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## Comment

### A. Lincoln, a Corporate Attorney and the Illinois Central Railroad

"Biographies as written are false and misleading. The author of the life of his hero paints him as a perfect man—magnifies his perfections and suppresses his imperfections—describes the success of his hero in glowing terms, never once hinting at his failures and his blunders."

A. Lincoln<sup>1</sup>

#### I. INTRODUCTION

Abraham Lincoln undoubtedly has earned an indelible place in the history of the United States. Millions of pages have been written chronicling his political, professional, and personal life. Biographers, scholars, and historians elevate the events in the life of this simple country man to almost superhuman levels.<sup>2</sup> The focus here is not with the martyred Abraham Lincoln of

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1. RICHARD H. LUTHIN, *THE REAL ABRAHAM LINCOLN* 113 (1960). This remark was quoted by Lincoln's law partner, William H. Herndon. The quote continued:

Why do not book merchants and sellers have blank biographies on their shelves always ready for sale, so that when a man dies, if his heirs—children and friends—wish to perpetuate the memory of the dead, they can purchase one already written, *but with blanks* which they can fill up eloquently and grandly at pleasure thus commemorating a lie; an injury to the living and to the name of the dead.

1 ALBERT J. BEVERIDGE, *ABRAHAM LINCOLN 1809-1858* 520 (1928).

2. BEVERIDGE, *supra* note 1, at 521-23. Beveridge notes, "even those who rode the circuit and practised law were so influenced by the atmosphere of adulation which surround them when they gave their descriptions, that their accounts must be received with caution" and the importance of "bearing in mind the conditions under which Lincoln's associates gave their recollections of him." BEVERIDGE, *supra* note 1, at 521. Beveridge also writes:

While unblemished honor is a pre-eminent element of his character, undue effort has been made, perhaps, to extend his peculiar reputation over every incident of his life as a lawyer; and he is represented to us as a sort of heavenly agent of justice, succoring the unfortunate in earthly courts and scourging the unworthy.

BEVERIDGE, *supra* note 1, at 546. John P. Frank in his book says:

We are dealing with a heavily documented figure; after his death, anyone who had ever patted Lincoln's uncle's dog was entitled to write a piece

American history but with his many experiences as a corporate attorney. Lincoln was both a politician and a lawyer. In his capacity as a lawyer, he faced many of the same decisions and difficulties in his practice that lawyers face today. His practice is interesting, in part, because it spans a time when the tenets of corporate law were undergoing great changes.<sup>3</sup>

The Illinois Central Railroad, one of the largest Illinois corporations, retained Abraham Lincoln as counsel in the early 1850s.<sup>4</sup> At a time when corporate law was in a state of change, Lincoln represented and advised this newly chartered corporate client in areas where legal rules were not always obvious and the outcome was far from guaranteed by precedent.<sup>5</sup> Through his

about it.

JOHN P. FRANK, LINCOLN AS A LAWYER 26 (1961); *see also* Jesse J. Dunn, *Lincoln, the Lawyer*, OKLA. L.J., Jan.-Feb. 1906, at 215 in which the Hon. Jesse J. Dunn, a former President of the Oklahoma Bar Association, describes Mr. Lincoln as one who "stood high above their fellows" and "none will be found more universally respected, more loved and revered." *Id.* at 215-16. When the article is read in its entirety, it is easy to see the glowing way in which Mr. Lincoln is referenced.

The list of sources for exaggerated accounts of Mr. Lincoln's traits is virtually endless. Literally hundreds of examples could be proffered in defense of the proposition that these tributes to Abraham Lincoln are based in reverence for an assassinated President more than the reality of actual events.

3. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 446-463 (1973); *see also* EDWIN MERRICK DODD, AMERICAN BUSINESS CORPORATIONS UNTIL 1860 124-194 (1954). A more detailed description of the state of corporations in the 1850s is addressed in Part II of this paper.

4. Lincoln's first recorded case for the Illinois Central Railroad was tried on May 25, 1853. Telegram Sent to Mason Brayman, in 2 THE COLLECTED WORKS OF ABRAHAM LINCOLN 194 (Roy P. Basler ed., 1953) [hereinafter *Collected Works*]. There is some dispute as to the actual time when Lincoln began his relationship with the I.C.R.R., but a letter from Lincoln to Mason Brayman (then counsel for I.C.R.R.) suggests he was retained on October 7, 1853 in connection with a case involving taxation by McLean County. *Id.* at 202, 205.

It is generally believed that Lincoln also was involved in the lobbying efforts associated with the charter grant for the I.C.R.R. in 1851. *See* Charles Leroy Brown, *Abraham Lincoln and the Illinois Central Railroad, 1857-1860*, 36 J. ILL. ST. HIST. SOC. 121, 128 (1943). On August 30, 1904, Judge Anthony Thornton signed an affidavit in which he tells of a "distinct recollection that Mr. Lincoln and several members of the Legislature were engaged by the Illinois Central Railroad Company to obtain the charter for the company." *Abraham Lincoln*, 1 ILL. CENT. MAG. 15, 16 (June 1913). At the time, Judge Thornton was the only living member of the legislature of Illinois which granted the charter of the I.C.R.R. *Id.*

5. William D. Beard, *Lincoln as a Railroad Lawyer*, 85 ILL. HIST. J. 209, 210 (1992). The development of railroads presented challenges for the Illinois legal system. English precedents and prior state and federal rulings were combined with

experiences as counsel for the Illinois Central Railroad, Abraham Lincoln became known as "one of the most successful railroad attorneys."<sup>6</sup> His role as a corporate attorney "reveals a more realistic Lincoln than our mythic man of the grade-school texts."<sup>7</sup>

To place Lincoln's corporate law career in context, one must first understand the state of corporate law, the types of corporations in existence, and the typical corporate law practice in the 1850s. Within this framework, Lincoln's individual practices and contributions to corporate law become more apparent. This paper focuses specifically on the relationship between Abraham Lincoln and the Illinois Central Railroad.

The discussion is divided into several sections. Part II examines Lincoln's legal background: his education, admittance to the bar, law partners, office arrangements, and his general reputation in the legal community. Part III outlines the status and changes in corporate law in the mid-nineteenth century. Part IV chronicles the history and development of the Illinois Central Railroad. Finally, part V is an analysis of the attorney/client relationship between Abraham Lincoln and the Illinois Central Railroad.

## II. LAWYER LINCOLN

Abraham Lincoln first began his legal education by studying the *Revised Statutes of Indiana*, which also contained the Declaration of Independence and the United States Constitution in the prefix.<sup>8</sup> From there, the stories about the furtherance of his legal education range from a young boy chopping wood<sup>9</sup> to a fifty-cent barrel containing *Blackstone's Commentaries*.<sup>10</sup>

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Illinois "public policy, legislative prerogative, and judicial activism in order to create the first state railroad regulations." *Id.* Part III of this article contains a general overview of the state of corporate law in the 1850s.

6. Frank Whelan, *A. Lincoln for the Railroads*, 1 ILL. REP. 34 (1975).

7. *Id.*

8. BENJAMIN THOMAS, *ABRAHAM LINCOLN* 42 (1952); see also Arthur L. Goodhart, *Lincoln and the Law*, 50 A.B.A. J. 433, 436 (1964); LUTHIN, *supra* note 1, at 59; STEPHEN B. OATES, *WITH MALICE TOWARD NONE* 15 (1977).

9. Dunn, *supra* note 2, at 218. In Dunn's speech delivered at an annual meeting of a Bar Association, he provides the earliest account of Lincoln studying law as given by an old settler near New Salem. Apparently the settler employed Lincoln to chop wood, and as the settler passed the place, he found Lincoln sitting on top of a pile of wood reading. When asked what he was reading, Lincoln replied, "I am not reading; I am studying . . . studying Law." Dunn, *supra* note 2, at 218.

10. CARL SANDBURG, *ABRAHAM LINCOLN, THE PRAIRIE YEARS 163-64* (1926). In 1832, while Lincoln was a part owner of a store with a man named Berry, a mover came by the store in a covered wagon. He sold Lincoln a barrel for 50 cents, and in the bottom of that barrel, Lincoln found *Blackstone's Commentaries on the Laws of*

One dimension of his education is almost certain; John T. Stuart,<sup>11</sup> a Springfield attorney and fellow member of the Illinois House of Representatives, influenced Lincoln's decision to become a lawyer. Stuart met Lincoln during the 1834 Illinois congressional campaign. At Stuart's urging, Lincoln borrowed several treatises from the firm of Stuart & Drummond in furtherance of his studies.<sup>12</sup>

Before gaining admittance to the bar, Lincoln served in a legal apprenticeship which consisted of supervision by a practicing attorney and reading standard legal treatises such as *Chitty's Pleadings*, *Greenleaf on Evidence*, *Story's Equity*, and *Story's Equity Pleading*.<sup>13</sup> In March, 1836, the circuit court completed the preliminary formality of certifying that Lincoln was a "person of good moral character."<sup>14</sup> Lincoln's last hurdle to bar membership was passing an oral examination. Finally, on September 9, 1836, Abraham Lincoln received his license to practice law.<sup>15</sup>

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*England. See also* ALBERT A. WOLDMAN, *LAWYER LINCOLN* 14 (1936) (describing this as an "event destined to shape his career and change the course of history.").

However, a different account of how Lincoln came into the possession of *Blackstone's Commentaries* is given in a short biography prepared after Lincoln was nominated for President. In the biography it is stated, "He bought an old copy of Blackstone, one day, at auction in Springfield, and on his return to New Salem, attacked to work with characteristic energy." JOHN J. DUFF, *A. LINCOLN: PRAIRIE LAWYER* 15-16 (1948). Arthur L. Goodhart, in a 1964 *ABA Journal* article, finds the Duff account more credible. He points out that the four volumes of Blackstone "were of considerable value and were readily salable as was shown by the large demand for the next Blackstone edition the following year." Goodhart, *supra* note 8, at 436. Goodhart goes on to point out that Lincoln was a storyteller and would have likely repeated such an interesting account of obtaining *Blackstone's* in a barrel to his legal friends. Yet neither Judge David Davis or William Herndon claim to have heard Lincoln tell this story. *Id.*

11. Martin Joseph Keenan, *Lincoln's Forgotten Profession*, 58 J. KAN. B. ASSN. 27, 30 (April 1989). In 1834, Lincoln was elected to his first term in the lower house of the Illinois legislature. John Stuart, a Springfield attorney, was re-elected to a second term in the same year. During the campaign, Stuart met Lincoln. OATES, *supra* note 8, at 26.

John Duff believed Stuart's influence on Lincoln may have been overemphasized. There are some indications that Lincoln had already considered a career in law when Stuart approached him. DUFF, *supra* note 10, at 23.

12. OATES, *supra* note 8, at 26; LUTHIN, *supra* note 1, at 60.

13. Keenan, *supra* note 11, at 30; OATES, *supra* note 8, at 28.

14. LUTHIN, *supra* note 1, at 60; OATES, *supra* note 8, at 32.

15. THOMAS, *supra* note 8, at 54; OATES, *supra* note 8, at 32.

During Lincoln's twenty-four year law career, he had three different law partners. The first was none other than John Stuart,<sup>16</sup> the man who influenced Lincoln's decision to practice law. Unfortunately for Lincoln, Stuart practiced law as a sideline to his pursuit of a political career while Abraham Lincoln devoted himself to a full-time legal career.<sup>17</sup> Their practice often involved trivial legal matters such as neighborhood quarrels, livestock disputes, crop damage by livestock, replevin suits for at-large animals, cases for debt, and a few divorces.<sup>18</sup>

Perhaps in response to Stuart's political pursuits or the drudgery of the routine cases, Lincoln and Stuart amicably parted in the spring of 1841.<sup>19</sup> Soon after, Stephen Logan became Abraham Lincoln's second law partner. They built a busy practice and maintained a virtual monopoly on litigation in the Illinois Supreme Court from 1841 to 1844.<sup>20</sup> In late 1844, the firm ended when Logan asked his son David to join him as partner.<sup>21</sup>

Lincoln's third, and last, law partner was William Herndon.<sup>22</sup> Despite some dispute on the nature of their professional relationship,<sup>23</sup> authorities generally agree that Lincoln took the role of courtroom litigator, while Herndon did much of the research, preparation, and office work for the firm.<sup>24</sup> Having remained active partners until his departure for the White

16. OATES, *supra* note 8, at 45; *see also* LUTHIN, *supra* note 1, at 60; KEENAN, *supra* note 11, at 30.

17. Cullom Davis, *Abraham Lincoln and the Golden Age of American Law*, BULLETIN OF THE 52ND ANNUAL MEETING (The Lincoln Fellowship of Wis., Milwaukee, Wis.), Apr. 12, 1992, at 12.

18. LUTHIN, *supra* note 1, at 61.

19. THOMAS, *supra* note 8, at 95; *see also* LUTHIN, *supra* note 1, at 67.

20. OATES, *supra* note 8, at 59; *see also* LUTHIN, *supra* note 1, at 68.

21. DUFF, *supra* note 10, at 94; *see also* OATES, *supra* note 8, at 71; LUTHIN, *supra* note 1, at 70.

22. OATES, *supra* note 8, at 71; *see also* LUTHIN, *supra* note 1, at 70.

23. While virtually all of the authors' written works on Lincoln agree that Herndon was the antithesis of Lincoln in personality, *see* DUFF, *supra* note 10, at 97-103; OATES, *supra* note 8, at 72-75; THOMAS, *supra* note 8, at 98-100; Keenan, *supra* note 11, at 30, there is some dispute by Herndon himself as to the exact situation. WILLIAM HENRY HERNDON, *HERNDON'S LINCOLN: THE TRUE STORY OF A GREAT LIFE* 37 (reprinted 1970). There is evidence that Herndon did most of the legal research and briefing, but Herndon's contention that Lincoln did less office work than any other lawyer in Illinois is not substantiated by the preserved handwritten documents prepared by Lincoln. *Id.*

Lincoln's practice of allowing the junior partner to do much of the research and briefing would not be considered unusual today. *Id.* at 38.

24. DUFF, *supra* note 10, at 104; *see also* THOMAS, *supra* note 8, at 97-100; OATES, *supra* note 8, at 98-100; LUTHIN, *supra* note 1, at 146-148.

House in 1861, the assassination of President Lincoln on April 14, 1865 abruptly ended their partnership.<sup>25</sup>

One can make some generalities concerning the Lincoln & Herndon law practice. Their professional law work ranged from actions in foreclosure, debt, replevin, trespass, partition, suretyship, to slander and divorce actions, personal injury actions, suits to compel stockholders to pay their assessments, will contests, and a few criminal cases.<sup>26</sup> These cases were heard in various levels of the judicial system, from the state circuit courts on through to the United States district courts and the Illinois state Eighth Judicial Circuit.<sup>27</sup> Abraham Lincoln, the only lawyer who attended courts in every county seat,<sup>28</sup> usually spent at least six months of every year "riding the circuit."<sup>29</sup> The attorneys who rode the circuit would usually have one night to prepare their case. This completely belied any notion that Lincoln was unable to adequately prepare for a case by himself. Herndon's assertions concerning Lincoln's inability to research and brief a case appear to overstate the real situation. Yet Herndon was not alone in his critical characterization of Lincoln's legal abilities; some historians and contemporaries of Lincoln have attempted to portray him as a persuasive advocate before a jury, but one who

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25. DUFF, *supra* note 10, at 104. Duff gives an account of Lincoln's departure for Washington, D.C. Lincoln is said to have told Herndon to leave the wooden sign at the entrance to the office. "Give our clients to understand," Lincoln said, "that the election of a President makes no change in the firm of Lincoln & Herndon." *Id.* The sign still remained when Lincoln's body was brought home to Springfield after his assassination. *Id.*

26. LUTHIN, *supra* note 1, at 148-49.

27. LUTHIN, *supra* note 1, at 148.

28. LUTHIN, *supra* note 1, at 512.

29. At that time, court was held in various counties from mid-March to mid-June and again from early September to the first of December. BEVERIDGE, *supra* note 1, at 512-13. Lawyers would travel to the various county seats and upon their arrival, clients would employ them. BEVERIDGE, *supra* note 1, at 517-18.

lacked technical knowledge or ability.<sup>30</sup> These assertions are simply not accurate.<sup>31</sup>

Lincoln and Herndon divided their legal fees equally as they were paid.<sup>32</sup> When first practicing law, Lincoln earned from twelve to fifteen hundred dollars a year,<sup>33</sup> but by the mid-1850s he averaged five thousand dollars a year which was a good income for the time.<sup>34</sup> His average fee for a case was five to ten dollars, with most cases ranging from fifty cents to one thousand dollars.<sup>35</sup> Lincoln and Herndon were not always paid in cash; often clients paid with groceries, produce, poultry, or clothes.<sup>36</sup>

Despite the fact that one of Lincoln's most notable cases involved a rather large fee,<sup>37</sup> the overall record shows that Lincoln's fees were normal for

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30. In John J. Duff's book, *A. Lincoln; Prairie Lawyer*, a reference is made to assertions attributable to William Herndon (Lincoln's law partner), Ward Hill Lamon (a junior lawyer and co-counsel with Lincoln on many of his circuit cases), and Henry C. Whitney (fellow attorney who rode the circuit with Lincoln) that Lincoln was somehow "strikingly deficient in the technical rules of the law." DUFF, *supra* note 10, at 126.

One of the more scathing reviews of Abraham Lincoln's legal abilities appears in a book by William Henry Herndon in which he flatly states,

Lincoln was not, it is generally admitted, well versed in legal technicalities and precedents; he argued usually from the logic of the facts and the principles of justice involved. Herndon, on the other hand, had real skill in the search for authorities and citations to bolster his pleading . . . There is little evidence to show that during his partnership with Herndon Lincoln ever performed the drudgery of digging up legal precedents.

HERNDON, *supra* note 23, at 37-38.

31. One of the more striking documents which contradicts the notion that Lincoln lacked technical knowledge is his March 6, 1856, Opinion on the Pre-emption of Public Lands, 2 COLLECTED WORKS, *supra* note 4, at 333. Throughout the various writings, speeches, and correspondence compiled in *The Collected Works* the true skills of a lawyer familiar with the technical intricacies of the law is clearly reflected.

In his book, John Duff points out that "court records prove conclusively that [Lincoln] resorted to every legitimate device and utilized every technical advantage to win his cause. To represent Lincoln as a lawyer either disinclined or without the know-how to take advantage of any technical defense is plainly a distortion of fact." DUFF, *supra* note 10, at 126; *see also* THOMAS, *supra* note 8, at 98.

32. THOMAS, *supra* note 8, at 97.

33. THOMAS, *supra* note 8, at 92.

34. OATES, *supra* note 8, at 98.

35. THOMAS, *supra* note 8, at 92; *see also* BEVERIDGE, *supra* note 1, at 553, 555.

36. THOMAS, *supra* note 8, at 92.

37. Lincoln brought suit against the Illinois Central Railroad for his fee in defending the I.C.R.R. in the McLean County tax case. The case would prove to be of great significance for I.C.R.R. and eventually a judgment for the \$5000 fee was



that time.<sup>38</sup> With more than fifteen hundred dollars worth of investments by 1860, Lincoln had accumulated substantial wealth.<sup>39</sup>

Finally, Lincoln enjoyed a good reputation among his colleagues.<sup>40</sup> Despite his renowned bouts with melancholy<sup>41</sup> and superstitious beliefs,<sup>42</sup> most of Lincoln's colleagues knew him to be analytical and practical in his approach to the law.<sup>43</sup> Yet Lincoln himself was not convinced: "I am not an

awarded to the Lincoln & Herndon law firm. *See infra* Part IV of this article for a discussion of Lincoln's fee case.

38. BEVERIDGE, *supra* note 1, at 554. Lincoln expressed his opinion on legal fees in his Notes for a Law Lecture, 2 COLLECTED WORKS, *supra* note 4, at 82;

The matter of fees is important far beyond the mere question of bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. As a general rule never take you whole fee in advance, nor any more than a small retainer. When fully paid before hand, you are more than a common mortal if you can feel the same interest in the case, as if something was still in prospect for you, as well as for your client. And when you lack interest in the case the job will very likely lack skill and diligence in the performance. Settle the amount of fee and take a note in advance. Then you will feel that you are working for something, and you are sure to do your work faithfully and well. Never sell a feenote—at least not before the consideration service is performed. It leads to negligence and dishonesty—negligence by losing interest in the case, and dishonesty in refusing to refund when you have allowed the consideration to fail.

39. OATES, *supra* note 8, at 98.

40. LUTHIN, *supra* note 1, at 123. Herndon himself said, "Lincoln was a man of great dignity and yet democratic—easy of approach. He would up to a certain point allow any approach but go beyond *that*, and his dignity soon protected itself, and wilted the man who dared go beyond the proprieties of the occasion." LUTHIN, *supra* note 1, at 124.

41. Jesse W. Weik, in researching his book, found that most of Lincoln's close associates "convinced me that men who never saw him could scarcely realize this tendency to melancholy." BEVERIDGE, *supra* note 1, at 524. Herndon also was quoted as saying, "Melancholy dripped from him as he walked and his face when in repose . . . was . . . pervaded by a look of dejection as painful as it was prominent." BEVERIDGE, *supra* note 1, at 523-24 (quoting Wm. Herndon).

42. Lincoln believed fat men were ideal jurors because they were jolly by nature and easily swayed. He rejected people with high foreheads because he believed they had already made up their minds about the case. He considered blond, blue-eyed males inherently nervous and more likely to side with the prosecution in murder cases. OATES, *supra* note 8, at 100-01.

Lincoln also believed in dreams. He took them as warnings and portents. THOMAS, *supra* note 8, at 133-34; *see also* BEVERIDGE, *supra* note 1, at 526.

43. THOMAS, *supra* note 8, at 134; *see also* OATES, *supra* note 8, at 97-98; BEVERIDGE, *supra* note 1, at 541-42, 544-47; LUTHIN, *supra* note 1, at 148-149.

accomplished lawyer. I find quite as much material for a lecture in those points wherein I have failed, as in those where I have been moderately successful."<sup>44</sup>

Lawyers in the 1850s tried even the pettiest cases before a jury, so one's courtroom manner was an important element for success.<sup>45</sup> In this regard, Abraham Lincoln possessed an important quality - diligent preparation of a case. By studying the opposite side of every case, he rarely was surprised by the testimony of the opposition. Having mastered the facts, Lincoln showed great confidence before the jury.<sup>46</sup> He often appealed to reason and possessed a gift for presenting the essential facts to the jury in the simplest, clearest fashion.<sup>47</sup> When speaking to the jury he was direct and concise, using the plain and familiar language of the average person. He tried to avoid confusing the jury with too many points by stressing the crucial ones.<sup>48</sup> Lincoln also was quite skillful in examining witnesses, especially on cross-examination.<sup>49</sup> He never took notes during testimony, but seemed to remember every word of it. He only asked necessary questions of a witness and refrained from brow-beating, confusing, distracting, or alarming them. If he found a witness to be honest and truthful he questioned them in a gentle and friendly manner, but if he believed a witness was lying or evasive he became severe and merciless.<sup>50</sup> Lincoln, however, did not display emotion in the courtroom. He showed perfect calm and appeared to lack enthusiasm.<sup>51</sup> He often used anecdotes in his arguments to simplify difficult concepts or make the opposition look ridiculous.<sup>52</sup> All of these factors formed the basis for Lincoln's courtroom success.

44. July 1, 1850 Fragment: Notes for a Law Lecture, 2 COLLECTED WORKS, *supra* note 4, at 81; *see also* LUTHIN, *supra* note 1, at 149; OATES, *supra* note 8, at 105.

45. THOMAS, *supra* note 8, at 92.

46. Dunn, *supra* note 2, at 220.

47. HERNDON, *supra* note 23, at 38; *see also* THOMAS, *supra* note 8, at 133; Goodhart, *supra* note 8, at 438.

48. BEVERIDGE, *supra* note 1, at 549.

49. BEVERIDGE, *supra* note 1, at 549.

50. BEVERIDGE, *supra* note 1, at 549.

51. BEVERIDGE, *supra* note 1, at 549. William Henry Herndon in his book, HERNDON'S LINCOLN, *supra* note 23, at 40, agrees with such characterizations of Lincoln:

With Lincoln the emphasis was on casual, friendly questioning of witnesses, free from technical matters of law. He would good-naturedly concede nine points out of ten to the opposing counsel, until it seemed he had given his case away. But on the tenth point he would insist, and it was the nub of the action. In presenting the arguments to the jury Lincoln excelled.

52. Dunn, *supra* note 2, at 220.

With such favorable reviews,<sup>53</sup> it should surprise no one that Lincoln was primarily a litigator<sup>54</sup> and most certainly preferred the courtroom over the office. He handled civil and criminal cases for individual clients as well as corporations. Despite the demands of diverse clientele and legal issues, Lincoln maintained a successful law practice.

Whatever combination led Lincoln into a successful law career, all his skills were put to task when the Illinois Central Railroad retained him in the early 1850s. Lincoln's role as a corporate counsel soon placed him into the emerging and changing area of corporate law.

As Carl Sandburg hypothesized;

On a late afternoon of an autumn day in the year 1850 Abraham Lincoln, sitting in his rattletrap buggy, might have been lost still deeper in his thoughts if he could have snatched the film of tissue off the Future and read events to operate in the ten years to come. The babblings, confusions, and mixed paths of those events, as well as the human majesty of some of their outstanding performances, might have had for him the same mystery as the coming of evening in autumn haze, when all the revealed shapes of daylight take on the rags or the silks of mist and dark, and form themselves into fine or comic apparitions not seen in broad daylight. Hours come when men of dreams or mathematics, or both, have to be keener and more elusive with the outlines of their reveries or the statements of their theorems.<sup>55</sup>

### III. CORPORATE LAW IN THE 1850S

#### A. *Legal Concepts*

The development of law does not occur in a vacuum. As Carl Sandburg's writings suggest, the events in our country and the rest of the world are factors which can lead to changes in the law.<sup>56</sup> This was equally

53. Although neither Beveridge or Dunn actually witnessed Abraham Lincoln in the courtroom, both men have taken more than a passing interest in his life. While their lack of first hand knowledge could lead to skepticism, in my own research for this paper I have found no source which contradicts or refutes their assertions.

54. Dunn, *supra* note 2, at 220; *see also* Keenan, *supra* note 11, at 28.

55. SANDBURG, *supra* note 10, at 467. In his own unique style, Sandburg lays out the events which led to the atmosphere of the 1850s. He tells of population expansion, industrial growth, European revolution, homestead acts, sale of public lands by the Government, the development of the railroads, the goldrush of California, and the tension of slavery. SANDBURG, *supra* note 10, at 451-466.

56. Specifically, the population in the United States grew from twelve million to thirty-one million people between 1850 and 1860. Over 2.6 million immigrants came into this country; the government granted 269,406,415 acres of public land (2.5 million of those to the state of Illinois and eventually to the Illinois Central Railroad);

true in the mid-nineteenth century when corporate law was evolving and adapting to an ever-changing society.<sup>57</sup>

Until the mid-nineteenth century, the states enacted no general incorporation acts. Legislatures incorporated companies by special acts<sup>58</sup> called special charters which defined the nature and scope of the corporation in rather rigid terms.<sup>59</sup> Changes in the scope of a corporate enterprise necessitated the directors, with consent of the shareholders, to lobby the legislature to enact new special acts granting additional or different corporate powers.<sup>60</sup> As a result of this special charter system, an important duty of a corporate lawyer was appearances before the legislature on behalf of clients seeking passage of an incorporation act for their enterprise.<sup>61</sup>

In 1819, the U.S. Supreme Court held that a corporate charter was a contract between the state and corporation.<sup>62</sup> Any amendment to the charter by the legislature was invalid under the Contract Clause of the federal Constitution.<sup>63</sup> This interpretation led to disputes over monopolistic rights<sup>64</sup> and tax exemptions<sup>65</sup> which the state legislatures had granted to corporations

industrialization grew through transcontinental railroads, steamships, factories, and the American threshing machine. DEPT. OF THE CENSUS, U.S. DEPT. OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES, 1789-1945 25, 200 (1949); *see also* MALCOLM C. JENSON, AMERICA IN TIME 60 (1977).

57. THOMAS, *supra* note 8, at 155-56.

58. Elmer A. Smith, *Abraham Lincoln, an Illinois Central Lawyer*, a paper read at a meeting of the Western Conference of Railway Counsel at 3 (February 13, 1945) (provided by The Lincoln Legal Papers, Springfield, Illinois).

59. DODD, *supra* note 3, at 133.

60. DODD, *supra* note 3, at 133. Infrequently, legislatures would enact general laws allowing certain types of corporations to exercise powers beyond the ones spelled out in their charter. DODD, *supra* note 3, 133.

61. DODD, *supra* note 3, at 133.

62. *See generally* Dartmouth College v. Woodward, 17 U.S. 518 (1819).

63. U.S. CONST. art. I, § 10, cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts . . .").

64. For example, Chief Justice Taney, in *Charles River Bridge v. Warren Bridge*, 36 U.S. 419 (1837), wrote the court's majority opinion that a legislature did not have the power to grant monopolistic rights to private capitalists to encourage investment in public transportation. Justice Story dissented and expressed the view that a charter which authorized the construction of a structure, such as a toll bridge, granted monopolistic rights by implication. *Id.* at 583 (Story, J., dissenting). DODD, *supra* note 3, at 125-26, 129; *see also* Herbert Hovenkamp, *The Classical Corporation in American Legal Thought*, 76 GEO. L.J. 1593, 1596 (1988).

65. The argument centered on the notion that tax exemption benefitted the corporation—a body which the state itself had created—giving it an unusual privilege which the ordinary citizen could not claim. DODD, *supra* note 3, at 130. In effect,

in these special charters. *Dartmouth College* gave corporate shareholders legally protectable interests, a development that would grow in importance as the 19th century progressed.

Once corporations came into existence, the courts had to determine what legal status they would hold. Beginning in 1809, the U.S. Supreme Court held that a corporation is "certainly not a citizen" under the Constitution, but for purposes of diversity it would be treated as a group of citizens.<sup>66</sup> This view dominated until 1844 when the Taney Court held that a corporation should be "deemed...a person, although an artificial person" and treated as a citizen of its state of incorporation.<sup>67</sup> The Court conceded that a corporation differs from a natural person, but within the meaning of the law, it was a citizen. Corporations now had a presumption of citizenship in the state of incorporation.<sup>68</sup>

The shareholder suit, foreshadowed in the 1830s, was advanced in *Dodge v. Woolsey*.<sup>69</sup> Prior to this time, the corporation itself had the exclusive right to sue its officers and directors for any misconduct.<sup>70</sup> Between 1800 and 1830 minority shareholders brought only three cases claiming an exemption from paying their share assessments based on amending statutes passed by the

corporations could obtain constitutional immunity from the legislative power to tax through the Contract Clause. *DODD*, *supra* note 3, at 132. In essence, the charter was a contract between the state and the corporation which was protected by the federal constitution. If the state was prohibited from pass legislation which impaired the obligation of a contract, then the state was prohibited from enacting tax legislation levying taxes against a corporation if its charter provided tax exemption. As a result, chartered corporations could maintain a tax exempt status which no ordinary citizen could obtain.

*Dodge v. Woolsey*, 59 U.S. 331 (1855), by majority opinion of the United States Supreme Court, held that adoption of a new state constitution did not affect the tax exempt status of these chartered corporations. The state had no greater power to impair contracts by a constitutional provision than they did by statute. *DODD*, *supra* note 3, at 132.

66. *United States v. Deveaux*, 9 U.S. 61 (1809); *see also DODD*, *supra* note 3, at 150; *Hovenkamp*, *supra* note 64, at 1598. This ruling made it difficult to sustain a suit in federal court because the number of situations where complete diversity would exist between all plaintiffs and all defendants was rather small. *Id.*

67. *Charleston R.R. v. Letson*, 43 U.S. 497, 557 (1844); *see also Hovenkamp*, *supra* note 64, at 1598.

68. *Hovenkamp*, *supra* note 64, at 1598. Ten years later, the same Taney Court changed its position, admitting that a corporation could not literally be a constitutional citizen. *Marshall v. Baltimore & O. R.R.*, 57 U.S. 314, 328-29 (1853).

69. 59 U.S. 331 (1855).

70. *FRIEDMAN*, *supra* note 3, at 449.

legislature.<sup>71</sup> The development of the railroad companies made the problem of minority rights much more serious. Most railroads began as local enterprises, but quickly grew in size and territory. In many cases, another railroad company later merged, consolidated, purchased, or leased the railroad.<sup>72</sup> The problem with minority shareholders arose because many of the charters in these railroad companies did not allow for such amendments to the charter. Having enticed the shareholders to invest in the railroad by advancing a local interest, the company now angered them because the railroad had reneged on their promised benefits to the investors.

Courts then faced a significant increase in the amount of litigation brought by minority shareholders. These suits were based on contract theory. Because the law regarded the corporate charter as a contract between the shareholders, any change by the majority shareholders without legislative authorization was a violation of the rights of the dissenting shareholders.<sup>73</sup> When minority shareholders used this argument in railroad cases dealing with route changes, the court usually found favor with it. The key factor in the case's outcome appeared to turn on the substantive nature of the change.<sup>74</sup>

In a shareholder suit, the courts held officers and directors to a standard based on their fiduciary obligations.<sup>75</sup> As trustees of the corporation, the

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71. DODD, *supra* note 3, at 133. Two cases were brought in Massachusetts and one in New Hampshire. All three related to a change in a turnpike or canal route. In all three cases the shareholder was successful in their attempt to defend against liability to pay assessments on their shares. DODD, *supra* note 3, at 133.

72. DODD, *supra* note 3, at 134.

73. DODD, *supra* note 3, at 134-35.

74. DODD, *supra* note 3, at 136-37. The Illinois court in *Banet v. Alton & S. R.R.*, 13 Ill. 504, 521-22 (1851), would not allow release of the subscriber from their obligation to pay the share assessment if the corporation remained "substantially the same." If the amendments were considered useful to the public and beneficial to the corporation without diverting property to new and different purposes the shareholder would be forced to pay their share assessment. DODD, *supra* note 3, at 137.

Lincoln's involvement in this case pre-dated his formal association with the Illinois Central Railroad. Although the official reporter cites the plaintiff's name as Banet, it was actually Barret. Barret had purchased land in Morgan County, Illinois and stock in the Alton & Sangamon Railroad in anticipation of its planned route through New Berlin. However, the railroad changed its planned route to Carlinville when Morgan County residents refused to buy any railroad stock. Barret sued, claiming that since the directors of the railroad corporation failed to inform him of the move he was released from all his obligations. Lincoln, arguing for the railroad, persuaded the jury that a majority of the shareholders had agreed to the move, therefore, Barret should not be released from his obligation. Whelan, *supra* note 6, at 37.

75. FRIEDMAN, *supra* note 3, at 450.

officers and directors were not to engage in self-dealing, buy or sell to the company, and were strictly accountable for any profits.<sup>76</sup> These obligations were directly in line with one of the goals of corporate law - to make corporations, managers, and promoters act honestly toward shareholders.<sup>77</sup>

The notion of par value of stock also lost its meaning during this time.<sup>78</sup> By 1874, sixteen states refused to allow the state to own corporate stock,<sup>79</sup> so corporations moved to the open market for capital. Stock was now worth what it would bring on the open market, not the face value shown on the stock itself.<sup>80</sup> As a result, corporate capital was no longer a fixed fund of assets and par did not represent the value of the corporation.<sup>81</sup>

Several methods of enforcement were available for "policing" the activities of corporations. First, tort actions were not uncommon<sup>82</sup> and courts treated corporations substantially the same as individuals. Some of the more common suits were negligence, nuisance, trespass, patent infringement, defamation, assault & battery, willful injury to a passenger, and false imprisonment.<sup>83</sup>

The courts utilized the doctrine of *ultra vires* to find certain acts of the corporation beyond the powers granted in its charter.<sup>84</sup> This doctrine ties in closely with Chief Justice Taney's notion that the courts must strictly adhere to the charter. Ultimately, the doctrine did not survive when the courts later established the business judgment rule.

Finally, corporations were susceptible to *quo warranto* actions.<sup>85</sup> Typically based on a serious violation of the charter or a breach of legal procedure, the attorney general brought suit against corporations to obtain a forfeiture of their charter.<sup>86</sup> The state was often successful in *quo warranto* cases. The courts, however, showed some reluctance to dissolve a corporation when the suit involved a successful business enterprise.<sup>87</sup>

76. FRIEDMAN, *supra* note 3, at 450.

77. FRIEDMAN, *supra* note 3, at 448.

78. FRIEDMAN, *supra* note 3, at 449.

79. FRIEDMAN, *supra* note 3, at 447.

80. FRIEDMAN, *supra* note 3, at 449.

81. FRIEDMAN, *supra* note 3, at 449.

82. DODD, *supra* note 3, at 190.

83. DODD, *supra* note 3, at 190.

84. FRIEDMAN, *supra* note 3, at 453. It was possible to avoid this by arguing that the act in question was implied by the terms of the charter. DODD, *supra* note 3, at 188.

85. DODD, *supra* note 3, at 181.

86. DODD, *supra* note 3, at 181.

87. DODD, *supra* note 3, at 182.

General statutes for voluntary dissolution of a corporation were uncommon. The only method of voluntary dissolution required application to the legislature for a statutory enactment.<sup>88</sup> Some courts found there was no power to voluntarily dissolve a corporation.

The states utilized three forms of involuntary dissolution in addition to *quo warranto*: 1) expiration of a corporation's chartered period, 2) occurrence of an event the legislature clearly declared as one terminating its existence, or 3) the legislature could repeal the charter without the corporation's consent, if the states reserved such a right in the charter.<sup>89</sup>

### B. Economic Factors

Corporate law came of age in the mid-nineteenth century as an emerging world power struggled to form new legal institutions that would support the nation's economic life. In the thirty years preceding the Civil War, the United States experienced tremendous economic growth and industrialization.<sup>90</sup> The population of the United States increased from 12.8 million people in 1830 to 31.4 million in 1860<sup>91</sup> and the number of states admitted to the union rose from twenty-five to thirty-three.<sup>92</sup> In the 1850s, the United States was an agricultural nation with a flourishing manufacturing sector tied together by a communications network.<sup>93</sup> Canals, railroads, newspapers, steamboats, and telegraphy facilitated the movement of goods and information at relatively high speeds and low costs.<sup>94</sup>

Regional specialization was the economic story of the mid- to late-19th century. The Northeast produced manufactured goods such as cotton cloth, shoes, glassware, and revolvers.<sup>95</sup> The Northwest, including the Great Lakes region, produced enormous amounts of wheat, flour, corn, and pork.<sup>96</sup> The Deep South and Gulf States amassed huge surpluses of cotton, processed tobacco, and labor in the form of slaves.<sup>97</sup> The Far West was only beginning to mine its gold and silver resources.<sup>98</sup>

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88. DODD, *supra* note 3, at 184.

89. DODD, *supra* note 3, at 184.

90. DODD, *supra* note 3, at 123.

91. DEPT. OF CENSUS, *supra* note 56, at 25.

92. DEPT. OF CENSUS, *supra* note 56, at 289.

93. JENSON, *supra* note 56, at 60.

94. JENSON, *supra* note 56, at 60.

95. JENSON, *supra* note 56, at 60.

96. JENSON, *supra* note 56, at 60.

97. JENSON, *supra* note 56, at 60.

98. JENSON, *supra* note 56, at 60.



Illinois' economic history charts a similar path of growth. In December, 1818, Illinois became the twenty-first state as a largely uninhabited territory.<sup>99</sup> The federal government owned most of the land prior to 1830 with many pioneers concentrating on acquiring land titles.<sup>100</sup> Efforts to expand economic growth in the 1830s proved disastrous with three state banks failing and a collapsing program for building roads, canals, and railroads indebting Illinois into the 1880s.<sup>101</sup> The 1840s showed rapid growth, due in part to an influx of settlers into the state hoping to obtain land.<sup>102</sup> Responding to years of growth, Governor William Bissell was elected in 1856 on a platform promising support for school construction, commercial and industrial expansion, and abolition of slavery.<sup>103</sup>

The 1850s also showed a rapid growth for railroad corporations and marked the beginning of Illinois' railroad system by the chartering of the Illinois Central Railroad. In 1830, only thirty miles of railroad track had been laid; by 1860 over 30,626 miles of track existed.<sup>104</sup> At the same time, the Illinois Central Railroad began building one of the great rail lines in the state of Illinois. The railroad not only stimulated farming by providing transportation for farm products to markets, but it also aided the coal mining industry.<sup>105</sup> With the industrial increases came thousands of new jobs, bridge construction, and manufacture of railroad equipment.<sup>106</sup> By the 1860s industry within Illinois had tripled in size. It doubled again in the 1870s and doubled yet again in the 1880s.<sup>107</sup> There is little doubt that much of this growth was spurred on by the development of rail traffic in the state.<sup>108</sup>

In the decade preceding his presidency, Abraham Lincoln would put all of his corporate knowledge and skill in the law to use for this newly chartered

99. WORLDMARK ENCYCLOPEDIA OF THE STATES 156 (2d ed. 1986).

100. *Id.*

101. *Id.*; see also Part III (discussing Lincoln's involvement with this public works program).

102. WORLDMARK, *supra* note 99, at 156. The land had been available for some time prior to 1840, but the lack of good transportation slowed the sale of land. With the attempts to improve the canals, roads, and railroads in the late 1830s came a new stream of people into the state wanting to purchase land.

103. WORLDMARK, *supra* note 99, at 156.

104. DEPT. OF CENSUS, *supra* note 56, at 200; see also DODD, *supra* note 3, at 123.

105. WORLDMARK, *supra* note 99, at 155.

106. WORLDMARK, *supra* note 99, at 155.

107. WORLDMARK, *supra* note 99, at 162.

108. WORLDMARK, *supra* note 99, at 157. Literally hundreds of towns built banks, grain elevators, retail shops, small factories, courthouses, and schools as a result of the expanding economy. WORLDMARK, *supra* note 99, at 157.

railroad company. Many of the tenets of corporate law previously discussed were changing or unfolding requiring Lincoln to sort through the maze. Abraham Lincoln and the I.C.R.R. were about to discover the new direction of corporate law.

#### IV. ILLINOIS CENTRAL RAILROAD

The real genesis of the Illinois railroad project goes back to 1835 when the building of the "Central" became a great political issue.<sup>109</sup> On January 18, 1836, the Illinois legislature incorporated the Central Railroad Company. The special charter named fifty-nine incorporators and authorized capital of two and a half million dollars.<sup>110</sup>

In February 1837, the Illinois legislature passed the Internal Improvement Act which provided for an extensive network of railroads through the state.<sup>111</sup> The Act authorized expenditures of twelve million dollars for improvements, with three and a half million dollars of that going to the Illinois Central Railroad.<sup>112</sup> As a member of the Illinois legislature and its Committee on Finance, Abraham Lincoln had an important role in the passage of this legislation.<sup>113</sup> Several of Lincoln's colleagues noted his involvement and support of this Act.<sup>114</sup>

109. HOWARD GRAY BROWNSON, 4 HISTORY OF THE ILLINOIS CENTRAL RAILROAD TO 1870 301 (1915).

110. *Id.* at 301-302.

111. *Id.* at 302.

112. JOHN W. STARR, JR., LINCOLN AND THE RAILROADS 25 (1927).

113. *Id.* at 20. Lincoln issued a statement on June 13, 1836 saying he was "for distributing the proceeds of the sales of public lands to the several states, to enable our state [Illinois], in common with others, to dig canals and construct rail roads without borrowing money and paying interest on it." 1 COLLECTED WORKS, *supra* note 4, at 48.

114. In a convention by their constituency, the Sangamon representatives were instructed "to vote for a general system of internal improvements." STARR, *supra* note 112, at 20. Lincoln, as a leader of the Sangamon delegation, tried to accomplish this end. Governor Ford (then state executive) said:

Mr. Lincoln is continually found voting with his friends in favor of this legislation and there is nothing to show that he saw any danger in it. He was a Whig, and as such in favor of internal improvements in general and a liberal construction of constitutional law in such matters.

STARR, *supra* note 112, at 27. Lincoln's law partner, William Herndon, added: [T]he so-called internal improvement system was significantly reckless and unwise. The gigantic and stupendous operations of the scheme dazzled the eyes of nearly everybody, but in the end it rolled up a debt so enormous as to impede the otherwise marvelous progress of Illinois . . . . However

Precious little construction for the railroad would ever actually take place, however, because shortly after the Act's passage political opposition began to develop.<sup>115</sup> Unfortunately, the project proved to be beyond the financial and managerial abilities of the state. The Illinois legislature drew up and passed two acts in February 1840 which stopped all railroad work in the state.<sup>116</sup> In the end, corruption and mismanagement depleted the existing financial resources leaving only a few hundred miles of grading and a few thousand tons of iron as evidence of Illinois' attempt to construct a railroad through the center of the state.<sup>117</sup>

Between September 1850 and January 1851, the Illinois General Assembly had its efforts to construct a central railroad bolstered by the passage of a federal land grant on September 20, 1850. Under the federal grant, the United States gave over two and a half million acres of land to the State of Illinois to grant to a railroad corporation.<sup>118</sup> The land grant provided for six miles of land on both sides of the road and completion of the entire system within ten years. If the State of Illinois could not complete the road in ten years, the unsold lands would revert back to the federal government, and Illinois would have to pay the United States whatever it received for the sold lands.<sup>119</sup> This Act also granted land to Mississippi and Alabama for branches extending from the Illinois lines into these areas from various routes.<sup>120</sup>

The Illinois legislature set upon the task of chartering a railroad to fulfill the conditions of the federal land grant. Although he was no longer a member of the Illinois legislature, some of his contemporaries believed that Abraham Lincoln played a role in the selection process for chartering a railroad company to construct a central line.<sup>121</sup>

Three investment groups battled to obtain the special charter from the Illinois legislature. The Boston-New York group,<sup>122</sup> the Holbrook

much we may regret that Lincoln took part and aided in this reckless legislation, we must not forget that his party and all his constituents gave him their united endorsement.

STARR, *supra* note 112, at 27-28.

115. STARR, *supra* note 112, at 30.

116. STARR, *supra* note 112, at 31.

117. BROWNSON, *supra* note 109, at 303.

118. Brown, *supra* note 4, at 125.

119. BROWNSON, *supra* note 109, at 315.

120. Smith, *supra* note 58, at 4.

121. STARR, *supra* note 112, at 40-47.

122. This group consisted of eastern capitalists and was headed by Robert Rantoul, Jr., a Massachusetts lawyer. Some of the management members were John Wentworth, William Bissell, Mason Brayman, and expert lobbyist George Billings.

group,<sup>123</sup> and the Wadsworth group<sup>124</sup> all lobbied the legislature hoping to attain a charter from the state of Illinois. Evidence exists suggesting Abraham Lincoln lobbied for one of these groups, but which one remains in dispute.<sup>125</sup> Initially, Lincoln sided with the Wadsworth group which turned out to be the weakest of the three. The real contest developed between the Boston-New York group and the Holbrook group.<sup>126</sup>

Robert Rantoul, Jr., a famous Massachusetts lawyer and a Democrat in the U.S. Senate, headed the Boston-New York contingency.<sup>127</sup> Late in the selection process, the Boston-New York group bought off the Holbrook group with a promise of a large block of Illinois Central stock and an agreement to make improvements to the line benefiting the Cairo members of the Holbrook group.<sup>128</sup> The Boston-New York group's struggle to win the necessary votes for passage of the charter was over. The Illinois legislature incorporated the Illinois Central Railroad on February 10, 1851.<sup>129</sup>

Bissell and Brayman would go on to become the first attorneys of the Illinois Central Railroad. Brown, *supra* note 4, at 127.

123. Darius D. Holbrook had previously obtained a charter from the legislature for the Cairo City & Canal Company and, at the time of this battle, was president of the Great Western Railway Company. Brown, *supra* note 4, at 124. Sidney Breese, known as "the Father of the Illinois Central", was Holbrook's chief counsel and lobbyist. Brown, *supra* note 4, at 124-125. Breese was also a member of the 1851 Illinois Legislature. It is believed that Lincoln lent his support to this group after initially aligning himself with the Wadsworth group. Whelan, *supra* note 6, at 36.

124. This group, headed by Julius Wadsworth, consisted of local capitalists. Wadsworth never proved to be a strong candidate despite Lincoln's initial support for them. Brown, *supra* note 4, at 126-27.

125. STARR, *supra* note 112, at 42. As noted earlier, Judge Anthony Thornton, a member of the Illinois legislature at that time, recalls that Lincoln was associated with Robert Rantoul, Jr. and the Boston-New York group. However, a son of Rantoul is on record with the Massachusetts Historical Society denying the alliance. Rantoul's son believed Lincoln opposed his father and supported the western promoter. STARR, *supra* note 112, at 43-44.

Rantoul's son also recalls a statement made by Lincoln in January 1863 at a reception in the White House. Lincoln purportedly claimed to be retained at the time by local capitalists opposed to an eastern group securing a grant from the legislature. STARR, *supra* note 112, at 44.

The issue appears to remain a bit of a mystery absent any records showing Lincoln's true involvement. To date no such records have been found.

126. Brown, *supra* note 4, at 127.

127. Brown, *supra* note 4, at 127.

128. Brown, *supra* note 4, at 127. Since Holbrook's first enterprise was the Cairo City & Canal Company, the buyout agreement focused on benefits to the Cairo portion of the railroad. Brown, *supra* note 4, at 127.

129. Smith, *supra* note 58, at 3.

The bill provided the Illinois Central Railroad with a perpetual charter, the remains of the old state surveys and gradings, the federal land grant and right of way, and tax-exempt status on its property.<sup>130</sup> The legislature also agreed not to incorporate a competitive railroad for fifty years.<sup>131</sup> In return, the Illinois Central was required to complete the main line of the railroad in four years, the branches in six years, and the quality of the road had to equal that of the Great Western of Massachusetts<sup>132</sup> in all respects. The charter also freed Illinois from all responsibilities connected with the land grant. Finally, and most significantly, the state required the I.C.R.R. to pay seven percent of its gross earnings annually as the charter tax.<sup>133</sup> This tax was the subject of one of Lincoln's most famous cases as counsel for the I.C.R.R. with the outcome proving to be an important one for the railroad.<sup>134</sup>

With the passage of the charter, the I.C.R.R. set upon the task of constructing the road. I.C.R.R. designed the road to run from Galena in the extreme northwestern part of the state through Springfield to Cairo in the southern extremity.<sup>135</sup> In 1851, railroad construction was in its infancy.<sup>136</sup> Engineers, promoters, and management spent months planning the exact route, surveying the land, making cost estimates, and hiring workers.<sup>137</sup> By January

130. BROWNSON, *supra* note 109, at 323.

131. BROWNSON, *supra* note 109, at 302.

132. Robert Rantoul promised the Illinois Legislature that the line would equal one of the great eastern railroads, the Great Western of Massachusetts. Rantoul proposed to build a railroad "equal in all respects to the railroad running between Boston and Albany, with such improvements thereon as experience has shown to be desirable and expedient." STARR, *supra* note 112, at 42.

133. BROWNSON, *supra* note 109, at 323; Brown, *supra* note 4, at 128-29. The charter tax was really in two parts. Section 18 provided for a tax of five percent on gross receipts in consideration of the grants, privileges, and franchises. Section 22, provided for an additional tax on all the company's property. The charter limited that tax to 75 cents per \$100 valuation. Section 22 also provided a gap filler if the five percent and property tax did not equal seven percent of gross receipts. The state required the company to deposit with the treasury the difference to make the whole amount equal to at least seven percent of the gross receipts. Section 22 exempted the I.C.R.R. from taxes of any kind, not provided for in the charter agreement. Brown, *supra* note 4, at 129-30; *see also* Smith, *supra* note 58, at 15.

134. Illinois Central R.R. Co. v. County of McLean, 17 Ill. 291 (1854). This case was the most notable one that Lincoln handled for the I.C.R.R. The specifics of the case are discussed in Part IV of this article.

135. STARR, *supra* note 112, at 25.

136. BROWNSON, *supra* note 109, at 324.

137. BROWNSON, *supra* note 109, at 326-330.

1, 1855, all of the main line and over half of the branches were in operation. The last rail was laid on September 26, 1856.<sup>138</sup>

In the end, the Illinois Central was the best built railroad in the west with a total construction cost of \$26,568,017.61.<sup>139</sup> Over the next several years, the I.C.R.R. centered its activities around securing traffic, finding markets for its rail products, and developing its various operational departments.<sup>140</sup>

Just as the I.C.R.R. was getting established in the railroad industry, disaster struck. A panic in 1857,<sup>141</sup> a drought ruining the corn and wheat crop in 1858,<sup>142</sup> and low grain prices in 1859<sup>143</sup> almost drove the company into foreclosure and forced the shareholders to pay assessments on their stock.<sup>144</sup> It would be years before the I.C.R.R. would overcome this financial setback. It was during these years of construction and economic setbacks that Abraham Lincoln was retained as counsel for the Illinois Central Railroad. The challenges and precedent setting events that followed elevated Lincoln's reputation in the corporate law community.

#### V. LINCOLN'S RELATIONSHIP WITH THE ILLINOIS CENTRAL RAILROAD

On October 7, 1853, Abraham Lincoln accepted a \$250 retainer fee from the Illinois Central Railroad.<sup>145</sup> Although the I.C.R.R. was not Lincoln's first

138. BROWNSON, *supra* note 109, at 344-45.

139. BROWNSON, *supra* note 109, at 346.

140. BROWNSON, *supra* note 109, at 348.

141. The businesses of this country faced a severe financial panic in 1857. As a relatively new enterprise, the I.C.R.R. was particularly vulnerable to the financial instability caused by the panic. The I.C.R.R. was forced to suspend payments and make an assignment of its property to trustees. Brown, *supra* note 4, at 121.

142. The I.C.R.R. relied on Illinois' agricultural traffic to help make the railroad profitable. With the drought, the farmers had little or nothing to transport to market. BROWNSON, *supra* note 109, at 350.

143. By 1859, the grain prices had fallen to such a low level that the farmers found it unprofitable to market their corn and wheat. *Id.* In addition, the state of Illinois decided to invoke the company's charter which subjected the I.C.R.R. to potential liability of \$300,000. Brown, *supra* note 4, at 121-22.

144. BROWNSON, *supra* note 109, at 350.

145. Brown, *supra* note 4, at 131; *see also* Letter to Thompson R. Webber, Champaign County Circuit Court Clerk, 2 COLLECTED WORKS, *supra* note 4, at 202, 205. James Joy became chief counsel for the I.C.R.R. in 1852 and was instrumental in their retention of Lincoln as local counsel. *Abraham Lincoln*, ILL. CENT. MAG., May 1913, at 15.

Prior to October 7, 1853 Lincoln probably did some "isolated pieces of law work" for the Illinois Central Railroad. Brown, *supra* note 4, at 131.

railroad client,<sup>146</sup> their relationship continued for nearly a decade. Many of Lincoln's I.C.R.R. cases established general principles of law, with much of the legal reasoning becoming precedent for future litigation. Lincoln was not retained exclusively by the I.C.R.R.; he continued his law practice with Herndon and handled a number of cases for various clients.<sup>147</sup> His corporate clients included banks, insurance companies, gas companies, and large mercantile and manufacturing concerns.<sup>148</sup> He did not, however, specialize in corporate law and often opposed corporate interests.<sup>149</sup>

In the mid-1850s, courts and legislatures defined the powers of the railroad companies under their charters. Many of the legal questions surrounding the development of rail transportation concerned the rights of landowners along the right of way of the road, the rights and privileges of passengers and shippers, and the duties and liabilities of the railroads.<sup>150</sup>

When the I.C.R.R. retained Abraham Lincoln, he had been practicing law for over seventeen years. His approach to the law and the cases he handled was refined and clear. He possessed a mature, straightforward, businesslike

146. Lincoln argued his first railroad case for the Alton & Sangamon Railroad in 1848 and won. Whelan, *supra* note 6 at 37. Lincoln and Herndon also took cases for the Ohio & Mississippi, the Rock Island, the Tonica & St. Petersburg, and the Chicago & Alton Railroads. THOMAS, *supra* note 8, at 156.

147. OATES, *supra* note 8, at 104. Two of the more notable non-I.C.R.R. cases Lincoln handled included the *Effie Afton* case (a steamboat which crashed into a railroad bridge, burned and sank; Lincoln represented the Rock Island Railroad accused of obstructing navigation) and the Duff Armstrong murder case (Lincoln's impassioned argument before the jury and his use of an almanac to impeach a witness on the position of the moon on the night of the murder resulted in an acquittal for his client). THOMAS, *supra* note 8, at 157, 159-60; *see also* OATES, *supra* note 8, at 136-37, 141-42; SANDBURG, *supra* note 10, at 37-39; LUTHIN, *supra* note 1, at 163-68.

In a third case, *McCormick v. Manny* (a patent infringement case concerning a mechanical reaper; Lincoln was on retainer with the defendant John H. Manny), Lincoln prepared diligently for the upcoming trial in Cincinnati, but was subsequently pushed aside by George Harding, a Philadelphia patent attorney, and his associates Peter Watson of Washington and Edwin Stanton of Pittsburgh. Lincoln remained in the courtroom as a mere observer and left humiliated and deeply hurt by the rejection. LUTHIN, *supra* note 1, at 160-63.

148. Lincoln's clients included financial institutions: the Bank of Illinois, McLean County Bank, Bank of Missouri, Bank of Indiana, the banking firm of Page & Bacon in St. Louis; insurance companies: the Delaware Mutual Safety Insurance Company and the North American Insurance Company; manufacturing and mercantile: the Columbus Machine Manufacturing Company and St. Louis' S.C. Davis & Company. LUTHIN, *supra* note 1, at 158; *see also* Davis, *supra* note 17, at 17; THOMAS, *supra* note 8, at 158.

149. THOMAS, *supra* note 8, at 158.

150. DUFF, *supra* note 10, at 265; *see also supra* Part II of this article.

style.<sup>151</sup> One of Lincoln's more striking features was his talent with words.<sup>152</sup> He learned through his extensive trial work that the use of simple and direct words combined with careful preparation produced the best results in the courtroom.<sup>153</sup>

What status did Abraham Lincoln believe corporations held? In one of Lincoln's railroad cases,<sup>154</sup> a plaintiff's attorney attacked Lincoln for defending "great soulless corporations."<sup>155</sup> Lincoln's response indicates that he viewed a corporation as a "legal person".<sup>156</sup>

Counsel avers that his client has a soul. This is possible, of course; but from the way he has testified under oath in this case, to gain, or hope to gain, a few paltry dollars he would sell, nay, has already sold, his little soul very low. But our client is but a conventional name for thousands of widows and orphans whose husbands' and parents' hard earnings are represented by this defendant, and who possess souls which they would not swear away as the plaintiff has done for ten million times as much as is at stake here.<sup>157</sup>

The exact number of cases Lincoln handled for the railroad is not known,<sup>158</sup> but at least one reliable source attributes over fifty I.C.R.R. cases to him.<sup>159</sup> Many of the I.C.R.R. cases were tried in the lower courts and not of much complexity or great importance.<sup>160</sup> He argued eleven cases for the

151. FRANK, *supra* note 2, at 78-79 (Frank points to the careful, concise notes Lincoln prepared for his fee case against the I.C.R.R. as an example of his precision).

152. FRANK, *supra* note 2, at 94.

153. Goodhart, *supra* note 8, at 438. Lincoln's style carried over to his political life. His speeches and debates were concise and philosophic. Goodhart, *supra* note 8, at 438. *See also They Recall the Lincoln of Illinois Days*, ILL. CENT. MAG., Feb. 1923, at 11.

154. It appears from the various written works that there is some difficulty in determining which railroad, the I.C.R.R. or another company, Lincoln was representing when this statement was made. Most of the works researched for this article either make no reference to which railroad or state that it is unknown. Whelan, *supra* note 6, at 37; BEVERIDGE, *supra* note 1, at 551; STARR, *supra* note 112, at 65.

155. Whelan, *supra* note 6, at 37.

156. Whelan, *supra* note 6, at 37.

157. Whelan, *supra* note 6, at 37.; *see also* BEVERIDGE, *supra* note 1, at 551; STARR, *supra* note 112, at 65.

158. Smith, *supra* note 58, at 6. The Lincoln Legal Papers in Springfield has amassed the best collection of Lincoln's papers. The uncertainty in the number of cases Lincoln handled stems from problems in record keeping, fires which destroyed two county courts, missing volumes of dockets, fragmentary records, and papers stolen by vandals and collectors. HERNDON, *supra* note 43, at 35.

159. Davis, *supra* note 17, at 16.

160. Smith, *supra* note 58, at 10.



I.C.R.R. in the Illinois Supreme Court<sup>161</sup> which involved freight claims,<sup>162</sup> mechanics liens,<sup>163</sup> and tax assessments.<sup>164</sup>

### A. McLean County Tax Case

Among all of the cases Lincoln handled for the Illinois Central Railroad, biographers and legal analysts have universally written about two. The first, and best known, is the *Illinois Central Railroad v. County of McLean*.<sup>165</sup> As noted in Part IV, one of the terms of the I.C.R.R. charter required the railroad to pay seven percent of its gross earnings annually as a charter tax. The tax was in two parts. Section 18 provided for a five percent tax on gross receipts while section 22 provided for an additional tax on all the company's property. The charter limited the total tax to 75 cents per \$100 valuation. Section 22 also provided a gap filler if the five percent plus the additional property tax did not equal seven percent of gross receipts. In that event, the state required the I.C.R.R. to deposit with the treasury the difference to make the whole amount equal to at least seven percent of their gross receipts.<sup>166</sup> In return, the State of Illinois exempted the Illinois Central " from all taxation of every kind."<sup>167</sup>

The McLean County suit arose because the counties on the railroad line were prohibited from assessing and taxing the railroad.<sup>168</sup> Some counties were quite upset at this loss of property tax revenue. As its response, McLean County threatened to tax the I.C.R.R. property located in their county. I.C.R.R. Chief Counsel James Joy and Abraham Lincoln filed a bill to enjoin the county from doing so.<sup>169</sup> The I.C.R.R. wanted Lincoln to serve as counsel for this case, but he had previously negotiated with Champaign County officials about right of way matters and felt they had "the prior right to [his] services."<sup>170</sup>

161. *Id.*; see also OATES, *supra* note 8, at 104.

162. *Illinois Central R.R. v. Brock*, 19 Ill. 166 (1857); *Illinois Central R.R. v. Morrison*, 19 Ill. 136 (1857).

163. *Radcliff v. Pierce, Reese, Crosby, Watson, Usher, & Johns*, 23 Ill. 473 (1860).

164. *Illinois Central R.R. v. County of McLean*, 17 Ill. 291 (1854); *Illinois v. Illinois Central R.R.*, 27 Ill. 56 (1859); *Illinois v. Illinois Central R.R.*, 27 Ill. 64 (1861).

165. 17 Ill. 291 (1854).

166. Brown, *supra* note 4, at 129-30; see also Smith, *supra* note 58, at 15.

167. Brown, *supra* note 4, at 130.

168. Brown, *supra* note 4, at 130.

169. Brown, *supra* note 4, at 132.

170. Letter to Thompson R. Webber, Champaign County Circuit Court Clerk, 2

The county, represented by Lincoln's former law partners John T. Stuart and Stephen T. Logan,<sup>171</sup> argued that the State of Illinois could not exempt a corporation from county taxes because the charter applied to state taxes only.<sup>172</sup> The I.C.R.R. argued that the State could legally make such a tax exemption under the constitution.<sup>173</sup> The Illinois State Circuit Court agreed with McLean County, but on appeal the Illinois Supreme Court reversed the decision in favor of the Illinois Central.<sup>174</sup> Chief Justice Scates found the tax exemption "within the constitutional power of the legislature."<sup>175</sup>

The I.C.R.R. claims this case was the most important one Lincoln handled for the railroad because of its far-reaching effect.<sup>176</sup> If the I.C.R.R. had lost, every county, city, and school district in Illinois where the road ran or owned property would have assessed and collected local taxes on the railroad.<sup>177</sup> Such an unfavorable ruling by the court would have forced the I.C.R.R. to pay millions of dollars in taxes in addition to their seven percent charter tax and likely bankrupt the railroad.<sup>178</sup>

COLLECTED WORKS, *supra* note 4, at 202. On September 12, 1853, Lincoln sent correspondence to the clerk of the court of Champaign County stating,

As this will be the same question I have had under consideration for you, I am somewhat trammelled by what has passed between you and me; feeling that you have the right to my services; if you choose to secure me a fee something near such as I can get from the other side. The question, in its magnitude, to the Co. on the one hand, and the counties in which the Co. has land, on the other, is the largest law question that can now be got up in the State; and therefore, in justice to myself, I can not afford, if I can help it, to miss a fee altogether. If you choose to release me; say so by return mail, and there an end. If you wish to retain me, you better get authority from your court, come directly over in the Stage, and make common cause with this county.

2 COLLECTED WORKS, *supra* note 4, at 202. When the county failed to respond, Lincoln notified the I.C.R.R. that he was free to take the case for the railroad. 2

COLLECTED WORKS, *supra* note 4, at 205.

171. 2 SANDBURG, *supra* note 10, at 33.

172. Whelan, *supra* note 6, at 38; STARR, *supra* note 112, at 63.

173. Whelan, *supra* note 6, at 38.

174. STARR, *supra* note 112, at 62; 2 SANDBURG, *supra* note 10, at 33.

175. STARR, *supra* note 112, at 62.

176. STARR, *supra* note 112, at 63.

177. STARR, *supra* note 112, at 63.

178. STARR, *supra* note 112, at 63.; 2 SANDBURG, *supra* note 10, at 33. An analysis was made eighty years later by other I.C.R.R. attorneys which suggests that the victory by the railroad was, in reality, a defeat. Brown, *supra* note 4, at 132. They believed a ruling of unconstitutionality by the court would have relieved the I.C.R.R. from paying the seven percent charter tax and subjected it to taxation on the same basis as other railroads. Brown, *supra* note 4, at 132. Using the I.C.R.R.

In October 1858, Lincoln showed his confidence in the outcome of this case by stating in one of his speeches, "The decision, I thought, and still think, was worth half a million dollars to [I.C.R.R.]."<sup>179</sup>

### *B. Lincoln v. Illinois Central Railroad*

The second prominent I.C.R.R. case was directly related to the McLean County case. Upon completion of his work in that litigation, Lincoln submitted his bill to the Illinois Central Railroad for services rendered.<sup>180</sup> From there, the accounts of what transpired vary among the biographers and the I.C.R.R. officials.

The typical biographer's account begins when Lincoln submitted an initial bill of two thousand dollars to the I.C.R.R. Chicago office. When the I.C.R.R. official saw the amount on the bill, he refused to make the payment.<sup>181</sup> On his way home from Chicago, Lincoln met with a number of attorneys<sup>182</sup> who convinced him to increase the bill to five thousand dollars and bring suit to collect his fee.<sup>183</sup> At trial, six attorneys attested to the reasonableness of this fee.<sup>184</sup> The jury heard the case in June of 1857 and entered a judgment in the amount of forty-eight hundred dollars for Lincoln.<sup>185</sup> When the I.C.R.R. failed to pay the judgment, the court issued a

computations, the company estimated it would have saved \$34,000,000 if they had lost the case. Brown, *supra* note 4, at 133.

179. October 22, 1858 Speech at Carthage, Illinois, 3 COLLECTED WORKS, *supra* note 4, at 331.

180. 2 SANDBURG, *supra* note 10, at 33; STARR, *supra* note 112, at 73; Brown, *supra* note 4, at 133; Whelan, *supra* note 6, at 38.

181. 2 SANDBURG, *supra* note 10, at 33; STARR, *supra* note 112, at 74. Lincoln's law partner, William Herndon, has his version of the Chicago meeting quoted in John Starr's book. Herndon claims Lincoln was "stung by the rebuff" and "withdrew the bill." STARR, *supra* note 112, at 74.

182. STARR, *supra* note 112, at 74. The attorneys included Grant Goodrich, Archibald Williams, Norman B. Judd, O.H. Browning, and others. FREDERICK TREVOR HILL, LINCOLN, THE LAWYER 252 (1906).

183. STARR, *supra* note 112, at 74.

184. STARR, *supra* note 112, at 74. Hill's book lists eight attorneys: O.H. Browning, Norman B. Judd, Isaac Arnold, Grant Goodrich, Archibald Williams, Judge Norman Purple, Judge Logan, and Robert Blackwell. HILL, *supra* note 182, at 252.

185. Brown, *supra* note 4, at 133. When the case was first called, the railroad failed to make an appearance, so a default judgment was entered. Lincoln subsequently agreed to a reopening of the case which he also won. He then agreed to have the verdict set aside because he failed to introduce evidence of a two hundred dollar retainer he had already received from I.C.R.R. Thus, the final verdict was entered for forty-eight hundred dollars (\$5000 minus the \$200 retainer). HILL, *supra*

writ of execution ordering the sheriff to seize property of the railroad to satisfy the judgment. The Illinois Central Railroad promptly paid the remaining portion of the judgment.<sup>186</sup>

The I.C.R.R.'s version of *Lincoln v. Illinois Central Railroad* is found in one of its publications entitled *Abraham Lincoln as Attorney for the Illinois Central Railroad*.<sup>187</sup> They suggest that if such a large fee was paid without a protest, the board of directors would have been embarrassed. So Lincoln and the I.C.R.R. agreed to an arrangement which allowed Lincoln to "bring a friendly suit against the road and whatever sum should be allowed by the court and jury would be paid without appeal."<sup>188</sup> The I.C.R.R. also contested the suggestion that they refused to pay the judgment. They pointed to a rail pass Lincoln received as counsel for the railroad on December 31, 1857, after the suit, and his continued representation of the I.C.R.R. following the suit as proof of payment.<sup>189</sup>

Despite the differences in the accounts of the case, the certainty of the outcome is not in dispute. Abraham Lincoln sued his client, the I.C.R.R., for his fee and won a large judgment. Surprisingly, this case did not end the professional relationship between the two.<sup>190</sup>

### C. Morrison Case

Five months after forcing the I.C.R.R. to satisfy his fee judgment, the railroad once again engaged Lincoln's services.<sup>191</sup> The case was *Illinois Central Railroad v. Morrison & Crabtree*,<sup>192</sup> a landmark in Illinois railroad law.<sup>193</sup> Despite being approached first by defendant Morrison for representation, Lincoln soon found out that the I.C.R.R. was still interested in keeping him in their employ.<sup>194</sup>

note 182, at 253.

186. 2 SANDBURG, *supra* note 10, at 33; Whelan, *supra* note 6, at 38.

187. HILL, *supra* note 182, at 316; *see also* STARR, *supra* note 112, at 76.

188. HILL, *supra* note 182, at 316.

189. HILL, *supra* note 182, at 317-18.

190. 2 SANDBURG, *supra* note 10, at 34; STARR, *supra* note 112, at 79; Whelan, *supra* note 6, at 38.

191. 2 SANDBURG, *supra* note 10, at 34.

192. 19 Ill. 136 (1857).

193. DUFF, *supra* note 10, at 265.

194. Brown, *supra* note 4, at 135. Lincoln initially wrote to Morrison's lawyers and informed them of his prior relationship with the I.C.R.R. Because he had just won the fee case against the I.C.R.R., Lincoln believed they no longer wished to keep him on retainer. Letter to James Steele and Charles Summers, 2 COLLECTED WORKS, *supra* note 4, at 389. To his surprise, the railroad kept him as their counsel. Brown,

Morrison brought suit against the Illinois Central when the railroad damaged his cattle because of a delay in their transportation.<sup>195</sup> When one of the locomotive engines failed en route, it resulted in a greater weight reduction in the cattle than would normally be anticipated.<sup>196</sup> Morrison had entered into a special contract with the I.C.R.R. which released the railroad from liability in exchange for a reduced rail car rate. For the first time, a court considered the right of a railroad to restrict its liability to a shipper through express agreement.<sup>197</sup> Lincoln was not involved in the case until after the trial ended and the jury had found for Morrison.<sup>198</sup> On appeal, Lincoln conceded that the common law did not allow the I.C.R.R. to exempt itself from liability, but he argued that the changing nature of trade and transportation justified a modification of the common law position.<sup>199</sup> Judge Sidney Breese<sup>200</sup> agreed with Lincoln, reversed the lower court, and ruled in the railroad's favor.<sup>201</sup>

#### D. State Auditor Case

Abraham Lincoln would handle one more important issue for the Illinois Central Railroad before he left the state as president-elect. This litigation required three years of legal battling and two separate cases before the courts resolved this issue. One of the reasons the I.C.R.R. continued their relationship with Lincoln after the fee case was the company's anticipated litigation with the State of Illinois.<sup>202</sup> Unless he was kept on retainer for the Illinois Central, the railroad might find Lincoln at the opposing counsel's table. In the fall of 1857, a dispute arose between the I.C.R.R. and the state auditor over the amount of taxes the railroad owed to the State of Illinois.<sup>203</sup>

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*supra* note 4, at 135.

195. DUFF, *supra* note 10, at 265.

196. DUFF, *supra* note 10, at 265.

197. DUFF, *supra* note 10, at 265.

198. DUFF, *supra* note 10, at 265.

199. DUFF, *supra* note 10, at 267.

200. Sidney Breese is known as the "Father of the Illinois Central". STARR, *supra* note 112, at 40. As a state judge in the 1840s, Breese organized an unsuccessful "drive in Washington to develop railroads in Illinois." Whelan, *supra* note 6, at 36. In 1851 when the I.C.R.R. charter passed in the legislature, Breese was speaker of the Illinois House of Representatives and proclaimed himself the author of the Illinois Central project. Brown, *supra* note 4, at 125-126. Breese would later play an important role in an I.C.R.R./Lincoln case, *State of Illinois v. Illinois Central Railroad*, as an Illinois Supreme Court justice. Brown, *supra* note 4, at 148.

201. DUFF, *supra* note 10, at 267.

202. Brown, *supra* note 4, at 135.

203. Brown, *supra* note 4, at 139.

Under sections 18 and 22 of their charter, the I.C.R.R. annually was required to pay seven percent of its gross earnings as the charter tax.<sup>204</sup> The first installment of this tax was due in May of 1857.<sup>205</sup> I.C.R.R. attorney John M. Douglas<sup>206</sup> made a payment to the state totalling \$56,196.82.<sup>207</sup> In August, 1857, the I.C.R.R. filed with the State Auditor a listing of company property valued at \$19,711,559.59 as required by the charter.<sup>208</sup>

Jesse Dubois was not only the State Auditor, but a close personal friend and neighbor of Abraham Lincoln.<sup>209</sup> The I.C.R.R. believed Dubois would not assess taxes against its property, but would settle for seven percent of the I.C.R.R.'s gross earnings.<sup>210</sup> The company's belief was mistaken; on October 22, 1857, Auditor Dubois levied a state tax of 67 cents on each \$100 of valuation. Based on the valuation of the \$19.7 million figure the I.C.R.R. filed, the assessment amounted to \$132,067.44 in taxes.<sup>211</sup> According to the State of Illinois, the I.C.R.R. owed \$94,440.23 over the amount the railroad already paid for the year.<sup>212</sup>

The I.C.R.R. knew that an adverse judgment by the court likely would bankrupt the railroad. They also were aware of Lincoln's friendship with Auditor Dubois and his intimate knowledge of the specifics of the company's charter tax sections.<sup>213</sup> I.C.R.R. Chief Officer Ebenezer Lane wrote a May 14, 1857 letter which explained the company's reason for retaining Lincoln in this matter.<sup>214</sup> The I.C.R.R. believed Dubois would seek to retain Lincoln as a consultant for the state if the company let him go. Lane went on to explain that Lincoln "had seen the obscurity of those sections of our charter relating to taxation"<sup>215</sup> which were subject to a disfavorable interpretation for the railroad. By settling the company's fee case with Lincoln, the I.C.R.R. could keep him on the company's side and "fortunately [take] him out of the field."<sup>216</sup> Not only was the I.C.R.R. concerned about Lincoln's inside

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204. Brown, *supra* note 4, at 135. See *supra* notes 133-34, 165-67 and accompanying text (explaining the tax provisions in the I.C.R.R. charter).

205. Brown, *supra* note 4, at 136.

206. The I.C.R.R. hired Douglas in 1856 as a lawyer in their Chicago office. Douglas would also become president of the I.C.R.R. Brown, *supra* note 4, at 136.

207. Brown, *supra* note 4, at 136.

208. Brown, *supra* note 4, at 139.

209. Brown, *supra* note 4, at 138.

210. Brown, *supra* note 4, at 139.

211. Brown, *supra* note 4, at 139.

212. Brown, *supra* note 4, at 139-140.

213. Whelan, *supra* note 6, at 39.

214. Brown, *supra* note 4, at 137-38.

215. Brown, *supra* note 4, at 137-38.

216. Brown, *supra* note 4, at 137-38.

information, but they also recognized the importance of his political prominence and connections with Dubois and then-governor William Bissell.<sup>217</sup>

Lincoln devised a four-part defense strategy. First, the I.C.R.R. would seek a delay in this matter by convincing Dubois to postpone any litigation until 1859.<sup>218</sup> Second, the I.C.R.R. lawyers hoped to convince the Illinois legislature to enact a statute which would transfer the current function of property valuation from the state auditor to the Illinois Supreme Court.<sup>219</sup> The proposed statute would provide the railroad with a right to appeal the state auditor's valuation to the Illinois Supreme Court and impose upon the court the duty to make a valuation independent of the one by the state auditor.<sup>220</sup> Third, once the I.C.R.R. appealed the auditor's valuation to the Supreme Court, Lincoln hoped to get a decision from the court which would lower the auditor's 1859 valuation.<sup>221</sup> Fourth, the company then hoped to persuade Dubois to use the Court's 1859 valuation to reduce the ones for 1857 and 1858.<sup>222</sup> The ultimate goal of this defense plan was getting a valuation which fell below the two percent portion of the seven percent charter tax.<sup>223</sup> As explained in Part IV, the tax was divided into two parts: a five percent gross receipts tax and a two percent property tax. The goal of the I.C.R.R. was to obtain a property valuation which would bring the tax below the two percent provided in the charter. If the company was successful, the court could avoid deciding the construction of the charter, because the tax assessment would be below the seven percent total charter tax the I.C.R.R. was already obligated to pay.<sup>224</sup>

State Auditor Dubois agreed to postpone any litigation on the 1857 and 1858 assessments and continued to accept the I.C.R.R. payments made in compliance with the charter.<sup>225</sup> Lincoln initially succeeded in step one of his defense strategy. However, on November 3, 1858, Dubois filed an action with

217. Brown, *supra* note 4, at 137-38. At that time Lincoln was a special advisor to Governor Bissell. See Whelan, *supra* note 6, at 39.

218. Brown, *supra* note 4, at 140. The taxes would accrue for the years 1857, 1858, and 1859, but the delay would buy the I.C.R.R. some time. Brown, *supra* note 4, at 140.

219. Brown, *supra* note 4, at 140-41.

220. Brown, *supra* note 4, at 141.

221. Brown, *supra* note 4, at 141 ("The statute could not be presented and enacted until 1859.").

222. Brown, *supra* note 4, at 140-41.

223. Brown, *supra* note 4, at 141; see note 133 (explaining the charter tax percentages).

224. Brown, *supra* note 4, at 141.

225. Brown, *supra* note 4, at 142.

the Illinois Supreme Court to recover the assessed taxes for 1857 and 1858.<sup>226</sup> In January 1859, Lincoln successfully convinced the court to continue the debt case to the next term.<sup>227</sup> This gave the I.C.R.R. time to implement step two of the defense plan.

In February 1859, before the valuation bill passed in the legislature, Dubois made a critical stipulation. If the valuation bill did pass, Dubois agreed to remove the low-end limit for the I.C.R.R. 1859 valuation of \$13,000,000 and allow the court to make a lesser valuation.<sup>228</sup>

Early in the 1859 legislative session, the legislature introduced and passed into law the bill which conferred original jurisdiction on the Supreme Court concerning property valuations.<sup>229</sup> Lincoln had achieved step two of the I.C.R.R.'s plan.

In March 1859, Dubois rejected the I.C.R.R.'s property valuation submitted for 1859 and revalued their property at \$13,000,000.<sup>230</sup> Under the newly passed legislation, Lincoln then took his appeal of the auditor's valuation to the Illinois Supreme Court. At this time, the I.C.R.R.'s old friend Sidney Breese was one of the three Justices on the Illinois Supreme Court.<sup>231</sup> Breese was joined on the court by Chief Justice John D. Caton,<sup>232</sup> and Pinkney H. Walker.<sup>233</sup> Despite some obvious friendly connections with the I.C.R.R., these men were able jurists with high rank, independence, and were uncontrolled.<sup>234</sup> The court's independent valuation of the I.C.R.R.'s property was \$4,942,000,<sup>235</sup> over \$8,000,000 less than the Auditor's. The assessed tax on the court's valuation placed the amount slightly less than the two percent of gross receipts spelled out in the I.C.R.R. charter.<sup>236</sup> The

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226. Brown, *supra* note 4, at 146.

227. Brown, *supra* note 4, at 147.

228. Brown, *supra* note 4, at 157.

229. Brown, *supra* note 4, at 147-48.

230. Brown, *supra* note 4, at 152.

231. Brown, *supra* note 4, at 148.

232. Chief Justice Caton, while serving on the Illinois Supreme Court, was president and manager of the Illinois & Mississippi Telegraph Company. Caton later transferred the company to the Western Union Company for a fortune. While president of the Illinois & Mississippi Telegraph Company, he implemented a reorganization measure which allowed his telegraph lines to run along the rights of way of railroads. Since the Illinois Central was the longest railroad in Illinois, Caton was probably quite friendly with their interests. Brown, *supra* note 4, at 140-50.

233. Walker was appointed to the Supreme Court by Governor Bissell who was a solicitor for the Illinois Central. It seems unlikely Gov. Bissell would appoint someone "hostile to the Illinois Central." Brown, *supra* note 4, at 150.

234. Brown, *supra* note 4, at 151.

235. Brown, *supra* note 4, at 152-56.

236. Brown, *supra* note 4, at 156.



I.C.R.R. did not owe the State of Illinois any additional taxes. Lincoln won his third defense plan victory for the railroad, but his job was not finished.

Lincoln and the I.C.R.R. still faced a tough battle. The company's final defense step was to convince Dubois to use the Supreme Court's 1859 property valuation as a basis for computing the company's delayed 1857 and 1858 assessments. The case litigating the debt accrued by the delayed 1857 I.C.R.R. property valuation was argued before the Supreme Court on January 12, 1860.<sup>237</sup> Despite several legal obstacles,<sup>238</sup> Lincoln and the other I.C.R.R. attorneys managed to argue their case effectively. The Supreme Court decided the 1857 debt case as it had the appeal case on the 1859 assessment. The court's property valuation for 1857 was less than the Auditor's and within the two percent charter tax. Once again, the court did not need to rule on the construction of the charter because the assessed tax fell below the charter tax. As a result, the I.C.R.R. had no taxes to pay in addition to the seven percent charter tax already paid.<sup>239</sup> The same ruling applied to the I.C.R.R.'s 1858 property valuation.

Without a doubt, Abraham Lincoln's successful handling of this issue saved the Illinois Central Railroad from financial disaster.<sup>240</sup> Had the court's valuation come close or exceeded the state auditor's, the I.C.R.R. would have owed thousands of dollars more to Illinois than what had already been paid. Given the precarious position of the railroad in 1859,<sup>241</sup> any additional financial burdens would likely have forced the I.C.R.R. out of business.<sup>242</sup>

237. Brown, *supra* note 4, at 156.

238. The rule of law in Illinois was that a taxpayer was bound by their own return on property valuations. Brown, *supra* note 4, at 158. The I.C.R.R. submitted a \$19.7 million valuation for 1857 which clearly exceeded the valuation the railroad was hoping to get from the Court. Brown, *supra* note 4, at 158. The I.C.R.R. also faced an uphill battle on the method of assessing value. The formula in existence added the market value of bonds plus other indebtedness plus the market value of the capital stock. For the I.C.R.R., this took their assessment well above \$20,000,000. Brown, *supra* note 4, at 158. The final obstacle was the financial strength of the I.C.R.R. in 1857. Brown, *supra* note 4, at 158.

For a more detailed analysis of the problems the I.C.R.R. faced *see* Brown, *supra* note 4, at 157-160.

239. Brown, *supra* note 4, at 160.

240. Brown, *supra* note 4, at 160.

241. *See supra* Part III at notes 56-108.

242. Although the I.C.R.R. viewed this decision as a victory, an argument could be made that the company may have been better off if the court had ruled on the construction of the charter. As the court must have known when it rendered its decision, the 1851 Illinois legislature granted a charter to the I.C.R.R. which was extremely favorable to the state. A seven percent tax paid by the I.C.R.R. was much more than any other similarly situated corporation was required to pay. Brown, *supra*

The true magnitude of Lincoln's accomplishment in this case is evidenced by subsequent events in the Illinois Central's history. For the next eighty years, from 1860 to 1942, the I.C.R.R. was never required to pay any state tax beyond the seven percent charter tax.<sup>243</sup>

### *E. I.C.R.R. Associates & Friends*

In addition to a stellar legal association with the I.C.R.R., Abraham Lincoln also formed many friendships during his time with the railroad. Some of the Civil War's most famous generals became acquainted with Lincoln because of their ties with the I.C.R.R. organization. Included in this category was General George McClellan, General Mason Brayman, General Ambrose E. Burnside, General H. L. Robinson, General Nathaniel P. Banks, and General T. E. G. Ransom.<sup>244</sup>

Despite the many legal successes Lincoln gained for the I.C.R.R., the company's treatment of him was not always reflective of those successes. On more than one occasion Lincoln had to ask the I.C.R.R. to pay what appeared to be overdue fees,<sup>245</sup> including the famous case previously discussed in which Lincoln sued for his fee.<sup>246</sup> Requesting legal fees from a client is not a

note 4, at 160.

In theory, the I.C.R.R. would have gained more by a court ruling which invalidated the two sections of the charter dealing with taxes. The company would no longer be required to pay the excessive seven percent, but would pay the normal property valuation tax. Without all of the necessary financial figures it is difficult to say whether Abraham Lincoln truly won a victory for the I.C.R.R. or cost them an even better outcome of eliminating the charter tax altogether.

243. Brown, *supra* note 4, at 161.

244. *Lincoln and the Illinois Central*, 15 ILL. CENT. MAG. 5, 10 (Feb. 1927). Each of these men were employed with I.C.R.R. at the same general time Lincoln was their local counsel. George McClellan left the army in 1857 to accept the position of chief engineer for the railroad. Mason Brayman was chief counsel for I.C.R.R. in 1853 when Lincoln was retained. The other men held various positions, each at different times, for the railroad.

245. 2 COLLECTED WORKS, *supra* note 4, at 233-234, 325-26. In September 1854, Lincoln wrote to Mason Brayman concerning \$100 he withdrew from the I.C.R.R. account as payment for "a great variety of little business for the Co. . . ." 2 COLLECTED WORKS, *supra* note 4, at 234. Again in September 1855, Lincoln requested \$150 "as a fee for all services done by [Lincoln] for the Illinois Central Railroad, since last September, within the counties of McLean and DeWitt." 2 COLLECTED WORKS, *supra* note 4, at 325. Lincoln was not even sure how many cases he had handled for the company during that time, but estimated it to be fifteen and charged only ten dollars per case. 2 COLLECTED WORKS, *supra* note 4, at 326.

246. *See supra* Part IV(B), notes 180-192.

particularly unusual event; however, it seems odd that the company would neglect to pay Lincoln any fees for his services in over a year.

During the 1858 senatorial campaign, the I.C.R.R. dealt with the two candidates quite differently. Stephen A. Douglas was a personal friend of George B. McClellan, then vice president of the Illinois Central Railroad, and frequently used a private rail car to get to his famous debates with Lincoln. Abraham Lincoln, on the other hand, was sometimes relegated to travelling in the caboose of a freight train.<sup>247</sup> On one occasion while both men were travelling in the southern part of Illinois, the freight train whose caboose Lincoln was riding in switched off the main track to allow Douglas' train to pass by. Douglas' car, adorned with flags, banners, and a brass band playing "Hail to the Chief," carried Douglas and his influential political friends. In response, Lincoln reportedly laughed and said to his companions, "The gentleman in that car smelt no royalty in our carriage."<sup>248</sup> Needless to say, the story was quite different in 1860 when Lincoln ran for president. By then, Lincoln enjoyed a favorable national reputation with George McClellan, Stephen Douglas, and others. Such a reputation aided Lincoln in his receipt of the Republican nomination.<sup>249</sup>

Abraham Lincoln would not forget the I.C.R.R. as chief executive. During the Civil War, the I.C.R.R. was an important link in the movement of supplies and troops to the front lines.<sup>250</sup> Typically, the United States paid the railroad companies for such transport, but the Illinois Central was different. The 1850 federal land grant specifically required the I.C.R.R. to carry all supplies and troops of the United States over the road without charge.<sup>251</sup> For several years a controversy between the I.C.R.R. and the federal government continued about whether the railroad should be paid for its transport of supplies and troops. Finally, in May 1863, with the problem brought to his attention, President Lincoln wrote a letter to Secretary of War Edwin Stanton which resulted in the I.C.R.R. receiving payment for its rail services to the government minus a one third deduction for the land grant provision.<sup>252</sup>

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247. STARR, *supra* note 112, at 135-36. Ward Lamon, an associate of Lincoln's, claimed there were "orders from headquarters to permit no passenger to travel on freight trains, [so] Mr. Lincoln's persuasive powers were often brought into requisition. The favor was granted or refused according to the politics of the conductor." STARR, *supra* note 112, at 135-56; *see also The Story of the Illinois Central Lines during the Civil Conflict 1861-1865*, ILL. CENT. MAG., June 1913, at 16.

248. *Story of Illinois Central Lines*, *supra* note 247, at 16.

249. *Story of Illinois Central Lines*, *supra* note 247, at 18.

250. STARR, *supra* note 112, at 70.

251. STARR, *supra* note 112, at 70.

252. STARR, *supra* note 112, at 70-71.

The final irony in the relationship between Lincoln and the I.C.R.R. came in May 1865. Following Lincoln's assassination on Good Friday, April 14, 1865, Secretary Stanton scheduled the series of trains which would take Abraham Lincoln's body back to Springfield, Illinois.<sup>253</sup> On April 21, 1865, Lincoln's journey home began on a special train provided by the Baltimore and Ohio Railroad.<sup>254</sup> A number of railroads would continue the trip back to Illinois, including the Northern Central Railway, the Pennsylvania Railroad, the Hudson River Railroad, the New York Central Railroad, the Columbus and Cincinnati Railroad, the Columbus and Indianapolis Central Railway, the Lafayette and Indianapolis Railroad, the Louisville, New Albany and Chicago Railroad, and the Michigan Central Railroad.<sup>255</sup> The final leg from Chicago to Springfield would be handled, not by the I.C.R.R., but by the Chicago and Alton Railroad. Lincoln's body travelled almost seventeen hundred miles by rail,<sup>256</sup> yet the railroad company he had served for nearly a decade did not provide a single mile of transport.

## VI. CONCLUSION

From its humble beginnings in 1836, Lincoln's career developed and progressed into one of the most successful legal practices in Illinois. When retained by the Illinois Central in 1853, Lincoln was not a well-known corporate attorney, but he soon matured into one of the best. The cases he handled for the railroad were diverse and numerous with a handful becoming significant decisions in the practice of corporate law.

Lincoln contributed greatly to the legal profession and his clients' interests by the way he conducted himself in and out of a courtroom. As one of his largest clients, the Illinois Central Railroad was no exception. He clearly demonstrated an understanding of the law and the skill to use it for the benefit of his clients.

He assisted a newly chartered railroad through its early struggles and financial difficulties. In both the McLean County and state auditor cases, Lincoln almost certainly shielded the I.C.R.R. from financial ruin. From routine to prominent cases, he successfully dealt with the wide range of issues, duties, and responsibilities which went along with a corporate practice. He did not always prevail in his attempts, but he won more cases than he lost.

The relationship Lincoln had with the I.C.R.R. had elements of simplicity and complexity. In many ways, Lincoln handled his cases for this corporate client in much the same manner he did all his clients. He consistently made

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253. STARR, *supra* note 112, at 265.

254. STARR, *supra* note 112, at 266.

255. STARR, *supra* note 112, at 268-273.

256. STARR, *supra* note 112, at 274.

routine court appearances, presented the evidence, and argued his case to judge and jury. In that regard, his relationship with the I.C.R.R. was simple and routine. The complexity of their relationship arose in cases where Lincoln argued for a change in the law or a different interpretation of the existing law.

The Illinois Central Railroad Company was also different from many of Lincoln's clients. The I.C.R.R. chose Lincoln because he was familiar with the circuit and because it needed a lawyer who could handle local matters as they arose. Lincoln wanted the I.C.R.R. as a client because retainers were rare and the clientele in the 1850s was always shifting and uncertain. The I.C.R.R. provided some stability and unique legal challenges for Abraham Lincoln. Both parties needed the other, yet they did not always act in such a way. Lincoln was willing to pass up the opportunity to be the I.C.R.R.'s local counsel in 1853 because his legal ethics told him he had already advised the counties opposing the railroad on the same issue; he risked his employment by suing for his fees following the McLean County case; and he rolled the dice for a big victory in the state auditor case instead of taking a safer, but less rewarding approach. On the other side, the I.C.R.R. paid him late for services on more than one occasion; they kept him on retainer after the fee case not for his skill as an attorney, but only to keep him from joining the opposition; and they forced him to travel in the caboose of a freight train on his 1858 senatorial campaign trips. In the end, their relationship remained intact for nearly a decade not because of some great admiration for the other, lofty social causes, or political gains, but because both sides needed each other. The I.C.R.R. needed the best local counsel on their side and Lincoln needed both the economic benefits as well as the high visibility and recognition that came with being counsel for the largest railroad corporation in the state.

Abraham Lincoln was an able and accomplished corporate attorney. He was a successful advocate for his client in many cases and offered sound advice based on reasoned judgments. He was willing to persuade the courts to change the law, while using the existing law to his advantage. More importantly, Lincoln dealt effectively with the members of the I.C.R.R. He established a number of friendships which he would call upon during his years with the company and throughout his presidency. Abraham Lincoln turned his meager beginnings into great successes for the benefit of himself and the Illinois Central Railroad.

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