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## Abraham Lincoln and the Duty of Zealous Representation: The Matson Slave Case

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### I. INTRODUCTION

Lincoln, as the heroic preserver of the Union, has attracted historians to every aspect of his life. His law career has attracted some interest, but in the big picture of Lincoln historiography it seems neglected. The spotlight finally shone on his career when the Lincoln Legal Papers project collected over 90,000 legal documents, most of them recovered from dusty courthouses, and made them easily available on the web.<sup>1</sup> Now researchers have a new window into the life of a typical Illinois lawyer, when statutes were fewer and lawyers had to rely almost exclusively on their quick-wits in court. At the same time, the Papers invite us to evaluate Lincoln as a lawyer, with special emphasis on the litigation for which he is best known.

One of the most controversial events in Abraham Lincoln's law career was his representation of a slave owner in the 1847 case, *In re Bryant*, popularly known as "The Matson Slave Case." *In re Bryant* was "one of the strangest episodes in Lincoln's career," wrote Lincoln's friend and colleague, Henry Clay Whitney, and many historians agree with him.<sup>2</sup> Lincoln's involvement in the *Bryant* case has caused some historians to question Lincoln's antislavery convictions and his skill as a lawyer. It is difficult for those who revere him as the Great Emancipator to accept that he would argue for the rights of a slave owner. Many historians discuss

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<sup>†</sup> The author wishes to thank research assistants, Michael Enzweiler and Beth Ann Taylor for their work in the preparation of this article.

<sup>1</sup> See, e.g., THE LAW PRACTICE OF ABRAHAM LINCOLN, SECOND EDITION, <http://perma.cc/R647-2R6S> (last visited April 15, 2014).

<sup>2</sup> CHARLES R. MCKIRDY, LINCOLN APOSTATE: THE MATSON SLAVE CASE 3 (2011) (quoting HENRY CLAY WHITNEY, LIFE ON THE CIRCUIT WITH LINCOLN 315 n. 4 (1940)).

the case apologetically; feeling the need to point out that arguing for a slave owner was not typical of Lincoln's general practice of law.<sup>3</sup> Others use the case to illustrate their belief that the Great Emancipator never fully supported freedom for slaves.<sup>4</sup> Still others see his involvement in the case as an example of zealous advocacy, of Lincoln putting his personal views aside to best represent his client.<sup>5</sup>

This article examines the merit of these varying viewpoints focusing on whether Lincoln's decision to take the case is an indicator of a proslavery sentiment and if it not, and Lincoln was an abolitionist at heart, then did he zealously represent Matson in *In re Bryant*. Part II provides the relevant background for *In re Bryant*, including the history of slave law in Illinois, relevant precedent, and the facts in issue. Part III argues that Lincoln's involvement in *Bryant* was more the result of ethical concerns and a reflection of Lincoln's personal trial strategy than political agenda or inadequacies.

## II. BACKGROUND: LINCOLN'S CAREER AND THE LAW AND FACTS LEADING TO *IN RE BRYANT*

### *A. Historical Discussion of Lincoln's Law Practice*

Before the Lincoln Legal Papers were published, biographers tended to examine just two areas of Lincoln's practice: criminal law and railroad law. They discussed the heartrending Duff Armstrong case, for example, where Lincoln defended Armstrong pro bono in a murder case at the request of Armstrong's mother, Hannah Armstrong, who had befriended Lincoln in his youth.<sup>6</sup> Dramatically, Lincoln achieved a not guilty verdict by producing an almanac that showed the moon was too low in the sky for the key witness to have seen Armstrong commit murder.<sup>7</sup> By singling out this high profile case, biographers gave readers the idea that Lincoln concentrated on criminal law. This is far from the truth, however, as Lincoln's practice included only a small number of criminal cases.<sup>8</sup>

Another category of cases biographers highlight is railroad law. Railroads were in their infancy when Lincoln practiced, and lawyers could scarcely avoid making precedents every time they litigated an important issue. In the last ten years of his practice, between 1850 and 1860, he handled important precedent-setting cases that have become icons for

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<sup>3</sup> *Id.* at 3–4.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> BENJAMIN P. THOMAS, ABRAHAM LINCOLN: A BIOGRAPHY 159 (1952).

<sup>7</sup> *Id.*

<sup>8</sup> ABRAHAM LINCOLN, ESQ.: THE LEGAL CAREER OF AMERICA'S GREATEST PRESIDENT 82 (Roger Billings & Frank J. Williams eds., 2010).

biographers: the *McLean County Tax* and *Rock Island Bridge* cases.<sup>9</sup> In the first, railroads were exempted from exposure to taxation by every county through which they ran: taxation that if not checked would have ruined their business.<sup>10</sup> The court agreed with Lincoln's argument that under the Illinois Constitution the legislature could exempt the railroad from taxation for a number of years by both state and county entities.<sup>11</sup>

In the *Rock Island Bridge* case, a riverboat owner sued a company that owned a bridge over which a railroad ran for damages incurred when its boat, the *Effie Afton*, collided with bridge supports.<sup>12</sup> Lincoln's defense on behalf of the Rock Island Bridge Company resulted in a hung jury and a victory for the railroad.<sup>13</sup> Railroads were then freer to build bridges over rivers as long as they did not impede passage by boats without exposure to negligence for every boat that happened to slam into their bridges. A decision that all railroad bridges impermissibly obstructed river traffic would have slowed the growth of railroads significantly. The case was pivotal in the fight between the established riverboat trade and the upstart railroads for transportation supremacy. Railroad cases became a significant part of Lincoln's practice during the ten years before the Civil War, and it can fairly be said that he was a pioneer in transportation law, both suing and defending the railroads.

Still, Lincoln was not primarily a railroad lawyer. He practiced primarily debtor-creditor law, a category that was at the core of over half of his cases, including those involving contracts, mortgages and promissory notes. Of the 5,000 or so known cases Lincoln handled, the Lincoln Legal Papers reports that 3,145 involved some aspect of debtor and creditor law.<sup>14</sup> Lincoln's partner, William Herndon, described the typical cases he took while riding the Eighth Judicial Circuit as "assault and battery--suits on notes--small disputes among neighbors--slander--warranties on horse trades--larceny of a small kind."<sup>15</sup>

The controversy over the quality of Abraham Lincoln's law career began immediately after his death and continues to this day. The prominent Lincoln historian, Michael Burlingame, devotes several pages to

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<sup>9</sup> *Illinois Central Railroad Co. v. McClean County and Parke*, 17 Ill. 291 (1855); *Hurd, et al. v. Rock Island Bridge Company*, Ill. Cir. (Chicago, 1857) (surviving record of the case is only found in newspapers because the Federal Court files were destroyed in the 1871 Chicago fire).

<sup>10</sup> GUY C. FRAKER, *LINCOLN'S LADDER TO THE PRESIDENCY: THE EIGHTH JUDICIAL CIRCUIT* 49 (2012).

<sup>11</sup> *See id.* at 163.

<sup>12</sup> *Id.* at 164.

<sup>13</sup> *Id.*

<sup>14</sup> THE LAW PRACTICE OF ABRAHAM LINCOLN, SECOND EDITION, *supra* note 1, <http://perma.cc/J9FH-Z3T9> (last visited April 21, 2014) (noting courthouse fires in Logan and McLean Counties, the destruction of common law and criminal case files in Sangamon County, and the Great Chicago Fire's destruction of federal court records means that Lincoln was involved in more cases than those for which we have record).

<sup>15</sup> DAVID HERBERT DONALD, *LINCOLN* (1995) (quoting Letter from William Herndon to Mrs. Leonard Swett (Feb. 22, 1890)).

Lincoln's career in his biography, "Abraham Lincoln: A Life."<sup>16</sup> He, Ronald White, and David Donald are the only general biographers that made heavy use of the most recent information contained in the Lincoln Legal Papers.<sup>17</sup>

Donald's opinion of Lincoln's career can be gleaned from the title of chapter six, "At the Head of His Profession in This State," in his biography.<sup>18</sup> Burlingame, on the other hand, says "It is difficult to describe Lincoln's stature as a lawyer with any precision."<sup>19</sup> In contrast to Donald, Burlingame mentions one Lincoln contemporary after another who made negative comments, although he admits that they all admired Lincoln personally.<sup>20</sup> Lincoln's partner, William Herndon, said, "Lincoln never read much law,"<sup>21</sup> a thought echoed by George Edmunds, a Springfield lawyer, who thought Lincoln was a lazy man.<sup>22</sup> Edmunds grudgingly admitted, however, that Lincoln "didn't need to study so much as the rest of us, because he could grasp the essentials of an argument in an instant."<sup>23</sup> Still, Edmunds concluded, "he was not a great lawyer."<sup>24</sup> Lincoln's most intimate associate, Judge David Davis, said "Lincoln could hardly be called very learned."<sup>25</sup> Finally, Brian Dirck, who recently wrote a book on Lincoln's law career, concluded that he was "a pretty ordinary lawyer."<sup>26</sup>

The picture of Lincoln as an indolent lawyer, always wisecracking and talking politics when he should be researching a case, is misleading. It does not take account of the informality of practice in the Illinois county circuit courts. No lawyer in those circuit courts, let alone Lincoln, was required to cite much precedent.<sup>27</sup> Court days were festive days on the circuit. The arrival of an itinerant retinue of lawyers made for a social as well as legal event. Lincoln himself was more than a lawyer to townspeople and colleagues; he was an entertainer often providing a wisecrack or story.<sup>28</sup> In fact, circuit judge David Davis would interrupt legal proceedings to hear the joke Lincoln was telling in the back of the room.

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<sup>16</sup> See generally 1 MICHAEL BURLINGAME, ABRAHAM LINCOLN: A LIFE (2008).

<sup>17</sup> DVD: THE LAW PRACTICE OF ABRAHAM LINCOLN: COMPLETE DOCUMENTARY EDITION (Martha L. Benner and Cullom Davis eds., 2000).

<sup>18</sup> *Id.*

<sup>19</sup> BURLINGAME, *supra* note 16, at 355.

<sup>20</sup> See *id.* at 352-55.

<sup>21</sup> WILLIAM H. HERNDON & JESSE W. WEIK, HERNDON'S LINCOLN 209 (Douglas L. Wilson & Rodney O. Davis eds., 2006).

<sup>22</sup> BURLINGAME, *supra* note 16, at 353 (quoting CHICAGO, J., Feb. 12, 1909).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> See *id.* at 373.

<sup>26</sup> BRIAN DIRCK, LINCOLN THE LAWYER 142 (2007).

<sup>27</sup> Henry C. Whitney, Life on the Circuit with Lincoln, 41-42 (1892).

<sup>28</sup> Willard L. King, Lincoln's Manager, David Davis, 89 (1960).

An example of the kind of tomfoolery that took place in those courtrooms is the story that appeared in Harper's Monthly in 1866.<sup>29</sup> Ward Hill Lamon was prosecuting a case in Bloomington, Illinois.<sup>30</sup> He was a big, athletic man and before court he had accepted a challenge to a wrestling match.<sup>31</sup> As he got up to address the jury, the other lawyers in the courtroom noticed that Lamon's trousers were torn in the rear.<sup>32</sup> As Harper's told it:

One of the lawyers, for a joke, started a subscription paper, which was passed from one member of the bar to another as they sat by a long table fronting the bench, to buy a pair of pantaloons for Lamon, "he being," the paper said, "a poor but worthy young man." Several put down their names with some ludicrous subscription, and finally the paper was laid by someone in front of Mr. Lincoln. He quietly glanced over the paper, and immediately took up his pen and wrote after his name, "I can contribute nothing *to the end in view*."<sup>33</sup>

In addition, Lincoln made a folksy appearance in the courtroom, not revealing himself as a highly educated man. Lincoln, to be sure, did not receive much formal education.<sup>34</sup> During his youth, he spent a total of about one year in so-called "blab schools," where students recited their lessons out loud.<sup>35</sup> It was a good enough education on the frontier, but nothing like the education many of his peers received in preparatory schools and colleges. Lincoln once wrote in a brief biography, that he was "education defective."<sup>36</sup>

Lincoln entered the practice of law after passing the bar examination, but his success on the examination gives little indication of his competence. State supreme courts, then as now, regulate admission to the bar. Today, all lawyers have to pass a written bar exam, but in Lincoln's day, there was no written exam.<sup>37</sup> His bar exam consisted of just a few oral questions administered by a Supreme Court justice.<sup>38</sup> There is no record of Lincoln's own bar examination but there is an informal account of a bar

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<sup>29</sup> ABE LINCOLN LAUGHING: HUMOROUS ANECDOTES FROM ORIGINAL SOURCES BY AND ABOUT ABRAHAM LINCOLN 72 (P.M. Zall, ed. 1982).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See LOUIS A. WARREN, LINCOLN'S YOUTH: INDIANA YEARS, SEVEN TO TWENTY-ONE, 1816-1830 122-33 (1959); see also BURLINGAME, *supra* note 16, at 30-37.

<sup>35</sup> Thomas, *supra* note 6, at 12.

<sup>36</sup> THE COLLECTED WORKS OF ABRAHAM LINCOLN 459 (Roy P. Basler et al. eds., 1990).

<sup>37</sup> DIRCK, *supra* note 26, at 21-22; see also MARK E. STEINER, AN HONEST CALLING: THE LAW PRACTICE OF ABRAHAM LINCOLN 37 (2006).

<sup>38</sup> DIRCK, *supra* note 26, at 21.

examination Lincoln later gave to a young applicant.<sup>39</sup> Jesse Weik records the story in an interview he had with the applicant, Jonathan Birch:

“At the appointed time,” said Mr. Birch when he related the incident, “I knocked at the door of Lincoln’s room and was admitted. Motioning me to be seated he began his interrogatories at once without looking at me a second time to be sure of the identity of his caller. ‘How long have you been studying?’ he asked. ‘Almost two years,’ was my response. ‘By this time it seems to me,’ he said laughingly, ‘you ought to be able to determine whether you have in you the stuff out of which a good lawyer can be made.’ Then he asked me in a desultory way the definition of a contract and two or three other fundamental questions, all of which I answered readily and, as I thought, correctly. Beyond these meager inquiries, as I now recall the incident, he asked nothing more. Meanwhile, sitting on the edge of the bed he began to entertain me with recollections—many of them characteristically vivid and racy—of his own practice and the various incidents and adventures that attended his start in the profession. The whole proceeding was interesting and yet so unusual, if not grotesque, I was at a loss to determine whether I was really being examined or not. In due time we went downstairs and over to the clerk’s office in the court-house, where he wrote a few lines on a sheet of paper which he enclosed in an envelope and directed me to report to Judge Stephen T. Logan, the other member of the examining committee at Springfield. The next day I went to Springfield where I delivered the note as directed. On reading it Judge Logan smiled and, much to my surprise, gave me the required certificate or license without asking a question beyond my age, residence and the correct way of spelling my name. The note from Lincoln read:

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<sup>39</sup> Jesse W. Weik, *A Law Student’s Recollection of Abraham Lincoln*, THE OUTLOOK, Feb. 11, 1911, at 311–14.

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.

Yours

LINCOLN<sup>40</sup>

Lincoln began practice as the partner of John Todd Stuart, and they practiced together for four years between 1837 and 1841.<sup>41</sup> Stuart must be given credit for making Lincoln a member of the bar. While they served together as soldiers in the Black Hawk War of 1832, Stuart saw Lincoln as a diamond in the rough and suggested that Lincoln study to be a lawyer.<sup>42</sup> He loaned him books and encouraged him.<sup>43</sup> These books were *Blackstone's Commentaries*, *Chitty's Pleadings*, *Greenleaf's Evidence* and *Story's Equity*, all of which Lincoln studied while leaning on a tree in the tiny village of New Salem.<sup>44</sup>

Stuart was mostly absent from the office and was not particularly active as Lincoln's mentor.<sup>45</sup> He was seldom in the office with Lincoln because he spent much of his time traveling around Illinois as a politician and serving as a U.S. Representative.<sup>46</sup> When Stuart left for Washington to take his seat in Congress in 1838, Lincoln wrote hopefully in the firm records that it was "The commencement of Lincoln's administration."<sup>47</sup>

Even when his career had matured, Lincoln did not have to worry about the elaborate Code of Professional Responsibility that governs lawyers' behavior today. Lawyers in Lincoln's time were guided only by collective norms of behavior.<sup>48</sup> For example, Lincoln knew he must not represent a client when there was a conflict of interest and did not do so.<sup>49</sup> On the other hand, he sometimes failed to handle a client's case in a timely manner.<sup>50</sup> His passion for engaging in politics simply caused him to miss court dates.<sup>51</sup> This was a decidedly negative factor in Lincoln's otherwise positive career.

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<sup>40</sup> HERNDON'S INFORMANTS 726–27 (Douglas L. Wilson & Rodney O. Davis eds., 1998) (citing Interview by Jonathan Birch with Jesse W. Weik).

<sup>41</sup> DONALD, *supra* note 15, at 70–74.

<sup>42</sup> *Id.* at 46, 53.

<sup>43</sup> *Id.*

<sup>44</sup> STEINER, *supra* note 37, at 32.

<sup>45</sup> DONALD, *supra* note 15, at 73–74.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> ABRAHAM LINCOLN, ESQ.: THE LEGAL CAREER OF AMERICA'S GREATEST PRESIDENT, *supra* note 8, at 171–183.

<sup>49</sup> *Id.* at 177.

<sup>50</sup> *Id.* at 179–181.

<sup>51</sup> *Id.*

When Lincoln left Stuart to become the partner of Stephen A. Logan in 1841, he finally found a mentor.<sup>52</sup> Logan's invitation to become his partner was an early indication that Lincoln was becoming an excellent lawyer because Logan was an acknowledged leader of the Illinois bar. By the time Lincoln left Logan in December 1844 and entered his third and final partnership with William Herndon, he had considerable practice experience.<sup>53</sup>

Herndon did most of the drudgework of drafting law documents at their Springfield office while Lincoln traveled by horseback and railroads to handle trials on the Eighth Judicial Circuit.<sup>54</sup> For Lincoln, the rush of trying a case was preferable to the boredom of sitting behind a desk.<sup>55</sup> Descriptions of Lincoln in his Springfield office portray a man who was happiest when he read newspapers, talked politics, and told stories.<sup>56</sup> Davis said he was not a general reader, and cracked a book only to look up a fact.<sup>57</sup> But this statement must be tempered with evidence that Lincoln's self-education continued long after he became a lawyer and that he avidly read newspapers. While riding on his horse, he read Euclid and was pleased when at last he could tell colleagues he had mastered it.<sup>58</sup> He also became intimately acquainted with Shakespeare and his favorite poet, Robert Burns.<sup>59</sup> Most importantly, he was a scholar of the Constitution and the founding fathers and brought his knowledge to its highest fruition in the Cooper Union Speech.<sup>60</sup>

Some commentators note that while Lincoln read Burns and Shakespeare, he appears to have never read a law text after he was accepted into the bar.<sup>61</sup> However, even today most lawyers rely primarily on relevant cases and statutes in preparation for a case, just as Lincoln did, and only occasionally seek direction from legal treatises and texts.<sup>62</sup> Even when Lincoln wanted to read up before a trial, he found the law libraries in the humble circuit courthouses inadequate.<sup>63</sup> Only Springfield, the state capital, had a decent library, and he used it often to prepare for work in his booming appellate practice in the Illinois Supreme Court when he was not riding the circuit.<sup>64</sup>

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<sup>52</sup> Thomas, *supra* note 6, at 95.

<sup>53</sup> *Id.* at 96.

<sup>54</sup> FRAKER, *supra* note 10, at 45–48; *see also* THOMAS, *supra* note 6, at 96–100.

<sup>55</sup> FRAKER, *supra* note 10, at 45–48.

<sup>56</sup> DIRCK, *supra* note 26, at 39–41.

<sup>57</sup> STEINER, *supra* note 37, at 40.

<sup>58</sup> DONALD, *supra* note 15, at 142–43; *see also* JOHN P. FRANK, LINCOLN AS A LAWYER 11 (1961).

<sup>59</sup> *Id.* at 47; *see also id.* at 85; *see also id.* at 569.

<sup>60</sup> *Id.* at 238–239; *see also* ALBERT WOLDMAN, LAWYER LINCOLN 260–61 (1936).

<sup>61</sup> CHARLES B. STROZIER, LINCOLN'S QUEST FOR UNION: A PSYCHOLOGICAL PORTRAIT 172 (2d ed., rev. 2000).

<sup>62</sup> Roger Billings, The American Legal System, 17–19, 30 (2015).

<sup>63</sup> FRANK, *supra* note 58, at 23.

<sup>64</sup> STROZIER, *supra* note 61, at 177.



Lincoln was also blessed with a near photographic memory.<sup>65</sup> He not only read *Blackstone*, *Chitty*, *Greenleaf* and *Story* as prescribed by Stuart; he remembered every word.<sup>66</sup> As needed, he would look up the published Illinois Supreme Court cases, the Illinois statutes, which were all contained in one volume, and occasionally the few treatises he could find in the circuit courthouses. He was also known to carry a few law books in his saddlebags.<sup>67</sup> And so, the common criticism that Lincoln read but few law books is hardly a criticism at all.

Lincoln was not known by his colleagues to be highly organized.<sup>68</sup> He carried documents and papers in his stovepipe hat.<sup>69</sup> A pile of papers in his office was marked, "When you can't find it anywhere else, look into this."<sup>70</sup> Lincoln was perfectly capable of getting organized for an important trial, however. For example, Lincoln easily navigated the far more complicated than today pleadings standards of *Chitty's Pleadings*.<sup>71</sup> Today common law pleadings have been replaced by a single document called a "complaint" which suffices to get a case started in court.

We are severely handicapped in our evaluation of Lincoln as a trial lawyer by the shortage of verbatim transcripts of trials. But the rich documentary record of his 5,000 cases gives us a good picture of his practice skills. We can supplement that record with recollections of his colleagues and a few eyewitness accounts of his trials. We know that he displayed extraordinary skill in jury trials.<sup>72</sup> The oft-quoted statement of Lincoln's intimate colleague, Leonard Swett, illustrates how cagey Lincoln was. He explained that Lincoln's tactic was to admit the truth of some damaging testimony but hammer on the one point crucial to his case.<sup>73</sup> To the jury Lincoln would say in his folksy way that he:

reckoned it would be fair to let this [evidence] in or that and sometimes, when his adversary could not quite prove what Lincoln knew to be the truth, he 'reckoned' it would be fair to admit the truth to be so-and-so. . . . What he was so blandly giving away was simply what he couldn't get and keep. By giving away six points and carrying the seventh he carried his case, and the whole case hanging on the seventh he traded away everything which would give him the least

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<sup>65</sup> STEINER, *supra* note 37, at 32–33; *see also* HARRY E. PRATT, *ILLINOIS AS LINCOLN KNEW IT: A BOSTON REPORTER'S RECORD OF A TRIP IN 1847* (Harry E. Pratt ed., 1938).

<sup>66</sup> STEINER, *supra* note 37, at 32–33.

<sup>67</sup> *Id.*

<sup>68</sup> THOMAS, *supra* note 6, at 97.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> STEINER, *supra* note 37, at 32.

<sup>72</sup> Davis, *supra* note 28, at 78.

<sup>73</sup> HERNDON'S INFORMANTS, *supra* note 40, at 635–36 (citing Letter from Henry C. Whitney to William H. Herndon (Aug. 29, 1887)).

aid in carrying that. Any man who took Lincoln for a simple-minded man would very soon wake up with his back in a ditch.<sup>74</sup>

Herndon commented famously that Lincoln was not a “technical lawyer,” that is, a lawyer who did a lot of research.<sup>75</sup> But Lincoln did not need to be a technical lawyer in courts where the bulk of the cases concerned collection of debts. Debt collection consisted mostly of filing a complaint for the creditor for a delinquent debt and obtaining a default judgment.<sup>76</sup> The creditor’s lawyer used the judgment to support a levy on the debtor’s property.<sup>77</sup> It was usually accomplished with little argument in court. Contrary to Herndon’s assertion, when a case did call for a technical lawyer Lincoln rose to the occasion. Published reports of appellate cases reflect that Lincoln cited common law extensively.<sup>78</sup> In trials where the stakes were high, Lincoln not only researched the law; he carefully conducted an on-site investigation into the facts and interviewed witnesses.<sup>79</sup> His careful preparation can be seen in the *McClellan County Tax case*,<sup>80</sup> the *Rock Island Bridge case*,<sup>81</sup> the *Duff Armstrong* murder case,<sup>82</sup> and even the ill-fated *McCormick Reaper Patent case*.<sup>83</sup>

Lincoln’s colleagues recognized his trial skills with their referrals. He got his biggest cases because fellow attorneys wanted him on their team, and in at least one case both sides fought for his services.<sup>84</sup>

A laudatory evaluation is found in the 1860 John Locke Scripps campaign biography.<sup>85</sup> Lincoln did not write the biography but he supplied Scripps with a lengthy handwritten autobiography and in June, gave Scripps an extensive interview in Springfield.<sup>86</sup> This may be as close to a self-evaluation as is available. The following brief passage is the only one about his career in the eight chapters of the biography:

His services were eagerly sought in almost every case of importance; and perhaps no lawyer in Illinois or any other State has been more uniformly successful in the cases [*sic*] which he has undertaken. It is one of the peculiarities of Mr. Lincoln as a lawyer, that he holds himself bound in honor and

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<sup>74</sup> *Id.*

<sup>75</sup> STEINER, *supra* note 37, at 40.

<sup>76</sup> ABRAHAM LINCOLN, ESQ.: THE LEGAL CAREER OF AMERICA’S GREATEST PRESIDENT, *supra* note 8, at 91–93.

<sup>77</sup> *Id.*

<sup>78</sup> STEINER, *supra* note 37, at 48–52.

<sup>79</sup> DONALD, *supra* note 15, at 155–57.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 151.

<sup>83</sup> THOMAS, *supra* note 6, at 158.

<sup>84</sup> DONALD, *supra* note 15, at 156–57.

<sup>85</sup> JOHN LOCKE SCRIPPS, 1860 CAMPAIGN LIFE OF ABRAHAM LINCOLN 35–36 (1931).

<sup>86</sup> DONALD, *supra* note 15, at 253; RONALD C. WHITE, JR., A. LINCOLN 335 (2009).

in conscience, having accepted a fee, to thoroughly master the case of his client. In this regard he is noted among his professional brethren for the greatness of his labors. He not only studies the side of his client, but that of his opponent also. Consequently he is never taken unawares, but has ample resources for whatever turn the ingenuity, skill, or learning of opposing counsel may give to the case. To this peculiarity, in part, owes the well-known fact that whenever Mr. Lincoln is employed in connection with other eminent counsel, before the conclusion of the case the sole management of it is almost invariably surrendered to him. Not by any ostentatious thrusting of himself forwards is this position obtained, for nothing could be more foreign to Mr. Lincoln's manner, either at the bar or elsewhere; but proving himself to be more completely master of the case than his associates, the latter voluntarily award the position to him, and even insist upon his taking it. Another peculiarity of Mr. Lincoln as a lawyer is the fact that he is ever ready to give his assistance gratuitously to a poor client who has justice and right on his side. He has managed many cases from considerations of a purely benevolent character, which he would not have undertaken for a fee. More than this, in cases of peculiar hardship, he has been known, again and again, after throwing all of his power and ability as a lawyer into the management of the case, without charge, or any other reward than the gratification of a noble nature, on bidding his client adieu, and when receiving his cordial thanks and the warm grasp of his hand, to slip into his palm a five or a ten dollar bill, bidding him to say nothing about it, but to take heart and be hopeful. Those who know him intimately will not be surprised at this relation, because it harmonizes well with his whole character; but so careful has he always been to conceal his charitable deeds that the knowledge of such actions on his part is confined to those who have come into possession of it without his agency.<sup>87</sup>

Lincoln's successes were well known across Illinois. Even out of state attorney's came to hear of his success, for instance, Grant Goodrich, a successful attorney from Chicago, asked Lincoln to become his partner.<sup>88</sup> However, Lincoln decided to stay in Springfield with William Herndon.

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<sup>87</sup> SCRIPPS, *supra* note 85, at 35–36.

<sup>88</sup> HERNDON'S INFORMANTS, *supra* note 40, at 349.

Finally Lincoln's success and reputation as a lawyer helped make him President of the United States.<sup>89</sup> In 1860 David Davis, the judge before whom Lincoln practiced the most, led a team to the Republican Convention in Chicago that included Norman B. Judd, Jesse K. Dubois, Leonard Swett, and Stephen A. Logan.<sup>90</sup> Their enormous respect for his capabilities came from their personal acquaintance with him as a lawyer.

For all his faults, Lincoln's peers regarded him as at the top of his profession in Illinois. After he left Illinois to take office as President, some of the nation's best lawyers, such as Reverdy Johnson, Edwin Stanton, and Edward Bates, came to know him well. When they interacted with him as politicians they saw in his ability to form reasoned opinions the qualities of an outstanding legal mind, just as his Illinois colleagues did.

## *B. History of Slavery in Illinois Law*

### *1. Northwest Ordinance*

In 1763, the territory that would become the state of Illinois was acquired by Great Britain after its victory in the French and Indian War.<sup>91</sup> In 1787, Congress passed the Northwest Ordinance, which created a process by which this "Indiana Territory" would be developed into states.<sup>92</sup> Article IV of the Northwest Ordinance expressly declared that "there shall be neither slavery nor involuntary servitude" in the territory.<sup>93</sup>

However, the leaders of the Indiana Territory became concerned that Article IV's prohibition on slavery would significantly hamper the growth of the territory by preventing migration from slave states.<sup>94</sup> As a result, in 1805, the territorial government promulgated an indenture law that was designed to encourage slave-owners while still complying with the prohibition on slavery.<sup>95</sup> According to the indenture law, a slave could be brought and kept in the territory if the slave-owner and slave could come to a voluntary agreement of indentured servitude.<sup>96</sup> Under such an agreement, the slave would work for a specified term in exchange for payment.<sup>97</sup>

When Illinois became a distinct territory in 1809, it adopted this indenture law.<sup>98</sup> Although indentured servitude was perceived as a voluntary arrangement, the realities of the indenture law were nearly

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<sup>89</sup> WILLARD L. KING, *LINCOLN'S MANAGER: DAVID DAVIS* 127–61 (1960).

<sup>90</sup> WILLIAM C. HARRIS, *LINCOLN'S RISE TO THE PRESIDENCY* 199 (2007); *see also* WILLIAM BARRINGER, *LINCOLN'S RISE TO POWER* 193 (1937).

<sup>91</sup> MCKIRDY, *supra* note 2, at 7.

<sup>92</sup> *Id.* at 6.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 7.

<sup>95</sup> *Id.*

<sup>96</sup> MCKIRDY, *supra* note 2, at 7.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 8.

identical to slavery.<sup>99</sup> Indentured service agreements could be enforced by a court order of specific performance.<sup>100</sup> These “voluntary” servants agreed to terms that often exceeded their life expectancies, for miniscule amounts of money.<sup>101</sup> In addition, indentured servants were legally treated as property that could be leased to others, and could also serve as consideration for a contract or collateral for a debt.<sup>102</sup>

In 1818, Illinois adopted its state constitution and was admitted into the Union.<sup>103</sup> The Illinois Constitution prohibited the future introduction of slavery into the state, but it did not affect the indentured servants who were bound by “voluntary” contract.<sup>104</sup> As a result, the state constitution effectively solidified the indentured servitude regime already in place.

## 2. *The Black Code*

Following its admission into the Union, Illinois consistently passed laws that represented proslavery sentiments.<sup>105</sup> Collectively known as the “Black Code” or the “Black Laws,” these laws restricted the rights of free black people, thus ensuring the continued treatment and perception of black persons as an inferior race.

Under the Black Code, all black people were presumed to be slaves unless they could prove otherwise.<sup>106</sup> To prove free status, a black person was obligated to obtain a Certificate of Freedom from a court of record and to file this certificate with the county clerk.<sup>107</sup> In addition, he or she was forced to post a \$1,000 bond with the county, promising good behavior and to obey the law.<sup>108</sup> Any black person unable to produce this certificate was considered a runaway slave and was subject to detention for up to a year, during which time the sheriff was authorized to rent out the “slave” to bidders on a month-to-month basis.<sup>109</sup> In fact, Illinois law permitted any Illinois resident to detain a black person in order to bring him before a Justice of the Peace to prove his free status.<sup>110</sup>

Other aspects of the Black Code also ensured the systematic mistreatment of black people. For example, black people were prohibited from voting, serving in the state militia, and attending the public schools

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<sup>99</sup> *Id.*

<sup>100</sup> MCKIRDY, *supra* note 2, at 9.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 8.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> MCKIRDY, *supra* note 2 at 8.

<sup>106</sup> *Id.* at 11.

<sup>107</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES 3 (Daniel W. Stowell et al. eds., 2008).

<sup>108</sup> *Id.* at 3.

<sup>109</sup> MCKIRDY, *supra* note 2, at 11–12.

<sup>110</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 4.

and universities.<sup>111</sup> Black people were also prohibited from marrying white people and testifying against them in court.<sup>112</sup> Additionally, while harboring or assisting a black person who did not have the required certificate of freedom was a crime punishable by a \$500 fine, alerting the authorities to a runaway slave entitled a white person to a reward.<sup>113</sup>

### 3. *Fugitive Slave Act*

The Fugitive Slave Act was passed in 1793 to give effect to the fugitive slave clause of the US Constitution Article IV, Section 2(3) which read:

“No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”<sup>114</sup>

Section 3 of the Act authorized a slave owner to seize or arrest a runaway slave, take him or her before any judge or magistrate, and upon proof of ownership to receive a certificate authorizing the owner to remove the slave from the state or territory from which he or she fled.<sup>115</sup> This is what Lincoln’s client, Matson, was seeking to do, although this was not technically a runaway case.

### 4. *Precedent Relevant to Bryant*

Prior to *Bryant*, other courts, both in Illinois and other states, had heard cases similar to *Bryant*, on the issue of bringing slaves into “free states.” Ten years earlier, in *Bailey v. Cromwell*, Lincoln argued successfully that a note taken in payment for the sale of an African American was unenforceable.<sup>116</sup> The facts of *Bailey v. Cromwell* are as follows. Cromwell and Bailey agreed that Cromwell would sell one of his indentured servants to Bailey.<sup>117</sup> Although Bailey took possession of the girl, payment was not due until Cromwell produced the documentation required to show that the young girl was indeed his servant.<sup>118</sup> After six months, the girl fled from Bailey and asserted her freedom, so Bailey refused to pay.<sup>119</sup> Cromwell brought suit against Bailey in an action of assumpsit, seeking damages for breach of contract.<sup>120</sup> At trial, Cromwell

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<sup>111</sup> MCKIRDY, *supra* note 2, at 11.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 12.

<sup>114</sup> U.S. Const. art. IV, § 2.

<sup>115</sup> Act of February 12, 1793, Ch. 7, 1 Stat. 307 (1793).

<sup>116</sup> *Bailey v. Cromwell*, 4 Ill. 71 (3 Scam. 1841).

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 71, 73.

<sup>120</sup> *Id.* at 71.

prevailed and recovered damages from Bailey.<sup>121</sup> Lincoln, representing Bailey, appealed to the Supreme Court of Illinois.<sup>122</sup> The Illinois Supreme Court ruled that the subject of the sale, an African American woman, was free of the slave owner's claim of ownership.<sup>123</sup> Since she resided in Illinois and the Illinois constitution prohibited slavery, she was not "property" that could be sold and the note for her sale was unenforceable.<sup>124</sup> Historian Charles R. McKirdy, an Illinois lawyer himself, observes that "[c]ontrary to what has been written about it, *Bailey v. Cromwell* did not make new law. It turned on established precedent. It was not a suit for freedom. It was a commercial case."<sup>125</sup> The finding that slaves were emancipated residents of Illinois was 'dictum,'<sup>126</sup> not the holding of the case. After all, *Bailey* did not decide what constituted residency, a concept of great importance in *In re Bryant*.

The court first held that all people in the state of Illinois are presumed to be free in *Kinney v. Cook*.<sup>127</sup> Thus, a party who claims a right to a person's indentured servitude must rebut that presumption.<sup>128</sup> In this case, the consideration for the contract was the girl; because the sale of a free person was illegal, the consideration was valid only if Cromwell could prove a right to the girl's services.<sup>129</sup> Cromwell failed to show proof of title to the girl, so the Court held that Cromwell failed to rebut the presumption that she was free.<sup>130</sup> As a result, the contract failed because the free girl could not constitute adequate consideration.<sup>131</sup>

In *Willard v. People*, a slave girl named Julia owed service to Mrs. Liles in the states of Kentucky and Louisiana.<sup>132</sup> Mrs. Liles and Julia were traveling from Kentucky to Louisiana, so they passed through the state of Illinois in the process.<sup>133</sup> While traveling through Illinois, Julia escaped from Mrs. Liles.<sup>134</sup> A man named Willard, who was aware that Julia was a slave, helped Julia escape the authorities and Mrs. Liles.<sup>135</sup> Willard was ultimately convicted under an Illinois law that prohibited "harbor[ing] . . . any negro, mulatto, or person of color, the same being a slave or servant,

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<sup>121</sup> MCKIRDY, *supra* note 2, at 42.

<sup>122</sup> *See id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 72.

<sup>125</sup> MCKIRDY, *supra* note 2, at 42.

<sup>126</sup> *See* BLACK'S LAW DICTIONARY 549 (10th ed. 2014) (defining dictum as "[a] statement of opinion or belief considered authoritative because of the dignity of the person making it").

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

<sup>131</sup> *See* BLACK'S LAW DICTIONARY 549 (10th ed. 2014).

<sup>132</sup> *Willard v. People*, 5 Ill. 461, 468 (4 Scam. 1843).

<sup>133</sup> *Id.* at 469.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 468–69.

owing service or labor to any other person,"<sup>136</sup> On appeal, the dispositive question was whether Julia remained a slave despite being brought voluntarily into the free state of Illinois<sup>137</sup> for if Julia had been freed by her passage into Illinois, Willard's conviction could not stand.<sup>138</sup> The Supreme Court of Illinois ultimately ruled that Mrs. Liles had a right to transport her slave through the state of Illinois without affecting her right to Julia's services.<sup>139</sup> The court reasoned that the doctrine of comity, which encourages states to recognize the laws of other states, controlled.<sup>140</sup> Here Mrs. Liles' property right to Julia's services had been created and defined by Louisiana law, so the court ruled that the doctrine of comity imposed a duty upon the state of Illinois to recognize and respect that property right.<sup>141</sup> In doing so, the Supreme Court of Illinois recognized that slaves who were temporarily brought in transit through the state of Illinois remained slaves.<sup>142</sup>

In *Vaughn v. Williams*, a Kentucky resident named Tipton moved with three of his slaves to the state of Illinois.<sup>143</sup> Upon arrival, Tipton cleared some land, built a house, and made other improvements to the land with the help of the slaves.<sup>144</sup> Tipton also declared to several people that he intended to become a citizen of Illinois.<sup>145</sup> After residing in Illinois for six months, Tipton sold his slaves to a man in Missouri, who later sold them to the plaintiff, Vaughn.<sup>146</sup> After being purchased by Vaughn, the slaves escaped to Indiana.<sup>147</sup>

Eight years later, Vaughan learned that the slaves were residing in Indiana and he procured a warrant for their arrest under the Fugitive Slave Act.<sup>148</sup> Once the slaves were taken into custody, the defendant, Williams, took part in a rescue of the captured slaves.<sup>149</sup> This lead Vaughan to sue Williams under the Fugitive Slave Act provision that allowed a slave-owner to recover from anyone who aids in the escape of a fugitive slave.<sup>150</sup> The Circuit Court for the District of Indiana held that Tipton—the slaves' former master—had freed them years prior to the suit.<sup>151</sup> Because Tipton

<sup>136</sup> *Id.* at 469.

<sup>137</sup> *Id.* at 470.

<sup>138</sup> *Willard v. People*, 5 Ill. 461, 471 (4 Scam. 1843).

<sup>139</sup> *See id.* ("[T]he citizens of one government have a right of passage through the territory of another . . . without the latter's acquiring any right over the person or property.").

<sup>140</sup> *Id.*

<sup>141</sup> *See id.*

<sup>142</sup> *Id.* at 472 ("[T]he slave does not become free by the constitution of Illinois by coming into the state for the mere purpose of passage through it.").

<sup>143</sup> *Vaughn v. Williams*, 28 F. Cas. 1115, 1116 (D. Ind. 1845).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 1116–17.

<sup>147</sup> *Id.* at 1117.

<sup>148</sup> *Vaughn v. Williams*, 28 F. Cas. 1115, 1117 (D. Ind. 1845).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* at 1118.



voluntarily brought and kept the slaves in the state of Illinois for six months, and because he declared his intention to become a citizen of Illinois, "there can be no doubt that the slaves were, thereby, entitled to their freedom."<sup>152</sup>

In *Ex parte Simmons*, a slave owner named Simmons, from South Carolina, traveled with his family and his slave to Philadelphia, Pennsylvania.<sup>153</sup> Upon arrival, Simmons rented a family residence, where his slave worked as a domestic servant.<sup>154</sup> This arrangement continued for six months, at which point Simmons was forced to file an application under the Fugitive Slave Act requesting a certificate of ownership for his slave.<sup>155</sup> The Circuit Court for the Eastern District of Pennsylvania held that Article IV § 2 of the United States Constitution and the Fugitive Slave Act apply only to slaves who have escaped from a slave state to a free state.<sup>156</sup> Thus, a slave owner does not have the right of recaption when he voluntarily takes his slaves to a free state.<sup>157</sup> As a result, after six months of voluntary residence in Pennsylvania, Simmons' slave became free.<sup>158</sup>

### C. *Facts of In re Bryant*

Robert Matson owned Jane Bryant and her children, and normally kept them in Kentucky.<sup>159</sup> He owned farmland in both Kentucky and Illinois.<sup>160</sup> Each spring he would bring slaves to Coles County, Illinois, to work on the farm there and would return them to Kentucky after the harvest in fall.<sup>161</sup> But in spring 1845, he brought Jane Bryant and her children to Coles County, where they were allowed to remain for about two years.<sup>162</sup> It is unclear exactly why Matson allowed Bryant to stay. However, it is suggested that it had to do with Bryant's husband, Anthony, a freed man, who was with her at the farm in Coles County.<sup>163</sup> When Anthony learned that Jane was to be returned to Kentucky, he enlisted a local abolitionist, Gideon M. Ashmore, to help him.<sup>164</sup> Subsequently, Ashmore asked an abolitionist physician, Dr. Hiram Rutherford, to join him in rescuing

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<sup>152</sup> *Id.*

<sup>153</sup> *Ex parte Simmons*, 22 F. Cas. 151, 151 (E.D. Pa. 1823).

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 152.

<sup>157</sup> *Id.*

<sup>158</sup> *Ex parte Simmons*, 22 F. Cas. 151, 152 (E.D. Pa. 1823).

<sup>159</sup> *Id.* at 1.

<sup>160</sup> *Id.*

<sup>161</sup> MCKIRDY, *supra* note 6, at 23.

<sup>162</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 2.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

Jane.<sup>165</sup> They arranged for Jane and her children to leave the Matson farm at midnight and hide at Dr. Rutherford's home in Independence, Illinois.<sup>166</sup>

Matson discovered where Jane and her children were staying and tried to persuade them to return with him.<sup>167</sup> When that failed, he hired a Coles County attorney, Usher F. Linder, to get them back.<sup>168</sup> Linder advised Matson to swear out an affidavit to William Gilman, a justice of the peace, that he brought Jane and her children to Illinois temporarily with the intention of returning them to Kentucky.<sup>169</sup> Judge Gilman responded with an order to the sheriff to bring the Bryant family before himself or another judge in Coles County.<sup>170</sup> Ashmore then delivered the Bryants to Sheriff Lewis R. Hutchason at the Coles County jail in Charleston to await trial.<sup>171</sup> Soon afterward, Ashford and Dr. Rutherford hired the lawyer, Orlando B. Ficklin, to represent the Bryants.<sup>172</sup>

The court's decision would either send Jane Bryant and her four children back to their prior owner, Robert Matson, or release them as free persons in the State of Illinois. There were only eight cases Lincoln argued on petitions for writs of *habeas corpus*, an area of law that later played an important role in his conduct of the Civil War.<sup>173</sup> Only two of these cases, including the *Bryant* case, related to questions of black freedom.<sup>174</sup> Of the six others, three involved criminal defendants and three involved child custody.<sup>175</sup>

In the first hearing, Ficklin argued the case for the Bryants' freedom before a panel of Gilman and two other justices of the peace.<sup>176</sup> After a two-day trial the panel concluded that it had no jurisdiction to decide whether the Bryants were free, and Judge Gilman remanded them to the sheriff's custody.<sup>177</sup> This concluded the first hearing. At this point, Lincoln had not yet arrived in Coles County.<sup>178</sup> Ashmore, the abolitionist, then filed two petitions for writs of *habeas corpus* with the circuit court, and the court issued a writ to the sheriff to cause the bodies of Jane, Mary Catherine, Sally Ann, Mary Jane, and Robert Noah Bryant to be brought

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<sup>165</sup> MCKIRDY, *supra* note 2, at 25.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 26.

<sup>169</sup> *Id.*

<sup>170</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 4–

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<sup>171</sup> MCKIRDY, *supra* note 2, at 26.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.* at 16.

<sup>174</sup> *Id.*

<sup>175</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at

16.

<sup>176</sup> *Id.* at 27.

<sup>177</sup> *Id.* at 27–28.

<sup>178</sup> MCKIRDY, *supra* note 2, at 28–29.

before it.<sup>179</sup> Sometime later, Lincoln rode into town and was engaged by his colleague and friend, Usher Linder, to help with the Matson case. Both men argued before the court in the case.

The second hearing in the circuit court, on the writ of *habeas corpus*, ended with a decision to free the Bryants.<sup>180</sup> The case was argued before a panel of two Illinois Supreme Court judges, William Wilson and Samuel Hubbell Treat, sitting as circuit court trial judges.<sup>181</sup> This arrangement was unusual, and Wilson asked Treat to join him because of the importance of the case. By all accounts, these men were highly respected and impartial. There was no jury because the litigation involved a hearing on a petition for the writ of *habeas corpus*, an ancient writ that a judge issues to a sheriff requiring him to show why he is holding a certain prisoner.<sup>182</sup> Petitions for such writs presented questions of law that only judges could decide, and in this case they had to decide whether the sheriff had legal grounds to incarcerate the slaves.<sup>183</sup> If not, they had to be set free.

Justices Wilson and Treat held that “Matson, by bringing Jane and her children into the State of Illinois, and domiciling them here, has forfeited all claim to their services, and entitled them to be discharged therefrom.”<sup>184</sup>

Matson also sued Ashmore and Dr. Rutherford for \$2,500 under the law prohibiting harboring a Negro who had neither a certificate of freedom nor a required bond.<sup>185</sup> Matson was using the notorious “Black Code” in Illinois that made it difficult for freed black people to live there.

He asked for the maximum fine of \$500 for Jane Bryant and each of her four children, but when Jane Bryant won the *habeas corpus* case, Matson’s case collapsed.<sup>186</sup> In a related case, Justice of the Peace Samuel

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<sup>179</sup> *Id.*

<sup>180</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 17–21. The procedural history of the case is as follows: First, Matson filed a writ of *capias* ad respondendum, ordering the constable to take the Bryant’s into custody for a hearing. Second, a *capias* ad satisfaciendum was issued, ordering the sheriff to hold the Bryants. Third, a public notice was issued, stating that the Bryants were committed to the Coles County Jail in Charleston as “Runaway Negroes”. Fourth, a declaration was issued stating that Dr. Hiram Rutherford unlawfully harbored Jane Bryant, who did not have a certificate of freedom. Fifth, Lincoln posted bond for costs for Matson, promising to be surety for Matson to pay costs relating to the keeping of Bryant and her children in custody. Sixth a public notice was issued offering Bryant and her children to the highest bidder for one month of service as provided for in “An Act Respecting Free Negroes and Mulattoes, Servants, and Slaves”. Seventh, Bryant filed a petition for writ of *habeas corpus* asking the court to direct the Sheriff to bring them before the Chief Justice of the circuit court to prove they were free people, could petition for a writ of *habeas corpus*, and could not be treated as fugitive slaves. Eight, Bryant filed a second writ of *habeas corpus* to ask the court to order the Sheriff to release Bryant and her children. Ninth, the first *habeas* petition was granted, ordering the Sheriff to bring the Bryants before the Chief Justice. And tenth, the Chief Justice filed an opinion in which they held that Matson had forfeited all claims to Bryant and her children by bringing them into a free state.

<sup>181</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 16.

<sup>182</sup> *Id.* at 12–13.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.* at 17–21.

<sup>185</sup> STEINER, *supra* note 37, at 111–12 (2006).

<sup>186</sup> *Id.* at 112.

C. Ashmore, Gideon Ashmore's brother, issued a warrant for Matson to appear before him on the charge of "living in an open state of fornication with one Mary Corbin."<sup>187</sup> The maximum penalty if a jury found him guilty was a \$200 fine or six months in prison.<sup>188</sup> This was probably a tactic to encourage Matson to go back to Kentucky and perhaps abandon the slaves.<sup>189</sup> Apparently a jury found him guilty of fornication in May 1848, and he was fined \$30.<sup>190</sup> There is no record of his paying the fine, but in 1848 he married Mary Corbin.<sup>191</sup>

### III. UNDERSTANDING LINCOLN'S INVOLVEMENT IN *IN RE BRYANT*: WHY DID LINCOLN REPRESENT A SLAVE OWNER?

An enduring question in studies of Lincoln's career both as a litigator and as an anti-slavery politician is why Lincoln would agree to represent a slave owner in the *Bryant* case.

#### A. *The Role of Morality in the Decision to Take a Case*

According to David Hoffman, an influential antebellum writer on legal ethics, "what is morally wrong, cannot be professionally right."<sup>192</sup> More recent biographers point out that the majority of legal commentators in Lincoln's day rejected Hoffman's view.<sup>193</sup> For example, Timothy Walker summed up the reasons lawyers take unpopular cases: "There must be counsel on both sides of a case, in order to make the scales of justice even."<sup>194</sup> He continued, "If it be the duty of one lawyer to decline a prosecution, it is the duty of all to decline;"<sup>195</sup> Finally, in 1854, the distinguished commentator Judge George Sharswood summed up the prevailing attitude that persists to this day: "[t]he lawyer, who refuses his professional assistance because in his judgment the case is unjust and indefensible, usurps the function of both judge and jury."<sup>196</sup>

<sup>187</sup> *Id.* at 111.

<sup>188</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 7.

<sup>189</sup> STEINER, *supra* note 37, at 111.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at 124.

<sup>192</sup> *Id.* at 132 (quoting DAVID HOFFMAN, A COURSE OF LEGAL STUDY 765 (2d ed. 1836)).

<sup>193</sup> See *id.* at 133 (citing numerous examples); See, e.g., J.F. Jackson, *Law and Lawyers*, 28 KNICKERBOCKER 377, 379 (1846) ("It is not for advocates to say whether a cause is just or unjust."); GEORGE ROBERTSON, SCRAP BOOK ON LAW AND POLITICS, MEN AND TIMES 239 (1855) (acknowledging that it is an advocate's "duty, whether in a good or bad cause, on the wrong side or the right, to present, in as imposing a manner as fair argument can exhibit, the stronger or more plausible points in his client's behalf, without expressing an uncandid opinion."); See also BURLINGAME, *supra* note 16, at 252-53.

<sup>194</sup> STEINER, *supra* note 37, at 133 (quoting Timothy Walker, *Advice to Law Students*, 1 W. L.J. 481, 483 (1844)).

<sup>195</sup> *Id.* at 133.

<sup>196</sup> STEINER, *supra* note 37, at 133 (quoting GEORGE SHARSWOOD, A COMPEND OF LECTURES ON THE AIMS AND DUTIES OF THE PROFESSION OF THE LAW 26 (1854)).

In colonial times John Adams defended British soldiers accused of murdering colonists during the Boston Massacre.<sup>197</sup> Because most of his fellow colonists hated the British, Adams's courageous defense of them was subject to criticism as morally wrong, yet he represented them zealously.

In another colonial case William Wirt defended the man accused of murdering Chancellor Wythe, a preeminent Virginia lawyer and mentor of Thomas Jefferson.<sup>198</sup> Years later in April 1850, the *Monthly Law Reporter* said, "we have never been able to ascertain that Mr. Wirt's standing as a man of honor and integrity was tarnished in the least by his conduct in this instance."<sup>199</sup>

Lincoln's decision to represent a slave owner does not detract from his reputation as an abolitionist. Rather, Lincoln was practicing law without moral judgment. In this sense, Lincoln answered the lawyer's highest calling, to honestly represent the client and let the court concern itself with the morality of the parties' positions.<sup>200</sup>

Lincoln and his colleagues accepted a wide variety of cases and would freely take the side of either a plaintiff or defendant.<sup>201</sup> Altogether, Lincoln handled three slave cases; two as counsel for slaves, one as counsel for the slave owner.<sup>202</sup> And as a railroad lawyer in the final years of his practice, he took cases for and against railroads.<sup>203</sup> In other words, Lincoln had always been willing to represent sides with conflicting opinions. During Lincoln's time there were no "plaintiff" and "defendant" bars as there are today.<sup>204</sup> Attorneys represented plaintiffs or defendants primarily on the basis of availability.<sup>205</sup> Attorneys might work together on one case and be opposed in another. For example in *Bryant*, Lincoln worked in partnership with Usher Linder for the plaintiff slave owner. Opposing him as the lead defendant attorney was Orlando Ficklin. Just two years later, Ficklin asked Lincoln to be his partner in the defense of a man accused of slander.<sup>206</sup> This time, Ficklin and Lincoln were opposed by Linder.<sup>207</sup>

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<sup>197</sup> See Terry Votel, *A Proud Tradition: Representing the "Unpopular Cause,"* 68 APR Bench & B. Minn. 7, 7 (2011).

<sup>198</sup> Norman W. Spaulding, *The Myth of Civic Republicanism: Interrogating the Ideology of Antebellum Legal Ethics*, 71 Fordham L. Rev. 1397, 1448–49 (2003).

<sup>199</sup> *Id.* at 1450.

<sup>200</sup> FRAKER, *supra* note 10.

<sup>201</sup> DONALD, *supra* note 15, at 157.

<sup>202</sup> See *id.* at 41–43.

<sup>203</sup> DONALD, *supra* note 15, at 157.

<sup>204</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 163 (noting that for slander cases alone, Lincoln represented defendants thirty-nine times, while he represented plaintiffs forty-six times).

<sup>205</sup> *Id.* at 213–14.

<sup>206</sup> *Id.* at 163.

<sup>207</sup> *Id.* at 167.

*B. Lincoln was Required by Ethical Standards to Resolve Any Conflicts of Interest Before Agreeing to Represent Jane and her Children*

In addition to Lincoln's adherence to moral neutrality, the rule against conflicts of interest played a role in the *Bryant* case. Today, the ABA Model Rules of Professional Conduct require that lawyers keep confidential any information learned from a prospective client who sought to, but did not retain him.<sup>208</sup> The lawyer may withdraw from representation if it can be accomplished without material adverse effect on the interests of the client.<sup>209</sup> But to withdraw from representing a client and then use that client's confidential information in representing another person in the same or substantially related matter would be "materially adverse to the interests of the former client."<sup>210</sup> In other words it would be a conflict of interest if an attorney were to withdraw from one side of a case and subsequently agree to represent the other side.<sup>211</sup>

Although the rule was unwritten in Lincoln's time, he demonstrated an understanding of the dangers conflicts of interests might pose through his letters to his clients. For instance, when Lincoln was solicited by R. E. Williams, Esq. to become co-counsel for a client named Bakewell.<sup>212</sup> He wrote Williams,

I well remember the transaction; but as Bakewell will need no lawyer but you, and as there is likely to be some feeling, and both the parties are old friends of mine, I prefer, if I can, to keep out of the case. Of course I will not engage against Mr. Bakewell.<sup>213</sup>

In another example Lincoln informed Mason Brayman, his employer and a lawyer for the Illinois Central Railroad, he had been contacted about representing claims against the railroad but that he recognized a conflict of interests and had turned down the engagement.<sup>214</sup> He told Brayman people had been complaining that the Illinois Central Railroad did not keep its covenants in regard to making fences and that "[a]n old man from DeWitt was down here the other day to get me to bring a suit on the account; but as I have sold myself out to you, I turned him over to Strait, who, I understand, will bring the suit . . ."<sup>215</sup>

<sup>208</sup> MODEL RULES OF PROF'L CONDUCT R. 1.18(b)(2014).

<sup>209</sup> MODEL RULES OF PROF'L CONDUCT R. 1.16(b)(1)(2014).

<sup>210</sup> MODEL RULES OF PROF'L CONDUCT R. 1.9(a)(2014).

<sup>211</sup> MODEL RULES OF PROF'L CONDUCT R. 1.7(a)(1)(2014).

<sup>212</sup> ABRAHAM LINCOLN, ESQ.: THE LEGAL CAREER OF AMERICA'S GREATEST PRESIDENT, *supra* note 8, at 177 (quoting letter from Abraham Lincoln to R.E. Williams (Aug. 15, 1857)).

<sup>213</sup> *Id.*

<sup>214</sup> *Id.* (quoting letter from Abraham Lincoln to Mason Brayman, (March 31, 1854)).

<sup>215</sup> *Id.*

When Lincoln rode into Coles County, Linder was the first person to approach him about the *Bryant* case.<sup>216</sup> Linder had already argued against Bryant in the first *habeus* proceeding and wanted Lincoln on his team for the second. Dr. Rutherford did not know this, and separately approached Lincoln to join the lawyer already engaged for Jane Bryant, Orlando Ficklin.<sup>217</sup> Lincoln hesitated, because of his prior contact with Linder for the other side, then told Dr. Rutherford he would look into it.<sup>218</sup> Dr. Rutherford, however, was miffed at Lincoln's initial refusal to represent Bryant. He believed Lincoln, as an antislavery man, would jump at the chance to represent Bryant and was unaware that Lincoln had already been engaged by Linder.<sup>219</sup> Lincoln went back to Linder and asked to be excused from representing Matson which resolved any conflict, since he had not yet received any pertinent information.<sup>220</sup> Had he already discussed strategy with Matson and Linder, he would have been bound to stay with them, but he went straight to Linder to ask for a release.<sup>221</sup> Just hours after his first conversation, he returned to Dr. Rutherford and said he was now available to represent the Bryants.<sup>222</sup> However, Dr. Rutherford refused to hire Lincoln, angered by his previous refusal.<sup>223</sup> Instead, he hired a talented but inexperienced young lawyer named Charles H. Constable.<sup>224</sup> Lincoln then returned to Linder and rejoined Matson's team.<sup>225</sup>

These events suggest that Lincoln would have preferred to represent the Bryants but that there was a misunderstanding between Dr. Rutherford and him regarding that preference. Dr. Rutherford quoted him as saying that "he had sent for the man who had approached him in Matson's behalf [Linder] and if they came to no more decisive terms than at first he would probably be able to represent me [Rutherford]."<sup>226</sup> While Lincoln thought he had communicated his desire to represent the slaves once he had resolved the conflict of interest, Dr. Rutherford saw this as a preference to represent the slave owner.

There is, however, some evidence to suggest that Lincoln had been employed by Matson before coming to Coles County, which contradicts

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<sup>216</sup> McKirdy, *supra* note 2, at 29.

<sup>217</sup> *Id.* at 30.

<sup>218</sup> *Id.*

<sup>219</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES *supra* note 107, at 41 ("I had known Abraham Lincoln several years, and his views and mine on the wrong side of slavery being in perfect accord, I determined to employ him").

<sup>220</sup> *Id.*

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 42 ("But it was too late; my pride was up, and I plainly indicated a disinclination to avail myself of [Lincoln's] offer").

<sup>224</sup> *Id.*

<sup>225</sup> MCKIRDY, *supra* note 2, at 31.

<sup>226</sup> *Id.*

the theory that he wanted to represent the Bryants and only resolved to represent Matson when Dr. Rutherford refused to hire him. A bond posted on behalf of Hiram Rutherford dated September 24, 1847, was signed by Lincoln.<sup>227</sup> The date preceded Lincoln's arrival in Coles County by three weeks and would seem to indicate Lincoln came to town already engaged by Matson.<sup>228</sup>

The bond, however, was written entirely in the hand of Usher Linder's partner, Thomas Marshall, except for Lincoln's signature.<sup>229</sup> What probably happened is that Lincoln first saw the bond after he arrived in Coles County on October 14, crossed out the name of V. S. Eastin, and added the words, "Attest, Abraham Lincoln."<sup>230</sup> Aside from the bond, there is no evidence Lincoln came to Coles County to take part in the Bryant case.

We can only speculate about the reason Lincoln visited Coles County on October 14, 1847. After all, it was not a county of the Eighth Judicial Circuit where Lincoln usually practiced.<sup>231</sup> It bordered the western counties of the Circuit, however, and Lincoln regularly attended court in Coles County.<sup>232</sup> In fact, Coles County Circuit Court was the only one Lincoln regularly attended outside the Eighth Judicial Circuit during the 1840's.<sup>233</sup> On these detours from the Circuit he often visited his father and stepmother at nearby Goosenest Prairie.<sup>234</sup> The editors of Abraham Lincoln's papers say that "he probably paid them a visit in October 1847 to discuss the collection of a debt through a local justice of the peace court."<sup>235</sup>

Furthermore, he had regular legal business in Coles County. He had five ongoing cases and took on three new cases, two of which were Matson cases, on that visit.<sup>236</sup> One case began in October 1847, the same month *Bryant* was decided, and two others began in May 1847 during an earlier visit of Lincoln to Coles County and before the *Bryant* case was even contemplated. Lincoln may have been coming into town for any one of these cases.

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<sup>227</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 10.

<sup>228</sup> See STEINER, *supra* note 37, at 29.

<sup>229</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 10 n.36; *contra* STEINER, *supra* note 37, at 29 (suggesting that the bond "appears to be in Lincoln's handwriting").

<sup>230</sup> *Id.* at 9-10.

<sup>231</sup> STEINER, *supra* note 37, at 103.

<sup>232</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 9 n.32.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Id.*

<sup>236</sup> *Id.*



Additionally, the visit was probably related to his recent election to Congress. With only weeks before his scheduled departure for Washington to assume his seat in the House of Representatives he wanted to say goodbye to his family and clear up his docket.

### C. Other Possible Motives

Lincoln was fiercely devoted to the rule of law, and the fugitive slave law was the law at the time.<sup>237</sup> He was especially devoted to, and a scholar of, the Constitution, and the Fugitive Slave Act explicitly enforced the Constitution.<sup>238</sup>

Friendship and collegiality also played a role in Lincoln's decision to represent Matson. Not many scholars report how highly Lincoln valued the friendship of Usher Linder, who asked him to be co-counsel for Matson.<sup>239</sup> Linder was regarded as an excellent trial lawyer and Lincoln admired and respected him.<sup>240</sup>

## IV. LINCOLN'S ZEALOUS REPRESENTATION IN *BRYANT*

The *Bryant* case demonstrates Lincoln's professional integrity, his ability to put moral views aside and zealously represent his client.

Today, all lawyers are required by the Model Rules of Professional Conduct to represent their clients zealously.<sup>241</sup> The American Bar Association's Model Rules of Professional Conduct, adopted in some form in every state, require a lawyer to "act with reasonable diligence and promptness in representing a client."<sup>242</sup> Further, "[a] lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer . . . [and] act with commitment and dedication to the interest of the client and with zeal in advocacy upon the client's behalf."<sup>243</sup> These rules apply even when a lawyer is appointed by a court to serve unpopular clients, thus demonstrating that even the morally reprehensible are owed zealous advocacy by their attorneys.<sup>244</sup>

Periodical literature of the antebellum period reflected that, although not yet bound by the Model Rules, lawyers should be client-centered and

<sup>237</sup> 1 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES 1-26 (Daniel W. Stowell et al. eds., 2008).

<sup>238</sup> DONALD, *supra* note 15, at 134 (noting that although Lincoln declared himself to be "naturally anti-slavery," he did not support measures to end slavery because he did not believe that the United States had the constitutional authority to interfere with the institution of slavery in the states).

<sup>239</sup> MCKIRDY, *supra* note 2, at 5.

<sup>240</sup> *Id.* at 46-48.

<sup>241</sup> MODEL RULES OF PROF'L CONDUCT R. 1.3 cmt. 1 (2014) ("A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.").

<sup>242</sup> MODEL RULES OF PROF'L CONDUCT R. 1.3 (2014).

<sup>243</sup> MODEL RULES OF PROF'L CONDUCT R. 1.3 cmt. 1 (2014).

<sup>244</sup> MODEL RULES OF PROF'L CONDUCT R. 6.2 ("A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause.").

ethically neutral.<sup>245</sup> The lawyer who refused a case engaged in moral activism and usurped the functions of both judge and jury.<sup>246</sup> Ethical neutrality was a defining trait of the adversarial system.<sup>247</sup>

Lord Henry Brougham first stated the doctrine of zealous advocacy in a speech before the House of Lords.<sup>248</sup> In 1820, he argued a case tried before the House of Lords as counsel for Caroline of Brunswick, the estranged wife of George, Prince of Wales, the future King George IV.<sup>249</sup> The King brought divorce proceedings against her on account of adultery.<sup>250</sup> Brougham was attacked on the basis that defending Caroline against the King was a treasonous act that no patriot would undertake. He said, "[a]n advocate, in the discharge of his duty, knows but one person in all the world, and that person is his client [...] and in performing this duty he must not regard the alarm, the torments, the destruction which he may bring upon others."<sup>251</sup>

Over the years, some Lincoln biographers have argued, citing statements from Lincoln's colleagues, that Lincoln's representation was less than zealous when he did not believe in a case.<sup>252</sup> Albert Beveridge wrote that spectators believed Lincoln argued *Bryant* weakly and half-heartedly.<sup>253</sup> Lincoln, he wrote, oversimplified the case when he argued that the sole question was whether the slaves were in transit or were to remain permanently on Matson's Illinois farm.<sup>254</sup> But it was a characteristic trial tactic of Lincoln to simplify the facts so the trier of fact could understand them and concede several points to the other side to gain credibility, but save the single argument that he needed to win.<sup>255</sup>

The record of Lincoln's career offers little support for Beveridge's and other apologists' views that Lincoln performed poorly because he did not believe in the *Bryant* case. To the contrary, Orlando Ficklin, Lincoln's opposing counsel at the trial, believed that Lincoln performed well.<sup>256</sup> Almost forty years later he gave a summary of the facts and described Lincoln's trial tactics.<sup>257</sup> No transcript of the trial itself is available but

<sup>245</sup>Spaulding, *supra* note 198, at 1400.

<sup>246</sup>*Id.* at 1422.

<sup>247</sup>*Id.*

<sup>248</sup>M.H. Hofflich, *Legal Ethics in the Nineteenth Century: The "Other Tradition,"* 47 KAN. L. REV. 793, 794 (1999).

<sup>249</sup>*Id.* at 794-95.

<sup>250</sup>*Id.* at 795.

<sup>251</sup>*Id.* at 795.

<sup>252</sup>*See, e.g.,* WOLDMAN, *supra* note 60, at 64 (stating that in the *Bryant* case Lincoln's arguments were pitifully weak, spiritless, and half-hearted).

<sup>253</sup>McKirdy, *supra* note 2, at 87 (citing 1 ALBERT J. BEVERIDGE, ABRAHAM LINCOLN 396 (1928)).

<sup>254</sup>*Id.* at 88.

<sup>255</sup>Douglas L. Wilson and Rodney O. Davis, Eds., *Herndon's Informants*, 635 (1998).

<sup>256</sup>2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 33.

<sup>257</sup>*See id.* at 28-38.

Ficklin's words ring true. Ficklin wrote that in the team of Linder and Lincoln, Linder argued first for Matson.<sup>258</sup> His bombastic argument relied on the Fugitive Slave Act which itself derived from the Constitution of the United States.<sup>259</sup> Lincoln, like Linder, believed unflinchingly in the supremacy of the Constitution, even grudgingly in its endorsement of slavery.<sup>260</sup> But he recognized that this was not a fugitive slave case. Matson had voluntarily brought his slaves into a free state. Linder led off with an argument that if the Constitution protected slavery in Kentucky, then the Bryants should remain slaves as long as they were in custody of their master, even in the free state of Illinois.<sup>261</sup>

Lincoln followed Linder with his argument. According to Ficklin:

[Mr. Lincoln], did not endorse the extreme propositions of General Linder, but frankly admitted that IF his client, General Matson, had brought his slaves to Illinois, and placed them on his farm as a permanent settlement, there to remain independently, that it worked out and effected their emancipation. Mr. Lincoln, as was his habit in most cases, of stating his opponents' points and arguments with such amplitude and seeming fairness, and such liberality of concession of their force and strength, that it increased in his adversaries their confidence of success. That was done in this case, but his trenchant blows and cold logic and [subtle] knitting together, and presentation of facts favorable to his side of the case, soon dissipated all hope that any advantage was likely to be gained by Lincoln's liberal concession, but rather that he had gained from the court a more patient and favorable hearing and consideration of the facts on which he relied for success. The fact that General Matson had, at such time when he placed a slave on his Illinois farm, publicly declared that he was not placed there for permanent settlement, and that no counter statement had ever been made publicly or privately by him, constituted the web and woof of the argument of Mr. Lincoln, and these facts were plausibly, ingeniously and forcibly presented.<sup>262</sup>

Ficklin asserted that Lincoln was in top form arguing for Matson's repossession of the slaves.<sup>263</sup> He admired Lincoln's tactics and preferred

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<sup>258</sup> *Id.* at 32–33.

<sup>259</sup> *Id.*

<sup>260</sup> DONALD, *supra* note 15, at 134 (noting that Lincoln opposed slavery but did not believe the Constitution gave the United States the power to interfere with the institution of slavery in the states).

<sup>261</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 33.

<sup>262</sup> *Id.*

<sup>263</sup> *Id.*

Lincoln's subtle approach to Linder's extreme propositions.<sup>264</sup> He gave no indication that Lincoln might have held back his best arguments. To the contrary, Lincoln's trial tactics in the *Bryant* case matched the description of Lincoln's general trial strategy given by another of Lincoln's closest associates, Leonard Swett.<sup>265</sup>

#### IV. CONCLUSION

The *Bryant* case holds a special place in history as one of Lincoln's most important cases, but it says little about Lincoln's personal feelings toward slavery. With respect to slavery, he generally kept a low profile as a lawyer and politician in the rabidly pro-slavery region of Central Illinois. Nevertheless, he put his anti-slavery beliefs on record as a twenty-eight year-old Illinois representative. He and one other representative courageously signed a petition of protest against the majority's pro-slavery resolution, and declared slavery an injustice, while expressing concern that promulgation of abolitionist doctrines only made matters worse for slaves.<sup>266</sup> He was an antislavery man and would have preferred to join Bryant's side, but it was not possible.<sup>267</sup> Representing the slave owner, Matson, Lincoln's "duty as a lawyer was to present his client's case in an honest and forthright manner and let the court determine the justice of the client's position."<sup>268</sup>

Lincoln's honesty was genuine and his skill with a jury unsurpassed. All his attributes were on display in October 1847 at the Coles County courthouse. He was attending to business as usual, even when the atmosphere was charged by a rare case on slavery. His performance, even in an odious case, was that of an extraordinary trial lawyer.

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<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> THOMAS, *supra* note 6, at 64.

<sup>267</sup> 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES, *supra* note 107, at 41.

<sup>268</sup> FRAKER, *supra* note 10, at 51.