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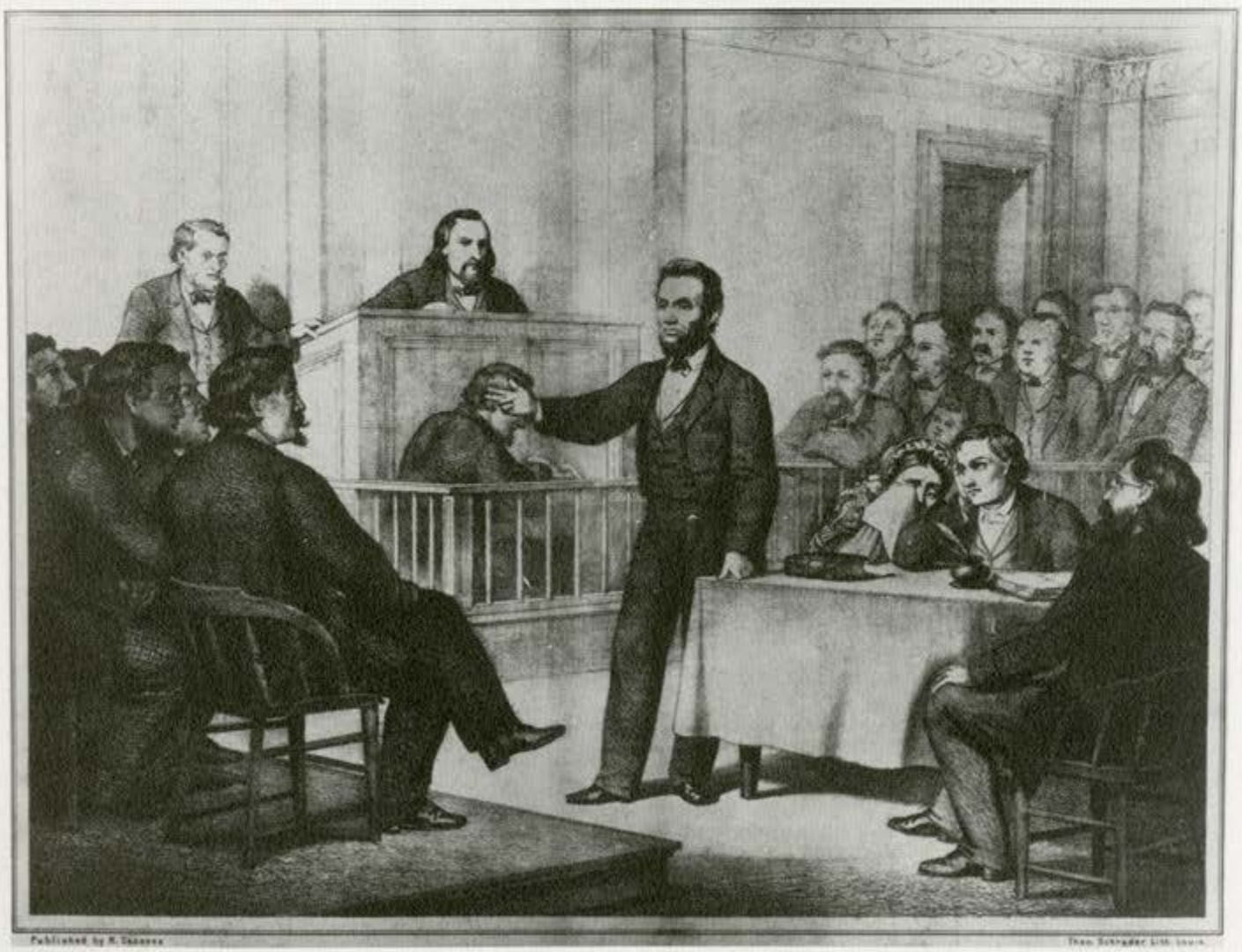
LINCOLN AND LEGAL EDUCATION IN ANTEBELLUM AMERICA (PART II)

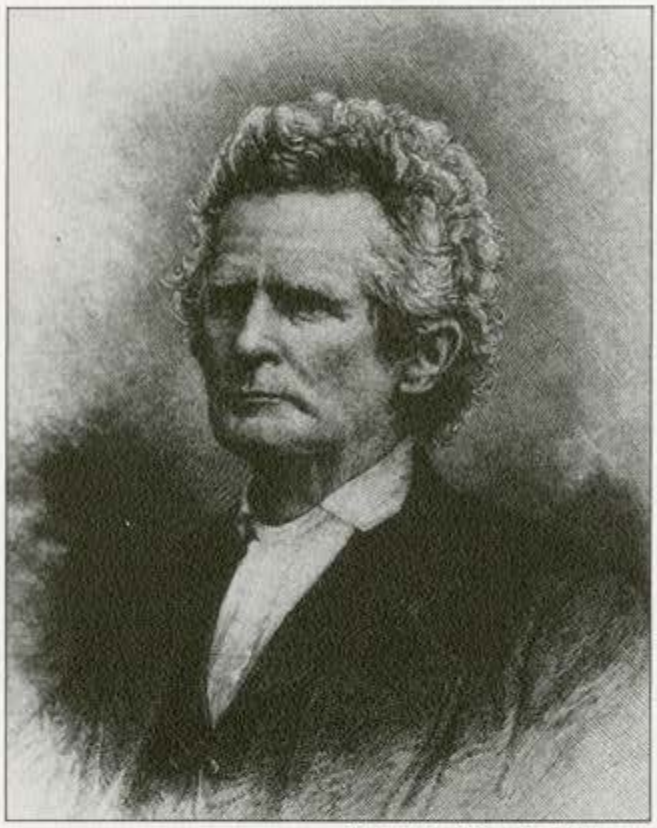
by Matthew Noah Vosmeier

For most of the nineteenth century, aspiring lawyers could study for the law in various ways. For example, Lincoln and his contemporaries received their legal educations by reading on their own, in a law office, or by attending a private or college-affiliated law school. However, it became increasingly common to spend some time in a law school. A turning point for the profession and for legal education occurred in the 1820s, when private law schools began to merge with colleges. Legal historians Robert Stevens and William Johnson suggest that colleges offered prestige to private schools, such as by awarding degrees to law graduates, which private schools could not do. In addition, this arrangement gave liberal arts colleges an appearance of practicality, offered them a connection with the legal elite, and perhaps protected both the legal and the academic professions from those social pressures which have been termed "Jacksonian Democracy," as well. After 1850, and years of neglect, law schools



From the Lincoln Museum

FIGURE 1. A lithograph, published by H. Cassens of St. Louis, showing Lincoln as he defended William "Duff" Armstrong in the famous "Almanac Trial" of 1858. Although Lincoln did not grow a beard until 1860, lithographer Theodore Schrader depicted him with one.



From the Lincoln Museum

FIGURE 2. Stephen Trigg Logan, Lincoln's second law partner.

began to revive.[21]

Until recently, historians have viewed the "Age of Jackson," when Lincoln began his legal career, as a period of decline for the American legal profession. They have pointed to state-legislated reduction of requirements in formal legal training, codification movements to simplify the law, the dissolution of bar associations, attacks on the profession as an elite class, and the closing of law schools.[22]

A corollary to this interpretation is that Jacksonian Democracy strongly affected the practice of law on the frontier West. Although Anton-Hermann Chroust does not imply that frontier western law was "a travesty or a farce," he views it as an institution which "shunned formality, decorum, and even a modest mastery of the law":

> The frontier judges, usually "fair" in their "homey" decisions, prompt in the discharge of their duties . . . were invariably popular with the majority of the frontiersmen who liked informality as well as "rough-and-ready" justice in their courts. . . . The idea of "individualized justice" plainly replaced on the frontier the notion of an "organized machinery of the law". . . . Refinements of legal procedure were regarded as dishonest devices to thwart justice and permit the guilty to escape his just punishment.[23]

To illustrate frontier simplicity, Chroust employs an Eastern lawyer's description of Stephen T. Logan, one of Lincoln's law partners, when he sat on the bench:

> To us, just from the city of New York with the sleek lawyers and the prim and dignified judges, and audiences to correspond, there was a contrast so great, that it was almost impossible to repress a burst of laughter. Upon the bench was seated the judge [Logan], with his chair tilted back and his heels as high as his head, and in his mouth a veritable corncob pipe; his hair standing nine ways for Sunday, while his clothing was more like that worn by a woodchopper than anybody else. There was a railing that divided the audience; outside of which smoking and chewing and spitting tobacco seemed to be the principal employment.[24]

Concerning the certification of lawyers, Chroust explains that, after 1830, apprenticeship requirements were often abolished, and one could practice "as soon as he could convince any judge that he knew 'some law.' . . . Upon application for a license he was, as a rule, subjected to a purely perfunctory examination as to his knowledge of the law by a disinterested and often ignorant judge or by a 'board' of equally uninterested and ignorant lawyers."[25]

While Lincoln cannot be accused of ignorance or lack of interest, this observation is reminiscent of a story told about Lincoln as a bar examiner:

> I knocked at the door of his room, and was admitted, but I was hardly prepared for the rather unusual sight that met my gaze. Instead of finding my examiner [Lincoln] in the midst of books and papers, as I had anticipated, he was partly undressed and, so far as the meager accommodations of the room permitted, leisurely taking a bath. . . . "How long have you been studying?" he asked. "Almost two years," was my response. "By this time, it seems to me," he said laughing, "you ought to be able to determine whether you have in you the kind of stuff out of which a lawyer can be made. What books have you read?" I told him, and he said it was more than he read before he was admitted to the bar. . . .
>
> After he had dressed we went downstairs and over to the clerk's office in the courthouse, where he wrote a few lines on a sheet of paper, and inclosing [sic] it in an envelope, directed me to report with it to Judge Logan, another member of the examining committee at Springfield.
>
> . . . On reading it, Judge Logan smiled, and much to my surprise, gave me the required certificate without asking a question beyond my age and residence, and the correct way of spelling my name. The note from Lincoln read: "My dear Judge: —The bearer of this is a young man who thinks he can be a lawyer. Examine him, if you want to. I have done so, and am satisfied. He's a good deal smarter than he looks to be."[26]

Given these views of the legal profession in the West, it would be easy to see Lincoln and his colleagues as merely sufficient, if poorly-trained and indecorous, advocates of crude justice on the Jacksonian frontier. Arguing the importance of Lincoln's lawyering, Cullom Davis writes that interpreting Lincoln's law practice as "neither especially important or notable" is the "first among the myths" about Lincoln's years as a lawyer. For example, he quotes William L. Prosser, a legal scholar, who states that "Honest Abe was never anything very remarkable as a lawyer," for his small-town practice dealt with "such matters as the death of a cow, a fight behind a barn, the foreclosure of a mortgage, the slander of a lady alleged to have fallen from virtue, the theft of a pig, with once in a while a divorce, or something more exciting such as a petty swindle, or a railroad case." In fact, says Davis:

> Lincoln had a diverse and consequential general practice of some 3,000 cases that included work in the Sangamon Circuit Court, the Eighth Judicial Circuit of central and eastern Illinois, U.S. district and circuit courts in Springfield and Chicago (and possibly elsewhere), the United States Supreme Court, and the Illinois Supreme Court.[27]

Other historians, too, have rejected the idea that Jacksonian and frontier law was in such decline, and that it was as simple and crude as formerly interpreted. Robert Stevens explains that not all the legal profession's problems were the result of "Jacksonian Democracy," but rather, of America's long-standing distrust of the legal profession, and that the "legal climate or culture" varied from state to state. Studies of the frontier bar have shown a "surprisingly pluralistic picture," with some local bars showing "a high degree of professional organization and apparent competence."[28]

Describing how lawyers improved their "professional image," Maxwell Bloomfield attempts to reconstruct both the complicated attitudes antebellum society held about lawyers, and the complex reasoning lawyers used to defend their profession's existence. He says that there was "no sharp break with the past," for Jacksonian lawyers were intent on maintaining professionalism, insisting "upon a technical competence that set them apart from their fellow men," enabling them "to rationalize their elite status in American society on grounds that made some sense even to

radical democrats." Using ideas complementary to Jacksonian ideas of equality, legal apologists argued that the ranks of the legal profession were open to any aspirant who possessed the traits of the "self-made man" and was willing to persevere. Too, the decline of bar associations was not a sign of decline, but rather a sign of change from within the profession, for the rise of voluntary groups "often displayed a more intense professional consciousness than their earlier counterparts." Further:

> The scaling down of formal educational requirements, for example, which critics have so readily attributed to the anti-intellectualism of a raw democracy, may equally imply a reasoned assault upon the privileged position of upper-middle-class practitioners and their sons, while the popular election or short-term appointment of judges presupposes no necessary decline in the caliber of the bench.[29]

Similarly, Johnson explains that the apparent "abysmally low, even irresponsible standards" indicate that the function of law schools in this period was different from that of the twentieth century:

> It was not intended to serve as the sole or even primary mode of legal training; it was not intended to regulate entry into the legal profession; and it was not intended to certify the professional competence of lawyers. Instead, the nineteenth-century law school was designed to blend in harmoniously with other arrangements for legal training and to operate in the context of other methods of professional regulation and certification.[30]

Law schools did not set any entrance requirements to the school, and while students might be encouraged to enter at the beginning of a term, they were, in fact, admitted at any time. The curriculum covered the same material that was studied in law apprenticeships, and a student could sit for his examinations after three semesters, or sooner, if he had studied law before attending the school. Johnson points out that law schools emphasized general principles of law, expecting prospective lawyers would learn the details of law in practice, and students saw schooling as only one part of their legal education.[31]

A sense of the law school experience is expressed well in a description of a course of study printed on the back page of Daniel Mayes' "Introductory Lecture, delivered to the Law Class of Transylvania University, on the 5th of November, 1832." Incidentally, Mayes' lecture, which attempted to prove law to be a "moral science," was printed at the request of several law students at Transylvania, including Ninian Wirt Edwards:

> In the Law Department of Transylvania there are annually two sessions, one of six months, commencing the first Monday in April; the other of four months, commencing the first Monday in November. The course of study, is intended to embrace the entire legal education of the student. . . . For each day's study, the students here have a lesson assigned, which is on the next day recited to the professor, he enlarging on the text when necessary; pointing the attention to such parts of the lesson as are essential to be well impressed on the mind, drawing and impressing such distinctions, as should be marked; stating, wherein the law has undergone changes, and how that change has been effected, calling the attention of the student to the reason, upon which each principle, or rule, rests, where a reason is known, and answering such enquiries connected with the subject under examination, as the student may propose. . . . Each Saturday a Moot Court is held, in which pleadings in law and equity are framed, and the questions arising on them discussed. . . . The price of the ticket is $25 per session, and the Matriculation and Library fee $5. Students are of course admitted at any time, yet it is profitable to enter at the commencement of a session.[32]

This description indicates that students learned through a course of directed readings of selected treatises. The library probably did not play an important role in the college's curriculum, particularly as it had been "consumed by fire when the college edifice was burned." But Professor Mayes had "procured a small library for the purposes of the students" that would be enlarged "from time to time."

It was not law school, however, but the "professional life style," that ensured a lawyer's ability and regulated entry into the profession, explains Johnson. Until the 1870s, the judges and lawyers of the judicial circuit maintained professional standards and codes of behavior. Thus, professional discipline was enforced after the lawyer began to practice. This is the way the profession operated when Lincoln practiced, and explains why the behavior of lawyers in this period appears casual, if not downright incompetent. If Lincoln did not examine the aspiring lawyer too rigorously, it was because he understood that the practitioners (and citizens) of the circuit would find out soon enough what kind of lawyer he would make by judging his courtroom ability and oratory.[33]

Because there were few judges in Illinois, the state supreme court justices visited county courthouses twice a year to hear cases. Lincoln spent a great deal of time during his career traveling with a judge and other lawyers on the Eighth Judicial Circuit. The circuit shrunk in size during Lincoln's two decades practicing law, but for a number of years, Lincoln spent three months on the road at a time, visiting fourteen counties on a circuit of four hundred miles.[34]

In his book *Life on the Circuit with Lincoln*, Henry C. Whitney, a partner of Leonard Swett, and companion of Lincoln's on the circuit after 1854, writes nostalgically: "If the business of our Circuits was meagre, the good cheer and conviviality were exuberant: and if we did not make much money, our wants 'were few and our pleasures simple,' and our life on the Circuit was like a holiday." He also explains how their professional decorum was regulated by Judge David Davis' "orgmathorial court (as he called it)." At these trials, "some of Swett's speeches, and Lincoln's interjections . . . were better than the sketches of the Pickwick Club."[35]

Willard King's biography of David Davis contains a story of Lincoln as a defendent before the orgmathorial court. When Lincoln's companions heard he had told his partner, Ward Hill Lamon, to return half the fee to a client, Lincoln was brought before Judge Davis, who charged him with "impoverishing this bar by your picayune charges of fees. You are now as poor as Lazarus, and if you don't make people pay you more for your services, you will die as poor as Job's turkey." The trial at the tavern

From the Lincoln Museum

FIGURE 3. Judge David Davis.

From the Lincoln Museum

FIGURE 4. Francis F. Browne's *Every-Day Life of Abraham Lincoln* (1886) contains humorous, if apocryphal, anecdotes about Lincoln as a lawyer. Here, during a horse trade, Lincoln claims a judge has outwitted him by exchanging a nag for Lincoln's sawhorse.

was a jovial affair, and Lincoln was fined for his offense.[36]

The conviviality of the circuit, and the dominating presence of Judge Davis, is evident in the following colorful anecdote by Whitney. Gathered with his companions around the fireplace, David would determine who could sit in on the evening's conversation:

> For instance, an unsophisticated person might be attracted to the Judge's room by our noise, supposing it to be a "free for all" . . . but if he really was not desired, he was frozen out by the Judge thus: "Ah! Stop a minute, Lincoln! Have you some business, Mr. Dusenberry?" If Dusenberry should venture: "Well, no! I came designin'—Davis would interrupt him, "Swett, take Mr. Dusenberry out into the hall, and see what he wants, and come right back yourself, Swett. Shut the door. Now, go ahead, Lincoln! You got as far as—Ha! Ha!! Ha!!! 'She slid down the hill, and—,' but wait for Swett. Swett!! Swett!!! called he. "Hill," (to Lamon) "call Swett in. Now, Lincoln, go ahead," etc. "She slid down the hill, you know. Ho! Ho! Ho!!!"[37]

Whitney's account of life on the circuit was published in 1892, at a time when, Johnson explains, a number of lawyers who had practiced before 1860 wanted "to record for posterity a style of professional life that was rapidly receding into the past." The decline of the judicial circuit made it more difficult for lawyers to participate in the regulation and maintenance of the profession in a personal way. The professional world of Lincoln, in which a student could learn as he went—by studying alone, or in a law office, and by observing his colleagues on the circuit—began to give way, so that, after 1870, law schools increased in importance and number, and with the bar associations, gradually took over the means of professional certification. But that transition, says Johnson, "was so gradual as to be imperceptible by the profession."[38] Lincoln regretted his meager formal education, and when he spoke to Robert about attending Harvard, he perceived the trend toward receiving a professional education in a law school. Yet he also recalled, perhaps wistfully, that he had established his own career at a time when one could become a lawyer in an informal, personal, and convivial way.

FOOTNOTES

21. Johnson, *Schooled Lawyers*, pp. 52, 1; Stevens, *Law School*, pp. 5, 21.
22. Stevens, *Law School*, pp. 6-8.
23. Chroust, *Rise of the Legal Profession*,2:97, 2:95-96.
24. Ibid., 2:97n.
25. Ibid., 2:106.
26. Haar, ed., *Golden Age of American Law*, p. 83.
27. William L. Prosser, quoted in Davis, "Crucible of Statesmanship," pp. 7; Ibid., p. 8.
28. Stevens, *Law School*, pp. 8, 16n.
29. Bloomfield, *American Lawyers*, pp. 137, 145-146, 140, 141.
30. Johnson, *Schooled Lawyers*, p. 42.
31. Chroust, *Rise of the Legal Profession*, 2:200-201; Johnson, *Schooled Lawyers*, pp. 12-13, 48-49.
32. Daniel Mayes, *An Introductory Lecture, delivered to the Law Class of Transylvania University, on the 5th November, 1832* (Lexington, Kentucky: H. Savary & Company, 1832), p. 8.
33. Johnson, *Schooled Lawyers*, pp. xiii, 24-25, 29-30.
34. Neely, *Abraham Lincoln Encyclopedia*, p. 96.
35. Ibid., p. 335; Henry C. Whitney, *Life on the Circuit With Lincoln* (Boston: Estes and Lauriat, publishers, 1892), pp. 41-46.
36. Willard L. King, *Lincoln's Manager, David Davis* (Cambridge, Massachusetts: Harvard University Press, 1960), p. 89.
37. Whitney, *Life on the Circuit*, pp. 45-46.
38. Johnson, *Schooled Lawyers*, pp. 27, 25, 38.