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Review of *The Law Practice of Abraham Lincoln:
Complete Documentary Edition*. Edited by Martha L.
Benner and Cullom Davis.

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“A Superior Opportunity of Being a Good Man”

GERALD J. PROKOPOWICZ

The Law Practice of Abraham Lincoln: Complete Documentary Edition. Edited by Martha L. Benner and Cullom Davis. Champaign: University of Illinois Press, 2000. 3 DVDs and user's manual. \$2,000. ISBN 0-252-02566-0.

Great president. Lousy lawyer.” In four words, a movie character played by the late actor Walter Matthau thus summed up the career of Abraham Lincoln. For most of the 136 years since Lincoln's death, general readers and scholars alike have accepted this verdict. Occasional Southern partisans have tried to belittle Lincoln's greatness as a president, but no substantial challenges to his overall reputation appeared between Edgar Lee Master's vitriolic *Lincoln: The Man* in 1931 and Lerone Bennett's *Forced Into Glory: Abraham Lincoln's White Dream* in 2000. During that span, hundreds of other authors portrayed Lincoln in every possible light: dynamic leader or passive responder to events, cool religious skeptic or secret Christian believer, Burkean conservative or proto-twentieth-century statist liberal, ideologue or pragmatist; but always an admirable and successful model of a particular way of thinking, which (by remarkable coincidence) generally tended to be that of the author as well.

Even rarer than a serious attack on Lincoln as a president has been a serious evaluation of Lincoln as a lawyer. Abraham Lincoln received his law license in 1836 and began practicing as the junior partner of John Todd Stuart (cousin of his future wife Mary Todd) in 1837. He ran the firm for two years while Todd served in Congress and in 1841 left to become a partner of Stephen T. Logan. Three years later he established his own practice, with

William H. Herndon as his junior partner, and (with the exception of a single term in Congress) spent the next seventeen years living in Springfield, devoting most of his energies to the law. Numerous books have described Lincoln's pre-presidential years, but John J. Duff's *A. Lincoln: Prairie Lawyer* (1960) and John P. Frank's *Lincoln as a Lawyer* (1961) remain the only two full-length studies of Lincoln's legal career (although others are currently being written).

The Lincoln Legal Papers

One of the main reasons why scholars have been reluctant to tackle the subject has been the difficulty of gaining access to the sources. Roy P. Basler, in his edition of *The Collected Works of Abraham Lincoln*, published some items relating to Lincoln's law practice but chose generally to exclude “law cases and documents appertaining thereto (such as receipts for fees, affidavits, declarations, praecipes, etc.),” which he declared were “arbitrarily relegated to separated volumes which the [Abraham Lincoln] Association proposes to publish at a later date” (CW 1; viii–ix). In 1985, forty-two years after Basler wrote his introduction, the Abraham Lincoln Association and other organizations gave their support to the Illinois Historic Preservation Agency when it launched the Lincoln Legal Papers project, which had as its goal the publication of the law documents that Basler had omitted.

Under the leadership of editors Martha L. Benner and Cullom Davis, the project sent inquiries to libraries, museum, and document collectors across the country alerting them to the effort to find every piece of written evidence relating to the legal career of Abraham Lincoln. For the next ten years, LLP staff members scoured all the county courthouses in Illinois where Lincoln was known to have practiced, as well as several in Missouri and Indiana. Other researchers sought Lincoln-related legal documents at the Library of Congress, the National Archives, and various specialized Lincoln archives scattered throughout the country, such as those at The Lincoln Museum in Fort Wayne, Indiana, and the Abraham Lincoln Museum in Harrogate, Tennessee. Although the

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project experienced some setbacks, including the arrest of a former researcher who took advantage of his employment to steal a number of Lincoln documents (which were subsequently recovered), the results vastly exceeded the most optimistic projections.

By 1995, the Lincoln Legal Papers project generated some 250,000 photocopied pages representing almost 100,000 documents, an enormous quantity of material that made traditional publication impractical; even if each document and its accompanying annotation filled only half a printed page, the results would have easily filled a hundred large volumes, creating a publication more than ten times the size of the original *Collected Works*. The directors of the project therefore planned to publish a selection of transcribed, annotated documents in the traditional multivolume printed format, as well as a comprehensive facsimile edition of all the documents, on microfilm. To the great relief of every researcher who ever spent hours squinting at a microfilm reader, the computer revolution overtook the project in 1994, when it was decided to publish the facsimile edition on CD-ROMs. Even these would have been awkward to use, as the complete edition would have required as many as twenty-four discs of data. In 1999, DVD technology was adopted, resulting in the far more convenient three-disc set that was published in 2000.

A Landmark Publication

The Law Practice of Abraham Lincoln: The Complete Documentary Edition thus became one of the first major documentary collections to appear in electronic format. It contains 96,386 documents totaling 206,294 pages, drawn from 5,669 court cases and other legal matters. Had this mass of material been published on paper or microfilm, the editors would have been forced to choose a single method of organizing the documents, arranging them by date (the traditional choice), by case or subject matter, by author, or in some other form. By choosing an electronic format, the editors escaped the limitations of a single organizing principle. With the opportunity to employ multiple organizing strategies, however, came the responsibility of choosing wisely among the many possibilities, and offering the researcher a manageable number of useful choices. Here the editors of the Lincoln Legal Papers did a superb job not only in making Lincoln's documents available, but in taking advantage of the possibilities inherent in electronic publishing to make them easily accessible, even for the novice computer user.

For that hypothetical novice, the 18-page manual provides a nonthreatening introduction to the program, as

well as a simple and straightforward set of installation instructions. For those using the program in a library, where the manual may not be available, all of the manual's contents are online in the Reference section, which gives a more detailed introduction to the Lincoln Legal Papers project. In addition to explaining its carefully defined scope, its editorial guidelines, and the user's options for searching for documents, the Reference section contains substantial historical content in the form of narrative and statistical descriptions of Lincoln's law practice, a glossary of legal terms, biographical sketches of 199 historical figures, a set of maps and illustrations, an introduction to nineteenth-century pleading and practice, an outline of the Illinois court system, an extensive bibliography, and such useful historical tools as a table converting the value of money in any period from 1809 to 1990 into its 1999 equivalent.

The most impressive aspect of the publication, besides its sheer size, is the efficiency of its search tools. There are four search screens from which to choose: General (the most useful); Type of Work; Document; and Direct. The General search allows selection from a menu of subject headings, some of which have subheadings as well. A search for cases dealing with "African Americans," for example, can be further narrowed to "Free Blacks" or "Slaves and Slavery." Additional search fields on the General search page include starting and ending dates, and case participants and their roles. Using Boolean operators AND, OR, and NOT, it is possible to search, for example, for all of Lincoln's cases from 1846 to 1850 involving free blacks in which he was a defense attorney, but which did not involve Billy Herndon (there aren't any). If the restriction against Herndon is removed, one finds the case of *Crowder v. Collier & Collier*, in which Lincoln and Herndon defended Nancy Collier, "a free woman of colour," against a mortgage foreclosure and reached a settlement. The Type of Work screen allows searches by case name, court name, type, and jurisdiction, and by any one of 163 kinds of legal action, from bankruptcy to manslaughter to "trespass quare clausum fregit" (which, the glossary explains, means "that the defendant damaged the plaintiff's real property by wrongfully entering within the boundaries of the plaintiff's property"). The Document screen includes fields for the type of document, author, and signer, while the Direct screen allows searches by the unique ID number assigned to each document, for those who already know exactly what they are looking for.

There are numerous other useful features. A print button on the case summary screen sends to the printer all the information on that screen, but neatly reformatted

as a printed document, rather than simply capturing everything on the monitor. The document printing option automatically reformats the document for standard 8.5 x 11-inch paper. When viewing facsimiles of documents on the screen, one must frequently zoom in and out in order to read the handwriting, and it is a great convenience to find that this can be done with the left and right mouse buttons, putting the most often-used features where they are easiest to use.

In comparison with the massive effort involved in collecting all of these documents, and the care and intelligence that went into making them easy to use, the limitations of the project scarcely merit mentioning. Some were beyond the editors' control, such as the omission of many of Lincoln's federal cases, the documents of which were destroyed in the Chicago Fire of 1871. Others are inherent in the facsimile edition format, such as the difficulty of deciphering some nineteenth-century handwriting (although not that of Lincoln, which was remarkably clear). The extensive background material and individual case descriptions compensate in large part for the absence of document-specific annotation, but still leave the reader with the task of puzzling out the importance of each document. Finally, it will be welcome when some future data storage medium is invented that allows all the material to be stored on a single disk, eliminating the need to swap the three disks in order to access different documents. In the meantime, users may want to spend the ten or twenty seconds or so it takes for their computers to read a disk each time it is inserted to reflect on how much better it is to have only three DVDs to change instead of 24 CDs, or endless rolls of microfilm.

Lincoln the Lawyer

Turning from process to content, what do all these documents tell us about Abraham Lincoln the lawyer? The first thing that a collection of 5,669 cases and other legal matters requires is the final rejection of Lincoln's outdated reputation as a "lousy lawyer." To have handled an average of more than 200 cases each year, for twenty-five years, indicates that Lincoln was an extraordinarily hard-working and much sought-after attorney. The statistical breakdown of Lincoln's career provided in the Reference section shows that Lincoln's workload was not only heavy but also diverse. Most of his cases involved civil matters, tried in common law or chancery courts (the distinction was largely procedural), but he also appeared as counsel in numerous criminal and bankruptcy cases. He represented plaintiffs more often than defendants, but only by a ratio of about three to two. The great majority of his

cases were tried at the state circuit court level, but he also had hundreds of federal cases (even omitting those for which no records have survived), and appeared hundreds of times before the Illinois Supreme Court.

If the editors of the Lincoln Legal Papers did no more than fill out the picture of the sixteenth president's law practice, they would have performed a valuable, if narrow, historical service. What they have produced, however, is also a work of social history that affords remarkable insight into the role of law and lawyers in the frontier era of Midwestern settlement. This was a time of unusual ferment in American law, characterized by some legal historians as a "Golden Age" of jurisprudence. From 1820 to 1860, a period encompassing Lincoln's entire legal career, American lawyers and judges reacted to the novel social and legal problems generated by the twin engines of industrial revolution and westward expansion by rejecting obsolete English precedent and substituting common sense and a faith in the nation's economic and moral progress as the underpinning of the law. In few other eras could individuals with as little formal education as Lincoln become so successful as lawyers, and Lincoln was well aware of the prestige and power that lawyers like him wielded at a time when the law was so plastic. "Discourage litigation..." he wrote in an 1850 lecture for law students. "As a peacemaker the lawyer has a superior opportunity of being a good man." If Lincoln was representative of his peers as a lawyer, and "by all evidence, Lincoln and his partners had a typical practice compared to other attorneys during the same period in the Midwest" (A Statistical Portrait: Introduction) according to the editors, then his legal papers can be taken as representative as well.

The Future

Sixteen years after its inception, the team of editors and researchers that created *The Law Practice of Abraham Lincoln: The Complete Documentary Edition* not only continues its work on the letterpress edition of selected cases, but has expanded its scope dramatically. In November 2001 the Illinois Historic Preservation Agency announced its intention to publish a new edition of the complete papers of Abraham Lincoln, with the legal papers to form the first series. The second series is to consist of Lincoln's other pre-presidential papers, and the third and final series, due to be completed in 2025, will cover Lincoln's presidency. Now under the leadership of Daniel W. Stowell, the project formerly known as the Lincoln Legal Papers anticipates including not only Lincoln's own writings but his incoming correspondence as well. With

more than two hundred letters arriving at the White House each day of Lincoln's presidency, this ambitious plan guarantees a final product many times the size of Basler's *Collected Works*.

It is an unfortunate fact of human nature that there is no field of interest or enterprise so specialized that it cannot be riven by senseless feuds, and the world of Lincoln manuscript editing is, alas, no exception. A committee of the Abraham Lincoln Association, which was the original sponsor of Basler's work and an early supporter of the Lincoln Legal Papers, has also been planning a new edition of Lincoln's presidential papers. Although it would seem to be of obvious benefit either to combine the talents of the distinguished scholars on the Abraham Lincoln Association committee with the proven editorial expertise of the Lincoln Legal Papers staff, or to divide the scope of work between the two projects and assign the pre-presidential papers to one and the presidential documents to the other, neither solution has been accepted by both parties. As a result, for the time being both projects are set to proceed on parallel paths, competing for funding and confusing the public. One can only hope that the leaders of both projects will soon recognize that as a peacemaker, the documentary editor, like the lawyer, "has a superior opportunity of being a good man."

Technical Requirements

The Law Practice of Abraham Lincoln: The Complete Documentary Edition is published in an attractive clamshell case that resembles a legal volume and contains an 18-page manual and three digital video discs (DVDs). The minimum hardware requirements to use the publication are an IBM-compatible PC with a Pentium processor, running Windows 95 or Windows NT 4.0, and 32 MB RAM, 130 MB hard drive space, a 256-color display with 640 x 480 pixel resolution, and a DVD drive. There is no Macintosh version. Another technical requirement is a check for \$2,000 payable to the University of Illinois Press, to cover the list price of the edition, some four or five times the current price of Lincoln's *Collected Works*.

A few hints: the program assumes that the DVD reader is the D: drive. If that is not the case, no document images can be viewed until the user modifies the file "lincoln.ini" by changing "D" to the correct drive letter for each of the first three lines, labeled CD1, CD2, and CD3. The remaining lines, CD4 through CD 24 can be ignored, as they are historical artifacts of the years when the editors intended to put the work on 24 CD-ROMs rather than the current three DVDs. The user is also well advised to set the monitor to the recommended 800 x 600 pixels rather than the minimum 640 x 480 pixels, as some of the information at the margins may become unviewable at the latter setting.

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simile of Susan Paul's April 1, 1834, letter to William Lloyd Garrison, editor of *The Liberator*, suggests that at least this text was available in manuscript form. Did Brown compare the original with its published form? Are other letters available in manuscript form? Why did the editor decide to use *The Liberator* version?

For most readers, the absence of this information will not materially affect their appreciation or use of this volume. Good editorial practices, however, preserve and enrich the text and context of an edition. The work of the Association for Documentary Editing remains essential in continuing to educate scholars and publishers about the necessity and utility of learning about and then following practices now well established by the editorial profession.

