

Our Growing Knowledge of Lincoln*

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It's time for a new study of Abraham Lincoln as a lawyer. Three such books have been written, the first in 1906 by Frederick T. Hill, the second by John T. Richards in 1916 and the last by Albert A. Woldman in 1936. Good works in their day, they are as out-of-date as are the automobiles of those days.

It's a larger task now that it was in 1936 because many more tools and materials are now available to do the job. Large collections of the private papers of Lincoln and his associates have become available. Lincoln's own papers, opened in 1947 and consisting of 18,000 items, can be supplemented by those of William H. Herndon, his law partner of sixteen years, and by those of John Dean Caton, justice of the Illinois Supreme Court, 1842-1864. These three outstanding collections, all in the Library of Congress, have not been used in a study of Lincoln as a lawyer. The Herndon collection contains one or more papers from nearly 500 of

Lincoln's law cases on the circuit and in the Supreme Court. This collection also contains the recollections of Lincoln as a lawyer by fifteen of his closest associates at the bar. The Caton collection consists of more than 10,000 letters, a large number of which he received from other Supreme Court judges.

New manuscript collection is in the Illinois State Historical Library of lawyers who practiced with Lincoln include those of John A. McClernand, Leonard Swett, James C. Conkling, Ward H. Lamon, David Davis and Albert T. Bledsoe. This Library also has one or more papers in Lincoln's own handwriting in approximately 170 of his lawsuits. Brown University Library has material on thirty-one cases, and files in twenty-one cases are in the Huntington Library in California. Two volumes which were recently published by Rufus Rockwell Wilson entitled *Uncollected Works of Abraham Lincoln* contain some of the above papers in almost 500 cases.

Photostats of files in several hundred other Lincoln cases have been collected by the Illinois State Historical library and by the Abraham Lincoln Association in Springfield. They provide a basis for drawing some conclusions in regard to the extent of Lincoln's practice in the individual counties on the Eighth Circuit. They give data on the types of cases which he handled and what percentage of the total business came into the hands of Lincoln and other lawyers who followed the judge from court to court. In Sangamon County, where his business was large, comparison of the size and type of his

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practice could be made. There were terms of court where three to four hundred cases were on the docket. A study of the number of divorce cases and what percentage of Lincoln's cases were of this type would be valuable.

His practice in the sixty-three terms of court held on the Eighth Circuit, from 1837-1860, must be studied in the knowledge that he was busy with politics during twelve terms.

It was long thought that Lincoln's Supreme Court practice was limited to the 178 reported cases. Later research shows that he was associated with some 243 cases. Except for the seventy-five cases now in the Herndon collection, little of his Supreme Court business can be studied from the files.

Several hundred unpublished letters of Lincoln, many relating to his law practice, have been located by the Abraham Lincoln association in connection with the publication of his writings and additional letters keep coming to light.

Lincoln's legal connections with the Illinois Central railroad have been considerably enhanced by newly discovered material as have his relations with the Alton & Sangamon railroad. Lincoln said in a recently discovered speech at Carthage, October 22, 1858, in regard to his \$5,000 fee from the Illinois Central: "The decision, I thought, and still think, was worth half a million dollars to them. I wanted them to pay me \$5,000, and they wanted to pay me about \$500. I sued them and got the \$5,000. This is the whole truth about the

fee; and what tendency it has to prove that I received any of the people's money, or that I am on very cozy terms with the Railroad Company, I do not comprehend."

The first bankruptcy law passed by Congress was in effect February 1, 1842 to March 3, 1843. Under this act, the firm of Logan and Lincoln with seventy-seven cases led the bar of Springfield and were tied for fourth place in the state in total cases. Judge Nathaniel Pope's "Bankrupt Court" handled 1742 cases from 87 of the 94 counties. Cook County with 100 cases led, while Hancock County, a very small county, had 65 cases. This large number were principally Mormons following the example set by their leaders, Joseph and Hyrum Smith and Sidney Rigdon. In the thirteen months before Congress repealed the law, bankruptcy cases provided a fair portion of the Logan and Lincoln income.

Lincoln's twenty petitions to the Governor of Illinois for pardons for prisoners in the Alton penitentiary is a newly developed phase of his career. These papers are now in the Illinois State Archives building, illustrate the care Lincoln exercised in the preparation of the legal papers and contain two of his finest unpublished letters.

Studies of the Eighth Judicial Circuit need to be made from various angles, such as the type of the county seats, towns, types of court houses, the taverns available, population growth in the counties, reduction of the number of counties in the circuit and changes in

mode of travel induced by the railroads. Too much of what has been written on Lincoln as a circuit lawyer has been based on Henry C. Whitney's *Live on the Circuit with Lincoln*, published in 1892, a generation after Lincoln left the circuit and presenting only what Whitney experienced from 1854-1860. This was after the railroads connected the county seats and horseback and carriage travel was over.

Lincoln served as judge of the circuit court in several counties in the absence of Judge David Davis. Published accounts are very inaccurate, being based upon memory of a court scene which took place many years before. Examination of the judges dockets show a surprising number of cases in Lincoln's handwriting.

Character studies are needed of the leading Supreme Court justices among the twenty-one men before whom Lincoln appeared and also of the two judges of the Eighth Circuit, Samuel H. Treat and David Davis and Thomas Drummond of the United States District court. Needed most of all to a good understanding of his circuit court practice are character sketches of the lawyers who were long associated with Lincoln.

Lawyers of the thirties were in many cases ill prepared to compete with new arrivals, many of whom had college educations prior to studying law. Those less able to get their share of law business obtained county offices, took up merchandising, became land agents or moved on west. Lincoln's law students and their careers in the

profession is a chapter yet to be written. Like the members of any graduating class they moved on to new communities to practice and some were very successful.

Printed monographs and books in late years have added much to our store of Lincoln legal lore. Biographies of William H. Herndon, Ward H. Lamon, David Davis, Albert T. Bledsoe and Nathaniel Pope, among others, are of great value.

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