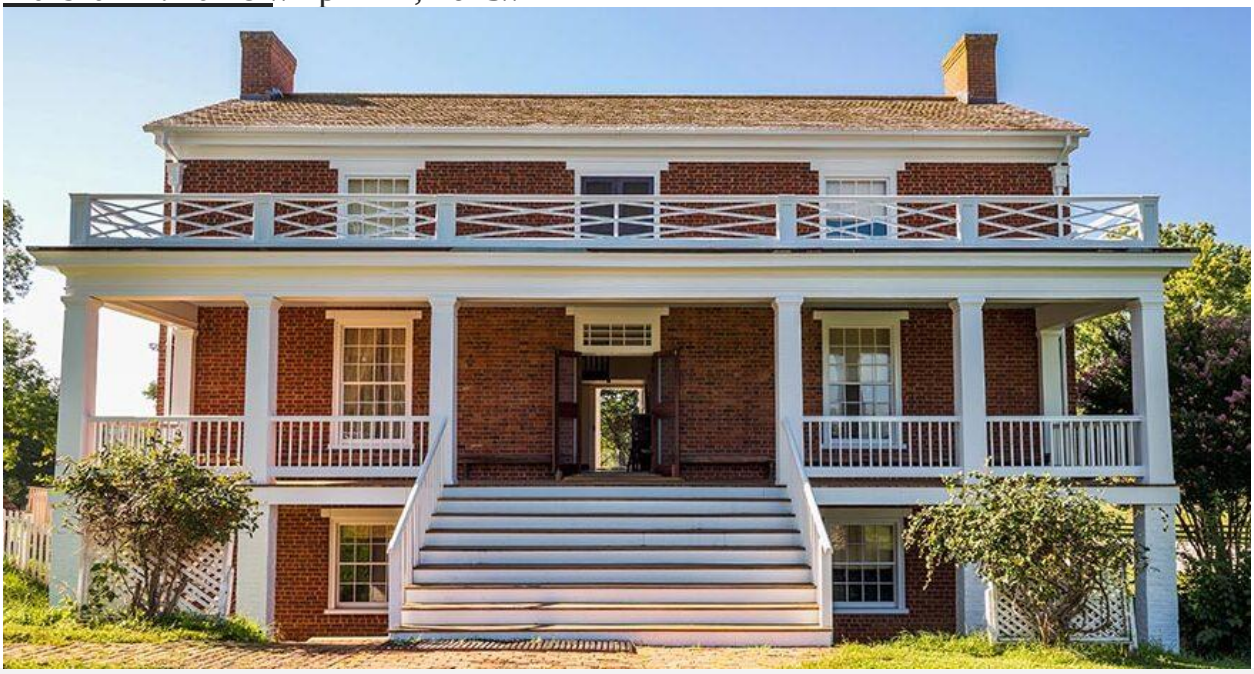
MINNESOTA LAWYER

Marshall Tanick

Perspectives: End of Civil War recalls legal lore here

Marshall H. Tanick//April 14, 2025//



Confederate Gen. Robert E. Lee surrendered to Union Gen. Ulysses S. Grant in the McLean House at Appomattox Court House, Virginia, on April 9, 1865. *(Depositphotos.com image*

"[N]ow we are engaged in a great Civil War."

Abraham Lincoln, Gettysburg Address (November 19, 1863)

* * * * * * * * *

"No other soldiers on any fields in this or any other country, ever displayed greater heroism."

Union Gen. Winfield Scott Hancock (1824-1886), praising 1st Minnesota Regiment on Cemetery Ridge at Gettysburg

* * * * * * * * *

"War is Hell."
Union Gen. William T. Sherman (1820-1891)

* * * * * * * * *

"It is well that war is so terrible; otherwise we should grow too fond of it."

Confederate Gen. Robert E. Lee (1807-1870)

* * * * * * * * *

"... a new birth of freedom."

Lincoln, again at Gettysburg (November 19, 1863)

Last week marked the anniversary of the end of the Civil War, which started on April 12, 1861, and ended, as a practical matter, with the surrender of Robert E. Lee's Army of Northern Virginia at Appomattox Court House on April 9, 1865, although the fighting continued for a while in small pockets of the South.

The war affected many features of America, including in the nascent state of Minnesota, which joined the Union only a couple of years before the Confederate attack on Fort Sumter in South Carolina initiated the war.

One feature impacted by the four-year conflict was the law.

The 160th anniversary on Saturday of the effective conclusion of the war provides an opportune occasion to review its history in this state as seen through the prism of related litigation and law.

Dreadful decision

The long-simmering and escalating sectional dispute over slavery was the major catalyst of the Civil War. Minnesota was at the heart of the controversy, even before the jurisdiction became a state.

Events occurring years before Minnesota was designated a territory gave rise to the infamous *Dred Scott* case, in which the U.S. Supreme Court validated slavery and insulated it from legal challenge. Known officially as *Scott v. Sandford*, the case raised what one Supreme Court jurist termed "constitutional principles of the highest importance." *Scott v. Sandford*, 60 U.S. 393 (1857).

The *Scott* litigation itself arose in both the Missouri state and federal court systems, was argued twice before the U.S. Supreme Court, and was decided in 1857, one year before Minnesota became a state. The holdings of *Dred Scott* — that slaves were not citizens under the Constitution, that residing in "free" territory does not emancipate a slave, and that the due process provisions of the Fifth Amendment prohibits Congress from legislating against slavery — had dreadful consequences precipitating the Civil War four years later. Historians have rightfully excoriated the

court for exhibiting an "amazing lack of moral or political wisdom," one of them terming the decision "the most disastrous ever handed down by the Supreme Court."

Scott, originally a slave in Missouri, had sued for his freedom on the basis that he and his wife had lived at Fort Snelling in the future Minnesota territory from 1836 to 1838 while enslaved to a military doctor, before being returned to the slave state of Missouri. (Slavery had been proscribed in what was then known as the Upper Louisiana Territory according to the terms of the Missouri Compromise Act of 1820).

At the conclusion of four bloody years of war, the legal damage caused by the *Dred Scott* decision was rectified by the Civil War Amendments to the Constitution: the 13th (barring slavery), the 14th (privileges and immunities, equal protection, and due process clauses), and the 15th (right to vote).

The case also helped to elect a president: Following his loss to Stephen A. Douglas in the 1858 U.S. Senate race in Illinois, Abraham Lincoln saw his political career relaunched by the *Scott* decision, and expressly acknowledged as much. One and a half years into his presidency, Lincoln issued the Emancipation Proclamation, freeing all slaves in Union-occupied territory while preserving the practice in border states loyal to the Union. It took the 13th Amendment to put a formal end to slavery throughout the nation.

Constitutional considerations

Although never practiced in Minnesota, and expressly prohibited by law, slavery played a role in Minnesota's birth. When Minnesota entered the Union in 1858, it was joined by Kansas in 1861, where the legitimacy of slavery was an open issue. The open warfare over slavery in Kansas, which prompted the term "bloody Kansas," was yet another factor in precipitating the Civil War, along with the *Dred Scot* decision.

Shortly after the Civil War, Minnesota voters twice defeated measures to amend the Constitution to allow African Americans to vote. The voters finally approved the measure in 1868, but the decision proved to be nearly superfluous: "Two years later, the 15th Amendment to the U.S. Constitution was ratified, granting citizens the franchise regardless of race.

But Minnesota was ahead of the curve with respect to women's suffrage. In 1875, the Minnesota Constitution was amended to grant women the right to vote in school board elections; this was nearly 45 years before the U.S. Constitution eliminated voting restrictions by gender. In 1898, a constitutional amendment gave women the right to vote for library boards and serve on those bodies.

Minnesota also got the jump on lowering the voting age. In 1970, the electorate approved reducing the voting age from 21 to 19 years of age, which preceded by a year the ratification of the federal 26th Amendment, which lowered the voting age to 18 for all Americans.

The abolition of slavery, one of the legacies of the Civil War, is reflected in some Minnesota cases. A century later, the ban on slavery and involuntary servitude was held not to extend to compulsory military service in *U.S. v. Crocker,* 420 F.2d 307 (8th Cir. 1970).

The 8th U.S. Circuit Court of Appeals affirmed a ruling by Judge Philip Neville in Minnesota upholding the constitutionality of the military draft over 13th Amendment objections which had been "squarely forced and rejected by other ours as well. *U.S. v. Crocker,* 420 F.2d 309 (8th Cir. 1970).

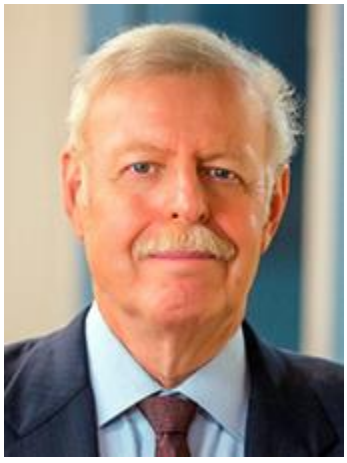
Lincoln legacy

While he never set foot in Minnesota, Lincoln played a role in the law in this state. Shortly after his presidency began, he welcomed to the White House one of Minnesota's first two United States senators (then elected by a vote of the state Legislature), Morton Wilkinson. Lincoln expressed his praise for the "rapid advance of everything desirable in that young sister in the Republic-Minnesota … the people up your way have very correct political views …"

A short time later, Lincoln had to deal with his first major legal issue in Minnesota, arising out of strife between Dakota Indian bands n and white settlers in the southwestern party of the state in the summer of 1862. The discord culminated in the deaths of a number of homesteaders in the New Ulm area, prompting Lincoln to dispatch his personal secretary and the Commissioner of Indian Affairs to assess the situation and quiet the growing hysteria.

Minnesota militia captured and tried 303 Indians, who were sentenced to death by a military tribunal without counsel. They were convicted as "belligerents of a sovereign nation" rather than as domestic criminals.

Lincoln intervened, imposing federal authority to stay their executions until he could review their cases. Beset by conflicting advice, Lincon concurred that 39 of the group warranted the death sentence, while the rest were imprisoned indefinitely, which proved fatal to many of them due to brutal conditions of confinement. To calm protests, Lincoln agreed to monetary compensation and to move the remaining tribe members from Minnesota.



Marshall H. Tanick

The sanctions were viewed as too harsh by many, while others, including the state's governor, Alexnader Ramsey, criticized Lincoln for being too lenient. Ramsey told Lincoln that he would have received more political support from Minnesota if he "had hung more Indians," to which Lincoln replied, "I cannot afford to hang men for votes," as recounted in E. Hentley's "Abraham Lincoln: The Jurist of the Civil War." Hentley, E. "Abraham Lincoln – The Jurist of the Civil War," 14 N.Y.L.Q. Rev. 473 (1936-37).

More than a century later, Lincoln' legacy was reflected in a case decided by the Minnesota Court of Appeals regarding the jurisdiction of state courts over activities conducted on Native American tribal reservations. In one 1997 case, the appellate court affirmed a ruling of the Redwood County District Court upholding a jurisdiction over contracts and decisions regarding those documents, redeeming the exercise of judicial authority not unduly intrusive on

the Indian tribal government. *Granite Valley Hotel Limited Partnership v. Jackpot Junction Bingo and Casino,* 559 N.W.2d 135 (Minn. Ct. App. 1997).

But Judge James Randolph, concurring specifically, ruminated at length about the independence of Native American tribes and social justice for the sovereign entities. His missive of nearly 50 pages discussed Lincoln's moral doubts about slavery noting that "[h]istory graciously has vindicated Lincoln … 100 percent, 500 percent, 1,000 percent. At the time, [Lincoln] spoke, contemporary history was not so kind." *Id.* at 177.

Another military clash also prompted a Minnesota jurist to refer to Lincoln's legacy. The case of *ex parte Ortiz* arose after the United States obtained Puerto Rico from Spain at the end of the Spanish-American War. *ex parte Ortiz,* 100 F. 955 (D. Minn. 1900). The U.S. District court in Minnesota encountered the issue of what to do with Puerto Ricans who were captured and sentenced to death for murder.

After his sentence was commuted by President William McKinely and he was confined at the state prison in Stillwater, the convicted killer brought a habeas corpus proceeding in federal court here. The judge denied the petition, reasoning that the Puerto Rican was properly tried and convicted by ancillary tribunal for crimes committed during wartime. But, in so doing, the judge quoted from Lincoln's Gettysburg Address "in language not yet forgotten" of the authority of the "government of the people, by the people, for the people."

Abe adoration

There are a number of reasons why Lincoln is adored, including his eloquent and acute observations about the human condition. One of his most well-known aphorisms was reflected in *State v. Craig,* 2002 WL 1050344 (Minn. Ct. App. May 28, 2002)(nonprecedential). Accused of terroristic threats and fifth-degree domestic assault, the defendant sought to represent himself despite several warnings by the Stearns County District Court judge. At a pretrial hearing, after the judge asked him: "You know what Lincoln said?" The defendant answered affirmatively: "Yes, I do," although neither judge nor the defendant explicitly uttered the remark.

It could have been Lincoln's saying "Better to be silent and be thought a fool, than to speak and remove all doubt." More likely, the judge was discouraging *pro se* representation, based upon Lincoln's recognition that if one is "resolutely determined to make a lawyer of [one] self, the thing is more than half done already." That remark has been reworked over time into a more familiar phrase: "A person who represents himself has a fool for a client."

The Civil War was a defining moment in the nation's history and its conclusion 160 years ago this week underscores how

Minnesota played a major role in the conflict and the law it bred.

PERSPECTIVE POINTERS

Civil War Casualties, battlefields and medical related

Union deaths: 360,222
Confederates deaths: 258,000
Minnesota: 2,500;
State with most casualties: New York
Black soldiers and sailors: 70,000.

Marshall H. Tanick *is an attorney with the Twin Cities Law firm of* ***Meyer Njus Tanick Linder & Robbins, P.A.***