Law Practice from Abraham Lincoln to Now

By David Hirsch and Dan Van Haften

In "The Taming of the Shrew," William Shakespeare, a favorite of Abraham Lincoln's, wrote: "And do as adversaries do in law, Strive mightily, but eat and drink as friends." Judicial process is the alternative of force: the alternative of the gun battle in the street. How has the American legal system changed over the years? This article will discuss its evolution in the following areas: (1) legal practice, (2) fees, (3) advertising and ethics, (4) legal education, (5) pleadings, (6) legal research, (7) information and technology, (8) transportation, (9) appeals, and (10) the public image of the legal profession.

Legal Practice

Abraham Lincoln began to practice law in 1837 in a largely agrarian society. Lincoln initially traveled Illinois' Eighth Circuit by horseback over open prairies, visiting 14 circuit courts in the central and eastern parts of the state.

John Dean Caton, a 19th-century chief justice of the Illinois Supreme Court, looked back on the early circuit days in Illinois:

> In the olden time in Illinois, say prior to 1850, … [attorneys], with the judge, traveled on horseback in a cavalcade across the prairies from one county seat to another, over stretches from fifty to one hundred miles, swimming the streams when necessary. At night they would put up at log cabins in the borders of the groves, where they frequently made a jolly night of it. This was a perfect school for story telling, in which Mr. Lincoln became so proficient. It was, indeed, a jolly life on the border, the tendency of which was to soften the asperities and to quicken the sensibility of human nature. Here was unselfishness cultivated, and kindliness promoted, as in no other school of which I have knowledge.

Isaac Newton Arnold described a typical Illinois circuit courtroom and its informal 19th-century environment: "The Judge usually sat upon a raised platform, with a pine or white-wood board on which to write his notes. A small table on one side for the clerk, and a larger one, sometimes covered with green baize, around which were grouped the lawyers, too often I must admit, with their feet on the top of it."

Much like soap operas, trials provided entertainment. People flocked to county seats when the circuit court was in session. As Henry Clay Whitney, an attorney and a colleague of Lincoln's, wrote, "The semi-annual shopping of the country districts was transacted during court week: the wits and county statesmen contributed their stock of pleasantry and philosophy: the local belles came in to see and be seen: and the court house, from 'early morn till dewy eve,' and the tavern from dewy eve to early morn, were replete with bustle, business, energy, hilarity, novelty, irony, sarcasm, excitement and eloquence."

In 1899, John M. Palmer commented,

> [B]efore the introduction of railroads, telegraphs, telephones, and the "daily newspaper," which collects the history of events in all parts of the civilized world and, by means of the railroads, is delivered on the day of its publication at nearly every post office in the state,—the lawyers were the instructors of the people on every political topic. The terms of the courts usually lasted three or four days and rarely more than a week. On the Monday beginning the term, at noon or in the evening after court adjourned, some recognized member of the bar would "make a speech," defending his own party or assailing the other party. If the first "speech" was made at noon or at night, some lawyer would answer the first speaker at night or at noon, and so the party orators would alternate to the end of the term of the court.

Joseph Cunningham, a lawyer from Champaign County in Illinois, described the county and Urbana, the county seat, in the mid-1850s:

> This county [Champaign] was then a part of the Eighth Judicial Circuit of Illinois and the circuit courts of the eight counties constituting the circuit were presided over by the Hon. David Davis, afterwards one of the justices of the Supreme Court of the United States, and also, afterwards, a senator in the United States Senate from Illinois. The majesty of the law in the county was then personified by a two-story brick courthouse, thirty by forty feet in size and a nearby log jail, twenty feet square. The county seat then consisted of a little cluster of wooden dwellings, some of which were of logs, a few stores and shops and two hotels of the western variety. It stood at the geographical center of the county and its expectations of a future of any consequence were based upon the conscious wealth of its lands

and upon the hoped for population which it was predicted was to come and occupy them when the projected Illinois Central Railroad, then nearing the county, should connect it with the outer world. Until then this county was in all respects, save its location, a frontier county and town.

In those days, lawyers drafted documents by hand. The medium was paper and ink. Henry B. Rankin described Lincoln's law office:

> The Lincoln law office was up a flight of stairs so narrow that two people walking abreast rubbed elbows. The room was plainly furnished, yet with Lincoln's presence there, and the many friends and callers who thronged it by day, and not infrequently by night, it was the most interesting office royal of all the public rooms I ever was privileged to frequent. It was a plainly furnished back room on the second floor. The two windows looked out on a flat one-story warehouse roof, coated with tar and pebbles. On hot summer days the tar softened, and the breeze, if there happened to be any, wafted a powerful resinous odor into the room. The office furnishings were far from elaborate. A large table in the middle of the room; two good-sized book-cases with compartments for filing and ample shelving for books—one stood on the west side between the two windows, the other midway on the south wall. The door into the office was fitted on the upper half with a window-sash divided by 8x10 glass to furnish from the office what light the entrance hall had. A rod at the top of this carried rings attached to a curtain for closing when "no interruption" was desired.

Fees

In Lincoln's time, fees frequently were not arranged in advance. Lincoln represented Thomas Margrave in *Grable v. Margrave*, an appeal to the Illinois Supreme Court by defendant William Grable of the verdict of $300 for the seduction of Margrave's daughter. Lincoln wrote to Samuel D. Marshall, Margrave's attorney from Shawneetown, Ill., who had hired Lincoln for the appeal:

> Springfield, July 14. 1842—Friend Sam: Yours of the 15th. June, relative to the suit of Grable vs Margrave [the case that Lincoln had argued before the Illinois Supreme Court the day before] was duly received, and I have delayed answering it till now, when I can announce the result of the case. The judgement is affirmed. So soon as the clerk has liesure [sic] to make out a copy of the mandate of the court, I will get him to do so, and send it to you, by force of which, your clerk will issue an execution. As to the fee, if you are agreed, let it be as follows. Give me credit for two years subscription to your paper [*Illinois Republican*, published by Marshall] and send me five dollars in good money or the equivalent of it in our Illinois paper.

John Dean Caton described how fees were handled:

> Those early settlers had not much money to pay lawyers' fees, but they would generally pay something and give notes for the balance, or, perhaps, turn out a horse or a colt in payment. These would probably serve to pay tavern bills, and a horse or two might be led home or sold on the way. Fee notes formed a sort of currency at a county seat about court time and could frequently be sold to a merchant or the landlord at a moderate discount. A town lot or an eighty [80 acres] of land would sometimes be taken for a fee, especially when it had been a part of the subject-matter of the litigation.

Fee schedules existed early in the 19th century. By mid-century, fee schedules fell into disuse or were repealed, but they reappeared early in the 20th century. The initial issue of the Illinois State Bar Association's *Quarterly Bulletin*, published in 1912, contained a fee schedule for the Hamilton County Bar Association. Sample fees included fees for consultation (not regular client)—not less than $2.00; collections—10 percent on amounts of $500 or less, 5 percent on the next $500 or part thereof, 2.5 percent on all amounts in excess of $1,000, no charge for amounts less than $2.00; foreclosures of mortgages—same as collections, except no fee less than $15; divorces in default cases—$15; divorces when defended—$20 plus 5 percent of alimony collected; misdemeanors—$10; felonies—$25; appeal cases in circuit or county court—$10; and defense in civil cases in circuit or county court—$10. The Illinois State Bar Association adopted a fee schedule in 1916, and other states followed suit. Hourly billing became more common in the 1960s. Fee schedules persisted into the early 1970s.

Advertising and Ethics

Louise Hill writes: "From its early days, the legal profession frowned on the overt pursuit of clients and considered competition for business among lawyers to be both inappropriate and distasteful." The 1887 Alabama Code of Ethics was created by the Alabama State Bar Association and included 56 general rules designed to guide Alabama lawyers. Hill describes this as "the first formal Code of Ethics for the American legal profession based largely on the works of David Hoffman and George Sharswood." This code stated the following: "Newspaper advertisements, circulars and business cards, tendering professional services to the general public, are proper; but special solicitation of particular individuals to become clients ought to be avoided."

The Canons of Professional Ethics created by the American Bar Association (ABA) in 1908 were based on the 1887 Alabama Code of Ethics as well as on the works of Hoffman and Sharswood. The 1908 canons condemned both advertising and solicitation. This guidance served the interests of the established membership of the ABA better than it served practitioners in smaller law firms and lawyers who were not ABA members.

In Lincoln's time, female lawyers essentially did not exist: the practice of law was seen as something for the good old boys. Not until 1869 was the first woman, Belle Babb Mansfield, admitted to a state bar in the United States—in her case to Iowa's state bar.

Monroe Freedman, legal historian and ethicist, wrote,

> The *Canons* were not inspired purely by disinterested concerns with improving the ethical conduct of lawyers. Rather, they were motivated in major part by the large numbers of Catholic immigrants from Italy and Ireland and Jews from Eastern Europe beginning in about 1880. … [T]he established bar adopted educational requirements, standards of admission and "canons of ethics" designed to maintain a predominantly native-born, white, Anglo-Saxon, Protestant monopoly of the legal profession. It is not coincidental that immigration into the United States reached an all-time peak in 1908, the year the *Canons* were promulgated by the ABA.

Historian Jerold Auerbach described how this point was put brutally by a member of the bar: "What concerns us … is not keeping straight those who are already members of the Bar, but keeping out of the profession those whom we do not want." The ABA in 1910 was a "selective" organization whose membership consisted of only 3 percent of the country's lawyers. In 1912, the ABA admitted three attorneys without knowing they were African-Americans. When the ABA became aware of their race, a subcommittee passed resolutions rescinding their membership and forwarded this issue to the 1912 ABA annual meeting for review and a final decision. Page 12 of the report of the 1912 ABA annual meeting carried the title "RESOLUTION ON STATUS OF CERTAIN MEMBERS" and a discussion introducing a proposed resolution, which was adopted:

> Without intending to engage in any discussion of its merits I am about to offer a resolution which I believe men of your intelligence can vote upon as well without discussion as with it. … Three persons of the colored race were elected to membership in this Association without knowledge upon the part of those electing them that they were of that race, and are now members of this Association. "*Resolved*, That, as it has never been contemplated that members of the colored race should become members of this Association, the several local councils are directed that, if at any time any of them shall recommend a person of the colored race for membership, they shall accompany the recommendation with a statement of the fact that he is of such race."

Restrictions on advertising and solicitations were carried over to the ABA's 1969 Model Code of Professional Responsibility. In *Bates v. State Bar of Arizona*, 433 U.S. 350, 364 (1977), the U.S. Supreme Court stated the following about advertising by lawyers: "[C]ommercial speech serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system." The ABA's Code of Professional Responsibility was updated in 1977 to allow advertising, with certain restrictions.

Legal Education

In 1837, the education of a lawyer was generally either training as an apprentice or formal education. Lincoln did neither, opting to study law on his own. David Hoffman, the father of American legal ethics, was the first law professor at the University of Maryland. In 1816, Hoffman wrote a classical law curriculum, entitled *A Course of Legal Study, Respectfully Addressed to the Students of Law in the United States*. Law schools became more common in the mid-1800s. Yale University offered a law degree in 1843. Tulane began law instruction in 1847, Pennsylvania in 1850, Albany in 1851, Columbia in 1858, and Boston University in 1872. The Union College of Law, which became Northwestern University School of Law, was founded in Chicago in 1859. But studying law in a lawyer's office rather than attending law school remained common into the 20th century.

The 1845 Illinois statutes contained the following requirements to practice law: a license from two Supreme Court justices and a certificate "from the court of some county, of his [the lawyer's] good moral character." In 1858, the Illinois Supreme Court created examining boards to conduct law examinations. Lincoln served on one of these boards beginning in 1858 and became head of his board in 1860.

In Lincoln's time, female lawyers essentially did not exist: the practice of law was seen as something for the good old boys. Not until 1869 was the first woman, Belle Babb Mansfield, admitted to a state bar in the United States—in her case to Iowa's state bar. In the same year, Myra Bradwell, editor of the *Chicago Legal News*, was refused admission to the bar in Illinois, despite having passed the bar exam. She filed an action in the Illinois Supreme Court, including a brief referring to Mansfield's admission

to the Iowa bar. Bradwell was turned down again in 1870 and lost an appeal to the U.S. Supreme Court. She was finally admitted to the Illinois bar in 1890, when the Illinois Supreme Court granted her a license. One of Bradwell's notable accomplishments was successfully battling Robert Todd Lincoln, resulting in the release of his mother, Mary Todd Lincoln, from Bellevue Place, an insane asylum in Batavia, Ill., where she had been confined.

Fundamental change in American legal education in the 19th century set the stage for legal education in the 20th century. Lawrence Friedman described the changes that took place at Harvard University:

> Eighteen seventy was a year of revolution in legal education. It was the year Harvard Law School got a bold new dean, Christopher Columbus Langdell. Langdell changed legal education dramatically. He aimed to teach law as a "science." He replaced dry lectures with the give-and-take of the Socratic method, and compiled the first "casebooks" to be used as vehicles for teaching the law. He also invented the law professor, in a way. Before Langdell, law schools brought in established lawyers and judges to give lectures part-time. Langdell hired young, smart men, with little or no experience in the world, but skill at teaching—at least in teaching as Langdell thought things should be taught. The Harvard method of question and answer, of plowing through casebooks, was slow and intensely impractical; even at Harvard, it had its enemies. Yet by the early twentieth century, it had conquered all its rivals.

By 1970, a rigorous legal education was the norm in the United States. This was near the end of the era of active lawyers who never went to law school. It was also just prior to the dramatic increase of women attending law school. Women were about to jump from a small fraction of the class to half the class. African-Americans were in law school in greater numbers than before. By 2012, legal education was becoming more practical. National law schools that taught only theory in the 1970s now included more clinical, practical training. Despite that change, however, the Socratic method continued as part of the way law was taught.

Pleadings

There were seven types of common law pleadings in the 19th century:

- declaration by the plaintiff;
- plea by the defendant to the counts of the declaration;
- replication by the plaintiff responding to the plea;
- rejoinder by the defendant, answering the replication;
- surrejoinder by the plaintiff, answering the rejoinder;
- rebutter by the defendant, answering the surrejoinder; and
- surrebutter by the plaintiff, answering the rebutter.

According to a modern civil procedure casebook, "Common law pleading was a nightmarish exercise. It was part of a system not well calculated to reach a decision on the merits. Indeed, pleadings were an end in themselves, and seemed more important than any factfinding function of the court. The situation led to calls for reform both here and in England in the mid-nineteenth century."

Pleadings in Illinois tended to be short and technical. John Dean Caton wrote: "By practice sanctioned by courts and lawyers, much of the verbosity and formalities required in the English courts, in both the common law and chancery pleading, was eliminated in early times, and I think, with marked advantages; while all that was substantive, and necessary fairly to advise the opposite party of what he had to meet, was retained."

Adoption of modern pleadings was slow in some states. Edson R. Sunderland, who drafted the Illinois Civil Practice Act of 1933, noted at the time that, even though the state of New York had adopted a code of civil procedure in 1848, "Illinois has heretofore done less to modernize its judicial procedure than any other important commercial state in the Union."

The Illinois Civil Practice Act of 1933 began as follows: "The provisions of this Act shall apply to all civil proceedings, both at law and in equity. …" Four types of pleadings were adopted:

- complaint: the initial pleading by the plaintiff, which replaced the declaration used in common law as well as the bill filed in equity cases;
- answer: the response by the defendant to the complaint, admitting or denying each allegation in the complaint;
- counterclaim, which may be initiated by the defendant as part of the answer; and
- reply, which is initiated by the plaintiff in response to any new matters raised in a counterclaim.

The Illinois Civil Practice Act of 1933 introduced numbered pleadings in Illinois. Numbered pleadings were introduced into federal practice in 1937. Numbered pleadings were a simple but significant step forward: they provided a mechanism by which one could visually understand and efficiently reference pleadings. Notice pleading, defined in the federal rules as "a short and plain statement of the claim showing that the pleader is entitled to relief," replaced technical pleading. Despite that, the trend in federal courts today seems to be away from pure notice pleading.

Legal Research

Late in his law career, Lincoln complained about a growing trend that was creeping across the country from the east: that of college-trained lawyers researching their cases to death. In 1897, Judge Abram Bergen, who had been a colleague of Lincoln's, commented on Lincoln and on legal publishing:

> He thought much. He read comparatively little. He knew thoroughly the works of Coke, Blackstone, Stephen, Chitty, Starkey and, later, Greenleaf's Evidence and Story's Equity. These contained the

> germs of nearly all law. He [Lincoln] gave little time searching for cases, or studying what is termed case law. He commenced practice when there were few text-books or reports, only two or three of Illinois, and when elected President there were only twenty volumes of Illinois reports. In these he participated as counsel in about one hundred cases. There are now of the Supreme Court one hundred and sixty volumes, and of the Court of Appeals sixty-two; in all of Illinois reports alone two hundred and twenty-two, more than eleven times the number in existence when he quit the practice.

In a footnote to his essay, Judge Bergen indicated that, in 1926 (when his 1897 address was published), there were 320 volumes of Illinois Supreme Court reports and 231 volumes of the Illinois Court of Appeals reports.

For much of the 19th century, decisions made by appellate courts were published irregularly by the state or by hit-or-miss private reporters and publishers. This practice was about to change in two important ways: legal decisions (primarily appellate) were about to be published in a timely manner and would have broad coverage. Also about to appear were West's Digest, Key Numbers, and Shepard's citator.

In 1810, *American Reports* totaled 18 volumes; in 1840, 545 volumes; in 1848, 800 volumes; and, by 1885, 3,800 volumes. Lawrence Friedman wrote the following about the reports:

> The ultimate influence of the reports can hardly be measured. They enabled the states to put together their own common law, independent of England, rival systems, and other states. At the same time, they enabled the states to borrow more freely from each other. Big states and famous judges were considered more authoritative, and were cited more frequently than small states and small judges. New York's reports carried high prestige, especially the opinions of Chancellor Kent.

The *American Reports* were soon to be supplanted by West's National Reporter System, which West announced in 1885, and which published the full text of all appellate decisions. West was promptly accused of being a waste basket reporter because it published all appellate decisions, rather than just "significant" ones.

Not long after Lincoln, legal research became mechanically thorough—albeit tedious and time-consuming. With the research done manually with paper volumes, law became, or was about to become, what may be the largest and most thoroughly indexed body of knowledge in existence. Pinpoint access to appellate opinions was available. Not only could one find case law, one could also find out if it was good law. All one needed was legal research techniques and a library. The explosion in case law citation about which Lincoln complained was easily managed by publishing developments that began after Lincoln's practice. After 1890, West decided to publish a comprehensive digest of all reported American decisions. This digest summarized legal points and led to West's structured system for legal research. Frank Shepard published *Illinois Annotations*. Shepard's concept was simple, yet hugely useful. He went through Illinois appellate decisions looking for cases cited within opinions; he then listed every place the earlier case was cited. This made it comparatively easy to tell when a case had been overruled or criticized. It also made it easy to find similar cases. His name became a verb: *to shepardize*. Initially this concept was implemented with stickers stuck on pages. In 1900, the stickers were dropped and a citator was published: *Shepard's Consolidated Illinois Supplement*. By 1903, *Shepard's* included points of law, which identified the legal issue to which the citing case referred.

About 1907, West Digest topics were numbered, using unique numbers for various legal concepts. These turned into Key Numbers. This system, with its paper foundation, grew quickly and also worked well electronically. West claims that its Key Number analysis is a scheme conceptualizing the entire body of American law, arranging it in an orderly and logical way. A West publication states: "The Key Number analysis contains about four hundred major topics, each one of which is further subdivided. There are over 100,000 individual Key Numbers used in the arrangement." The scheme is based on seven categories containing matters related to persons, property, contracts, torts, crimes, remedies, and government. Then, in 1928, West published the *United States Code Annotated*.

Changes in society, driven by technology, developed new areas of law. Francis Aumann wrote that "[s]tatute and common law expanded as public lands were opened to settlers and railroads were pushed far out into the West. Great industrial corporations developed and population increased particularly in the industrial centers. In the next fifty years, the law of corporations, railroads and public service companies and insurance developed rapidly."

Legal research did not change much from 1837 to 1970, with two exceptions: many more books were published, and judicial opinions were published promptly and finely cataloged or classified. Nearly everything remained paper-oriented, and research was manual and slow, but legal research became a rigorous discipline. The volume of judicial opinions on paper exploded, but much more was to come.

By 1950, *Shepard's* was nearly ubiquitous. By 1970, West had a digest for each unit of its National Reporter System. Early on, West made two major contributions in its judicial opinion reporters, starting with the Northwestern Reporter: reasonably quick and accurate dissemination of appellate opinions and editorial case headnotes summarizing decided issues and categorized by a Key Number system. According to Thomson West's web-site: "A headnote is a concisely written definition of a point of law in a judicial case, and any given case can have more than 50 points of law. West attorney-editors have written more than 24 million headnotes as part of West's caselaw collection, and write some 500,000 headnotes each year."

Lexis started to computerize legal research about 1973;

Westlaw started doing so in 1975. It took 10 or 20 years until prices came down to levels that medium or small law firms could afford. It also took time for computer research to advance much beyond complex Boolean searches.

Many lawyers today function with fewer books and by the seat of the pants, quick and dirty research—perhaps as lawyers did in Lincoln's time. Research today tends to be spotty and sloppy for many reasons, one being that the economic pressures some lawyers face cause them to take more cases than they have the time to research thoroughly.

Information and Technology

In his law practice, Lincoln understood the importance of acquiring the right information and of communicating it effectively. As President, he faced similar issues on a grander scale. Lincoln was the first President to make extensive and effective use of instant electronic communication in the form of the telegraph. The telegraph functioned like an early form of e-mail, carrying with it many of the features and dangers of e-mail itself: speed, the ability to break through layers of bureaucracy, lack of visual and auditory feedback (facial expression and tone of voice)—not to mention interception and downed lines. Lincoln, already a master of verbal communication, became a master at the telegraph.

Technology changed the law office, law practice, and the law. But the basics have remained the same: lawyers keeping up with their own cases and dealing with uncertainty, calendar conflicts, deadlines, clients, witnesses, juries, opposing counsel, and judges. Major physical differences from Lincoln's time include air conditioning, indoor bathrooms, and improved travel. Legal research, communication, and document preparation have all changed. The first commercially viable typewriter was patented in 1868 by American printer and editor Christopher Latham Sholes, with help from Carlos Glidden and Samuel W. Soulé. By the 1890s, typewriters were mass marketed, which, as Lawrence Friedman explained, changed law office staffing: "Apprenticeship … was on the road to extinction. Perhaps what killed it was the rise of the law firm, and the revolution in the way offices were organized: with secretaries, dictation, typewriters, telephones. These 'modern' offices sharply distinguished between professional staff and office staff; the apprentice, who was a little of both, became obsolete."

On Jan. 14, 1861, President-elect Lincoln wrote to John G. Nicolay: "Mr. Nicolay will please make two copies of Gen. Wool's letter, and one copy of my answer to it." Nicolay had to copy the letters by hand, even though carbon paper, which could still be found in law offices in 1970, had been invented in 1806.

In the mid-20th century, information was relatively manageable. Secretaries typed documents from shorthand notes of lawyers' dictation or from handwritten text on legal pads. In the 1960s came the IBM Selectric typewriter. At the time, most lawyers did not know how to type and looked down on typing. Then came desktop computers. For a while lawyers were hostile to the keyboard, but the next generation of lawyers knew how to type. FedEx was also a large step forward. Despite having been patented as far back as 1843, fax machines were not generally available until the 1970s. Telephones were invented in 1876. Long distance calls remained expensive until shortly after the 1984 breakup of the Bell System. Information management at the time was still in its infancy.

The telegraph functioned like an early form of e-mail, carrying with it many of the features and dangers of e-mail itself: speed, the ability to break through layers of bureaucracy, lack of visual and auditory feedback (facial expression and tone of voice) —not to mention interception and downed lines.

Today, telephone calls are cheap and sometimes free or nearly free. People are permanently connected by e-mail, cell phones, iPhones, Blackberrys, and other devices. As a secretarial tool, shorthand is largely obsolete. Technologically phobic attorneys are dying out, retiring, or educating themselves. Adapting to technological change can be slow, as this 1926 observation highlights: "Many lawyers are unnecessarily handicapped because they never have learned how to keep documents and memoranda so they can be found quickly." Electronic filing, if truly transparent and freely accessible, could partially solve this problem.

Transportation

Technology drove changes in transportation and manufacturing, and these changes led to changes in the law—through both judicial and legislative action. When Lincoln began practicing law, transportation was primitive, and therefore people and information traveled slowly. Trains were coming to Illinois but had not yet arrived in the Eighth Circuit. Rivers and canals were the only important highways, and roads, if they existed, were frequently muddy. Counties were usually designed with county seats in the center, placing everyone within a day's horse ride of the courthouse. As a member of the Illinois General

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Assembly, Lincoln worked for river and rail infrastructure improvements. On Feb. 11, 1861, President-elect Lincoln, passing through Lafayette, Ind., on his way to Washington, D.C., stated:

> FELLOW CITIZENS:—We have seen great changes within the recollection of some of us who are the older. When I first came to the west, some 44 or 45 years ago, at sundown you had completed a journey of some 30 miles which you had commenced at sunrise, and thought you had done well. Now only six hours have elapsed since I left my home in Illinois where I was surrounded by a large concourse of my fellow citizens, almost all of whom I could recognize, and I find myself far from home surrounded by the thousands I now see before me, who are strangers to me.

Transportation and communication changes picked up speed after the Civil War. As technology changed society, the courts made decisions and legislatures enacted statutes in new areas, especially tort law. A casebook explained the changes in the law:

> In 1776 torts was almost unknown as a field. As late as 1835, Francis Hilliard's *The Elements of Law; Being a Comprehensive Summary of American Jurisprudence* barely recognized the existence of tort law. However, tort law developed so rapidly that by 1859 Hilliard published a two-volume treatise on the subject, *The Law of Torts and Private Wrongs*, with citations to over 5000 cases. Railroads, steamboats, mills, and urbanization were the great engines driving this revolution in tort law.

Appeals

In the 19th century, lawyers and judges filled the function that court reporters fill today. In 1906, in *Lincoln the Lawyer*, Frederick Trevor Hill wrote the following:

> There were no official shorthand writers in the courts while Lincoln practised, and the lawyers took their own notes of the testimony during the trial; and these, together with such memoranda as the judge entered on his minutes, formed the data for the record. Lincoln himself, however, rarely took any notes, claiming that it distracted his attention; and as his memory was excellent and his reputation for honesty well established, he experienced no difficulty in supporting his version of what happened at the trial when the records were necessary for the appellate courts.

In a footnote in his book, Hill explained that, "[i]n making up an appellate record in those days, each lawyer stated the substance of what he thought the testimony had been, and the judge supplemented or corrected the two versions and certified the result to the higher court."

A book on inventions reports that stenographic reporting improved in the mid-1800s: "Phonetic stenography, introduced by William Tiffin in the mid-eighteenth century, was a significant step in making stenography faster. … [I]t was not until 1837, when Sir Isaac Pitman (1813–1897), an English educator, published *Stenographic SoundHand*, that a single dominant English stenographic system arose." Benn Pitman, brother of Isaac Pitman, supervised four reporters using Pitman's shorthand system to transcribe the proceedings at the trial of the individuals who conspired to assassinate Abraham Lincoln.

In Lincoln's day, oral arguments were long (sometimes lasting more than a day) and briefs were short (maybe just one issue and a list of cases). Lincoln had a relatively clean slate with which he worked on his appeals. There was not much precedent, leaving lots of room for persuasion. By the end of the 19th century, the volume of cases increased. As Lawrence Friedman wrote, "Many appellate opinions of the '80's [1880s] and '90's [1890s] are torture to read—bombastic, diffuse, labored, drearily logical, crammed with unnecessary citations. There are many reasons for this difference in style. Reports were fuller, and were not carefully edited. The work load was too great to allow time for pruning and polishing."

In 1839, a congressional committee investigated "*the expediency of giving to the judges of the supreme court of Iowa* [Territory] *the same salary as those of Wisconsin* [Territory]. …" (Emphasis in the original.) The committee's report summarized the plight of the Iowa Supreme Court judges:

> In the Territories there are no public conveyances, and the judges must keep horses, winter and summer; this is a heavy expense to him who does not cultivate the soil, particularly in a new country, where the demand for articles of consumption is great and prices high. At this time, in some parts of the Territory, flour is worth twenty-five dollars per barrel, and other articles in that proportion. When it is estimated how much is required to maintain the family of an officer dependent alone on his salary, then surely the compensation to the judges of Iowa is not sufficient or proportioned to the services required of them; and though they, thus far, have remained in the Territory, attending strictly to the discharge of their duties, yet their compensation is

less than those of Wisconsin by three hundred dollars each per annum.

Public Image

In Lincoln's time, the judicial system was recognized as essential and the administration of justice was generally respected. Beginning in the 1970s, from a public relations standpoint, the legal system was falling apart. Lawyers, judges, and the legal system itself were threatened in a way they did not foresee but that they had helped to create. The system was about to become victim to the ignorance it generally fostered or, at minimum, tolerated.

The Internet and cable television were around the corner. Instant communication can provide information without knowledge, which is like power without judgment. When fundamentals are not understood, misunderstandings of a profound and serious nature may harm both individuals and society. The public today tends to dislike lawyers. Legal ethicist Ronald D. Rotunda, after considering survey results, wrote the following:

> People dislike us because we manipulate the legal system and file a lot of lawsuits, but they like us because we fight for our clients and cut through bureaucratic red tape. When we fight zealously for our client, file lawsuits, and cut through red tape we are doing good, but when we fight zealously for our client, file lawsuits, and manipulate the legal system, we are doing bad. We receive accolades and denunciations for doing the same thing. In other words, individuals want a Rambo-like litigator on their side, but they want the opponent's lawyer to be understanding and supportive of their position.

Rotunda reasoned that lawyers would never be popular as long as they were really doing their jobs:

> We should not be surprised that medical doctors rate more highly in the public opinion polls than we lawyers do, because doctors simply represent the patient. There is no doctor fighting zealously for the disease. … Our legal system gives everyone their day in court, and some of these litigants are viewed less favorably than ugly diseases. Lawyers are the messengers who are blamed for the bad message. … [I]n litigation, at least one side (often called the loser) will be unhappy. Even if the other party (often called the winner) believes that he or she has been ultimately vindicated, it is still not unusual for that party to complain that justice did not come easily but had to be fought for, summoned, mustered. Even winners are often upset because they had to hire a lawyer; justice and equity did not come knocking on the door, unbeckoned, and asking to enter. When winners and losers are disgruntled, their lawyers are like magnets for their complaints.

Contemporary courtrooms are mostly empty except for the direct participants. The public thinks that it knows more than it does. Attention spans are short, and understanding is wide but shallow. There is more visibility, but little vision.

In his campaign for the Illinois General Assembly, which took place about five years before he became a lawyer, Abraham Lincoln said, "Upon the subject of education, not presuming to dictate any plan or system respecting it, I can only say that I view it as the most important subject which we as a people can be engaged in. That every man may receive at least, a moderate education, and thereby be enabled to read the histories of his own and other countries, by which he may duly appreciate the value of our free institutions, appears to be an object of vital importance. … "

Knowledge and understanding facilitate intelligent decisions, permit individuals to function better, and allow the overall system to function better. With an informed public, ordered liberty is more nearly obtained. The knowledge of the general citizenry is just as important as the knowledge of officers of the court.

Legal education of the general public may be more essential today than ever before. Civilization's intractable problems tend to gravitate to attorneys and then to courts. Public respect for the American legal system rests on a general perception of its overall fairness. That respect is the life force of the judicial branch and the historical bedrock of our country. This was true from the beginning, and it remains true from Lincoln's day to the present. **TFL**

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