



Law Practice of Abraham Lincoln: The Complete Documentary Edition. University of Illinois Press.

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THE LAWYER-PRESIDENT

Abraham Lincoln held national elected office, as a one-term congressman and president of the United States, for 1981 days, which constituted approximately ten percent of his entire life. He was a licensed, active attorney at the bar of Illinois for 8552 days, or about forty percent of his life. Lincoln spent a lot more time in a courtroom than he did in the Capitol building or the White House. In fact, he was the most experienced courtroom attorney to ever attain the presidency. Americans have probably never been comfortable with this. It is surely no coincidence that, of the presidents who regularly appear in various “greatest presidents” opinion polls—Washington, Lincoln, Kennedy and Roosevelt—Lincoln is the only attorney. Americans are traditionally ambivalent about the legal profession, oscillating between Perry Mason-type mythologies and . . . well, pick your favorite lawyer joke. We have always been hesitant to invest too much of our national moral capital in lawyers. Hence, many would rather not be reminded that the Great Emancipator sometimes represented the rights of slaveholders in American courtrooms, or that Honest Abe the railsplitting commoner was an attorney for a large railroad corporation. At best, our popular culture will accept Lincoln as Henry Fonda’s folksy barrister in the 1939 film *Young Mr. Lincoln*, using his sage backwoods wisdom to acquit Duff Armstrong, an innocent man, of murder (who, historians now know, wasn’t innocent after all). Unfortunately, Lincoln’s legal career has also been given relatively short shrift by professional historians. While there are hundreds of books and monographs covering nearly every conceivable aspect of Lincoln’s political career, studies of his law practice could fit on an average library shelf,

with room to spare. In some ways this is understandable. After all, Lincoln had far more impact on American history when he drafted the Emancipation Proclamation than he did when he drafted a will for a forgotten client in an obscure Illinois county seat. But biographers, those who wish to assess the totality of the man, have less excuse for putting Lincoln’s law career on the backburner. Sadly, even the best have done so. Stephen Oates’ classic biography, *With Malice Toward None*, provided little more than a brief description of Lincoln’s law practice, as did David Donald’s more recent biography, *Lincoln*. [1] Neither of these standard works offered much in the way of serious analysis concerning the impact of Lincoln’s law practice on his personality or political outlook. Even Douglas Wilson in his superb 1998 study of Lincoln’s antebellum years, *Honor’s Voice: the Transformation of Abraham Lincoln*, while acknowledging “there is reason to think that Lincoln’s experiences in the courts of the justices of the peace were formative and that he carried their lessons with him throughout life” offers little analysis of how and why this was so. [2] Lincoln biographers in most cases treat his law career as something of a chore, a topic that must be addressed, but only so the author and the reader can move on to matters more interesting and salient. This is all the more surprising because, as antebellum lawyers go, Lincoln’s practice has always been comparatively well documented. The basic edition of his papers, *The Collected Works of Abraham Lincoln*, [3] contains quite a few documents related to his law career, as does the voluminous Herndon-Weik collection, a compilation of Lincoln miscellany collected by William Herndon, Lincoln’s law

partner. <p> Now, however, the Lincoln law practice is extraordinarily well documented, better than any other antebellum American lawyer. The Lincoln Legal Papers Project has released the fruits of years of painstaking labor, in which its researchers tracked down 5100 cases and nearly 100,000 documents scattered in courthouses throughout Illinois, to give us an extraordinarily complete picture of Lincoln's law practice. The Lincoln Legal Papers staff gathered so much information that they chose to make good use of modern computer technology and published their findings in a DVD-ROM database. I cannot pretend to have done anything like an exhaustive survey of the database's contents. Scholars will need to devote a great deal of time to this collection to ferret out its nuances and possibilities (and let me confess here that I plan to do so for my next book). But what examination I have managed has yielded several initial impressions. <p> First, Lincoln's practice was extremely diverse. Those scholars who are acquainted with the activities of nineteenth-century attorneys will find much that is familiar here: scores of cases involving debt collection, business partnerships, and estate settlements, as well as quite a lot of divorce and real estate litigation. But the database also contains rather idiosyncratic cases that illustrate just how far Lincoln ranged in his search for litigation. There are four arson cases, a burglary trial, a half dozen counterfeit cases, and several admiralty claims, to name a few. Some Lincoln mythmakers portray him as an attorney who chose to litigate only those cases which fit within a particular intellectual and moral purview; but the database reveals a man who sought out business in nearly every nook and cranny of the law. <p> Second, he was much more of a civil than a criminal attorney, despite the fact that his criminal cases—such as the Duff Armstrong trial—have received the lion's share of attention in Lincoln folklore. For example, the database includes forty-four entries involving murder trials, but at least five times that many entries involving issues of contract law. Even a casual examination of the data strongly suggests that Lincoln's interest in economics, ably documented by Gabor Boritt and others, was influenced by the fact that he spent so much time addressing the legal ramifications of economic development on a micro scale in hundreds of court cases. It is difficult to escape the conclusion that Lincoln the attorney devoted much more time to business than criminal justice. <p> Third, Lincoln's interaction with other attorneys was quite fluid. We already know from extant documents that Lincoln formed and dissolved a number of temporary partnerships while riding the circuit, and that he even acted on occasion as a presiding judge in what was a loose and in-

formal antebellum Illinois legal culture. The database reinforces these impressions, revealing in Lincoln an attorney who often was involved in litigation in a peripheral fashion, as co-counsel with other attorneys, or even as an informal advisor or referee in arbitration proceedings. This presented something of a quandary for the Lincoln Legal Papers Project editors, who often could not determine from available records just how deeply Lincoln was involved in a given case. In the end, they made the reasonable decision to include every case in which Lincoln was possibly involved, and allow scholars to decide for themselves how best to assess these matters. <p> On the technical end, I found the DVD-ROM to be generally user-friendly. The search engine is comprehensive and easy to use, with a broad range of subject headings, including formal legal headings like mandamus and breach of contract, as well as general headings—cases involving cows and turkeys, for example—and headings involving some of Lincoln's more famous trials like the Almanac case and the Chicken Bone trial. The editors have also included cases which were settled out-of-court, and those in which Lincoln was invited to participate but declined. Some search parameters are overly broad—the “politics and government” heading, for example, encompasses a wide variety of cases, ranging from voting rights issues to land title disputes—but overall the search engine is everything a scholar could wish for in attaining a useful portrait of all or part of Lincoln's practice. The database does present some minor speed bumps for the moderately computer literate user like myself. The collection contains three discs: one with the basic database, which is installed using the Windows Install Wizard protocol, and two other discs containing facsimile copies of many of the documents related to the cases. The latter two discs can be installed in the computer's hard drive, but only after altering the program, which is a bit complicated. Also, the user can view the facsimiles directly from discs two and three, but there is no indication concerning which disc contains the facsimile one needs for a given case. These are minor irritations, however, and the database does contain a very useful help file. <p> Legal historians will immediately recognize the value of the Lincoln Legal Papers, and should be fairly champing at the bit to get at this collection. At long last we have a truly comprehensive, detailed record of the practice of an antebellum career attorney. And make no mistake: Lincoln was a career attorney, a man who immersed himself in the profession, rather than (like Stephen Douglas, for example) using a brief legal career as a stepping stone to political life. Hopefully, Lincoln scholars will recognize this fact, and use the wonderful new research tool provided by

the Lincoln Legal Papers Project to correct the imbalance between treatments of his political life and law career. <p> [1]. Stephen Oates', <cite>With Malice Toward None</cite> (New York: New American Library, 1978); David Donald, <cite>Lincoln</cite> (New York: Free Press, 1995). <p> [2]. Douglas Wilson, <cite>Honor's Voice: the Transformation of Abraham Lincoln</cite> (New York: Alfred A. Knopf, 1998), 103. <p> [3]. Roy P. Basler, ed., <cite>Collected Works of Abraham Lincoln</cite>, 9 vols (New Brunswick: Rutgers University Press, 1955).

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