

not return alive," a thought Herndon considered "an illusory notion." Then, a short time later, the partners shook hands "with a fervent Good-bye," and Lincoln "disappeared down the street," never to return to his law office.¹

Herndon knew much about Lincoln in the years of their acquaintance from 1837 to 1860, but his reminiscences should be viewed with caution, not only because memories can dim over time, but because they can be self-serving. In this story, Herndon could defend the soundness of the partnership against his enemies who were mystified by Lincoln's long professional association with him. Herndon wrote that Lincoln recalled that, in sixteen years, "We've never had a cross word during all that time, have we?" Lincoln also reportedly told of opportunistic lawyers' efforts to convince him to replace Herndon, but "insisted that such men were weak creatures."²

In spite of its less credible parts, the story is appealing because it enables us to imagine a human Lincoln who realized, and was perhaps even slightly reluctant to admit, that an important chapter of his life was ending. Of course, the presidential campaign had changed his daily life considerably. After his nomination in May 1860, he moved into an office in the State House and saw his law partner less regularly. His requests that the office sign remain and that the partnership continue seem, in part, a kind gesture to his partner; nevertheless, Lincoln's farewell before leaving for Washington apparently caused him to pause and reflect on his nearly twenty-four year legal practice and it hints at the importance of his profession in his life.³

Lincoln had spent much of his adult life pursuing both his profession and his "peculiar ambition" for political success. Perhaps he thought that he would eventually rejoin his partner, for it was not the first time he had left Herndon with the practice, though his earlier extended absence lasted for only two years when he sat in Congress from 1847 to 1849. Lincoln's "first love," Mark E. Neely, Jr., explains in his recent biography *The Last Best Hope of Earth* (1993), was politics, which he pursued "before he chose a profession or married" and, of course, his enduring fame is a consequence of his strong presidential leadership. John P. Frank argues in *Lincoln as a Lawyer* (1961) that "Lincoln was an outstandingly able and successful lawyer for his own time and place" but that had he "died in 1860, his epitaph would have been the words of [Lincoln's friend, Judge] David Davis, 'He was a good Circuit Court lawyer.'"⁴

Cullom Davis, director and senior editor of the Lincoln Legal Papers, however, asserts that Lincoln's profession had a greater impact on his life than most historians have been willing to admit. For the almost quarter-century that Lincoln lived in Springfield, he emphasizes, Lincoln spent more time at the law than in politics. For most of his professional life,



President-elect Abraham Lincoln in February 1861, soon before he left Springfield for Washington.

Lincoln lived from four to six months of the year riding the circuit. At the peak of his career in the 1850s, he was one of Illinois' most prominent lawyers, carrying a large caseload in the federal courts in Springfield and Chicago and handling with his partners over 400 cases before the Illinois Supreme Court. By the end of his career, the Lincoln partnerships had handled as many as 5000 cases.⁵

Yet, writes Davis, in spite of all the research that has been done to locate "one or more wellsprings of Lincoln's statesmanship," his law practice is the "only one important topic [that] still lacks adequate detailed analysis as a formative influence on the mature Lincoln." Herndon's biography is full of useful material, but as suggested by the passage quoted above (and evident in other early works, such as Henry C. Whitney's reminiscences in *Life on the Circuit with Lincoln*), much of the information about Lincoln the lawyer is anecdotal. Later literature on his practice, much of it written between the world wars, Davis explains, is "incomplete, unreliable, and inconclusive." In all, a fragmentary record, combined with historians' attraction to the dramatic story of Lincoln the politician (as well as their inability to deal with the esoteric terms and practices of nineteenth-century law), has left a gap in our understanding of Lincoln. That gap was

filled only partly by the works of lawyers John J. Duff (*A. Lincoln: Prairie Lawyer*) and John P. Frank (*Lincoln as a Lawyer*), both published in the early 1960s.⁶

A project is now underway that is working to restore the law practice to a central part in Lincoln's life. *The Lincoln Legal Papers: A Documentary History of the Law Practice of Abraham Lincoln, 1836-1861* is a project of the Illinois Historic Preservation Agency, cosponsored by the Abraham Lincoln Association, the University of Illinois College of Law, and the Sangamon State University Center for Legal Studies. The project's staff is in the midst of an arduous task that involves locating, editing, and eventually publishing the widely scattered documents from Lincoln's quarter-century as a lawyer. Since the project began in earnest in the late 1980s, its estimates of the size of Lincoln's practice have risen considerably, from 3000 to a total of 5000 cases, from 177 to over 300 Illinois Supreme Court cases (plus another 108 involving his partners), and from 75,000 to a total of 100,000 documents. The project's current number of located documents recently reached 75,000.⁷

The edition of Lincoln's legal papers will "fulfill a commitment made by the Abraham Lincoln Association to publish the legal documents." Appearing in 1953, the indispensable and massive multi-volume *Collected Works of Abraham Lincoln* did not include law cases and related documents, but its introduction explained that these would eventually appear in "separate volumes which the Association proposes to publish at a future date."⁸ When published, the *Lincoln Legal Papers* will be offered in two formats. One of the formats is a five-volume letterpress edition, which will include from seventy-five to one hundred of the most representative of Lincoln's cases in common, chancery, and criminal law, in addition to non-litigation matter such as probate and office work. Each case will include an editorial note providing context, a description and analysis, and all relevant documents. As a consequence of technological advances, instead of a microform edition, a second format will be a complete facsimile edition on CD-ROM.⁹

Having a complete, edited, and accessible collection of Lincoln papers available to Lincoln students is a satisfying prospect, but also appealing is hearing of the project's uncovering of long-hidden Lincoln documents. Soon after the appearance of the *Collected Works of Abraham Lincoln*, historian David Donald, in a 1956 preface to *Lincoln Reconsidered* (1956; 1961), took stock of Lincoln and Civil War history and found that substantial scholarship had been published. Lincoln scholars have long been haunted by the question of the exhaustion of the "Lincoln theme." Donald did not think the theme exhausted, but did suggest that students of the middle period would rethink basic issues of Lincoln's era rather than concentrate upon "uncovering

some long-forgotten body of manuscripts." Lincoln research has indeed focused on interpretation, benefiting from changing historiographical trends and an unslacking interest in Lincoln.¹⁰

However, the excitement of finding Lincoln documents perhaps explains the apparent enthusiasm with which the *Lincoln Legal Papers* personnel go about an otherwise tedious and dusty task of collecting the evidence of Lincoln's law practice. Unlike other documentary projects, the staff points out, the 100,000 items that will make up the *Lincoln Legal Papers* are widely dispersed in a number of institutional and private collections. For several years, the staff has been engaged in a search of seventy-two county courthouses in Illinois, where they estimate that perhaps 75 percent of the number of documents they will publish are housed. Even here, the staff notes, "Whether well maintained or not, these records are interfiled in all of those facilities with millions of unrelated documents. Think of each courthouse as a large haystack containing scattered needles, or Lincoln Legal records."¹¹

Researchers, working in teams of three or more for several months at a time, must search through court dockets and case files, though they work from lists of known Lincoln cases. Their task offers rather close encounters with the past. In one newspaper account, William Beard, assistant editor for the project, noted that "When clerks used to finish writing out a page in a docket book, they'd blot the ink with sand, then blow off the excess" so that "When you come out of here after a full day, you have to blow the sand out of your pants."¹² In July 1991, when researchers Dennis Suttles, Susan Krause, and John Lupton searched the Macoupin County Courthouse in Carlinville and discovered a long forty-three page document in Lincoln's handwriting, Susan Krause is reported as noting that her heart "skipped a beat" as she unfolded it for the first time in perhaps 135 years.¹³ Several months earlier, researcher Mike Bonansinga was at the Morgan County Courthouse in Jacksonville. According to Krause, he hummed while he worked, and then, recognizing a Lincoln document, "the pitch of his hum changed slightly." The project's annual report summed up the feeling as "the near-mystical sense of making one last swing around Lincoln's circuit."¹⁴

Although there are reminiscences and anecdotes of the convivial life on the circuit, little is known about Lincoln the lawyer or antebellum western legal practice. Without stenographers below the appellate level to recount Lincoln's behavior in the courtroom, and because the legal documents (created in the context of nineteenth-century legal practice) only "yield information grudgingly," writes Mark E. Neely, Jr., Lincoln's professional life has remained "surprisingly inaccessible." Cullom Davis writes that "it will be several years before anyone can authoritatively appraise Lincoln the

lawyer," but the Lincoln Legal Papers project's goal is to provide historians with the necessary sources to do so. As documents from county courthouses and elsewhere have been uncovered and interpreted, the project staff gains insight into Lincoln's legal techniques in a variety of cases. Several years ago, the project's wide-ranging search turned up a particularly important find, a one-hundred page transcript of the 1859 trial of Peachy Quinn Harrison for the murder of Greek Crafton—in which Lincoln defended Harrison with the aid of Harrison's grandfather, Peter Cartwright, the well-known circuit-riding Methodist minister and Lincoln's 1846 political opponent for Congress. The case provides a rare window into Lincoln's courtroom skills. Although such a trial makes for exciting reading, Lincoln was not primarily a criminal lawyer. Recently the project analyzed 20,000 legal documents in its database and found that 67 percent of his cases were in common law (such as bankruptcy, appeals, breach of contract, trespass, and slander), 25 percent in chancery (such as divorces and estate settlement), and only 8 percent in criminal law.¹⁵

The work of the Lincoln Legal Papers project is bringing the lesser-known half of Lincoln's life out of the forgotten past. Refocusing interest on Lincoln's practice adds depth to our understanding of the developing western politician of the 1850s. For instance, the sample of cases indicated that the Lincoln's busiest years on the circuit were between 1852 and 1859. Historians have long noted that the year 1854, when Lincoln was "thunderstruck" by the passage of the Kansas-Nebraska Act, marked his reentry into politics, but the years following this event were also filled with legal work. In his research on the "symbiosis of law and politics" in Lincoln's life, Cullom Davis explains that the years of "virtual political exile" between 1849 and 1854 were crucial ones, in which Lincoln gained railroad developers as clients and rose in the ranks of Illinois lawyers. Although Lincoln was increasingly involved in Illinois politics after 1854, Davis argues that it was not until the "watershed" year 1858 that Lincoln turned from the "predominance of law in his work to the predominance of politics"; and even then, he spent the year 1859 involved in his practice to make up income after the previous year's senatorial campaign. In sum, Davis argues that Lincoln, "like many of his peers, juggled law and politics so effectively that they nourished and reinforced each other," and he refers to Lincoln as a "political lawyer and a lawyerly politician."¹⁶

Notes

1. William H. Herndon and Jesse W. Weik, *Herndon's Life of Lincoln* (New York, 1942; 1983), pp. 390-391.
2. Mark E. Neely, Jr., *The Abraham Lincoln Encyclopedia* (New York, 1982), pp. 145-147; Herndon, *Life of Lincoln*, pp. 390-391.
3. Neely, *Abraham Lincoln Encyclopedia*, p. 146.
4. Mark E. Neely, Jr., *The Last Best Hope of Earth: Abraham Lincoln and the Promise of America* (Cambridge, Mass., 1993), pp. 9, vii; John P. Frank, *Lincoln as a Lawyer* (Urbana, Ill., 1961), pp. 172-2.
5. Cullom Davis, "Abraham Lincoln, Esq.: The Symbiosis of Law and Politics." Paper presented at the Seventh Annual Lincoln Colloquium, Springfield, Illinois, 24 October 1992, pp. 2-3.
6. Cullom Davis, *Lincoln the Lawyer* [pamphlet] (Springfield, 1990), pp. 1-3; Davis, "Abraham Lincoln, Esq.," p. 2.
7. *The Lincoln Legals: A Documentary History of the Law Practice of Abraham Lincoln, 1836-1861* [pamphlet] (Springfield, n.d.), [pp. 1, 3]; Davis, *Lincoln the Lawyer*, 6; Davis, "Abraham Lincoln, Esq.," p. 3; "The Lincoln Legal Papers Project," in "News From The Abraham Lincoln Association," *Lincoln Lore*, Number 1834, Dec. 1991; Letter to Members of the Abraham Lincoln Association, 24 November 1993.
8. *The Lincoln Legals*, [pp. 1-2]; Roy P. Basler et al., eds., *The Collected Works of Abraham Lincoln* (New Brunswick, New Jersey, 1953), 1, viii-ix.
9. "Book Edition Preview," *Lincoln Legal Briefs: Quarterly Newsletter of the Lincoln Legal Papers*, Number 27, July-Sept 1993, p. 3.
10. David Donald, *Lincoln Reconsidered: Essays on the Civil War Era* (New York, 1961), pp. ix-x.
11. "The Records Search," in *Annual Report, 1992: The Lincoln Legal Papers*, p. 1.
12. *Ibid.*, p. 1; Quoted in Bill Furry, "The Missing Lincoln" *Illinois Times*, 21 March 1991.
13. Herbert Mitgang, "Under the Dust, A New Luster for A. Lincoln, Esq." *New York Times*, 9 February 1992, p. 9.
14. William Stage, "Law-Circuit Legacy: Illinois Researchers Reconstruct Record of Abe's Lawyer Days." *The Christian Science Monitor*, 14 February 1992, p.; "The Records Search," in *Annual Report, 1992*, p. 2.
15. Neely, *Last Best Hope of Earth*, p. 34; Davis, *Lincoln the Lawyer*, pp. 8-12; "A Statistical Preview," in *Annual Report, 1992*; Furry, "Missing Lincoln".
16. "A Statistical Preview," in *Annual Report, 1992*, 3; Neely, *Abraham Lincoln Encyclopedia*, p. 170; Davis, "Abraham Lincoln, Esq.," p. 8; Cullom Davis, "The Lawyer's Avenue to the Public: Abraham Lincoln and Political Rhetoric," Paper presented at the Lincoln-Douglas Debate Symposium, 21 August 1992, p. 13; Davis, "Abraham Lincoln, Esq.," pp. 9, 3.



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