

Some Highlights Of The Life Of  
David Davis,  
Lincoln's Most Ardent Supporter



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*David Davis, the 7<sup>th</sup> President of the Illinois State Bar Association, was closely associated with Lincoln for many years, first as a circuit-riding companion, later as his political supporter and campaign manager in the 1860 Republican Convention, and as an appointee to the United States Supreme Court. Upon Lincoln's assassination in 1865, Davis, at the request of Robert Lincoln, took charge of Lincoln's funeral and became administrator of the martyred President's estate.*

David Davis, born in Maryland in 1815, the posthumous son of a young physician, reared in a slave-holding family, earned his way by manual labor through Kenyon College then became a student in a law office in Lenox, Massachusetts, and, after attending New Haven Law School, came west and started to practice law in Pekin. Soon he went to Vandalia, the State Capital, as a member of a Citizens' Committee to secure from the legislature a railroad for Pekin. Here he first met a tall, gangling legislator named Lincoln, then called

"Captain" from his Black Hawk war service.

Davis, a personable young man, just short of six feet tall, with blue eyes and ruddy cheeks found that his Southern rearing and New England education gave him a vantage-ground in attracting clients. The north half of the State had been settled by New Englanders and the south half by Tennesseans and Kentuckians. These two great floods of immigration met and mingled in the State's center and Davis had a common bond with both. In 1836 Jesse Fell, (Governor Adlai Stevenson's grandfather) sold Davis his office in Bloomington and the law practice that went with it. The next year, Davis made a trip back East to see his betrothed bride, a Judge's daughter at Lenox, and John T. Stuart, a leading lawyer of Springfield and Lincoln's law partner, temporarily took over Davis's law practice.

After a term in the legislature and in the 1847 constitutional convention, where his education and industry gave him some leadership, Davis, at the age of 33, became the Circuit judge and thereby started his tie with Lincoln. Together twice a year for the next eleven years, they rode over the 14 counties of the Eighth Judicial Circuit. "In my opinion", Davis later said, "Lincoln was happy, as happy as he could be, when on this Circuit, and happy no other place." Lincoln never seemed to mind the dirty taverns, miserable food, lice and bedbugs that bothered Davis. At the dinner table, Lincoln sat preoccupied, buried in his thoughts about his pending cases. "He thought

more than any man I have ever known," his partner Herndon said.

Many letters from the circuit by Judge Davis to his wife tell how miserable the accommodations were: "The tavern at Pulaski is perhaps the hardest place you ever saw...everything dirty and the eating horrible...Lincoln, Stuart and everybody else from Springfield [were there]. The old woman looked as we would suppose the witch of Endor looked. She had a grown daughter, who waited on the table – table greasy – table cloth greasy – floor greasy and everything else ditto... I wonder if she ever washed herself. I guess the dirt must be half an inch thick all over her." Another execrable tavern was Traveller's Home at Metamora, the County seat of Woodford County. "The tavern at Woodford is miserable," Judge Davis wrote his wife, "but it may be that Mr. Cross [the County Clerk] may take compassion on us and take us into his house". Robert G. Ingersoll, a Peoria lawyer on a trip abroad, made a revealing comment on this tavern: an ancient tapestry that he saw at Windsor Castle, reminded him of a "Metamora tablecloth the second week of court."

The local weekly newspapers sometimes carried a report of a term of court. Such an item in 1850 from the *Illinois Citizen* of Danville praised Judge Davis's strength of mind, legal acumen and power of discrimination. His talents, the writer acknowledged, were not brilliant or dazzling, but he was impartial in his decisions, firm in his integrity, and had the confidence of the profession, and was deservedly popular with the masses. "He holds no rank as an orator,

but he expresses his opinions with clearness and precision and with plain and common sense."

The same article gives a striking portrait of Lincoln as a lawyer: "Rough, uncouth and unattractive," he was also "stern...and unfamiliar...slow and guarded," yet profound in the depths of his musings. He lives but to ponder, reflect and cogitate... In his examination of witnesses, he displays a masterly ingenuity...that baffles concealment and defies deceit. And in addressing a jury, there is no false glitter, no sickly sentimentalism... In vain we look for a rhetorical display... Seizing upon the minutest points, he weaves them into his argument with an ingenuity really astonishing... Bold, forcible and energetic, he forces conviction upon the mind, and by his clearness and conciseness, stamps it there, not to be erased. Such are some of the qualities which place Mr. L at the head of the profession in this State." Thirteen years later Mr. L would make a speech notable for its clearness and conciseness at Gettysburg, Pennsylvania.

"Ah, what glorious fun we had sometimes," Usher F. Linder, a circuit lawyer, wrote in his *Reminiscences*, recalling their convivial nights in Judge Davis's room at the taverns. A discussion between Davis and Linder on Linder's drinking is still laughed about in the courthouses on the circuit. For two terms Linder had been drunk and appeared before the court only to secure continuances of his cases, which Judge Davis reluctantly granted. On the third such occasion, however, the Judge admonished him: "Mr. Linder, I must

give you some advice. You must drink less and work more, or you will roll in the gutter." Linder, outraged by this paternalism, stiffened up and responded: "And I must give your honor some advice, You must eat less and [in the flattest term] eliminate more or you will bust." Davis then weighed nearly 300 pounds.

Many of the Judge's letters to his wife mention Lincoln. After presiding in an important case, with Judge Logan, a top lawyer on one side and Lincoln on the other, the Judge wrote her "I cannot but admire every day in court Judge Logan's great skill as a lawyer and Mr. Lincoln's exceeding honesty and fairness." In court Lincoln started with one tight, definite theory of his case and would concede nearly everything not pertinent to that theory. Soon he became the Judge's favorite and sometimes, in an emergency, presided in his stead. But the Judge did not favor his favorite in his decisions; of 87 cases tried by Lincoln before Judge Davis, he decided 47 against him and only 40 in his favor.

When, in 1854, Lincoln became a candidate in the legislature for United States Senator, Davis threw himself into the campaign and wrote many letters seeking support for him. Cruelly disappointed when Lyman Trumbull won the Senatorship by only a few votes over Lincoln, Davis in 1858 again supported Lincoln in the great debates between him and Stephen A. Douglas, which gave Lincoln his national reputation. Davis avidly read the reports of each debate and frequently wrote Lincoln with his suggestions.

When Lincoln won a majority of the peoples' votes, but lost the Senatorship in the legislature, Davis wrote him "I have regretted for the past month that I had not resigned my Judgeship and entered into the fight for you."

In 1860, Davis took the principal part in securing Lincoln's nomination for President at the Republican National Convention in Chicago. Davis had a genius for organization and he used it to secure Lincoln's nomination. Leonard Swett, who worked with Davis for Lincoln, later said, "Had Judge Davis not lived, Lincoln would not have been nominated." Jesse Fell afterwards wrote Lincoln "If I were going to select a man of all others to whom we are under the greatest obligation for your nomination at Chicago, I would unhesitatingly say it was him".

In the campaign that followed, Davis became Lincoln's eyes and ears. Pennsylvania and Indiana held their state elections for Governor a month before the national election and, unless the Republicans carried those state elections, Lincoln could probably not be elected. Lincoln sent Judge Davis to those states with a letter: "The bearer of this, Honorable David Davis, is my very good personal and political friend: and I shall be greatly obliged by any kind attentions shown him." Davis saw the Republican leaders in both states, smoothed over sharp differences between them and secured from the East additional campaign funds for Indiana. Republican victories in those states in October assured Lincoln's election a month later.

After the jubilation over the election, Lincoln asked Davis to accompany him on the special train to Washington for the inauguration. They stopped at many cities from which Davis wrote his wife. "The people seem wild with excitement", he said. Seven Southern states had seceded and civil war loomed. Davis joined William H. Seward in urging conciliation. Mrs. Davis, an extremely intelligent New England girl, even after the South captured Fort Sumpter, thought the seceders should be allowed to go in peace. But such ideas were like a pinch of snow in a roaring fire. However, Davis said that the country would not recover for fifty years from the moral degradation of a war.

Immediately on Lincoln's election, Davis had been besieged with applications for positions which he forwarded to Lincoln with the comment that this did not indicate his support for an applicant. But when he returned from the inaugural he had been instrumental in securing appointments of two Cabinet members, two territorial judges, a Commissioner of Indian Affairs and the Marshal of the District of Columbia. For himself, he had not wanted much. Jesse Fell told Lincoln that a good second-class post would satisfy Judge Davis and Ward Lamon, Lincoln's law partner at Danville, suggested to Lincoln that Davis might be made Commissioner of Patents. But Lincoln at once said no. He had other plans for Davis. He wanted to appoint him Commissary General of the Army, a crucial spot where Davis's integrity and genius for organization fitted. But General Winfield Scott told the

President that it would demoralize the Army if a civilian were appointed to a military post, and Lincoln shrank from overruling the General in apparent favor of a personal friend. After laborious services as chairman of a Presidential Commission to investigate charges against General Fremont, Davis went back to riding his Illinois circuit at \$1,000 a year.

In October, 1862, at the insistent urging of many friends, Lincoln appointed Davis a Justice of the Supreme Court and in December he took his seat. With the war going badly against the North, Davis found Washington – teeming with contractors, lobbyists, office-seekers and politicians – profoundly depressing. "I can't throw off the dread I have of going on the bench", he wrote, "Writing opinions will come hard to me. I don't write with facility." Very lonely without his family, he could not come home for Christmas and Mrs. Davis tartly wrote him that she would try to resign herself to her fate and make their children happy. "Maybe you will come to us for a week if you have the leisure." Plaintively he told her that he could not resign now. "This Country is in great straits now, more than at any time... God alone, it would seem, can save us from destruction. Six or nine months will tell the tale and if the Country goes so does the Supreme Court. It may be that my judicial honors will be short-lived." The North had just lost the battle of Fredricksburg with 12,000 dead and wounded.

But Davis soon wrote his full share of opinions and his brethren on the bench commended them. His most famous

opinion in his fourteen years on the Court he delivered in 1866, after the war, in *Ex Parte Milligan*. (72U.S. 2) A civilian, he held, the civil courts being open, must have a jury trial, and could not be tried by a Military Commission for conspiring to seize the U.S. arsenals, release the rebel prisoners and, after arming them, march South with them, and join the rebel forces.

Milligan, who had been sentenced to death, had been a lawyer in Indiana and Democratic candidate for Governor. He held the title of Major General in the Sons of Liberty, a secret disloyal organization in the North, financed in part by the Confederate government. In 1863, such secret societies, through Democratic caucuses, controlled the lower house of the Illinois legislature, which had a Democratic majority as a result of Lincoln's Emancipation Proclamation.

"The Democratic Party in this State is in the hands of Extreme Men", the Judge wrote his brother-in-law, "just as the Republican Party of the United States is in the hands of the Extreme Anti-Slavery Men". General Orme, formerly a lawyer of Bloomington, wrote the Judge: "I think that this State is on the verge of Revolution... South of Springfield, deserters of the army cannot be arrested. They are protected and rescued from arrest by large mobs... The Democratic press and speakers openly denounce Lincoln as a tyrant and despot; charge him with violating the Constitution, and being a worse traitor than Jeff Davis."

"I wish I was there", the Judge told his wife, "I might pour oil on the troubled waters". Riding his Federal Circuit at Indianapolis, he charged the Grand Jury: "It is charged that there are secret organizations... with grips, signs and passwords having for their objects—resistance to Law, and the overthrow of the Government... If anywhere in this State bad men have combined together for such wicked purposes, I pray you, bring them to light and let them receive the punishment due to their crime." However, the Judge then told Lincoln that he must withdraw his Emancipation Proclamation, but Lincoln, greatly distressed by this advice, responded that his policy regarding slavery was fixed and he meant to adhere to it.

Even Lincoln felt sure that he could not be re-elected in 1864, but when, in September, General Sherman captured Atlanta in the heart of the South, the North went wild with joy, and Lincoln's re-election became assured. In the following April, Davis, in spite of an illness, was holding court in Chicago when the papers reported the surrender of General Lee's army. Grand jubilation followed. The Chicago Tribune headlined:

"END OF THE WAR  
DRAFT STOPPED

PRESIDENT LINCOLN COMING"  
President and Mrs. Lincoln would attend the great Fair soon to be held in Chicago. But that night they went to Ford's Theatre. The next morning came the stunning news of Lincoln's assassination. Coming so soon after the celebration of the victory it raised a seething wave of vindictive hatred

toward the South. In the North mobs turned on southern sympathizers and beat and maimed them. "The agitation was calmed by no official counsel of moderation" a modern scholar has commented. In Chicago, however, an official voice spoke calmly and clearly. On the Saturday morning of Lincoln's death, despite the judge's illness and the devastating shock of the tragedy, he asked that all of the local judges adjourn their courts and bring the lawyers before him. He made a brief speech telling of his deep, double grief both as a citizen and as a devoted personal friend of the President, but implored them to calm the public mind and preserve order. Elected chairman of a meeting of the bar to be held on the following Monday, he could not serve because he had received a telegram from Robert Lincoln: "Please come at once to Washington and take charge of my father's affairs."

In Washington, Davis made the funeral plans and gathered all of Lincoln's papers which for many years thereafter he held sealed in Bloomington. These have since become the Robert T. Lincoln papers in the Library of Congress. Appointed Administrator of Lincoln's estate at the request of Mrs. Lincoln and Robert, Davis, refusing all fees, administered it so successfully that he increased its value from \$75,000 to over \$110,000.

Davis said that Mrs. Lincoln had never been stable mentally and the President's assassination at her side proved too much for her. She claimed that voices spoke to her through the walls and that people tried to poison her. She carried

\$57,000 in government bonds in a pocket in her underskirt and made ridiculous, extravagant purchases. Robert Lincoln consulted Judge Davis and her cousin, John T. Stuart, and both of them advised him that he must have her committed at once before she harm herself or her bonds were taken from her. At her committal, Robert wept in court, but soon she recovered somewhat and was released.

Robert Lincoln said of Davis, "I cannot remember when I did not know Judge Davis, first as the Circuit Judge of whom I heard as a boy every thing good from my father and who was very kind to me. Upon my father's death I went to the Judge as a second father, and this he was to me until his death."

Privately to his friends Davis roundly condemned the impeachment of President Johnson, the Radical Republican Reconstruction of the South and the scandal-ridden Grant regime. Suddenly in 1872 the National Labor Reform Convention nominated Davis for President, hoping that the Liberal Republicans and the Democrats would adopt their candidate. This nomination came as a shock to him, but his friends persuaded him, instead of rejecting it, to telegraph the convention, thanking them and stating that the Presidency should neither be sought nor declined by an American citizen. However, with his consent, his friends thereafter unsuccessfully sought his nomination at the National Liberal Republican convention at Cincinnati.

Davis had determined to resign from the Supreme Court as soon as President

Grant's term ended in 1877. He had been proposed by the Democrats in Congress as the key man of the five Justices of the Supreme Court on the Electoral Commission to determine whether Hayes or Tilden had been elected President, but he refused to serve. He decried this Commission, being strongly of the opinion that Congress had no constitutional power to act on this question.

In 1877, the Illinois Legislature had a deadlock on the election of a United States Senator. Neither party controlled the legislature, the balance of power being held by eleven Greenbackers. On the fortieth ballot, the legislature suddenly elected Judge Davis. No Republican voted for him but all of the Democrats did. His election as Senator surprised him. He had taken no part in securing it, refusing to answer letters or telegrams on the subject. But as a Senator, he could spend more time at home with Mrs. Davis, whose health no longer permitted her to live in Washington.

In the Senate, Davis, as an Independent, refused to enter the caucus of either party though both parties sought his vote. However, on the death of President Garfield when Vice President Chester A. Arthur became President, the Republicans of the Senate elected Davis president of the Senate and he thus succeeded to the Vice Presidency. Elected to the Senate by unanimous Democratic vote in the Illinois legislature, he was elected president of the Senate by unanimous Republican vote.

At the end of his term as Senator, Davis refused re-election and retired to his home in Bloomington. His farms, his books, his family and his friends absorbed him. He had early invested every dollar that he could borrow or save in Illinois land. He had bought acreage on which part of the City of Chicago was subsequently built and had bought over ten thousand acres of central Illinois farms at \$2.50 per acre or less. In his lifetime he made magnificent gifts to churches, hospitals and educational institutions. "He gave away in his life far more than most men ever possess," a Bloomington minister said of him.

In 1884 the Illinois State Bar Association elected him its President. In his inaugural address he spoke in admiration of the jury system. During all his years on the circuit, he declared, he had never had an occasion even to suspect that a jury before him had been subject to any unworthy influence.

Judge Davis died of diabetes in Bloomington in 1886 and 20,000 friends accompanied his body to its grave. Day after day throughout his life, he had made devoted friends. He collected friends with far more fervor than he acquired property. A distinguished Judge told Davis's wife that the Judge was "the best and truest friend in the world" and that there was "no limit to his kindness" to those who needed it. Nearly everyone who came within his ken – from Abraham Lincoln to the servants in the Judge's home and the tenants on his farms – loved him."

*About The Author*

Willard L. King, senior partner in the Chicago firm of King, Robin, Gale & Pillinger, is the author of a book on the life of David Davis entitled *Lincoln's Manager David Davis*, published in 1960; a book entitled *Melville Weston Fuller*, published in 1950, and is co-author of the book, *Law of Opinion Evidence in Illinois*, published in 1942. He is a graduate of the University of Chicago (Ph.B., 1916 and J.D., 1917) and received honorary degrees from Bowdoin College and Knox College. Admitted to the Illinois bar in 1917, he started practice in Peoria. He moved to Chicago in 1921.

*Editor's Note: Willard King's biography of Judge Davis, published by Harvard University Press in 1960, is out of print but the University of Chicago Press has recently published a paperback edition of it.*

*NOTE: Two descendants of David Davis, his great grandson, David Davis and the latter's son, David Davis Jr., are lawyers and practice with the firm of Davis and Davis in Bloomington, Illinois. The great grandson is a former state senator.*

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