

## Judge David Davis (1815-1886)

David Davis was born on March 9, 1815 at Mercer Plantation, Maryland to David and Anne Mercer Davis. His father died several months before he was born and when he was five years old, his mother married Franklin Betts. Davis spent the majority of his childhood in Annapolis, MD with his uncle, Reverend Henry Davis. Davis began his education at New Ark Academy in Delaware in 1826. After two years there, he attended Kenyon College in Gambier, Ohio and graduated in 1832. As a law student, Davis entered Henry Bishop's law office in Lenox, Massachusetts. He moved on to attend New Haven Law School in 1834 for less than a year before opening his own practice in Pekin, Illinois in the fall of 1835. Davis received his license to practice law in Illinois the same year.

Shortly after his arrival in November 1835, Pekin citizens chose Davis and four other delegates to go to Vandalia—Illinois's state capital—to lobby for the construction of a railway from Pekin to the Wabash River on the eastern edge of the state. In early December 1835, Davis attended the six-week session of the General Assembly where he met Jesse Fell of Bloomington, Illinois. Fell tried to convince the legislature to pass the railway through his town on its way to the Wabash. Both Davis and Fell were successful in their bids. It was also during this time when Davis first encountered Representative Abraham Lincoln who would become one of his closest friends and political allies. This connection would last until Lincoln's untimely death 30 years later.<sup>1</sup>

In 1836, Davis purchased Jesse Fell's law practice and moved to Bloomington. Two years later, he partnered with Wells Colton and, in December 1839, obtained his license to practice law before the Illinois district of the United States Circuit Court.

After establishing himself in Bloomington, David Davis returned to Massachusetts to marry Sarah Walker—his long-time sweetheart and daughter of William Perrin Walker, a probate judge from Lenox—on October 30, 1838. Sarah was a strong woman and a source of quiet strength for Davis throughout his political struggles. David and Sarah produced seven children; only two of whom, George and Sally, survived to adulthood. In 1843, Davis bought Jesse Fell's farm located on the eastern part of Bloomington. This land would later become the site of their elegant mansion, "Clover Lawn." Completed in 1872, the mansion offered many modern conveniences including indoor plumbing, hot and cold running water, a central furnace, and gas lighting. Clover Lawn was designed by well-known architect Alfred Piquenard. Piquenard, partnered with Chicago architect J.C. Cochrane, also designed Bloomington's third courthouse and the Illinois State Capital Building in Springfield.<sup>2</sup>

Davis's law practice proved to be a stepping stone to greater things in the world of politics. In 1840, at the age of twenty-five, he was nominated as the Whig candidate for the Illinois State Senate. Unfortunately for him, his bid proved unsuccessful. Nevertheless, four years later Davis was elected to the Illinois State General Assembly. His experience working with the Assembly also earned him the opportunity to serve as a delegate in the Illinois Constitutional Convention in Springfield in 1847.

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<sup>1</sup> Willard L. King, *Lincoln's Manager: David Davis*, (Cambridge: Harvard University Press, 1960), 21-22.

<sup>2</sup> State of Illinois, "Welcome to the Illinois State Capitol," [http://www.cyberdriveillinois.com/publications/pdf\\_publications/com18.pdf](http://www.cyberdriveillinois.com/publications/pdf_publications/com18.pdf).

Although Davis succeeded in the legislature, his true passion was the judiciary. In 1848 he was elected judge of Illinois's Eighth Judicial Circuit Court. While he served in this position, his decisions were seldom appealed and even more seldom reversed. When the court arrived in town, the Grand Jury would first determine whether or not there was enough evidence to hold a trial. Then, the Judge would try the smaller cases which usually involved mostly misdemeanors such as gambling or selling alcohol. He also tried larger cases which dealt with land title cases, slander and libel suits, divorces, appeals from justices of the peace, livestock ownership, and even a few murder trials.

As a lawyer, Lincoln also traveled the Eighth Circuit. He and Davis often journeyed together throughout the fourteen counties that made up the Circuit—Sangamon, Tazewell, Woodford, McLean, Logan, DeWitt, Piatt, Champaign, Vermillion, Shelby, Moultrie, Macon, Sullivan, and Christian. The Circuit consisted of approximately 11,000 square miles, a territory nearly the size of the state of Connecticut.<sup>3</sup> Court convened every spring and fall and lasted for three months at a time. Circuit riders traveled from county seat to county seat on horseback or in buggies, spent the night in local taverns, and served in court during the day. Davis's sixty-mile trek from Bloomington to Springfield took two days to complete.<sup>4</sup> In good weather it was a pleasant ride. Often however, the unpaved roads were muddy and there was no protection from the cold and rain. Despite how rigorous and miserable Davis's travels were, he enjoyed them mostly due to the contact with his companions particularly Abraham Lincoln, the only attorney who traveled the whole Circuit with him. Davis, Lincoln, and other Circuit riders often lodged together. While in Pekin, they frequently boarded at Mrs. Wilson's, "a fine comfortable ... place."<sup>5</sup> Such comfort was rare.

Davis's letters home usually described poor living conditions across the Circuit. It appeared that "while others on the circuit complained about the food and beds in these country taverns, Lincoln never seemed to mind them, however miserable they might be."<sup>6</sup> Davis wrote many letters to his wife Sarah. It was obvious that he missed her greatly because they wrote back and forth at least once or twice a week. In comparison, Judge Davis mentioned to Sarah in one letter that Lincoln heard from Mary Todd only once every few months. Occasionally, Sarah even rode out to Pekin or Decatur to visit her husband though local gossip claimed that it was indecent for a woman to ride such long distances alone.

Lincoln's friendship with Davis was well-known throughout the Circuit and their relationship helped raise Lincoln's status in the region.<sup>7</sup> Davis was known for his impartiality and sound judicial reasoning. His friendship with Lincoln did not soften this quality. Indeed, the two friends often clashed on issues. Nevertheless, Davis's appreciation of Lincoln's legal prowess grew as their friendship did. In one of the frequent notes to his wife, the judge mentioned the lawyer's "exceeding honesty & fairness."<sup>8</sup> Davis's respect for Lincoln as a lawyer was evident. The judge often hired Lincoln as an attorney. He also chose Lincoln to take his place on the bench on several

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<sup>3</sup> King, 87.

<sup>4</sup> King, 71.

<sup>5</sup> King, 75.

<sup>6</sup> King, 77.

<sup>7</sup> Guy Fraker, "Lincoln's Bloomington," *Illinois Heritage* Vol. 10, No. 1 (January/February): 7; *Ibid.*, 87.

<sup>8</sup> Fraker, 53 & 73.

occasions the first being in November 1854. Lincoln presided also when Davis was forced to leave the Circuit for personal emergencies. In March 1859, Davis enlisted Lincoln's help as he returned to Bloomington to tend to an ailing Sarah and again in October 1859 as Davis returned home to grieve the birth of a stillborn child.<sup>9</sup>

In 1852 the Circuit was reduced by six counties—Edgar, Shelby, Moultrie, Christian, Macon, and Piatt—due, in part, to an appeal from Davis. The territory was simply too large for him to manage. He had written to Sarah earlier that spring that “This Circuit must be lessened or I will resign.”<sup>10</sup> In 1855 Davis was re-elected as the circuit judge for another six-year term. Fortunately for him two years later Sangamon, Tazewell, and Woodford counties were also removed from the Circuit. In addition to this territorial shrinkage, railroads multiplied in the area to provide much more efficient transportation.<sup>11</sup> Judge Davis served on the Eighth Circuit until his appointment to the United States Supreme Court in 1862—a fourteen year career.

Judge David Davis was instrumental in Abraham Lincoln's presidential nomination. In May, 1860 the Illinois Republican Party convened in Decatur and named Abraham Lincoln as its nominee for President of the United States. Davis gathered a team of predominantly Eighth Circuit lawyers and Lincoln political allies, including Jesse Fell, to work with him at the Republican National Convention in Chicago, Illinois.<sup>12</sup> In addition to Lincoln, four prominent candidates vied for the Republican nomination: Edward Bates of Missouri, Ohio Governor Salmon P. Chase, Simon Cameron of Pennsylvania, and Senator William H. Seward of New York.<sup>13</sup> Of these five men, Lincoln was the least known. As the leader of the party in the Senate, Seward commanded the most widespread support. Upon his arrival in Chicago, the judge realized that the Lincoln team had no headquarters. Immediately, Davis rented two rooms at Tremont House—five blocks from the convention center—and began making up for lost time.<sup>14</sup> Davis and his team courted various state delegates paying particular attention to those from Pennsylvania which had the second largest number of representatives.

Davis promoted Lincoln tirelessly. In the four days between arriving in Chicago and the beginning of the convention, Davis had transformed Lincoln from a dark horse candidate into a true contender for the nomination. After Seward, Lincoln was the most popular candidate. Seward's forces at the convention far outnumbered Lincoln's. To counter this strength, Davis and Jesse Fell arranged for Lincoln supporters to arrive early and enter the hall before any “Sewardites” could. Thousands of extra tickets were printed for Lincoln backers and some of the loudest voices in the state made an appearance to out shout Seward's crowd. Strategic placement also worked to favor Lincoln. Norman B. Judd placed a sea of Lincoln supporters between Seward's team and undecided delegates.<sup>15</sup> In this way, Seward's forces could not reach the undecided delegates in the rear of the hall.

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<sup>9</sup> Fraker, 95-97.

<sup>10</sup> Fraker, 88.

<sup>11</sup> Fraker, 91.

<sup>12</sup> Fraker, 7.

<sup>13</sup> King, 134-135.

<sup>14</sup> Gary Ecelbarger, *The Great Comeback: How Abraham Lincoln Beat the Odds to Win the 1860 Republican Nomination*, (New York: Thomas Dunne Books, 2008), 190.

<sup>15</sup> King, 138-139.

On the third day of the convention nominations and balloting began. Judd officially nominated Abraham Lincoln. A total of 233 votes were needed to seal the nomination. The first ballot strongly favored William Seward while the second and third ones shifted progressively toward Lincoln. On the third ballot, Lincoln's votes outnumbered Seward's but he still needed one and a half votes to earn the nomination. Suddenly, an Ohio delegate moved four votes to Lincoln. Shouts filled the gallery. Cannon fire roared from the roof. Within moments, 354 more votes shifted to Lincoln. At 1 p.m. on Friday, May 18, 1860 Abraham Lincoln became the Republican Party's Presidential nominee for the general election. Judge Davis wept.<sup>16</sup>

Following his general election win that fall, Lincoln began the process of appointing individuals to various offices throughout his administration. Judge Davis encouraged the appointment of numerous men to a variety of positions from clerks to Cabinet members.<sup>17</sup> Davis himself refused to nominate himself for openings often against the advice and pressure of those around him. When Judd was considered for a Cabinet position, Davis's Illinois friends urged him to submit his own name to rival Judd's. Furthermore, the Whig faction of the Republican Party favored Davis for such an office. Fell reminded the President-Elect of the service Davis had performed: "I know Judd is a true friend of yours, but I think I can safely say that of all *living men* you have no truer more devoted friend and admirer than in the person of Judge Davis. And if I were going to select that man of all others whom we are under the greatest obligations for your nomination at Chicago I unhesitating say it was him ...."<sup>18</sup> To Fell, Lincoln owed a great debt to Davis, a debt which could be repaid in the form of a Cabinet position. Ultimately, Lincoln chose not to appoint Davis to his Cabinet.

By the inauguration of March, 1861 Judge Davis had succeeded in appointing two Cabinet members, two territorial judges, a Commissioner of Indian Affairs, and a Marshal of the District of Columbia. He however, had received nothing. Lincoln had begun to seriously consider Judge Davis for the post of Commissary-General in the War Department but did not wish to upset tradition by appointing a non-military individual, especially a personal friend. Judge Davis was never appointed to this post nor did he find out about Lincoln's thoughts on the matter until 1872. In Bloomington, after the inauguration and unaware of Lincoln's deliberation, Davis wrote to Ward Hill Lamon: "I don't know what to do with myself hereafter, unless it is, to hold courts. After so much political excitement, the last year, and so much notoriety, it looks like small business to go to holding courts on a \$1,000 a year. ... The more I think of the manner of leaving Washington, the more I feel hurt."<sup>19</sup> Davis *was* appointed to sit on the Board of Visitors to West Point but he viewed it as an empty position. The Judge felt truly unappreciated and, no doubt offended by Lincoln's choices. Personal communication between the Judge and the President nearly ceased upon Davis's return from Washington.<sup>20</sup>

Within two months time, three vacancies existed on the Supreme Court. It was hinted that Davis would be selected to fill one of them. Judge Davis himself did not openly hope for a Court position though he said that "I would like a judicial position in

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<sup>16</sup> Ecelbarger, *The Great Comeback*, 228.

<sup>17</sup> King, 175.

<sup>18</sup> King, 170-171.

<sup>19</sup> King, 181-182. Davis was re-elected as the Eighth Circuit judge in 1861.

<sup>20</sup> King, 184.

preference to anything else and would like something higher than I now hold.”<sup>21</sup> Lincoln postponed the Court appointments until the judicial circuits were reorganized. Two of the three vacancies came from the South and with the war raging; Lincoln feared upsetting that region further. The President first appointed Noah H. Swayne of Ohio to fill the first vacancy in January 1862. Following the passage of Lincoln’s circuit reorganization act that July, the President chose Samuel F. Miller of Iowa to fill one of the remaining positions.<sup>22</sup> Throughout the process, communications poured into Lincoln’s office recommending Davis as a justice. For example, on the day of Swayne’s appointment, thirty-one members of the Illinois Constitutional Convention lobbied the President on behalf of the judge. No doubt because of this promotion and Lincoln’s personal and professional history with Davis, he invited Judge David Davis to sit on the Supreme Court as an Associate Justice on August 27, 1862. Davis took his seat on December 10 of the same year.

Davis’s most well-known decision while on the Court came out of the 1866 *Ex Parte Milligan* case. In September, 1862 Lincoln suspended the writ of *habeas corpus* for civilian prisoners held in the North by military authorities. *Habeas corpus* allowed citizens to contest unlawful imprisonment. On October 4, 1864 Lambdin Milligan, a civilian residing in Indiana, was arrested on charges of conspiracy against the Union and was confined to a military prison in Indiana. He was later found guilty by a military tribunal of conspiring to seize Union arsenals, release rebel prisoners, and march with them until he could join Confederate forces. He was sentenced to be hanged for his crimes. Lincoln had no intention of carrying out this sentence but he was assassinated before he could commute it. President Andrew Johnson however, *did* sign Milligan’s death warrant. Judge Davis, a life-long opponent of the death penalty, protested Johnson’s decision and stated that he wanted “no more blood spilt in this country.”<sup>23</sup> Davis believed that Milligan had not received a fair trial because of the suspension of *habeas corpus*. He sided with the majority of justices to overturn the case. The Supreme Court “held that a military court had no jurisdiction to try Milligan, a civilian residing outside a war zone,” where the civilian courts still functioned.<sup>24</sup> Thus, he was still entitled to all of his Constitutional rights.

It is important to note that *Ex Parte Milligan* was not the only instance when Davis disagreed with Lincoln. In fact, both the judge and his wife opposed the war. On April 12, 1861 the day Fort Sumter was attacked, Sarah Davis wrote to her sister claiming that “I do not believe that Union can be kept together. The fact is our people of the South and the North do not love each other and I believe in a peaceful separation. Bloodshed is not at all to my taste and we shall not love each other better after stirring up the worst feelings of our nature.”<sup>25</sup> The judge agreed with his wife at first but later realized that the war was necessary. Davis devoted his efforts to ending it as soon as possible. He wrote to his son George that “a united North may strike terror to the southern people and end the war sooner.”<sup>26</sup>

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<sup>21</sup> Pratt, McLean County Historical Society Archives.

<sup>22</sup> King, 195.

<sup>23</sup> *The Milligan Case*, McLean County Historical Society Archives, 251.

<sup>24</sup> Summary of Supreme Court Decision, McLean County Historical Society Archives.

<sup>25</sup> Letter from Sarah Davis to her sister, McLean County Historical Society Archives.

<sup>26</sup> “Appointment,” Chapter XIV by Pratt, McLean County Historical Society Archives.

Davis's political career continued even while on the bench. On February 22, 1872 the Labor Reform Party nominated him as their presidential candidate though he proved unsuccessful at the Liberal Republican convention. Five years later, Davis was elected to the United States Senate by the Illinois General Assembly. On March 4, 1877 Davis formally resigned his seat in the Court to join Congress.

Shortly before accepting his seat in the Senate, Davis found himself embroiled in another national controversy this time regarding the 1876 presidential election between Rutherford B. Hayes and Samuel Tilden. Tilden, a Democrat, initially appeared to have won the popular vote by 51 percent yet Hayes, a Republican, was determined the winner. Due to widespread illiteracy in the United States at the time, pictures or icons often accompanied a candidate's name on the ballot. Generally, the Democratic ballot featured an image of a rooster while the Republican one depicted Abraham Lincoln. In this particular election however, the Democrats printed an image of Lincoln next to Tilden's name. This situation caused immense voter confusion and led Florida, Louisiana, South Carolina, and Oregon to send in two electoral vote counts: one for the Democrats and one for the Republicans. Neither party wanted the other to decide the election so Congress created an electoral commission comprised of five Senators, five Representatives, and five Supreme Court Justices to decide who would receive the twenty disputed electoral votes.

Both parties agreed that Davis would be the best choice for the last remaining slot—seven Republicans, seven Democrats, and Judge Davis, more of an independent than a Republican. But Davis narrowly missed the opportunity to be on the commission. As the bill to create the electoral commission passed in Congress, Davis was elected to the Senate and resigned his post on the Court. He was therefore unable to sit on the commission. In the end, eight Republicans and seven Democrats made up the group; all voted along party lines and Hayes won the presidency within days of the inauguration.

Sarah died a few years later on November 9, 1879. After her death, countless women had tried to win over his heart. Davis eventually fell in love with Addie Burr, Sarah's former nurse, and began a long-distance relationship with her writing long romantic notes from his desk in the Senate to her home in Fayetteville, North Carolina. In 1883, Davis did not seek re-election; instead, he retired to Clover Lawn. After a secret, year-long engagement, David and Addie were married in a quiet ceremony on March 14, 1883. Throughout his retirement, Judge Davis kept busy by reading, farming, spending time with family and friends, and served as President of the Illinois Bar Association.

Davis was also a generous man throughout his life. He donated forty acres of his own land to Illinois State Normal University in 1857 and another sixty acres to the Illinois Soldiers and Sailor's Children's School. During his Supreme Court tenure he also helped the city of Bloomington retain, and repair the maintenance shops for the Chicago and Alton Railroad.

On June 20, 1886 Davis went into a coma and was given less than 48 hours to live. Miraculously, he survived for six days but died on June 26, 1886 at the age of 71. Since that November, he had ailed from a tumor on his shoulder. He had also been previously diagnosed with diabetes and confined to his home. On the day of his death, all of the church bells in Bloomington rang and flags were flown at half staff throughout town. Davis's funeral attracted 20,000 people from all over the country which to this day

remains one of the largest crowds ever assembled at a funeral in Central Illinois. Robert Lincoln and Adlai Stevenson I were among the pallbearers at his funeral. Judge David Davis was buried next to Sarah in Evergreen Memorial Cemetery.

By: Anthony Bowman, 2009