

MEMORIAL ADDRESS
THE LIFE AND SERVICES OF
DAVID DAVIS.

By Leonard Swett



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In the autumn of 1848, I was sitting in Bloomington, where Baker's store then was, at the corner of Main and Front streets. The office of David Davis, before he was Judge Davis, was then across the street to the east, and a half block beyond the opposite corner. As I was sitting there, I can yet see in memory an immense man with coat open at the breast and with his coat-tails flapping in the wind as he crossed the street and came to the corner where I was. That was my first sight of him. I thought then and still think that immense tread was the tread of Hercules. He was then midway in his journey of life, or thirty-five years old, and when the sun of life seems to stop and stand still awhile in its course.

About this time he was elected Judge of the Eighth Judicial Circuit, itself an empire in extent, and remained as the Judge of that circuit until 1862, when

he was appointed by Mr. Lincoln, then President, one of the Justices of the Supreme Court of the United States¹. I had myself, a little before, returned from a small service in the Mexican war, and was very much impaired in health, so, knowing the outside of a horse very good for the inside of a man, I commenced, about a year after this time, to ride on horseback over a large portion of this Eighth Circuit. I continued this mode of life until about the year 1862, or a period of thirteen years.

The circuit began at Sangamon, or Springfield, on the west, and extended to Tazewell, Woodford, and Livingston on the north, to Vermilion and Edgar on the east, and to Shelby, Moultrie, Piatt and Cumberland on the south. It embraced originally fourteen counties, but grew less as the country grew older, the Legislature making new circuits as the population and business increased, until about 1854 it was reduced to six counties, commencing with Sangamon on the west, and embracing Logan, DeWitt, McLean, Champaign and Vermilion. I used to join the cavalcade of the circuit at Logan, and one can hardly realize that within a period of a single life such changes could take place as have occurred in the State of Illinois between that time and now. Chicago then contained a trifle over 25,000 inhabitants, against 700,000 now. Peoria, Quincy, Bloomington and Springfield, now cities from 25,000 to 50,000 were then little villages of from

¹ For a list of all the members of the Supreme Court, and who appointed them, visit <http://www.supremecourtus.gov/about/members.pdf>

1,500 to 3,000. The settlements of the State skirted along the timber, the streams were without bridges, and dim trails led from one county seat to another. There was not a foot of railroad in operation in the State, against about 10,000 miles now, and our immense coal fields were then wholly undiscovered or undeveloped, and there were no manufactories in the State. In this condition of things, at the age of twenty-four years, I first met Mr. Lincoln, at Mt. Pulaski, in 1849, driving his horse, "Old Tom," which afterwards became a fixture upon the circuit, and he and Davis, with two horses and a buggy, David B. Campbell, the State's attorney, in a buggy, and I sometimes in a buggy and sometimes on horseback, commenced the traveling of this circuit together. The court at first, in the counties of ordinary size, sat but three days. In counties the size of Sangamon, it lasted a week. Arriving at the county seat in the morning about eight o'clock, the litigants would come in, generally on horseback, bring their witnesses in the same manner, and by nine o'clock the great old Judge would occupy the bench of the log court house, and would be defending some criminal, brought into court from the log jail, or trying a civil case in which we had never seen the parties or witnesses, and probably never heard of the case until that morning.

In the evening the Judge held a levee at the village tavern. The principal farmers called. Lincoln told his queerest stories. Dave Campbell drew from a superb violin, which he never left behind, tones of sweetness which

in memory at least were not rivaled in harmony and melody by the strains of Ole Bull, and Wednesday afternoon, if it was a court commencing Monday, we were off again to the next county seat to repeat there the same work in court, and to enjoy the same levee in the evening. Nor can I fail to recall the splendid galaxy of talent which met on this circuit. At Springfield and Lincoln, who has passed beyond eulogy; Edward D. Baker, afterwards of the Galena Congressional District, also of California, and Senator from Oregon, and who died gallantly pointing a cannon with his own hand at Ball's Bluff; John T. Stuart, a great lawyer and most just gentleman; and David B. Campbell, than whom a more companionable and able gentleman never lived. He sickened early and

"By the roadside fell and perished.
Weary in the march of life."

There were also Gridley, of Bloomington; Weldon and Moore, of Clinton; Emerson and Post, of Decatur; Kirby Benedict and U.F. Linder, on the eastern part of the circuit, and Edward Hannigan, Caleb B. Smith and Daniel W. Voorhees, who came over with a torrent of eloquence from Indiana, to the eastern counties. I believe Daniel W. Voorhees, Mr. Weldon, and Messrs. Moore and Post, of Decatur, are the only survivors of this brilliant and gallant array.

TRULY A LEADER AMONG MEN

Every man in life occupies a place among his fellows which, by quiet and common assent, is allotted him. It is

said that Napoleon, when first elected one of the three Consuls of France, was not elected First Consul. Neither were the others First Consuls, but chairs were so arranged that, in the middle, there was one for the First Consul, and beside it, and on opposite sides, two for the other Consuls. At the first meeting Napoleon, in the presence of the Chamber of Deputies, as a matter of course, walked up to and took, without comment, the place of First Consul, and waved the others into the other seats, and thus in his own greatness and by acquiescence became First Counsel. In just this way Judge Davis became the leader of the bar and of the community of the Eighth Judicial Circuit. He was emphatically a hospitable Judge, and when his court was visited by a stranger, he was immediately noticed and provided for by the Judge. "Get a seat for Squire Jones, Mr. Sheriff? This way Squire Jones." In this manner he provided for every one, according to his rank and standing in life.

He was especially kind to young men, always knew when one came and settled in a county seat, and always helped them out of their troubles, often to the confusion and dismay of the older members of the bar, who were, many of them, inclined to sit down on them. I remember well an incident between Linder and the Judge on this subject. A young man had settled in Danville, and in his pleadings at court he had written a plea wrong. Linder demurred to it, and the Judge, in sustaining the demurrer, intimated to the young man

how to amend the plea. The young gentleman amended it and got it wrong again. Linder demurred again, and the Judge again sustained the demurrer, making plainer his suggestion. The plea was again amended and was again wrong when the Judge said, "Give me that plea." He took it, read it over to himself and amended it to suit himself and handed it back. Linder could demur no more, but was very angry. That night he called round to the Judge's room and found him alone and writing. "Come in, Linder," said the Judge. "Come in." "O, no," said Linder. "I see you are writing pleas in some of your numerous cases. I will not disturb you."

He was a preoccupied, absent-minded man. On one occasion, at a the Champaign count, an old man and his wife, emigrants, were passing through the country and were robbed by a young man who overtook them and who begged a ride. The occurrence took place just before his court, and the young man was arrested and tried and convicted at that term. The Judge in passing sentence gave the young man a lecture upon the baseness of his conduct in accepting a ride with the old man and then knocking him on the head and robbing him. After pointing out in glowing language his conduct, the Judge proceeded: "And it is the judgment of this court that you be confined in the *Legislature of the State of Illinois for a period of seven years.*" It was not until Ward H. Lamon, the Prosecuting Attorney, had gone to the judge and whispered in his hear that he discovered his mistake,

and substituted the penitentiary for the legislature of the State.

Judge Davis was, by nature, faithful to a trust. Besides this natural make-up, his duty had been burned into him while young by the conduct of his own guardians. The Judge's father and mother died while he was young. Twelve thousand dollars was left in his guardians' hands to be paid over to him when he should become 21 years of age, but his guardians in some manner invested this so as to lose the whole or spent it, and when he became 21 he had nothing. He litigated these guardians for many years, and finally lost the case by an equal division of the Supreme Court of Maryland.

At the time he was presiding, no land of a minor could be sold under the laws of the State except on petition to the Judge of the Circuit Court. Judge Davis always declined to order such sales, but kept the land in kind for the ward until he or she became of age, and then not only was the estate preserved, but the ward got the benefit of the rise in the value of his estate, which then was rapid and universal.

On one occasion, about 1852, at the Champaign court, Mr. Murphy, a lawyer from Danville, filed a petition for a step-father who was the guardian of a young girl whose mother he had married, asking permission to sell an improved farm which she owned. Everybody looked to the Judge to see him refuse the application, when, contrary to his habit, he ordered the land sold, and that when the money

was collected it should be paid to Thompson R. Webber, who is still remembered for his honesty and fidelity, and as being the clerk of that court. In the course of a year afterwards, Webber reported that he had a good pile of money. The Judge ordered him verbally to go to Cincinnati, invest all the money in land warrants, which could then be had for about \$1 an acre, and to meet him at the Danville court, which was held next day after that of Champaign, and where the land office for the entry of land was then open. Mr. Webber went to Cincinnati, bought the warrants, came to Danville, when the Judge adjourned the court, went to the land office in person, and entered unimproved but rich farm lands in Champaign, all in the name of the girl, and when she became of age she was worth \$50,000. His conduct was paternal and patriarchal to all. If any of the lawyers got wild, the Judge often made him stop it and go to bed to sleep it off.

These may be said to illustrate the outposts or exterior layers of the Judge's character. Dig through these and you come to a mine of pure gold.

ONE OF OUR GREATEST JUDGES.

Judge Davis was one of the greatest judges this country has ever produced. He knew just enough law to be a great judge, and not enough to spoil him. The poorest lawyers I have ever known are men who know the most law. Such over-crammed men are sometimes called case lawyers. Wirt

Dexter described one of these book-worms well when he said, calling him by name: "He is the best man in a consultation I ever saw, if you will hear him for a half hour and then turn him out of the office and lock the door." It is said that certain German scholars have run mad with Greek learning. One of them has compiled a treatise showing 15,000 Greek particles or roots. His is not the most useful knowledge, but simply learning run mad. A great judge must know not only law, but must know things also. Judge Davis knew well the principles and rules of law, but he also knew that these rules were simply guideboards to justice. He did not look at the guideboard and go mad after it. He went straight for justice, using it so far as it would guide him, and when it would not he threw it away. He was a natural judge. He took to justice by instinct as the hound takes the scent. He was of the same order as Chief Justice Marshall, and an anecdote of this great jurist illustrates the character of both. It is said of Judge Marshall that one time as he sat in consultation with his brother judges of the Supreme Court, some knotty and new question was under discussion. Judge Marshall stopped the discussion. He said, "The law is so and so. Brother _____," and he, turning to one of the judges, "you please hunt up the authorities to sustain my position."

Judge Davis knew that all legal rules were the result of a wise experience, and that they were intended as simply guides to the right. If, in any present complication, he found these rules

used to further the wrong, he would go through them like cobwebs. An anecdote of him illustrates this. Judge Davis and the eminent Judge Treat of the United States District Court were old and fast friends. They were one time holding the United States Circuit Court together in this city. One of the keenest land sharks this State ever produced, had got some kink on a large farmer's farm and had brought ejectionment to take it substantially for nothing. The Judge at the trial heard him, looked at him, and finally, crossing his legs, swung around in his rotary chair so as to turn almost his back to him, looked over his shoulder at the lawyer who was trying his own case, and said, "You can talk to Treat; you can talk to Treat; before this court you cannot steal a man's farm in that way."

I will give another illustration of this element of his character. The Judge, after his promotion to the United States Supreme Court, was holding a Circuit Court of the United States in a neighboring State with the United States District Judge, when a conflict arose between two sets of heirs, each claiming for itself an entire estate. The evidence tended to show that a man had married a wife in Germany, abandoned her and his family, came to Indiana, married another woman, raised another family, accumulated an estate of a million dollars, and died. After his death the German heirs came for the estate, and the Indiana heirs resisted. There were some informalities in the proof of the first marriage in Germany, enough to create a doubt where one wants to

doubt. The two Judges were in consultation upon this case after the trial. Judge Davis said: "It is a pity about this case. There is property enough for both. The situation is not the fault of either party, but of the man who is dead. Let us make them divide it." The District Judge replied, "That is right. You are good at that. Suppose you engineer the matter." And so they went into court and sent for the lawyers on opposite sides. Judge Davis then said in substance: "This case is a hard one, and not entirely free from grave doubts. No one is to blame but the father, and it is through his industry that each side now claims a large fortune. There is enough to divide and give each side as much as it ought to have, and they ought, each party, to forgive the father, who might have some unknown motive for his conduct, and divide his estate." The counsels were situated like the parties. If the court was forced to a decision, it must give all either to the one side or the other, and the side losing would have nothing with which to pay the numerous and able array of counsel on its side. The true way was for each party to yield something and settle the case. After again brushing up his grave doubts, at least as much as they could bear, the attorneys were left to consult and negotiate, and finally came into court with a decree, entered by consent, declaring both families to be heirs, and dividing the million equally between them all. Each side went away happy, and with a half million.

THE GREAT DECISION OF HIS LIFE

The great decision of Mr. Justice Davis' judicial life, is what is generally known as the Milligan decision. By that he puts his mark upon the constitutional history of this country, which will never be obliterated. The substance of this decision is that peace is the natural condition of this country, and prevails except when actually interrupted by war, where the question arises. That the rights of peace, including the rights of trial by jury, exist in all persons whenever the courts are open and the channels of justice uninterrupted, notwithstanding actual war may prevail in other parts of the country. War and not peace is the natural condition of mankind. War has left its fossil remains in the history of the ages back to the fire-rock, next to the creation of man; the doctrine of "Peace on earth, good will to men," in its application to governments is new. War and force today is the rule of the world. If one would blot out from the map of the world every nation founded on force and governed by force, he would blot out the map of nearly all the world.

The doctrines of the Milligan decision were born in the United States, and to the honor of the memory of David Davis be it said he was the father of them. Let us who give our lives to the law, see to it that this decision is preserved, and that it shall always live as a memento to the judicial greatness of our friend, and as one of

the great constitutional landmarks of our country.

Judge Davis' political record resolves itself into his work at the Chicago convention, at which Mr. Lincoln was nominated, and a term of six years in the United States Senate. He had a desire to go to the Chicago convention as a delegate. This came from his friendship for Mr. Lincoln and his own consciousness of strength. He wanted Abraham Lincoln nominated, and he, unconsciously to himself, realized if he could go there as a delegate, he could do more to secure this result than any living man; and so it was an open secret among his friends, before the Decatur convention of 1860, that the Judge then wanted to hold the first purely political office of his life. He was consequently elected a delegate-at-large for the State.

He was first on the ground, having, as I remember, gone to Chicago, Friday, a week before Mr. Lincoln was nominated, the following Friday. He found when he got there that no headquarters had been engaged for the Illinois delegation. He sent for John B. Drake, then proprietor of the Tremont House, and the result was an arrangement by which the Judge paid a bonus for the evacuation of certain rooms by private families, and these were soon properly marked as the "Illinois Headquarters." Here without anybody electing him to the position, he at once became the leader of all the Illinois men. He told me when I arrived there Monday to join his staff and go to work, and if everybody would also work, the nomination could

be made. The work to be effected was not political log-rolling, but simply to convince the party represented there, and which had the honesty of a party representing a great principle and had never yet been in power, that Mr. Lincoln was the most available man. He seated himself behind a big table in the rooms of the headquarters and organized committees of visitation to the various delegations, and did the other work of the convention. For instance, he had Samuel C. Parks, of Logan, who was born in Vermont, organize a delegation of about four, also from Vermont, to visit the delegates from that State; and he had me, from the State of Maine, organize a delegation, and visit my old friends from the Pine Tree State, and every man was to come back and report to him. And so he labored with all, issued his orders to all, and knew the situation of every delegation. He had Governor Oglesby, then of very stout lungs, fill the body of the building where the public were admitted, with a strong-voiced brigade of shouters. He organized at first two States--Illinois and Indiana--as presenting the name of Lincoln, and then had sporadic strength in almost every delegation. Pennsylvania had agreed, if on the second ballot we showed increasing strength, she would come to us with forty-eight votes.

I had the honor to be present with the Judge and two leading delegates from Pennsylvania in the wee small hours of Friday morning, the day of the nomination, in which the question was whether Pennsylvania would not come on the second ballot and would not

help to constitute the increase on that ballot. The result shows how well he succeeded. It is my belief if all the other causes had existed as they did exist, and Judge Davis had not lived, Mr. Lincoln would never have been nominated, and, consequently, never would have been elected President of the United States.

Judge Davis had been continuously upon the bench in this State and upon the Supreme bench for thirty-two years when he was elected United States senator, and by that Senate before his term expired was elected President of the Senate and *ex officio* Vice President of the United States. The time allotted will not permit me to discuss his life there. I will, however, mention it was here that he first met on terms of intimacy the late lamented but able and honorable Senator, Gen. Logan. They had both been prominent men in the same State, but the lines of their lives had fallen in different places and among different companions. They finally became rivals, and at the same moment Judge Davis obtained a seat in the United States Senate, Gen. Logan lost the same seat. But the General, being soon re-elected, the two became companions. I used, as a rule, to visit Judge Davis, spending about a half-day with him, every time in passing to and from Washington he came through Chicago.

HIS GREAT LOVE FOR GEN. LOGAN

I here began from the first to notice what is always curious to observe--a new love in an old man. He began to speak at first with great kindness of Gen. Logan, which soon passed to the praise of his bold and fearless integrity. As soon as they knew each other they became firmly attached, and it is doubtful if finally there were any truer or more faithful friends in the whole Senate--any two men who appreciated each other more warmly than David Davis and John A. Logan. Suffice it to say that Judge Davis and his political career that he was the only man in the United States who has ever been able to make a personal party, consisting solely of himself, respectable. By great capacity, by sterling qualities and character, he was able to retain his personal convictions on all subjects and vote with either party best representing them, and at the same time to retain the personal respect and confidence of the Senate and of the Nation. He governed the Senate, when presiding office, in the same paternal and patriarchal way he governed the Circuit Court in an early day.

Some senator once moved about 3 o'clock in the afternoon to adjourn. "O, pshaw," said the Judge. "It isn't time to adjourn yet," and actually went on with the business, only man in the whole country who could have done this, and he could not have done it if he had not been entirely unconscious of what he was doing.

If I were asked to state what was the leading trait of Judge Davis' character, I should say latent, unconscious strength. Almost everything in nature contains latent heat. This is a force which the object possesses unconsciously to itself and to every other person. Judge Davis was full of latent, unconscious strength. He simply walked up to and did anything almost impossible to be done as a matter of course. In this way he acquired control over the most uncontrollable men, and accomplished with the greatest ease what seemed to others impossible accomplishment. The Judge's forecast was just as good as other men's actual sight of things. Away back in an early day, when we used to range together over the prairies, he looked down the channels of time and he was the State of Illinois with its smiling farms, its cities, its railroads and manufactories as we see them now, and he made a colossal fortune in the simplest way possible. He never got the advantage of any man in a trade. He never loaned money for interest, and never foreclosed anybody. Nobody ever left Illinois to "go West" and try it again on his account. Although I lived with him the last half of his life on most intimate terms, I never saw his promissory note or ever saw anyone else who ever saw or heard of it. He simply entered land for \$1.25 an acre, had it put into fertile farms, and when he died he left this same land worth \$100 an acre.

Judge Davis was one of the kindest and most tender-hearted and most generous of men. At the Chicago

Convention, when Lincoln's nomination became a fixed fact, when delegations were changing their votes, and everything was in the confusion of coming to Lincoln, when everybody was shouting, and in the hurrah of Bedlam, Judge Davis threw his great arms around a friend and cried like a child.

He fulfilled the Scriptural mandate in his charities of not letting his right hand know what his left hand was doing. He gave wisely, but not ostentatiously, and never talked about his giving. Many church and school-house in Central Illinois sits to-day on a lot given by the Judge. I have, at different periods in my intercourse with him, occasionally stumbled upon his charities. In this way I happen to know instances where he loaned or gave away to poor lawyers sums which, when added together amount to \$3,500. He had an immense landed estate and an army of tenants. I have known years of drought in which, as a rule, he remitted to his tenants his entire claims for rent. When visiting him in his last sickness, as I was walking over his palatial grounds with his wife I said to her, noticing an old gardener, "How many of these old people have you?" She replied, "About twenty." These were permanent fixtures of the place, and when he died a great light went out to them all.

I visited him last the 10th of May and spent a day at his home. He was then suffering intensely but heroically, and I bade him adieu, then thinking I might never see him again. I never did. In June I was called to

Bloomington to the most remarkable funeral I ever witnessed. Twenty thousand people gathered there on that occasion, coming in mostly by wagons, and some coming twenty-five and thirty miles. This crowd, of course, could not get into the house, or even to see the funeral, but they could line in silence the streets where it was known the cortege would pass, and fill the sidewalks, the front yards, doors and windows, every inch of the way from his house to the graveyard, a distance of more than two miles. In the cortege after the corpse and after the family in carriages, and on that occasion the equals of the family they served, were the poor, the servants of the family, the gardeners, and even those who lived upon the bounty of the good judge. Thus on a bright June day, at that gathering of the great and the small, of the proud and humble, the rich and the poor, and all his friends, we consigned him to his final resting place, and all alike were real mourners.

Judge Davis presented the best rounded character I have ever met in my life.

BROAD AND CATHOLIC IN HIS IS BELIEF.

He was not a religious man in the sense of being a member of any church, yet he believed in all religions and in the good works of all churches, and they all alike called upon him in their wants to lend them a helping hand, and he gave to one just as cheerfully as to another. He was broad and catholic in his beliefs and in

his conduct. Intimately as I have known him, I cannot, as I write these lines, recall one wrong act in all his life. He is the only man of whom I can say, if I had the making of him for time and eternity, I should alter nothing. Tender, considerate, and kind, strong robust, and vigorous, he walked on, a model in character and a model of success. Judge Davis is the only man I have ever known of whom I could conscientiously and without mental reservation say this, standing among people who knew him well, and standing, as it were, over his grave.

Shakespeare makes his Portia say, speaking of the virtues and temptations of life: "If to do were as easy as to know what were good to do, chapels had been churches and poor men's cottages princes' palaces.... It was easier to tell twenty what were good to do than one of the twenty to follow my own instructions."

Judge Davis was no exception to this rule. He was a man of strong human passions. The Lord in creating the universe has used and given, for instance, to our earth, two opposite gigantic forces--the centripetal, which would hurl it precipitately to the sun, and the centrifugal, which would send it on a straight line through space, an element of destruction to whatever it should meet in its pathway. The earth's orbit around the sun day and night, and the fruitful seasons are the result of a lawful equipoise of these giant forces; so the greatest character in life is not the simplest character that does not wrong because it knows no wrong, but the strong and robust,

full of passions and sinful proclivities, but also full of moral visions which see that these passions are given us to curb and to give robust strength to our characters when properly restrained. Judge Davis was a character full of humanity and full of moral sense. It is said of the Pilgrim Fathers, when they arrived upon the desolate wintry coast of New England and looked upon the snow-covered land, they thought no law was in existence there, and so they resolved they would be governed by the laws of God until they had time to make better. Judge Davis, as he came into this world and mingled among men, saw the large, splendid sense and great personal freedom in obeying all the laws of God, and he did obey them all his life.

As I recall the circumstances of my own early life in this State, I thank God and thank Him again, that in the mysteries of Providence He placed the lines of my life between two such great men as David Davis and Abraham Lincoln, and permitted me, in the hours of my own weakness, to "lean on their own great arms for support."

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