



The Jury in Lincoln's America

Stacy Pratt McDermott

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The Jury in Lincoln's America, by Stacy Pratt McDermott

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PREFACE

Through an examination of the jury and of the law in the vibrant and dynamic environment of antebellum Illinois and through an analysis of the jury trials of the state's most famous son, this book seeks to demonstrate the importance of the jury and, by extension, the law to nineteenth-century Americans. Abraham Lincoln and his contemporaries exhibited a commitment to the rule of law that not only shaped their understanding of society but also influenced their individual roles within their communities and the world at large. Lincoln stands in history as an iconic figure of the American past, but he was not born ready to lead his nation through a bloody civil war. His development as a man and a national leader took place in the courthouses of antebellum Illinois during a legal career that spanned three decades. The legal environment that shaped Lincoln provides the context of this book, and Lincoln's experiences with the law as an attorney, a litigant, a judge, and a juror provide a fascinating human connection to the history of the law in pre-Civil War Illinois, the Midwest, and America.

Antebellum Springfield and Sangamon County, Illinois, were home to Abraham Lincoln, and therefore, they are the site of this community study of the midwestern legal experience and analysis of local jury composition.¹ But even without the Lincoln connection, this locale is a viable environment in which to study nineteenth-century legal history for several critical reasons. First, Springfield and Sangamon County were settled and culturally diverse. The county represented a cultural blending of the North and the South. Of the states of nativity that Sangamon County residents reported in the 1860 census, Connecticut, New York, and Ohio were as ubiquitous as Kentucky, Tennessee, and Maryland. There was also some ethnic diversity in the region. A relatively large number of Irish and German immigrants lived in Springfield, and a small population of free blacks made their homes there as well.²

Second, the county contained elements of both urban and rural mid-nineteenth-century America. Sangamon County was agriculturally based,

and farming was central to its economy. Yet Springfield—the county seat, state capital, and home to 29 percent of the county's residents in 1860—was a bustling commercial center with a population of more than nine thousand people. Political, legal, social, and economic systems were in place, and in Springfield and Sangamon, as in many other midwestern towns and counties, churches, civic and literary organizations, professional associations, and schools were numerous. By 1850, Sangamon County had none of the exceptional, frontier-related characteristics (such as absent or makeshift legal institutions or transient populations) that might skew such a study of jury composition. And for its part, Springfield was a typical town in the emerging Midwest.³

Finally, the surviving antebellum legal records of the county are abundant. A nearly complete run of the docket books, court records, and fee books of the circuit court during the antebellum period is available to the scholar. As well, county histories and newspapers from that era are plentiful, and manuscript materials compiled by the county's residents are exceedingly rich. From these copious resources, it is possible to reconstruct a demographic picture of jury composition in Sangamon County. Most significant for the current study given its focus on Abraham Lincoln, the county was the home base for this successful midwestern attorney: it provided the social, political, economic, legal, and physical context in which he developed his law practice. In Springfield and in the other county seats of central Illinois, he handled more than fifty-two hundred cases in a legal career that spanned nearly twenty-five years during the most formative era in the history of both American law and the emerging Midwest. This study fully utilizes the records of Lincoln's law practice.⁴ Statutes, legal treatises, newspapers, periodicals, manuscript sources, and demographic data collected in the 1850 and 1860 U.S. censuses enhance the richness of the hundreds of trial and appellate case documents examined for this volume. History, environment, people, and power relations that existed within antebellum midwestern communities are never far from the discussion.

This book investigates the status of the jury as a democratic and political institution in antebellum America. Further, it evaluates the characteristics of the jurors, their jury experiences in Sangamon County, and the quality of their verdicts. It is relatively easy to examine the nineteenth-century political and legal rhetoric that antebellum Americans employed

to describe the jury, but it is a much more laborious task to analyze the status of the jurors themselves. This book seeks to find out who served as jurors in Illinois and to study their jury box and courtroom experiences. It also explores how the individual status and experiences of jurors informed their service and what juror status meant in terms of jury verdicts for various groups of litigants, especially men without property, women, and African Americans. When we understand the economic, social, political, and professional status of the “gentlemen” who served on grand and petit (or trial) juries, we can begin to see the ways in which jury selection and service played out at the local level. Within the circuit courts, evidence of the law was clear and direct. In the jury box, jurors represented a very human link between legal structures and the community. From that specific convergence of law and society, a vivid picture of the midwestern Illinois legal landscape emerges. Abraham Lincoln’s own juror service and the corpus of his jury cases further enhance that landscape.

Community is an integral part of the legal story this book relates. The community in this book is Sangamon County, Illinois, but it is also the broader community of the midwestern region. The analysis of jury composition and of the status of the jury in antebellum Illinois is grounded in a body of literature that defines the Midwest as a valid historical region with distinct geographic, legal, and political boundaries. Historians in recent years have contributed to our understanding of the Midwest’s political and social development during the mid-nineteenth century. Their findings have revealed marked geographic and historical differences between the people who settled in the states that developed from the Old Northwest Territory and those who remained in the southern and eastern United States, where far more historical research has been concentrated. However, because there are no similar community studies of juror composition, this book cannot offer an in-depth analysis comparing antebellum midwestern juries and juries in other parts of the country. Instead, it seeks to provide as much detail as possible about the circumstances of the jury and the experiences of jurors in one midwestern locale and to suggest some conclusions about the wider meaning of jury service in the emerging Midwest.⁵

Antebellum midwestern history is an important focus of the book, and midwestern legal history is particularly central. Little scholarship on the history of law in this vibrant region exists, and the legal history of Illinois

prior to the Civil War has not yet been told. With the exception of David Bodenhamer's research on the history of the jury in antebellum Indiana, midwestern scholarship has not investigated the jury. This book is intended to provide the antebellum Illinois perspective, adding to Bodenhamer's work, and to fill a significant gap in the scholarship of the history of American law.

The book consists of an introduction and four chapters that combine to show the structures and context of the law, the composition of juries, the experience of jury service, and the power relationships that functioned whenever a grand or petit jury was impaneled. The introduction broadly defines Abraham Lincoln's America and discusses the nineteenth-century political language that Americans used to describe their understanding of juror qualifications, the process of trial by jury, and jury service. The introduction also highlights the antebellum American commitment to the law and, particularly, to the institution of the jury.

Chapter 1, "Jury Law and Tradition in the Antebellum Midwest," examines the statutes and appellate case law pertaining to juries in four midwestern states from the year each attained statehood to 1860: Ohio (which entered the Union in 1803), Indiana (1816), Illinois (1818), and Michigan (1837). In less detail, the chapter looks at the law regarding juries in Iowa (1846) and Wisconsin (1848). Before we can even begin a discussion on the status of jurors and the role of juries, it is imperative to understand the legal structures that state legislatures created to define and maintain jury service in the antebellum Midwest. Consequently, this chapter also compares and contrasts the law from state to state, explores the political and social meaning of trial by jury for midwesterners of the era, and reveals the continuities and discrepancies between law and tradition. It sets the context of the legal foundation of the jury and provides a basis from which an understanding of antebellum midwestern jury politics can emerge.

Chapter 2, "The Composition of Juries in Sangamon County, Illinois, 1830–60," is quantitative in structure and incorporates the research in regard to juror status. It presents raw demographic data on the grand and petit jurors in Sangamon County and offers a community study of the jurors themselves. The data appear in narrative form, and the quantitative analysis is infused with individual stories of jury experiences. The analysis also considers the demographic makeup of Sangamon County beyond the

jurors and addresses the meaning of community in terms of the county's legal history. The chapter also provides some complementary statistical analysis regarding jurors who served outside of Sangamon in Lincoln's cases in circuit courts throughout central Illinois. The purpose of this additional evidence is to give broader geographic credence to the Sangamon County context and to make a number of more general claims about mid-western juries as well.

Chapters 1 and 2 draw heavily on the more than ninety-six thousand legal documents from Abraham Lincoln's law practice. Between 1837 and 1861, Lincoln tried cases in the circuit courts across central Illinois, in the federal courts in Springfield and Chicago, and in the Illinois Supreme Court. His caseload was varied and extensive, and his courtroom experiences shed light on the legal systems of Illinois, including key aspects of jury service in the pre-Civil War era.⁶ Thus, the documentary evidence from Lincoln's law practice provides a convenient set of primary source materials. But more than research convenience, it offers a legitimate historical narrative regarding the law and community in a vital, developing region during a dynamic period of American history.

Chapter 3, "The Work of Jurors in the Antebellum Illinois Courtroom," presents an in-depth examination of the actual work and experiences of grand and petit jurors. This analysis gives us a sense of how juries functioned and how litigants experienced the law at the local level. The analysis evaluates juror status and what that status meant to the outcome of the legal cases that various panels of jurors interpreted. Four topics—crimes related to drinking and gambling, slander, divorce, and race—are the focus of this examination on jury work, and three groups of defendants and civil litigants—white men without property, women, and African Americans—share the stage with the jurors who heard their cases. The chapter draws meaning from the contrasting status of jurors and litigants, examining different areas of the law to provide some broader understanding and balance.

Chapter 4, "The Struggle for Legal Power in Lincoln's America," considers the push and pull of jury authority, which was one of the central issues of nineteenth-century law. Juror qualifications and service, jury work, and popular discourse regarding the institution of the jury fueled the flames of the power struggle between bench, bar, and jury. As judges sought to redefine the role of the jury in the courtroom and dictate procedure, jurors

tried to make sense of the law and a rapidly changing world through their verdicts. And as panels of juries exercised their courtroom authority, the rising professional bar worked to position itself as a broker between judicial dominance and jury independence. Illinois jurors, lawyers, and judges wanted to bring order to the sometimes frightening and chaotic legal, social, economic, and political transformations they were experiencing in the emerging Midwest. The end result was a three-way battle for dominance that became particularly apparent in Illinois courtrooms in the 1840s and 1850s. This chapter analyzes the power struggle in order to better understand the centrality of the jury in the antebellum Midwest, which represented the America of Abraham Lincoln and his courtroom contemporaries.

This study examined the reported summaries and opinions in 175 appellate cases related to the jury in Indiana, Illinois, Iowa, Michigan, and Wisconsin. Although the bulk of the opinions came from the Indiana and Illinois supreme courts, a selective sampling from other midwestern states was instructive. Because of the importance of the appellate cases in the descriptions and analyses presented throughout the book, an annotated list of the 175 cases studied is included in the appendix. Readers will find this a useful reference for each chapter as well as a convenient resource for further inquiry.

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Introduction

Abraham Lincoln's America

When the young Abraham Lincoln moved to Indiana with his family in 1816, permanent settlement in the developing states of the Old Northwest Territory was just under way. In 1830, when the Lincoln family crossed the Wabash River to relocate in central Illinois, the states and territories of what was then the emerging Midwest—Ohio, Indiana, Illinois, Michigan, Wisconsin, and Missouri—were still a sparsely populated frontier with a population of just over 1.5 million people, representing only one-eighth of the entire population of the United States. However, after 1830, the region was on a fast track of population growth. Ohio had 1.5 million people by 1840 and nearly 2 million by 1850, and Indiana's population had increased by 300,000 between statehood in 1816 and 1840. In 1830, Michigan's population had been less than 32,000, but over the next ten years, it blossomed to more than 200,000; by 1850, the state population numbered 400,000. Wisconsin's population grew from 30,000 in 1840 to more than 300,000 in 1850. The Lincolns were not the only people who recognized the region's promise and hoped to take advantage of all it had to offer.¹

By 1840, the population of the emerging Midwest had surpassed 3 million. In the 1840s, there were few large cities in the region, but by 1850, the population of Cincinnati, St. Louis, and Chicago had reached 115,000, 78,000, and 30,000, respectively. In Illinois, the population grew from just over 157,000 in 1830 to nearly 860,000 by 1850. Also by that year, the population of the entire region had exceeded 5 million. An observer of this astonishing population growth shared his views of it in the *Sangamo Journal*, a newspaper in Springfield, Illinois, writing that "the child was then alive who would live to see two million population in Illinois, and that by 2000 A.D. there would be 3,000,000."²

Settlers in the region were a "conglomeration of peoples," migrating in homogeneous groups and creating a complex patchwork of ethnic and cultural settlement. They came from the eastern and southern United States and from across the Atlantic Ocean, and some groups predominated in certain areas. Tennesseans and Kentuckians, like the Lincoln family, settled in the southern half of Indiana and in Illinois; New Yorkers settled in Michigan and Wisconsin; and German, Irish, Norwegian, and Scot settlers were also establishing a noticeable presence in the midwestern states. By comparison with other states, few New Englanders and people of foreign nativity settled in Indiana. People from slaveholding states comprised the largest group of settlers in that state: in 1850, southern-born settlers made up 44 percent of American-born residents in Indiana. What foreign settlers there were in Indiana tended to be German, whereas Illinois settlement patterns were divided between immigrants from Germany and those from Ireland. In the southern half of Illinois, nearly all of the American-born settlers were from Kentucky and Tennessee. In the northern section, settlers hailed mostly from Ohio. More than 135,000 New Yorkers settled in Michigan by 1850; they also predominated in Wisconsin, but New England provided a significant number of settlers there as well. In Iowa in 1850, southerners and northerners had settled in basically equal proportions.³

Although the overwhelming majority of residents of the emerging Midwest were white, the population also included Native Americans, immigrants, and people of color. A New Englander speaking of Wisconsin in the 1840s wrote: "The five races of both continents [are] present . . . the Yankee is in his own latitude, and retains in full his unique identity. Men with European tongues gather in here like the dispersed of the tribes of

Israel. All say welcome to each other. The Frenchman shortens his mustaches, and becomes American . . . Irishman you recognize by his hardy form and native brogue. . . . Jews and Germans are here. . . . I see . . . a respectable representation of the people of color, and one small band of natives—real red men, but wearing paints of different colors on their cheeks.” This observer was certainly naive in his harmonious depiction of Wisconsin, but he was accurate in noting that varying groups, both ethnically and racially defined, coexisted in the Midwest.⁴

By 1860, nearly 7 million people, 22 percent of the total population of the United States, resided in the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. Since the Northwest Ordinance of 1787, which had laid the physical boundaries of the nation’s “West,” the region was being transformed from the frontier of a young country to a geographic and economic center of a burgeoning nation. With settlement and growth came great environmental change and a landscape that was much altered from the vast prairies and woodlands of the Old Northwest. While the region was undergoing extreme economic depressions in the late 1830s, “people continued to live and to make a living . . . settlements advanced . . . lands were cleared, trade was carried on, small industries were born and grew.” One writer marveled that “the growing Midwest was a land of wooden barns and houses, of wooden schools and churches, wooden sidewalks in the towns and plank or wood-block streets in the cities. European travelers, puzzled at the frontier’s frame houses, were astonished to see wooden factories, hotels, and even wooden courthouses with oak or ash columns painted like clouded marble.” The emerging Midwest was a region of enormous growth and development, and people in other parts of the country and the world took notice.⁵

The vibrant atmosphere of Springfield, Illinois, in 1850 reflected the dynamic nature of the region. The economic, political, and social pulse of the bustling town revealed something of the region’s promise. The unpaved streets and boarded sidewalks were full of pedestrian and horse-and-buggy traffic, as business owners, lawyers, litigants, and consumers darted in and out of the numerous shops and offices on and around the state capitol square. The impressive physical landmarks of the town included the Third Presbyterian Church; Ash & Diller’s lumberyard; and the large, three-story Tinsley Building, which housed the U.S. Post Office

and the U.S. federal court. Standing in front of the Illinois State Capitol, one could see the commanding Greek portico of the Sangamon County courthouse, the handsome American House Hotel, and the Illinois State Bank. It was just a short walk to enter the storefronts of more than a dozen dry goods stores, three drugstores, two bookbinderies, and numerous other businesses, including barbershops, boot and shoe stores, clothiers, gun dealers, and law offices.⁶

Springfield had been the home of the Illinois state government since 1839, when the construction of the capitol building was completed. Set on the public square, the classical and elegant two-story Greek Revival building, constructed of local blond dolomite limestone, featured a dome and substantial Doric columns. Considered one of the most imposing seats of government in the West, the capitol stood as a symbol of the established political and legal institutions of the state. Although Sangamon County and the state of Illinois were predominately rural and agriculturally based, the county and the city of Springfield were not the wild frontier. In 1850, the physical environment was settled, much of the land was developed, and the population and community were booming. Home to nineteen lawyers, sixteen teachers, fourteen members of the clergy, thirteen physicians, four newspaper editors, three dentists, and at least six schools, including the Colored School, Springfield was an established town with a thriving economy; a strong political heartbeat; well-established religious, educational, and social institutions; and entrenched legal structures. Native-born Illinoisans, Kentucky and Tennessee southerners, New York and Connecticut Yankees, and Irish and German immigrants made their homes and earned their livelihoods in Springfield. The rapidly developing transportation networks of the area facilitated settlement and mobility. Springfield and Sangamon County served as transportation crossroads and exemplified “midwestern cultural mixing.”⁷

Springfield was Lincoln's town for twenty-five years. It was home to his family and the center of his professional experience; it witnessed his political disappointments and achievements; and perhaps most important, it was where his intellect was honed and where his worldview developed. As he departed from the town in February 1861, he declared, “To this place, and the kindness of these people, I owe every thing.”⁸ To Lincoln, Springfield and its midwestern context was America. For him and nearly