

**This year the Chicago Bar Association celebrates the Bicentennial of Abraham Lincoln's birth. On May 2nd at Navy Pier, Lincoln biographer Doris Kearns Goodwin addressed the Association at a Bicentennial Gala Dinner. Lincoln's life was a fascinating study in law, morality and politics, as this overview of his public statements demonstrates.**

**L**INCOLN CONTEMPORARY FREDERIC Douglass was born a slave, yet later became one of the most prominent African American figures in U.S. history, as an abolitionist, women's suffragist, editor, orator, author and reformer. After Abraham Lincoln's death, Douglass made this assessment of Lincoln's life:

"I was impressed with his entire freedom from popular prejudice against the colored race. He was the first great man that I talked with in the United States freely, who in no single instance reminded me of the difference between himself and myself, of the difference of color..."

Douglass was well aware that, in Lincoln's fourth debate for the U.S. Senate seat in 1858, Lincoln had stated:

"I will say then that I am not, nor ever have been in favor of bringing about in any way the social and political equality of the white and black races, that I am not nor ever have been in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor of intermarry with white people..."

[W]hile they do remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having

the superior position assigned to the white race."

Was Lincoln a farsighted statesman, an opportunist politician, a racist, or something else? A brief examination of his time and his challengers may help to put these questions in historical perspective.

The nation in which Abraham Lincoln rose to manhood was profoundly troubled by the existence of slavery in the face of the Declaration of Independence's "selfevident" solemn avowals that "all men are created equal" and are endowed with the inalienable right of "liberty".

The U.S. Constitution had acknowledged slavery as an institution and euphemistically recognized its legality. Article I Section 2 apportioned U.S. Representatives to each state based on the number of "free Persons; plus threefifths of all other Persons". (i.e. nonfree persons: slaves). Article I Section 9 provided that the "migration or importation of such persons as any state shall think proper to admit" could not be prohibited by the federal government "prior to 1808". (i.e. international slave trading). Article IV Section 2 stated that persons "held to service or labor" under state law (i.e. slaves) who flee into another state "shall be delivered up" to the "party to whom such service or labor may be due."

President Thomas Jefferson, both a slave owner and a signer of the Declaration of

Independence, in 1807 signed into law a bill banning the slave trade and the importation of slaves into the United States after 1808. Yet slavery remained legal under the laws of numerous states, and runaway slaves legally had to be returned to their "owners".

A famously reported story is of a young Lincoln who hired on as a hand on a flatboat which traveled down river to New Orleans in 1828. Lincoln was shocked to witness there a slave auction. He reportedly was appalled, and this early revelation informed his evolving hatred of the "peculiar institution" of slavery.

### Addressing the Slavery Question

As Lincoln matured and entered the political arena, he addressed the slavery question publicly. While he served in the Illinois Legislature, a resolution was introduced disapproving of abolition societies, and affirming the "sacred right of property in slaves." Lincoln spoke out against this resolution, stating that "the institution of slavery is founded upon both injustice and bad policy;" and "if slavery is not wrong, nothing is wrong." The resolution passed 776, with Lincoln voting No. In Congress (1847-1849) Lincoln introduced legislation to eliminate slavery in the District of Columbia (with compensation to the slave owners), and he supported the Wilmot Proviso, which sought to bar slavery from the new territories gained from Mexico during the recent Mexican War. Largely due to his criticism of the conduct of that war, Lincoln did not seek another term in Congress.

In 1849 Lincoln returned to the practice of law in Springfield. Over time, he defended both slave owners and fugitive slaves.

The next year Congress enacted a strengthened Fugitive Slave Act, which threatened Illinoisans who might want to help runaway slaves. Said Lincoln to a friend, "Oh, it is ungodly! It is ungodly! No doubt it is ungodly! But it is the law of the land."

Then, in 1854, Congress passed the Kansas-Nebraska Act, which gave settlers in those territories the option to expand slavery there. The Act was sponsored by Illinois Senator Stephen Douglas. This Act nullified the Missouri Compromise of 1820 which had prohibited the extension of slavery in that area.

*Team of Rivals*, Doris Kearns Goodwin, Simon & Schuster, 2006

*Abraham Lincoln, The Prairie Years*, Carl Sandberg, Harcourt Brace, 1929

*A Stillness at Appomatox*, Bruce Catton, Knopf Doubleday, 1970

*Narrative of the Life of Frederic Douglass*, Houston Baker, Penquin 1986

*The Civil War: A Narrative*, 3 volumes, Shelby Foote, Random House, 1974

Lincoln was galvanized politically. In his own words, he was "thunderstruck and stunned". He took on Sen. Douglas.

In a letter to a friend, Lincoln wrote: "As a nation we began by declaring that 'all men are created equal: We now practically read it 'all men are created equal, except negroes.'"

Before a large crowd at the Illinois State Fair, Lincoln criticized both the Kansas-Nebraska Act and the institution of slavery. "No man is good enough to govern another man, without the other's consent", he said. It is a perversion of the concepts of "self government" and "popular sovereignty" to permit the majority to enslave a minority, Lincoln argued.

Then, in a famous 1854 speech in Peoria, Lincoln publicly condemned slavery and Douglas Kansas-Nebraska Act:

"I hate it because of the monstrous injustice of slavery itself. Slavery is founded in the selfishness of man's nature opposition to it is his love of justice. These principles are an eternal antagonism; and when brought into collision so fiercely, as slavery extension brings them, shocks, and throes, and convulsions must ceaselessly follow. Repeal the Missouri Compromise repeal all compromises repeal the declaration of independence repeal all past history, you still can not repeal human nature. It still will be the abundance of man's heart, that slavery extension is wrong; and out of the abundance of his heart, his mouth will continue to speak."

In 1857 the U.S. Supreme Court decided *Dred Scott v. Sanford*. The Court ruled that a slave is not a citizen and cannot even sue

in court. And in pure dictum, the Court added that Congress had no constitutional power to prohibit slavery in the territories.

Thus slavery and its extension and growth was the central issue during the 1858 Lincoln-Douglas debates and campaign for the U.S. Senate. U.S. Senators were at that time selected by the state legislature, so Lincoln and Douglas were campaigning for their respective parties to win control of the legislature.

In accepting his party's nomination for U.S. Senator, Lincoln gave his famous "house divided" speech:

"A house divided against itself cannot stand." I believe this government cannot endure, permanently, half slave and half free. I do not expect the Union to be dissolved I do not expect the house to fall but I do expect it will cease to be divided.

It will become all one thing or all the other. Either the opponents of slavery will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in the course of ultimate extinction; or its advocates will push it forward, till it shall become alike lawful in all the States, old as well as new North as well as South."

#### **Campaign of 1858**

During the campaign, as happens today, the candidates exaggerated the extremism of each other. Douglas accused Lincoln of being an "abolitionist" who advocated "citizenship" for the slaves. These were unpopular positions in Illinois at the time.

Lincoln, in this context, responded during the debates with his statement denying favor for the "social and political equal-

ity of the white and black races." Lincoln also asserted during the debates:

"I agree with Judge Douglas [the negro] is not my equal in many respects certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without the leave of anybody else, which his own hand earns, he is my equal and the equal of Judge Douglas, and the equal of every living man."

"I say upon this occasion I do not perceive that because the white man is to have the superior position the negro should be denied everything. I do not understand that because I do not want a negro woman for a slave I must necessarily want her for a wife. My understanding is that I can just let her alone."

Lincoln tried to focus the debates on the spread of slavery, rather than its eventual abolition:

"When the Judge [Douglas] reminds me that I have often said to him that the institution of slavery has existed for eighty years in some States, and yet it does not exist in some others, I agree to the fact, and I account for it by looking at the position in which our fathers originally placed it restricting it from the new Territories where it had not gone, and legislating to cut off its source by the abrogation of the slavetrade thus putting the seal of legislation against its spread. The public mind did rest in the belief that it was in the course of ultimate extinction.

[But lately, I think and in this I charge nothing on the Judge's motives lately, I think, that he, and those acting with him, have placed that institution on a new basis, which looks to the perpetuity and nationalization of slavery."

Douglas' Democratic Party won a majority of the Legislative seats, and Stephen Douglas was selected to be the U.S. Senator from Illinois.

The Lincoln-Douglas debates made Lincoln a national figure. He was nominated for President in 1860 by the Republican

Party at its convention in Chicago. The full political story is welltold in Ms. Goodwin's book: "*Team of Rivals*."

During the campaign Lincoln stressed that he opposed the extension of slavery, and not its existence. At his Cooper Union speech in 1860, he said;

"Wrong as we think slavery is, we can yet afford to let it alone where it is, because that much is due to the necessity arising from its actual presence in the nation; but can we, while our votes will prevent it, allow it to spread into the National Territories, and to overrun us here in these Free States? If our sense of duty forbids this, then let us stand by our duty, fearlessly and effectively."

Lincoln was elected with votes from the North, Midwest and far West. The South feared that he was a closet abolitionist. Even before Lincoln's inauguration, one by one, southern slave states voted to "secede" from the United States. Lincoln tried to reassure the South:

"Do the people of the South really entertain fears that a Republican

administration would, *directly* or *indirectly*, interfere with their slaves, or with them, about their slaves? If they do, I wish to assure you, as once a friend, and still, I hope, not an enemy, that there is no cause for such fears. The South would be in no more danger in this respect, than it was in the days of Washington. I suppose, however, this does not meet the case. You think slavery is *right* and ought to be extended; while we think it is *wrong* and ought to be restricted. That I suppose is the rub. It certainly is the only substantial difference between us."

At his inauguration, Lincoln was sworn into office by Chief Justice Roger Taney the author of the infamous Dred Scott opinion. In his address, Lincoln again tried to preserve the Union and reassure the South: Lincoln had, he said, "...no purpose, directly or indirectly, to interfere with the institution of slavery in the states where it exists." As a lawyer, Lincoln believed that the federal government lacked the power to eliminate slavery in the South.

But the die was cast. The "seceded" southern states mobilized their militias, fired upon the federal government's Fort Sumter, and attacked the federal army as it marched toward Richmond. The Civil War was on.

### Saving the Union

During the war, Lincoln's immediate goal was to save and reunite the Union:

"My paramount object in this struggle is to save the Union, and is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slaves, I would do it, and if I could save it by freeing *all* the slaves, I would do it; and if I could save it by freeing some and leaving others alone, I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union; and what I forbear, I forbear because I do *not* believe it would help to save the Union. I shall do *less* whenever I shall believe what I am doing hurt the cause, and I shall do

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## Ethics continued from page 61

- (2) preparing or expressing legal opinions;
- (3) representing another in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration and mediation;
- (4) preparing any document through any medium for filing in any court, administrative agency or tribunal for a specific person or entity; or
- (5) negotiating legal rights or responsibilities for a specific person or entity.

The "unauthorized practice of law" includes:

- (1) engaging in the practice of law by persons or entities not authorized to practice ... or
- (2) using the designations "lawyer," "attorney at law," "counselor at law," "law," "law office," "J.D.," "Esq.," or other equivalent words by any person or entity who is not authorized to practice law in this state ... the use of which is reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law in this state.

The State Bar Counsel is authorized to enforce the Rule and enforcement is funded by member's dues.

New York's Judiciary Law Section 476-A provides:

1. The attorney-general may maintain an action upon his own information or upon the complaint of a private person or of a bar association organized and existing under the laws of this state against any person, partnership, corporation, or association, and any employee, agent, director, or officer thereof who commits any act or engages in any conduct prohibited by law as constituting the unlawful practice of the law.

[The term "unlawful practice of the law" is defined largely by reference to other provisions of New York law.]

2. Such an action may also be maintained by a bar association organized and existing under the laws of the state of New York, upon an application to the supreme court of the state of New York, or a justice thereof, for leave to bring the same by such bar association on good cause shown therefor and proof that a written request was made upon the attorney-general to bring such an action and that more than twenty days have elapsed since the making of such request and he has failed or refused to bring such an action.

While each example may have its own drawbacks, they provide much more clarity in defining "unauthorized practice" and who has standing to enforce the law than does Illinois. Unauthorized practice by out of state attorneys has been addressed by the new Illinois Rule 5.5 Perhaps the public and the bar in Illinois would be better served if the legislature and courts reviewed the more serious matter of laypeople posing as lawyers in the light of the information supplied by the ABA Survey. ■

## Lincoln and the Death of Slavery continued from page 37

*more* whenever I shall believe doing more will help the cause...I have here stated my purpose according to my view of *official* duty; and I intend no modification of my oftexpressed *personal* wish that all men everywhere could be free."

Indeed, scholars note that had Lincoln defined the war as an effort to end slavery, he would have lost the allegiance of at least the border states, the Congress, and much of the army, and winning the war would have been impossible. And a victory by the Confederacy surely would not have helped the plight of the slaves.

As the Civil War raged, Lincoln invited Frederic Douglass to the White House for a consultation a first for an African American. Lincoln overcame cabinet opposition and accepted over 180,000 black Americans into the Union Army. And he drafted and issued the Emancipation Proclamation, effective January 1, 1863. This Executive Order was promulgated as a war measure of the CommanderInChief. It deemed slaves in the rebelling southern states to be contraband, and ordered that they were to be forevermore free.

### Slavery—The Greatest Wrong

Lincoln told a group of freedmen that while slavery was "the greatest wrong inflicted on any people," he thought it "far better for us [the races] to be separated." Lincoln even considered ending slavery peacefully via paid compensation to slave "owners" or colonization to Africa (which he acknowledged was 'impractical'). He also believed that if slavery could be confined to existing states, and not expanded, that it would eventually wither and die naturally.

As the war trended against the Confederacy, Lincoln became bolder. In April 1864 the U.S. Senate passed the 13th Amendment to the Constitution, which expressly forbade slavery. Lincoln made the amendment's passage a part of the Republican Party's 1864 platform. After years of bloody Civil War, sympathy for the South was nil, and military victories at Atlanta and Mobile helped reelect Lincoln. After Lincoln's



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reelection, the border state of Maryland enacted a new constitution which abolished slavery. The trend was gathering strength. At his second Inaugural address in March, 1865, Lincoln was conciliatory toward the South, and noted that the bloody war was "punishment for the sin of slavery".

When confederate envoys sought peace, Lincoln wrote to them that the "abandonment of slavery" was a necessary condition to stop the war.

The House passed the Thirteenth Amendment in January, 1865, and it went to the states for ratification. Lincoln's Illinois was the first state to ratify it, on February 1, 1865. By April 14, 1865, twenty states had ratified the amendment (27 were needed). On that evening Abraham Lincoln was assassinated at Ford's theater by an angry southern sympathizer. Lincoln paid for his abolitionism with his life.

On December 6, 1865, the 27th state ratified the 13th Amendment, and slavery was at last illegal in the United States.

It is both difficult and unfair to judge a historical figure using today's standards and sensibilities. Lincoln clearly detested slavery, and desired its ultimate extinction. He was mindful of the need to lead, yet not to get too far ahead of the populace. *Actions* speak louder than words. Lincoln's *actions* furthered the goal of the ultimate eradication of slavery in the United States. Unfortunately, it took a bloody civil war to expiate the sin of slavery. The result was the adoption of the 13th Amendment. Abraham Lincoln thus won his last battle. ■

*Arthur S. Gold and William R. Coulson are principals of Gold & Coulson, a partnership concentrating in complex commercial litigation, class actions, products liability, medical malpractice, entertainment, and construction litigation.*

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