



Legal History

Lincoln in the Second Circuit

By C. Evan Stewart

Political careers have sometimes been jump-started by one speech. William Jennings Bryan at the 1896 Democratic Convention (the “Cross of Gold” speech) is a classic example. Even more important, however, especially for the future of America (and the world), was a speech Abraham Lincoln made in New York City. Without it, he would never have been President.

A Nascent Candidacy

Having narrowly lost the Illinois Senate race to Stephen Douglas in 1858 (because of the gerrymandered Illinois Legislature), but having gained a fair amount of political notoriety as a result, Lincoln and his allies undertook to keep him in the public eye so that he could be “available” for office in the future. Besides cor-

responding widely with Republican leaders throughout the North, Lincoln traveled to Ohio, Indiana, Wisconsin, and Kansas; in each, he gave speeches that were well-received and prompted many to propose him for a spot on the 1860 Republican ticket. To one Pennsylvania politico who wrote Lincoln, promoting the Pennsylvania Governor (Simon Cameron) for President and Lincoln for Vice President, Lincoln responded in part: “I shall labor faithfully in the ranks, unless, as I think not probable, the judgment of the party shall assign me a different position.” And with his sharp political instincts “Old Abe” also knew that, before he could make a claim to either spot on a national ticket, he would have to ensure that the factious Illinois Republicans would be a solid block for their “favorite son.” As such, Lincoln spent much of 1859 and 1860 addressing various feuding personalities (both great and small) in order to keep their eyes on the bigger prize.

An Invitation to Speak in Brooklyn

On October 12, 1859, James A. Briggs, a New York based lawyer and ally of Ohio Governor Salmon P. Chase (who desperately wanted to be President – see *Federal Bar Council News* (December 2000)), sent a telegram to the “Hon. A. Lincoln” that asked, “will you speak in Mr Beecher’s church Broolyn [sic] on or about the twenty ninth (29) November on any subject you please pay two

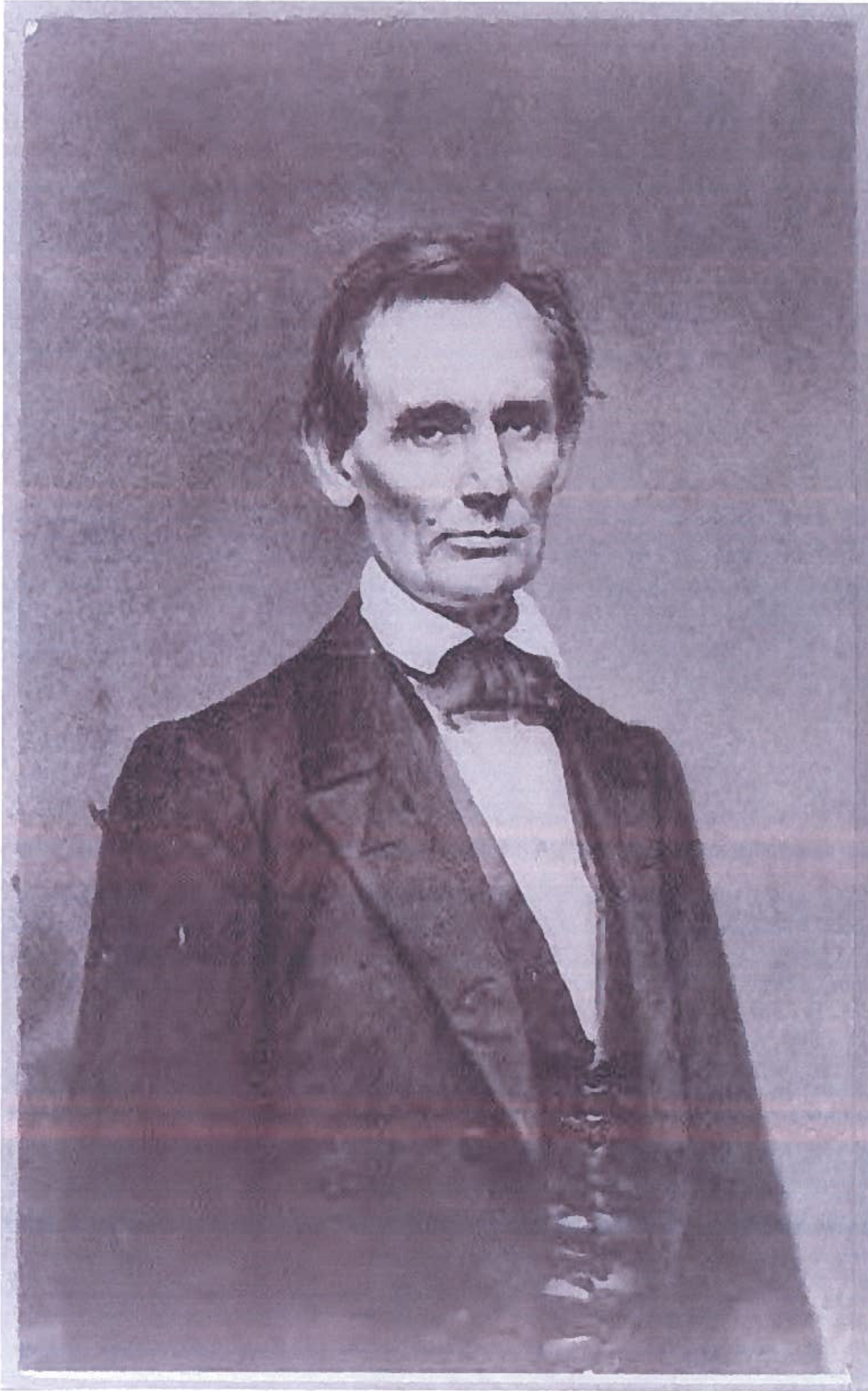
hundred (200) dollars.”

Lincoln instantly recognized that speaking in Henry Ward Beecher’s Plymouth Church in Brooklyn – the “Grand Central Station of the Underground Railroad” – would be a perfect opportunity for the “prairie statesman” (as New York Senator William Henry Seward referred to Lincoln) to widen his contacts and establish his bona-fides with influential Republican leaders in the East. Of course, there were significant risks, not the least of which was whether his frontier style of oratory would play well before the “wealthy and fashionable society of the great city.” And Briggs was not interested in promoting Lincoln’s candidacy, *per se*; rather, he hoped to use Lincoln as a means to undercut Seward (the presumptive Republican front-runner) in his home state, to the benefit of Chase. (Ultimately, the sponsorship of the event was taken over by the Young Men’s Republican Union of New York, which was showcasing various candidacies in an effort to weaken Seward.)

Because of Lincoln’s legal and political commitments, the November 29th date proved impossible. As a result, Monday, February 27, 1860, was eventually agreed upon as the date for Lincoln’s speech. And on February 22, he boarded a train in Springfield to make the trek eastward.

Preparing the Speech

In the September 1859 issue of *Harper’s*, Lincoln’s arch-rival, Douglas, had published a lengthy



Abraham Lincoln photographed by Matthew Brady before delivering his Cooper Union address in New York. Photo courtesy Library of Congress Prints and Photographs Division, LC-USZ62-1891.

tract entitled “The Dividing Line Between Federal and Local Authority: Popular Sovereignty in the Territories.” The main thrust of Douglas’s article was that the Founding Fathers had specifically intended for the federal government to have no jurisdiction with respect to slavery in the territories; consistent with Douglas’s espousal of “popular sovereignty,” that authority resided only in the territories themselves. Thus, slavery could expand throughout the territories, if those in the territories so desired it. It was this contention that Lincoln committed himself to rebut before his New York audience.

As he began his research, Lincoln wrote notes of his thoughts, one of which concluded: “[The Founding Fathers] *did*, through the federal government, control slavery in the federal territories. They did the identical thing which D[ouglas] insists they understood they ought not to do.” (emphasis in original) And to prove this point, Lincoln did prodigious research into the Constitutional debates, the papers of Washington, Jefferson, and Madison, as well as

the earliest Congressional votes on slavery. The results of that research would provide the core for his speech, as well as powerful political ammunition for the 1860 campaign that lay ahead.

Lincoln then took to writing, re-writing, and re-writing again his speech. His law partner, William Herndon, later observed that “[n]o former effort in the line of speech-making had cost Lincoln so much time and thought as this one.” Lincoln even walked the streets of Springfield, speaking aloud various passages to see how they sounded – sometimes to the puzzled amusement of his neighbors. Finally, Lincoln was satisfied with his work product; Herndon was, as well, sure that “it would be the crowning effort of Lincoln’s life.”

Only one more thing needed to be done before boarding the train. Lincoln ordered a new black suit from a local tailor, as well as a new pair of boots to go with his suit. The “prairie statesman” wanted his sophisticated audience to believe he could meet them at least half way, culture-wise.

The Big Apple

The train took three entire days to zig and zag its way across the country. On the last leg of the journey (Philadelphia to New York), Lincoln learned for the first time that his speech would be taking place at the Cooper Institute in New York, as opposed to the Plymouth Church in Brooklyn. Conventional wis-

dom/history is that Lincoln was overwhelmed when he set foot in the bustling metropolis and that his fear of failure was renewed by the shift of forum to the big city. That might be partially correct, but “Old Abe” was also thinking with great clarity about how to advance his chances for the national stage.

One example of this is that he made a point to have his portrait captured by the increasingly famous photographer, Mathew Brady. Lincoln, who had previously been photographed at other key moments in his career, was carefully posed by Brady as a thoughtful statesman, with a table of books and a pillar. Then the photographer, worried about his gangly and mis-proportioned subject, began to rearrange Lincoln’s collar; Lincoln retorted: “Ah, I see you want to shorten my neck.” To which Brady later recalled replying: “That’s just it – and we both laughed.” The flattering picture that Brady took would turn out to be the key photographic representation of candidate Lincoln for the remainder of the 1860 election cycle (and beyond).

The “Speech”

A crowd of fifteen hundred distinguished New Yorkers showed up at Cooper Union on the evening of February 27 to hear the “prairie statesman.” Warmly introduced to the crowd by literary giant William Cullen Bryant, the seated Lincoln stood up and slowly walked to the podium. Visually, the crowd was taken aback

by the extremely tall, thin man with ill-fitting, wrinkled clothes and a “long, gaunt head capped by a shock of hair that seemed not to have been thoroughly brushed out.” And if that were not enough, his first words were: “Mr. Cheer-man.” Not a great start.

Nerves undoubtedly played a part, but so did the fact that Lincoln chose to employ a speaking style different from the style he had employed so effectively on the political stump in Illinois. As one of Lincoln’s friends recounted, Lincoln did not proceed “in so familiar a way, walking up and down, swaying about, swinging his arms, bobbing forward, telling droll stories and laughing at them himself.” Instead, he stood “stiff and straight, with hands quiet, pronouncing sentence after sentence, in good telling English, with elaborate distinctness, . . . and casting at each finished period, a timid, sidelong glance at the formidable army of Reporters who surrounded the table close at his elbow, as if conscious, that after all the *world* was his audience, . . . and that for the time being, these little busy fellows were the arbiters of his fate.” Not only did this style start to win over the media present, but the general audience as well.

As Caesar did with Gaul, Lincoln divided his presentation into three parts. The first part was a historical argument, crafted in a legal structure, refuting Douglas’s argument and demonstrating with piece after piece of evidence that the Founding Fathers believed the federal government was em-

powered to restrict slavery in the territories. The second part was directed to being conciliatory to the South (i.e., more moderate than Seward), while also tagging Southern “fire-eaters” for the blame for any challenge to the sanctity of the Union. And the third part was directed to the base of the Republican Party – to not waver as to its core beliefs.

Not even citing Douglas’s article in *Harper’s* by name (although he repeatedly invoked Douglas’s line “our fathers who framed the Government under which we live”), Lincoln systematically analyzed the thirty-nine signers of the Constitution, carefully detailing votes by twenty-three signers on the Northwest Ordinance (in 1784, 1787, and 1789), a 1798 statute barring slaves from moving into the Mississippi Territory, a bill enacted in 1804 regulating slavery in the Louisiana Territory, and the Missouri Compromise of 1820. As to the sixteen signers who did not have revealing voting records one way or another, Lincoln demonstrated that many influential leaders (e.g., Franklin, Hamilton, Morris) had been forceful critics of slavery. By his compelling presentation of the evidence, Lincoln left the audience no room to doubt that Douglas’s thesis was neither correct nor historically well-founded.

Deftly inserting the knife into Douglas’s side, Lincoln closed this section by saying, among other things:

If any man at this day sincerely believes [that the Founding Fathers did not want to con-

trol slavery in the territories], he [has a] right to say so.... But he has no right to mislead others, who have less access to history, and less leisure to study it, into the false belief that ‘our fathers who framed the Government under which we live’ were of the same opinion – thus substituting falsehood and deception for truthful evidence and fair argument.

In the second part of his speech, Lincoln said he would speak directly to the Southern people, “if they would listen – as I suppose they will not.” Embracing the mantle of conservatism (in large part to deflect John Brown’s raid in Harper’s Ferry), Lincoln put the “radical” label on those Southerners already calling for secession if the Republicans were to prevail in the 1860 election:

But you will not abide the election of a Republican President! In that supposed event, you say, you will destroy the Union; and then, you say, the great crime of having destroyed it will be upon us! That is cool. A highwayman holds a pistol to my ear, and mutters through his teeth, “Stand and deliver, or I shall kill you, and then you will be a murderer!”

And in his concluding section, Lincoln urged his Republican colleagues to “do our part” to ensure that “all parts of this great Confederacy shall be at

peace, and in harmony, with one another.” At the same time, there were limits to what party members could or should do. Citing Douglas’s proposed legislation to bar public criticism of slavery (the South would be placated only if we “cease to call slavery *wrong*, and join them in calling it *right*. And this must be done thoroughly – done in *acts* as well as in *words*.”), Lincoln told the audiences that “true Union men” could not shrink from their “moral, social, and political responsibilities,” nor could they agree with the South “that slavery is morally right, and socially elevating.” Slavery was a moral wrong, and “true Union men” had to ensure that it not expand beyond those Southern states in which it was well-established. That led to Lincoln’s stirring conclusion:

Neither let us be slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves. LET US HAVE FAITH THAT RIGHT MAKES MIGHT, AND IN THAT FAITH, LET US, TO THE END, DARE TO DO OUR DUTY AS WE UNDERSTAND IT.

Upon his conclusion there were roars of “cheers and shouts of applause” that rocked Cooper Union. One eyewitness exclaimed that Lincoln was “the greatest man since St. Paul.” William Cullen Bryant opined that Lincoln had

made “the best political speech he ever heard in his life;” and this was an assessment with which Horace Greeley publicly agreed.

But while Lincoln had wowed his audience of 1,500 people, he knew there was a greater audience he had to reach. There is persuasive (but not irrefutable) evidence that Lincoln allowed Greeley’s *New York Tribune* to borrow the speech’s manuscript earlier in the day so that it could be set in type and have proofs sent to three other New York papers (the *New York Times*, the *New York Herald*, and the *New York Evening Post*). What is indisputable is that, after a celebratory dinner with various Republican leaders at the Athenaeum Club, Lincoln visited the *Tribune*’s offices around midnight to go over the “proof slips.” The chief proofreader for the *Tribune* later attested to Lincoln reading “each galley with scrupulous care. When these words were read and corrected, he waited until the revised proof was prepared and brought in, and these he read and made corrections himself.” We do not know what the original manuscript looked like, because Lincoln discarded the pages after being satisfied with the *Tribune*’s proofs. We do know that he approved capitalizing the last sentence of his speech.

The next day, there were at least 170,000 copies of Lincoln’s speech set out in the four New York newspapers (with the *Tribune*’s version being the most accurate and complete). And the color commentary on Lincoln’s

performance was overwhelmingly enthusiastic (except for some partisan Democratic sniping). Greeley’s *Tribune*, for example, opined that “No man ever before made such an impression on his first appeal to a New-York audience.” Other newspapers across the country also strongly praised Lincoln’s address; and subsequently, the Republican Congressional Document Committee mailed out 100,000 reprints of the speech (with annotations to the sources of Lincoln’s historical assertions).

A Speaking Tour

Lincoln had originally planned to travel on just to visit his son, Robert, at Phillips Exeter Academy in New Hampshire and then return to Illinois. But based upon his instantaneous notoriety, he was pressed into giving speeches in Rhode Island (Providence and Woonsocket), New Hampshire (Manchester, Exeter, Concord, and Dover), and Connecticut (Hartford, New Haven, Bridgeport, Norwich, and Meriden). In these appearances, Lincoln basically reiterated his Cooper Union remarks. Besides the extremely positive public reaction he received at each of his stops, Lincoln impressed/won over key Republican leaders and media moguls who, prior thereto, had no feelings positive or negative about the “prairie statesman;” many of these influential individuals (e.g., James G. Blaine, Edward H. Rollins, James Babcock, Gideon Welles, George G. Fogg) would prove to

be very helpful at the Republican Convention and in the general election.

Writing to his “Dear Wife” from Exeter, New Hampshire, Lincoln reported that he thought the Cooper Union speech “went off passably well.” As for the “little speech-making tour” thereafter, however, he found it exhausting, writing that if he could have foreseen “this toil... I think I would not have come East at all.” Whether that was merely tired bones speaking, in truth Lincoln returned home to Illinois with a general perception across the North that he was now not only a serious, legitimate contender for the Presidency, but in the minds of many he was likely the strongest Republican candidate in the key states the party needed to carry in November (Illinois, Indiana, and Pennsylvania).

Postscripts

- On May 18, 1860, Lincoln defeated Seward on the third ballot at the Republican National Convention in Chicago, Illinois. One of my ancestors, William M. Stewart, was a Pennsylvania delegate pledged to support the state’s governor (Simon Cameron) on the first ballot. On the second and third ballots, Stewart switched his vote to “Honest Abe.”
- Lincoln, after his election, was quoted as saying “Brady and the Cooper Union speech made me President.” There is

a great deal of truth to that observation; the Brady picture, however, really did not get wide distribution until after the Republican National Convention and thus was more of a factor in the general election. But as for the “speech,” Lincoln would never have been his party’s nominee without it.

- The best single volume on Lincoln continues to be David Donald’s *Lincoln* (Simon & Schuster 1995). The most comprehensive analysis of

our 16th President, however, is set forth in Michael Burlingame’s magisterial, two volume *Abraham Lincoln: A Life* (Johns Hopkins 2008). Harold Holzer’s *Lincoln At Cooper Union* (Simon & Schuster 2004) is the best scholarly work explaining the speech and its historical context. And for those who want a recently published, comprehensive review of the political dynamics of 1860, see Douglas Egerton’s *Year of Meteors* (Bloomsbury 2010).

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