

Abraham Lincoln, Esq.: The Legal Career of America's Greatest President

Edited by Roger Billings and Frank J. Williams

University Press of Kentucky, Lexington, KY, 2010. 263 pages, \$40.00.

REVIEWED BY HENRY S. COHN

From 2007 to 2010, when the bicentennial celebration of the birth of Abraham Lincoln was at its height, several important books and articles were published on Lincoln's career as a lawyer in Springfield, Ill. A major source of information for the authors of these works was *The Law Practice of Abraham Lincoln: Complete Documentary Edition*, published on DVD by the University of Illinois Press in 2000. This collection of almost 100,000 documents took researchers 15 years to assemble by tapping court archives throughout the United States.

Abraham Lincoln, Esq. comprises a dozen essays that supplement recent studies of Lincoln's legal career. The essays are divided into three groups: "Evaluating Lincoln's Career," "The Illinois Years," and "The Washington Years."

The first group includes an essay by Brian Dirck, a professor at Anderson University in Indiana. Dirck summarizes his seminal book, *Lincoln the Lawyer*, and notes that, for most of Lincoln's career, he was a litigator whose major clients were both creditors and debtors. Dirck does not rate Lincoln highly as a lawyer, calling him merely a "respectable 'prairie lawyer.'"

Roger Billings, a professor at Northern Kentucky University's Salmon P. Chase College of Law, explores Lincoln's very first law-related experiences in New Salem, Ill., prior to his becoming a lawyer in 1836. Billings relates that Lincoln "hung around" the justice of the peace in the village of New Salem, observing his friend, town justice Bowling Green, and learning about bills and notes. New Salem

residents asked Lincoln to draft notes for them. One of the earliest of these notes dates from 1832, when Lincoln was only 23 years old. It directs a party holding funds due to the drawer to pay the drawer's creditor directly. Shortly after Lincoln drew up this note, he became a debtor himself, co-signing a note to purchase a grocery store in New Salem. Lincoln later went into default on the note and struggled to pay the creditor in full. Billings builds on Lincoln's early experiences to show how his practice developed into a specialty in collection law.

Lincoln's collection law practice was mostly routine, but it did have occasional complications. Billings gives as an example Lincoln's legal action against a wealthy man, Blackledge, who had co-signed a note to purchase a mill. Lincoln's involvement began in 1852, when another attorney who did not live in the same county as Blackledge forwarded the collection to Lincoln. Lincoln did not live in Blackledge's county either, and Lincoln and his law partner, William Herndon, took several frustrating trips to court while they were riding the judicial circuit. The collection became more difficult when Blackledge died; Herndon removed the case to probate court, and the probate judge disallowed all claims against Blackledge's estate. Lincoln appealed, but it took until 1857 for his client to be paid in full.

In his essay, Christopher Schnell, who helped to publish the DVD collection issued by the University of Illinois Press, finds that Lincoln had business ties to several residents of Kentucky, including Robert Todd, the father of his soon-to-be wife Mary. Lincoln represented Todd, who was a defendant in a suit on a debt that he had incurred in purchasing land in the Springfield area. Lincoln was unsuccessful at trial, as the court agreed with Lincoln's opponent that the notes tendered by Todd in payment for the debt were drawn on a failed bank and consequently lacked sufficient value.

In his contribution to *Abraham Lincoln, Esq.* Mark E. Steiner, a professor at the South Texas College of

Law, repeats some of what he wrote in his book, *An Honest Calling: The Law Practice of Abraham Lincoln*. Steiner's thesis is that Lincoln's ethical positions were identical to those of other Whig lawyers in the region. These Whig lawyers refused to represent only one side or viewpoint, but they stressed the need to represent any legitimate client, whether plaintiff or defendant. In addition, the outcome of a dispute was less important to these Whig lawyers than the fact that it had been resolved through orderly, peaceful means. Lincoln's first priority was to resolve his cases through settlement.

The essay by eminent Lincoln scholar Harold Holzer looks at Lincoln's law practice differently from the way the book's other essays do. Rather than concentrate on Lincoln's mundane court appearances in Illinois' Eighth Judicial Circuit, Holzer stresses Lincoln's successes, especially in his later years at the bar, and sees Lincoln's work in the *Effie Afton* case as brilliant. Lincoln's client, the owner of a bridge over the Mississippi River at St. Louis, was sued for interfering with a navigable waterway when a barge exploded on contact with the bridge. Lincoln spoke in summation for two days, with a masterful command of the facts. Although there was a hung jury (9 to 3 in favor of Lincoln's client), the bridge and rail industry viewed the case as a victory. The case furthered efforts to make internal improvements and establish a national transportation policy, as championed by Lincoln's mentor, Henry Clay.

Each essayist, regardless of where he stands regarding Lincoln's legal abilities, points out the important lessons from the law that Lincoln was able to bring to his political life, including his presidency. Frank J. Williams, former chief justice of Rhode Island, goes so far as to list many of the attributes of the "good lawyer" Lincoln and correlate them to his political and presidential actions. These include Lincoln's trademark honesty, zealotry, and humility. John A. Lupton, an editor of the University of Illinois Press DVD collection, begins his essay by relating

a joke played by fellow bar members on a lawyer who had terrible penmanship and writing ability. Then Lupton notes, in contrast, that Lincoln's "clear and bold handwriting" in legal documents, as well as his drafting abilities, supported his writing "some of the most perceptive and thought-provoking words in our nation's history" as President.

The final two essays review Lincoln's proficiency in handling legal issues as President. In one of them, William D. Pederson, director of the International Lincoln Center at Louisiana State University, discusses Lincoln's struggles to resolve international crises that arose during the Civil War. Lincoln chose to declare a full blockade of Southern ports rather than merely to order their closure. The blockade allowed for the seizure of neutral ships (mostly from England) outside the international three-mile limit. He also approved the detaining on the high seas of a British ship, the *Trent*, and the removal of two Confederate officers from the ship. When this action—known as the "Trent Affair"—became a source of tension with Great Britain, Lincoln resolved the matter, according to Pederson, by using the Whig lawyers' technique of compromise and released the Confederates from detention by Union forces. The spirit of compromise also guided Lincoln's decision to rein in one of his generals who wanted to pursue Confederates into Canada after they had traveled to St. Albans, Vt., to raid and rob local businesses. Lincoln also took a leading role in the adoption of the Lieber Code, written by political scientist Francis Lieber, a pioneering work on humanitarian land warfare that led to the Hague Convention.

Pederson praises the influence that the self-taught Lincoln had on international law. His courageous stands inspired President Kennedy's weighty decisions in such matters as the Bay of Pigs and the Cuban missile crises. According to Pederson, Kennedy carried a Lincoln quotation in his pocket that read, "I know there is a God—and I see a storm coming; if He has a place for me, I believe I am ready."

Abraham Lincoln, Esq. is a fine

addition to the literature on Lincoln as a lawyer, and its bibliographical references will be valuable for future study. **TFL**

Henry S. Cohn is a judge of the Connecticut Superior Court. He reviewed the books by Brian Dirck and Mark E. Steiner mentioned in this review, in The Federal Lawyer (Nov./Dec. 2008 and Feb. 2009, respectively).

Lincoln's Counsel: Lessons From America's Most Persuasive Speaker

By Arthur L. Rizer III

American Bar Association, Chicago, IL, 2011. 264 pages, \$34.95.

REVIEWED BY ARAM A. GAVOOR

Historians and legal scholars alike have looked at the oral advocacy of Abraham Lincoln in wonder. How did he achieve and sustain such effectiveness throughout his public life? Arthur Rizer explores this question in *Lincoln's Counsel*, an easily digestible, step-by-step analysis of Lincoln's rhetorical skill. In a book that is part biography and part guide to trial advocacy, Rizer examines the central role that Lincoln's skill at oral advocacy played in his accomplishments.

Along the way, Rizer highlights several lessons that Lincoln learned in his public life that will resonate for the contemporary reader. Lincoln shines throughout most of the book, but Rizer offers lessons from the occasional failures of our 16th President as well. Using Lincoln as an example, Rizer impresses upon the reader what lawyers ought to be.

The structure of *Lincoln's Counsel* is straightforward. Rizer spends the first third of the book observing Lincoln as a young adult. This journey includes the young Lincoln's rigorous self-education, his practice as a traveling lawyer and local politician in southern Illinois, and three of his most famous trials. Throughout this portion of the book, Rizer examines Lincoln on a personal level in some detail, showing, for example, that Lincoln's reputation

as a voracious reader with a keen mind is well-deserved. Rizer also finds that the future President's gaunt and lanky appearance defined him as much as his abiding can-do attitude did. Rizer also discusses Lincoln's miserable failure as a general store owner as well as his ringing success in defending the railroad companies in the face of serious legal challenges from the waterway shipping industry. One lesson of note for the contemporary reader comes from Lincoln's ascendancy to a seat in the Illinois General Assembly after having previously lost the election for that seat. The eventual success came, Rizer advises, because Lincoln drew on his charm and likability. "The lesson here is simple and powerful: being a potent public speaker and persuader does not mean much if people don't like you."

Rizer next delves in earnest into Lincoln's political career. One can see how the early life lessons that Lincoln learned helped to account for his success later in life, and it is easy to cheerlead for the future President. Rizer furnishes memorable advice based on Lincoln's actions: "never jump into a boat with an issue you know to be a loser unless there are principled reasons for doing so," and "a good persuasive speaker must look several moves ahead."

From an initial heavy emphasis on biography, Rizer then zeroes in on Lincoln's political successes before turning to a few of his missteps. In what amounts to a lesson in trial advocacy, Rizer offers several examples of Lincoln's rhetorical greatness and then dissects each to examine its component parts. Here, Rizer uncovers Lincoln's great command of the language as well as the importance of his use of anecdotes and humor in effective persuasion. Although the chapter that highlights Lincoln's great rhetoric is full of rich anecdotes, Rizer's treatment of Lincoln's failures and foibles is too brief—only 12 pages—and his prose strains a bit in his discussion of them.

Rizer is at his best when he crescendos to a close with the book's final chapter, "The Greatest Closing

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Argument Ever Made: The Gettysburg Address.” Examining the speech thoughtfully, through the lens of an advocate, Rizer argues convincingly that this speech—in its creation, content, and delivery—represents the pinnacle of a lifetime of learning and experience. Rizer writes:

To capitalize on a good theme, the practitioner should tie his closing remarks into a theme he had “road mapped” in the opening statement. We see that Lincoln consistently did this. His co-counsel often gave the opening, and Lincoln would follow with the closing. In a sense, the “co-counsel” in the Gettysburg Address was none other than Thomas Jefferson. ... When Jefferson said that all men were created equal, he meant it. However, excluded from Jefferson’s definition of “men” were African Americans, other minorities, and women—basically anyone who was not a white male. ... Thanks in part to Lincoln, Americans have reshaped the words and thoughts of the Declaration of Independence into a true meaning of equality. **TFL**

Aram A. Gavoora is a trial attorney in the Office of Immigration Litigation in the Civil Division of the U.S. Department of Justice, where he defends the nation’s immigration laws. He is also a professorial lecturer of law at The George Washington University Law School, where he teaches courses in legal research and writing as well as introduction to advocacy.

Murder on the High Seas: The True Story of the Joe Cool’s Tragic Final Voyage

By Carol Soret Cope

Berkley Books, New York, NY, 2011. 283 pages, \$7.99.

Caught in the Act: A Courageous Family’s Fight to Save Their Daughter from a Serial Killer

By Jeannie McDonough with Paul Lonardo

Berkley Books, New York, NY, 2011. 287 pages, \$7.99.

REVIEWED BY JOANN BACA

Although these two true-crime books impart essentially the same type of information about the crimes and resulting prosecutions they describe, they could not be more different in execution. *Murder on the High Seas* works well as a straightforward third-person narrative, relying occasionally on quotes from individuals who were involved in the proceedings. *Caught in the Act*, by contrast, is exceedingly effective by virtue of its first-person narration, which gives it an immediacy that a third-person account would find difficult to attain.

Murder on the High Seas begins as the U.S. Coast Guard finds an abandoned sport fishing boat, the *Joe Cool*, in the Florida Straits near the coast of Cuba, as well as a life raft holding two survivors from the vessel, Kirby Archer and Guillermo Zarabozo. The survivors, who chartered the *Joe Cool*, first tell their rescuers that Cuban pirates attacked the vessel and killed its crew, then forced Archer and Zarabozo to throw the bodies of the crew overboard. But the survivors’ story quickly unravels as mounting circumstantial evidence points to Archer and Zarabozo as the actual murderers.

The author, Carol Soret Cope, an attorney in Miami, brings a lawyer’s perspective to her book, which describes each step of the investigation

of the crime and the subsequent prosecution of the federal case developed against Archer and Zarabozo. But, before Cope plunges the reader into the legal aspects of the case, she provides a brief history of the colorful and contentious families of the murdered crew members. The reader is thereby able to become acquainted with the victims—Jake Branam, Kelley Branam, Scott Gamble, and Sammy Kairy—and to understand the deep ties of companionship that bound them to one another. Cope also delves into the histories and possible motivations of the two men who were brought to justice for the murders they had committed.

It is clear that Cope has done abundant research. She succinctly describes the investigations conducted by the Coast Guard, the FBI, and federal prosecutors; explains with a minimum of legal arcana the charges and how they were derived; identifies legal strategies that both the prosecution and defense considered and used; probes the conflicts in the jury room that led to a verdict in one prosecution; and even explores the child custody battle over the children of two of the murder victims.

It is perhaps inevitable that a true-crime story written by an uninvolved third party would lean heavily on the record of facts, and that record forms the bulk of *Murder on the High Seas*. But Cope avoids making her book a dry recitation by inserting bits of descriptive color where she can. For instance, she spends the better part of a page describing the interior of the state-of-the-art courtroom in which a trial will take place, including this slightly overwrought description: “This trial could not be likened to a play; it seemed closer to a high-definition 3-D IMAX experience, at least in the modern judicial temple of the Ferguson Federal Courthouse.” Despite such occasional excessive touches, her narrative generally is prosaic. The story is not gripping, nor is the book a page-turner, but it is a thorough and solid presentation that expertly lays out a complex investigation and prosecution.

Caught in the Act, written by crime victim Jeannie McDonough with Paul

Lonardo, contains the same elements as *Murder on the High Seas*: descriptions of terrible crimes and the long and entangled investigative and legal effort that led to the conviction and sentencing of the perpetrator. What sets *Caught in the Act* apart is how intensely personal the narrative is. Despite her thorough research, Cope could not hope to make *Murder on the High Seas* as engrossing and fascinating as McDonough makes *Caught in the Act*, because McDonough is able to bring the reader with her to the scene of a violent crime. She, unlike Cope, has eyewitness testimony with which to draw the reader into the emotional maelstrom that is the beating heart of *Caught in the Act*.

Even superbly researched and presented reportage would struggle to match up against a simple first-person chronicle, and McDonough has written far more than a simple account of her family's suffering at the hands of a serial killer. *Caught in the Act* is an absorbing and riveting account, reading at times like a chilling fictional tale. The book propels the reader through the humid dark nights, following long-haul trucker Adam Leroy Lane down the highway as he terrorizes women and commits a series of horrifying crimes that culminates in his presence in Shea McDonough's bedroom one hot July night in 2007. By the time Lane enters the McDonough home, the horror of his cold-blooded intentions makes the McDonoughs' violent encounter with him all the more terrifying to the reader. By grace and good fortune, Jeannie McDonough and her husband Kevin manage to accost Lane in the act of attacking their daughter Shea in her bed, and they overpower him after a frantic struggle. Thereafter, the book offers fascinating insights from a crime victim's viewpoint, as McDonough takes us from Lane's violent actions to the ultimate consequences of his crime.

McDonough, whose only previous experience with the legal system had been jury duty, expresses her myriad frustrations with the time-consuming judicial process inherent when several jurisdictions wish to prosecute the same man. She also voices her ambivalence at being called a hero for

her automatic response in defending her family. These reactions are not unusual given the circumstances, and the reader would not be faulted for expecting them. What is exceptional, however, and what gives her book the frankness that is experienced in a confessional, is McDonough's courageous sharing of her family's struggles with survivors' guilt, which paralyzed not just Lane's intended victim, Shea, but also Jeannie and Kevin as well as their son Ryan. McDonough often mentions the unworthiness they all felt in being placed in the same category as the Ewals and Massaros, who suffered the loss of family members to Lane's murder spree, or as Patricia Brooks, who barely survived Lane's brutal attack. As McDonough recounts, "I didn't think we'd deserved to survive more than they had, and I tried to put myself and my family in the other families' shoes." Perhaps as a result of this deep need to acknowledge the immense grief suffered by others, McDonough introduces the reader to members of other families who lost loved ones to the serial killer's deadly acts of violence, and the reader comes to understand their pain as well as the McDonoughs' pain.

Throughout *Caught in the Act*, Jeannie McDonough is generous in her praise of the efforts of the law enforcement community, even as she expresses aggravation over what seems to her to be the glacial pace of prosecution as well as her shock that a defense attorney would try to assist Lane in fighting the charges against him. The reader comes to understand her determination to stay as involved in the process as possible and her desire to follow closely every turn of events as the criminal justice system pursues the prosecution of Lane, even as doing so delays her ability to put the terrible incident behind her. As she describes her experience with the system, "The sense that my convictions might be somewhat unhealthy did occur to me, but it is difficult for people who haven't experienced this kind of trauma to understand the driving need for complete closure."

By the time *Caught in the Act* ends, the reader has experienced an intense immersion in the psyche of a family

traumatized by violence. McDonough has exposed the sharpness of her fear, the rawness of her anger, and her blunt determination to see justice served upon Adam Leroy Lane. With such powerful, primal revelations, *Caught in the Act* makes for the kind of compelling narrative that *Murder on the High Seas* cannot equal, even though it tells its own story well. **TFL**

JoAnn Baca is retired from a career with the Federal Maritime Commission. Her husband, Lawrence Baca, is the immediate past president of the Federal Bar Association.

Operation Family Secrets: How a Mobster's Son and the FBI Brought Down Chicago's Murderous Crime Family

By Frank Calabrese Jr., with Keith and Kent Zimmerman and Paul Pompian
Broadway Books, New York, NY, 2011. 323 pages, \$24.99.

REVIEWED BY JOANN BACA

"What kind of son puts his father away for life?" Frank Calabrese Jr. poses this question in various ways throughout the pages of *Operation Family Secrets*. His father, Frank Calabrese Sr., was head of the Calabrese crew and a member of the Chicago crime organization known as the "Outfit." After reading the more than 300 pages of Frank Calabrese Jr.'s story, the reader is left with the impression that he has yet to answer this question to his own satisfaction.

Approximately half the book is devoted to background on the Calabrese family, mostly covering the rise of Frank Calabrese Sr. from street punk to head of his own crew and then to a "made man" (that is, a person admitted into a criminal organization's innermost circle) in the Outfit. Calabrese Jr. interweaves his own story with his father's, describing his own youth and young adulthood under the tutelage of his father. Along the way, the author scatters insights into how

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various crews—not just the Calabrese crew—in the Outfit were organized and manned, how the Outfit’s illegal activities were conducted, and how many of the Outfit’s colorful and dangerous characters became important—or expendable.

Calabrese relates lessons he learned from his father about conducting himself as a crew member so as to keep under the radar of the police. These seemingly simple warnings proved helpful; the Calabrese crew appeared so low-key that for years the FBI did not realize how integral the crew was to the Outfit’s operations. Among the lessons Calabrese was taught were: “Never flash a roll of cash in public. Don’t be a hot shot—*spaccone*—and if you are handling or exchanging a large sum of money, conduct the transaction under the table.” Calabrese also relates the relatively modest lesson he learned after he decided to go straight: working hard at a real job, no matter how menial, brings a sense of satisfaction that criminal activity cannot.

The book often refers to Mafia-inspired books, movies, and television shows. When describing one uncle, Calabrese notes, “Some likened Nick to the mild-mannered Fredo in *The Godfather*.” He writes that a nightclub “was a cross between *GoodFellas* and *Saturday Night Fever*.” He describes his father’s new house in these words: “The home’s interior was similar to television gangster Tony Soprano’s.” Calabrese seems to have invoked these fictional creations as a shortcut to providing more detailed descriptions.

Calabrese does not appear to feel any remorse for spending years engaged in illegal activities. He claims to have become an informant not for personal gain (and there is evidence that he got little in return for his testimony), but because he wished to ensure that his father, whom he considers a “sick man,” would never get out of prison. Yet Calabrese is conflicted about his decision. Perhaps his ambivalence stems from his complex relationship with a father who, according to Calabrese, presented different faces depending on his mood or provocation. Rising from nearly every

page of the book is Calabrese’s internal battle between loving his father and hating and fearing him.

Calabrese, who is not a medical professional and does not base his opinion on any medical assessment, claims, “My father had multiple personalities.” He describes his father’s three personalities as “the caring and loving provider, the patriarch”; “the controlling and abusive father, demanding and strict”; and “the killer, whose method of murder was strangulation, followed by a knife to the throat.” Although Calabrese provides some evidence of the first “personality”—sitting down to pleasant family dinners or distributing food to the needy at Christmas time—the book emphasizes the latter two “personalities.” Calabrese relates numerous instances of abuse that his father inflicted on the male members of his family. When Calabrese arrived late to a meeting with his father, his apology was met with “a volley of punches. Boom. Boom. Boom. Lefts and rights to the side of the head.” His father, upset by something Calabrese’s Uncle Nick had said “responded angrily by smacking my uncle with his hand, fracturing his face. ...” Once, after his father realized that Calabrese had secretly borrowed a significant amount of money from the stash always hidden in the house, Calabrese writes, “At least he didn’t shoot me.” But, he continues, “he punched me in the face. I was numb; I couldn’t defend myself. They just kept on coming, punch after punch. ...”

To demonstrate his father’s third “personality”—the killer—Calabrese recounts, sometimes in grisly detail and sometimes in matter-of-fact style, the murders his father planned or committed. He painstakingly describes a hit for which his father designed a car bomb so powerful, “human remains, mostly head and shoulders, are plopped in the middle of the I-294 on-ramp. Pieces of the luxury Mercedes-Benz were strewn everywhere, and from as far away as a quarter mile, birds came to feast on Cagnoni’s scattered body parts.” He describes another murder in an off-hand manner, relating how his father’s crew carried out the hit: “On January

16, 1978, Mendell was severely beaten by Saladino and strangled by my dad, and his throat was slit by Nick.”

It is difficult to feel much sympathy for the author, who engaged in criminal activities willingly and without expressing any regret—at least not in this book—yet one may feel some sympathy for him because of the brutality he experienced at the hands of his father. It comes as no surprise that a family that included murderers would not have a placid home life, yet Calabrese’s father was so abusive that the reader wonders why Calabrese stuck with him for years. Despite his father’s explosive and sometimes unpredictable attacks, as well as Calabrese’s skills as a businessman in his own right, Calabrese continued to work on the collection end of the Calabrese crew’s illegal activities, which primarily encompassed the “juice loan business” (usury), gambling, and extortion.

At the heart of Calabrese’s litany of complaints against his father is the older man’s failure to provide what Calabrese considered an appropriate level of financial support. He resents that his father treated outsiders better than he treated his own sons, giving one friend a better deal on a mortgage and offering to extend credit to another.

Calabrese relates that he and his wife paid for their own wedding, even though his father “gave our guests the impression that he had footed the bill.” When Calabrese started a legitimate business, he was surprised that his father extorted him “in true Outfit style” for a third of the profits. While serving time in prison, Calabrese worried how his family would survive financially: “Yet despite the money stashed away in Chicago ... it was clear: my father was not going to pitch in to help.” Calabrese himself brings up finances as he ruminates on why he had turned informer: “I searched my soul to make sure I wasn’t doing this out of spite or because Dad had reneged on taking care of me and [brother] Kurt financially in exchange for doing time. This *couldn’t* be about money!” Yet ample evidence from Calabrese’s recollections serves to cement the idea in the

reader's mind that, indeed, resentment about money was a prime motivation for turning informer, even if fear of his father's murderous nature contributed significantly to his decision.

The second half of the book focuses on Calabrese's time in prison and his dealings with law enforcement, especially the FBI, once he decided to turn on his father and provide information on the Outfit's operations. This part of the book also includes background on the development of the investigation that resulted from Calabrese's—and later his Uncle Nick's—cooperation with the FBI. The investigation was known as “Operation Family Secrets” (hence the book's title).

As the subtitle of the book makes clear, the FBI's investigation was instrumental in destroying the Outfit as a criminal organization. Although other FBI prosecutions had targeted members of the Outfit, Operation Family Secrets was the first to indict made men from the Outfit for violating the Racketeer Influenced and Corrupt Organizations Act (RICO). This complex statute essentially lists 35 state and federal crimes—including gambling, murder, extortion, kidnapping, robbery, arson, and money laundering—for which a person who is a member of a criminal enterprise may be convicted if found to have committed two of the listed crimes within a 10-year period. Through exhaustive research based on leads from Calabrese and his uncle, as well as recordings made when Calabrese spoke with his father while wearing a wire, the FBI proved that the Outfit functioned as an enterprise under RICO. Fourteen people were indicted, 11 on conspiracy to further the enterprise, including by attempting or committing murder.

The second half of the book necessarily is less detailed than the first half, because Calabrese was not privy to the inner workings of the government as it developed its incredibly complex case against the Calabrese crew and the Outfit. Although Calabrese apparently tried to make this part of the story as colorful as possible, he was unable to do more than provide representative examples of the work of many of the people involved in what appears to have been a grinding, monumental

undertaking. Readers who are as interested in how the government built its massive case as they are in the criminals themselves should be warned that the book will leave them wishing for more.

In fact, considering that Calabrese's contribution to the case was essentially to give the government merely a foot in the door, the reader might wish that Calabrese's Uncle Nick had supplied information for the book, because his story might have been even more compelling than Calabrese's is. After all, Uncle Nick was a made man in the Outfit who was involved in the meat and potatoes of the organization's criminal activities, whereas Calabrese, by contrast, hardly got past the appetizer and lacked much of the firsthand information that only a made man and a participant in numerous murders could contribute.

With such an intriguing subject matter, and with a narrative filled with gruesome descriptions of mob hits and colorfully drawn personalities to match Outfit nicknames such as “Big Tuna,” “Johnny Apes,” “Big Stoop,” “Philly Bean,” “No Nose,” and “The Mooch,” it is hard for the reader not to be engaged, even if the book seems at times to be an attempt at self-aggrandizement and self-justification on the part of Calabrese. The book is only as good as it needs to be. It is repetitive at times and is written in a mostly blunt tone filled with references and mob-style terminology with which we have become familiar through television and movies. Yet the book is undeniably entertaining—much like a car wreck at which one cannot help but stare while driving by. **TFL**

JoAnn Baca is retired from a career with the Federal Maritime Commission. Her husband, Lawrence Baca, is the immediate past president of the Federal Bar Association.

The Eichmann Trial

By Deborah E. Lipstadt

Schocken Books, New York, NY, 2011. 272 pages, \$24.95.

REVIEWED BY CHRISTOPHER C. FAILLE

In *The Eichmann Trial*, historian Deborah Lipstadt tries to refute the central theses of Hannah Arendt's famous 1963 book, *Eichmann in Jerusalem: A Report on the Banality of Evil*. In my view, Lipstadt fails: Arendt got the contested questions, in essence, right. But let us proceed to that conclusion through the underlying facts.

While living in Argentina under the name Ricardo Klement, Adolf Eichmann, in 1956 and 1957, repeatedly visited a friend who lived in a wealthy neighborhood in Buenos Aires. The friend, Willem Sassen, knew who Klement really was.

Sassen, a writer of Dutch background and Nazi politics, wanted to sell a story that, he hoped, would counter what he saw as the “propaganda” of the victorious Allies. He had already contacted *Life* magazine about such a scoop, but, because he couldn't tell the magazine's editors whom he was really interviewing, Sassen couldn't make a sale.

The Sassen tapes and the transcripts made from them (on which Eichmann later scrawled marginal notes) are critical historical documents precisely because, at that time, Eichmann was not a defendant in a trial seeking to save his own life. Indeed, he seemed not to have been concerned that he would ever face such a situation, because he was living under the presumed safety of his new life in Argentina and speaking under the prodding of a sympathizer.

Germany and Hungary

In that context, Eichmann made it clear that, in his view, the only flaw in the Holocaust was that it was left incomplete: “[H]ad ... we killed 10.3 million [Jews], then I would be satisfied.” As for what actually was done, Eichmann expressed continuing pride.

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In 1960, Israeli agents kidnapped Eichmann and transported him to their country for trial. Willem Sassen seized his market opportunity and sold his manuscripts both to *Der Stern* and to *Life*. The Israeli Mossad managed to acquire a partial copy of the original transcripts of the 1956 and 1957 interviews, with Eichmann's handwritten notes in the margins.

In Jerusalem, in 1961, in the course of Eichmann's trial, it turned out that the prosecution had these transcripts but did not have the original tapes. This meant that, under Israel's evidentiary rule (roughly analogous to our "best evidence" rule), the transcripts could not be used. The court admitted into evidence only those pages with Eichmann's written comments in the margins—and some of those comments themselves proved quite damning. He had written that he had "deportation figures to be proud of" and congratulated himself on his "uncompromising fanaticism."

And, from his own perverse point of view, Eichmann may have deserved to be congratulated. In 1942, the German government had started pressing its allies in Hungary to toughen their own anti-Jewish laws. Earlier, some German Jews had fled to Hungary and found a haven there, and the Nazis deemed that unacceptable. When Hungary began to come around to its ally's way of thinking, certain officers suggested to Eichmann, then the head of Germany's Department for Jewish Affairs, that Hungary might be willing to deport its "foreign Jews" to Germany after all. But Eichmann found that option unacceptable, and, according to a biography by David Cesarani—titled *Becoming Eichmann*—Eichmann told the Hungarian officers that he preferred "to wait until Hungary is ready to include her own Jews in the scope of this operation."

That chance came, and the result—the death march that Eichmann organized in October 1944—was quite analogous to the Cherokee Trail of Tears in U.S. history. The Hungarians forced more than 70,000 Jews—men, women, and children—to march to Austria. According to Swiss diplomats

who witnessed the march, and whom Deborah Lipstadt quotes in her book, marchers "usually went several days without receiving any food at all." Those who fell behind the deliberately impossible pace that was imposed were routinely either shot dead or left where they dropped. In late December 1944, the prisoners who survived the death march reached Austria, where the Nazis hoped that they might prove of some use in a labor camp. As Lipstadt reminds us, the circumstances of that march, and the trail of corpses along its path, astonished and dismayed even so unsentimental a bystander as Auschwitz Commandant Rudolph Höss.

When Eichmann attempted to deny responsibility for this foot march during his trial, Israel's attorney general, Gideon Hausner, who personally led Eichmann's prosecution, asked Eichmann to explain a notation Eichmann had made on one of the pages of the Sassen transcripts: "In accordance with my proposal I had them march from Budapest to the Lower Austrian border. ..."

Eichmann in Custody

The tale of how the Israeli Mossad tracked Eichmann, seized him, and flew him out of Argentina has been told often—including by Cesarani in *Becoming Eichmann* (2004); by Neal Bascomb in *Hunting Eichmann* (2009); by Zvi Aharoni, one of the agents who took part in the capture, in *Operation Eichmann* (2000); and by Peter Malkin, the team's hand combat specialist, in *Eichmann In My Hands* (1990).

It is well known that, in launching the operation, Israel acted, in large part, upon the report of a man named Lothar Hermann, a half-Jew, who had so successfully hidden his Jewish heritage that in the late 1950s his teenage daughter, Sylvia, knew nothing about it. Hermann was understandably aghast when Sylvia introduced her new boyfriend, Klaus Eichmann, to her family (Eichmann's children had kept his name), and, Lipstadt writes, "Klaus boasted to Sylvia's family that his father had been a high-ranking Waffen-SS officer and declared that the Germans should have finished the job of exter-

minating the Jews."

But the search for Eichmann remains in some respects a mystery to those of us who do not have access to Israel's state secrets. Early efforts to following up on the Hermann family's tip were halfhearted, and interest picked up considerably only when another informant—one whose identity remains a secret—separately indicated that Ricardo Klement was Adolph Eichmann.

Lipstadt does give us the following detail about the early hours after the abduction, as the agents held their captive in their Buenos Aires safe house. Her description largely follows the one found in Malkin's memoir:

Some of the members of the Israeli team were taken aback to discover that, rather than a haughty SS officer living in splendor, they had caught a trembling factory worker in shabby underwear with false teeth. They were also struck by how mind-bogglingly obedient he was. At one point Malkin and one of his colleagues took Eichmann to the toilet. They waited outside. After a few minutes, Eichmann called out to Malkin, "*Darf ich anfangen?*" ("May I begin?") Only when told yes did he begin to move his bowels. Witnessing Eichmann's behavior, Aharoni wondered if this man could possibly have "decided the fate of millions of my people."

I think it is fair to say, then, that Aharoni and Malkin were both struck by what would soon come to be called Eichmann's banality.

Hannah Arendt

The *New Yorker* sent Hannah Arendt to Israel to cover Eichmann's trial. Her report, "Eichmann in Jerusalem," appeared in a series of five articles in the magazine, starting in February 1963. Later that year, Viking Press published her report, with some modifications, in book form.

There were at least three elements in Arendt's reports that guaranteed

attention, although, even considering all of them, the ferocity of the storm she generated might well have been surprising. First, some of her comments bearing on the trial itself crystallized an underlying tension in the way Jews around the world looked at the Holocaust, and, for that matter, in the way they looked at a number of other things: Israel, each other, God, and God's laws. Hannah Arendt embodied the divide between universality and particularity.

Universality and Particularity

The tension between these two concepts might be built into Judaism. Religiously observant Jews believe in a God who is at once the creator of the universe, indeed Being itself ("He Who Is"), and at the same time the special patron and partisan of a particular people—of Abraham and his extended family. Taking the particularity too far would lead to polytheism ("Yes, He is our God, but who are we to say the Philistines don't have a different God ...?"). Taking the universality too far would lead to a God of all, who is no longer specifically "the God of Israel"; it would lead to Spinozism, if you will, and thus out of Judaism. Judaism proper requires a God both partial *and* cosmic.

Appropriately, then, there was much criticism of Israel for its claims to speak for all the world's Jewry, and, in this case, to try a war criminal on behalf of his crimes against Jewry. It was as if the prosecution of Eichmann by this particular state upset the balance of a partial and cosmic God. Arendt concurred in this critique, writing that the "valid proposals for an international tribunal" rested on the view that "the crime against the Jewish people was first of all a crime against mankind," a view with which she agreed.

Indeed, Hannah Arendt's book ends with a universalist speech that she thought the judges should have given when they sentenced Eichmann to death. She thought that such a speech might have redeemed the proceedings: "[W]e find that no one, that is, no member of the human race, can be expected to want to share the earth with you. That is the reason, and the only reason you must hang."

Banality

Second, Arendt memorably portrayed Eichmann as an unthinking—even clownish—character. When her articles were collected in book form, they bore the subtitle, "A Study in the Banality of Evil," and that phrase has become a cliché. Meanwhile, the Eichmann case had inspired a Yale University psychologist, Stanley Milgram, to begin a series of experiments in the psychology of obedience. As Milgram later described the results of his experiments, "Stark authority was pitted against the subjects' strongest moral imperatives against hurting others, and, with the subjects' ears ringing with the screams of the victims [the simulated screams of actors, in fact], authority won more often than not."

Milgram's experiments became famous, and his results appear to have merged in the public's mind with Arendt's description of Eichmann's banality, leading to the widespread imagery of ordinary folks, without any malevolence, going about their daily business, inflicting enormous pain in the process. What is to be done? One lesson might be, in the words of Ice-T: "Don't hate the player, hate the game."

The Councils

Even more than the universalism, even more than the banality and conformity issue, Arendt attracted ire by emphasizing the culpability of leaders of the Jewish communities of Eastern Europe in the totality of the destruction. Before the trial, Arendt wrote to her friend, the philosopher Karl Jaspers, "I'm afraid that Eichmann will be able to prove, first of all, that no country wanted the Jews (just the kind of Zionist propaganda which Ben Gurion wants and that I consider a disaster) and will demonstrate, second, to what a huge degree the Jews helped organize their own destruction. This is, of course, the naked truth, but this truth, if it is not really explained, could stir up more anti-Semitism than ten kidnappings."

The same point appears with a greater formality of expression in Arendt's book, *Eichmann in Jerusalem*. She stresses that the Jewish Councils,

especially the one at Theresienstadt, actually prepared lists of those whom the SS might next transport for murder. They saw themselves as saviors, who, "with a hundred victims save a thousand people, with a thousand ten thousand." Gruesome as such calculations are at their best, the truth, Arendt maintained, was quite the contrary. Noncooperation, or a leaderless Jewry, might well have thrown sand into the machinery of death over which Eichmann and his colleagues presided and might have reduced some of those thousands to hundreds, and some of those ten thousands to thousands.

Lipstadt versus Denialism

In our own time, a perverse movement of Holocaust denial has developed—a movement that claims the title of Holocaust "revisionism," yet seeks not so much to revise as to obfuscate. The literature produced by deniers of the Holocaust is infuriating, and Lipstadt is to be congratulated for having managed to become a *bête noire* of its perpetrators. Her status as such came about through no choice of her own, but that doesn't lessen the distinction it offers.

In 1961, there was no denialist industry yet, just isolated cranks such as Professor Austin App, a German-American. As we have seen, when the perpetrators of the Holocaust had no fear that telling the truth would lead to unpleasant consequences, they acknowledged their attempt to destroy European Jewry and only bemoaned their failure to complete the job. The year 1976 might be a good date to pinpoint for the arrival of a worrisome scale of—and a veneer of academic respectability around—Holocaust denial. That was the year of the publication of *The Hoax of the Twentieth Century*, by Arthur Butz, a professor of electrical engineering at Northwestern University. Ernst Zündel and Fred Leuchter became the movement's great luminaries in the 1980s.

Through most of the 1980s, David Irving occupied a spot on the periphery of denialism. He had built a reputation in the 1970s as a scholar of the military history of World War II. As to

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the Holocaust, he went no further, for some time, than maintaining that Hitler himself was innocent of ordering it. On Hitler's behalf, Irving tried to pass the buck downward (the opposite of Eichmann's trial strategy in Jerusalem). But, through the 1980s, Irving increasingly closed ranks with deniers on a personal level, and at the end of that decade, he appears to have decided that there was no buck to pass—that any effort at the systematic destruction of Jewry was the figment of Allied, and especially of British, wartime propaganda.

In 1994, 18 years after Butz's book, Penguin Books published Deborah Lipstadt's discussion of the denial movement—a book with the straightforward title *Denying the Holocaust*. David Irving, a latecomer to denial, was not a central figure in Lipstadt's account, but she does characterize him in the book as a “Hitler partisan wearing blinkers” and contends that “on some level Irving seems to conceive of himself as carrying on Hitler's legacy.” In 1995, Penguin UK published this book in the United Kingdom and, in due course, Irving sued for libel.

That lawsuit, which was covered extensively by the British press, came to trial in January 2000. There was no jury; the parties agreed to argue their case to the bench, Mr. Justice Charles Gray, who concluded in April that “Irving has for his own ideological reasons persistently and deliberately misrepresented and manipulated historical evidence. ... [H]e has portrayed Hitler in an unwarrantedly favorable light, principally in relation to his attitude towards and responsibility for the treatment of the Jews. ... [H]e is an active Holocaust denier [and] he associates with right-wing extremists who promote neo-Nazism.”

As is the practice in the United Kingdom, the losing plaintiff was liable for the defendant's legal costs, which in this instance amounted to millions of pounds, and in March 2002, Irving was declared bankrupt.

Lipstadt on Arendt

Lipstadt wrote a fine book—*History on Trial*, published in 2006—dealing

with Irving's trial and its implications, and it is easy enough to understand the appeal of the Eichmann trial as the subject of her next book. But there are no deniers to serve as a foil in *The Eichmann Trial*, and there is nothing new in the book about the particulars of Eichmann's capture or trial. What is new in *The Eichmann Trial* is the critique of one of Lipstadt's precursors who wrote about the trial. Lipstadt wants the world to know that Hannah Arendt got the Holocaust, Eichmann, and Israel wrong. Lipstadt claims that Arendt was too universalist, wrong on Eichmann's state of mind, and wrong on the Jewish Councils.

Universalism

When the news broke that Eichmann was in Israeli hands, speculation about an international tribunal sprung up at once. The legal mechanism existed. As Lipstadt writes, “the Soviet Union intimated that it might call for reconvening the Nuremberg tribunals, as was its right.”

Even among committed Zionists, the notion of an Israel-only proceeding seemed a bit too claustrophobic. Lipstadt quotes Nahum Goldmann, the president of the World Zionist Organization at the time, who suggested that Israel invite judges from each of the countries that had suffered under Nazi occupation to serve along with Israel's own chief judge. (Lipstadt also, approvingly, quotes the response of Israel's former prime minister, David Ben-Gurion, that Jews who support Goldmann's position suffer from “inferiority complexes.”)

Arendt generally favors a universalist approach, and Lipstadt addresses Arendt's position in something of the same spirit as that in which Ben-Gurion addressed Goldmann's. Arendt's discussion of the Nazis' crimes against humanity obscures, in Lipstadt's view, the fact that it was the Jews in particular who were targeted for elimination: “She related a version of the Holocaust in which anti-Semitism played a decidedly minor role.”

Banality

Separately, the idea that Eichmann

was just a bureaucratic yes-man, who was bound to his desk and unaware that what he was doing was wrong, strikes Lipstadt as credible only for those who “give more credence to his demeanor and testimony at the trial than to what he actually did during the war.”

The Councils

Finally, Arendt's focus on Jewish leadership enrages Lipstadt. Where Arendt sees guilt, Lipstadt sees (at worst) ambiguity. Lipstadt finds it sometimes “hard not to interpret” Arendt's statements as “closing the gap between perpetrator and victim.” In making this point, Lipstadt engages in a bit of selective quotation that deserves some rebuke. She writes that, according to Arendt, the Jewish Councils and “their ‘pathetic and sordid’ behavior was the ‘darkest chapter’ of the Holocaust.”

Yes, Arendt does use the phrase “pathetic and sordid.” She also uses the phrase “darkest chapter” in proximity to it. A fuller quotation, though, is this: “To a Jew this role of the Jewish leaders in the destruction of their own people is undoubtedly the darkest chapter of the whole dark story. It had been known about before, but it has now been exposed for the first time in all its pathetic and sordid detail by Raul Hilberg. ...” The phrase “To a Jew” gives crucial context to the rest of Arendt's statement.

Moreover, the fact that Arendt speaks for that moment as a Jew speaking to other Jews gives us an excuse to note that, in this debate over the Eichmann trial, Arendt isn't always the advocate of universality in judgment. She feels the particularity of her own identity as fiercely, in her own way, as Lipstadt does.

Oiling the Gears of the Machine

Enough, though, of the game of lining up points with counterpoints. These are weighty matters and it is time that we reason together.

Universalism

On the question of the right balance of the cosmic and the partial within Judaism I cannot take a stand. I am not

a Jew and I intend to argue about no one's identity but my own (nor that either, if I can help it). I will, rather, quote a passage from the writings of my favorite philosopher, William James, and both Arendt and Lipstadt might agree that this view is pertinent: "Are we not bound to take some suffering upon ourselves, to do some self-denying service with our lives, in return for all those lives upon which ours are built? To hear this question is to answer it in but one possible way, if one have a normally constituted heart."

The Councils

When it comes to the complicity of some Jewish leaders in their broad catastrophe, I believe Arendt was right, and her perceptions have held up over time. A victim is never simply a member of the general class of people who have been victimized. Let us never let our hesitation to blame the victims become an unwillingness to dissect historically crucial distinctions, or we will have to consider the elite of Vichy France as well as the Jewish Councils above reproach.

Arendt could hardly have kept the issue of the role of the Jewish Councils out of her reporting from Jerusalem even if she had wanted to, because it came up explosively within the trial. After all, Pinchas Freudiger, once a prominent member of such a council, testified at the trial. In a moving passage, Arendt quotes the justifications that he offered for his own role in oiling the machinery of the slaughter that was under way, and simultaneously she punctures them:

"There are people here who say they were not told to escape. But fifty percent of the people who escaped were captured and killed"—as compared with ninety-nine per cent, for those who did not escape. "Where could they have gone to? Where could they have fled?"—but he himself fled, to Rumania, because he was rich and Wisliceny helped him.

After Arendt's book was published, in the face of intense reaction to passages such as that, Arendt told a reporter for *Look* magazine that she didn't

think the community leaders had been in a position to say, "Cooperate no longer, but fight!" She was not blaming them for failure to follow the path of the resistance in Warsaw. Rather, she was decrying their inability to consider noncooperation (or, as Freudiger's testimony shows, any encouragement of escape). She said that there came a moment when they were "already fully informed of what deportation meant," yet they continued to prepare lists for deportation. That was wrong.

I find it impossible to fault her for reaching that conclusion.

Adapting Kant for a "Little Man's" Mind

The banality of evil? Well, perhaps this is not the most fortunate expression, and it has been overused, but to blame Arendt for that is akin to blaming Jane Austen because too many hacks use the expression, "It is a truth universally acknowledged. ..."

The bizarre discussion of Kantian philosophy that broke out in the midst of Eichmann's trial, to which both Lipstadt and Arendt refer, supports Arendt's view of Eichmann rather than Lipstadt's view. Arendt wrote that Eichmann had first declared during a police interrogation that he "had lived his whole life ... according to a Kantian definition of duty." At the trial, one of the judges, Yitzhak Raveh, pursued this point in direct questioning.

The essence of the Kantian notion of duty—that is, the categorical imperative—is that every individual is necessarily his own legislator, because he must think of every act of his own as giving a law to the world; in other words, an act is moral only if the actor can will that it should become a universal law. Eichmann, however, told the court that the true Kantian significance of duty was too deep for him. He adopted another version "for the household use of the little man," as he put it, which involves internalizing the laws or commands that are handed down to you by the people in charge.

Arendt considered this so "incomprehensible on the face of it" that it confirmed her sense that Eichmann wasn't really thinking at all, just mouthing accepted formulas, in this case with deference to a recognized authority in moral philosophy. Kant,

in other words, was simply a name for Eichmann's lifelong disposition to find somebody to whom he could direct the question "Darf ich anfangen?" while he was seated on his throne.

Yet, Lipstadt would reply, perhaps Eichmann wasn't really so superficial, so accepting of his "little man" status, as he wanted to believe or pretend during his trial. What considerably weakens the plausibility of this point for me, though, is a passage in Neal Bascomb's *Hunting Eichmann*, an almost poignant portrait of Eichmann's behavior in the days just before and just after Hitler's suicide, as the hierarchy crumbled and Eichmann, "desperate for direction," sought someone, somewhere, who was still willing to issue orders he could follow—a description that seems to keep Eichmann squarely within the Arendt/Milgram outline. In practice, Eichmann accepted his "little man" status.

In those final days, a man in Eichmann's position who had some personal initiative might have drifted away from his military and party contacts, taken to wearing civilian clothes, adopted the name "Joe Schmidt," and paid an available forger to prepare proper documents for Herr Schmidt. Such a course seems not to have occurred to Eichmann, because following orders was so firmly engrained in his (unthinkingly adopted) self-image.

Clearly it is not the case that Nazism equals intellectual banality. Wernher von Braun was all too proficient in rocketry. Ezra Pound, a fascist radio propagandist, was also one of the central figures in modernist poetry. Arendt's one-time lover, Martin Heidegger, was, at the least, an erudite scholar and teacher of philosophy as well as (beginning on May 1, 1933 and continuing until the war's end) a member of the Nazi Party.

These examples may strengthen Lipstadt's point on one level, but not with regard to Eichmann, who wasn't a rocket scientist, a poet, or a philosopher. Ordering a deadly foot march, intimidating community leaders, arranging train schedules for the deportation of the doomed—none of these activities requires the sort of thinking required by those other three vocations.

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Thoughtlessness among a large swath of the subject population is an integral ingredient in the Nazi system. Submissiveness on the part of some—indeed of many—helps make them useful instruments of war against the enemies of the state and helps squelch opposition from quarters where thought continues and resistance flares.

All in all, I infer that Arendt had the logic of Nazism and the internal gearing

of the Holocaust mostly right. Certainly, she had more right than Lipstadt gives her credit for.

With this book behind her, though, I hope that Lipstadt will go back to doing what she does best: giving hell to Holocaust deniers. They have given her plenty of new material for further books since she wrote *Denying the Holocaust* in the mid-1990s. She could become for them the sort of pursuing Fury

that Richard Dawkins has become for creationists. Yet her Fury-like pursuit would have an even more deserving target. **TFL**

Christopher Faille, a member of the Connecticut bar since 1982, writes on a variety of financial issues, and is the co-author, with David O'Connor, of a user-friendly guide to Basic Economic Principles (2000).