Dishonest Abe Scholarship:

The Lincoln Biography Plagiarism Scandal

by

Robert Bray
and
Michael Burlingame

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Introduction

More than a decade of silence has followed the American's Historical Association's findings (1992, 1994) that Stephen B. Oates had taken language from several of his sources and put that language, without attribution, into several of his own books. The 1992 verdict judged that Oates's "account of Lincoln's early years in *With Malice Toward None* is derivative to a degree requiring greater acknowledgement of Benjamin Thomas's earlier biography of Lincoln. . . . The Association strongly recommends that any future editions of Mr. Oates's *With Malice Toward None* include appropriate acknowledgement of Mr. Thomas's *Abraham Lincoln*."[1] While Oates has never agreed with the AHA's conclusions, his publishers, Harper Collins, did: subsequent paperback reprintings of *With Malice Toward None* have indeed included a statement of indedebtedness to Thomas in the front matter of the book. In this very limited fashion, then, an intellectual and academic wrong against Thomas's biography has been righted. For this we are grateful.

Yet, as the late 1990s and first few years of the new century have dramatically demonstrated, the problem of academic dishonesty among professional historians is more vexing than ever before. A detailed account of the Oates controversy (which is the aim of this book) may help readers understand why this is so: there is among the professoriate a deep emotional need to "deny the obvious" in order to sustain an appearance of decorum. Far from a routine exercise in academic hair-pulling and eye-gouging, the plagiarism scandal described in this volume raises questions about the moral fiber of our society.

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[1] 1992 Finding. See Appendix 5 for the complete text of both findings.

More noteworthy than the literary larceny committed by Professor Stephen B. Oates of the University of Massachusetts was the unseemly haste shown by eminent Lincoln authorities to rush to his defense *publicly* (declaring the plagiarism charges "totally groundless and without foundation") while *privately* chastising him for committing "a sin against scholarship." When shown that Oates had not only pirated others' words in his biography of Abraham Lincoln but also in his biographies of Martin Luther King, Jr., and William Faulkner, Oates's exonerators -- with two notable exceptions -- played "see no evil, hear no evil, speak no evil." One might reasonably have expected more integrity from scholars who study the life and times of Abraham Lincoln.

The cast of characters in this drama includes prominent novelists (William Styron and Gore Vidal), historians well known beyond the confines of academe (James M. McPherson, the late C. Vann Woodward), a U. S. Senator previously known for his integrity (the late Paul Simon of Illinois), former officials in the 1st Clinton administration (Secretary of Health and Human Services Donna Shalala and the director of the National Institutes of Health, Bernadine Healy) eager to crack down on the nation's premier scientific fraudbusters (Walter Stewart and Ned Feder), and academics at some of the nation's most prestigious institutions of higher learning (including Harvard, Yale, Princeton, Columbia, Duke, and Berkeley).

More than a decade ago, Stephen B. Oates, who has since retired from the University of Massachusetss, announced his plans to publish a book about his experiences in this case. To a journalist in 1993 Oates refused "to say much about how the allegations have affected his life, because, he says, 'I'm going to do that story myself.' He is writing a book now that he plans to call *Stolen Years: A Writer's Ordeal with the Charge of Plagiarism*."[2] Since we immediately suspected

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[2]*Chronicle of Higher Education*, 12 May 1993, p. A19.

that our roles in the controversy would not be accurately portrayed by Oates, we proceeded to write a book of our own in an attempt to tell, as dispassionately as we could, the story from our perspective. Although we completed it in a summer of hard work in 1994, it was apparently not publishable then, or at least we didn't show it to the right publishers (one editor told us that, given the threats of legal action for libel made by Oates against us and the American Historical Association, their presses were unable to take the risk of publishing our book).

But now *Dishonest Abe Scholarship* is, if anything, even more relevant, as the very recent appearance of two new scholarly books on the topic illustrates.[3] In attempting–and failing–to meet its professional responsibilities in adjudicating the Oates plagiary–finding Oates guilty of unattributed borrowing but declining to call his practice by the "p-word"–the American Historical Association let itself and all concerned parties down, and afterward (as of 2003) went out of the business of determining what constituted plagiarism in history and what ought to be done about cases once discovered and demonstrated.[4] True, the AHA's findings in plagiarism cases, such as those in concerning Oates , were never made public, and therefore could have no salutary effect on the profession at large (or its public), the AHA's withdrawal from the fray left historians without any professional recourse: thereafter, when it came to plagiarism in historiography, anything went and no one was accountable. We thought then

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[3] Ron Robin, *Scandals and Scoundrels: Seven Cases That Shook the Academy* (Berkeley: University of California Press, 2004); and Peter Charles Hoffer, *Past Imperfect: Facts, Fictions and Fraud in the Writing of American History* (New York: Perseus Publishing, 2004). Both of these book discuss the Oates case, yet neither copes with the continuing problem of the *definition* of plagiarism nor captures the important context that made the Lincoln biography plagiary a nationally-debated issue.

[4] AHA press release, 5 May 2003.

and still do that such an abandonment was ethically mistaken and tantamount to beginning a slow professional suicide.

Throughout the more than four years of the controversy, Oates and his defenders maintained that no adequate definition of plagiarism existed in the academy. We disagreed then; we disagree now. Both of us have had long careers as undergraduate teachers, and, time and again, we have had to face the hard fact of plagiary among students: discovery, confrontation, punishment. And how do we, along thousands of our colleagues in literature and history across the nation, know very well indeed what plagiarism is? Besides our own professions' publications (the AHA *Statement on Standards of Professional Conduct* and the Modern Language Association's *Style Manual* and *Handbook for Writers of Research Papers*, both of which contain long-accepted definitions of plagiarism), colleges and universities around the country have long relied on the work of two English professors, Harold C. Martin and Richard M. Ohmann, who define a plagiairst thus: "The academic counterpart of the bank embezzler and of the manufacturer who mislabels his product is the plagiarist, the student or scholar who leads his reader to believe that what he is reading is the original work of the writer when it is not."[5] In *The Logic and Rhetoric of Exposition*, Martin and Ohmann distinguish four different types of plagiarism: word-for-word copying, the "mosaic," the close paraphrase, and the "apt term." Though Oates employs all four techniques, he is especially fond of the mosaic, which, as Martin and Ohmann argue, is no more legitimate than word-for-word copying. If undergraduates are punished for using the mosaic technique of stealing others' words, we believe that a professor at a research university should not be whitewashed as the University

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[5] Martin and Ohman, *The Logic and Rhetoric of Exposition* (New York: Holt, Rinehart, and Winston, 1965), p. 274.

of Massachusetts at Amherst whitewashed Oates. It is hard to imagine that institution ever disciplining a student for plagiarism; any undergraduate or graduate student convicted on the Amherst campus could plausibly cite Oates's example on appeal.

In an attempt to discredit his principal accusers (the co-authors of this book), Oates denounced them as "scholars with axes to grind" and "woefully ignorant" of the Lincoln literature. Neither assertion is true. We did not know Stephen B. Oates in 1990 (nor do we know him personally to this day), and all we knew of his work at the time was *With Malice Toward None*, which we treated critically according to the methods of our respective disciplines of literature and history. As to our capabilities with the Lincoln literature, Robert Bray, though hardly a Lincolnist before the controversy, has moved in that directions since. Bray, Colwell Professor of English at Illinois Wesleyan University, has published articles on Lincoln in the *Journal of the Abraham Lincoln Association*, and books on his specialty (nineteenth century midwestern literature). Soon, the University of Illinois Press will publish a biography of Lincoln's political opponent, Peter Cartwright (July, 2005). Michael Burlingame, now the Sadowski Professor of History Emeritus at Connecticut College, has written *The Inner World of Abraham Lincoln* (University of Illinois Press, 1994) and won the 1995 Abraham Lincoln Association Prize for his *Abraham Lincoln: An Oral History* (1996). In addition, he wrote or edited several more books of Lincoln studies during the latter 1990s and is currently finishing the first two volumes of his five-volume life of Lincoln, to be published by Johns Hopkins in 2005. We present these academic credentials with diffidence; we would not present them at all if Stephen B. Oates and his supporters had not publicly abused us with falsehoods and *ad hominem*.

The story told here illustrates the melancholy truth pointed out by historian John Higham, who noted that "plagiarism sows confusion and weakens

morale in the community it strikes" and that "academic institutions, publishers, and leaders have been painfully reluctant to move against gross offenders." In trying to explain why "responsible scholars and administrators shrink from their clear obligation to uphold within their chosen profession the standards of the academy," Higham dismissed the fear of libel suits, which he contended "has become a vastly overblown rationalization for other inhibitions that most of us are less willing to admit." Among the real inhibitions are "a long-standing preoccupation of scholarly organizations with rights and a concomitantly casual attitude toward responsibilities" and "the self-interested cynicism of our age, which says in effect that we are all phonies, that ambition deserves a certain latitude, that the 'rat race' forces people to cut corners, and that self-righteous whistle blowers only make trouble."[6]

Oates's plagiarism and the pusillanimous conduct of scholars in dealing with it calls to mind the emphatic question posed by the editor of the *Journal of the American Medical Association*: "If we don't take a stand on plagiarism, what the hell *do* we take a stand on?"[7]

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[6]John Higham, "Habits of the Cloth and Standards of the Academy," *Journal of American History*, vol. 78, no. 1 (June 1991), 108-9.

[7]Drummond Rennie quoted in *The Chronicle of Higher Education*, 21 Feb. 1992, p. A 13.

Part One:

"A Specious and Fantastic Arrangement of Words"

by Robert Bray

Chapter 1

Recognition

Like so many affairs, this one started innocently enough. I remember the day: Wednesday, November 1, 1989; and the moment: sitting with a group of students on the south side of the Old State Capitol square in Springfield, Illinois. We were a college course on a field trip, a freshman seminar from Illinois Wesleyan University that had been two months in the classroom wrestling with the myth and mystery of Abraham Lincoln and were now out doing some sight-seeing in the Man's backyard. Early that morning we had driven over from Bloomington and, after assembling in the State House rotunda for some perfunctory edification from our state senator, who like all the rest of them claimed his modicum of the Lincoln political legacy, had gone on to do the

obligatory tours of the Lincoln home and the Lincoln-Herndon law office. Now after a fast-food lunch we were lazing in the wan afternoon sun before proceeding to the Lincoln Tomb, to Lincoln's New Salem and finally home again on the Lincoln Heritage Trail. The students, most of whom had already done this pilgrimage in grammar school and were by now "Lincolned out," were content to remain watching the street people, more interesting to them than state senators and a surfeit of "formaldehyde history." But their professor was restless, itching as usual for books. So I suggested that we go over to Prairie Archives and have a look at the old Lincoln volumes. Come on, gang, I urged like a scoutmaster, it's only a block away. Amenable if unenthusiastic, they followed me down and across Sixth Street to the northeast corner of the Square (where Springfield's only used and rare bookstore was located before it got its current respectable south-square address). The baker's dozen of us crowded into the shop and bunched in the Lincoln corner. Uneasy at first--their sixth-grade teachers hadn't allowed them inside *this* Lincoln shrine--before long the students caught my enthusiasm, the musty magic of the place took hold, and we all began happily pulling down books, flipping pages and checking prices.

At the time, I knew Abraham Lincoln chiefly through literature and legend. As a professor of American literature, my scholarly home in the 19th century, I was of course aware of the presence of Lincoln in the nation's (and Illinois') poetry and fiction. Lyrics like Whitman's "When Lilacs Last in the Dooryard Bloom'd" and Vachel Lindsay's "Abraham Lincoln Walks at Midnight" were then more familiar (and real) to me than the standard biographical portraits from William H. Herndon to J. G. Randall. I had first assimilated the mystical Lincoln not from Sandburg's massive six-volume apotheosis but from Francis Grierson's beautiful (and neglected) evocation of Lincoln's Illinois in 1858, *The Valley of Shadows* . And the "real" Lincoln--Lincoln

the master politician, inscrutable to the end--I had recently got from Gore Vidal instead of from the micropedia of Lincoln historiography. I say this not to depreciate the historian's Lincoln but to admit the skewed view I carried with me into the dusty confines of Prairie Archives. Yet teaching the popular and literary Lincoln was driving me to know more (and other). Perhaps that's why I reached to the top shelf for a book I might otherwise have ignored, Benjamin Thomas's *Abraham Lincoln* (1952). Back in September we had begun our "Stories of Abe" course with Thomas's *Lincoln's New Salem,* but his 1952 biography I had only heard of. On the recommendation of a colleague in history, I had chosen Stephen B. Oates's *With Malice Toward None* (1977) as our contemporary biography. I was assured that it was "up to date" in its interpretations of slavery, civil rights and Republican radicalism, a vividly written narrative and therefore the reigning "standard one-volume life" of Lincoln--having usurped the very Thomas I was now holding in my hand. A few years before, I had happened upon a remaindered copy of the hardbound edition of *With Malice Toward None* and put it on the pile of reading to be done whenever. With the Lincoln course's advent, whenever had eventually arrived. Well, I thought, riffling the pages of Thomas, here's a way of learning what has changed in Lincoln studies over the generation between Thomas and Oates. If I buy it I'll have a handy comparison of "traditional" and "relevant" Lincoln lives to share with the students.

Thus the rationalizing teacher in me. But the dæmon actually in charge was that of the book collector. Wasn't this copy of Thomas a first edition in its original dust-jacket, and in what old and rare booksellers call 'very good plus' condition, with the author's signature in ink on the flyleaf? Anyone loving--and loving to possess--books knows it's pointless to deny that such features make a difference. I could already feel my wallet coming out. I might flinch at the price, but I'd end up buying the book. "Look," I said to the students at either elbow,

"it's signed--this is the guy who wrote *Lincoln's New Salem*." In the spirit of our class outing, such a connection alone seemed sufficient for a purchase. Never mind how much it is, I said to an inquiring young mind: if you can afford the one you're holding there on the Lincoln marriage, I can afford Benjamin Thomas. With that I went to the counter, pulled an ace out of the deck of plastic and painlessly became the owner of a book the reading of which would change my professional life. Benjamin Thomas's *Abraham Lincoln* was, I would soon learn, a classic of American historical biography. Yet, sadly, it became for me a classic that had, a dozen years before, suffered the literary equivalent of elder abuse.

We went on that afternoon on to be awed at the tomb, aimless at New Salem, and a-wearily back home in Bloomington. Before I dropped the students off at the dorms I gave the usual teacher's injunction: "Don't forget to do your homework for our next class: the account of Lincoln's boyhood years in *With Malice Toward None*." Being after all their teacher and thus ever a step ahead, I had done mine the day before, which meant that in the evening I could put the kids to bed, pour a glass of wine and settle down for a sojourn in my new Thomas. And that's what I did. But by page eleven I was wondering was it the wine or had I read this somewhere before? Then I came to a sentence that stopped me dead. Its narrative context was the emigration of a party of Lincoln's relations from Kentucky to Indiana late in 1817. Thomas wrote:

> "With them came Dennis Hanks, an illegitimate son of another of Nancy's aunts, a cheerful and energetic waif of nineteen. . . ."[8]

I reached for Oates and in a moment found the parallel passage:

> "With them came Dennis Hanks, illegitimate son of another of Nancy's aunts, a congenial, semiliterate youth of nineteen".[9]

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[8]Thomas 11.

Hoping to relieve my consternation, I quickly turned to the reference notes at the back of *With Malice Toward None*: no citation of Thomas and nothing specific to Dennis Hanks or the Sparrows (438). Of course, the parallel could be a lapse on Oates's part, an unacknowledged common source between Thomas and Oates or just a coincidence, however remarkable. Whatever the explanation, I was now keenly curious to see if there were further parallels. It didn't take long to find them: Thomas's next paragraph embodies his account of the illness and death of Nancy Hanks Lincoln. Though this particular parallel is discussed in Appendix 1, I repeat the text here because of its importance to the later controversy:

> In the late summer of 1818 a dread disease swept through southwestern Indiana. Known as the "milk-sick," it is now believed to have been caused by cattle eating white snakeroot or rayless goldenrod and passing on the poison in their milk. All that the pioneers knew about it, however, was that it struck quickly and usually brought death. In September both Thomas Sparrow and his wife came down with it. The nearest doctor lived thirty miles away; even if his services had been available, he could have offered little help. Within a few days both sufferers died. Thomas Lincoln knocked together two crude coffins and buried the Sparrows on a near-by knoll. Soon afterward Nancy Hanks Lincoln became ill and died on October 5. Again Thomas put together a rude coffin, and the awfulness of death afflicted the little group in the wilderness cabin. The body lay in the same room where they ate and slept. The family made all the

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[9]Oates 8.

> preparations for burial, and conducted the simple funeral service, for no minister resided in the neighborhood. The woods were radiant with autumn's colors as they buried Nancy Lincoln beside the Sparrows.

And, in the following paragraph, the aftermath of her death:

> Once again the Lincolns had hard times. Twelve-year-old Sarah cooked, swept, and mended, while Thomas, Abraham, and Dennis Hanks hewed away at the forest and tended the meagre crops. Their fortunes ebbed. Deprived of the influence of a woman, they sank almost into squalor (11).

Here is how Oates tells it, in *his* next two paragraphs:

> The following summer an epidemic of the dreaded "milk sick" swept through the area. Many settlers died, including Thomas and Elizabeth Sparrow, and then Nancy too fell sick and died. She was only thirty-four years old. While Thomas fashioned a black cherry coffin, the dead women lay in the same room where the family ate and slept. Then came the funeral on a windy hill, with Thomas, Sarah, Abraham , and Dennis Hanks huddled around the grave. In subsequent years Abraham said little about his mother's death, as reticent about that as he was about her life and family background. But he once referred to her as a wrinkled woman, with "withered features" and "a want of teeth."
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> Dennis Hanks now moved into the Lincoln cabin and shared the loft with Abraham. Twelve-year-old Sarah tried to fill her mother's place, to clean, cook, and wash for them. But it was hard without a woman, and the Lincoln homestead sank into gloom and squalor" (8)[paragraph continues on another subject].

What had I found in these two textual parallels? In the "With them came Dennis Hanks. . ." instance, the answer was obvious: a prima facie instance of plagiarism on two counts: first, because the verbatim material (twelve of Oates's first thirteen words) is not within quotation marks; and, second, because Oates does not cite Thomas as his source. These conditions obtaining, it does not matter, strictly speaking, where Thomas got his information or even his language, since, on textual evidence, Oates demonstrably wrote from Thomas. But what of the second parallel, which is longer, more complex and less verbatim? While Oates's story of Nancy Hanks Lincoln's death struck me as clearly derived from Thomas, to be certain I would at least have to check both writers' references to see whether they were both rewriting a common source--and this tedious chore I had no immediate intention of undertaking.[10]

My instinct as a professional close reader is to show plagiary on textual grounds alone. This is how I have long practiced the craft of comparative analysis of texts, including a number of cases of plagiarism.[11] Both as a teacher of writing and of literature, my definition of the act is simple: the derivation of one text from another without attribution. I believe this is the definition that has generally obtained throughout the history of western literature, classical to contemporary, the one that has been in force whether an age has lauded or

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[10]This was made much harder because Thomas does not cite sources; instead he refers generally to those he principally used for each section of his biography. See Appendix 1, "Reading Between the Texts," for an analysis of Oates's sources in the Nancy Hanks Lincoln episode.

[11]For instance, when I was preparing an introduction for the 50th anniversary edition of Harold Sinclair's *American Years*, an important historical novel about town-building on the Illinois frontier (University of Illinois, Prairie State Books, 1988), I had no choice but to reveal plagiary in a novel I deeply admired. For Sinclair had silently plundered Francis Grierson's *The Valley of Shadows* (1909) for his rousing account of a central Illinois Methodist camp meeting (xxxix).

condemned plagiary or merely shrugged its cultural shoulders. Of all the ironies in the controversy to come, none to me would be more piquant than this: while I knew only a bit of Lincoln lore in 1989, I had had plenty of experience with the history and practice of plagiary. Though later on Oates and his defenders didn't know this about me, I doubt that it would have mattered to them. For in their eyes I would not be qualified to judge because I was an "English teacher" and neither a Lincolnist nor a historian of any stripe; while I could--and would--insist that my professional training and experience fitted me well for just such a case as this. Thus professions often thought to be sisters (*"Les Belles Lettres"*) would be at loggerheads over methods and authority.

Flashforward: at the height of the quarrel (April 1991) I received an anonymous postcard (postmarked Champaign, Illinois) with this typed message: "'The bad poet imitates: the good poet steals.' / T. S. Eliot/ Come on, Bob, grow up!" Aside from the moral dubiety of an anonymous letter-writer's advising someone else to grow up, he--I assume the writer is male and a historian--repeats an error often made by those who do not know the context (or even the correct language) of Eliot's famous dictum. I've heard it quoted time and again to justify plagiarism, but rarely with an understanding of Eliot's argument. The apothegm occurs in his essay on the Jacobean playwright Philip Massinger, and the point is to show the sort of literary refabrication mediocrities do:

> One of the surest tests [of inferiority] is the way in which a poet borrows. Immature poets imitate; mature poets steal; bad poets deface what they take, and good poets make it into something better, or at least something different. The the good poet welds his theft into a whole of feeling which is unique, utterly different from that from which it was torn; the bad poet throws it into something which has no cohesion.

> A good poet will usually borrow from authors remote in time, or alien in language, or diverse in interest.[12]

Eliot faults Massinger on every count here, but particularly for echoing Shakespeare, who was so close to him in literary-historical time, not to mention an incomparably greater poet. When I received the unsigned postcard, I assumed the writer was quoting Eliot against me and for Oates. But if so I do not see the fit. Oates hardly makes what he takes from Thomas into "something better" or fashions "his theft into a whole of feeling which is unique, utterly different" from the source; nor is Thomas's book "remote in time, or alien in language."

Moreover, Eliot was talking about poets, not biographers. And whether, finally, Oates "made it better" and is therefore not a mediocre biographer is a matter of opinion; obviously, I think he is a bad biographer, but what is indisputable is that *he did use Thomas often and often without attribution.* In literature critics contend over quality. Eliot holds that since genius has its own laws, plagiary done well enough is not only justifiable but necessary to the complex organic double helix of poetic "tradition and the individual talent." Would historians--Lincolnists among them--be willing to grant such a license to one another? To their graduate students? To all comers?

Eliot's high modernist argument actually continues a long western tradition of rationalizing plagiary. In Greco-Roman literature plagiarism was taken for granted, not because all new writers were geniuses but because they weren't! To classical scholars, the stunning surprise would be that text A was *not* derived from text B. This would be like saying that one of the synoptic gospels, Luke, say, owed nothing to Mark but was entirely original. Much the same in

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[12]T. S. Eliot, "Philip Massinger," *The Sacred Wood* (New York: Barnes & Noble, 1960 [1920; 1928]), 125. For a similar view on literary borrowing, see the quotation from Alexander MacGregor, Ch. 4, 87-88.

the Renaissance: in literature as in painting there were three levels of appropriation of the past: *translatio, imitatio , aemulatio.* Classical models were to be copied, imitated or emulated, with a fixed aesthetic hierarchy rising from the pedestrian copying of hacks to the emulation of one strong talent by another. At the dawn of Renaissance humanism Petrarch defined the practice as it would come to be accepted for more than four centuries:

> A proper imitator should take care that what he writes resembles the original without reproducing it. The resemblance should not be that of a portrait to the sitter--in that case the closer the likeness is the better--but it should be the resemblance of a son to his father. . . . With a basis of similarity there should be many dis-similarities. . . . Thus we may use another man's conceptions and the color of his style, but not use his words. In the first case the resemblance is hidden deep; in the second it is glaring. The first procedure makes poets, the second makes apes.[13]

Here is more than a forehint of Eliot, who, though deemed a "great poet," may have been practicing what he impeached. The point for literary history, however, is that Renaissance writers facing the classics needed a strategy of imitation. As Erasmus put it, "if we wish to imitate Cicero successfully, we must above all disguise our imitation of Cicero." Sometimes the game turned hermetic: "imitation lies hidden. . . . It conceals rather than reveals itself and does not wish to be recognized except by a learned man."[14] The observation of H. M. Paull in *Literary Ethics* is pertinent here: "But though plagiarism was so

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[13]Quoted in David Lowenthal, *The Past is a Foreign Country* (Cambridge: Cambridge University Press, 1985), 81. My account of the history of plagiary in the Renaissance is taken from Lowenthal, 80-7; and from Greene, *passim.*

[14]Lowenthal 81.

universally practiced it must no be imagined that no stigma attached to it. The author whose work was borrowed often protested, though for lack of a copyright he could do no more. [Ben] Jonson's 'Hang him, plagiary!' . . . is proof of the attitude of the man of letters."[15] Thus by the 17th century the practice among "learned men" of lacing books with every matter but one's own was coming under general censure. Robert Burton, in the famous preface to *The Anatomy of Melancholy* (1621), "Democritus to the Reader," complained that his contemporaries "lard their lean books with the fat of others' works." Burton spoke of himself, too, the *Anatomy* being a quodlibet perhaps unparalleled in literary history. Still, of his method he scrupulously insisted, "I have taken, not filched," by which he meant *that he had quoted and attributed* rather than plagiarized. More than three hundred years before Harold Bloom invented the "anxiety of influence" and Julia Kristeva posited "intertextuality," Burton felt the huge psychic weight of the past on his writerly back: "[W]e can say nothing but what hath been said," he lamented, "Our poets steal from Homer; he spews. . . they lick it up."[16]

Only in the 19th century do the concepts of literary "originality" and "ownership" take root (and flourish into our time, despite contemporary "post-modern" reaction). Romanticism: where creativity centers on inspiration and iconoclasm, on matters of the heart that poets believed, or pretended they believed, had not even been *thought* previously, let alone *well expressed*. And in a capitalist culture literary property was like any other: what the individual talent makes, he holds: hers is the property, the *copyright* to dispose of as she pleases.

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[15]H. M. Paull, *Literary Ethics: A Study in the Growth of the Literary Conscience* (Port Washington, N.Y.: Kennikat Press, 1968 [1928]), 106.

[16]Robert Burton, *The Anatomy of Melancholy* (London: J. M. Dent & Sons, Everyman's Library, 1932), 23-5.

But what of plagiary today? My own professional group, the Modern Language Association, defines plagiarism similarly in the *MLA Style Manual*: "the use of another person's ideas or expressions in your writing without acknowledging the source." And the editors elaborate:

> The most blatant form of plagiarism is reproducing someone else's sentences, more or less verbatim, and presenting them as your own. Other forms include repeating another's particularly apt phrase without appropriate acknowledgment, paraphrasing someone else's argument as your own, introducing another's line of thinking as your own development of an idea, and failing to cite the source for a borrowed thesis or approach.[17]

Unfortunately, though the *MLA Style Book* regards plagiarism as a "moral offense," the organization that commissioned the work (as a guide to humanistic scholarship in various disciplines) has nothing official to say about the *ethics* of the matter: whether plagiarism by MLA members is a bad act, what to do about it when found, etc.[18] Yet where I come from, personally and professionally, plagiarism is serious business and recognition of plagiary is *guilty knowledge:* you have not committed the act, yet, through reading and recognizing, are strangely culpable in it. Readers who are not aware in this way are of course not implicated--hence the tendency in so many instances of plagiarism for people

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[17]Walter S. Achtert and Joseph Gibaldi, *The MLA Style Manual* (New York: the Modern Language Society of America, 1985), 4.

[18]In December 1992 the Delegate Assembly of the Modern Language Association adopted a "Statement of Professional Ethics" which included this single statement on plagiarism: "[W]e should not plagiarize the work of students or colleagues" *PMLA* ____ But the "Statement on Professional Ethics" has not (of this writing) been approved by the MLA's Executive Council, and in any case it does not offer members any guidance about what to do when someone breaks this commandment and is caught.

initially to doubt the charges and indulge in a version of blaming the victim. After all, an incredulous world reasonably asks, why would any smart writer do such a dumb thing and how could he or she hope to get away with it? As to motives, it's anyone's guess, and the whys of plagiarism may not be rational.[19] But as to discovery, I've got a hunch that writers "get away with it" all the time. For I suspect that most plagiarism, even in the computer age, is discovered not by laborious collation but by serendipity--or serendipity plus a good ear and a decent memory: a reader's fortuitous juxtaposition of two texts in the same period of reading. At least this has been my experience in the several plagiarism cases I've been involved with ("adult" rather than student cases, that is). One of these is especially instructive.

Early in February 1980 Illinois Wesleyan University was eagerly anticipating the appearance of a new novel by a member of its English department, Robert Burda. Entitled *Clinemark's Tale,* it was to be a breakthrough book both for the author and his publisher, Everest House, a fledgling New York firm hoping for a hit. We had followed the author's agon through drafts, revisions and publicity. Now advance copies were out to reviewers and the book was ready to go on sale. Then the catastrophe: Walter Clemons, a powerful and widely respected reviewer, announced to the world that *Clinemark's Tale* was a plagiary of Somerset Maugham's *The Painted Veil* (1925). In other words, the new book was an old book "renewed." Writing in *Newsweek* (under the head, "The Tainted Veil"), Clemons provided the obligatory parallel passages, but it was his

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[19]Thomas Mallon, in *Stolen Words* (New York: Penguin Books, 1991; original edition Ticknor and Fields, 1989), has a fascinating paragraph on the psychopathology of plagiarists, built around the deep motive of the "death-wish" (120-21).

trenchant commentary on similarities of plot and language that doomed Burda and Everest House and their now-stillborn "breakthrough novel":

> Set in Hong Kong, [*The Painted Veil*] is one of Maugham's most efficient East-of-Suez melodramas. A wife caught in adultery is offered a cruel choice by her dull husband, a bacteriologist. If her lover will divorce his wife and marry her, she may have a divorce. But if her lover finks out, as her husband foresees, she must accompany him to the interior of China, where a cholera epidemic is raging.
>
> Burda's novel is set in Africa, not China, and the characters have undergone a sex change. A husband caught in adultery is offered a cruel choice by his dull wife, a bacteriologist. If his mistress will not divorce her husband, as the wife foresees, he must accompany her to the interior, where a cholera epidemic is etc.[20]

Clemons did not employ the term "plagiarism" to describe Burda's practice; instead he spoke of "pastiche:"

> Pastiche is a literary exercise dating back at least to Chaucer. But the new version of an old story, whether or not the source is acknowledged, must make us forget that source, at least temporarily. Burda's bad luck is that his novel keeps reminding us how good Maugham's was.[21]

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[20]Walter Clemons, "The Tainted Veil: a Twice-Told Tale," *Newsweek* (4 Feb. 1980), 76, 78.

[21]Clemons 78.

Clemons offered another version of Eliot's law: if the makeover were done with genius, it was acceptable, even expected. But Burda hadn't, and it wasn't. What the reviewer labeled "pastiche," others saw as plagiary. In the days following Clemons's review, other stories appeared in the local and national press in which Burda attempted to explain himself and his book. But they were of no help to the embattled novelist: the harder he tried, the deeper the grave he dug. Illinois Wesleyan had no choice but to do its own investigation, and the faculty convened its personnel committee to do so. As head of the Illinois Wesleyan English Department at the time, the duty of documenting the plagiarism fell to me. I was to submit a complete list of textual parallels between the two novels. It was a plodding and ultimately pointless task of quantifying what Clemons had already shown and Burda himself was now admitting: *Clinemark's Tale* was written out of *The Painted Veil,* so much so that Burda's novel would not have been possible without Maugham's. The drama thereafter played through its predictably stormy stages. Having at first tried absolutely to deny that he had read The *Painted Veil*, Burda, faced with the obvious, then attempted to justify his plundering on the grounds that he had forged something 'new"--a "feminist" retelling of Maugham's "sexist" story--from the stolen material, etc. The denouement of the affair was sad and embarrassing. Everest House and *Clinemark's Tale* died, Burda's agent quit him, and within a year the new author some had compared to Joseph Conrad was forced to resign from the Illinois Wesleyan faculty.

Besides the tedious practice of comparing two long texts closely cover to cover, an unforgettable week of drudgery, I learned one important lesson about literary plagiary from the Burda case. Walter Clemons had *happened* to have been looking at Maugham's novel right before Burda's had appeared on his desk. This was rotten luck for Burda but illustrative of the principle of serendipity.

Likewise, had I not very recently been reading the early pages of Oates when I opened Thomas, I probably would have missed the similarities, startling once seen, of passages like "With them came Dennis Hanks. . . ." And I'm sure I would have read right by the dozens of subtler borrowings. Strangely, that no one else had recognized the parallels between 1977 and 1990 became, during the controversy, a perverse argument *against* plagiarism's having occurred! As if to say: "*I* didn't catch any of this when I originally reviewed or read the book, so it must not be there now." (More on this peculiar professional psychology in Chapter 2 below).

But the fact is, I *had* made the crucial textual recognition and the problem of what to do about it would not go away. Over the next several days, as time allowed, I continued to read Oates and Thomas together, looking for further parallels. They were not hard to find. In the opening twenty pages of *With Malice Toward None* I noted at least half a dozen passages that apparently contained language borrowed from Thomas, nothing on the order of verbatim blocks of text but a number of the MLA's "particularly apt phrase[s]" and two important narrative episodes (Lincoln's boating trips to New Orleans and the removal of the Lincoln family to Illinois). Liking the detective work, I was nonetheless troubled by the accumulating evidence of plagiary. So I decided to let my students in on the secret. For the next meeting of the seminar, on the morning of Tuesday, November 7, 1989, without an introduction or other preliminaries I began the class with an overhead projection of the Nancy Hanks parallel, Thomas and Oates side by side on the screen. "What do you make of this?" I asked. The students jumped on it, unprompted by me. "Which one was written first?" was the immediate query. And when I answered that Thomas had a quarter-century on Oates, another hand went up: "Does Oates cite Thomas, then?" Not that I can determine, I replied. "So it's plagiarism. You'd have our

butts if we tried to get away with something like that"--this uttered sarcastically by one of the seminar's freer spirits.

And she was right. Typically, when college students are caught plagiarizing, professors and their institutions, though respecting confidentiality, punish the act pretty severely. Illinois Wesleyan sets down a strict and standard definition of plagiarism in its *Catalog* ("the representation of another person's words or ideas as if they were one's own"), and faculty are required to inform the dean of all cases, with first-time perpetrators failing the phony paper or even the class, repeat offenders liable to expulsion. Students may not respect the ethics of plagiarism, but they certainly know the risk they're taking if they commit the act.

When, however, a professor plagiarizes and is discovered, the decision of the discoverer to "go public" is more difficult. Whether the parties work at the same university or are half a world apart, they are a lot like members of a "gentlemen's" club--the Ivory Tower of popular imagination--overheard in the midst of a tiff, their crescendo voices annoying the sleepers in the reading room and, scandalously, carrying through the club's closed and grated windows into the busy public street outside. Even though I've never met Stephen Oates, and he vociferously denies that I belong to his club, I stand by the metaphor: traditionally, academia has claimed to be a self-policing profession with high ethical standards, yet in reality our vocation is one that too often discourages its members from trampling decorum and warns, lest any insist, that "it"--knowledge of plagiary--be kept in the club, or else. This hypocrisy is not entirely without sense. At the very least, public disclosure of plagiarism can result in professional reputations' being hurt on both sides of the issue, regardless of the outcome. And the stakes are often much higher: an accuser may face a libel lawsuit (or a threat of one: see Chapter 2 below), the accused may lose his job,

and both, perversely enough, may be professionally shunned because of the flap–again, irrespective of how the case plays out. More personally, one naturally hesitates to be the messenger shot for bringing unwelcome news--by going careering thereby to lose a career. Finally, there's the contemporary postmodern intellectual malaise that proclaims us all guilty (and therefore no one is), symptomatic of an academic arena in which, as Peter Shaw says, "it is difficult to imagine a plagiaristic act. . . that would go undefended."[22] But for the grace of Clio or some other muse we too *could* plagiarize, the fear that despite such grace we *have*---sometime, somewhere, the deed buried and forgotten in an ancient article from the pre-tenure years, now so dimly past, more obscure than the approaching horizon of retirement.

But if for no other reason than to stay square with my students, I did decide to "go public" with my evidence of plagiarism. But how to proceed? Early in December 1989 I was in Springfield for the Illinois History Symposium, an annual meeting of scholars interested in the history and culture of Illinois. I talked to a trusted acquaintance, Cullom Davis, who was a historian and more recently a Lincolnist, having assumed the directorship of the Lincoln Legal Papers. As I told him what I was uncovering concerning Oates's misuse of Thomas, I shall never forget the funny look he gave me, saying: "You're not the first person to tell me this." Davis then explained that in 1986 he had received a letter from an old Springfield friend, Laurin Wollan, now a professor at Florida State University. Wollan expressed his astonishment at textual parallels he had come upon in Thomas and Oates, and he listed a few of the most glaring. What, he asked Davis, should be done about this?[23]

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[22]Peter Shaw, "Plagiary,"*The American Scholar*, Summer, 1982, 336.

[23]Laurin Wollan was a professor of criminal justice at Florida State University (recently retired) and an attorney. He has kindly provided me with a copy of his

At the time, neither Davis nor Wollan had pursued the matter, but now, three years later, Davis was struck with the coincidence (or was it rather an independent confirmation of Wollan's detection of plagiary?). I told him that I wanted to write a paper exploring the parallels more fully. If I put in a proposal for next year's Symposium, describing a Lincoln session to include papers on Oates's biography, would he agree to give commentary? Davis then and there said he would--with the proviso that if he thought me wrong he would clearly say so to the Symposium audience. At this point I may have gulped, but Davis's monition was fair enough, his frankness characteristically admirable. We parted amiably but, or so it seemed to me, in respective sorts of brown studies: the commitment we had made was so serious, its outcome so unpredictable.

Back home in Bloomington, I continued reading Oates and Thomas together and thinking about how to propose the session I had in mind. I knew I wanted James Hurt, an English professor at the University of Illinois Urbana-Champaign, to give one of the papers. Hurt and I were old "Illinois literature" friends and I remembered having read in manuscript a critical piece on Oates's theory and practice of "biographical realism" that used *With Malice Toward None* as a case study.[24] He readily agreed to participate, as did another English professor friend and colleague, Douglas Wilson from Knox College in Galesburg. Wilson told me he had nothing to say about the Oates biography, except that he hadn't learned anything from reading it, but as he was then deep into his

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letter to Cullom Davis, dated 15 July, 1986; it contains several of the same parallel passages cited above in Ch. 1. For Wollan's role in the plagiarism controversy, see below, Ch. 4.

[24]This was originally intended for Hurt's "Writing Lincoln" chapter in his book *Writing Illinois* (Urbana: University of Illinois Press, 1992) but was eventually omitted.

reconsideration of "Herndon's informants," he would be happy to offer a new interpretation of the friendship of Lincoln and Joshua Speed as it concerned the former's "non-marriage" on "that fatal first of January" 1841. I was delighted. Both papers promised well. If I could manage my part, the session ought to go. By early February 1990, I had pulled all the materials together and mailed the proposal to the Symposium program committee.

Assuming approval, which would come sometime in April, I had only eight months to complete the paper and send it to Davis for review early in October. While continuing to follow the parallel progress of the two biographies, gathering new instances of borrowing almost page-by-page, I decided to collect and study a representative sample of *With Malice Toward None's* 1977-78 reviews (including those I had glanced at before ordering the book for class). Mainly, I wanted a fuller sense of what both Lincolnist and popular opinion had been, but in addition I was curious whether anyone else had so much as hinted at what I was noticing, page after page--and had the temerity to say so in print.

No one had. Of the dozen reviews I checked, none pointed out any similarities in language between the two books, although nearly every reviewer lauded Oates's effort as the heir-apparent to Thomas as the reigning Lincoln biography.[25] I hadn't expected otherwise--the twenty-five years between Thomas and Oates is an age in historiography, and even serious reviewers wouldn't have

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[25]The closest was John Y. Simon's in the *Lincoln Herald:*" Inevitably, the new Lincoln invites comparison with Benjamin P. Thomas's magisterial 1952 biography, which has held sovereignty for a quarter of a century as the standard single-volume portrait. Similarities between Oates and Thomas are striking: comparable in length, chronological proportions, and in choice of topics covered, both books concentrate more on narrative than direct interpretation. Both authors have a gift for explication which spares general readers from aimless wandering in the thickets surrounding such complex matters as those Lincoln and Douglas debated, and both aim toward Lincoln the man rather than political history" (80: 3 [Fall 1978], 199).

been likely to have re-read Thomas in preparation for reviewing Oates (though one could argue that they were duty-bound to do so before deposing the one and crowning the other). But I was a little surprised that not even the Lincoln-period specialists had noticed anything amiss.

One of these authorities was Harold Hyman, a professor of history at Rice University, who had completed Benjamin Thomas's book on Edwin Stanton after the latter's death (*Stanton: the Life and Times of Lincoln's Secretary of War,* 1962), but who apparently heard no alarms in his head, however faint, when he read Oates. In a review-essay for *Reviews in American History,* Hyman freely praised *With Malice Toward None* as

> a fully fleshed, thoughtful, provocative scholarly biography, based on impressively thorough exploitation of familiar sources as well as the most interesting recent reevaluations. There is no reason to repeat here the admiring chorus sung about Oates's book in the more popular reviewing media. I agree with it. This is a remarkable *Lincoln.* Oates has fulfilled the scholar's responsibility. . . to comprehend better "History, Men and Time."[26]

Hyman calls the book "scholarly," the author a "scholar." Clearly, then, in his highly respected opinion as a historian, *With Malice Toward None* is an example of sound *scholarship* that happened to become *popular*. This is the historiographical high ground, which Oates himself would try to occupy during the early stages of the quarrel and at the top of which I too wished to address his compositional practice in the Lincoln book. If Hyman had tumbled to the truth, would he have altered the judgment with which he closed his essay? "Oates has given us the

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[26]Harold M. Hyman, "Neither Image Breaker nor Broker Be," *Reviews in American History,* 6:1 (Mar. 1978), 73.

best relatively brief, sensitively balanced scholarly biography of Lincoln. There is more to do. But all Lincoln-Civil War and Reconstruction students now have a new measure by which to judge their work."[27] We must believe so, for how can a text that owes an unpaid scholarly debt to the past constitute a scholarly standard for the future?

I puzzled over this question then, and I still do now. But the fact remained that in 1977-8 some of the best 19th century American historians had greeted *With Malice Toward None* as the successor to Thomas without realizing that Oates's book stood on the latter's ample but unwilling shoulders. I hoped that a demonstration of this silent dependence would lead to a scholarly re-evaluation. From the start, I made this an important part of my task. During the spring of 1990 I read a number of the major Lincoln biographies and monographs. I got my list partly from Paul Angle's *A Shelf of Lincoln Books* (1946) but mostly from browsing in libraries and Oates's reference notes. I began with Thomas's *Portrait for Posterity* (1947), the survey of previous Lincoln biography he had traversed before writing his own. I knew Herndon and Sandburg (both the six-volume and one-volume versions) because of my interest in Illinois literature, but Albert J. Beveridge I had yet to tackle. His immensely detailed two-volume *Abraham Lincoln: 1809-1858* (1928) was, I quickly learned, *any* subsequent biographer's chief source for the pre-presidential Lincoln. And there was much else (as I hope Appendix 1 of this book shows). At first I read entirely to check Oates's sources, cited and otherwise, and what I found was both satisfactory and bothersome--no "ur-text" from which both biographers copied, so the search must continue. Yet soon I found myself reading with another aim in mind, to confirm *intertextuality.* The more I read, the more I became convinced that Lincoln biographies were

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[27]Hyman 78.

"about each other." As Lincoln studies grew exponentially in the post-World War II period, as book after book appeared, the horizon of primary sources receded and "orginality" was ever less possible to the new writer--while the *illusion* of originality remained supremely important. This idea wouldn't let me alone and caused a change in the emphasis, if not the direction, of the essay-in-progress. The plagiarism I had detected and tracked would henceforth be the keystone of an argument about biographical originality, realism and myth-making--in short, about Oates's theory of biography as related to what I decided to call his "compositional practice" in *With Malice Toward None.*[28]

To this end I thought and wrote during the summer of 1990. When I finished a complete draft of the essay early in August, I asked some friends and colleagues at Illinois Wesleyan and a few Lincolnists in the area to read it. Most important, in retrospect, was the decision to have "Reading Between the Texts" vetted by the university attorney, Mark Dunn. Handing him a copy, I had two questions: 1) Was the case for plagiarism convincing? And 2) Would the university's professional liability policy be in effect when I gave the paper? After reading and ruminating for a week or so, Dunn answered "yes" to both queries, and I now knew I would have an institutional and insurance umbrella over me when I spoke in Springfield in November.

Other responses to the essay were also positive--with one qualification and one significant dissent. I had sent the manuscript to Richard Wentworth--a historian, a friend and then the director of the University of Illinois Press--to obtain his opinion. He wrote back to say he liked the essay, but cautioned about using the word "plagiarism:" not that Oates hadn't been caught *in flagrante,* he

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[28]This decision, as it turned out, resulted in some kindred critical points in my and James Hurt's papers, which mistakenly led to Oates's thinking Hurt was raising the plagiarism issue too. See Ch. 3 below.

admitted, but shouldn't I proceed with euphemistic circumspection in a paper that was bound to be controversial?

> I certainly feel that Oates has gone beyond reasonable bounds in borrowing from Thomas, but I suspect some people would look at the same evidence and argue otherwise. I am a bit worried that if you use the word plagiarism it might incite him to hire an attorney, and that might end up costing you money to hire one of your own. I suspect he can afford that more than you can.[29]

Wentworth's perspicacity here bordered on clairvoyance, as will appear. But, given the case I had made against Oates and my definition of the act of plagiary, I was reluctant to omit the "P-word" merely to avoid the possibility of legal action. It seemed like professional self-censorship. Wentworth closed his letter with the information that he would forward the manuscript to Robert Johannsen for a second (and a specialist) opinion, as he had asked my permission to do on the phone a day or two before. Earlier in the summer I had met and struck up an acquaintance with Johannsen, the J.G. Randall Professor of History at the University of Illinois. We had spent an inclement but pleasant day at Lincoln's New Salem, talking about Illinois books at Ralph Newman's little bookshop and later attending the fifteenth anniversary production of The Great American People Show's *Your Obedient Servant, A. Lincoln.* It had been a cordial meeting, and I was naturally eager to have Johannsen's opinion on the essay.

When the news came on 4 Nov., however, it was like a rabbit punch: Johannsen flatly declared that I was wrong: "Frankly, I do not think you make a

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[29]Richard Wentworth to Robert Bray, 22 Oct. 1990.

case for plagiarism."[30] But he didn't say why he thought so, didn't criticize my argument, didn't comment on the evidence, didn't in short offer me a clue. With less than a month to go before the Symposium, I was faced with an unargued negative judgment from a big name in Lincoln scholarship--and certainly a power in Illinois historical circles. At this point, what I could do but worry over my paper yet again and hope that Johannsen's was a aberrant view? It was an anxious time: I took what comfort I could from the knowledge that the other scholars who had read the paper were to a person persuaded by my case. Uneasy as I was, there was no question of backing out now.

At 1:15 pm on Friday, Nov. 30, in the Freeport Room of the Ramada Renaissance hotel in Springfield, the session of the 11th Annual Illinois History Symposium entitled "With Malice Aforethought" convened. Too nervous to have eaten lunch, I got to the session early and fidgeted as the room slowly filled up. After what seemed a long wait, we began. Cullom Davis introduced Jim Hurt, Doug Wilson and myself to an audience of perhaps seventy-five--scholars, amateurs and the simply curious. I was to read first. Not knowing whether Stephen B. Oates was present (he wasn't), nor being able to gauge the friendliness of the room (it was, mainly), I rose with an anxiety I hoped wasn't outwardly obvious and hurried through "Reading Between the Texts," fussing the while with sundry handouts and overhead transparencies that I hoped would make the Oates-Thomas parallels clear to a probably skeptical audience. Somehow I fretted my half-hour upon the stage without getting tongue-tied or projecting anything upside down, finished to a rippling of polite academic applause and took my seat.

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[30]Robert Johannsen to Robert Bray, 4 Nov. 1990. See ch. 4 below for Johannsen's subsequent involvement in the controversy.

Though I didn't know it until later, there was at least one strong supporter in the audience: Mary Linehan, who had been an American studies student of mine at Illinois Wesleyan in the early 1980s, had gone on to do a Ph.D. in history at Notre Dame, and was teaching in the Chicago area. About a week after the session she wrote me a very kind letter, the concluding paragraph of which I quote: "I have taught college history for three years and have frequently encountered student plagiarists. Two department chairmen have told me to let it go, that cheating is to be expected. It is sometimes hard to fight the disillusionment and to realize that academe is not perfectly pure, but I was never so proud to be in this profession and to be a Wesleyan graduate as I was last weekend. Thank you for your courageous stand." No: thank *you,* Professor Mary Linehan.[31]

The session next got to hear two excellent papers, Wilson's "Abraham Lincoln, Joshua Speed and 'that Fatal First of January,'" and Hurt's "With Malice Toward Some: the Historiography of Stephen Oates." Yet throughout the proceedings I think everyone was anticipating Davis's commentary (I found myself dreading it!) at the end. Taking the podium, he began with remarks on "Reading Between the Texts." I remember the almost complete attention in the room as Davis spoke:

> What about the plagiarism charge? As defined by the American Historical Association, which has had to come to grips with this issue over the last decade, plagiarism is using without citation another writer's language, sources, concepts or data. Either asserting plagiarism, as Robert Bray has done, or judging the claim, as I am about to do, is a disagreeable task that imperils profes-

[31]T Mary Linehan to Robert Bray, 8 Dec. 1990.

> sional collegiality. But professional integrity far outweighs professional collegiality, so Bray has raised the question and I must begin the task of assessing it.
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> While incomplete, Bray's analysis is credible as far as it goes. There are too many identical and nearly identical words and phrases, too many syntactical and structural echoes, too many parallels in the sequence of topics, too many convergences on the same unusual evidence, ultimately too much striking resemblance to dismiss or ignore Bray's accusations.
>
> [paragraph here omitted]
>
> It is my belief that the present paper falls short of an airtight case, because it concentrates on the first half of Oates's book, and then takes up another issue. But is [sic] offers enough disturbing evidence of possible plagiarism to warrant formal inquiry by a panel of historians. I wish this were otherwise because I have admired *With Malice Toward None.* [32]

I hope my sigh of relief when Davis finished with me was mental and not audible. At last, for better or worse, it was all out: the "story" had been publicly told and a historian of integrity had publicly agreed with it. Davis went on to give Hurt and Wilson's papers their due, which was high praise, while I sat like one in a daze. Somehow I managed to get through the question period, which I but dimly recollect, though since that day others have declared that it was animated. Jim Hurt remembered that "Professor Bray was questioned very sharply and in some cases hostilely about his reasoning and conclusions,"[33] and I

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[32]Cullom Davis, "Comments on Robert Bray's ' Reading Between the Texts,' typescript copy.

[33]James Hurt to Stephen B. Oates, 29 Jan. 1991 (copy).

afterwards heard from a friend that there was some serious grumbling from a Lincoln "heavy" in the audience who was far from convinced and, indeed, thought the paper shouldn't have been allowed. But he did not speak to me directly then and hasn't since, though I've run into him at a number of professional meetings. The rest of the day was for me a blur of "coming down." I attended the banquet that evening and heard John Mack Faragher speak,[34] went to a session on Saturday morning, and drove home to Bloomington in the afternoon. Looking back, I suppose I was a trifle sad that "Reading Between the Texts" hadn't and wouldn't turn the Lincoln world upside down, but mainly happy to have the whole business over and done with. It was over, wasn't it?

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[34]Faragher was the Symposium's featured speaker because of his popular and authoritative book *Sugar Creek,* the history of a frontier community just south of Springfield. I mention him here because he later made some public utterances about the "With Malice Aforethought" session. Faragher told the Boston *Globe* that "word had gotten out that Bray was going to use 'graphic evidence' to pillory Oates. He said that the room was jammed with people. [para.] When he sat at dinner with organizers of the symposium, Faragher said, 'There was expectation it might be in the Times the next day. It wasn't and they were disappointed'" (Jean Caldwell, "UMass biographer rebuts accusations that he plagiarized," Boston *Globe,* 17 April 1991, 23).

Dishonest Abe Scholarship

Part I: Bray: "A Specious and Fantastic Arrangement of Words'

Chapter 2

Reaction

The following Tuesday, December 4, the storm I didn't know was brewing broke. By the time I got to my office at Illinois Wesleyan that morning, the voice mail was already piling up. The first message was from a reporter (as were the half-dozen others), and as I heard his request for an interview I realized I had a decision to make and little time to think it over: should I talk to the press about the Symposium and my paper? Wisely or not, I determined to answer media inquiries as carefully as I could. And talk to one, talk to all: whoever presented journalistic bona fides would have my attention for the few minutes it took them to do their job. Had I known then how many of the tribe I'd just obliged myself to speak with over the next two years--and how good they were at getting what they wanted from me--I might have declined the pleasure. But instead of indulging second-thoughts I picked up the phone, breathed deeply and punched in the number of the *State Journal-Register* in Springfield, Illinois.

The journalist who answered was Pete Ellertson, with whom I proceeded to speak for about thirty minutes (and there were several follow-up calls). Evidently the talismanic words Lincoln and plagiarism, in tandem yet, were irresistible to a Springfield-based newspaperman, for he had already been busy preparing what would be the first feature story on the controversy, which would appear the following morning in the *Journal-Register* (Ellertson's piece also went out on the Associated Press wire, which no doubt explains the rash of calls from

Oates's "home-town" papers the next day).[35] I found I could talk easily with Ellertson because he knew what had transpired at the Symposium and somehow had obtained and read a copy of my essay. What is more, he had a literary interest in plagiary and seemed to understand the method and tendency of my argument against Oates. Perhaps for these reasons the resulting article was "friendly" and detailed: Ellertson looked at the two texts himself and quoted freely from the essay, especially from the section that discussed the "fever-and-ague/winter of the deep snow" episodes. Best of all, from my point of view, as a sidebar he highlighted the two versions in parallel texts, so that readers could see what I was basing my analysis on, culminating in Oates's "climatological absurdity" in having written, apropos of that memorable winter, "[f]or nine weeks the temperature held at about twelve below zero."[36] Incidentally, when asked about this very detail by another reporter (Jim Hillas of the *Daily Hampshire Gazette*--see just below) Oates replied: "'There are only so many ways you can say the temperature held the same way.'"[37] Now this is a bit garbled, but if it means what I think it does, he had missed my point widely--which was that he miscopied the words from Thomas--but understandably since he had not had the chance to read the sentence in context. But, misunderstanding aside, the

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[35]Later in the afternoon of the 4th, I also spoke with Dan Shomon of United Press International (Springfield), who had been at the "With Malice Aforethought" session and was doing a wire story that would be available to subscribers on the 5th.

[36]Pete Ellertson, "Lincoln scholar being accused of plagiarism," *State Journal-Register,* 5 Dec. 1990 (Wednesday), 1, 4. The passages in question occur on pages 21-2 and 15 of Thomas and Oates respectively (see Ch. 1 above for further details).

[37]Jim Hillas, "Lincoln scholar at UMass denies plagiarism," *Daily Hampshire Gazette,* 6 Dec. 1990, 1, 12.

"there are only so many ways" defense was one that would soon become hackneyed from droning reiteration by Oates's defenders. Yet it was as mistaken the first time made as the last. Because of any language's potentialities, there are an *indefinitely large* number of ways of saying what one means or describing what happens, and if you like Thomas's way, as Oates must have done frequently, you quote and cite him and readers and scholars alike are satisfied.

Overall, Ellertson wrote fairly and accurately about the Symposium session and my presentation. What he quoted from our phone conversation sounded, when I read it, like what I had wanted to say: that I had spoken out because professional responsibility demanded it; that there was nothing personal in my action, since as I've said I didn't know Oates and was unfamiliar with his work and career beyond *With Malice Toward None;* and that, in short, I was willing to withdraw my argument if and when it was shown to fail. But Ellertson's article also contained Oates's first public reaction, a reaction that indicated the bitter conflict to come. Claiming that he did not know "his work would be questioned at the symposium," and that he "learned of Bray's paper only through reporters' inquiries," he was upset: "'I am really put out with the Illinois State Historical Society that they never gave me a chance to respond. . . . I'll tell you--I'm going to respond. My whole reputation is on the line.'"[38] Hadn't the Symposium co-ordinators informed him of my paper well in advance of the event, as I had requested them to do and as they assured me they would? If not, this was a serious ethical lapse on their part, and I could well understand Oates's angry reaction.

A reporter for the *Amherst Gazette,* Jim Hillas, saw Ellertson's story on the Associated Press wire Wednesday and called Oates for reaction: "'This is

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[38]*Journal Register*, 12-05-90, 4.

someone trying to make a name for himself through sensationalism,'" Oates declared, going on to complain that he was being unfairly asked to respond to charges he hadn't seen. "'By the time I get the paper and make a constructive response it will be back page news. . . . It takes years to build a reputation, and by accusation you can destroy it in a matter of minutes.'"[39] Presumably, the "someone" Oates thought on the make was myself (or perhaps Cullom Davis, or both of us). About our motives he couldn't have been more wrong. In any case, our motivation was irrelevant. Oates might well have heeded the advice of Lincoln, uttered in 1864: "It is much better not to be led from the region of reason into that of hot blood, by imputing to public men motives which they do not avow."[40]

As a historian, as the senior editor and director of the Lincoln Legal Papers and as one of the most respected public humanists in the state of Illinois, Cullom Davis had more to lose than gain in bringing Oates's plagiarism to the attention of the American Historical Association. For, day in and out, Davis had to meet and work closely with the "Lincoln community" and the tightly controlled Abraham Lincoln Association, including of course those who were already lining up on Oates's side of the contention. Let the plagiary be ever so clearly demonstrated to the world, he would still suffer obloquy from those Lincolnists, professional and amateur, who thought it indecorous at best, betrayal at worst, to bring the matter before the AHA and speak frankly about it to the press. What he did, he did from conscience: "making a name" would have required him *not* to act as he did.

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[39] Hillas 1, 12. Hillas did not speak to me before writing, relying instead on Associated Press wire copy for his information on the Symposium session and my essay.

[40]John Hay diary, 18 December 1864, Hay MSS, Brown University.

For my part, I was not at all interested in joining the Lincoln priesthood. Wounding the reputation of one of its elders was the furthest thing from my mind, especially since I hadn't known that Oates belonged to that august confraternity. But his point about the fragility of professional reputations was right enough--and to this both of us were equally vulnerable. If I didn't want to make a name, I didn't want to lose the good one I had, either. For fairness's sake and my own, he needed something to respond to. Ironically, even as Oates's complaints were appearing in print, a copy of "Reading Between the Texts" was waiting for him at his University of Massachusetts office: I had faxed it to him at 3 p.m. (Bloomington time).[41]

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[41]For the record, this was five days before I received a request for the paper from Oates. I regard this as much more than a quibble because Oates later complained to the AHA that he had received his copy "long after it had made headlines. . . ." As the dates of the first stories compared to the date of my faxing the essay show (5 Dec. and 6 Dec. 1990), this is false. On Monday, December 11, 1990, I received the following letter:

> 10 Bridle Path
> Amherst, MA 01002
>
> December 6, 1990
>
> Professor Bray:
>
> May I have a copy of your paper about me as a Lincoln biographer, which you read before the recent annual meeting of the Illinois State Historical Society? Since many of your allegations against me have already appeared in the press, I must have a copy of your paper in order to make an appropriate response. Please send it to me at the above address.
>
> Sincerely,
> [signed]
> Stephen B. Oates

(Oates to Bray, 6 Dec. 1990). It is not clear why, if he were as anxious to respond to the "allegations" as he said to the press, Oates sent his request to me by letter rather than telephone or telefax. In any case, I replied to his letter with one of my

Also on the afternoon of the 6th, in between answering the phone, I called the Historic Preservation Agency in Springfield. I wanted to know for sure that Oates had been informed of the "Malice Aforethought" session. I spoke with Carl Oblinger, the chief administrator of the Illinois History Symposium and the person ultimately responsible for the choice of papers on the program. Because the press was calling him too, he knew of Oates's "not informed" complaint and assured me that the Agency, as agreed, had sent Oates a letter of notification concerning the session back in October. As a matter of fact, Oates had responded with a note of his own, declining to attend. What is more, someone from the Agency (Oblinger said "we") had told a visiting colleague of Oates's (also unidentified) that my paper would analyze textual parallels between the two biographies, though this was a verbal exchange and not documented. Relieved, I asked for copies of the correspondence and Oblinger said he would oblige. I received them a few days later, but the substance of the letters is relevant here. The Agency's letter, dated October 4, 1990 and over the signature of Noreen O'Brien Davis (the "detail-person" for the Symposium), was business-like though sadly inexplicit:

> Dear Dr. Oates:
>
> I am writing to make you aware of one session being presented at the Eleventh Annual Illinois History Symposium that you might have an interest in. I refer to the enclosed symposium program; please take note of Friday, November 30, 1990, at 1:15 p.m.
>
> I have enclosed a couple of extra programs for your use. If I may

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own, saying I hoped he had received the essay and to let me know if he had not (Bray to Oates, 11 Dec. 1990). I have had no communication with Oates since that day.

be of further assistance, please let me know.[42]

Apparently, the Historic Preservation Agency left it to Oates to look at the indicated program session and make the right inferences: "With Malice Aforethought," "Reading Between the Texts: Stephen Oates's *With Malice Toward None* and Benjamin Thomas's *Abraham Lincoln*." It is easy to see how he might not have detected a theme of plagiary from this letter and the accompanying program, but his handwritten reply shows that Oates did detect *something:*

Dear Ms. O'Brien Davis,

I appreciate your thoughtfulness in sending me copies of the program for the upcoming Illinois History Symposium. I wish I could attend the session "With Malice Aforethought." Maybe I'll send a spy out there to attend for me!

Best regards,

Stephen[43]

The bit about sending "a spy" reads playfully, but Michael J. Devine, head of the Illinois Historic Preservation Agency took Oates at his word: "In my view, Professor Oates was clearly informed of the fact that papers critical of his work were to be presented at the Symposium. He had, in my view, every opportunity

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[42]Noreen O'Brien-Davis to Stephen B. Oates, 4 Oct. 1990 (copy). In his "Letter of Protest to the American Historical Association," written more than six months later, Oates would declare: "All I ever received was a vague note from Noreen O'Brien-Davis, Symposium Coordinator and Cullom Davis's wife. . . " (Stephen B. Oates, "'A Horse Chestnut is not a Chestnut Horse:' Lincoln Author Refutes Accusations of Plagiarism," Appendix 1: 2 (photocopy of typescript; cited hereinafter as "Refutation"). But Oates was mistaken in one of his details: Cullom Davis is not married to Noreen O'Brien-Davis.

[43]Stephen Oates to Noreen O'Brien-Davis, 9 Oct. 1990 (copy).

to ask for further information from the staff or the panel participants. In fact, he may have sent a 'spy.'"[44]

Clearly, the Agency thought itself covered, and I hoped I was too. The more so after reading a troubling story in Friday's (7 Dec.) *Chicago Tribune*. Oates was again complaining about not having been informed ahead of time and denouncing the plagiarism charges as "absurd," "preposterous" and "reckless." "'To argue that I lifted Thomas and put him in my book is just absurd. Everybody who writes on Abraham Lincoln reads Benjamin Thomas. He's a great scholar. . . . My book is quite different from Thomas'. . . . It has different emphases, different interpretations.'" Having thus responded, Oates insisted that "'[o]n the advice of my attorneys, I can't respond to the charges that are being insinuated.'"[45] Beyond the adjectives and the attitudinizing ("'I have spent four miserable days staggering around in the dark, with no idea of what I'm accused of. I can't fathom the motivation of the people involved.'"), Oates's words gave me my first sense of how he was going to defend himself: since everybody who works on Lincoln reads Thomas, and since his book is "quite different" from Thomas's, there can be no question of plagiary. Because I had never suggested that the books were alike in their interpretations, I was puzzled at this tactic and amused at the bad logic. Lincolnists who read Thomas don't all use him the same way, or all use him, period. And *With Malice Toward None* is certainly different from *Abraham Lincoln*--except when it is the same, as in the major respect of

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[44]Michael J. Devine to Rodney O. Davis, 5 Dec. 1990 (copy). Rodney Davis was then a professor of history and American studies and at Knox College, Galesburg, Illinois, and was the academic chair of the Illinois History Symposium Committee. He now co-directs (with Douglas Wilson) the Lincoln Studies Center at Knox.

[45]Sharman Stein, "Lincoln author under seige," *Chicago Tribune*, 7 Dec. 1990 (Friday), 1.

language. My case rested mainly on textual and narrative similarities rather than interpretations (with the looming exception of the Herndon-Lincoln law partnership parallels: see Appendix 1). Once Oates read the essay, I thought, he would see that language, composition and attribution were the keys to the plagiary I had alleged, and he would then attempt an appropriate and detailed rebuttal to the analyses I had actually done. I should have been so lucky!

More disturbing to me were quotations in Stein's article from two powers in the Lincoln field, John Y. Simon and Frank Williams. Simon was a professor of history at Southern Illinois University at Carbondale, the editor of the Ulysses S. Grant papers, and a recognized Lincoln expert. Though I didn't know Simon at the time, I certainly knew *of* him and his imposing reputation. But to my knowledge he hadn't been at the symposium session nor had he read my essay. So when an authority of Simon's stature was willing to pre-judge the issue-- "'the passages cited by Bray do not appear to support a verdict of plagiarism'"--I was surprised and disappointed.[46] Williams, who was a friend of Oates and one of his staunchest defenders, was at that point unknown to me even as a name. I soon learned, however, that he was a Rhode Island lawyer, a Lincoln amateur and the current president of the Abraham Lincoln Association. While not a scholar, and presumably uninformed about the argument I was making, Williams like Simon

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[46]Later in the article, Simon offered a clue concerning what a strong case for plagiarism would require: "I would have to see some substantial evidence of purposeful fraud to be convinced that there really is a plagiarism charge that can be sustained" (*Chicago Tribune,* 7 Dec. 1990, 1). Throughout the controversy Simon would adhere to this "intent to deceive" criterion—one that is not usually considered a necessary condition for establishing plagiarism. Simon's position on the issue is complicated in that he was a member of the Illinois History Symposium Committee that chose my paper for the program. I later heard from Simon himself that he had not read my prospectus nor attended the committee meeting at which it was approved. Had he been there, he told me, he would probably have voted to reject "Reading Between the Texts."

was eager to have the case dismissed before it was called: the charges, he pronounced, "'don't rise to the level of what's being alleged. . . .The thrust of Oates' book is Lincoln and slavery. That's not Thomas' thrust. They're both great biographies.'"[47] Once again, as with Oates's defense earlier in the article, this was answering an argument I hadn't made. That the interpretive thrust of *With Malice Toward None* was different from Thomas's in *Abraham Lincoln* was pretty obvious to anyone who had read the two books. But what did this have to do with misappropriation of language? This was the fundamental point at issue, and I would find myself having to make it time and again over the life of the controversy. And I would discover that blank irrelevance in an academic argument is one of the hardest things to counter.

The first in a line of "What is plagiarism? Is this plagiarism?" articles appeared in the *Daily Hampshire Gazette* on Thursday, December 13, 1990. The writer, Robert Grabar, led with a quotation from Carl Oblinger, who seemed to be distancing himself (if not the Illinois Historic Preservation Agency) from the case I had made at the symposium:

> "It's all (an accusation) of paraphrasing. That's done all the time. . . . "(Historical) material is told so often that paraphrasing is really endemic to the field. . . .This is not the usual plagiarism charge."[48]

Oblinger, to be sure, was welcome to say whatever he liked about "Reading Between the Texts," but I would have preferred that he better understood what the essay was doing before speaking. Oblinger should have realized that I was

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[47]*Chicago Tribune,* 7 Dec. 1990, 1. Besides being ignorant of my argument, Williams, as Oates's friend and sometime attorney, was hardly a disinterested critic. See below, Ch. 5

[48]Robert Grabar, "Historians question charge of plagiarism in book," *Daily Hampshire Gazette,* 13 Dec. 1990 (Thursday), 41.

analyzing not the trope of *paraphrase* but of *imitation.* This is such a basic writerly distinction that I'm amazed at how hard it is for historians to keep in mind. Ask any high school or college student what paraphrase is and she'll tell you it's a restatement of text "in your own words"--precisely the Greek root meaning of the term. Yet every instance I cited from *With Malice Toward None* revealed not paraphrase, not restatement in Oates's "own words," but rather a *recomposition* of Thomas, that is, an imitation or echoing of the original, whether deliberate and open or deceitful and covert (though it is significant that the American Historical Association recognizes this distinction and regards unattributed paraphrase as itself a form of plagiarism).[49] In the process of recomposing, Oates nearly always carried over some portion of Thomas's words, phrases, clauses and syntax. Surely this is not what Oblinger considers mere paraphrase, the sort of thing "[t]hat's done all the time" by historians. Or, if it is, so much the worse for the profession of history.

Similarly, several of Oates's colleagues in the department of history at the University of Massachusetts contributed their own definitions of plagiarism to show that what he had done didn't fit--all five of them, of course, without having read my paper. The first was Robert Jones, chair of the department in 1990, who thought the charge "peculiar" because "'Usually plagiarism is an allegation that somebody has published my work before I published it.'"[50] While this is "usually" *no*t true in the history of literary plagiarism, where the theft is most often from a pre-existent printed text, Jones may have been remembering the

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[49]"More subtle [plagiarism] is the unacknowledged appropriation of concepts, data, and footnotes, all disguised in paraphrased or newly crafted sentences" (American Historical Association, "Statement on Plagiarism," *Statement on Standards of Professional Conduct,* 1990, 18-19.

[50]Grabar 41.

Jayme Sokolow case of the earlier 1980s--a memorable one in the precincts of UMass Amherst.

The Sokolow affair is far too complex, crazy and disillusioning to detail here, but the whole story is marvelously told by Thomas Mallon in *Stolen Words*.[51] Briefly, this is what the history department at UMass would have "known by heart." In the late 1970s and early 1980s Sokolow was a callow assistant professor of American history at Texas Tech who was anxiously trying to get a book called *Eros and Modernization* published ahead of his tenure deadline. The difficulty, however, was that Sokolow had plagiarized portions of his manuscript from a dissertation by UMass historian Stephen Nissenbaum, which had recently appeared as a book under the title *Sex, Diet and Debility in Jacksonian America* (1980). When the first university press editor sent Nissenbaum--as the authority on the subject--Sokolow's manuscript for evaluation, it was a cruel irony. When it happened twice more, however, he naturally refused to look at this poisoned version of his own work, growing angrier with each new round in the fiasco. Though Nissenbaum denounced the plagiary to all three editors, not one passed the knowledge on, either to Sokolow or other publishers or the wider academic community. Thereby a major plagiarism, uncovered by the victim, went for several years not only unpunished but virtually unknown. Eventually, in the absence of such pertinent information, a university press (Farleigh Dickinson) accepted and brought out *Eros and Modernization:* a last straw that determined Nissenbaum to complain to the American Historical Association, which he and his department chair, Robert Griffith, did in March 1984.

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[51] Mallon, Ch. 4, "Quiet Goes the Don." Details in this paragraph come from pages 148, 152-5, 158, 177, 179.

Those who followed the case or read about it in *Stolen Words* know that Stephen Nissenbaum got no satisfaction from the AHA. After much dithering, the organization allowed Sokolow, as Mallon dryly observed, "to settle his own case." There was no admission of guilt on his part, no finding of plagiary by the AHA, no mention of the "p-word" at all. *Eros and Modernization* was not recalled from print and until *Stolen Words* appeared in 1989 there was no widely public disclosure of Sokolow's plagiarism.[52] I suspect that the AHA's pusillanimity embarrassed many of its members, because the organization quickly drafted and instituted a "Statement on Plagiarism" that, on paper at least, was the toughest of its kind in academia. To quote Mallon again: "It is an exceptionally forthright document, all the more so in view of the timid response actually made by the organization to one of the cases that prompted it." And, concerning the sanctions portion of the document ("A persistent pattern of deception justifies the termination of an academic career."): "the last paragraph of the 'Statement on Plagiarism' is almost a history of what never happened to Sokolow."[53] Stephen Nissenbaum, thoroughly disillusioned, went about his business as an esteemed teacher and writer of history; Jayme Sokolow moved on to a professional

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[52]Mallon 185.

[53]Mallon 187-8. This first version of the AHA's "Statement on Plagiarism" was written by member historians Robert Zangrando and John Higham. Mallon concludes that the AHA and Zangrando in particular (who was on the AHA's Professional Division committee at the time Nissenbaum complained) "mishandled" the Sokolow case and let Nissenbaum down badly (184, 188). However this may be, Zangrando, with whom I have become acquainted because of the Oates case, has since shown himself to be a stalwart "hard-liner" on plagiarism, trying to keep the AHA aware of its responsibilities to "whistle-blowers" and to its own stated standards of professional conduct. I was present at an AHA convention session in San Francisco in January 1994 when Zangrando forcefully indicted Professional Division officers for *failing* in the Oates case to live up to the 1990 version of the "Statement on Plagiarism."

position with the National Endowment for the Humanities, where he oversaw "the grants awarded to university professors for the pursuit of their research."[54]

I think the Sokolow case is in two respects relevant to Oates's. In the first place, its lamentable outcome portends the failure of will the AHA would show with Oates five years later. And then there is Sokolow's plagiary itself. I'm sure that the tale has passed into legend in the UMass history department, handed down from chair to chair, told and retold at cocktail parties and always making a good story for the new assistant professors. Poor Jayme Sokolow--he thought he was stealing from an unpublished source, Nissenbaum's dissertation, thus fulfilling Robert Jones's criterion for historiographer plagiary: "'somebody has published my work before I published it.'" But why was the fact of Sokolow's plagiarism apparently so obvious to everyone, then and now, that the plundering was all but taken for granted--a few parallel columns and that's that? This is an important question, especially in light of Jones's (and others') dismissive attitude toward the Oates charges: "'To take something out of a popular book would be ludicrous. People who plagiarize in that sense are fools. . . . The chances (of not being caught) are nill [sic] . . . .'"[55] In other words, Oates didn't plagiarize because he would have been foolish to do so because the act would have been immediately apparent to the world. The first part of this is

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[54]Mallon 176, 187.

[55]Grabar 41. In a similar article appearing in the *Amherst Bulletin* Jones referred to me as "this fellow" and allowed that "[p]lagiarism is pretty easy to prove. You put one page beside another and if a certain percentage reads the same, it's plagiarism" (Bruce Watson, "Plagiarism charge faces Stephen Oates," *Amherst Bulletin,* 12 Dec. 1990). Jones did not say what this "certain percentage" needed to be, but "putting one page beside another" is precisely what I had done with Oates and Thomas. Jones's "verbatim quantity test," as we might call it, is, however, irrelevant both to the AHA's definition of plagiarism and the common academic understanding of the act.

more a matter of deep psychological motive than of common sense, and all I can say is that (as already noted) such manifestations of the "death wish" do not surprise experts in plagiarism.[56] The second is a peculiar sort of logic that I would become familiar with over the life of the quarrel. Lincoln expert: I reviewed Oates's book when it came out back in 1977; I didn't see these parallels; ergo, they must not be there--all wrapped in a smug "QED" that implied, if it did not say, no point in looking at the texts again, *I know.*

But as I and others have shown, the parallels *are* there and Stephen Oates put them there. And many of the borrowings are of a piece with the examples Mallon gives of Sokolow's larceny. Consider the following two passages, the first from Sokolow, the second from Nissenbaum:

> Yet it would be completely misleading to see Thomas and his wife Mary as nineteenth century critics of Victorian sexuality who glorified sexual intercourse. Their defense of sexuality was rooted in the very spirit which it appeared to reject.

And:

> But, for all that, it would be profoundly misleading to see the Nicholses as a kind of nineteenth-century anticipation of Masters and Johnson. What is even more striking about them than their ostensible modernity is the fact that their attitudes were, in the last analysis, rooted in the very spirit they appeared to reject.[57]

I invite readers to look at the Oates-Thomas parallels discussed in Appendix 1 of this book. By comparison, Oates's account of Nancy Hanks Lincoln's death has approximately the same amount of verbatim borrowing as Sokolow's; moreover,

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[56]Mallon 34, citing and discussing Peter Shaw's "Plagiary."

[57]Quoted by Mallon 154.

Oates, like Sokolow, also expropriates syntax and the general ordering of sentences (narrative order in the one, analytical in the other). In other words, both are plagiarisms. Yet neither Jones nor to my knowledge anyone else (other than the thief himself) ever argued that Sokolow was "paraphrasing" Nissenbaum or insisted that historians do this "all the time" or otherwise extenuated Sokolow's offense with the plea that "there are only so many ways of saying" that the Nicholses weren't prophets of modern sexual liberation.

Another of the UMass history professors prominent in Grabar's piece was Leonard Richards, who offered his own versions of both the "It's not there because I didn't find it" and the "There are only so many ways" rationalizations: "'What can you do? The guy was born in Kentucky, moved to Indiana, went to Illinois. . . .Everybody who writes about Lincoln writes the same story. It's only controversial things that you cite. I'm surprised, if there was a problem, that reviewers didn't catch it years ago. . . .I've read both books; I never would have dreamed of such a charge.'"[58] Richards, as we shall see, was far from alone in not being able to dream of Stephen Oates as a plagiarist, but it is his other comment that interests me here. Is it true that "everybody who writes about Lincoln writes the same story"? A moment's thought shows that this truism needs salt to swallow. William Herndon, after interviewing the New Salem area folk still alive and compos mentis in 1866, gave us the full-blown, romantic and tragic legend of the Lincoln-Ann Rutledge love affair--the one that remains popular today: By early 1834 Lincoln and Ann had declared their love to one another; they were going to be wed; then she fell ill and died in August, 1855; her death hit Lincoln so hard that he became temporarily insane and was stricken with melancholy for life. Later 19th and early 20th century biographers included Herndon's account

[58]Grabar 41.

with qualifications or embellishments, but modern professional historiographers, beginning with Beveridge, de-canonized it as the merest myth, alcoholic fumes from Herndon. Yet now a thorough re-examination of his interviews by experts like John Y. Simon and Douglas Wilson indicates that the legend is probably true *as Herndon originally told it.* So what do you do with the story if you're attempting a life of Lincoln?

Even when biographers *do* tell the "same story" of a canonical episode in Lincoln's life, they rarely compose in the same or similar words, sentence-structure and narrative order. Writers on Lincoln (and writers generally) *choose* their materials and their means. They may show, say, Dennis Hanks coming to Indiana either in their own voice or another's. If the latter, they, again, must quote and cite. Or if they are struck by an atmospheric tidbit from Thomas concerning Lincoln's river-rafting to New Orleans--"giving an occasional tug on their slender sweeps to avoid the snags and sandbars"--they are obliged to give him his due for the invention. They do *not* slightly rewrite the sentence and pass off the prose as their own, as Oates did: "tugging on their slender sweeps to avoid snags and sandbars."[59] It would be fascinating to learn what professors Jones and Richards would say about these and many other such examples, and whether after reading my essay they would continue to defend their colleague so blithely. But, alas, though quick in December 1990 to call the charges categorically "ridiculous," they have been molasses-slow in responding to the subsequent four years of the controversy. In fact, I've heard nary a word from anyone in the UMass history department--and that includes Stephen Nissenbaum.

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[59]Thomas 17; Oates 14.

Perhaps the most focused and philosophical of the first round of newspaper articles was by Patrick Reardon in the *Chicago Tribune* of Tuesday, December 11, 1990. Reardon had called me at about 10 a.m. on the previous Friday (Dec. 7), asking for a face-to-face interview, something no other reporter had done, which I was glad to grant in order the better to explain myself. By 2:30 that afternoon he was in my office, where we talked for nearly two hours. Reardon, who was soft-spoken but tough-minded, seemed to understand the psychological stress Oates and I were under, and he certainly had done his homework on the "nuts and bolts" of my argument. He asked why I'd stopped citing examples of parallel text after the Lincoln-Herndon partnership sections of the two biographies (roughly after the first one-third of each). I answered that I hadn't exactly stopped, just quit bringing them up in the paper, since I was satisfied that a pattern of plagiary had emerged and wasn't interested in quantifying instances. When I told him there were plenty more I could have used, he asked to be shown. I got out my copy of Oates that had annotations and cross-references to Thomas all the way to page 260, well into the first year of Lincoln's presidency and the Civil War (Laurin Wollan has since tracked the books all the way through, finding persistent unattributed borrowings throughout *With Malice Toward None)* [60]. Reardon asked if he might have a copy of a sampling of the relevant pages and went away, I believe, even more thoughtful than he had arrived, and his article reflected it.

Reardon distinguished between "popular" and academic notions of plagiarism--"the verbatim transcription by one writer of another's words" versus (in the AHA's terms, already quoted above) "'the unacknowledged

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[60]Laurin Wollan, document submitted to the American Historical Association, 19 Feb. 1991 (copy). For Wollan's important role in the Oates controversy, see also chs. 3 and 4.

appropriation of concepts, data, and footnotes, all disguised in paraphrased or newly crafted sentences. . . .'"[61] And he clearly thought that what I was alleging was mostly the "disguised" variety. As had Ellertson nearly a week before, Reardon gave my position a fair shake, both in his text and in the side-bar, which featured three parallels: the death of Nancy Hanks Lincoln, the "deep snow" of 1830-31 and an episode from Lincoln's first session as a state legislator at Vandalia.[62] The story finished with words both prophetic and ominous:

> In accusing Oates, Bray is attacking a star of the nation's community of historians. As an outsider, he is likely to be the subject of counterattacks by Lincoln experts.

But having forewarned, Patrick Reardon kindly allowed me the last word: "'I'm a writer too,'" I protested. "'I've written things that are out in the world. I'm a fairly well-respected literary critic around the state. I'm not afraid to take a stand if I believe the evidence warrants it."[63] The "well-respected" may have been

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[61]Patrick Reardon, "Book controversy hits accuser, accused," *Chicago Tribune,* 11 Dec. 1990, 1.

[62]Unfortunately, the article sidebar slightly garbled the text of the "deep snow" on the crucial matter of Oates's thermometer: "For nine weeks the temperature held at about nine degrees below zero."

[63]Reardon 1. On Sunday, Dec. 16, Reardon published another article on plagiarism, using the Oates case as "only the latest in a growing number of highly publicized allegations of plagiarism." Not reporting this time so much as reflecting, Reardon revealed his own morally serious view of plagiary: "Plagiarism. . . is a subversion of the scholarly process. Scholars work in the knowledge that much of what they have to say is based on the efforts of those who have come before. They also expect that their work will be the basis, in the future, for the endeavors of others. But, for this system to succeed, scholars have to trust each other that their contributions will be recognized." Reardon then quotes John Higham, one of the writers (with Robert Zangrando) of the AHA's "Statement on Plagiarism:" "'What really has to be taught is the moral imperative of generosity and cooperation'" (*Chicago Tribune,* 16 Dec. 1990, 5: 1, 20). Significantly, Higham later decided that what Oates had done was *not* plagiarism (see Ch. 5 below).

wishful, and the bit about not being afraid was certainly whistling in the dark: I *was* afraid--of the "Lincoln experts," of public reaction, most of all of being wrong. Yet at the same time I was glad of the opportunity to speak forcibly to the *Tribune's* huge audience. For, I knew deep down, the evidence *did* warrant the conclusion, and I intended to keep on saying so, regardless of whether I could ever convince the keepers of the Lincoln flame.

Reardon's articles marked the end of the first phase of the controversy, publicly at least. Privately, though, things were getting noisome. On Thursday, Dec. 13, 1990, at about 2 in the afternoon, I received a package via courier. Inside was, if not a "letter-bomb," at least a bomb of a letter, neatly typed on the nicest embossed stationery I'd ever seen. It was from one Neal I. Gantcher, attorney, of the law firm of Leavy Rosensweig & Hyman, New York City. As I read the turbid prose, I realized I was being formally threatened with a suit for libel:

> We represent Professor Stephen B. Oates and are writing to you on his behalf in regard to the recent charges that were made by Professors Bray and Davis at the symposium sponsored by the Illinois State historical Society on Friday, December 7, 1990 [sic] that Professor Oates plagiarized in writing his book "With Malice Toward None." Professor Oates categorically denies the charges. At the least the statements attributed to Professors Bray and Davis are libelous per se and have harmed Professor Oates. If Professors Bray and Davis were interested in the truth of this matter, it would have been responsible scholarship to have first apprised Professor Oates of the charges and allowed him to review the material that was to be presented at the symposium so that he would have had the opportunity to either attend the

> symposium or comment on the charges being made. The report issued in such circumstances constitutes malice or reckless disregard of the truth and is particularly heinous.[64]

For my "heinous" actions, Gantcher continued, I must recant or pay the price:

> Unless a retraction and a satisfactory apology is [sic] received by this office within ten (10) days from the date hereof, we will consider such silence to mean that Professors Bray and Davis do not intend to withdraw their comments. Notice is hereby given that if such unfounded and defamatory charges are not so withdrawn Professor Oates shall seek to recover the damages that he has suffered as provided to him under Federal and/or State law.[65]

Besides Davis and myself, Gantcher also named Raymond E. Hauser, who was then the president of the Illinois State Historical Society, as a party to this "libel," no doubt because of his fiduciary responsibility in the organization that had allowed the paper to be read. And, finally (and surprisingly to me), the AHA was named:

> By this letter, the American Historical Association is also put on notice that if it intends to investigate the charges of Professors Bray and Davis, then Professor Oates should be allowed to respond to the charges being brought to the Association. Any public comment by the Association in regard to this matter may result in a republication of the libelous statements here-tofore made by Professors Bray and Davis for which Professor

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[64]Neal I. Gantcher to Bray et al., 12 Dec. 1990.

[65]Gantcher to Bray et al., 12 Dec. 1990.

Oates will also hold the Association liable.[66]

Yet hadn't Oates just days before this told the *Daily Hampshire Gazette* that "he would welcome an investigation by a panel of historians into whether his 1977 book took passages from a previous publication"?[67] I had assumed that Oates meant by "panel of historians" the AHA's Professional Division, which had the duty of adjudicating all matters of professional conduct, including plagiarism. But here was his lawyer sternly putting the organization "on notice" that it too would be liable for damages to Oates's reputation occurring as a result of any such inquiry! [68] In other words, dear AHA, find my client not guilty and all will be well; but dare call him a plagiarist and there'll be hell to pay. It is impossible to reconcile this peremptory demand with Oates's earlier statement that he would "welcome" a hearing by the AHA.

Since I had never been threatened with a lawsuit before, I was both bemused and scared by Gantcher's letter. Bemused for two reasons: because I was naively confident that academic disputes were to be settled in the "marketplace of ideas," the workings of which would judge right or wrong on the evidence alone; and because I was reasonably well protected if the matter were to end up in court. I knew that my university's professional liability insurance was in force and would pay for my defense and, God forbid, for any monetary judgment against me if the libel charges were upheld. But at the same time I was frightened. This was no notice from a bill collector, to toss into the wastebasket. Threats from a New York law firm, with perhaps Oates's powerful

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[66]Gantcher to Bray et al., 12 Dec. 1990.

[67]Hillas, 6 Dec. 1990, 1.

[68]As it turned out, Oates empanelled his own jury, the "Gang of 23." See Chs. 4 and 5 below.

publishers, HarperCollins, standing silently behind them, descended from a realm I knew solely through movies and TV. But I did recognize terms like "malice" and "reckless disregard of the truth"-- these were the sort that lawyers used when they intended to claim punitive damages. Time to retract? Had it not been for the reassurance I received from Illinois Wesleyan's general counsel, Mark Dunn, I might right then have donned my supplicant's robe and crawled to the offices of Leavy Rosensweig crying "mea culpa, mea maxima culpa!" But New York was a long way to crawl, and Dunn told me not to worry--this was the standard stuff of legal intimidation, in New York or Bloomington. We would not, he added with a smile, dignify it with an answer. And retraction was out of the question.

So now I was under the threat of a libel suit (and remain so at this writing, as is Cullom Davis). An uncomfortable situation, to put it mildly, but what could I do? This was way out of my league and I had to trust Mark Dunn's lawyerly view that this was gamesmanship on Oates's attorney's part: a suit would likely never even be filed, let alone come to trial. I didn't know whether the letter to the AHA was intended to scare the organization away from a plagiarism hearing or influence its outcome. If the former, it failed. On December 20, 1990 I received a letter from James B. Gardner, the AHA's Deputy Executive Director, which informed me that Davis had initiated a formal complaint of plagiarism against Oates and included a copy of Davis's letter. I knew this was coming because I had heard Davis state his intention. But it is crucial to declare that, despite Oates's later charge of a "conspiracy," Davis and I did not work together then or at any time during the case. What we did do, thank goodness, was share information that helped us defend ourselves against lies and character assassination--not a plan, more of a "Whatcha gonna do?" "Dunno: how bout you?" In order to proceed, the AHA needed a copy of "Reading Between the

Texts" and would I kindly provide one?[69] While it was clearly my duty to oblige, especially as Davis had taken the plunge, the threat of the lawsuit made me hesitate. Perhaps, I told myself, the historians should "read between the texts" themselves and leave me out of it. As if I weren't already in up to my neck! Over the Christmas holidays I temporized, but in the end I chose to forward a copy of the essay. However, "on the advice of counsel" (and somewhat faint-heartedly), I stipulated in an accompanying letter the enclosed copy "is for the American Historical Association's staff to review, in order that they may decide whether a formal inquiry be made into the matter. Note that I am not myself bringing before the AHA a charge of plagiarism against Stephen Oates; rather I am cooperating with your preliminary request for information." Such timidity I today find revolting: in extenuation I can offer only the misgivings that I--and some members of my university's administration--were feeling in the days after

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[69]James Gardner to Robert Bray, 20 Dec. 1990. Davis included in his letter to the AHA portions of his comments on the Symposium papers. One passage led to an unfortunate misunderstanding between Davis and Jim Hurt: ". . . two English scholars have challenged the book's [*With Malice Toward None's*] reputation and the alleged purpose of the author. We will first consider Bob Bray's double indictment: that Oates plagiarized material from Benjamin Thomas for portions of his own biography, and that he preached reality or actuality while practicing literary license. The latter charge parallels one of Jim Hurt's points which I will address later." When he read Davis's remarks, Oates concluded, wrongly, that Hurt was in on the plagiarism charge; at first angry with Hurt, Oates after having read his essay more politely asked Hurt to clarify his position by dissociating himself from the AHA inquiry (Stephen Oates to James Hurt, 5 Feb. 1991 [copy]). This Hurt emphatically did in a letter to James Gardner on 14 Feb. Referring to Davis's Symposium commentary quoted above, Hurt wrote: "Out of context, this leaves a quite innacurate and misleading impression. My paper had nothing to do with the reputation of *With Malice Toward None,* with the "alleged purpose" of Professor Oates, or with any alleged "literary license." And he concluded: "I would appreciate being firmly dissociated from the plagiarism charges, which are totally unrelated to anything in my paper." (Hurt to Gardner, 14 Feb. 1991 [copy])

the letter from Oates's attorneys. I was confident that they would stand by me, right or wrong; but I suspect they would rather have left bad enough alone.[70]

With the year ended these first hostile encounters. Both sides had formed ranks and fired initial salvos before entrenching. All seemed quiet on the eastern front. But the silence was deceptive: one of the belligerents was preparing to go over the top with a spring offensive--and it wasn't the good guys.

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[70]Robert Bray to James Gardner, 2 Jan. 1991. Cullom Davis had written Oates (with whom he was acquainted) on 5 Dec. 1990, informing him of his intention to report the plagiarism allegations to the AHA. In the course of his letter, Davis quoted from the conclusion of the commentary he had given on my paper: "It is my belief that the present paper falls short of an airtight case, because it concentrates on the first half of Oates's book, and then takes up another issue. But it offers enough disturbing evidence of possible plagiarism to warrant formal inquiry by a panel of historians. I wish this were otherwise, because I have admired *With Malice Toward None*" (Cullom Davis to Stephen B. Oates, 5 Dec. 1990, copy). For Burlingame's reaction to Oates's threat to sue, see Ch. 5 below.

Dishonest Abe Scholarship

Part I: Bray: "A Specious and Fantastic Arrangement of Words"

Chapter 3

Refutation

On Tuesday, April 16, 1991, Stephen Oates held what one reporter called a "full-dress news conference" at the University of Massachusetts in Amherst.[71] He again attacked his critics, not mincing words, again denied that he had plagiarized, and released a "200-page" document that he claimed thoroughly rebutted the charges. I learned of the event when someone from National Public Radio called, played a tape of Oates fulminating, and then asked me for a reaction. Reaction to what? I wondered. To the name-calling? To a document I hadn't seen? Ah, the tables were now neatly turned! And not coincidentally, but deliberately on Oates's part: what I recollect from the tape, not all of which turned up in the next day's newspapers, was hearing Oates denounce the allegations as "academia at its pissiest" and myself as "sleazy," and then declaring he was "going to make Bray wait as long as he'd had to" before sending me a copy of his rebuttal.[72] If I thought this meant a less than a week--the time between my giving the paper in Springfield and faxing it to Oates in Amherst--I was much mistaken. More than three years later I still haven't heard

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[71]Mark Muro, "UMass professor's work brings fame--and a plagiarism charge," *Boston Globe,* 25 April 1991, 65.

[72]I am reconstructing this from memory, from notes taken at the time and later (in conversation with Mark Muro of the *Boston Globe*) and from newspaper accounts. I have tried to obtain a transcript of the press-conference tape from NPR, but unsuccessfully.

from Oates and only know what is in the "Refutation" because I obtained a "back door" copy by a circuitous route. Without it, I would have been hanging out to dry indefinitely.

At the press conference, and in a subsequent interview with the *Boston Globe's* Mark Muro, Oates voiced again the complaints he had made in December, this time more vociferously: "'It was a kangaroo court that convicted me in Illinois. . . . and then the headlines convicted me again. . . . I feel I've been victim of a witch hunt, and I feel violated.'"[73] The day he'd first heard of the plagiarism charges had been "his Pearl Harbor. . . . 'I was blind-sided, lying on the floor in public humiliation.'"[74] He might as well have added, since he evidently believed it, that he had been the victim of a sneak attack by a bunch of "Zeros" from Illinois. To hear him tell it, one could hear the emery wheels turning back in the Land of Lincoln: I was among a conspiratorial group of "'academics with axes to grind,'" and all of us showed a "'profound ignorance'" of Lincoln scholarship.[75] The "irresponsible" plagiarism charges had "impaired his health, cost him a visiting professorship at a Southern university and required him to spend four months preparing a public defense of his scholarly practices."[76] But at last the "victim" was retaliating, sounding like a bantam

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[73]Associated Press, "Beseiged Lincoln scholar assails his Illinois critics," *Chicago Tribune,* 17 Apr. 1991 (Wednesday), C 5.

[74]Muro 65.

[75]Edwin McDowell, "Lincoln Scholar Rebuts Charges of Plagiarism," *New York Times,* 20 Apr. 1991 (Saturday), 13.

[76]Muro 65. Oates spoke to reporters on this matter again a year later, after the first AHA ruling against him. By then it was a "professorship" rather than a visiting appointment, and at a "southwestern university" (B. J. Roche, "Group completes plagiarism probe of UMass professor," *Boston Globe,* 23 May 1992). I have written testimony from a faculty member at this "Southern university"--it is actually in the southwest, as Oates amended--saying that the history department

rooster reclaiming the barnyard: "'now, man, I've come back swinging. I got hit with a cheap shot, but now my sleazy accusers are going to have to deal with me.'"[77] Exactly what sort of chastisement he had in mind Oates didn't say, but he did pointedly--and publicly--threaten to sue.[78] Still, his righteous "macho-man" bristling was somewhat ironized by the revelation in the *New York Times* that Oates had hired a public relations firm to help defend him.[79] When the reporter, Edwin McDowell, asked him why such an extraordinary step was necessary, Oates replied: "'I'm just one single guy being ganged up on by four academicians and a powerful organization, and I need all the help I can get.'"[80] Yet if the charges were, as he again proclaimed--amplifying his earlier deprecations of "preposterous" and "absurd"--"'nothing but supposition and innuendo served up with sarcasm,'" why should Oates need to retain a New York law firm for intimidation and a spin doctor for damage control?[81]

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there had already decided *not* to offer the visiting professorship to Oates *before* the plagiarism controversy erupted.

[77]Muro 65. And Oates amplified his militancy: "'It's just a great pleasure to come back swinging. . . . I feel like a Civil War general who's been pinned down a while and finally goes on the offensive'" (65).

[78]*Chicago Tribune,* 17 Apr. 1991, C 5.

[79]The firm was Samantha Dean and Associates, New York City; as soon as I discovered the name, I called Ms. Dean and asked if she were responsible for copying and distributing "Reading Between the Texts" without obtaining my permission. She told me that Neal Gantcher had handled the matter. I then tried calling Gantcher several times over the next few days but was never put through to him.

[80]McDowell, *New York Times,* 20 Apr. 1991, 13.

[81]*Chicago Tribune,* 17 Apr. 1991, C 5. As for sarcasm, I don't believe there was much of it in the essay and what was there wasn't aimed at Oates. In the version read in Springfield, I had ended the paper with the following short paragraph, which Richard N. Current, in particular, may have considered insultingly

Didn't his "Refutation" document speak for itself, as I had hoped "Reading Between the Texts" did for me? Lincoln authorities like Richard N. Current, the "dean" of Lincolnists, emphatically thought so, and Oates made Current's comments (ostensibly in the form of a letter) available to the press: "'The materials that you have provided--and have been compelled to waste so much of your time and energy in assembling--more than confirm my original judgment. . . . In my opinion, the charge of plagiarism is absolutely groundless, frivolous and without merit.'"[82] This was strong stuff and intended, like the whole package, to have a quick and conclusive public and scholarly effect. In calling my position "frivolous," Current was judging motives he could know nothing of, and if "absolutely groundless. . . and without merit" was a professional historian's judgment, it was ill-considered, intemperate, and unworthy of his high position within the Lincoln community. For in writing as in the rest of life, *absolutes* are hard to come by. I hoped it would take more than cranky pronouncements to convince readers who had the two books open before them. I agreed with Current about one thing, though: the "Refutation" was, intellectually if not rhetorically, a waste of Oates's time and energy. Touted as a "200-page" response to his critics, the actual document was in good part a compilation of others' work, with less than half of it constituting Oates's own prose in self-defense. All the complainants' materials to the AHA were duplicated and distributed, nearly a hundred pages worth, including copies of

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sarcastic: "To those Lincoln experts like Richard N. Current who have endorsed Oates's biography as the best one-volume life, and to the many reviewers, professional and popular, who have praised its artistry, I would humbly offer this advice: go back and read *With Malice Toward None* again--for the first time." I dropped the paragraph when I revised the essay for first publication.

[82]McDowell, *New York Times*, 20 Apr. 1991, 13.

my essay--even with its copyright notice on the first page, which Oates and his lawyers chose to ignore. Needless to say, Neal Gantcher of Leavy Rosensweig & Hyman had not applied to me for permission to duplicate and distribute "Reading Between the Texts" to whomever they pleased (I would have granted it). This smacked of arrogance, for while I wouldn't have expected Gantcher & Co. to be courteous, they might at least have been more careful about expropriating copyrighted text from one of the very persons they were threatening to sue for libel.

Stripped of its appendices and extracts from previous Lincoln biographies and monographs, the "Refutation" was essentially an essay of quite modest length; stripped of his ad hominem, Oates had basically one argument to make: because writers on Lincoln relied on a "traditional body of knowledge"--especially limited concerning Lincoln's early life in Indiana and Illinois, because of the paucity of primary sources--they all told the same story and composed out of each other's tellings. Thus whatever Oates had done in his biography, others had before him and others would afterward. It was the Way of the Word. If he was a plagiarist, so were Thomas and Sandburg and the rest. But he wasn't and they weren't.[83] This comfortable status quo was understood by those in the know; folks like me didn't get it because of our "remarkable ignorance of Lincoln literature."[84]

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[83]This is a version of the "your're one too" or *tu quoque* argument. Whatever its logical merits (it is after all a fallacy), here the use of *tu quoque* was rhetorically effective: it allowed Oates to claim membership in a Lincoln scholarly community that excluded his critics, especially the alien "English professor," and deflected attention from the similarities between his narrative language and Thomas's. And he was able to do so while inconsistently asserting his *outsidership* and victimization by a Springfield coterie. See Michael Burlingame's analysis in Ch. 5 below.

[84]Muro, *Boston Globe,* 25 Apr. 1991, 65.

Oates cleverly entitled his "Refutation" "A Horse Chestnut is not a Chestnut Horse," adapting a wonderful phrase of Lincoln's that occurs in the first of the senatorial campaign debates with Stephen A. Douglas, the one in Ottawa, Illinois, on August 21, 1858. At the debate, Douglas had spoken first, trying among other things to paint Lincoln as an abolitionist and advocate of social equality between whites and blacks. When Lincoln's turn came to reply, he quoted at length from his "Peoria Speech" of four years previously, showing clearly that he did *not* favor such equality or even believe it possible. Then he added: "Now gentlemen, I don't want to read at any greater length, but this is the true complexion of all I have ever said in regard to the institution of slavery and the black race. This is the whole of it, and anything that argues me into his idea of perfect social and political equality with the negro, *is but a specious and fantastic arrangement of words, by which a man can prove a horse chestnut is a chestnut horse.*"[85] And then Lincoln's partisans in the audience had a good laugh at Douglas's expense. In adopting Lincoln against Douglas to ridicule his own critics, Oates insinuates some sophistry on our part so obviously false as to be risible. Yet because I believed the logical legerdemain to be his rather than mine, I have been happy to take the first part of the phrase as the subtitle for this part of *Dishonest Abe Scholarship,* though Oates is welcome to the credit for suggesting it to me: "A Specious and Fantastic Arrangement of Words."

On the other hand, who in a debate would want to be cast as Stephen a. Douglas rather than Abraham Lincoln? Not me: I refused to be a (chestnut) horse's ass for Oates's lampooning or anyone else's. Even though I had no audience to respond to, and no public outlet for anything I might wish formally

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[85]Abraham Lincoln, *The Collected Works of Abraham Lincoln,* Roy Basler, ed. (New Brunswick, N.J.: Rutgers University Press, 1953), 3: 15-16. Italics added.

to say in response to the "Refutation," I determined to set down a rejoinder on paper. The whole of my "Response to Stephen Oates" appears in Appendix 1, but a few of its points are important here, since I would later attempt to get Oates's supporters to reconsider their position on his plagiary.[86] There were two kinds of errors to redress, facts of context and facts and arguments concerning the plagiary. Foremost among the former is the old matter of what he knew and when he knew it: on the very first page of the "Refutation" Oates reiterates that he "was not invited to the session in question, or forewarned about the nature of Bray's paper."[87] As we have seen, the first part of this sentence is false (unless one takes "invited" absolutely literally), the second only half-true. This time, however, Oates reaches a new height of disingenuousness and slurs my character: "What is more, Bray lied to the *Chronicle of Higher Education,* claiming that I had been asked to attend the session but declined."[88] What the *Chronicle* article had reported--and not quoting me but paraphrasing--was that "Mr. Oates was invited to attend the conference but declined."[89] If I had actually said that he had been "asked" or "invited" to the symposium rather than "informed of it," I might now have to admit to speaking loosely--but never to lying. But, as best I remember, I *did* say "informed." For Oates publicly to call me a liar, without direct evidence and in the midst of his own prevarications, is simply shameless.

On my case for the plagiarism, Oates presents an apparently imposing rebuttal which, opened up, looks and smells like a tin of red herrings. It turns on the

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[86]See below, this chapter and Ch. 5.

[87]Stephen B. Oates, "Refutation," Section1: 1.

[88]"Refutation" 1:2.

[89]*Chronicle of Higher Education,* 12 Dec. 1990, A 5.

same three premises that Oates had already emphasized to the press back in December: 1) that the true definition of plagiarism is verbatim copying; 2) that in my essay I "display a profound ignorance of Lincoln scholarship" and 3) that Lincoln biography "consists of a common body of knowledge. . . that has accumulated for more than a century and is in the public domain."[90]

Concerning the meaning of plagiarism, I again invite readers to consider the definitions agreed upon by professional associations like the MLA and the AHA. Verbatim copying is most certainly plagiarism--*but only the most obvious kind.* It is the form teachers most often get from students, who might as well rubricate the stolen words in their papers, so clearly are they are not theirs but those of academic writers. Or it is what desperate deans do when the time comes to give a speech and they have nothing to say: Joachim Maitre repeats "nearly verbatim and without attribution sections of an article by film critic Michael Medved."[91] But it is manifestly *not* what Stephen B. Oates did, so if you agree that showing wholesale verbatim theft is necessary to establish plagiarism, you will also agree with Oates's assertion that he "did not plagiarize a thing from Thomas's biography."[92] I say "wholesale" because Oates (like his department chairman Robert Jones) *quantifies* what constitutes plagiarism: "the verbatim lifting of whole sentences and paragraphs from another's work and presenting them as one's own creation."[93] Yet if Oates did not do exactly this, he sometimes came

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[90]"Refutation" 1: 2-5.

[91]Anthony Flint, "Maitre resigns as dean, stays on faculty," *Boston Globe,* 13 July 1991 (Saturday), 1. Maitre was the dean of Boston University's College of Communications and a close friend of the university's president, John Silber.

[92]"Refutation" 1: 2.

[93]"Refutation" 1: 3.

very close, as in the now-notorious "With them came Dennis Hanks. . .." parallel, which is virtually verbatim and unattributed. And what do we call the act of repeatedly taking *parts* of sentences and paragraphs, not citing them and passing the prose off as one's own? It seems to me sheer casuistry to make the verbatim sentence the minimal unit of plagiary. Drop a single word from a 13-word string and you're somehow not guilty of pilfering the other dozen?

In addition to his verbatim test, Oates offers two other narrow characterizations of plagiary: "infringement of expression" (copyright violation) and "intent to deceive." The first of these he loosely equates with plagiarism: "I did not expropriate his sentences and paragraphs verbatim, or do anything that constitutes infringement of expression as defined by federal law or by common sense." [94] Significantly, this sentence invites the inference that Oates *did* "expropriate" Thomas's "sentences and paragraphs," though not in a verbatim manner and not sufficiently to get him into legal trouble. Further, it raises the intriguing questions of what might this "anything" be that "constitutes infringement of expression," and why is Oates concerned to deny what no one has accused him of? Perhaps he is trying to protect himself from any possible legal action, while also suggesting that the *only serious* kind of plagiarism involves copyright violation; and since, he asserts, there has been no "infringement of expression," there has been no plagiary. And the proof? Why, because by the verbatim test he has not plagiarized! A moment's thought, however, shows that plagiarism and infringement are not necessarily the same thing, though one often entails the other. A writer may plunder works in the "public domain" (and thereby commit no infringement), but unless attributed the act is still plagiarism; contrariwise, infringement might not be plagiarism

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[94]"Refutation" 1: 3-4.

when the copyrighted matter is fully attributed but has been taken without permission or employed in excess of "fair use" guidelines.

According to Ellen M. Kozak, an attorney specializing in plagiarism and copyright law who was asked to review the Oates case for the *Journal of Information Ethics,* "Plagiarism is, essentially, failure to attribute." Moreover,

> Copyright infringement does not necessarily mean taking of the whole cloth. Although there is no copyright in an idea or short phrase, where there has been access and there is substantial similarity, copyright infringement may be found. This includes the case of the publication of a small portion of a work. . . or even a paraphrase. Where the work taken is protected by copyright, the copyright owner (usually the author or the author's heirs or assignees) has standing to sue for infringement.[95]

Thus, since in the law's eyes plagiarism is "failure to attribute"--the very sense of the word that literary history, too, has sustained--Oates is wrong to invoke the "verbatim test" and perhaps mistaken in the presumption that he "did not do anything" that constitutes "infringement of expression."

Oates cites Alexander Lindey's *Plagiarism and Originality* (1952) as his "authoritative study" on the subject, rather than Thomas Mallon's much more recent (and highly acclaimed) *Stolen Words.*(1989). This may be because Oates thinks Mallon a "crusader" on plagiarism and Lindey more serviceable:

> "Plagiarism is literary--or artistic or musical--theft. It is the false assumption of authorship: the wrongful act of taking the product of another person's mind, and presenting it as one's own. Copying

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[95]Ellen M. Kozak, "Towards a Definition of Plagiarism: the Bray/Oates Controversy Revisited," *Journal of Information Ethics,* 3: 1 (Spring 1994), 71.

> someone else's story. . . . intact or with inconsequential changes, and adding one's name to the result constitute a simple illustration of plagiarism."[96]

But Kozak points out that Oates uses Lindey quite selectively:

> What is perhaps even more telling concerning Oates's scholarship is that his quote. . . conveniently occurs as part of the introduction to the Lindey volume (on page 2), and is greatly expanded upon throughout Lindey's text, with distinctions and examples much less simplistic and closer to the mark of the allegations made by Bray.
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> Indeed, the point that plagiarism is an ethical, as well as a legal issue, and can include partial takings and paraphrases, is brought out much later in the text. . . .[97]

"Intent to deceive" is usually assumed in plagiary, but hard to prove without a "confession." The AHA, no doubt recognizing this, dropped "intent to deceive" from the definition of the act in the 1990 revisions to the "Statement on Plagiarism," In denying any such intent, Oates is once more defending himself against putative legal charges that his critics, myself included, have no standing (or desire) to bring. I gladly leave the question of whether Oates infringed Thomas to the copyright holders, his publisher Knopf and his heirs. As for deception, that is for those who know Stephen Oates best to decide. But surely we all understand that the conclusion *I didn't* does not follow from *I didn't mean to.* [98]

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[96]"Refutation" 1: 3.

[97]Kozak 73-4.

[98]"Refutation" 1: 3.

As for my knowledge of "Lincoln scholarship," I have already admitted that at the outset it was like Shakespeare's "small Latin and less Greek." But by the time I finished researching and writing "Reading Between the Texts," I knew quite a bit about Abraham Lincoln, particularly about his pre-presidential life. I got there largely by checking Oates's source-citations and looking at the pointed-to books and articles. In my labors I had some good guides, such as Douglas Wilson of Knox College, who put me onto several primary sources that Thomas would have used in preparing his biography. Thus I *was* "Lincoln-literate" when I read my paper in November 1990 and have become somewhat more so in the years since. To be sure, Oates is right to say that I was not and am not a Lincoln specialist. But so what? And is *he* an expert in the subject or rather a professional biographer who dropped in on Lincoln for a few years and then dropped out? Would he consider himself a period specialist of the Civil Rights era because he wrote a life of Martin Luther King, or a Faulknerian by virtue of his biography of that modern American novelist? He may so regard himself, but scholars in these areas have been known strongly to disagree: Dawn Trouard, a well-regarded specialist in William Faulkner and southern literature, who teaches at the University of Akron, concluded her review of Oates's *William Faulkner: The Man and the Artist* (1987) with this crushing judgment: "If it were between this biography and nothing, I would take nothing."[99] A peer in one realm is a parvenu in another. Surely what is important in detecting plagiarism is not subject specialization but sensitivity to text. If credentials matter at all here (which I doubt), then mine are in order: analyzing and criticizing texts is what I

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[99]Dawn Trouard, reviewing *William Faulkner: The Man and the Artist* (1987) in *Mississippi Quarterly*, 41 (1987-88): 467. According to Trouard, one of the book's many faults is plagiarism: "Less generous than suspect, however, is Oates's free and easy use of sources, particularly the Blotner biography" (466). See Ch. 6 for an analysis of Oates's misuse of sources in his Faulkner and King books.

am trained in and what I have done during my entire professorial career. Since Oates cannot say the same, he is--by his own logic--not my "peer" when it comes to understanding plagiary.

Thus I was not much disturbed when I finally got to Oates's only real argument in the "Refutation," the claim that Lincolnists all quarry from a "common body of knowledge. . . that has accumulated for more than a century and is in the public domain." By now, Oates and his apologists had repeated this so often that they reminded me of Philip Marlowe's answer to the question, "Who's Hemingway?" "A guy that keeps saying the same thing over and over until you begin to believe it must be good." So one more time: language, not information is the point; whether information is "in the public domain" has relevance for questions of infringement, not plagiarism. In addition, Oates's point about a "common body of knowledge" is, as I've elsewhere said, my very own sense of "intertextuality." Because so many lives of Lincoln have been written over so long a time, true originality in Lincoln biography is impracticable. But what distinguishes the best biographies on Abraham Lincoln or any other subject are their language and interpretations. Let us grant that Oates's interpretation of Lincoln is "different" from Thomas's; his language often isn't--at least not different enough, with similarities occurring too frequently in *With Malice Toward None* to be ethically acceptable. Oates would have us believe that by merely pointing to the limited pool of what Gore Vidal has called "agreed upon facts" running through several generations of Lincoln biography--the existence or importance of which none of Oates's critics ever disputed--he has sufficiently justified his practice of silently re-writing Thomas. But he hasn't. The point at issue is and always has been *language and its attribution.* Line up as many accounts of the "milk-sick" or "deep-snow" episodes as you like, only Thomas's and Oates's will have readily identifiable commonalities of language and syntax.

As a matter of fact, this is precisely what a class of English majors at my college, Illinois Wesleyan, did: their instructor (not me) put the various passages Oates reproduces in the "Refutation" in a row (unidentified by author), asked the students to read them and then to decide which ones had the closest compositional affinities. More than 80% of the class picked Oates and Thomas. The process is no great mystery, and it certainly has little to do with being a specialist in Abraham Lincoln: when two people write alike, good readers know.[100]

Oates nevertheless concludes that my entire paper is "a malignant fantasy." He asserts that in citing Thomas "*seven times*, [his italics] for facts or quotations derived from his work," he has sufficiently attributed his debt to the source, ignoring the dozens of other passages that show borrowings without citations.[101] Finally, he rejects the AHA as an unfit tribunal to judge him or his work: he is not a member and they are not Lincolnists. Instead, he announces, he will submit his own evidence, in his own good time, "to Lincoln Scholars. They are my true peers, and to them I direct my refutation, to them I look for justice and exoneration."[102] The Commons lack jurisdiction; let the Lords decide. Oates clearly expected the nobles to oblige. And before long they did.

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[100]See ch. 5 below for another example of student readers finding plagiarism in Oates.

[101]"Refutation" 1: 18. Oates also says that "[b]ecause Thomas's biography repeats a lot of the information in his *Lincoln's New Salem* (1934), most of my references are to this earlier, original work." Two points concerning this: 1) The *information* is not in question (for that matter, *Thomas* got his information about Lincoln in New Salem from himself via the earlier book, yet he typically did not employ his own prior words when he came to write Lincoln's entire life more than a decade later); and 2) none of the parallel passages discussed by his critics have citations to *either* of Thomas's books.

[102]"Refutation" 1: 18.

At about 10 p.m. in the evening of Tuesday, April 30, 1991, I got a phone call from a reporter at the local newspaper, *The Pantagraph.* She was familiar with the Oates case and thought I should know of a new development. She then read me the statement of "exoneration" Oates had expected from his "true peers:"

> As scholars of the Civil Ear [sic] era and the life of Abraham Lincoln, we have examined with particular care and keen interest the recent charges of plagiarism against Professor Stephen B. Oates with regard to his 1977 Lincoln biography, *With Malice Toward None.*
>
> We have reviewed the allegations introduced at a 1990 Illinois State Historical Society symposium, together with material subsequently submitted to the American Historical Association. And we have studied the refutation released in response by Professor Oates several weeks ago.
>
> We conclude that the charges against Professor Oates are totally unfounded. We find no evidence of the appropriation of either the ideas or the language of other scholars without attribution--the only legitimate test of plagiarism.
>
> The charge of plagiarism is surely the most serious one that can be leveled against a scholar. That is precisely why we believe it crucial that the record show that the undersigned historians have examined this issue--and reject the complaint against Professor Oates as groundless.[103]

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[103]Press release, "Statement by Lincoln Scholars and Civil War Historians on Plagiarism Charges Against Prof. Stephen Oates," I have two copies of this document, one of which undated, the other mistakenly dated as "Wednesday,

He could hardly have done better had he written this himself, although Harold Holzer, as the designated "contact" should have proofread that opening a little more carefully. Here, the release proclaimed, are 23 (actually 20) historians of mid-19th century America, some of them, such as C. Vann Woodward and John Hope Franklin, pre-eminent, and they had now publicly announced that the plagiarism charges were "groundless."[104] Moreover, their verdict was based on a review of the allegations conducted with "particular care and keen interest." Worst of all, they declared that they had found "no evidence of the appropriation of either the ideas or the language of other scholars without attribution--the only legitimate test of plagiarism." Since this was the precise definition of plagiary I was working under, I was utterly confounded. Had they really *read* my essay? Or the collateral analyses of Alexander MacGregor and Laurin Wollan? And "no evidence!" How on earth could they conclude that copied, unattributed passages like "With them came Dennis Hanks. . . ." did not constitute plagiarism?

So when the *Pantagraph* reporter asked me for a reaction, I could express only pain, bewilderment and a version of what I later said to the *Boston Globe's* Mark Muro: "'Obviously, this looks very bad for me. These are names to conjure with, and they don't agree with me.'"[105] I honestly believe this was the worst moment for me during the entire controversy--if a moment can be said to last for several months. To my mind the evidence of plagiary was abundant, its analysis sound. Yet Woodward, Franklin, James McPherson, Kenneth Stampp, among

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April 29," but Wednesday was actually May 1st. For the full text and list of signatories, see appendix 3.

[104]In truth, three of the twenty-three were not "scholars" of anything: Harold Holzer, Ralph Newman and Frank Williams. See below and Ch. 5.

[105]Mark Muro, "Peers support Lincoln scholar," *Boston Globe,* 2 May 1991 (Thursday), 77.

other well-known names, were ruling me out of academic court. Woodward's name especially troubled me, for I knew of his reputation for fair-dealing and had admired his articles over the years in the *New York Review of Books.* So when he singled me out for opprobrium in a comment to the *Boston Globe,* my heart truly sank: "'The accusor's ignorance--and I hope it was ignorance rather than malice--had the effect of making perfectly understandable similarities look questionable.'"[106] I knew I wasn't malicious, and I hoped I wasn't ignorant. But the point was I didn't want C. Vann Woodward to think of me as either, and it hurt that he did. More personally distressing was the appearance of the names of two Illinois scholars with whom I was acquainted: Robert V. Remini and Robert Johannsen. Remini I had served with on the board of the Illinois Humanities Council; Johannsen, as already indicated, was someone I had become friendly with during the summer of 1990. Why hadn't they at least told me what was about to happen?

It was a question Cullom Davis too would ask, and with far greater reason than I. He knew most of the signers in the "Gang of 23" (as we soon impertinently began to call the group) and numbered several of them among his friends. But though we tried, neither of us was ever able to get a satisfactory answer concerning the snub. After Johannsen's letter back in early November 1990, I didn't wonder at his signing the statement. But I was disappointed that he hadn't forewarned me. Adding insult to injury was the appearance a couple of days later of what must surely be the nastiest, yellowest piece of journalism of the entire controversy. On Friday, May 3, 1991, Steve Neal, a regular op-ed writer for the *Chicago Sun-Times,* weighed in with an column so slanted that it

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[106]Mark Muro, 2 May 1991, 77. Within a couple of months, Woodward changed his mind: see below and Burlingame's analysis in Ch. 5.

should have caused even Oates's hardened partisans to blush in embarrassment. And Neal relied heavily on Johannsen's views to discredit Davis and myself:

> A prominent Civil War scholar, who was given an advance copy of plagiarism charges against Lincoln biographer Stephen B. Oates, advised the historian's accusers that their allegations were groundless.
>
> Robert W. Johannsen, the J. G. Randall distinguished professor of history at the University of Illinois. . . urged Robert Bray not to make plagiarism charges against Oates. 'I told him that he hadn't make [sic] a case for plagiarism, which is a very serious charge.'"[107]

In his November 4th letter, as previously documented, Johannsen had said only that he didn't believe the case was there, not offering any reasons for this view and not "urging" me to abandon the paper. Instead of showing me where my argument failed, Johannsen wrote, "I have neither the time nor the heart to go into any more detail."[108] It was a foretaste of the "Gang of 23's" "just because we say so" approach to the issue, which I see now I should have anticipated from this letter. Neal, having talked to Johannsen and me but having listened only to the former, used phrases like "brushed aside Johannsen's advice" to characterize my decision to go ahead with the paper, and "declined Johannsen's advice that Oates should be given an advance copy of the paper," to

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[107]Steve Neal, "Lincoln Biographer cleared by peers," *Chicago Sun-Times*, 3 May 1991 (Friday), 27.

[108]Johannsen to Bray, 4 Nov. 1990. And there is a telling passage in the letter's concluding paragraph: "I should mention that I reviewed Oates's Lincoln book for *Chicago History*. While I found some shortcomings in it. . . my overall conclusion was that it was a successful book." To me this translates as a vague form of the "I-didn't-see-any-plagiarism-therefore-it's-not -there" rationalization.

insinuate an ethical fault. Moreover, he asserted that Cullom Davis had "prodded" Larry Wollan and Alex MacGregor into submitting their own cases against Oates to the AHA.[109] In this blotch of yellow, there is only the slightest sprinkle of white. Again, Johannsen did not advise me to withdraw "Reading Between the Texts," nor did Davis "prod" anyone into doing anything. He had simply, and very sensibly, told Wollan and MacGregor--who were already eager to do what they could to help--that he would be glad of their support. But Neal is correct that Johannsen had wanted me to inform Oates ahead of the event: "I hope that you will send Oates a copy of your paper (and probably Dick Current as well). Oates should have been invited to serve as a discussant on your session so that he could respond to your charges publicly and before the same audience."[110] While I didn't and still don't see what business it was of Current's to see the essay, as I've said I now agree that I erred in not sending Oates an advance copy; as to his being a "discussant," this was not my prerogative but the Symposium's.

Neal ended his piece with a vicious put-down: "Next to Bray and Davis, Kitty Kelley is a distinguished scholar."[111] Where such animus came from I have no idea, and at the time it infuriated me, which I'm sure was the intent. Looking back, Neal's piece is grotesquely funny--especially in light of his later being charged with plagiarism himself. In May 1993 the Chicago *Reader* noticed that Neal had lifted the liner-notes from a blues recording and treated them as if he were interviewing the subject himself. Every word used by Neal--and taken verbatim from the album without attribution--was actually said to someone else.

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[109]Neal, *Chicago Sun-Times,* 3 May 1991, 27.

[110]Johannsen to Bray, 4 Nov. 1990.

[111]Neal, *Chicago Sun-Times,* 3 May 1991, 27.

Neal's boss at the *Chicago Sun-Times,* Mark Hornung, wasn't in the least troubled: "'Steve doesn't need to be lectured on how and where to take notes from me. . . . I don't have any problems with this one.'" In other words, he may well have plagiarized, but at the *Sun-Times* this is acceptable journalism. (Two years later Hornung resigned from the Sun-Times after he had been caught plagiairizing an editorial from the Washington Post.)[112] The *Reader* concluded: "The only party we didn't hear from was Neal himself. Hornung called back on his behalf. 'Steve generally doesn't talk,' Hornung told us."[113] Not about his own journalistic misdeeds, that is, though he's quick enough to sneer in print at the faults he thinks he sees in others. As an outraged letter to the editor put it two weeks later: "Neal's refusal to reply was more egregious than his original mistake--a perfect example of hubris."[114] To my knowledge, the Sun-*Times* and Neal did not cover either of the AHA's rulings against Oates: "Steve generally doesn't talk"--or listen. Neal gratuitously gave me Kitty Kelley to emulate; I herewith give him Joe McGinniss.

With articles like Neal's appearing in major newspapers, it was clear that Oates was winning the public-relations battle; and with authorities like the "Gang of 23" outspokenly behind him he was poised to win the whole academic war. So, after giving out his "Refutation" and brandishing his historian "peers'" public statement, there was more than mere bravado in Oates's April declaration of "case closed." For had he not been "exonerated by the most rigorous jury to

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[112]Unlike Oates and Neal, Hornung apologized. Mark N. Hornung, "An Explanation and an Apology," Chicago-Sun Times, 10 March 1995. Note: Steve Neal committed suicide on Feb. 18, 2004.

[113]*Reader*, 21 May 1993, 5.

[114]*Reader*, 4 June 1993, 4.

which anyone could appeal"?[115] All Cullom Davis and I could do put our professional faith in the AHA. Yet we had no idea at all about when the organization might rule, nor any firm assurance that they would find in our favor.

But even as Oates had launched his vigorous counter-attack in April 1991, we were no longer alone in the fight. On February 19, 1991, Laurin Wollan had sent his independent evidence of plagiary in *With Malice Toward None* to the AHA; and late in March Alexander MacGregor, professor of classics at the University of Illinois Chicago also entered the arena. MacGregor had read Patrick Reardon's December 1990 articles in the *Chicago Tribune* , immediately inferring the plagiary from the parallel passages. He sent me his notes on February 9 and also wrote to Davis. Reading through MacGregor's analysis, I saw that his was a mind to reckon with, that he had put some of my own points better than I could (in particular, the one about plagiarism and intertextuality in "canonical" biography), and that Davis and I would be fortunate to have his support. All his professional life, I later learned, MacGregor had been patiently and expertly tracing the derivations texts from other texts ("In classical studies," he once told me, "nearly everything is plagiary of one sort or another."). So Oates's derivation from Thomas was an easy call for him. Here is the concluding paragraph of MacGregor's essay, which I quote in full to show why I was so happy to have another "literature person" involved on my side:

> Plagiarists are impaled on a dilemma of their own making: if they leave their source intact, then the plagiarism is obvious. But if they change the order of presentation in the source. . . or take the easy way out and merely sub-

[115]Muro

> stitute one word for another to cover their tracks, the attempt is frustrate--because if the source was a good one in the first place, it used the most natural order and chose *le mot juste;* and any alteration therefrom will be not merely an alteration but a degradation. So here, I think. Whether or not Oates is a bad writer when left to his own devices, he is quite a bad one when set aside Thomas. Even assuming Oates recognized Thomas' offhand but perfect tricolons and antitheses, his sense for the telling detail, his mastery of making a *point,* in their stead Oates perforce had to substitute something else, and therefore something worse--a characteristic mix of banality and bogus precision, all too often lapsing into plain nonsense. It is surely no coincidence that the worst writing in Oates occurs when Thomas is at his best.[116]

At the time I found this--and do again today--perceptive and authoritative. But not so Oates: "His [MacGregor's] analysis is remarkable for two things: its pedantic mumbo-jumbo. . . and its complete ignorance of the Lincoln literature."[117] So much for an acknowledged expert on the derivation of texts and his disinterested "friend-of-the-court" brief (though it is difficult to believe that Oates really considers standard rhetorical terms like "tricolon" and "antithesis" as jargon). Larry Wollan was easily dismissed too: he was a criminologist, of all things, a Lincoln "amateur" whom Oates derided as a "worshipper" of Benjamin

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[116]Alexander MacGregor, "Notes sent to Professor Bray 9 February 1991 on the Oates plagiarism controversy," [8].

[117]"Refutation," 1: 19.

Thomas. Worst of all, he had used a computer, for God's sake, as an aid to his initial textual comparisons of the two biographies. Depreciate credentials, monger motives: these were the key tactics of Oates's "Refutation," unfortunately no less effective for being utterly sophistical.

By now it was abundantly clear that not being a historian, much less a Lincolnist, was sufficient in itself to discredit one's views on the subject of plagiary in Lincoln biography. How to overcome this handicap? Cullom Davis, while certainly a respected historian, had done more than his part in bringing the Oates case to the AHA; he was now far too busy to prepare his own thorough analysis cast in a mold acceptable to Lincolnists, nor did I expect him to. But those Lincoln historians not arrayed against us--and the grapevine hummed of their existence--had mysteriously gone to ground or were simply unwilling to speak out publicly in our behalf. Thus, faced with the unargued, inexplicable but apparently implacable judgment of the "Gang of 23," and with Oates's self-exculpating "case closed," we desperately needed an academic angel.

Well-nigh miraculously, on April 22, 1991, he appeared: Michael Burlingame, a professor of history at Connecticut College, a Princeton and Johns Hopkins scholar trained in Lincoln and the Civil War, and the angel who now rushed in where so many fools were fearing to tread. In the course of finishing his own biography of Lincoln, Burlingame wrote to Davis concerning some information he needed about Lincoln's legal career. As a postscript he mentioned that he had compared the first parts of Oates and Thomas and found numerous parallel passages. Did Davis think it would do any good to send his findings to the AHA? Any good! If not a life-saver it would at the very minimum be a huge boost for our morale. So the sooner the better, Davis and I told him as in a single voice! The story of Michael Burlingame's engagement with Oates and the AHA comprises the second half of this book, so I won't spoil it here. But I do want to

praise the timely courage of a person who has since become that which is more than an angel--a friend.

Bolstered by Burlingame's entry into the fray, and fed up with what I deemed unfair attacks on my character and professional standing from Oates and his adherents, late in the spring of 1991 I decided to take steps to try to clear my name. The most obvious means, publishing "Reading Between the Texts," did not , unfortunately, look to be feasible in the short run. Back in March, on the advice of friends who knew the journal, I had sent the manuscript to *Civil War History.* For an essay on plagiarism, even plagiarism in Lincoln biography, this seemed to me a forlorn hope for an essay on plagiarism. But *Civil War History* was subtitled "a journal of the middle period" and its editor, John T. Hubbell, was said to be concerned with matters of professional ethics. Perhaps an outside chance, then, and worth a shot. In the cover letter to Hubbell (dated 11 March) I attempted to explain the essay and my motives for submission:

> Because anything I may say in this letter is preceded by public controversy, I write with some diffidence. Yet I do not want an essay I have worked hard on and very much believe in orphaned by the Stephen Oates plagiarism issue. What I hope I've done in "Reading Between the Texts" is to raise a number of practical and theoretical questions about *With Malice Toward None,* an important but problematic text in the contemporary historiography and biography devoted to Abraham Lincoln and mid-19th century America. While I do not flinch from the plagiarism charge, and I think I have established Oates's un-acknowledged borrowings from Thomas, the essay goes much further than this--treating matters of intertextuality, realism and narrative scope, and testing Oates's biographical practice

against his explicitly stated theory.[118]

Seven weeks later the manuscript came back, unmarked and unremarked, with this spare letter from Hubbell, dated April 23:

> I have read your essay, "Reading Between the Texts: Benjamin Thomas's Abraham Lincoln and Stephen Oates's With Malice Toward None," and have decided against publication. This decision is supported by members of the Editorial Advisory Board.[119]

With the fabled acuity of hindsight, I realize that sending the piece to *Civil War History* was yet another act of naiveté on my part. Had I bothered to look at the journal's masthead I would have noticed names like Robert Johannsen, James McPherson and Mark Neely--captains all in the "Gang of 23." Of course, I wouldn't have known that in March, and was only just beginning to understand this game when Hubbell returned the rejected manuscript late in April--coincidentally between Oates's press conference and the "Gang's" statement of exoneration. I can imagine how he and his board might have interpreted the submission as an act of effrontery or provocation. Yet I had mailed it off in good faith, meaning what I said to Hubbell about believing in the essay and its argument. Hubbell's reply avers that he read the manuscript before turning it down, and I see no reason to doubt his word. But I infer from his letter that he chose not to send it out for review. Was this because it politically untouchable or not good enough to be read critically by other scholars? In what was a truly

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[118]Robert Bray to John T. Hubbell, 1 Mar. 1991.

[119]John T. Hubbell to Robert Bray, 23 Apr. 1991. A year later, after the first AHA ruling against Oates, I tried again with Hubbell and *Civil War History*, and this time the editor replied in less than two weeks: "Re. your letter of May 21st, our earlier decision stands" (John T. Hubbell to Robert Bray, 1 June 1992).

perverse irony, certain members of his editorial board were ostensibly reading it at that very time, sub rosa, and in pirated copies provided by Oates and his publicists! If I didn't really expect *Civil War History* to publish "Reading Between the Texts," I didn't want Hubbell and the editorial board playing politics with it either--which seems to have been pretty much what was going on.

After this failure, I had no other notion of where to send my "orphan." I let it sit on my desk, save for occasional trips to the photocopy machine and *"samizdat"* mailings to curious scholars who asked for copies. Since the essay was unpublished, if not unpublishable, I felt more than ever compelled to do *something* to defend myself. But what? At the end of the schoolyear, more from frustration than hope, I decided to try to communicate directly with members of the "Gang of 23." I wanted to know *why* they thought Oates hadn't plagiarized, and I wanted to give them reason to reconsider their judgment, which I thought hasty--barely two weeks having elapsed between the Oates's press conference and their "statement of exoneration," hardly ample time to deliberate a dispute that by then included four separate analyses of plagiarism against Oates and a "200-page" refutation from him.

Accordingly, I drafted what I believed to be a temperate but forthright letter. And I took a couple of weeks to finish a short "addendum" to "Reading Between the Texts" which I hadn't included in the original paper. It analyzed an instance of Oates's having used "Thomas's information, language and ideas (interpretations)--all without acknowledgment." To my mind showing this convincingly would satisfy "even the strictest construction of what constitutes plagiarism." I called the piece "Lincoln Staring into the Fire," after an incidence

of his eccentric behavior on the 8th Judicial Circuit in 1854.[120] Together with "A Response to Stephen Oates" and the cover letter, late in July 1991 I mailed "Lincoln Staring into the Fire" to seventeen members of the "Gang of 23." I excluded John Y. Simon because we were talking about Oates and other things fairly regularly, and Robert Johannsen and Robert V. Remini because I intended to send them more personal letters. And I omitted Harold Holzer, Frank Williams and Ralph Newman because they were not scholars.

Of the seventeen, only ten bothered to answer (no replies from Herman Belz, Richard Current, David Donald, John Hope Franklin, Gary Gallagher, Emory Thomas, or Thomas Turner). Of the responses, three were formalities: Gabor Boritt's secretary told me he was at the time too busy to write but that she was "sure" I would be hearing from him soon (I'm still waiting); Mark Neely wrote that the "reconsideration" I asked for would take far more time and trouble than he was willing to give; and James McPherson declined to comment further on the case since he expected to be called to give his views by the AHA or the University of Massachusetts, which was planning its own inquiry.[121] This left seven responses that were even half serious, and of these only two showed any tendency to reconsider. Among those that adamantly considered the "case closed," Hans Trefousse's stands out:

> In view of the fact that Oates' With *Malice Toward None* has a thesis entirely different from Thomas' by stressing Lincoln's

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[120]See Appendix 1. I realize now that for some, such as John Y. Simon, that the *strictest construction* of plagiary requires *intent to deceive,* which can never be demonstrated on textual evidence alone.

[121]Tina Fair to Robert Bray, 25 July 1991; Mark E. Neely, Jr. to Robert Bray, 5 Aug. 1991; James M. McPherson to Robert Bray, 31 July, 1991. For details of the University of Massachusett's hearing on the plagiarism charges, see ch. 7 below.

> similarity of aims with the radicals, I really feel that it is immaterial whether unimportant episodes were treated in a manner similar to that of others. Writing a book so distinct from others in emphasis does not constitute plagiarism. . . .[122]

Evidently, Trefousse, who teaches at the Graduate Center of the City University of New York and at Brooklyn College, considers biography largely a matter of *theses.* Hence if the interpretations in two books are different, "it is immaterial" whether the *story as told* of one is plagiarized--or "similar," as he puts it--from the other, since "distinct" emphases in one book *preclude* plagiary in another, no matter how similar their treatments of incidents. This is a most peculiar principle for the genre of biography, which even the most relentless of political historians must know has narrative at its heart and artful language in its veins.

Similarly, but much more gracefully, William McFeely, a professor at the University of Georgia and the well-known biographer of U. S. Grant, wrote:

> Your good, temperate letter of July 24 has been forwarded to me. I do wish the letter in the *Times* that I signed had been less hortatory; I certainly never wished to suggest that you were operating out of any motive other than the laudatory one of keeping the ugly business of plagiarism out of scholarship.

And he continued: "I signed the letter because I did not think that Oates's stale retelling of old Lincoln chestnuts came down to actual plagiarism. But I am quite willing to say that I have not given the texts the scrutiny that you and others have. I have neither the time nor the talent to go through all of Oates's sources line by line in order to come to a definitive judgment as to whether there has

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[122]Hans L. Trefousse to Robert Bray, 26 July 1991.

been plagiarism. . . ." And McFeely concluded with a generous offer of a public apology should the AHA conclude that Oates had indeed plagiarized.[123] On September 19, 1991, I wrote back to McFeely, thanking him for his "collegial tone" but wondering about the "I have neither the time nor the talent. . . ." statement. Would one have to check *all* of Oates's books and *all* his sources to convict him of plagiarism? "And, within the boundaries of the parallels I chose to scrutinize, isn't this microscopic and laborious analysis of sources precisely what I did?"[124] There was another, more critical, question I might have asked: how does McFeely's admission that he had "not given the texts the scrutiny that you and others have" square with the language of the "statement of exoneration?" "[E]xamined with particular care and keen interest. . . . reviewed the allegations. . . . studied the refutation. . . . examined this issue. . . ." If McFeely's degree of involvement is typical, then he and the rest of the exonerators were not so careful as they claimed, nor did their work justify the "hortatory" tone of the statement and a conclusion of "not guilty" expressed in adjectives like "groundless."

The other correspondents were all civil in their replies, and three of them expressed criticisms of Oates's practice that, again in light of their categorical public statement, quite surprised me. Kenneth Stampp, Professor of History Emeritus at the University of California-Berkeley, declared that Oates's failure to acknowledge Thomas "makes him vulnerable at least to the charge of carelessness--a most regrettable situation for a scholar to be in."[125] And even after

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[123]William S. McFeely to Robert Bray, 5 Aug. 1991.

[124]Robert Bray to William S. McFeely, 19 Sept. 1991.

[125]Kenneth M. Stampp to Robert Bray, n.d., including a copy of Stampp to Michael Burlingame, 7 Aug. 1991. Stampp was severe with me about what he considered an unfair attack on Richard N. Current at the end of "Reading Between the Texts." Although I still regard the point I was making as valid--that reviewers who praised Oates's biography when it appeared as the new standard

reading my new material, responded Eric Foner of Columbia University, "I am persuaded that Professor Oates is guilty of sloppiness in using and citing the work of previous authorities, but I do not see him as guilty of plagiarism, at least as I define that term." Like McFeely before him, Foner did concede that, Oates's vehement denials notwithstanding, the AHA was the "proper body to sort out these charges. . . ."[126] Finally, Major L. Wilson of Memphis State University thanked me for what he called my "conscientious and scholarly concerns in the matter and the considerable efforts you have made." But he agreed with Oates's complaints about the way in which the charges first were made, and, even after perusing my new evidence, he still thought Oates's way of composing did not amount to plagiarism. Wilson did not explain why not, or offer a definition, though he characterized my own as "a somewhat stricter one than others." The solution, he too believed, was to wait for the AHA to decide; as for himself, "[s]ince I am not a Lincoln scholar, I do not choose to be further involved."[127] And I had innocently thought it was *because* Wilson was a "Lincoln scholar" that he involved himself in the first place!

The two most encouraging letters in the batch were from Robert V. Bruce and C. Vann Woodward. For by the time they wrote me both of these respected historians had, in effect, changed their minds. Now they thought Oates had probably plagiarized and that the AHA should investigate. How they came

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one-volume life of Lincoln ought to go back and re-read it in light of the plagiary--I omitted the offending paragraph before publication of the essay in the *Journal of Information Ethics* and as the opening chapter of this book.

[126]Eric Foner to Robert Bray, 3 Aug. 1991.

[127]Major L. Wilson to Robert Bray, 1 Aug. 1991. I replied to Wilson on Sept. 19, 1991, attempting to explain the procedure by which Oates was to be informed of the nature of my paper.

round involves the tireless and steady convincing of Michael Burlingame, who tells the tale in Ch. 5 below. Suffice to say here that I was very much heartened at the news, and especially by C. Vann Woodward's letter to me:

> I am now persuaded by your letter and by additional information you and others bringing complaints against Oates have sent me that you were right in turning to the A.H.A. through official channels to handle the complaints against Oates. I confess that originally I hoped that this could be avoided and the historians might be spared the time and trouble a formal investigation would inevitably cost. But I have now changed my mind and believe that the association cannot avoid its responsibilities and that an official hearing is the best and most appropriate solution and should go forward. I enclose a copy of my letter to Dr James B. Gardner of the AHA to this effect.

And Woodward concluded: "If the decision goes against my original views I shall gladly retract them and make public apology for error."[128] This letter truly helped me overcome the stunning and rebarbative silence from the majority of the "Gang of 23."

Seven more or less substantial responses out of nineteen (this number includes Johannsen and Remini, from whom I was never able to get an answer, though I wrote each of them twice) is a disgracefully low number. At the time I was disgusted by such unfriendly and unprofessional behavior and remain disillusioned now. That a group of nationally-known historians would be so quick publicly to derogate my work and then snub me when I asked them why is, I have to say, scandalous. My exasperation with the "Gang" came through

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[128]C. Vann Woodward to Robert Bray, 20 Aug. 1991.

(though in rather a muddle of metaphor) in a follow-up letter to James McPherson:

> [A]ll I was asking for--and continue to desire--was an *argument* against my conclusion that Oates has plagiarized. Am I mistaken to believe that reasons and evidence remain our coin of the realm in academia? Or that we may buy with them something like the truth in a free marketplace of ideas? If "bad" money drives out "good" money, and your group thinks me, not Oates, the counterfeiter, then all the more important to establish once and for all which are the wooden nickels, the brass dollars. So far have I spent that I'm just about broke; but the other side is, by my reckoning, bankrupt. Maybe some day you will be free to balance the books with me.[129]

As the academic year 1991-2 approached, I took stock of the controversy and my role in it. High priests of Lincolnism like Richard Current and Gabor Boritt hadn't deigned to correspond with me. Those who had had the courtesy to reply either begged off or gave no arguments, so I still hadn't learned why they had "exonerated" Oates. And a few of them even seemed comfortable with the professional hypocrisy of "absolutely" denying Oates's plagiarism publicly, while revealing private doubts. Where then had my letter-writing campaign left me? In the realm of contention, no "forrader," I'm afraid. But I was perhaps just a little wiser about the politics of academic controversy.

A pair of unpleasant codas in the summer of 1991 completed the mostly dissonant point-counterpoint of Oates's "Refutation" and my side's attempted

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[129]Robert Bray to James M. McPherson, 19 Sept. 1991. I have not heard from McPherson since his reply to my original letter.

repudiation of it. One was an angry letter from an Oates partisan who wanted to storm the AHA and take no prisoners; the other a communication from the Illinois History Symposium telling me I was now "too hot to handle" and rejecting my proposal to present a paper at the 1991 meeting.

Oates's bellicose champion was a writer on Civil War subjects named William C. Davis, who on May 31 sent a blistering 4-page letter to the AHA (which dutifully forwarded a copy to me). It was a spirited attack on Oates's accusers, myself the most prominent target of his shotgun loaded with invective. At the time I had never heard of Davis (I've since seen his Tennessee face on the TV documentary series, *Civil War Journal*: he looks like Ricky Scaggs's uncle), but his letter made it clear I should have: "During the past seventeen years I have published some twenty-five books in the field of the Civil War. . . ." (A guy who can't offer an exact count of the books he's published has sure published a lot of them!) Davis was hugely upset that I had accused Oates of plagiarism without being an "expert" in Lincoln historiography:

> A man with no background or standing in the field involved--including an utter ignorance of the literature of that field--makes a public attack on a scholar's reputation without either informing him of his intent, or offering an opportunity to respond. . . .

Davis spoke of Oates's "inevitable exoneration" and wondered whether the press would cover that event as it had "Bray's headline accusations." And then came his judgment on my character: "Thus to have made such an attack is the most cavalier kind of recklessness. More than unprofessional, it is unmanly."[130]

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[130]William C. Davis to the American Historical Association, 31 May 1991, n p [1].

Unmanly? This sounded like "southronism" with a vengeance, and I half expected Davis to challenge me to a duel. Instead, he thought to satisfy violated honor with vituperation, slapping his gloves across my face:

> Perhaps historians will only be truly secure if they simply invent new words. I'll start it by contributing one of my own. To describe what has been done to Oates, I suggest we adopt the term "Braying."
>
> But wait a minute. There I go plagiarizing again. The word already exists, and it has a pertinent definition. *Webster's Ninth New Collegiate Dictionary* defines it as: "the characteristic loud harsh cry of a donkey."
>
> I couldn't approve of that definition more if I had stolen it myself.[131]

Well, if you're named Bray, this is the kind of thing you have to live with (and Eeyore is my favorite *Winnie-the-Pooh* character). But Davis's puerility was offensive when it wasn't laughable. And I only felt a little better when his "26th" (or so) book came out, a biography of Jefferson Davis, under the imprint of HarperCollins, Oates's publisher. On the dust cover was a fulsome blurb by Oates: "one of the great Civil War biographies of all time."[132]

However unkind Davis's words were, they hailed from a distance and from an unknown. The Illinois History Symposium, however, was a scholarly conference I had attended almost every year for a decade and at which I had met and made friends and presented papers fairly regularly. Without even thinking of the blazing Oates controversy, I had, early in 1991, sent in a proposal to share

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[131]Davis to the AHA, 31 May 1991, [4].

[132]Jefferson Davis: The Man and His Hour (New York: HarperCollins, 1991).

new research I was doing on Peter Cartwright, Abraham Lincoln and the "Peachy Quinn Harrison Murder Trial" of 1859. This was so innocuous and unrelated to plagiarism that I never for a moment considered that the paper would be rejected on any grounds other than that it didn't seem a promising topic to the committee. Thus I was shocked to receive a "no thanks" letter from the chairman of the program committee on May 1:

> The Symposium Committee met Saturday and after much deliberation concluded that in view of the apparently continued threat of legal action aginst [sic] the Historical Society, it (the committee) would prefer to direct Steven [sic] Oates' attention away from the Society by deferring your paper for a year, hopefully until Oates will have returned to his den. Acknowledging great importance of your paper, the Committee members suggested other venues where you might read it: the Abe Lincoln Symposium. . . or the program at the Lincoln home next February.[133]

This decision was hard for me to understand. Were the Illinois Historic Preservation Agency and the Illinois State Historical Society so scared of Oates and his lawyers that they would refuse an unrelated paper of "great importance" to be given at a conference a thousand miles from Amherst, Massachusetts? How was my standing up and reading something about Peter Cartwright's grandson's murder trial, Lincoln for the defense, supposed further to enrage Stephen B. Oates? And why did the program committee offer the gratuitous suggestion that I might get my work accepted at either of the two annual Lincoln events controlled by the priesthood? Fat chance!

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[133]Rodney O. Davis to Robert Bray, 1 May 1991.

Fortunately, this farcical episode has a happy ending. A few days after receiving the news, I happened to be talking to John Y. Simon on the phone and told him how dismayed I was at the program committee's decision. He was distressed at what he too saw as an injustice and immediately determined to pursue the matter. That very day he wrote to Rodney Davis, the chair, to express his concern for fairness and to open the way for a reconsideration, concluding: "Disagreement about the paper offered last year should not lead to a rejection of any Bray paper on any topic."[134] At Simon's urging, the committee agreed to take another look and, in short, put me on December's Symposium program. I finished writing the paper; I read it; it was uneventful. I recount this little story here both to illustrate how crazy things had gotten and in order to recognize Simon's commitment to free scholarship and professional civility. Throughout the protracted controversy, he has been one of Oates's readiest defenders, but he has also "agreed to disagree" with those of us on the other side, keeping communication open and centered on ideas and issues rather than personalities. This was, and is, leadership, and very welcome.

Oates's public relations campaign in the spring of 1991 was a triumph. It put his critics on the defensive and all but pre-empted further discussion. "Case closed." Or, as Harold Holzer, Oates's chief flack among the "Gang of 23," put it: "'As far as those who know this field best, the matter has been put to rest.'" And Holzer advised us to "'defer to this authoritative jury.'"[135] Such a typically patronizing attitude was one of the major reasons that I decided late in the spring to add my name to the AHA complainants against Oates (this was really a matter

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[134]John Y. Simon to Rodney O. Davis, 3 June 1991 (copy).

[135]Quoted in Mark Muro, *Boston Globe*, 2 May 1991, 77. Holzer was listed as the press contact for the "Statement of Exoneration."

of form, since I was considered one anyway). On June 12, 1991 I sent the AHA "A Response to Stephen Oates" and "Lincoln Staring into the Fire," along with a letter to James Gardner:

> Let me say why I am submitting these documents. As you will recall, I sent in my original essay somewhat reluctantly, given the publicity surrounding the matter and Oates's threat to sue. Since then, however, two things have happened to make me feel I must speak further: First, my own character and professional standing have been publicly impugned, by Oates and others; and, second, Oates has written and distributed his "Refutation," the ad hominem and generally misleading nature of which demands that I respond.[136]

By the fall of 1991 I realized that I'd done about all I could in self-defense and had gotten almost nowhere. From that point on, if I had a hope of professional vindication, it was up to the AHA, whose wheels, as Stephen Nissenbaum had painfully learned, ground slow but not always exceeding fine. And so the long wait began.

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[136]Robert Bray to James Gardner, 12 June 1991.

Dishonest Abe Scholarship: The Lincoln Biography Plagiarism Scandal

Part II

Burlingame: "A Sin Against Scholarship"

Chapter 4

Entering the Bray Fray

In December 1990, I regarded with the utmost skepticism press accounts of the Illinois History Symposium where charges were leveled against Oates, whose biography of Lincoln I had read when it first appeared in 1977. "Surely," I said to myself, "*I* would have noticed if it contained passages plagiarized from Thomas's *Lincoln*, which I have been assigning every year for the past two decades in my Civil War and Reconstruction course. Who does this *English professor*, Bray, think he is? Lincoln scholars would have detected any plagiarism long since!" Scoffing to myself thus, I sat down with Oates's biography next to Thomas's, fully expecting to find Bray's allegations baseless. My skepticism soon turned to incredulity as I discovered such close parallels as these:

Thomas (1952): "With them came Dennis Hanks, an illegitimate son of another of Nancy's aunts, a cheerful and energetic waif of nineteen . . . ." (p. 11)

Oates (1977): "With them came Dennis Hanks, illegitimate son of another of Nancy's aunts, a congenial, semiliterate youth of nineteen." (p. 8)

Thomas: "giving an occasional tug on the slender sweeps to avoid the snags and sandbars . . . ."

Oates: "tugging on their slender sweeps to avoid snags and sandbars . . . ."

In the first thirty-two pages of *With Malice Toward None* I found dozens of examples of such flagrant copying from Thomas's *Lincoln*.[137] The extensiveness of the borrowing convinced me that Bray was right and that the American Historical Association would find Oates guilty; there was no need for me to intervene. At a social occasion later in December I shared my conclusion with some Lincoln specialists, one of whom objected that the charges against Oates had been raised unfairly. I replied that I knew nothing about the conference's punctilio, but that it had no bearing on the main question: whether Oates was a plagiarist.

I thought nothing further about the matter until April 16, when Oates held a press conference where he termed the American Historical Association "a kangaroo court" with no jurisdiction over him, since he was not a member of the organization; asserted that the AHA's Professional Division lacked proper credentials for judging his work since none of the five historians on it was a Lincoln specialist; and defined plagiarism as verbatim copying of whole sentences and paragraphs.[138] Like John Swan, head librarian at Bennington College, I found Oates's protest about the AHA's jurisdiction "not compelling." Noting that the "AHA is certainly the most relevant formal organization to

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[137]See Appendix 2, "The Smoking Arsenal."

[138]New York *Times*, 20 April 1991; Boston *Globe*, 2 May 1991; Oates, "'A Horse Chestnut Is Not a Chestnut Horse': A Refutation of Bray, Davis, MacGregor, and Wollan," *Journal of Information Ethics,* vol. 3, no. 1 (spring 1994), 25-47.

investigate charges of plagiarism in the field of American history, whether or not the accused is a member," Swan queried, "when the American Bar Association is called upon to rate the fitness of judicial candidates, should it confine its scrutiny to the paid-up lawyers?" Swan also denied that the Lincoln scholars and Civil War historians to whom Oates submitted his rebuttal were his only true peers: "For such a claim of exclusive jurisdiction, this is a vaguely defined group; there are vastly more than twenty-three practicing Lincoln and Civil War scholars, especially considering that many, like Oates himself, do not confine themselves to these subjects." If Oates's forthcoming biography of Clara Barton were questioned, Swan asked, "will the only acceptable jury be confined to Clara Barton experts? An exclusive set indeed."[139]

Oates's definition of plagiarism seemed unduly narrow to me and others, including attorney Ellen M. Kozak, a specialist in copyright law, who protested that "surely a scholar with a graduate degree should know better. Close paraphrase has always been included within the definition, and is included in current copyright law as well." She noted that Alexander Lindey, upon whose work Oates relied heavily in his rebuttal, had made "the point that plagiarism is an ethical, as well as legal issue," and that Lindey's 1952 volume *Plagiarism and Originality* contends that plagiarism "can include partial taking and paraphrases." Attorney Kozak also questioned another source cited by Oates, K. R. St. Onge, who defined plagiarism as "an intentional verbal fraud." She suggested "that damage is done, and must be compensated, even when an automobile collision is accidental" and pointed

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[139]John Swan, "Sharing and Stealing: Persistent Ambiguities," *Journal of Information Ethics,* vol. 3, no. 1 (spring 1994), 43.

out that "copyright infringement can be found even where the copying was inadvertent and unintentional . . . ."[140]

Oates's narrow definition of plagiarism was not the one he had first learned. He told a journalist that when "he was a student . . . the definition of plagiarism was quoting more than four words without enclosing them in quotation marks."[141] By that definition, Oates was emphatically guilty; he did not explain how and when he had learned a different definition.

Shortly after the rebuttal appeared, Oates publicly described himself as an "outsider," denounced his accusers as "sleazy," ignorant, and "academics with axes to grind."[142] I found the adjective "sleazy" curious and decided to get involved, for it seemed to me that I could not be accused of being ignorant of the Lincoln sources, since I had been trained as a Civil War scholar at Princeton and Johns Hopkins; had been teaching courses on Lincoln and on the Civil War for more than two decades at Connecticut College; and had recently completed a book-length manuscript, *The Inner World of Abraham Lincoln*, which was then in the hands of a potential publisher. (The University of Illinois Press released it in 1994.) Moreover, I believed, I could not be labeled an "academic with an ax to grind," for I was unacquainted with Oates or his accusers.

Other developments that spring predisposed me to act. I had been appalled by the conduct of the molecular biologist David Baltimore, who had

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[140]Ellen M. Kozak, "Towards a Defintion of Plagiarism: The Bray/Oates Controversy Revisited," *Journal of Information Ethics,* vol. 3, no. 1 (spring 1994), 73-74.

[141] New York *Times,* 29 March 1993, p. A10.

[142]Boston *Globe,* 25 April 1991.

just been forced to resign the presidency of Rockefeller University because he had covered up scientific fraud while persecuting the whistle blower Margot O'Toole. I had also recently seen the German film *The Nasty Girl (Das schreckliche Maedchen)*, about a young woman who dares to reveal the Nazi background of the leading citizens of a Bavarian town and suffers obloquy for exposing their shameful past. It seemed to me that Bray, Wollan, Davis, and MacGregor were suffering a fate similar to Dr. O'Toole and to *das schreckliche Maedchen*. So on April 22, I wrote to Cullom Davis, asking if he could help me document some incidents I had included in *The Inner World of Abraham Lincoln*. In a postscript I said, "I have compared the opening chapters of the Lincoln biographies by Stephen B. Oates and Benjamin P. Thomas and have found dozens of passages where it seems to me that the former flagrantly lifts from the latter. I would be glad to file an*amicus curiae* brief supporting your complaint to the AHA if you think it would do any good. I do not know Oates personally, but it seems to me that, at least in the first 32 pages of *With Malice Toward None*, he had Thomas's biography before him and cribbed liberally from it." Four days later Davis left a message on my answering machine, encouraging me to file a brief with the AHA, to which I wrote that very day offering to submit a complaint.

On April 29, a scant two weeks after Oates's had issued his 200-page rebuttal, twenty-two of the thirty-four people to whom he had sent that document issued a statement dismissing the charges of plagiarism. When that statement was announced in the press, accounts did not list all twenty-two signers, only the most prominent, including C. Vann Woodward of Yale, James M. McPherson of Princeton, David Herbert Donald of Harvard, and Eric Foner of Columbia. Curious to discover if any of the Lincoln scholars who had recently helped me in my attempts to find a publisher for *The Inner*

World of Abraham Lincoln had also signed, I called a reporter at the Boston *Globe*. To my dismay, I was told that they had. As I confided to my journal, I had hoped that I could proceed "in such a way that the whistleblowers, now cut off at the knees, can be vindicated, without embarrassing the historians who have all been kind enough to read parts of my book and send me generous critiques. I *hope* some way can be found to achieve both goals, but I am not optimistic."[143]

Many of the exonerators were quite eminent. C. Vann Woodward, perhaps the most widely admired and respected of all American historians, had served as president of the AHA and the Organization of American Historians and had won the Pulitzer Prize, among many other awards. David Herbert Donald, former president of the Southern Historical Association, had won two Pulitzer Prizes. James M. McPherson had become a household name with the publication in 1988 of *The Battle Cry of Freedom*, a best-selling and Pulitzer-Prize-winning history of the Civil War. Many of the other twenty-two signatories were also prominent in the field. (A few days later one more historian, Robert V. Remini, signed the statement and declared that Oates's rebuttal had "totally demolished" his accusers.[144])

Impressive as this list seemed, there were some puzzling features to it. Less than a third of the twenty-three signatories could be considered Lincoln scholars; the others included specialists on the South, on Radical Republicans, on Civil War military history, on black history, on U. S. Grant, on the Jacksonian era, on constitutional history, and on the Civil War and Reconstruction era in general. As already noted, librarian John Swan rightly

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[143]Entry for 12 May 1991.

[144]Chicago *Sun-Times,* 3 May 1991

observed that "there are vastly more than twenty-three practicing Lincoln and Civil War scholars."

Although the signers referred to themselves as "scholars," three of them had no credentials justifying the claim. Harold Holzer, a public relations agent working for the New York Urban Development Corporation and a former press secretary for New York Governor Mario Cuomo and Congresswoman Bella Abzug, vigorously solicited signatures for the statement and was listed on it as the principal press contact. He served as chairman of the Lincoln Group of New York and, with two other exonerators (Mark E. Neely, Jr., and Gabor S. Boritt), Holzer had co-authored some Lincoln picture books. Holzer had no formal training as a historian, no advanced degree in the subject, and in his writings and public statements showed an infirm grasp of the facts of American history.[145] His credentials as an ethicist were somewhat tarnished; in 1993 he attempted to suppress an unfavorable review of his book on the Lincoln-Douglas debates.[146]

Even more suspect were the credentials of another of Oates's exonerators, Ralph G. Newman, a convicted felon. In 1975 a jury found Newman guilty of helping Richard Nixon evade taxes. In 1970, 1971, and

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[145]In his interview with Brian Lamb on C-Span, 22 August 1993, Holzer garbled the Dred Scott decision, implied that Illinois had been a slave state in 1858, and maintained repeatedly (and falsely) that Lincoln and Douglas had agreed to debate in every county seat in Illinois. On the weaknesses of Holzer's book, *The Lincoln-Douglas Debates: The First Complete, Unexpurgated Text* (New York: Harper-Collins, 1993), see Douglas L. Wilson, "The Unfinished Text of the Lincoln-Douglas Debates," *Journal of the Abraham Lincoln Association*, vol. 15, no. 1 (Winter 1994), 70-84, and Michael Burlingame, "Mucilating Douglas and Mutilating Lincoln: How Shorthand Reporters Covered the Lincoln-Douglas Debates of 1858," *The Lincoln Herald*.*

[146]The editor of the journal described to me how Holzer had organized a letter-writing campaign on his behalf.

1972, Nixon had virtually avoided paying Federal income taxes by claiming a deduction of $450,000 for the gift of his vice-presidential papers to the U. S. Government. In order to justify that deduction, Nixon had to show that he had donated those papers before July 25, 1969, which in fact he had not done until the spring of 1970. Newman, whom Nixon had hired to appraise the papers, submitted an affidavit falsely stating that the papers had been donated in the spring of 1969.[147]

Also suspect were the ethical credentials of another non-scholar who signed the statement of exoneration Frank J. Williams, a Providence, R. I., attorney. Like Holzer and Newman, Williams had no formal training as a historian; he had made no scholarly contribution to the field of Lincoln studies. In signing the statement, he identified himself as president of the Abraham Lincoln Association, though he had not consulted with that organization's board. Moreover, Williams did not publicly acknowledge that he had been Oates's personal attorney.

On February 12, 1995, Williams was dismissed by the board of trustees of the Abraham Lincoln Association for misusing his power as president. In protest,

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[147] The jury also convicted Newman of giving "false, fictitious and fraudulent statements to the Internal Revenue Service" about his examination of the Nixon papers. Newman faced a possible eight-year jail sentence and a fine of up to $15,000. Newman's lawyer pleaded for leniency, arguing that "[o]ne cannot dismiss the ego involvement of a person who views himself as working for the President and his closest associates. This involvement did result in submerging of better judgments in deference to a perceived interest in the Presidency." Evidently this argument helped persuade United States District Judge Frank J. McGarr to sentence Newman lightly (a $10,00 fine and no probation.) Judge McGarr noted that "[o]ther men were the architects of the fraud," but added: "Nevertheless, the crime is no less reprehensible, and a respected public figure such as Mr. Newman has a greater responsibility to uphold the law." (A former White House and Treasury Department aide spent four months in jail for his role in this backdating scheme.) New York *Times*, 13 November 1975, 7 January 1976.

Oates and some of hisother exonerators, including Harold Holzer, resigned from the board. Four months later it was discovered that in an essay entitled "Lincoln and Leadership: An International Perspective," Williams himself had committed plagiarism, using the same "mosaic technique" that Oates had employed.[148] Here are some examples of Williams's appropriation, without the use of quotation marks, of the language of Lincoln scholar James G. Randall, children's author Genevieve Foster, and others:

Genevieve Foster, *Abraham Lincoln's World* (New York: Charles Scribner's Sons, 1944), pp. 331-332: "Perhaps England lost sight of the importance of what had happened in Canada in 1867, because of a great reform which took place that year, by which the vote was given to most of the working class in the industrial cities, and England became, at last, a democracy.

"The Reform Bill was put through by the two great leaders in Parliament, and the two greatest rivals, Mr. Gladstone and Mr. Disraeli, caught working together for once in their lives. Gladstone, now leader of the Liberal Party, believed in the Reform. With Disraeli it was a sort of heads I win, tails you lose proposition, as you see in the cartoon from *Punch*.

"As the Conservative leader, Disraeli did not want Reform. The year before, when Gladstone had introduced a Reform Bill, he had fought against it, helped defeat it, and so put the Liberal party out.

"But 'you cannot fight against the future,' Gladstone had kept saying. The rule by the people and for the people was bound to come.

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[148]This essay appears in Abraham Lincoln: Sources and Style of Leadership, ed. Frank J. Williams, William D. Pederson, and Vincent J. Marsala (Westport, Conn.: Greenwood Press, 1994), pp. 165-178. I discovered this plagiarism while writing a review of the book for The Journal of Soouthern History.

"Disraeli was shrewd enough to see that, too. Even though he did not want it. But since he knew that it was coming, he thought his party might as well get the credit for it. So when the Conservatives came into power he turned about-face, introduced a Reform Bill, while Gladstone kept adding to until it suited him, and then Disraeli manipulated until he got it passed."

Frank J. Williams, "Lincoln and Leadership: An International Perspective," in *Abraham Lincoln: Sources and Style of Leadership* (ed. Frank J. Williams, William D. Pederson, and Vincent J. Marsala; Westport, Conn: Greenwoood Press, 1994), p. 167: "The Reform Bill of 1867, by which the vote was given to most of the working class, caused many to believe that England became, at last, a democracy. The Reform Bill was put through by the two great Parliamentary leaders and the two greatest rivals, Gladstone and Benjamin Disraeli, working together for once in their lives.

"Disraeli, the Conservative leader, did not want reform. The year before when Gladstone had introduced a reform bill, he had fought against it and helped defeat it throwing his Liberal Party out of office. But 'you cannot fight against the future,' Gladstone kept saying. The rule by the people and for the people was bound to come. Disraeli was shrewd enough to see that, even though he did not want it. Since he knew it was coming he thought his party might as well get some credit for it. So when the Conservatives came into power, he did an about face and introduced a reform bill to which Gladstone kept adding until it suited him and then Disraeli manipulated the bill to passage." (Williams does not cite his source.)

James G. Randall: "It is doubtful whether any other leader of the North could have matched him in dramatizing the war to the popular mind, in shaping

language to his purpose, in smoothing personal difficulties by a magnanimous touch or a tactful gesture, in avoiding domestic and international complications, in courageously persisting in the face of almost unendurable discouragements, in maintaining war morale while refusing to harbor personal malice against the South. Not inappropriately, he has become a symbol both of American democracy and the Union." *Dictionary of American Biography*, vol. XI, p. 258.

Frank J. Williams, "Lincoln and Leadership: An International Perspective," in *Abraham Lincoln: Sources and Style of Leadership* (ed. Frank J. Williams, William D. Pederson, and Vincent J. Marsala; Westport, Conn: Greenwoood Press, 1994), pp. 176-177: "It is doubtful whether any other leader of his time could have matched him in politics, in shaping language, in smoothing personal difficulties by a classical magnanimous touch or a tactful gesture, in avoiding domestic and international complications, in courageously persisting in the face of almost unendurable discouragements, and in maintaining war morale while refusing to harbor malice. Lincoln not only passes the test of leadership, he has become a symbol for democracy and union." (Williams cites his source in a footnote.)

Chambers Biographical Dictionary, ed. J. O. Thorne and T. C. Collocott, p. 1062: "The war of the French and Sardinians against Austria in 1859 and the popular vote of 1860 incorporated a great part of papal territory with the Sardinian (Italian) kingdom . . . ."

Frank J. Williams, "Lincoln and Leadership: An International Perspective," in *Abraham Lincoln: Sources and Style of Leadership* (ed. Frank J. Williams, William D. Pederson, and Vincent J. Marsala; Westport, Conn: Greenwoood Press, 1994), p. 170: "The war of the French and Sardinians against Austria in 1859 and the

popular vote of 1860 incorporated a great part of papal territory with the Italian kingdom . . . ." (Williams cites his source in his notes.)

Genevieve Foster, *Abraham Lincoln's World* (New York: Charles Scribner's Sons, 1944): "On Friday, July 8, 1853, four American steamships entered Yedo Bay." (p. 273) "a trade agreement between the nations. That treaty was not to be signed for another four years, not until 1858, and then only because of the foresight and courage of Lord Ii Naosuke." (p. 275) "For that he was called a traitor and a rebel. One day in March, 1860, ... Naosuke was being carried in his palanquin to a meeting with the Shogun when he was beset by hostile samurai and murdered." (p. 276)

Frank J. Williams, "Lincoln and Leadership: An International Perspective," in *Abraham Lincoln: Sources and Style of Leadership* (ed. Frank J. Williams, William D. Pederson, and Vincent J. Marsala; Westport, Conn: Greenwoood Press, 1994), p. 174: "On 8 July 1853, four American steamships under the command of Commodore Matthew Perry entered Yedo Bay . . . . Four years later a trade agreement was made between the nations, and then only because of the foresight and courage of Lord Naosuke, the Shogun's prime minister. For that he was called a traitor and a rebel and was murdered in March 1860 by hostile Samurai while on the way to a meeting with the Shogun." (Williams cites his source in his notes.)

Genevieve Foster, *Abraham Lincoln's World*, p. 256: "For China, the year 1858 was the seventh year in the reign of the Manchu Emperor Hien Feng. It was also the seventh year of a revolt to overthrow that Emperor and his Manchu Dynasty -- a ruinous civil war known as the Taiping Rebellion."

Frank J. Williams, "Lincoln and Leadership: An International Perspective," in *Abraham Lincoln: Sources and Style of Leadership* (ed. Frank J. Williams, William D. Pederson, and Vincent J. Marsala; Westport, Conn: Greenwoood Press, 1994), p. 175: "The year 1864 was the fifteenth year of a revolt to overthrow that emperor and his Manchu dynasty -- a ruinous civil war known as the Taiping Rebellion." (Williams does not cite his source in his notes.)

Jasper Ridley, *Lord Palmerston* (New York: E. P. Dutton, 1971): "it was one of Palmerston's chief maxims of foreign policy to take advantage of the weakness of his opponents; and the United States was greatly weakened by being involved in a civil war. Palmerston therefore adopted a much more hostile attitude to Lincoln's Government, which was the first Government of the United States to suppress the slave trade, than he had shown to any of the earlier Governments in the United States . . . ." (p. 549)

Frank J. Williams, "Lincoln and Leadership: An International Perspective," in *Abraham Lincoln: Sources and Style of Leadership* (ed. Frank J. Williams, William D. Pederson, and Vincent J. Marsala; Westport, Conn: Greenwoood Press, 1994), p. 168: "His philosophy was to take advantage of the weakness of his opponents. Ironically, he was more hostile toward Lincoln's government, the first U.S. administration to suppress the slave trade, than he was to any earlier administration." (Williams cites his source in his notes.)

In response to the statement by the Gang of 23, James M. McPherson, who, according to the Boston *Globe*, "took a lead role in organizing the statement," said: "Some of those on the list think Oates could perhaps have

been more careful, but his defense is right: All Lincoln biographers draw on a rather slender body of fact that makes similarities between books inevitable." Frank J. Williams declared, "We felt it was just intolerable that for whatever reason these people determined to scrutinize in the most nitpicking, microscopic and hostile way every word, comma and period of a fine scholar's book." Attorney Williams deemed Bray's accusation "irresponsible" and "chilling." Commenting on the remarkable speed with which Oates's self-appointed jury reached their verdict, Eric Foner said, "We felt Stephen Oates' reputation had been unfairly besmirched in public, and that that required a quick response."[149] Professor Foner and the others apparently had little compunction about damaging the reputations of Professors Bray, Wollan, Davis, and MacGregor. (There is reason to believe that in two weeks the Gang of 23 did not carefully weigh the evidence, despite the statement's claim that "[w]e have reviewed the allegations . . . together with material subsequently submitted to the American Historical Association . . . . [and] the refutation released in response by Professor Oates several [sic] weeks ago." One of the Gang of 23 asked me, "Just what did that statement that I signed actually say?")[150] The London *Economist* sneeringly dismissed the accusations of plagiarism, noting that "Thomas called the 'milk sick' that killed Lincoln's mother a 'dread disease' and Mr[.] Oates called it 'dreaded.' Uncanny, eh?"[151]

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[149]Boston *Globe*, 2 May 1991.

[150]Conversation, 5 August 1991.

[151]St.Louis correspondence in *The Economist*, 8 June 1991. *The Economist's* writer did not quote the passages fully:

Thomas, "In the late summer of 1818 a dread disease swept through southwestern Indiana. Known as the 'milk sick' . . . ." (p. 11)

Oates did not reveal the identity of the eleven historians who had been asked to sign the statement of exoneration but who had evidently refused. Conspicuously missing from the list were Don E. Fehrenbacher, among the most honored and most distinguished of all Lincoln scholars; Harold Hyman, a leading Constitutional scholar specializing in the Civil War era; William E. Gienapp, the Civil War specialist at Harvard who was working on a biography of Lincoln; Douglas L. Wilson and Rodney O. Davis, who were editing the interviews that Lincoln's law partner, William H. Herndon, conducted with people who had known Lincoln; Charles B. Strozier, author of *Lincoln's Quest for Union: Public and Private Meanings*; and many others.

Oates: "The following summer an epidemic of the dreaded 'milk sick' swept through the area." (p. 8) The author might have noted that three other passages on Oates's p. 8 strikingly resemble passages on Thomas's p. 11:

Thomas: "With them came Dennis Hanks, an illegitimate son of another of Nancy's aunts, a cheerful and energetic waif of nineteen . . . ."

Oates: "With them came Dennis Hanks, illegitimate son of another of Nancy's aunts, a congenial, semiliterate youth of nineteen."

Thomas: "Again Thomas put together a rude coffin, and again the awfulness of death afflicted the little group in the wilderness cabin. The body lay in the same room where they ate and slept."

Oates: "While Thomas fashioned a black cherry coffin, the dead woman lay in the same room where the family ate and slept."

Thomas: "Twelve-year-old Sarah cooked, swept, and mended, while Thomas, Abraham, and Dennis Hanks hewed away at the forest and tended the meager crops. Their fortunes ebbed. Deprived of the influence of a woman, they sank almost into squalor."

Oates: "Twelve-year-old Sarah tried to fill her mother's place, to make and mend clothes for the menfolk, to clean, cook, and wash for them. But it was hard without a woman, and the Lincoln homestead sank into gloom and squalor."

The snide comment "Uncanny, eh?" would not have been so appropriate if *The Economist's* author had included these examples. In a response, Bray cited the Dennis Hanks parallel and commented: "Can anyone reasonably deny that one of these is the source for the other? Since Benjamin Thomas wrote first, I said in my paper and reiterate here, Professor Oates should give him credit or write the matter differently". Letter to the editor, The Economist, 5 Oct. 1991, p. 6).

One of the scholars who did not sign the statement of exoneration told me that he had been asked to affix his signature but that he could not bring himself to agree that the charge of plagiarism was "groundless" and "totally unfounded." He did not, he said, have time to investigate the matter in depth and therefore could not feel confident in saying that Oates was a plagiarist.[152] Another of these historians told me that he "found the Bray article quite compelling" but that he did not want to get involved. "I don't see how anyone can say there is no issue here with Oates," he concluded.[153]

The four-paragraph statement by the exonerators did not explain why the unattributed borrowing of Benjamin Thomas's language without quotation marks did not constitute plagiarism; Oates attempted to do that in his long rebuttal, which I perused closely, seeking some extenuating circumstances that could possibly mitigate his guilt. Instead I discovered red herrings, non-sequiturs, and smoke screens. All Lincoln scholars copy from each other, Oates contended, showing that Thomas on a handful of occasions had used others' language without quotation marks or attribution. Such *tu quoque* arguments failed to persuade me; even if other Lincoln scholars had plagiarized, that did not excuse Oates. Moreover, Thomas's lapses were few while Oates's were numerous.

The rebuttal also purported to show how all Lincoln biographers had used similar language in describing the early life of their subject; Oates reproduced several accounts of the death of Lincoln's mother and other episodes to illustrate his point. Careful examination of those excerpts convinced me, however, that only the language of Oates and of Benjamin

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[152]Letter to the author, 4 July 1991, and a subsequent conversation.

[153]Letter to the author, 25 July 1991.

Thomas was strikingly similar. I annotated that rebuttal copiously, showing why I found it unconvincing, and included it with my complaint to the AHA.

While preparing my brief, I read *Stolen Words: Forays into the Origins and Ravages of Plagiarism* by Thomas Mallon, who noted that "plagiarism is something people may do for a variety of reasons but almost always something they do more than once."[154] Prompted by this observation, I scrutinized Oates's biographies of William Faulkner and Martin Luther King, Jr. I was inspired to examine the Faulkner biography in part because Laurin A. Wollan, Jr., mentioned to me that some of his friends suspected that the memoirs of Faulkner's Hollywood mistress had been pillaged by Oates. In addition, Professor Dawn Trouard of the University of Akron, in her review of Oates's *William Faulkner, the Man and the Artist: A Biography*, had deplored the author's "pernicious habits of appropriation" of other writers' language.[155]

The King and Faulkner biographies, like *With Malice Toward None*, turned out to be riddled with others' language which Oates had not enclosed within quotation marks. Here are a few specimens:

Time: "*Sometimes there was only the hawk of a throat* and the splash of spittle *against the* ear piece."

Oates: "*Sometimes there was only the hawk of a throat*, the sound of spit *against the* receiver."

William Robert Miller: "*Born in the year of Lincoln's Emancipation Proclamation*, the Reverend Mr. *Williams had literally come up from slavery*." *Martin Luther King: His Life, Martyrdom, and Meaning for the World*, p. 2

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[154]Thomas Mallon, *Stolen Words: Forays into the Origins and Ravages of Plagiarism* (New York: Ticknor & Fields, 1989), p. xiii.

[155]*Mississippi Quarterly*, vol. 41 (1987-88).*

Oates: "*Born in* 1863, *the year of Lincoln's Emancipation Proclamation, Williams had literally come up from slavery.*" p. 6

Martin Luther King, Jr.: "*On* that *cloudy afternoon* in March, *Judge Carter had convicted more than Martin Luther King, Jr., Case no. 7399; he had convicted every Negro in Montgomery.*" Stride Toward Freedom, p. 150

Oates: "*On* this *cloudy afternoon,* he thought, *Judge Carter had convicted more than Martin Luther King, Jr., case number 7399. He had convicted every Negro in Montgomery.*" p. 97

Meta Carpenter Wilde: "That I was pretty enough, *with blond hair that fell in a straight sweep to* my *shoulders*, with a ninety-two-pound body as lean and *lithe as a ballerina*'s, and *with a waist that was a handspan around*, I knew without undue vanity." *A Loving Gentleman*, p. 27

Oates: "She was lovely: tall and boyishly thin, *with* fine *blonde hair that fell to* her *shoulders in a straight sweep.* When she walked, she was *lithe as a ballerina, with a waist that was* only a *handspan around."* p. 135

Unlike the Lincoln biography, however, the King and Faulkner books contain endnotes where Oates sometimes indicates the sources from which he had expropriated language without using quotation marks. This seemed to me unethical, for if authors cite works in notes but do not enclose borrowed language within quotation marks, they deceive their readership; they announce, in effect, "I derived *information* from these sources, but the *language* is my own." As Laurin Wollan would later put it, "the analysis of plagiarism must address primarily the element of *appropriation*, not attribution." One writer taking from another "must do something more than merely provide attribution;" the second writer must "use quotation marks of some other

device for indication a quotation or paraphrase," or "substantially alter the first writer's distinctive, original writing."[156]

Still, since Oates's endnotes constituted at least some form of attribution, I asked two authorities on plagiarism whether the borrowing in the Faulkner and King books was less heinous than in the Lincoln book. Peter Shaw, author of *American Patriots and the Rituals of Revolution, The Character of John Adams, The War Against the Intellect*, and "Plagiary,"[157] told me that it was an old plagiarist's trick to steal language and then indicate the source in a note.[158] (In the summer of 1991 Shaw published an essay on the Oates case concluding that, based on the findings in the King and Faulkner books, it "no longer seems plausible that the similar phraseology [in the Lincoln biographies of Oates and Thomas]. . . can really be coincidental."[159]) A senior historian with impeccable scholarly credentials told me that the examples from the King and Faulkner biographies were more egregious specimens of plagiarism that those found in *With Malice Toward None*.[160]

Encouraged by these two scholars, I submitted my brief to the AHA in late May, 1991, offering what Thomas Mallon says is needed in order to establish plagiarism: "smoking guns, whole phrases appropriated like thy neighbor's wife and forced into adulterous proximity with whatever the

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[156]Laurin A. Wollan, Jr., "On the Necessity and Sufficiency of Attribution: Notes Toward the Definition of Plagiarism in Scholarship," paper read at the 1994 annual meeting of the American Historical Association, p. 7.

[157]*The American Scholar*, 1982, pp. 325-337.

[158]Phone conversation, 18 June 1991.

[159]Shaw, "The Fatal Pattern of Plagiary," Illinois Issues, (August and September 1991), p. 41.

[160]CHECK DATE OF HIGHAM'S LETTER

plagiarist can manage to create himself."[161] In my cover letter to the AHA, I pointed out that the King and Faulkner specimens cast doubt on Oates's main line of defense in his rebuttal, namely, that he and other Lincoln biographers had relied on the same small corpus of information about Lincoln's early life and that they therefore were bound to use some of the same language from those sources. At one point Oates summed up his strategy succinctly: "He [William E. Baringer] was the source for Thomas and I [sic] both."[162] While that argument seemed plausible at first blush, it did not account for similar borrowing in the King and Faulkner books. There Oates had lifted language from the autobiographies of King's father and wife, and of Faulkner's friend, Meta Carpenter Wilde. Mrs. Wilde, Mrs. King, and Martin Luther King, Sr., had not consulted sources that Oates later used, for they were writing memoirs, not scholarly works. Their memoirs were *urtexts*.

Oates's defense crumbled further in the summer, as Laurin Wollan discovered more and more examples of Benjamin Thomas's language in the later chapters of *With Malice Toward None*, including these:

Thomas: "*Tad ate all the strawberries intended for a state dinner; the steward raged and tore his hair . . . .*" p. 301

Oates: "*Tad . . . ate all the strawberries intended for a state dinner. The steward raged* at the boy *and* pulled *his hair . . . .*" p. 287

Thomas: "Sherman's boys hit *South Carolina like a horde of avenging* Goths." p. 505.

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[161]Mallon, Stolen Words, pp. 221-222.

[162]"Stephen B. Oates's Refutation of Accusations of Plagiarism," document released to the press in April 1991.

Oates: "Sherman's army stormed into *South Carolina like a horde of avenging* angels . . . ." p. 415

Thomas: "he remembered his snub at Cincinnati in *the McCormick reaper* case as *one of the most crushing experiences of his life* . . . ." p. 295

Oates: "*the McCormick reaper* episode had been *one of the most crushing experiences of his life*." p. 278

Thomas: "on *horseback over gullied mountain roads*." p. 396

Oates: "riding *horseback over gullied mountain roads*." p. 362.

In addition, a team of Faulkner scholars that summer found in *William Faulkner, the Man and the Artist: A Biography* abundant borrowing , without quotation marks, from Joseph Blotner's massive Faulkner biography and from other sources. (One of the sleuths called Oates's technique "pretty disgusting, slimy, dishonesty at its zenith, and I'm appalled that he's gotten way with this for so long."[163]) When these were forwarded to me, I submitted them to the AHA. Here are some examples:

Joseph Blotner: "'*Pantaloon in Black*' was, in fact . . . *one of the most powerful stories Faulkner had ever written* . . . his determined attempt *to penetrate the inner lives of* Negroes . . . ." *Faulkner: A Biography*, p. 1038

Oates: "Faulkner tried *to penetrate the inner lives of* black people . . . . '*Pantaloon in Black,' one of the most powerful stories Faulkner had ever written* . . . ." p. 179

Joseph Blotner: "they found Faulkner *face down on the floor, clad only in shorts*, *the* cold *November wind* sweeping *through* the *open window*." *Faulkner: A Biography*, p. 387

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[163]Letter to the author, 8 September 1991.

Oates: "He lay there, *face down on the floor, clad only in* his *shorts*, oblivious to *the* icy *November wind* blowing *through* an *open window* . . . ." p. 162

In August the novelist William Styron wrote me suggesting that I compare his description of Faulkner's funeral with the one in Oates's biography. "I don't have the Oates biography at hand, so I am unable to quote the precise page, but, if you care to, I suggest you make a comparison of what I recalled was the last page or two of that biography and the final page of an essay I wrote on Faulkner's funeral . . . . In Oates's biography he does mention that I wrote an essay on Faulkner's funeral. But shortly after that, I think you will see, he uses phrases from my essay totally without attribution which leave the impression they sprang from the oatesean mind. . . . Although I recall the borrowing -- or stealing -- was not extensive, it was nonetheless a definite misappropriation, and I was irritated when I ran across it since it seemed to represent more than mere sloppiness."[164] (At about this time, Styron also read Bray's original essay and wrote to him with this opinion: ". . . I cannot understand how there could be any final doubt after reading your comprehensive and exhaustive evidence. Thank you for sending me the material and for your letter. It is totally convincing. . . . I can't see how anyone with a sense of logic and decency could dismiss your devastating analysis.")[165]

Acting on Styron's suggestion, I discovered that the following passages had been lifted by Oates without quotation marks:

Styron: "And I am *in deep memory*, as if summoned there by a trumpet blast. *Dilsy and Benjy and Luster and all the Compsons, Hightower and Byron*

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[164]William Styron to Burlingame, Vineyard Haven, Mass., 23 August 1991.

[165]William Styron to Robert Bray, 11 Sept. 1991 [copy]).

Bunch and Flem Snopes and the gentle Lena Grove -- all of *these people and* a score *of others come swarming back* comically and villainously and tragically *in* my *mind with a* kind a kind of mnemonic *sense of utter reality, along with the tumultuous landscape* and *the fierce and* tender *weather, and the whole maddened, miraculous vision of life* wrested, as all art is wrested, out of nothingness."

Oates: "In the funeral procession, novelist William Styron found himself *deep in memory, as Dilsy and Benjy and all the Compsons, Hightower and Byron Bunch and Flem Snopes and the gentle Lena Grove, all these people and scores of others came swarming back in* Styron's *mind with a sense of utter reality, along with the tumultuous landscape, the fierce and gentle weather, and the whole 'maddened miraculous vision of life' that had created them*."

Styron: "It was a rather raw field [described in the next paragraph as a '*hot dry field*'], it seems to me, *overlooking a housing project*; but he lies *on a gentle slope between two oak* trees." p. 262. On the next page, Styron quotes from Faulkner's poem, "My Epitaph": "Though I be dead/ This solid earth that holds me fast will find me breath."

Oates: ". . . in a new section, a *hot dry field overlooking a housing project*. Then the crowd was gone, and Faulkner lay *alone between two oaks, on a gentle slope* where the earth that held him fast would draw him breath again."

Armed with evidence from the King and Faulkner biographies, as well as from *With Malice Toward None*, I prepared my case against Oates, confident that the "smoking arsenal" would convince readers of the validity of Bray's original charge. Little did I realize to what lengths academe would go to avoid dealing with such an unpleasant subject. I came to appreciate the truth of what Howard Gardner, Professor of Education at Harvard, later wrote: "I have been dismayed . . . to learn of cases in which professors have ignored plagiarism by their students or even by their colleagues, and of situations in

which professional organizations and universities have hidden flagrant cases of plagiarism because they have wanted to avoid the 'negative publicity.'"[166]

[166]*Chronicle of Higher Education*, 13 January 1993, p. B 3.

Dishonest Abe Scholarship: The Lincoln Biography Plagiarism Scandal

Part II: Burlingame

Chapter 5

The Gang of 23 Hears Little Evil, Sees Little Evil, Speaks Little Evil

On May 31 I traveled to Washington to submit the examples of plagiarism from Oates's Lincoln, King, and Faulkner biographies to James B. Gardner at the AHA's headquarters. In my cover letter I quoted two passages from the organization's *Statement of Standards of Professional Conduct*which impelled me to file the complaint:

"Historians . . . must be free of the offense of plagiarism, and must not be indifferent to error or efforts to ignore it or conceal it."

"All who participate in the community of inquiry . . . have an obligation to oppose deception actively in themselves and in others."

I explained that "I take this step reluctantly, for I am no friend of controversy, nor do I have a personal ax to grind." I said that I felt "like someone who has received a summons to jury duty and, after some struggle with his conscience, abandons thoughts of wriggling out of it. Especially in the wake of the recent David Baltimore scandal, I cannot sit idly by while whistle blowers . . . are made to look foolish." I made it clear that "I do not

accuse Oates of plagiarizing *ideas* or *information*" but "I do accuse Oates of plagiarizing . . . *words*."[167]

Along with my letter I enclosed not only compilations of parallel columns comparing Oates's language with his sources, but also a detailed rejoinder to his rebuttal of charges filed by Professors Bray and Wollan. In it I noted how Oates frequently changed the subject instead of focusing on the question of whether he used language strikingly similar to Thomas's; how irrelevant the motives of the complainants were; and how there "are plausible grounds for occasional similarities in language and syntax, but they do not explain the dozens of cases found in the early portions of Professor Oates's book." Gardner told me that on the subject of plagiarism, the organization was divided between hard-liners and soft-liners, adding that some members were reluctant to go ahead with an investigation because past presidents of the organization had signed the statement exonerating Oates.[168]

Fearing that the statement by the Gang of 23 -- combined with the threat of legal action -- might induce the AHA to drop its investigation, I decided to share my findings with all of Oates's exonerators, naively assuming that once they had seen how plagiarism marred not only the Lincoln biography but also the King and Faulkner books, they would readily acknowledge the error of their ways. In response, one of them wrote me saying that "You have strengthened the case against Oates for sloppiness and superficiality. You have certainly shown -- as did Bray and Wollan -- that he used similar words and phrases, sometimes large parts of whole sentences, identical or similar to other authors. The certainly skirts the edge of

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[167]Burlingame to Gardner, New London, Conn., 30 May 1991.

[168]Author's diary, entry for 31 May 1991.

plagiarism; probably by some definitions it *is* plagiarism." He added a sentence that astonished me: "I have told Oates personally (and so did several others who signed the statement) that he had committed" a "sin against scholarship."[169] (They had reached this conclusion before seeing evidence of Oates's plagiarism in his biographies of Martin Luther King and William Faulkner.) Why these scholars would *publicly* declare the charges "groundless" and "totally without foundation" while *privately* scolding Oates for a sin against scholarship I found hard to understand.

Another exonerator phoned me, saying that he and many other signers knew Oates personally: "We liked him. He's a nice guy." They were most upset by the lack of due process accorded him when the charge was first aired: "I thought the fellow who brought the charge was very anxious to make a name for himself," he explained. Oates had already "been clubbed too much." Yet he observed that "Oates was turning out books too rapidly" and added "I'm impressed with what you did."[170] (Another member of the Gang of 23 told me, "I thought you were foolish, but I half admired you.")[171]

Yet another of Oates's exonerators told me, "I signed the Holzer statement with some reluctance, as I told another signer when he invited me to join in Stephen Oates's defense. I am not sure that the case against Oates is airtight, but I do subscribe to the statement sent to you by one of the other signers: 'You have certainly shown -- as did Bray and Wollan -- that he used similar words and phrases, sometimes large parts of whole sentences, identical or similar to other authors.' The fact that Lincoln's earlier

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[169]Letter to the author, 9 July 1991.

[170]Phone conversation, 22 July 1991.

[171]Phone conversation, 12 September 1991.

biographer, Benjamin Thomas, and Oates used the same sources does not seem to explain these similarities altogether. In any case, Thomas got there first, and this, at the very least, required Oates to acknowledge that fact either in footnotes or in his text where these similarities occurred. That he failed to do so makes him vulnerable at least to the charge of carelessness -- a most regrettable situation for a scholar to be in."[172] Later this same historian said, "What Oates did was reprehensible, but I would call it petit larceny rather than grand larceny. . . . Oates deserves to be exposed . . . ."[173]

Another exonerator told me "I'm glad you're pursuing the Oates matter. I had strong reservations about letting him off the hook entirely. In fact, I was about to write a long commentary on the affair, short of condemning him for flagrant plagiarism, but reproving him for sloppy thought and writing, and calling on him to mend his ways henceforth." But, he thought, "Oates may have rationalized that so much had been written on Lincoln as to make efforts at total originality of expression futile or stultifying." When Harold Holzer had phoned to urge him to sign, however, he "demurred, but Harold tipped that balance by calling my attention to the declaration's phrase 'without attribution,' and so I went along." But, he concluded, "your finding of a similar practice in Oates's bios of King and Faulkner undercuts that last exculpation and stamps it as habitual, if not incorrigible."[174] Later he said, "I have a guilty feeling that I let myself be stampeded, as perhaps did others of the herd."[175] Eventually he sent a formal recantation to the AHA,[176] as did one other exonerator.[177]

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[172]Letter to the author, 7 August 1991.

[173]Letter to the author, 19 August 1991.

[174]Letter to the author, 7 July 1991.

Another eminent senior historian who takes an interest in scholarly fraud told me that the file I had prepared convinced him "that Oates has repeatedly indulged in practices that can only be described as plagiarism. I am amazed that such flagrant unacknowledged use of others' words went undetected for so long."[178] Seconding this view was a Lincoln scholar who wrote that "Oates has plagiarized Thomas's biography of Lincoln. The evidence, I should think, is overwhelming."[179] Another historian examined the file I prepared and told me, "None of the distinguished scholars who pledged themselves in support of Oates" would have tolerated "such unattributed usage of other scholars' work in undergraduate papers, let alone a purportedly scholarly work. . . . I would have a hard time giving a passing grade to Stephen Oates in a class of mine no matter how ably he proved himself as a prolific mimic/summarizer of someone else's style and research." In biographies, "I want to be able to determine where the argument comes from and what the sources are for any and all assertions made. Oates fails to do this over and over again. In doing so he undermines not only the reliability of himself, but also he assails the integrity of the historical profession as a whole." He read some of Oates's passages lifted from Benjamin Thomas to his students, who were especially struck by "the

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[175]Letter to the author, 12 August 1991.

[176]Statement dated 30 September 1991.

[177]Letter to the AHA dated 20 August 1991.

[178]Letter to the author, 8 June 1993.

[179]Letter to the author, 6 August 1991.

similarity of the cadence of Oates' narrative to that of Thomas's."[180] At Gettysburg College, Professor Michael Birkner held a mock trial in Historical Methods class; his students, who did not examine the King and Faulkner biographies, found Oates guilty of plagiarism.[181]

A lawyer with an interest in Lincoln asked to see the materials I had submitted to the AHA. After examining them, he told me "a great deal of my interest was generated by your 'Rejoinder' which, I think, provided very substantial support and balance to the original complaints. In summary, I think you have made a very clear and convincing case against Oates. I find it somewhat difficult to understand how Oates can simply overlook or ignore the numerous 'borrowings' of words, phrases, sentences, and even paragraphs."[182]

Yet by no means all of the twenty-three exonerators were willing to acknowledge that they had erred in declaring the charges against Oates "groundless" and "totally unfounded." One said, "[i]n regard to the Oates affair, I do not care to comment on his King and Faulkner biographies, since they deal with subjects with which I am unfamiliar. As for Oates's Lincoln biography and its sequel, *The Man Behind the Myths,* I have maintained . . . that nothing of significance in either of the books is original with Oates, that both of them are syntheses of the writings of other historians. There is no denying the existence of similarities between Oates and Thomas, in phrasing and arrangement as well as content . . . . In my opinion these similarities more

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[180]Letters to the author, 6 September and 8 October 1991.

[181]Birkner to Burlingame, Gettysburg, 19 November 1993.

[182]Letter to the author, 16 January 1992.

than confirm Oates's lack of originality, but they do not convict him of plagiarism."[183]

Another exonerator said, "I am persuaded that Oates is guilty of sloppiness in using and citing the works of previous authorities, but I do not see him as guilty of plagiarism, as least as I define the term."[184] In response I asked him and others who responded similarly, three questions:

If what Oates had done was not plagiarism, what was?

What would happen to their students if they did what Oates had done?

If I were to publish a book on the case, adducing all the examples of Oates's unacknowledged borrowing that I had sent them, would they be willing to have their names appear at the end of those examples endorsing a statement that "These specimens do not, in my view, constitute plagiarism?"

No one answered these questions.

Some of the twenty-three exonerators refused to look at the materials I sent, pleading lack of time. "Let me say," wrote one, "that the material I read that had been excerpted from the works by Oates did not strike me as having been plagiarized; and that is why I took the position I did. I cannot, however, pursue this matter indefinitely and become a party to the succeeding controversies."[185] Another replied, "I would need to review a large amount of text and correspondence, and that simply cannot be done . . . ."[186] A third

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[183]Letter to the author, 18 July 1991.

[184]Letter to the author, 2 August 1991.

[185]Letter to the author, 25 July 1991.

[186]Letter to the author, 5 August 1991.

said, "As you know the Civil War is not my field but I was asked to read Oates' defense and having done so I concluded that he was not guilty of plagiarism and I said so. That's as far as I wish to go."[187] A fourth exonerator also refused to look at my materials, saying "Your new material was not included in the matter forwarded to me for my opinion, which I have already given, based on the charges and Oates' reply. Not being an expert on Faulkner, or for that matter, Martin Luther King, I can hardly be expected to judge Oates' works dealing with these subjects."[188]

A fifth exonerator suggested that I not waste my time. "I have always taken plagiarism seriously," he assured me, but added that "Mr. Oat[e]s, like Mr. Thomas before him, was retelling old Lincoln chestnuts in stale language. That Mr. Oat[e]s' reputation as a writer has been damaged by this scrutiny seems to me to be clear. And I am wondering just what value to anyone can accrue to poking further into his work."[189] This historian did not seem concerned about plagiarism in the biographies of King and Faulkner, nor did he worry that the statement he had signed had damaged the reputation of Professors Bray, Davis, Wollan, and MacGregor.

Hans L. Trefousse publicly maintained that since Oates had offered an interpretation of Lincoln different from Thomas's, he could not be accused of plagiarism, no matter how much of Thomas's language he may have expropriated without quotation marks or acknowledgment in his endnotes: "The two books in question . . . are completely different. While Oates presents the Civil War President as a great statesman attuned to pressing problems of

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[187]Letter to the author, 12 August 1991.

[188]Letter to the author, 10 July 1991.

[189]Letter to the author, 23 July 1991.

race relations and emancipation, Thomas is more interested in Lincoln as the savior of democracy."[190] Richard N. Current also contended that Oates was innocent since his biography of Lincoln "is quite different from that of Thomas's." He further argued that "[i]f computers are used to find similarities of words and phrases in two books, the computers, in all fairness, ought also to be used to analyze the *differences* between the two books. In comparing Oates and Thomas, attention might be given to each author's references to 'Negroes' or 'blacks,' for example."[191] This objection was addressed by Thomas Mallon, who asked: "If the police enter the house of a suspected thief and find fifty-three stolen objects amid, say, two thousand legitimately purchased by the occupant, should they not proceed to arrest him? As Judge Learned Hand wrote, 'No plagiarist can excuse the wrong by showing how much of his work he did not pirate.'"[192] Laurin Wollan argues similarly that "it is not meaningful to say that a work is plagiarism; rather that there is plagiarism . . . in it. A plagiaristic work is one in which there is plagiarism, not necessarily one which has been taken as a whole or even in substantial

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[190]Trefousse, "The Oates Case," *Journal of Information Ethics,* vol. 3, no. 1 (spring 1994), 76-77. In this article, Professor Trefousse contends that "the main accusation against the author focuses upon his treatment of certain passages describing incidents in Lincoln's early life. If these charges can be sustained, most historical research becomes questionable, since both Thomas and Oates obviously used the same sources, and there are only a limited number of ways to describe the physical environment contributing to the development of the subject of a biography." This argument was made in 1994, three years after I had sent Professor Trefousse dozens of examples of Professor Oates's literary piracy in the later stages of his Lincoln biography and throughout his biographies of Martin Luther King, Jr., and William Faulkner.

[191]Current, "Concerning the Charge of Plagiarism Against Stephen B. Oates," *Journal of Information Ethics,* vol. 3, no. 1 (spring 1994), 78.

[192]Mallon, Stolen Words, pp. 117-118.

part from another."[193] Abraham Lincoln's chief White House Secretary, John G. Nicolay, noted that "Your literary burglar cannot often venture to carry off the fire-proof safe; he can escape detection more easily with the family treaspoons or the every-day jewels -- especially if he expects to put one through the melting pot, or defiantly wear the other in a new setting."[194]

Some of the exonerators reacted harshly. "Quite frankly," one wrote me, "with the evidence at hand, including your own, and with the non-definition of plagiarism which exists, I do not believe a case has been made against Stephen Oates. Sloppiness yes, plagiarism no." He went on to say that "[i]t has not gone unnoticed that those who seek to bring Oates down have not published widely. Is there not some jealousy here, people ask, protests to the contrary notwithstanding." He also noted that "[t]his whole sordid business has a chilling effect on every honest writer who publishes. Are they to be nit picked to death by anyone with a computer who seeks every similarity with what had heretofore been published?"[195] (Oates's defenders came to believe, wrongly, that Wollan had used a computer to help identify parallel passages in Thomas's biography and *With Malice Toward None*.)[196] Another said "I have no desire to get involved in what is looking more and more like an organized vendetta" against Oates.[197]

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[193]Laurin A. Wollan, Jr., p. 27.

[194]John G. Nicolay, unpublished essay on plagiarism, John G. Nicolay Papers, Library of Congress.

[195]Letter to the author, 9 July 1991.

[196]Phone conversation with Wollan, 12 July 1991.

[197]Letter to the author, 14 July 1991.

Most of the exonerators, however, were quite civil in their responses; some even agreed to read chapters of *The Inner World of Abraham Lincoln* and share their comments and criticisms. I was most gratified by their unwillingness to personalize the dispute; some have become good friends. I had been warned that the Lincoln community was a close-knit, small group which would take umbrage at my brash intervention in the Oates case and would retaliate by seeing that no university press would ever publish my book.[198] When the University of Illinois Press did accept my manuscript for publication, it was in part because two of Oates's defenders had praised it in reader's reports. Three of Oates's exonerators -- Richard N. Current, Mark E. Neely, Jr., and Robert W. Johannsen -- comprised the jury that awarded my book-length manuscript, *Abraham Lincoln: An Oral History*, the 1995 Abraham Lincoln Association Prize.

Only Gary Gallagher, Herman Belz, David Herbert Donald, Emory Thomas, and Harold Holzer did not respond to my inquiries. In December 1991 at the AHA convention I chanced to see Professor Donald, my former mentor, who informed me that I simply did not understand what plagiarism was. I thought to myself, "You would never have allowed me or your other students at Princeton and Johns Hopkins to commit this sort of literary larceny," but I did not feel free to engage in a public debate at the book exhibition area.

Harold Holzer, though, did eventually respond to some of the other complainants against Oates, denying that the evidence adduced from the King, Faulkner, and Lincoln biographies had shown Oates guilty of appropriating "any ideas or discoveries by any of his predecessors." As for

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[198]Conversation with a widely-published independent scholar, 6 July 1991.

the evidence in the King and Faulkner books, he said: "I do not feel myself qualified to offer any judgements on the King and Faulkner matters." About the Lincoln biography, he stated: "We know that he [Oates] relied on Professor Thomas's earlier work -- and cited that reliance in his sources -- just as we know that Thomas relied on earlier works as well, but in his case *without* citing his sources. The irony of this prolonged investigation, it seems to me, is that it is based upon the integrity of a book whose own dependence on earlier material is all too apparent."[199] Holzer's *tu quoque* argument ignored the main question, whether Oates (not the long-dead Thomas) was guilty of plagiarism.

In the summer of 1991 Herman Belz published a letter praising Oates's "cogent rebuttal" and declaring that he had "maintained a reasonable scholarly attitude, firmly defending himself and in the process telling us a good deal about the art of biography . . . ." He predicted that the plagiarism charges filed with the AHA "will be quietly dropped" and concluded that "Cullom Davis appears now to have acted hastily in reporting the matter to the AHA."[200]

I wrote to Professor Belz noting that in his rebuttal, Oates "denounces his critics for engaging in 'an academic version of McCarthyism,' for constituting a 'kangaroo court,' and for conducting a 'witch hunt.' He calls the Professional Division 'the AHA's answer to the House Committee on Un-American Activities,' quotes a friend as saying 'This is academia at its pissiest,' and dismisses his critics for providing nothing but 'innuendo, supposition, and sarcasm.'" I also called Professor Belz's attention to another

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[199]Holzer to Walter Stewart and Ned Feder, New York, 9 March 1993, copy.

[200]Belz to Paul [Verduin], 11 June 1991, *The Lincolnian*, July-August 1991, p. 2.

portion of the rebuttal, which said, "My main sin, from a Bray view, seems to be that I had the temerity to produce another one-volume Lincoln biography. Since Thomas's is one of the great American lives, where did Oates get off writing another Lincoln life? Worse still, how could Oates's book enjoy a wide popular and critical acceptance?" Oates also accuses Wollan of "devious" tactics, of being "woefully ignorant of the Lincoln literature," and says: "I find it significant that Wollan did not compare Thomas's biography to previous Lincoln lives, to find whether there were any similarities between them. All this raises the question of motive. I have been told that Wollan worships Thomas. If that is so, it explains Wollan's fanatical devotion to the compilation of his list." I also pointed out to Professor Belz that "in the Boston *Globe* Oates called his critics 'sleazy' and in the New York *Times* said they were 'academics with axes to grind.'" Such language, I suggested to Professor Belz, " hardly comports with the AHA's *Statement of Standards of Professional Conduct*, which Oates quotes in his rebuttal: 'The bond that grows of our lives committed to the study of history should be evident in the standards of civility that govern the conduct of historians in their relations with one another. The preeminent value of all intellectual communities is reasoned discourse -- the continuous colloquy among historians of diverse points of view. A commitment to such discourse makes possible the fruitful exchange of views, opinion, and knowledge.'"[201]

I also asked Professor Belz about another matter raised in his public letter: "I am curious about you statement that 'Stephen Oates sent his rebuttal to 22 Civil War and Lincoln scholars, of whom I was one. James McPherson among others conducted a telephone survey in May, and ascertained the

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[201]Burlingame to Belz, 6 August 1991.

unanimous judgment of the panel that Oates was not guilty of plagiarism.' In the Boston *Globe* Mark Muro wrote that 'Oates . . . . distributed to 34 major scholars and the media a 200-page, point-by-point rebuttal of Bray's allegations.' Was Muro wrong about the figure 34?" Professor Belz did not reply to this letter, or to the other three I wrote him that summer. Later he told other complainants in the case that "[i]t seems to me plagiarism involves deliberate falsification. It would take a judicial trial to go into the difficult issues raised by this kind of accusation."[202]

(Elsewhere Oates has abused those with whom he disagrees. In response to her unfavorable review of his Faulkner biography, he told Professor Dawn Trouard, "I could not care less about your opinion of my book as a work of biography. What I do care about is your attack on my integrity, since you virtually accuse me of plagiarism. . . . It is a pernicious piece of writing that plays loosely with the truth . . . . Under the pretext of writing literary criticism, you have maligned my character and my reputation."[203] He also called the review "scurrilous."[204] When the Yale University Press announced that it would publish a biography of Martin Luther King, Jr., by David J. Garrow, Oates wrote a letter to the press belittling Garrow and declaring that the publisher had "been had" because Oates was writing a biography of King and there would be no market for Garrow's.[205] Garrow went on to win a Pulitzer Prize for his King book.

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[202]Belz to Walter Stewart and Ned Feder, Rockville, Maryland, 16 March 1993, copy.

[203]Oates to Trouard, Amherst, 15 August 1991, copy.

[204]Stephen B. Oates, "Peter Shaw's Fatal Fallacy," unpublished essay, 1991, p. 4.

[205]Oates to the Yale University Press, copy in the possession of David J. Garrow.

QUOTE OATES'S LETTER TO POLK* When Peter Shaw publicly concluded that Oates had plagiarized, Oates noted: "Clearly Shaw has assured himself that he is purity personified when it comes to the paraphrasing in his own work."[206] He deemed my attempts to hold a dialogue with his twenty-three exonerators "especially loathsome."[207])

Soon after I sent my materials the 23 exonerators, Oates's New York lawyer, Neil I. Gantcher of the firm of Levy, Rosensweig, and Hyman, threatened me with a libel suit in language similar to that used in his letter to Bray. [208] I regarded this as a crude attempt at intimidation, but just in case the threat proved more than idle, I asked several people if they would testify on my behalf. Many agreed, including one who said: "Let the bastard take it to court. You could call all those 23 signers. Half or more would support you under oath, and add to the list . . . me and others I know of some renown who detest Oates, feel he plagiarized, and would not sign the statement."[209] William Styron said "I've read through the material you sent me with increasing amazement at Oates's sheer gall in appropriating so much of the work of others. You've certainly done an extraordinarily thorough job, it seems to me, of catching this guy in numerous acts of unmistakable theft, and I can't believe he won't eventually be held accountable. I wouldn't hesitate to provide you with a statement to the effect that I think he had plagiarized, since that fact seems to be as plain as the nose on one's face."[210] I also asked

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[206]Stephen B. Oates, "Peter Shaw's Fatal Fallacy," unpublished essay, 1991, p. 2.

[207]Oates to Noel Polk, Amherst, Mass., 24 October 1991.

[208]Gantcher to Burlingame, New York, 17 July 1991.

[209]Undated letter, postmarked 30 July 1991.

[210]Styron to Burlingame, Vineyard Haven, Mass., 5 September 1991.

two scientists who had developed a "plagiarism detecting machine" to examine Oates books. (More about this below.) Some of Oates's exonerators agreed to testify on my behalf if I were actually sued.

Friends of Oates as well as his lawyer also got in touch with me. "I have recently become aware," one of them wrote me, "of your gratuitous 107-page (I believe that's about the correct length) contribution to the current controversy surrounding Stephen B. Oates's biography of Abraham Lincoln, an admirable work that, for reasons known only to yourself and his other self-appointed accusers, has been under attack for some ten months now and has become the subject of a highly ill-advised inquiry by the American Historical Association's Professional Division. Leaving aside my own opinion of Oates's biography and that of a long list of illustrious historians who have rallied to his defense (as I'm sure you've read about in the New York *Times* and elsewhere), it occurs to me that, given your own impoverished record in scholarship, you might have found more productive ways to spend the many hours that you must have invested in producing your own document. It has long been standard practice in our profession for lesser lights to try and make their reputations by attacking major figures, but you might at least have tried to get in on the first attack instead of waiting for others to start throwing stones. At this point you might try just coolin' it."[211]

I wrote in reply: "Thank you for you letter . . . in which you express interest in my involvement in the case of Oates. I take the liberty of sending you the materials I submitted to the AHA last May, along with several recent documents that may interest you. . . . You show interest in my publication record. I have written a book on Lincoln which is in the hands of a potential

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[211]Letter of 8 September 1991.

publisher; if you would like to read it, I would be glad to have comments and criticisms from a scholar of your eminence."[212]

This historian kindly responded, "Your letter of September 25 was such a gracious reply that I've been considerably chagrined by the tone of my original letter to you. I've always placed great value on loyalty to old friends (in the case of Steve Oates and myself, a friendship of nearly thirty-four years). As I'm sure you realize, it's difficult not to rise to the defense of a friend under attack, even if, as in the present instance, I'm deeply troubled by much of what has been disclosed."[213]

At the AHA convention in 1994 I was accosted by a gentleman who noticed my name badge and introduced himself: "Hello! I'm Gerald McCauley, Stephen Oates's literary agent." He asked me a few questions about my Lincoln projects, then abruptly declared: "What you have done in the Oates case is reprehensible."

"I'm sorry that you feel that way," I replied.

"Well, I do," said he, ending the conversation.[214]

More unsettling was a letter I received from one Charles S. Yanikowski, who claimed that I had done in my dissertation what Oates had done in his biographies of King, Faulkner, and Lincoln.[215] Mr. Yanikowski alleged that on his own initiative and at his own expense, he traveled from

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[212]Letter of 25 September 1991.

[213]Letter of 6 October 1991.

[214]This colloquy took place in the lobby of the San Francisco Hilton Hotel around noon on January 8, 1994.

[215]Yanikowski to Burlingame, Boston, 30 September 1991

his home in Boston to Baltimore and spent twenty hours poring over my 1971 dissertation on Carl Schurz. Oates, he asserted, did not commission him to undertake this effort; he did it only because he admires Oates and considers him "an honest scholar" who has been the victim of a "lynching."[216] According to a press account, he had met Oates "at a public-history seminar" in the late 1980s.[217]

Here are some of the examples he adduced in the document he threatened to submit to the AHA as a complaint:

Burlingame: "If he conceded that slaveholders could take slaves into the territories . . ."

Source: "If . . . a slaveholder has a right to take his slave property into a territory . . ."

Burlingame: ". . . five of the thirteen colonies had allowed free blacks to vote . . ."

Source: ". . . free blacks . . . , in five of the original thirteen colonies, enjoyed the right of voting."

Burlingame: "Wisconsin stood by Seward until the end, when one of the New Yorker's spokesmen finally moved that the nomination be unanimous."

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[216]Yanikowsi to James B. Gardner, Boston, 13 September 1991; Yanikowski to Burlingame, Boston, 20 August 1993.

[217]*The Chronicle of Higher Education*, 2 June 1993, p. A12.

Source: ". . . we stood solidly for Seward until Mr. Evarts, the chairman of the New York delegation, . . . moved to make Mr. Lincoln's nomination unanimous."

Burlingame: ". . . defending 1500 miles of common border and a 2000-mile seacoast against an army and navy that could concentrate on any chosen spot."

Source: ". . . guarding fifteen hundred miles of Northern frontier and two thousand miles of seacoast against the enemy who is . . . always able to concentrate his forces wherever he pleases."

Burlingame: "In the meantime General John Buford's Cavalry spotted a strong Confederate force . . .."

Source: ". . . in the meantime a strong Confederate force had arrived. . . "

Burlingame: ". . . Schurz plodded through the works of Herbert Spencer . . . "

Source: "The leisure hours of camp life . . . permitted me to plod through several volumes of Herbert Spencer . . . "

Burlingame: ". . . the Virginia terrain was so cut up by fences, and . . . therefore the dragoons already in the 13,000 man army would suffice."

Source: ". . . the surface of Virginia was so cut up with fences and other obstructions . . . The regular dragoons he had were quite sufficient for all needs."

Burlingame: "While on a train bound for Quincy, Illinois . . . Schurz met Abraham Lincoln for the first time."

Source: "I was on a railroad train bound for Quincy. . . . [An acquaintance] introduced me to Abraham Lincoln, whom I then saw for the first time."

Burlingame: ". . . they spoke for nearly two hours."

Source: "We talked in my room nearly two hours."

Yanikowski's document called to mind the *tu quoque* logic Oates had employed when attacking Benjamin Thomas in his 200-page rebuttal. In Yanikowski's letter to me, he said, "I fear that quite a few people in the affair are going to end up looking petty, foolish and hypocritical -- you prominently among them. Now, I have done the same sort of analysis on you and one other scholar [James B. Gardner] as you have done on Oates. (Not counting the two days I spent actually getting my hands on something you wrote) I found that I could analyze the parallelisms in about three working days. I figure I could comfortably do about two a month, until it is obvious to any sensible person that such charges are ridiculous to make, and ridiculous to take seriously. I have not figured out whether to just file your case and the others with the AHA, or whether to use the methods employed against Oates and go to the press and to academic publications like *Illinois Issues*. I guess I'm still hoping that the AHA will display some sound judgment, repudiate the accusations, and save me the effort of pursuing this campaign. Is it too late for you to be a voice of good sense?"[218]

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[218]Yanikowski to Burlingame, Boston, 30 September 1991.

In reply I asked Mr. Yanikowski (whose return address was the insurance company in Boston which employed him) if I could reproduce *in toto* his letter and his examples from my dissertation in a book I planned to write on the case.[219] He refused such permission.[220]

I showed Mr. Yanikowski's materials to some of Oates's exonerators, who dismissed the claims as "petty nonsense,"[221] "little more than chaff,"[222] and "wholly unsupportable."[223] A fourth, who had changed his mind about Oates's innocence, wrote me saying, "Yanikowski's effort seems to use the tactic of reductio ad absurdum. It does, I must say, bring out the indistinctness of the line between plagiarism and the legitimate use of others' work, though I consider you to have been on the right side of it and Oates to have been on the other side."[224] Oates thought Yanikowski's analysis so damning that he sent it to the chairman of the History Department at Connecticut College, who did not share his opinion.[225]

Mr. Yanikowski in 1993 filed with the AHA formal complaints of "professional misconduct" against Robert Bray, Cullom Davis, Ned Feder, Alexander MacGregor, Walter Stewart, Laurin A. Wollan, Jr., and me.[226] He

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[219]Burlingame to Yanikowski, New London, Conn., 20 September 1991.

[220]Yanikowski to Burlingame, Boston, 30 September 1991 and 20 August 1993.

[221]Letter of 22 October 1991.

[222]Letter of 14 November 1991.

[223]Letter of 10 December 1991.

[224]Letter of 1 October 1993.

[225]Oates to Bruce Kirmmse, n. p., 17 April 1992, copy.

[226]Yanikowski to Samuel R. Gammon, Boston, 26 May 1993, copy.

alleged that we were guilty of "mugging" Oates and that we had violated AHA rules by going to the press while the case was still pending. The AHA dismissed the complaint in May 1994.[227]

Mr. Yanikowski also filed a complaint accusing me of plagiarism in my dissertation.[228] He repeated the charge in an interview with *The Chronicle of Higher Education*.. In reply I pointed out that I had gone to the press only after the case had been settled, which is allowed by the AHA rules; they only forbid speaking to the press while a case is pending (which, ironically, is just what Mr. Yanikowski himself did when he told the *Chronicle* that he was filing a plagiarism complaint against me. Later Mr. Yanikowski published an essay, "When the Trial *Is* the Punishment: The Ethics of Plagiarism Accusations," in which he inveighed against those who publicly raise charges of plagiarism. He evidently did not appreciate the obvious irony.) He also made a similar charge against James B. Gardner of the AHA and threatened to do the same against all the members of the AHA Council and Professional Division. (The AHA investigated the charges against Gardner and concluded that they had no merit.)[229] In April 1995 the AHA informed me that "After careful consideration of the material submitted by both parties, the Professional Division concluded that it found no evidence that you plagiarized or misused the work of others."[230]

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[227]James B. Gardner to Burlingame, Washington, 23 May 1994.

[228]Yanikowsi to Samuel Gammon, Boston, 16 July 1993, copy.

[229]*The Chronicle of Higher Education*, 2 June 1993, pp. A13-14.

[230]James B. Gardner to Burlingame, Washington, 17 April 1995.

In the fall of 1991, while the AHA conducted its investigation of Oates, his employer, the University of Massachusetts at Amherst, was also looking into the matter. In September and October, Dean Lee R. Edwards made an inquiry. After three weeks, Dean Edwards reported: "I have conducted a preliminary review into [sic] the allegations of plagiarism leveled against Professor Stephen Oates of the History Department. I have read the files of documents relevant to the case and consulted, confidentially, with two distinguished historians, both of whom also read the files, and with a professor of English who, like Oates[,] is also a biographer, and who is familiar with the case from a variety of published accounts. We are unanimous in our conclusion that the charges of plagiarism are groundless. I am happy to be able to report this conclusion."[231]

Oates's department chairman, Robert E. Jones, also declared his colleague blameless: "There are only so many ways you can talk about Lincoln's early life without saying something that has been said before: How many ways can you say that Abe Lincoln was born in a log cabin in Kentucky?"[232] Here Jones was off the mark: Oates, not Thomas, used the threadbare locution "log cabin" to describe Lincoln's birthplace, though Oates did write one of his paragraphs of Lincoln's Kentucky life right out of Thomas, carrying over sentence structure, details and language like this:

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[231]Lee R. Edwards to Sam Conti, Amherst, Mass., 16 October 1991, copy sent to the author by Richard D. O'Brien, Chancellor of the University of Massachusetts-Amherst, 8 November 1991.

[232]*The Chronicle of Higher Education*, 27 May 1992, p. A16; Jones, "Popular Biography, Plagiarism, and Persecution," *Journal of Information Ethics,* vol. 3, no. 1 (Spring 1994), 80-82.

Thomas: ". . . washing out corn and pumpkin seeds and carrying them along with much of the topsoil down the creek. . . " (4).
Oates: ". . . washing away the pumpkin seeds and the corn and the topsoil itself" (5).[233]

Jones added that in the two biographies he had looked into, he saw no plagiarism, even though I had sent him evidence of plagiarism in three of his colleague's books; he decried the motives of the complainants, whom he accused of venerating Benjamin Thomas; and he asserted that "[n]one of them is a publishing historian or biographer," even though I had informed him that I had written a biographical study of Lincoln to be published by the University of Illinois Press. Jones also resorted to one of his colleague's lamer arguments, the "potboiler defense": "the writing of popular biography imposes rules that set it apart from academic writing." In other words, it is legitimate to lift other authors' language without using quotation marks if you aim for a general audience but not if you aim for a scholarly one.[234] (When told of this line of reasoning, one of the Gang of 23 remarked to me, "That's bullshit!")[235]

As a professor of history at a research university, Oates had touted himself as a scholar, not a popularizer. In the preface to With Malice Toward None, Oates does not claim that he is merely rehashing the findings of others: "In the seven years I have been at work on Lincoln, I've attempted to be an

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[233]Oates does not cite Thomas, and the sources he does cite do not contain the corn-planting incident.

[234]Jones, "Popular Biography, Plagiarism, and Persecution," *Journal of Information Ethics*, vol. 3, no. 1 (Spring 1994), pp. 80-82.

[235]Conversation of 5 August 1991.

exhaustive and painstaking researcher. I've not only utilized scores of published source materials and unpublished manuscript collections germane to the Lincoln story, but have down from a cornucopia of modern studies about nearly all aspects of Lincoln's life and career and the times in which he lived." He thanked the John Simon Guggenheim Foundation for a fellowship; when applying to it for a grant, he probably did not describe his work at that of a mere popularizer.[236] The introduction to his King biography proclaimed that it was the "first new life of King to appear in eleven years (and the first written by a professional biographer" and "the first to utilize the indispensable Martin Luther King Collection at Boston University, the extensive King and SCLC collections at the Martin Luther King, Jr., Center for Nonviolent Social Change in Atlanta (material that only recently became available), the pertinent records in the John F. Kennedy and Lyndon B. Johnson presidential libraries, the Ralph J. Bunche Oral History Collection at Howard University, the holdings of the Horace Mann Bond Center for Equal Education at the University of Massachusetts, and other public and private sources, not to mention a cornucopia of governmental documents and published memoirs, monographs, and other words bearing on the King story that have come out in the last eleven years." He declared that "[b]ecause of all the new materials it uses, Let the Trumpet Sound is the most complete account of King published so far."[237] (Curiously Oates failed to notice, as he conducted research in the archives, that King had repeatedly committed

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[236]With Malice Toward None, p. xvi.

[237]Oates, Let the Trumpet Sound: The Life of Martin Luther King, Jr. (New York: Harper & Row, 1982), pp. x-xi

plagiarism as a graduate student. That revelation would be made later by the editors of King's writings.)[238]

The identities of the U-Mass English professor and the two outside historians asked by the University to investigate the case were not revealed. In a letter to a colleague in English Department at the University of Massachusetts, who may have been looking into the matter, Oates offered an explanation quite unlike the potboiler defense. "In my early writings," he said, "I tended to put quotation marks around each word I took from a source. As a result, my text was peppered with quotation marks around single words and phrases that related specific factual matter. My editors complained that such pedantry made the text unsightly and difficult to read."[239] (Oates had not publicly blamed his editors at Harper & Row for his technique of borrowing others' language without using quotation marks.)

To this colleague, Oates defended the expropriation, without quotation marks, of William Styron's language describing Faulkner's funeral: "As for my description of Styron's remembering in the funeral car, I tried to make it clear that these were Styron's thoughts, not mine, and I attributed the sentence in my footnotes." Oates did not explain how the omission of quotation marks would make it clear that he was giving the reader Styron's thoughts rather than his own. "I did not quote his entire sentence directly for a good reason: Joseph Blotner, in his *Faulkner: A Biography* had already quoted Styron's sentence in full, and I did not want to copy Blotner. . . . Perhaps I should have enclosed 'the gentle Lena,' 'tumultuous,' and 'fierce' in quotation

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[238]"The Student Papers of Martin Luther King, Jr.: A Summary Statement on Research," Journal of American History (June 1991), *

[239]Oates to a colleague, n. p., 23 October 1991, copy.

marks. That raises a crucial point. In my early writing, I tended to put quotation marks around each word I took from a source. As a result, my text was peppered with quotation marks around single words and phrases that related specific factual matter. My editors complained that such pedantry made the text unsightly and difficult to read." The obvious solution to this dilemma was to paraphrase others' words, but Oates did not want to do that. "When I started altering words, I ran into another difficulty: sometimes I found that changing the wording subtly altered the meaning and even the facts of a given passage. In the case of Styron's passage, had I replaced 'tumultuous' and 'fierce' with my own adjectives and changed the word order more than I did, I feared that it would be like *my* memory and ideas, not Styron's, and that it would be misappropriation. I was trying my best to retain the flavor of Styron's memory without making it inaccurate or plagiarizing it."[240]

This explanation ignores the fact that Oates *did* use quotation marks around "maddened, miraculous vision of life." By so doing, he in effect tells the reader *these words are Styron's* and that *the others are my own*. It strains credulity to believe that he did not enclose the other phrases in quotation marks for fear that his editors would complain about the text becoming "unsightly and difficult to read." All he needed to do was to place to opening quotation mark several lines higher on the page.

Beyond that, Oates lifted more than "fierce," "the gentle Lena," and "tumultuous":

Styron: "in deep memory"

Oates: "deep in memory"

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[240]Ibid.

Styron: "Dilsey and Benjy and Luster and all the Compsons, Hightower and Byron Bunch and Flem Snopes and the gentle Lena Grove -- all these people and a score of others came swarming back."

Oates: "Dilsey and Benjy and Luster and all the Compsons, Hightower and Byron Bunch and Flem Snopes and the gentle Lena Grove, all these people and scores of others came swarming back."

Styron: "with a kind of mnemonic sense of utter reality"

Oates: "with a sense of utter reality"

Styron: "along with the tumultuous landscape"

Oates: "along with the tumultuous landscape"

Styron: "the fierce and tender weather"

Oates: "the fierce and gentle weather"

Styron found unpersuasive Oates's argument that he had not quoted the entire sentence because Blotner had done so. "But what difference would that have made?" he asked Oates. "No one would have known or cared. What you ended up with was a passage in which, despite your efforts to contrive alternatives, most of the prose appeared to be yours instead of mine. It's as simple as that. Maybe it isn't strictly plagiarism but whatever it is it's fishy, and to my mind deplorable."[241]

Oates defended his lifting the other passage from Styron's essay thus: "As for Faulkner's grave site, I visited the scene during my stay in Oxford, inquired about the neighborhood and the old and new sections of the cemetery at the time that he was buried there, visited the graves of his relatives in the old sections, and read newspaper accounts of Faulkner's burial itself. I spent a fair amount of time at his grave site, studying the

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[241]Styron to Oates, 9 November 1991, copy.

landscape and taking notes: I recorded that the grave lay between two oaks . . . and also note the quiet, 'gentle slopes' where the graves were situated. How I wish I had used an adjective other than 'gentle' to describe the fact [sic] of the slope. Styron is such a powerful writer that his adjective seems to have buried itself so deeply in my memory that I used it when I stood on that very slope and described it thus. The same thing is true of the two adjectives I used to described the field, 'hot dry,' with the Faulknerian absence of the comma between the two adjectives. Yes, I should have chosen another way to describe that field (arid field maybe) or put quotation marks around those two words and credited Styron. No, I did not deliberately decline to do so in order to deceive him or anyone else."[242]

Once again Oates ignored phrases that he expropriates from Styron. In this brief passage he lifted more than "hot dry" and "gentle":

Styron: "overlooking a housing project"

Oates: "overlooking a housing project"

Styron: "he lies on a gentle slope between two oak trees"

Oates: "Faulkner lay alone between two oaks, on a gentle slope"

Styron, quoting Faulkner: "This soil that holds me fast will find me breath."

Oates: "the earth that held him fast would draw him breath again."

Referring to his use of Faulkner's language from "My Epitaph" without quotation marks or any other indication that the words are Faulkner's (the endnotes contain no reference to "My Epitaph"), Oates said: "In the matter of Faulkner's poem, 'My Epitaph,' Styron has no monopoly on either paraphrasing or quoting from it." While that is of course true, Styron does

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[242]Oates to a colleague, n. p., 23 October 1991, copy.

indicate clearly that it is Faulkner's language; Oates does not do so. Oates continued: "If he did, then Joseph Blotner 'plagiarized' from Styron in writing *Faulkner, A Biography*, which Faulkner critics regard as the standard reference work on Faulkner's life. Blotner ends his account of the funeral by quoting from the poem, exactly as Styron does, but Blotner does not footnote Styron's essay for the idea. But why should he?"

Blotner, like Styron, makes it clear that the language is Faulkner's and not his own; he reproduces the poem in italics, identifying it as Faulkner's work. Despite his protestations that he did not try to deceive, Oates leads the reader to think that this phrase is the product of his own imagination: "the earth that held him fast would draw him breath again," when in fact it is Faulkner's line slightly modified.

The University of Massachusetts did not consult me or any other complainants in the case. To be sure, my name had not appeared in the public prints in connection with the case, but the university knew of my involvement, for in November Chancellor Richard D. O'Brien sent me a press release declaring that "the considered opinion of this University is that there is no basis for the allegations of plagiarism against Professor Stephen Oates. I am delighted to state that the due process which has now been followed has confirmed the general opinion that Oates, one of our most distinguished faculty and a person of great national distinction, enjoys the high reputation which his works have earned him."[243]

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[243]Statement by Chancellor Richard D. O'Brien, 8 November 1991, enclosed in O'Brien to Burlingame, Amherst, Mass., 8 November 1991.

The beleaguered University of Massachusetts longed for some good publicity after a series of embarrassing developments at its flagship campus in Amherst.[244] On top of stories about severe budget cuts, declining admissions applications, racial turmoil, plumetting academic standards, basketball recruiting scandals, and sagging faculty morale, Chancellor O'Brien and his fellow academic bureaucrats hardly wished to admit that they were, like Boston University, tolerating a plagiarist on their faculty.[245] In an interview with the Boston Globe, the president of the University of Massachusetts, Michael Hooker, referred to his school as a C-plus institution.[246]

By a strange twist, at about the same time the University of Massachusetts was white-washing one of its favorite sons, a writer of far greater "national distinction" was about to voice a rather less favorable opinion on Oates's reputation. In September 1991 Bray had sent a copy of "Reading Between the Texts" to Greg Koos, a Bloomington friend and the executive director of the McLean County Historical Society. Koos had a long-standing interest in Lincoln biography; he had closely followed the controversy in the press and wanted to

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[244]Cf. Gary Crosby Brasor, Turmoil and Tension at the University of Massachusetts at Amherst: History, Analysis and Recommended Solutions, a report prepared for the Massachusetts Association of Scholars, November, 1994, and "UMass: Making the Grade?" Boston Globe, 12, 13, 14, and 15 March 1995.

[245]The plagiarist at Boston University was Dean Joachim Maitre, whose flagrant literary piracy led his friend, Boston University President John Silber, to remove Maitre from his ducanal duties but retain him as a member of the faculty of the school of communications. Apparently he was too unethical to be a dean, but ethical enough to teach. Boston Globe, 12, 13 July 1991. Ironically, the journalist who covered this story for the New York Times, Fox Butterfield, plagiarizied his July 3 story from the Boston Globe and was disciplined by his employer.

[246]Boston Globe, 12 March 1995, p. 18. c. 4.

take a closer look at the case against Oates. After reading through the essay and a chronology of events that Bray had prepared, Koos suggested that he forward it to Gore Vidal, in care of the *Nation,* and see what reaction, if any, the famous and fearless author of *Lincoln* might have. To Bray, who deeply admired Vidal's novels and essays, this sounded at best like a caprice and would likely result in yet another mortification: Vidal probably wouldn't even get the mailing, much less respond; and if by a miracle he did, it might well be in laughter. But why not try, Koos insisted? Well, ok. After all, another fine novelist, William Styron, had already seen the pattern of plagiary in Oates's writings and had said so to Burlingame and Bray. Perhaps Vidal would too. So off went the parcel: first to New York, and then (Koos hoped) on to Los Angeles or Italy--or wherever Gore Vidal happened to be residing at the time.

Weeks and months passed, and Bray only occasionally wondered whether his "orphan" had made the right or for that matter any port. Then out of the blue Koos called him one day early in April to announce that he was the proud possessor of a hand-written letter from Gore Vidal. The material, wonderfully, had been forwarded to Vidal at his villa in Salerno and, more wonderfully, Vidal had taken the trouble to read through it and reply. "I've followed only slightly the Oates-Bray affair," he wrote, "and I am, of course, pro-Bray--more so now that I am no longer innocent of the case he makes and of the response of O and the Lincoln Brigade. . . ."[247] Jumping at this opportunity, Bray immediately wrote back, thanking Vidal for having read the essay and agreeing that "plundering" had taken place:

"This entire affair, protracted now nearly a year and a half, has been very painful to me. During more than twenty years as a college teacher and a writer, I

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[247]Gore Vidal to Greg Koos , n.d. (copy).

have always tried to be a 'scholar' rather than a 'squirrel-scholar'--a distinction of yours I emphatically accept (just as I always found myself on Edmund Wilson's side, and against the profession I professed, in his famous quarrels with academe). But public attacks on my character and work (invidious comparisons with Kitty Kelley and insolent puns on my name, for example) have hurt me badly. I am not used to such nastiness, and I am left these days both angry and discouraged. Thus your support is very heartening. . . . "[248]

Bray expected that this would be the end of his communication with Gore Vidal, but some weeks later he received his own hand-written letter:

> What you've done is extend the range of plagiary into a dangerous country for hacks who do nothing else but sing the same hymns in slightly different keys. . . . [A]s you know, I first called "them" priests--I've now suggest- [sic] that the Lincoln priesthood remove themselves from the history departments & take up their rightful place in theology--This would enhance their more and more minatory national god, encourage new Revelations, & leave history to historians--and *us!*

He closed the letter with "Good luck" and a postscript: "As someone who has been lied about for 40 years, relax is my advice--In a society so corrupt to be attacked is a compliment."[249] Though Bray was unable to take the advice to relax, it was flattering that Vidal gave him credit for having "extend[ed] the range of plagiary into a dangerous country for hacks," and even more so to be included in Vidal's "us" versus the "Lincoln priesthood." But what Bray really wanted to

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[248]Robert Bray to Gore Vidal, 13 April 1992.

[249]Gore Vidal to Robert Bray, nd.

know was why writers like Vidal and Styron before him saw this sort of plagiary so plainly and Lincolnists didn't. Was it a "writer thing" that they just couldn't understand?

Actually, by the time Bray had received his letter, Vidal had already amplified his views on Oates's plagiarism--and had done so publicly. His letter to Koos had mentioned that he was to give the 1992 Lowell Lecture at Harvard on April 20th. Alerted by Bray, I drove up from New London, Connecticut, to attend Vidal's talk, and during the question period afterwards asked Vidal if he "would care to comment on the Lincoln biography plagiarism controversy?" Well, of course he would!

"Oh, I love it. I've sort of just entered it or it's been drawn to my attention. One Mr. Oates is supposed to have plagiarized from Benjamin what's his last name? [audience member: 'Thomas'] Thomas, yes. He wrote a very good volume a single volume biography of Lincoln. And Mr. Stephen Oates was accused by an English professor called Bray out in Illinois of plagiarizing. Absolutely fascinating. My knowledge of plagiarism, even though I'm a professional writer if not a plagiarist, I always thought plagiarism was just stealing somebody's mind without attribution, or some novel concept. What he did was beautiful literary criticism. History is just a department of literature and the sooner they get it out of their heads that they're in the business of science, the better it will be for everyone. It is a department of literature, and what he did was to compare the texts, and I read this sort of concordance of whatever you call it. It was absolutely fascinating. He would take a passage from Professor Oates and Oates is following the man's [Thomas's] thought because on the page you see the writer's mind at work, what details he selects. Yes, anybody writing on Lincoln has the same sources so you're going to be telling the same story pretty much. But the way it was organized I was totally convinced that this was a brilliant job

of literary criticism, and that indeed Mr. Oates did plagiarize. That is my view."[250]

As a writer *and* an authority on Lincoln, Gore Vidal was in a unique position to judge the Oates case. That he found as he did and was ready unequivocally to say so in public was splendid news for Bray and Burlingame (though his remarks were not reported in the press). We now had two superb contemporary American novelists standing on our side, and Vidal's support was all the more impressive for having been steeled in the crucible of his own "fiery trial" while doing a Lincoln "biography" ("history is just a department of literature").

The Professional Division of the AHA evidently agreed with Vidal. On November 14 I spoke with a knowledgeable official of the organization who "indicated that the votes on Oates's guilt had been unanimous and the Division would soon hold a conference call to hammer out the wording (to avoid legal complications) and decide on the recommendations, about which there was some disagreement."[251] My diary notes that I felt "exhausted and relieved, like a marathon runner just after breaking the tape."[252]

My relief turned out to be premature; during the next six months the AHA hierarchy, evidently fearing a lawsuit, modified the decision of the Professional Division.

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[250]Audio tape of Gore Vidal's remarks, 20 April 1992.

[251]Burlingame, diary entry, 14 November 1991. The conversation took place that morning.

[252]Ibid.

Dishonest Abe Scholarship: The Lincoln Biography Plagiarism Scandal
Part II: Burlingame

Chapter 6

The American Historical Association Twice Finds Oates Guilty of Ethical Misconduct Tantamount to Plagiarism

After the Professional Division reached its unanimous verdict of guilty in November, the AHA Council, in an unusual move, appointed an *ad hoc* panel of three scholars specializing in nineteenth century American history to read both Oates's Lincoln biography and Benjamin P. Thomas's and render a judgment.[253] Oates, disturbed by this procedure, complained about the "three invisible scholars."[254] David Herbert Donald of Harvard, one of the Gang of 23, found it curious that the identity of the three historians was not revealed: "These people may be highly reputable and indeed great world

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[253]On December 27, the Council reviewed the Professional Division's finding that Professor Oates was guilty of plagiarism. "Recognizing the complexity and gravity of this particular case," I was informed by the Executive Director of the AHA, "the Council decided that it should take responsibility for completing the review and agreed to seek the views of three recognized experts on mid-19th century U. S. political history and biography. Each will be asked to examine both books and the original source material and report back to the Council." Samuel Gammon to the author, Washington, D. C., 25 February 1992.

[254]Springfield (Mass.), *Union News*, 22 May 1992.

authorities, but we have no way of knowing."[255] Equally puzzled, I asked the AHA: "Will these three experts examine the materials submitted to the Professional Division by me and my fellow complainants, including examples from Oates's biographies of Faulkner and King? If not, are experts on King and Faulkner being consulted? If not, why not?"[256] Ignoring my questions about the King and Faulkner biographies, which I regarded as crucial for understanding Oates's compositional strategy in his Lincoln book, the AHA now told me that it had "not asked the reviewers to comment on the specifics [sic] complaints but to make independent assessments of the degree of overlap between the two manuscripts in question and the extent to which the overlap may be attributable to common sources. Each has been asked to provide professional evaluation of the books, not a judgment of guilt or innocence. Their evaluations will be advisory only -- they will not have 'the final say.'"[257]

This statement that the Association had "not asked the reviewers to comment on the specifics [sic] complaints" is a little out of tune with what Gammon had written in his February 25 letter and with what the finding said was the consultants' charge: "The Association also obtained copies of the Thomas and Oates biographies and secured outside review of both books *and the original source material* by an ad hoc committee composed of three recognized experts on Lincoln. . . ."[258] "[O]riginal source materials" probably

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[255]*The Chronicle of Higher Education*, 27 May 1992, p. A16.

[256]Burlingame to Samuel R. Gammon, New London, Conn., 14 March 1992.

[257]James B. Gardner to Burlingame, Washington, 15 April 1992.

[258]AHA "Finding" [May 1992], [2] (italics added).

means Oates's and Thomas's references, but it might be interpreted as the file of complainants' evidence. Readers of the "finding" would be justified in concluding that the consultants *did* study these files along with the two biographies, especially as this is certainly an important part of what they *should* have done to reach a just verdict. Moreover, if the AHA panelists had examined the King and Faulkner books, they would have seen that Oates had lifted language from many ur-sources, thus giving the lie to his contention that he and other biographers used similar language because they used the same sources.

But in fact, the panelists did not examine any of the material submitted by Bray, myself, or the other complainants, nor did they look into Oates's biographies of King and Faulkner. One of the three concluded that Oates was not guilty.[259] Another found him guilty of "plagiarism in the second degree."[260] It is not known how the third member of the panel voted.[261] In light of this, one must ask whether the AHA's decision not to use the "P-word" in its finding resulted from a "hung jury" of their consultants, who did not peruse all the relevant evidence and therefore could not achieve a full and fair sense of the case.

In May 1992, a year and a half after the original charges had been filed, the AHA handed down its finding. To my amazement, the organization ignored all the examples from the King and Faulkner books and confined itself to the early chapters of *With Malice Toward None*. Avoiding the word

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[259]This was told to me and to Robert Bray by the historian in question.

[260]I heard this directly from the historian in question.

[261]This historian did tell me, however, that he approved of what I and the others had done in the case of Professor Oates.

"plagiarism," the AHA ruled that "Stephen Oates's account of Lincoln's early years in *With Malice Toward None* is derivative to a degree requiring greater acknowledgment of Benjamin Thomas' earlier biography of Lincoln. The Association recognizes Mr. Oates's original contribution and style but concludes that he failed to give Mr. Thomas sufficient attribution for the material he used. In reaching this conclusion, the Association refers to its own statement: 'Historians should carefully document their findings . . . .' (*Statement on Standards of Professional Conduct*, 1990, p. 5)" The AHA also addressed Oates's "potboiler defense" (i.e., that he was producing books for a popular audience and should not be judged by the same standards that serious scholars must meet): "It now reaffirms the necessity of appropriate attribution of sources in biographies and other publications written for general audiences as well as in scholarly writing. The Association strongly recommends that any future editions of Mr. Oates's *With Malice Toward None* include appropriate acknowledgment of Mr. Thomas's *Abraham Lincoln*." The decision concluded with a curt dismissal of the charges I had brought about Oates's other biographies: "One of the five complainants also charged Mr. Oates with plagiarism in the writing of his biographies of Martin Luther King, Jr. and William Faulkner. The Association decided to focus its review on the more detailed charges regarding Mr. Oates's Lincoln biography and did not reach a finding on the other two charges."[262]

This document seemed to K. R. St. Onge a vindication of Bray's complaint: "Bray made a convert of the AHA," he wrote. "The 'findings' of the AHA are in full correspondence to his complaint . . . ."[263] To my mind the

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[262]Undated statement enclosed in Samuel R. Gammon to Burlingame, Washington, 18 May 1992. See Appendix 4 for the full text and list of signatories.

finding was only a timid and indirect way of saying the Oates was guilty of plagiarism. As Paul Gray remarked in *Time Magazine*, "[t]he judgment did not include the dreaded *P* word, a detail that puzzled some of the historians who read it; the failure to give sufficient attribution, after all, is a pretty good working definition of plagiarism."[264] A New York *Times* reporter noted ironically that "the association came down with a verdict. Or was it a hung jury? Yes, Dr. Oates is guilty of something, the group said, sotto voce. . . . But no, the association did not use the word 'plagiarism' to describe what Dr. Oates had done."[265]

Oates, acknowledging that the AHA "rapped me on the knuckles,"[266] indignantly complained, "I'm mad. It's taken a year and a half out of my life."[267] He protested that "I really never felt I've gotten due process in this whole thing" and said "he is no longer sure what plagiarism means."[268]

Surprisingly, Oates later declared that he was "delighted" with the AHA's decision in general.[269] But, he added, he was "disappointed" that the organization "rendered a 'finding' on an altogether different matter: what constitutes 'appropriate attribution of sources' in a work aimed at a general

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[263]K. R. St. Onge, "Plagiarism: For the Accusers and the Accused," Journal of Information Ethics, vol. 3, no. 2 (fall 1994), 24.

[264]Paul Gray, "The Purloined Letters," *Time,* 26 April 1993, p. 59.

[265]NY *Times*, 29 March 1993, p. A 10, c. 4.

[266]Springfield (Mass.), *Union News,* 22 May 1992.

[267]Boston *Globe*, 23 May 1992.

[268]The Washington *Post,* 19 May 1992, p. B2.

[269]Boston *Globe,* 23 May 1992.

audience."[270] He asserted that there "are no guidelines for what is sufficient acknowledgment of sources in popular histories. They're holding me to standards of PhD dissertations when I wrote a book for a popular audience. . . . It's opened up a Pandora's box. What's happened to me makes everyone vulnerable, especially those who write for a big audience and who don't want to weigh the reader down with footnotes."[271] This "potboiler defense" was explicitly rejected by the AHA.

Oates also claimed that the finding was mild compared with the AHA's stands taken on previous complaints; the organization, he alleged, "has not hesitated to use the term 'plagiarism when it found that such existed."* In fact, the AHA had been notoriously timid about using the word "plagiarism," as the scandalous case of Jayme Sokolow a few years earlier had shown.[272] Commenting on the AHA's pusillanimous action in that case, Stephen Nissenbaum, the victim of Sokolow's plagiarism, praised the AHA's subsequent changes in its statement on professional ethics, calling them "[w]elcome words." But, he said, "I have already seen what happens to courageous and principled language when the time comes to apply it to actual cases." Ominously he concluded, "I am left with a disturbing thought: Who will be Jayme Sokolow's next victim?"[273] The AHA has also dealt timidly with other ethical misconduct, like Allen Weinstein's refusal to adhere to the organization's "Statement on Standards of Professional Conduct"

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[270]*The Chronicle of Higher Education*, 27 May 1992, p. A15.

[271]Boston Globe, 23 May 1992.

[272]Mallon, Stolen Words, pp. 146-193.

[273]Nissenbaum, "The Plagiarists in Academe Must Face Formal Sanctions," *Chronicle of Higher Education*, 28 March 1990, p. A 52.

concerning the need to "make available to others sources, evidence, and data, including the documentation they develop through interviews."[274] The AHA had also shown itself pusillanimous in the case of David Abraham, who falsified quotes and committed other forms of academic fraud which were exposed by Yale historian Henry A. Turner.

Some of Oates's exonerators criticized the AHA. Richard N. Current observed that "[c]harges of plagiarism, a serious offense, should be heard in a court of law and not in an AHA Star Chamber in which the accused has no chance to be heard."[275] (Prosecutors are hardly likely to haul plagiarists into overcrowded courts. As copyright attorney Ellen M. Kozak observed: "Although plagiarism is indeed theft -- the theft of another person's words, work product, or both -- I know of no instance in which a district attorney has been persuaded to expend governmental resources in prosecution of a plagiarist."[276]) Public relations specialist Harold Holzer observed that the stand of the organization "goes beyond what is reasonable. The AHA and the people who brought the charges have made Mount Vesuvius of an anthill." Holzer added that the complaints against Oates "are so persistent they border on persecution."[277]

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[274]Jon Weiner, "The Alger Hiss Case, the Archives, and Allen Weinstein," Perspectives (Feb. 1992), pp. 10-12, and "Compromised Positions," Lingua Franca (Jan./Feb. 1993), pp. 41-48.

[275]Current, "Concerning the Charge of Plagiarism Against Stephen B. Oates," Journal of Information Ethics, vol. 3, no. 1 (spring 1994), 79. Current complained that he knew of far more serious cases of unethical conduct by historians that the AHA had not investigated.

[276]Kozak, "Towards a Defintion of Plagiarism: The Bray/Oates Controversy Revisited," *Journal of Information Ethics,* vol. 3, no. 1 (spring 1994), 73-74.

[277]The Washington *Post,* 19 May 1992, p. B2.

Two of the most eminent of Oates's twenty-three exonerators, Pulitzer-prize winners C. Vann Woodward of Yale and Robert V. Bruce of Boston University, reached different conclusions. Bruce said that if Oates "did feel someone else's phrase was better than one he could come up with, he should put quotes around it."[278] Woodward expressed surprise that the organization avoided the word "plagiarism," and to the Washington *Post* he "criticized the AHA for evasiveness." He told an interviewer, "'They're obviously not using the word 'plagiarism.' My guess is they're trying to avoid legal action. But the statement says [Oates] was guilty of using material without proper credit.' That, he said, is plagiarism by his [Woodward's] definition."[279] Professor Woodward told *The Chronicle of Higher Education* that he had changed his mind largely because of the specimens of literary theft in Oates's biographies of King and Faulkner, which, on top of the examples found in the Lincoln book, seemed conclusive evidence of plagiarism.[280] Woodward's protégé, James M. McPherson of Princeton, said apropos of the AHA decision, "I've spent many hours looking at the evidence and I came to the conclusion that it was not an open-and-shut case."[281] (That is a far cry from the statement that Professor McPherson endorsed and rounded up signatures for, which declared the plagiarism charges "totally groundless and without foundation.")

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[278]*Ibid*.

[279]*Ibid*.

[280]*Ibid*., p. A16.

[281]The Washington Post, 19 May 1992, p. B2.

Woodward's speculation about the AHA's fear of lawsuits is plausible. Oates's attorney, Neil I. Gantcher, had been pestering the AHA for some time, and a legal consultant for the AHA told me that the organization "hates lawsuits" and considers it "infra-dig to be involved" in them.[282] James B. Gardner informed a public meeting in June 1993 that a member of the AHA Council, immediately before the decision in the Oates case was released, had transferred her assets to her husband's name just in case Oates did sue.[283]

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The matter did not end with the May 1992 finding. In January of that year I had read a press account of two scientists at the National Institutes of Health (NIH), Walter Stewart and Ned Feder, who had devised a computer program that helped discover plagiarism. Actually a "coincidence detector," their program compared documents to see if they contained the exact same language. The machine could be set to look for strings of characters of varying length; Feder and Stewart had settled on thirty characters (about five or six words) as the ideal length.[284] With the threat of a libel suit hanging over my head, I wrote to them on January 21, pointing out that I was faced with that possibility: "In case this threat proves more than idle, I would like to gird myself thoroughly. I believe that the prima facie evidence I have already adduced from three of Oates's biographies (of Lincoln, Faulkner, and Martin Luther King) is conclusive, but to be on the safe side I would like to

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[282]Phone conversation with the author, 30 September 1993.

[283]Remarks by Dr. Gardner at a conference on "Plagiarism and Theft of Ideas," co-sponsored by the Office of Research Integrity at the National Institutes of Health ane the American Association for the Advancement of Science, held at the National Institues of Health, Bethesda, Maryland, 21-22 June 1993.

[284]New York *Times,* 7 January 1992, p. C1.

supplement it by going through some of Oates's other works. Because I am trying to write my own book on Lincoln and to teach a full load of courses, I have little time to spare for the drudgery of tracking down plagiarism by traditional means. Would it be possible to have your machine perform that task for me? If that is out of the question, could you recommend software that I could use . . . ?"

Stewart and Feder, well-known investigators of scientific fraud, were busy, but eventually agreed to look into the matter. In addition to the King, Lincoln, and Faulkner biographies, they examined Oates's books on Nat Turner and John Brown. In the latter two they found almost no traces of plagiarism, but in the King, Lincoln, and Faulkner biographies they uncovered more specimens than I and others had already adduced. Here are some examples:

Joseph Blotner, *Faulkner: A Biography*, pp. 1456-1457**:** "nine blood transfusions before she could leave the Oxford Hospital to recuperate at Rowan Oak."

Oates: "nine blood transfusions before she could leave the Oxford hospital to convalesce at Rowan Oak." p. 262

Blotner: "so weak that she had to do all the driving the first day."

Oates: "so weak that she had to do all the driving the first day." p. 267

Blotner: "with his knees out instead of tight to his mount."

Oates: "with his knees out instead of tight to his horse."

Blotner (quoting Simon Claxton): "he sat cross-legged, looking from me to the trees with the same penetrating stare."

Oates: "he sat cross-legged looking from Claxton to the trees with the same penetrating stare."

Blotner: "Sometimes she would see him sitting alone at a table in the bar at George's . . . ."

Oates: "sometimes she saw him drinking alone at a table in the bar at George's . . . ."

Blotner: "He had even had the car overhauled and two tires recapped . . . ."

Oates: "He even had his car overhauled and the tires recapped . . . ."

Blotner: "wearing an old-fashioned pongee suit with his rosette in the buttonhole and a white handkerchief up his sleeve." p. 1465

Oates: "dressed in a white pongee suit, with an old-fashioned white handkerchief in his sleeve and a rosette in his buttonhole . . . ."

Blotner: "Billy had just lost the only job he had ever held for any length of time."

Oates: "[Faulkner] had just lost the only job he had held for any length of time . . . ." p. 41

Blotner: "He stuffed himself with all the bananas he could hold and drank all the water he could swallow, he said, and presented himself at the recruiting station."

Oates: "he stuffed himself with all the bananas and water he could hold and went to the recruiting station . . . ." p. 22

Blotner: "Wortis felt that Faulkner might not have received enough love from his mother, but when he tried to touch on this area the patient refused to talk about it." pp. 1453-1454

Oates: "Wortis speculated that Faulkner might not have had enough love from his mother. Faulkner refused to talk about it . . . ." p. 262.

Blotner: "[Faulkner] was so sensitive, reflected Wortis, that life must have been very painful for him." p. 1454

Oates: "[Faulkner] was abnormally sensitive, so much so that life must have been painful for him." p. 262

Blotner: "He was a man with a strong need for affection . . . . built to suffer, thought Wortis, to be unhappy and to make his contribution partly because of this." p. 1454.

Oates: "He had a powerful need for affection . . . . Wortis decided that Faulkner was built to suffer, to be unhappy, and to make his contributions in part from that." p. 262

Blotner: "above the honking horns and exhaust fumes of Madison Avenue." p. 1456

Oates: "above the exhaust fumes and blaring horns of Madison Avenue." p. 262

In February 1993 Stewart and Feder submitted a formal complaint against Oates with the AHA, citing examples from all three books.[285] I

[285]New York *Times,* 29 March 1993, p. A 10.

supported their case by filing once again the materials that I had given to the AHA back in 1991 and which had been ignored.[286]

The AHA's Professional Division refused to look at examples of plagiarism in the later chapters of *With Malice Toward None* because, it claimed, that would constitute double jeopardy.[287] Such an assertion puzzled me, for the AHA had examined only the early chapters of Oates's Lincoln biography in its 1992 decision. All the evidence that Laurin Wolland and I had found in the later chapters of *With Malice Toward None*, not to mention what Stewart and Feder had come up with, was thus disregarded.

When the press reported Stewart and Feder's charges in March 1993, Oates at first tried to get the AHA to change its rules by demanding a hearing with lawyers and accusers present. (It is not entirely clear that this was a serious proposal. Oates had in fact been invited to debate me before the Lincoln Group of Boston in the fall of 1991, but on the advice of Oates's lawyer, the organization decided to scrap plans for a debate. I had immediately accepted the invitation.) Curiously Oates did not deny that the AHA's jurisdiction over his case, as he had done the previous year. "I do not intend to cooperate in my self-destruction in the closed proceeding of this Orwellian body," he declared.[288]

Failing in his attempt to induce the AHA to make an exception in his case, Oates then tried to get Feder and Stewart fired.[289] In a "Dear Paul" letter

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[286]Burlingame to James B. Gardner, New London, Conn., 1 June 1993.

[287]James B. Gardner, phone conversation with Burlingame, 31 May 1993.

[288]*The Chroncile of Higher Education*, 2 June 1993, pp. A 12-13.

[289]Marie Phillips to Bernadine Healy, Amherst, Mass., 10 March 1993, copy.

to his friend, Senator Paul Simon of Illinois, Oates claimed that he was being crucified by men who had no business checking to see if he had committed plagiarism: "These two scientists, without training or experience in the field, have concocted their own definition of plagiarism in biographical and historical writing and have launched a personal vendetta against me . . . ." Oates complained that "[n]one of their allegations has anything to do with science. . . . None of my books has a single scientific reference, or anything of a scientific nature that could possibly justify Stewart and Feder's attack." He assured Senator Simon that the AHA had found him innocent and that twenty-three experts in the Civil War had done the same. Oates went on to claim that "[o]ther historians have privately contacted me to express their fear of Stewart and Feder and their 'plagiarism machine.' Indeed, their actions pose a terrible threat to the field of biography and history, for what they have done to my books with their 'plagiarism machine' can be done to others, in and out of the academy, with similar results."[290] (Oates did not tell Senator Simon that Stewart and Feder's machine had virtually eliminated suspicion that he had plagiarized in his biographies of John Brown and Nat Turner.)

When working on *With Malice Toward None*, Oates had become friendly with Senator Simon, who in the 1960s had written a book on Lincoln's career in the Illinois legislature.[291] The Senator, without looking at the evidence adduced by Feder and Stewart, fired off a letter to the director of the National Institutes of Health, Bernadine Healy, saying: "I have been one who has strongly backed additional research funds for NIH, but I confess I don't see

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[290]Oates to Simon, n. p., 15 March 1993, copy.

[291]Paul Simon, *Lincoln's Preparation for Greatness: The Illinois Legislative Years* (Norman: University of Oklahoma Press, 1965).

where the action by these two gentlemen fits into NIH's mission in any way." He added that "I have followed the Lincoln field with some interest, and the baseless charge that Stephen Oates had to go through, that his Lincoln book involved plagiarism[,] concerned me at the time and continues to be a distortion that needlessly plagues a highly respected biographer."[292]

Stewart and Feder, who had exposed several unethical scientists, including John R. Darsee of Harvard and Nobel-prize winner David Baltimore, were not popular at NIH. Shortly after Simon's letter reached Healy's desk, she reassigned Stewart and Feder to routine jobs and ordered their lab closed down and their files impounded. On May 10, the lab, which had been established in 1988, was sealed.[293] A spokeswoman for the NIH, Elizabeth Singer, "said the pair of scientists had 'gone far afield' from the scientific mission of the health institutes," even though "their supervisors have acknowledged in interviews that they were kept informed of their work regularly, gave approval for it, gave them excellent ratings as employees and never asked them to narrow the scope of their work."[294]

Thus two of the most effective investigators of scientific fraud were abruptly silenced at the behest of Oates and Senator Simon. Those who believe that scientists adequately police themselves cheered;[295] others who think scientific fraud a major problem that scientists have not sufficiently addressed, were dismayed. The evidence suggests that the latter are more

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[292]Simon to Healy, Washington, 17 March 1993.

[293]New York *Times*, 13 June 1993.

[294]Ibid.

[295]Bernard D. Davis, "The New Inquisitors," Wall Street Journal, 26 April 1993, p. A 12.

realistic than the former. In a report on the serious fraud committed by physicians in an important breast cancer study, a doctor observed that "[s]cientific leaders like to say that researchers rarely falsify data in trials and that the system catches those who do. But the claims are not backed by studies, and many admit privately that their statements may reflect wishful thinking."[296]

Some of Oates's exonerators were supportive of Feder and Stewart. Said one: "You have gone to a great deal of trouble and should receive acknowledgment and thanks for your efforts from the history profession." But sadly, he continued, historians were unlikely to give such credit: "My best guess is that unless you can come up with at least several full sentences of unacknowledged copying, and better, a full paragraph or more you may expect little or no further action. The probable reaction to the numerous identical phrases will be to shrug it off as shabby work of Oates but not enough to inspire renewed efforts. This is not to single out my profession for laxity of standards as unique, though the laxity is evident. Rather, alas, it is to say many historians betray a prevailing human weakness to shirk unpleasant tasks and duties and to avoid hard work. Nevertheless I applaud your efforts as much as I deplore the probable reaction."[297]

(Similar points about the reluctance of historians to carry out "unpleasant tasks and duties" had been made earlier by John Higham, co-author of the AHA's 1990 statement on plagiarism. While noting that "plagiarism sows confusion and weakens morale in the community it strikes," Higham lamented that "academic institutions, publishers, and leaders have

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[296]Dr. Lawrence K. Altman, M.D. in the New York Times, 12 April 1994, p. C 3.

[297]Letter of 10 March 10 1993.

been painfully reluctant to move against gross offenders." In trying to explain why "responsible scholars and administrators shrink from their clear obligation to uphold within their chosen profession the standards of the academy," Higham dismissed the fear of libel suits, which he contended "has become a vastly overblown rationalization for other inhibitions that most of us are less willing to admit." Among the real inhibitions are "a long-standing preoccupation of scholarly organizations with rights and a concomitantly casual attitude toward responsibilities" and "the self-interested cynicism of our age, which says in effect that we are all phonies, that ambition deserves a certain latitude, that the 'rat race' forces people to cut corners, and that self-righteous whistle blowers only make trouble."[298])

Another of Oates's original exonerators praised Stewart and Feder's efforts: "I have followed your crusade against professional dishonesty in science with interest and approval, and I applaud your carrying it into my own primary field."[299] A third said, "I admire your tenacity and appreciate your letting me see your documents."[300]

Other members of the Gang of 23 were not so supportive. One wrote: "In your desire to condemn Oates and at the same time justify yourself aren't you confusing *justice* with *antipathy* and *resentment*?"[301] Said another: "Oates is occasionally guilty of lazy composition and hasty scholarship," but not of

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[298]John Higham, "Habits of the Cloth and Standards of the Academy," *Journal of American History*, vol. 78, no. 1 (June 1991), 108-9.

[299]Letter of 9 March 1993.

[300]Letter of 16 March 1993.

[301]Letter of 11 March 1993.

plagiarism.[302] "As a historian," wrote another exonerator, "I am disgusted by your pointless performance." He added: "You tell me my statements have been 'damaging' to Oates's critics. Here you resort to a kind of subtle intimidation which I resent. With all your 'scientific' capability, you would have a very hard time demonstrating that I have caused any damage whatever to such characters as Burlingame and Bray."[303] (I was not damaged, for my name had not been publicly associated with the case until May 1992 and my book had been accepted for publication by the University of Illinois Press shortly thereafter. But when the Gang of 23 issued its statement -- in effect calling the original complainants foolish -- it did wound them personally and professionally. As noted above, Bray told Gore Vidal that "public attacks on my character . . . have hurt me badly." Cullom Davis, who had a national reputation as a Lincoln scholar and director of the Lincoln Legal Papers, understandably felt the same way.[304])

One of the Gang of 23 insisted to Stewart and Feder that plagiarism could only be established if intent were proven: "I define plagiarism as theft of one person's work by another in a fraudulent attempt to claim authorship. This goes beyond demonstrating similarities of structure, thought or language to require evidence of intent to defraud. Lengthy passages copied verbatim or obviously paraphrased without attribution would supply such proof. . . . To prove the case for plagiarism you need irrefutable evidence."[305]

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[302]Letter of 15 March 1993.

[303]Letter of 12 March 1993.

[304]Davis to Burlingame, Springfield, 12 June 1991 and conversation wtih Burlingame, 18 August 1994.

[305]Letter of 8 March 1993.

Few agree that intent must be shown in order to establish plagiarism. The AHA in 1991 eliminated "intent to deceive" from its definition of plagiarism after deciding a case in which a plagiarist sought to justify her theft by claiming that "there was no intent to deceive."[306] Students at Dartmouth and Yale are told that "*[r]egardless of intent*, your failure to provide proper acknowledgment of the use of another's work constitutes plagiarism."[307] Undergraduates at Johns Hopkins learn that "[t]o pass off the language of others, or the ideas and research of others, as one's own constitutes *plagiarism*, whether the omission was conscious with intent to deceive or whether it occurred a result of careless note-taking or simple neglect to acknowledge indebtedness."[308] Princeton University warns that even though "students maintain that they have read a source long before they wrote their papers and have unwittingly duplicated some of its phrases or ideas," such pleas are not considered "a valid excuse." Princetonians are "responsible for taking adequate notes so that debts of phrasing may be

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[306]*Perspectives*, May/June 1991.

[307]Louis A. Renza, et al., *Sources: Their Use and Acknowledgment* (Hanover, N.H.: Dartmouth College, 1988), p. 7. The authors addd: "Many students eroneously believe that plagiarism can occur only in a research paper, and then, only by explicit intenet to deceive. On the contrary, plagiarism can occur whenever one makes use of the ideas or work product of someone else without including an appropraite citation." The statement then defines "plagiarism by mosaic or mixing paraphrase and unacknowledged quotation from source[s]" and gives examples striking similar to what Oates repeatedly does in his Faulkner, King, and Lincoln biographies. (p. 8) Yale uses this handbook as a supplement to its statement on "Cheating, Plagiarism, and Documentation." Northwestern University's "Some Notes of Plagiarism and How to Avoid It" (1992) relies heavilty on the Dartmouth statement, as does Princeton University's Rights, Rules, Responsibilities (1990).

[308]*Undergraduate Academic Manual* (Baltimore: Johns Hopkins University, 1992), p. 97

acknowledged where they are due."[309] The University of Virginia uses similar language in its manual on "Academic Fraud and the Honor System," where students are warned that "[a]ny quotation -- however small -- must be placed in quotation marks" and gives examples of Oatesean "partial paraphrasing" which constitutes plagiarism.

Even assuming that "intent to deceive" is a valid criterion for establishing plagiarism, how does one demonstrate it in the absence of a confession? Laurin Wollan observed that "many cases of plagiarism are explained -- or explained away -- by reference to intent," though in fact "in most cases the original text does not reappear unchanged." Instead, he noted, "the original text is usually changed in some way, usually a way that cannot plausibly be accounted for by accident or inadvertence." Below, in the appendix "The Smoking Arsenal," many such examples from Oates's works are reproduced. Surely it is no accident that Oates used the word *convalesce* rather than Joseph Blotner's term *recuperate* in the following specimen:

Blotner: "nine blood transfusions before she could leave the Oxford Hospital to recuperate at Rowan Oak."

Oates: "nine blood transfusions before she could leave the Oxford hospital to convalesce at Rowan Oak." p. 262

Wollan is right in arguing that "[s]uch changes . . . could be made only by advertence of the mind, by deliberate re-writing of the original text by a mind that knew what it was doing." Wollan sensibly concludes that "if intent

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[309]Princeton University, *Rights, Rules, Responsibilities* (1990), p. 46. This passage is preceded by the following: "Any material which is paraphrased or summarized must . . . be acknowledged in a footnote or in the text. A thorough rewording or rearrangement of an author's text does not relieve one of this responsibility."

is required, the best evidence of it is the alteration of the passage in question."[310]

Pointedly ignoring the evidence of plagiarism in his biographies of King and Faulkner, Oates told the press: "Apparently, it never occurred to Stewart and Feder -- outsiders in the field of biography and history -- that narrative Lincoln biographers draw their information from the same sources and try to describe that same information; hence the reason for similarities."[311] In a news release, Oates not only denounced the New York *Times* reporter who had broken the story but also accused Stewart and Feder of "using strident and accusatory language," of committing plagiarism themselves, and warned that, "[a]rmed with their 'plagiarism machine' and the zealotry of ignorance," the two scientists "represent a 'clear and present danger' to all biographical and historical writing."[312]

Oates took credit for the punitive reassignment of the two NIH scientists. "All this publicity and criticism from Capitol Hill and the inquiries resulted in Stewart and Feder being shut down, their plagiarism machine unplugged," he told a reporter.[313] But Oates did acknowledge that the controversy had affected him as he wrote his new biography of Clara Barton: "I'm just trying to be very careful. I always thought I was, but especially right now."[314]

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[310]Laurin A. Wollan, Jr., p. 18.

[311]*Ibid.*

[312]Press release by Oates, 31 March 1993.

[313]Paul Gray, "The Purloined Letters," *Time,* 26 April 1993, p. 60.

[314]*Ibid.*

Vigorous efforts to save Stewart and Feder's lab proved unavailing. Their defenders pointed out that their supervisor had approved of their work at each step of the investigation, but that made no difference to Healy and to the new head of the Department of Health and Human Services, Donna Shalala, who had tangled with Stewart when she was chancellor of the University of Wisconsin, where a scientist had been accused of faking lab results and Shalala refused to release evidence material to the case*. Exasperated, Stewart went on a hunger strike, but called it off just at the point where he might have suffered permanent harm.[315] Senator Simon made some ineffecutal gestures to undo the damage he had done.[316]

In December 1993 the AHA handed down its verdict in the second round of the Oates case. The procedures used to reach the new decision differed from those employed in the first round: the AHA Council did not review the Professional Division's work, nor did it consult with specialists in King or Faulkner studies. But if its methodology was different, the AHA reached a conclusion essentially the same as the one handed down a year and a half earlier: on the one hand, the Professional Division ruled that it found "no evidence that Stephen Oates committed plagiarism as it is conventionally understood, i.e. the 'expropriation of another author's text, and the presentation of it as one's own . . . .' (AHA, *Statement on Standards of Professional Conduct*, 1993)." On the other hand, the AHA found "evidence in Mr. Oates' work of too great dependence, even with attribution, on the structure, distinctive language, and rhetorical strategies of other scholars and

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[315]New York *Times*, 13 June 1993, section 4, p. 6.

[316]Paul Simon to Bryan M. Mitchell, Washington, 27 April 1993, and to Donna E. Shalala, Washington, 18 May 1993.

sources. Mr. Oates does not sufficiently distinguish between the use of conventional language or widely shared factual material and the borrowing of distinctive language and rhetorical strategies from the work of others."[317] This language is reminiscent of the AHA's revised "Statement on Plagiarism and Related Misuses of the Work of Other Authors" adopted in May 1993, which included a new category of scholarly misconduct: "The *misuse* of the writings of another author, even when one does not borrow the exact wording, can be as unfair, as unethical, and as unprofessional as plagiarism. Such misuse includes the limited borrowing, without attribution, of another historian's distinctive and significant research findings, hypotheses, theories, rhetorical strategies, or interpretations, or an extended borrowing even with attribution."[318] The AHA did not include the word "misuse" in its finding, but it seemed to me that the organization had condemned Oates for *something* unethical, probably misuse.

Among those evidently sharing my view was Stephen B. Oates, who demanded that the AHA retract its decision.[319] If the organization did not do so, he warned, he would "sue them for libel and conspiracy to commit libel." With some justice, he complained, "[o]nce again, it doesn't solve anything. It doesn't put this thing to rest." He protested that the AHA had waged a "three-year vendetta against me" and asserted that the organization had "invented a

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[317]This finding was reached at the meeting of the Professional Division on October 15 and 16, 1993, and conveyed to me in a letter dated 9 December 1993, signed by Samuel R. Gammon, Executive Director of the AHA. It is reproduced in full below as Appendix.*

[318]American Historical Association, *Statement on Standards of Professional Conduct, 1993* (Washington, D.C., 1993), p. 14.

[319]Washington *Post*, 17 December 1993.

vague rule specifically for me and then faulted me for violating it."[320] Others read the AHA decision as a condemnation of Oates. Asked Walter Stewart, "If that isn't plagiarism, what is?"[321] One of Oates's original exonerators said, "It sounds to me as if it's plagiarism, but they decided not to call it that."[322]

Others of the Gang of 23 disagreed. John Y. Simon thought that the AHA "wanted to hurt him [Oates] as much as possible while finding him innocent." One of the chief organizers of Oates's defense, James M. McPherson, said, "[i]t's crafted to be ambiguous, but I would say the weight of it lies toward an exoneration of Oates."[323] McPherson also called it "a mild censure" and guessed that "[t]his is probably the AHA's attempt to recognize that this is not a clear-cut case, and I would agree." McPherson added, "[t]he AHA didn't want to go on record calling this plagiarism, which I think is the right decision, but it didn't want to let it stand that there is nothing at all wrong."[324] A variation on that theme was sounded by Robert V. Bruce, who said that a major problem in dealing with plagiarism cases "is that there are

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[320]*The Chronicle of Higher Education*, 5 January 1994, p. A17.

[321]Washington *Post*, 17 December 1993. Professor Oates complaint about changing the rules was unfounded. In fact the AHA had altered its definition of plagiarism from the "expropriation of another author's findings, interpretation, or text, presented thereafter as one's own creation" to the "expropriation of another author's text, and the presentation of it as one's own." In submitting my complaint, I had explicitly stated that I was concerned only with text: "I do not accuse Professor Oates of plagiarizing ideas or information . . . . What I accuse Professor Oates of plagiarizing is words." Burlingame to James B. Gardner, New London, Conn., 31 May 1991.

[322]Washington *Post*, 17 December 1993.

[323]*Ibid.*

[324]*The Chronicle of Higher Education*, 5 January 1994, p. A20.

degrees of plagiarism. It's too bad it couldn't be defined as plagiarism either first-, second- and third degree, like the difference between a parking violation, manslaughter, and murder."[325]

Some universities and colleges make the distinction that Bruce recommended. For example, Boston University's statement on plagiarism includes the following passages from *The Logic and Rhetoric of Exposition*:, by Harold C. Martin, Richard M. Ohmann, and James H. Wheatley: "The academic counterpart of the bank embezzler, and of the manufacturer who mislabels products is the plagiarist, the student or scholar who leads readers to believe that what they are reading is the original work of the writer when it is not." There is, the authors note, a wide range of plagiarism: "At one end there is word-for-word copying of another's writing without enclosing the copied passage in quotation marks and identifying it in a footnote, both of which are necessary." At the opposite end of the spectrum "there is almost a casual slipping in of a particularly apt term which one has come across in reading and which so admirably expresses one's opinion that one is tempted to make it personal property." Unlike the AHA's statement, Boston University's -- based on *The Logic and Rhetoric of Exposition* -- goes on to give examples of different kinds of plagiarism, including "the mosaic," a technique much favored by Oates, which in the view of the authors is just as just as heinous as word-for-word plagiarizing: "there is really no way of legitimizing such a procedure."[326]

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[325]Washington *Post,* 17 December 1993.

[326]Harold C. Martin, James H. Wheatley, and Richard M. Ohmann, *The Logic and Rhetoric of Exposition* (3rd ed.; New York: Holt, Rinehart, and Winston, 1969), pp. 268-273. These remarks are quoted in "Academic Conduct Code," College of Liberal Arts, Boston University (October 1990), pp. 11-12.

The AHA's Professional Division's finding went on to say "that computer-assisted identification of similar words and phrases in itself does not constitute a sufficient basis for a plagiarism or misuse complaint. At issue is not the number of identical words used but rather the quality of language, characteristic phrases, structure, or other distinctive contributions, and such charges thus cannot be based on words or phrases isolated from the broader context in which they are used." This seemed to me a rather gratuitous slap at Stewart and Feder, who had sacrificed a great deal to help the AHA investigate the case. As Stewart observed, "[i]f they're saying computers aren't useful for discovering plagiarism, that's silly." The organization had, after all, found Oates guilty of "too great and too continuous dependence, even with attribution, on the structure, distinctive language, and rhetorical strategies of other scholars and sources" largely based on examples that Stewart and Feder had unearthed with their computer.[327]

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[327]Washington *Post*, 17 December 1993.

Conclusion-- *in joined voice*

Oates was right in warning that his case presented a "clear and present danger," but was wrong in identifying that danger. Far more threatening to the scholarly world than Stewart and Feder's machine was what one historian called "the Oates factor." Professor Robert L. Zangrando, who had helped write the AHA's 1990 statement on plagiarism, deplored Oates's bullying tactics and the AHA's craven response: "Allowing Oates to threaten people . . . , standing by while he tries to silence critics and/or even the curious who would wish to know more about the case itself, is a dreadful legacy that we shall all inherit from this affair. If the 'Oates factor' of lawsuit threats, countercharges, smokescreen accusations, leverage to get people fired or relocated in their work -- general harassment and slaughter of the 'messengers' -- becomes the practice throughout the academy, we shall reach a day when even designated book reviewers will hesitate to make honest professional judgments about a book or a manuscript for fear of retaliation. . . . The new 'Oates factor' has taken over, and now it's being raised to a new level of intimidation in having (so Oates boasted to the Time reporter) Feder and Stewart punished. Isn't this a dreadful message to send our graduate students?"[328] Yes. And more: it is a dreadful message to send to the world.

The most striking feature of this story, to our mind, is not Oates's plagiarism but the response to it by the AHA, by the University of

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[328]Robert L. Zangrando to Burlingame, DATE?* Cf. Zangrando, "A Crying Need for Discourse," *Journal of Information Ethics*, vol.. 3, no. 1 (Spring 1994), 65-69.

Massachusetts, and by the Gang of 23. As one historian observed, "the real scandal is the behavior of the AHA." Contrasting the organization's timidity in handling plagiarism complaints with its boldness in condemning the arms race, this scholar lamented that "the AHA has no idea what constitutes good historical practice."[329] By refusing to look at all of the evidence of Oates's literary larceny, and by failing to use the word "plagiarism" in its two decisions, the AHA proved to be (in John Higham's words) "painfully reluctant to move against gross offenders."

The University of Massachusetts warns its students that "[n]o form of cheating, plagiarism, fabrication, or facilitating of dishonesty will be condoned by the University community." Undergraduates are told that plagiarism involves "[f]ailure to properly identify direct quotations by quotation marks, appropriate indentation and formal citation" and "[f]ailure to acknowledge and cite paraphrasing or summarizing material from another source."[330] After the University absolved Oates, it is hard to imagine how undergraduates accused of plagiarism could be convicted or how graduate students could, with a straight face, subscribe to the Graduate Student Honor Code in which they affirm that they do not "lie, cheat, or steal or willingly tolerate those who do."[331]

Most dismaying to us was the conduct of the Gang of 23. To be sure, two -- C. Vann Woodward and Robert V. Bruce -- did formally recant, and others came very close to doing so; but most of them behaved inexplicably.

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[329]Letter by "Anonymous Historian No. 4," *The Independent Scholar*, vol. VIII, no. 3 (Summer 1994), p. 8.

[330]University of Massachusetts at Amherst, *Undergraduate Rights & Responsibilities, 1992-1993*, pp. 32-33, 63.

[331]University of Massachusetts at Amherst, "Graduate Student Honor Code," Appendix 1, p. 4.

They might have been more circumspect about signing the statement exonerating Oates if they had recalled the Francis Lowenheim affair of the late 1960s. The allegation that Professor Lowenheim had been discriminated against by the Franklin D. Roosevelt Library and the National Archives proved false, to the mortification of the signers of a protest letter published in the New York *Times*.[332]

It is sad enough that *any* scholars would defend a plagiarist, but that some *Lincoln* authorities would do so is particularly lamentable. We had assumed that if anyone in contemporary America might have solid integrity, it would be people who study Abraham Lincoln; alas, that assumption has proved naive.

Some of the Gang of 23 reproved Oates in private for committing "a sin against scholarship" while publicly labeling the plagiarism charges against him "groundless" and "totally unfounded." That, it seems to us, is the single most startling feature of the entire scandal.

The Gang's unwillingness to discuss with either of us what actually constitutes plagiarism; their reluctance to consider the evidence of plagiarism in Oates's biographies of King and Faulkner; their refusal to acknowledge what would befall their students if they had done what Oates did; and their silence when Burlingame asked them if he could affix their names to a statement at the end of "The Smoking Arsenal" indicating that the examples adduced did not, in their minds, constitute plagiarism -- all this confirmed the truth of the AHA's 1990 statement on plagiarism: "What is troubling is . . . the

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[332]*Final Report of the American Historical Association-Organization of American Histsorians Ad Hoc Committee to Investigate Charges against the Franklin D. Roosevelt Library*, August 1970, Papers of the American Historical Association, Manuscript Division, Library of Congress.

reluctance of many scholars to speak out about the possible offenses that come to their notice."[333] And, to reiterate the question posed to the academy at the beginning of this book, "If we don't take a stand on plagiarism, what the hell *do* we take a stand on?"[334] Indeed.

APPENDICES

Appendix 1: Reading Between the Texts[335]

Stephen Oates has said that in *With Malice Toward None* (1977) he "immodestly undertook to write a Lincoln biography for this generation."[336] Without knowing precisely what Oates meant by "this generation," we can at least infer that he considered previous biographies outdated in their research, their interpretations, or both. Such is the conventional justification for new books on old subjects, but it also points to the strong intertextual relationship among Lincoln biographies, going all the way back to William Herndon.[337] Put simply,

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[333]AHA, *Statement on Standards of Professional Conduct*, 1990, p. 21

[334]Drummond Rennie quoted in *The Chronicle of Higher Education*, 21 Feb. 1992, p. A 13.

[335] This is the text of the Bray's original essay, as revised for publication in the *Journal of Informtion Ethics*, 3: 1 (Spring, 1994), and here reprinted by permission.

[336]Stephen B. Oates, *Abraham Lincoln: the Man Behind the Myths* (New York: Harper & Row, 1984), xi.

[337]By "intertextual relationship" or "intertextuality" I mean the "multiple ways in which any one literary text echoes, or is inseparably linked to, other texts,

and I hope not tautologically, Lincoln biographies tend to be about the subject of Lincoln biography even as they purport, one descending from another, to elicit the "man himself." Oates, as will appear, goes to great lengths in *With Malice Toward None* to disguise intertextuality. Yet he hints at it in the preface when he calls his book the first "full-scale biography to appear in seventeen years."[338] The unnamed predecessor, one assumes, is Reinhard Luthin, whose *The Real Abraham Lincoln* appeared in 1960. Yet other than a declared devotion to the doctrine of biographical "realism" (Oates wished to "depict the Lincoln who actually lived [xv])," the two authors and their books have almost nothing in common. *The Real Lincoln* is written in plodding prose and an awkward narrative, wholly unlike Oates's splashy style and flair for dramatizing. Nor has *The Real Lincoln* been a

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whether by open or covert citations or allusions, or by the assimilation of the formal and substantive features of an earlier text. . . ." [M. H. Abrams, *A Glossary of Literary Terms*, 5th ed. (New York: Holt, Rinehart and Winston, Inc., 1988), 247. See also Thomas Greene, *The Light in Troy* (New Haven: Yale University Press, 1982), 16: "We as students of literature are interested in chains of words--images, sentences, passages, texts. In our province, the interplay between change and stability can be located most clearly in a work's intertextuality--the structural presence within it of elements from earlier works. Since a literary text that draws nothing from its predecessors is inconceivable, intertextuality is a universal literary constant."

By "going all the way back to William Herndon," I mean both the Herndon-Jesse Weik biography of 1889 and the vast amount of original source materials Herndon collected in the months and years immediately following Lincoln's death--letters, interviews and notes, all from people who had known Lincoln (especially in his pre-presidential Illinois life). The book Herndon wrote from this research thus became the "Gospel of Mark" of Lincoln studies: that text from which all others--synoptic, canonical or apocryphal--are derived. Since this essay was published, however, the work of Lincoln scholars has been made much easier by the appearance of an 'ur-Gospel,' the collection of the vast Herndon-Weik primary materials into a single, well-edited volume: *Herndon's Informants*, Douglas L. Wilson and Rodney O. Davis, eds., Urbana: University of Illinois Press, 1998.

[338]Stephen B. Oates, *With Malice Toward None* (New York: Harper & Row, 1977), xv. Subsequent page citations given parenthetically.

serious candidate for the laurels of "standard one-volume life of Lincoln," an honor Oates was apparently seeking and which more than one important expert has accorded him.[339] Oates, despite the oblique reference to *The Real Lincoln* in his preface, and the occasional citation of the book in his notes, owes practically no artistic or intellectual debt to Reinhard Luthin.

Yet there is someone standing behind Luthin whom Oates *was* striving to supersede: Benjamin Thomas, whose *Abraham Lincoln* (1952) was greeted upon publication—and almost by consensus—as the prized "standard one-volume life" and remains an important Lincoln book nearly forty years later. *Abraham Lincoln* was intended, he said in the preface, "for the reading public rather than for the expert," though he hoped of course that the experts would approve of it.[340] Thomas, wonderfully, managed to satisfy Lincoln specialists and popular readers alike, to make a book that was both readable and authoritative. He had two important advantages over earlier biographers: first, access to the Robert Todd Lincoln collection in the Library of Congress and, second, a thorough knowledge of Lincoln's speeches and writings gleaned from consulting editorially on the *Collected Works* publishing project. But in the end Thomas

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[339]Richard N. Current has recently judged that "Oates's [Lincoln] must be considered, on the whole, the finest of the one-volume biographies." Current calls the work of Luthin and Benjamin Thomas "somewhat old-fashioned by comparison." ("Oates and the Handlins," in *The Historian's Lincoln* , Gabor S. Boritt, ed.; Urbana: University of Illinois Press, 1988; 378.) Writing in the *American Historical Review* a decade earlier, however, Current had been somewhat more restrained in his enthusiasm, praising mainly the "up to date quality" of the book (82: 1075). And Hans L. Trefousse, reviewing *With Malice Toward None* in *Civil War History* , calls it "an excellent biography which deserves to stand beside Benjamin Thomas' as a standard and modern treatment of the Great Emancipator." (23: 172).

[340]Benjamin P. Thomas, *Abraham Lincoln* (New York: Alfred A. Knopf, 1952), [vii]. Subsequent page citations given parenthetically.

succeeded through his own talent and industry. As the biography of choice for Oates's father's generation, Thomas's *Abraham Lincoln* was surely the main competition for *With Malice Toward None.* Yet one would not know this from Oates himself, for he does not reveal that an intertextual battle has been joined: the preface and narrative are silent where Thomas is concerned. And, while *Abraham Lincoln* is cited perhaps a dozen times in the reference notes at the end of *With Malice Toward None*, these are mostly to note borrowings of primary-source quotations which Oates has not traced back to their origins. Since Oates never names other biographers in his text (he reduces them to the impersonal with rhetorical devices like "as one writer has said"); and since, in the interest a "clear-text" page, he does not use numbers for his reference notes (which most readers would not study in any case), Thomas's presence in *With Malice Toward None* is invisible, or at best dimly discerned as the author of just another not very important book on Oates's subject.

What I wish to show, however, is that Thomas's *Abraham Lincoln* is in fact a major unacknowledged source--an informing subtext--for *With Malice Toward None*, especially in the first two-hundred pages or so of the latter—approximately the two-fifths of the book treating Lincoln's life before the presidency. I have determined that Oates, for whatever reason, has freely used Thomas's information, his language and even his narrative structure at many points in *With Malice Toward None* . And he has done so without crediting Thomas's work.

Let me begin with a single incident from Lincoln's early life in Indiana, the death of his mother, Nancy Hanks Lincoln. Here is how Thomas tells it:

In the late summer of 1818 a dread disease swept through southwestern Indiana. Known as the "milk-sick," it is now believed to have been caused by

cattle eating white snakeroot or rayless goldenrod and passing on the poison in their milk. All that the pioneers knew about it, however, was that it struck quickly and usually brought death. In September both Thomas Sparrow and his wife came down with it. The nearest doctor lived thirty miles away; even if his services had been available, he could have offered little help. Within a few days both sufferers died. Thomas Lincoln knocked together two crude coffins and buried the Sparrows on a near-by knoll. Soon afterward Nancy Hanks Lincoln became ill and died on October 5. Again Thomas put together a rude coffin, and again the awfulness of death afflicted the little group in the wilderness cabin. The body lay in the same room where they ate and slept. The family made all the preparations for burial, and conducted the simple funeral service, for no minister resided in the neighborhood. The woods were radiant with autumn's colors as they buried Nancy Lincoln beside the Sparrows.

Once again the Lincolns had hard times. Twelve-year-old Sarah cooked, swept, and mended, while Thomas, Abraham, and Dennis Hanks hewed away at the forest and tended the meager crops. Their fortunes ebbed. Deprived of the influence of a woman, they sank almost into squalor (11).

Now Oates's version:

The following summer an epidemic of the dreaded “milk-sick” swept through the area. Many settlers died, including Thomas and Elizabeth Sparrow, and then Nancy too fell sick and died. She was only thirty-four years old. While Thomas fashioned a black-cherry coffin, the dead woman lay in the same room where the family ate and slept. Then came the funeral on a windy hill, with Thomas, Sarah, Abraham, and Dennis Hanks huddled around the grave. In subsequent years Abraham said little about his mother's death, as reticent about

that as he was about her life and family background. But he once referred to her as a wrinkled woman with “withered features” and “a want of teeth.”

Dennis Hanks now moved into the Lincoln cabin and shared the loft with Abraham. Twelve-year-old Sarah tried to fill her mother's place, to make and mend clothes for the menfolk, to clean, cook, and wash for them. But it was hard without a woman, and the Lincoln homestead sank into gloom and squalor (8).

The intertextual relation between the passages is clear, first and most obviously in the common language. Thomas: “dread disease swept through,” “the body lay in the same room where they ate and slept,” “Twelve-year-old Sarah cooked, swept, and mended,” “Deprived of the influence of a woman, they sank almost into squalor.” Oates: “dreaded 'milk-sick' swept through,” “the dead woman lay in the same room where the family ate and slept,” “Twelve-year-old Sarah tried to fill her mother's place, to make and mend clothes for the men, to clean, cook, and wash for them. But it was hard without a woman, and the Lincoln homestead sank into gloom and squalor.” This last parallel is particularly telling. Not only are “twelve-year-old Sarah,” “sank” and “squalor” verbatim from Thomas, but the syntax is also similar. Moreover, Oates's narrative structure—the selection of events and details and their ordering—strongly resembles Thomas's, though Oates has at some points compressed the story, at others expanded it (as in the curious quotation, anachronistic in this context, from Lincoln's letter to Mrs. Orville H. Browning concerning Mary Owens, written nearly twenty years after Lincoln's mother's death—if in fact it is truly Nancy Hanks rather than his stepmother, Sarah Bush Lincoln, being referred to).

Is this an instance of plagiarism?[341] On its face, yes (that is, from the evidence of a comparative analysis of composition), though possibly the passages have come down independently from a common ancestor, in which case Oates might not have been re-writing Thomas and *both* biographers were plundering the same source. While a third party is unlikely, given the stylistic similarities between Oates and Thomas (that is, the *information* comes from traditional sources available to both biographers, but Oates's linguistic *carrier* is tuned to Thomas's frequency), it is necessary to check (and check, and check--laborious and indefinite research, as one can never prove a negative). Because neither biography uses numbered notes, and Thomas's does not even give page references, it is difficult to know precisely what documentation each is using for any given narrative segment, and even harder to discover whether any discrete fact or assertion derives from specific pages in a source, once that source is identified. Thomas, as readers may remember, makes only general references, chapter-by-chapter, to the important books, articles and documents *he may be employing*, while Oates often gives blanket page citations that are no help

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[341]The original Latin meaning of "plagiary" was a kidnapper or man-stealer. According to Harold Ogden White, the Roman poet Martial first used the word to refer to literary theft: "Someone had 'kidnaped' a few of Martial's poems by claiming them as his own" [*Plagiarism and Imitation During the English Renaissance* (Cambridge: Harvard University Press, 1935), 16]. The earliest English citation is Ben Jonson's from 1601:"Why? the ditt is all borrowed: 'tis Horaces: hang him plagiary" (*Oxford English Dictionary*). I subscribe to the definition of plagiarism promulgated by my professional organization, the Modern Language Association of America: "Plagiarism is the use of another person's ideas or expressions in your writing without acknowledging the source" [*The MLA Style Manual* (New York: the Modern Language Association of America, 1985), 4]. A *prima facie* instance of plagiarism would be one like the following: Thomas writes, "With them came Dennis Hanks, an illegitimate son of another of Nancy's aunts. . . (11)." And this Oates carries over nearly verbatim: "With them came Dennis Hanks, illegitimate son of another of Nancy's aunts. . . "(8). For an extended discussion of plagiarism in literature, see Ch. 2.

whatever in isolating details and can be misleading besides (see the example of his references for pages 7-9). Thus the best that can be done is to note the sources Thomas and Oates both cite and check these carefully. In the "milk-sick" episode, the single such source is Albert J. Beveridge's *Abraham Lincoln* (1928), which is generally accepted as the most circumstantial account of Lincoln's Indiana boyhood written before Lewis Warren's *Lincoln's Youth: Indiana Years* (1959)--cited by Oates but not the pages that describe the epidemic.[342] Beveridge's account (1: 47-50) has many of the same facts but spread over several pages and embodied in a different style from either Thomas or Oates. In Beveridge the "milk-sick" comes in the autumn rather than the summer and isn't "dread" but "mysterious as forest shadows;" Thomas Lincoln "whip-sawed" the boards for coffins; and Beveridge does not have Nancy Hanks Lincoln's body lying in the cabin or the family's sinking into squalor or otherwise being much worse off than before her death.[343]

Another example of this sort of striking parallelism in the two narratives is the description of the "winter of the deep snow" in Illinois in 1830-31. Again, Thomas first:

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[342]Louis A. Warren, *Lincoln's Youth: Indiana Years* (New York: Appleton, Century, Crofts, Inc., 1959), 51-56. Oates cites pages 60-70, which treat the life of Lincoln's step-mother, Sarah Bush Lincoln, and her positive influence on the Lincoln household.

[343]Albert J. Beveridge, *Abraham Lincoln, 1809-1858* (Boston: Houghton Mifflin Co., 1928), 1: 47-9. Oates cites Beveridge, 1: 70, which in narrative time is well *after* Nancy Hanks Lincoln's death and mostly about Lincoln's reading , a subject not mentioned by Oates on pages 7-9. Ironically, the only place I have been able to find the detail of the "black-cherry coffin" is in Reinhard Luthin's *The Real Lincoln* (Englewood Cliffs, N. J.: the Prentice-Hall Co., 1960), 9; and William H. Herndon employs the word "dread" to describe the "milk-sick" outbreak on the Indiana frontier (*Herndon's Life of Lincoln*, Paul Angle, ed.; New York: Da Capo Press, 1983; 25). Oates cites neither Luthin nor Herndon in this context.

In the autumn almost all the Lincoln family came down with fever and ague, common afflictions of the Illinois country in the pioneer days. They became so discouraged that again they decided to move. But they stayed on through the winter—a hard winter. In December a raging blizzard set in. For days it showed no letup, until snow piled three feet deep on the level, with heavy drifts. Then came rain, which froze. More snow. When the weather cleared at last, a lashing northwest wind drove the sharp crystals across the prairie in blinding, choking swirls. Tracks made one day were wiped out by the next. The crust would support a man, but cows and horses broke through. Deer became easy prey for wolves as their sharp hoofs penetrated the icy surface and imprisoned them. Much fodder still stood in the fields, and feed for stock ran low. Day after day the temperature rose no higher than twelve below zero. For nine weeks the snow lay deep. When the spring thaw came, floods overspread the country (20-21). And the same material in Oates:

. . . . That autumn everybody on the Lincoln claim fell sick with the ague, a malarial fever attended by flaming temperatures and violent shakes. Then in December a blizzard came raging across the prairie, piling snow high against the Lincoln cabin. Then it rained, a freezing downpour that covered the snow with a layer of ice. Now a wind came screaming out of the northwest, driving snow and ice over the land in blinding swirls. Cows, horses, and deer sank through the crust and froze there or were eaten by wolves. For nine weeks the temperature held at about twelve below zero. Settlers called it the winter of the "deep snow," the worst they had ever known (15).

Once again, the only source in common is Beveridge, whose own ur-source is a venerable oral history from 19th century central Illinois, Edward

Duis's *Good Old Times in McLean County, Illinois.* From Beveridge Oates cites I, 77-109, of which the relevant pages are 104-5. Yet, significantly, Beveridge's account of the Lincolns' first Illinois homesteading does not include a reference to autumnal ague. Nor does Beveridge mention that terrible northwest wind, "lashing" in Thomas, "raging" in Oates, but driving the snow in "blinding swirls" in both. Beveridge mentions the wolves, to be sure, but has them going hungry along with the other animals rather than preying upon them; moreover, his account lacks the detail, common to Oates and Thomas, of animals falling through the snow crust and thus perishing. Beveridge notes that "the cold was intense, often ten to twenty degrees below zero." Twelve below is rather more specific and seems to come from Thomas's thermometer. By conflating two of Thomas's sentences ("Day after day the temperature rose no higher than twelve below zero. For nine weeks the snow lay deep.") into one ("For nine weeks the temperature held at about twelve below zero."), Oates ends up with a climatological absurdity—even for Illinois during this winter of winters. In addition, Oates's lead sentence for the first full paragraph on page 16 is "When the snow melted that March, rivers overflowed and floods washed across the prairie," a syntactic echo of Thomas's last sentence in the quoted passage. And, finally, Thomas calls the episode "the winter of the Deep Snow" in his next paragraph (21), as does Oates (omitting the upper case). Beveridge does not use the phrase.[344]

Before turning to a more extended parallel that will require structural as well as stylistic analysis, here are a few other glaring similarities of language, detail, and syntax, taken from the first several chapters of the two biographies.

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[344]Beveridge, 1 : 104-5

*** * On political parties in 1834—**

Thomas: "Party lines had become more definite now, and the Whig and Democratic organizations were beginning to take form (41)."

Oates: "By now party lines had solidified. . . .In Illinois, Democratic and Whig organizations had begun to form. . . (26)."

*** * On John T. Stuart—**

Thomas: "Kentucky-born, a graduate of Centre College, at Danville, Stuart had enjoyed all the advantages denied to Lincoln. His father, a Presbyterian minister, was professor of classical languages at Transylvania College. Widely read, with Southern grace and charm of manner, Stuart had studied law in Kentucky and begun practice in Springfield in 1828. Only two years older than Lincoln. . . (42)."

Oates: "Lincoln observed . . . how graceful and charming he was. A fellow Kentuckian, Stuart was two years older than Lincoln and enjoyed advantages Lincoln had never had. Stuart's father was a Presbyterian minister and a professor of classical languages at Kentucky's Transylvania College. . . (27)."

*** * On the State Legislature at Vandalia—**

Thomas: ". . . flights of frontier eloquence were sometimes interrupted by the crash of falling plaster. . . .

"Almost all of them were young. Very few had been born in Illinois. (46)"

"As Lincoln left for home at the end of the session, he pocketed $258 for his services and traveling expenses. . . . Back in New Salem after a bitter ride in sub-zero weather. . . he. . . resumed his law studies. . . (48)."

Oates: "Most of the legislators were professional men, all were young, few were natives of Illinois. As they debated the issues of the day, falling plaster often punctuated their orations. . . . When the legislature adjourned in February, 1835, Lincoln pocketed $258 for his labors, rode back to New Salem in sub-zero weather, and resumed his legal studies. . . (28)."

*** * On becoming a lawyer—**

Thomas: "On March 24, 1836 he satisfied the first requirement for admission to the bar when the Sangamon Circuit Court certified him as a person of good moral character (53)."

"At last Lincoln mustered courage for his bar examination. It proved easier than he expected. After answering some more or less perfunctory questions, he followed the practice of treating his examiners to dinner (54)."

"Near the end of the session Lincoln satisfied the last requirement for practicing law when the clerk of the Supreme Court

enrolled his name as an attorney (64)."

Oates: "In March, 1836, he took his first step toward becoming a lawyer when the Sangamon County Court registered him as a man of good moral character. . . . At last he got up his courage and took the exams, sailed through without mishap, then treated his examiners to dinner according to the custom of the day (32)."

"On March 1 [1837] the clerk of the Illinois Supreme Court enrolled his name as a lawyer (39)."

In checking sources for these extracts, I have not found most of Oates's information or language anywhere but in Thomas, even when they both were citing a source in common.[345] And in the last example, Lincoln's becoming a lawyer, Oates unaccountably does not cite *any* source for the details in the paragraph from page 32. Looking at his reference notes for pages 30-33 (440), and remembering that he claims ("[s]o far as possible") to have listed sources in the order he employed them in the narrative (437), we find that the citations cover the state and national political campaign of 1836, then move to Lincoln's romance with Mary Owens—jumping over the matter of his formal legal preparation.

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[345]An important book covering the years in the Illinois state legislature was cited--and clearly used--by both biographers: William E. Baringer, *Lincoln's Vandalia* (New Brunswick: Rutgers University Press, 1949). Oates unhelpfully cites pages 3-62 from *Lincoln's Vandalia*, but in all that text the only detail/language I have found that Thomas and Oates both employed is the phrase concerning the dilapidated statehouse in Vandalia: "Falling plaster frequently punctuated the eloquence of earnest debate (40)." Baringer's portrait of John T. Stuart (47) is very different in style and substance from those found in Thomas and Oates; he does not, so far as I could find, characterize the legislators as Thomas does on page 46 (Oates 28); and he has Lincoln being paid "more than a hundred dollars" (63) rather than the $258.

Elsewhere, Oates cites John J. Duff's *A. Lincoln: Prairie Lawyer* (1960) as his principal source for Lincoln's legal training and career. So why not here? Perhaps for the very good reason that Duff does not show Lincoln taking a bar examination or treating his examiners to dinner.[346] It is difficult to know where Thomas may have discovered the information about Lincoln's bar exam and dinner celebration, since his own main authority on the subject is Albert A. Woldman's *Lawyer Lincoln* (1936), and Woldman declares that Lincoln was not obliged by law to take a bar examination and points out that there is no record of one having taken place.[347] It appears, therefore, that the incident of an exam followed by dinner is Thomas's alone—and one silently appropriated by Oates.

Turning now to the longest sustained parallel passages I have found—accounts of the Lincoln-Herndon law partnership—it is necessary to recall that both Thomas and Oates use the same narrative structure and format in their biographies. That is, long chapters comprised of small discrete segments of narrative which do not have numbered sub-headings. Often these segments even lack formal syntactic connection to one another, marked only by white space, asterisks and extra-spacing and no indenting for the type of the first word or

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[346] John A. Duff, *A. Lincoln: Prairie Lawyer* (New York: Bramhall House, 1960): "It is not recorded that the event of March 1, 1837 was signalized by the customary celebration, which 'took every form from dinner to drinks all around' (33)." Duff's context makes it clear he thinks that the 1 March events would have included both the bar examination and the final enrolling of Lincoln as an attorney--supposing, of course, that there was an examination, of which he finds no evidence. Thomas, following *Lincoln Day-by-Day* , lets the 9 September 1836 Supreme Court licensing be (by implication) the date of the oral bar examination, which Oates follows. Harry E. Pratt, *Lincoln Day-by-Day, 1809-39* (Springfield: Abraham Lincoln Association, 1941), 56.

[347] Albert A. Woldman, *Lawyer Lincoln* (Boston: Houghton Mifflin Co., 1936), 22-3. Beveridge (1: 206) accepts 1 March 1837 as the day Lincoln received his law license but makes no mention of an exam or dinner.

phrase of a new section (Thomas); and by white space, extra indenting and a large, boldface capital to indicate the same thing in Oates. If Oates took over Thomas's means of structuring a biography, he made a fine choice of a model to imitate. The "segments within chapters" approach gives both writers more narrative and dramatic freedom from the usual conventions of linked story and analysis; readers, too, gain (though this was unintended by Oates) in being able to see the parallel narrative as a "forest" rather than a smattering of verbatim phrasal "trees." Finally, more interesting for critics than readers, perhaps, a structural similarity such as this, so close as to be a kind of template, is an indication that intertextuality is powerfully present and at work--the authority of Thomas informing the emulative strategy of Oates.

Thomas discusses the Lincoln-Herndon partnership on pages 96-100; Oates on 71-75. Thus both segments are about four pages long, with Thomas using thirteen paragraphs to Oates's nine. While they show quite a lot of similar and some identical language, it is the parallel structure in the two passages that is most arresting. Oates includes some information not in Thomas, and vice-versa, but for the most part they write about the same things, in recognizably similar fashion, though in somewhat different order. The following schematic gives the sequence of topics/incidents in both accounts.

	THOMAS	**OATES**
Incident	**[order & page]**	
end of Logan partnership	[1 : 96]	[1 : 71]
Lincoln chooses Herndon	[2 : 96]	[2 : 71]

H.'s background	[3 : 96-7]	[4 : 72]
L.'s reasons for choice	[4 : 97]	[3 : 72]
office routine	[5 : 97]	[7 : 73]
sketch of H	[6 : 97]	[5 : 72]
work habits	[7 : 98-9]	[6 : 72-3]
H. not socializing with L	[8 : 100]	[9 : 74-5]
conclusion: how they cared for each other	[9 : 100]	[8 : 74]

Oates may have thought to improve the coherence and flow of the episode by inverting incidents 3 and 4 and putting the amusing material about the Lincoln-Herndon office after the portrait of Herndon (somewhat expanded) and the description of how they worked together (which he shortens). And he may have decided to heighten the color of the partnership narrative by including a few details—not incidents—absent from Thomas, such as the doubtful story told by John H. Littlefield of seeds sprouting on the dirty floor of the office—which sounds like a tall tale out of Lincoln's beloved old southwestern humor.[348] This

[348]Oates probably took this from Duff, although Duff himself thought the story "a mite too fanciful to swallow (112)."

sort of adaptations are a writer's prerogatives, certainly, without which the making of new biographies on seasoned subjects could not proceed. But the overall imitative similarity of Oates to Thomas calls, at the very least, for attribution. To pass off a derivative account as original is to risk much: not only the scorn of scholars but the loss of face as a literary biographer. Nevertheless, Oates does not so much as whisper, nod or wink that Thomas is his subtext for the partnership narrative--certainly one of the keystones in any story of Lincoln's Illinois life.

Oates says in the reference notes that his "account of the Lincoln-Herndon partnership draws from Donald, *Lincoln's Herndon* , 6-49 and *passim* ; Duff, *Prairie Lawyer* , 94-117; Herndon, *Herndon's Lincoln* , 261-293. . . (443)." The first and last of these were also crucial to Thomas, while Duff's book, as the best later treatment of the legal career, would be a necessary resource for Oates.

In *Lincoln's Herndon* I found, not surprisingly, a great many of the details of the Lincoln-Herndon association scattered through pages 6-49, but little of the actual language used by Oates and Thomas (the Lincoln biographers speak of Herndon as "younger" or "junior" by nine years; Donald turns the disparity around: Lincoln is "older by nine years in time and a generation in discretion"[349]). An example of Oates's using Donald *passim* is the description of Herndon's person in the middle of page 72. Most of the details are taken from a passage on page 129 of *Lincoln's Herndon* :

> It was not Lincoln's appearance that drew Herndon, for Billy with his erect five feet nine inches, his jet black hair, his penchant for patent-leather shoes, kid gloves, and top hats,

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[349]David Donald, *Lincoln's Herndon* (New York: Alfred A. Knopf, 1948), 22.

cut a much more distinguished figure than did his partner.[350]

Clearly, Thomas used some of this for his own impressionistic sketch of Herndon at the bottom of page 97. Yet the most evocative detail of all—"he had sharp black eyes set in crater-like circles"—is not found, on page 129, or elsewhere, in Donald. Oates not only mentions Herndon's "black eyes" but like Thomas colors the hair "raven black" rather than the "jet black" of Donald. Since Herndon's person and dress are not described in Duff's *Prairie Lawyer* (and Herndon, to my knowledge, draws no such self-portrait in *Herndon's Lincoln*),[351] I conclude that Oates relied as much on Thomas as on the other sources, imitating his sketch and borrowing some of his tonal details.

Donald, with the leisure that a specialized study affords, could devote ten times more space to the partnership. His account is full of information and (appropriately) contains more analysis than narrative. Thus the section on Lincoln-Herndon's office is concentrated into three pages (32-4), while the analysis of what went on there occupies an entire chapter. In all this documentation, however, there is occasionally something missing—like Herndon's "raven eyes"--that turns up in Thomas and Oates. For instance, Donald duly mentions the irresistible detail of Lincoln's stovepipe hat's containing all manner of papers, which is originally from Herndon.[15] And both Thomas and Oates also pick it up, with the latter quoting Herndon's remark that the hat was "an extraordinary receptacle." But on the same page in Herndon is something Donald did not use: the bundle of documents with Lincoln's

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[350] Donald 129.

[351] *Herndon's Lincoln* 254.

endorsement, "When you can't find it anywhere else, look in this."[352] Thomas and Oates quote Lincoln's injunction, but with a fascinating difference from Herndon: they italicize the "it." "When you can't find *it* anywhere else, look in this." When Herndon found the bundle of papers after Lincoln's death he noted Lincoln's writing but apparently not his emphasis. Where did Thomas learn of this subtle textual variant? Most likely, from the manuscript, which he may have examined as a part of his editorial research on the *Collected Works* . For this Lincoln one-liner did in fact become an entry in the *Collected Works* and can be found, with the "it" italicized, on page 424 of volume 8.[353] So where did Oates get *his* emphasized "it"? Either from the *Collected Works* or from Thomas.[354]

As a last aspect of the Lincoln-Herndon parallels, I would like to consider an interpretive question addressed in both accounts, the sort of issue one-volume biographies are expected to handle yet without having the writing room for much argumentation: Why did Lincoln choose William Herndon for his new law partner in December, 1844? According to Donald, after surveying the speculations—pity for poor, parentally-abused Billy, because Joshua Speed asked him to, because of political expediency, etc.--the best reason is the one Herndon

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[352] *Herndon's Lincoln* , 254. The original editions of Herndon had this material as a footnote: William Herndon, *Herndon's Lincoln* (Chicago: Belford-Clarke Co., 1890), 315n.

[353]Abraham Lincoln, *Collected Works*, Roy P. Basler, ed. (New Brunswick, N.J.: Rutgers University Press, 1953), 8: 424.

[354] Oates does cite the *Collected Works* for this quotation (443). The point here is not that Oates might not have looked into the *Collected Works* himself, but that he is probably following Thomas instead of his principal cited source, Duff, who--I think significantly--uses the "look for it" quotation without the emphasis--evidently following Herndon rather than the *Collected Works* (117).

himself gave: "I don't know and no one else does."[355] In other words, Donald believes there are many possibilities, none of which is cardinal. Thomas and Oates both say that Lincoln's community was "surprised" at his choice of Herndon, then go on to explain it by mentioning several of the reasons from Donald's list. But is there a "thesis" argued in either version, a "controlling reason" from the list that orders the others and makes them cohere? If so, is such a thesis the same in both biographies? I think the answers are yes and yes. Thomas ends his paragraph of reasons on page 97 with this statement: "Moreover, Lincoln could train him according to his own methods and would no longer be dominated by an older man." What follows in Thomas's narrative is consonant with this interpretive key: opposites attracting, working well in "double harness," Herndon's hero-worshipping of Lincoln, and a relationship between them that deepened into something like father-son love. John Duff, in *Prairie Lawyer* , recognizing the cogency of Thomas's thesis, quotes it in his own analysis of the partnership and adds that Thomas's "life of Lincoln. . . must be considered as one of the great American biographies."[356]

This is lavish praise, the more remarkable because Duff's monographic study cites Thomas's one-volume complete life for an interpretation! Is Oates also following Thomas's thesis? Readers must judge for themselves, but I believe so. Oates writes, "At thirty-five, with a Congressional seat awaiting him, Lincoln wanted to run his own firm, be his own boss (71)." And on the next page he asserts that since Herndon was "young and inexperienced, he wouldn't contest Lincoln's decisions, wouldn't argue with him about which cases to accept (72)."

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[355] Donald, *Lincoln's Herndon* 20, quoting Herndon's letter to Jesse Weik, 24 Feb. 1887, Herndon-Weik Collection.

[356] Duff, *Prairie Lawyer* 100.

The rest of the segment follows Thomas pretty closely, as we have seen, and the few significant departures tend to flesh out the "older-younger," "big and little" idea, as in the quotation from a Herndon letter to Joseph Fowler: "'He moved me by a shrug of the shoulder,' Herndon sighed. "He was the great big man of our firm and I was the little one. The little one looked *naturally* up to the big one' (74)."[357] If one could discount the similarities in language, and even the parallel structure of the incidents in the two segments, there would still be this matter of thesis and argument. Benjamin Thomas had an idea about the Lincoln-Herndon partnership, a modest idea in a large context, growing modestly out of his sources, notably Donald's *Lincoln's Herndon*. But after all it remains a product of his mind and art. And for this he deserves at least a citation in the reference notes to *With Malice Toward None*.

While I could adduce many other instances of remarkable textual parallels between the books, I would like instead to turn to the larger but related matter of Oates's theory and practice of biography. As indicated earlier, Oates strongly champions "realism," believing, I suppose, that biography is closer to history than to literature though somehow involved with both. He takes his theory from a book called *The Art of Biography* by Paul Murray Kendall, whose characterization of the genre he warmly espouses as his own:

> [T]rue biography is a unique province of literature whose mission is to 'perpetuate a man as he was in the days he lived—a spring task of bring to life again.' Long on realism and short on romance, true biography resists the lure of fictional imaginings so as to be

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[357]Oates does not identify this letter as to Joseph Fowler, though Donald does (*Lincoln's Herndon* 129). And it is fair to say that no one knows whether Herndon wrote these words with a sigh--which is an appropriate segue to the second part of this essay.

faithful to biographical art—to what actually happened.[358]

It is this test of "realism" that Oates applies so severely to Carl Sandburg's *Abraham Lincoln* and which Sandburg predictably fails. For Oates, Sandburg was a mythographer whose work "cannot be regarded as authentic biography, as a careful and accurate approximation of the real-life Lincoln."[359] Oates is even harder on historical novelists. In a well-known essay entitled "William Styron's War Against the Blacks" he condemns and executes Styron for ignoring evidence that the historical model for the protagonist of *The Confessions of Nat Turner* was married and had children. The moral of this is "that an historical novelist, while free to speculate on deeper motivations, does not have the license to impose on real human beings temperaments and physical traits they did not have, living conditions they did not experience."[360]

As philosophical claims, these strictures will not, I suspect, hold up (the subjects of biography or historical fiction, for example, are not "real human beings;" some of them *were* real human beings, of course, and as such they lived not the ordered, comprehended lives of characterization, but concatenations of sensations over time that formed consciousness of existence.). And even as rules for writing biography they are extraordinarily tough. How well, in light of his theory, does Oates meet such high standards? That is, does he practice what he preaches in *With Malice Toward None*? Very briefly, as a test of "actuality," let us look at examples of three levels of biographical narrative in *With Malice Toward None.*

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[358]Stephen B. Oates, "Carl Sandburg's Lincoln," *Our Fiery Trial* (Amherst: University of Massachusetts Press, 1979), 100.

[359] Oates, "Carl Sandburg's Lincoln," *Our Fiery Trial* 109.

[360] Oates, "Styron's War Against the Blacks," *Our Fiery Trial* 4.

1. Assertions of fact supporting a characterization. A favorite "spin" in Oates's narrative is Lincoln as master of language. And so he was, most of us would probably agree. The trick for the biographer is convincingly showing how he became so, for this is still one of the opaque mysteries of Lincoln's life, despite the scrutiny of more than a hundred years. Perhaps aware of this, Oates begins early, giving Lincoln a boyhood "interest in poetry," based apparently on a couple of egregious quatrains in a copybook (10-11). Soon we find young Lincoln borrowing and reading the *Revised Statutes of Indiana* (15), though the cited source (Duff's *Prairie Lawyer*) calls this episode "distinctly on the improbable side," and goes on to remark that "[t]he story of the Indiana statute book is but one of a multitude of examples of the temptation that Lincoln's life affords to mingle fact with fiction."[361] Then in the legislature at Vandalia in 1834 we hear that Lincoln, as a freshman, "did his most influential work in drafting bills and resolutions for other Whigs, who could not write so lucidly or logically as he. In truth, his writing abilities earned him the most accolades in those early days in the Illinois legislature (28)"—this despite his main source's contradictory claim that Lincoln was valued as a scribe, for his penmanship, and not as a particularly good writer.[362] Later we are told that Lincoln's poem called "My Childhood Home I See Again" was "a difficult poem for him to write, especially the stanzas on Matthew Gentry, but he stayed at it, revising and polishing the lines until he had them right (71)." Thus by 1846 Lincoln is represented as a self-conscious literary artist, though Oates's warrant for showing him "revising and polishing the lines" is nowhere found in the reference notes (443). Now all of these things

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[361]Duff, *Prairie Lawyer* 5-6.

[362]"His proficiency in penmanship, not his knowledge, was being used." Baringer, *Lincoln's Vandalia* 62.

concerning Lincoln and language may well be true. But given Oates's evidence, I simply cannot tell. Are they matters of fact or interpretations ? It certainly makes a difference "to the life as actually lived" whether Lincoln loved poetry as a boy, was good at composing legislative prose, and carefully and laboriously crafted his verse.

2. Dramatizing the emotions of characters. When Lincoln writes to Mary Owens from Vandalia on December 13, 1837, there is "a cold and windy rain spattering against his windows (33)," the perfect objective correlative to his melancholy. But where on earth did Oates get this weather report? There is nothing pertinent to the weather in the letter itself, and it is hard to imagine what other source than Lincoln himself would bother to note the weather on an insignificant December day in Vandalia, Illinois. To take another example, Oates tells us that when, in August, 1842, James Shields read the "Lost Townships" letters he "was transported with rage" and "burst into" the office of the editor of the *Sangamo Journal* , demanding "to know who had written those letters (61)." How can Oates know that Shields was "transported with rage," especially since the cited evidence suggests that he did not "burst into the office" but sent someone to ask for the author in his stead?[363] In the summer of 1855, according to Oates, Lincoln "despaired of ever extinguishing slavery by peaceful means." Indeed, his hopes of this were "shattered," and "[n]ever had things seemed so out of control (121)." As elsewhere in *With Malice Toward None*, Oates chooses strong verbs which, in this case, point to a much disturbed interior Lincoln. Yet

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[363]Beveridge (whom Oates cites) and Herndon (whom he does not) both say that John D. Whiteside went to editor Simeon Francis's office to ask for the name of the author (Beveridge 1: 345; *Herndon's Lincoln* 192-3). Oates also asks us to "[s]ee also Harry E. Pratt, *Concerning Mr. Lincoln* . . . 18 (442)," but there is nothing relevant to the Shields affair on that page or any other in the book.

no source for this language is cited. The next paragraph begins, “And then came a letter from Joshua Speed, like an anguished cry from the dark of night (121-22).” Granted, there is a simile at work here, but the natural inference of the reader is that Oates has Speed's letter upon which to base the author's putative “anguished cry.” Oates leads the reader further along this path by asserting that Speed was “painfully certain that his and Lincoln's views differed now, and he set forth his feelings about slavery (122).” The trouble with this is that Speed's letter to Lincoln is not extant; Oates has built up a paragraph from Lincoln's reply to Speed (24 August 1855), from which one might fairly infer that one of Speed's subjects was slavery but not that he was “anguished” over it. This sort of narrative is not biographical by Oates's professed standards, but fictive. The license he is writing under is poetic, if not the very mythic one he revoked from Sandburg. Thomas, incidentally, also has several similar paragraphs (163-4) on this important Lincoln letter, but he does not try to guess Speed's mood or to suggest that he and Lincoln are now anything other than “old friends.”

3. Entering the mind of the subject. This is something even Gore Vidal declined to try when novelizing Lincoln. And we would not expect to see it in a “realistic” biography, given the relative paucity of clear documentary evidence of Abraham Lincoln thinking. Yet now and then Oates does get into Lincoln's mind. One of the most dramatic instances of this occurs in the context of Lincoln's seeking the Republican nomination for senator in 1858 and his worry that eastern Republicans will convince the Illinois party to choose Douglas instead. In a paragraph on pages 139-40 Oates represents a ruminant Lincoln through a series of rhetorical questions-cum-comments. Then follows this remarkable passage:

> If Douglas was involved in a plot to nationalize slavery, how could

Eastern Republicans shake his hand and pat his back and talk of supporting him? Did they not understand that he was the same old Douglas? That there remained profound and irreconcilable differences between him and the Republicans? We must not hook on to Douglas's kite, Lincoln warned Republican leaders. We must maintain our own Republican identity. Douglas is not your man for the Senate. *I am your man. I, a pure Republican.* (140, italics in original)

Rhetorical questions indicating thought in narrative are familiar fictional devices. But I am concerned more with Oates's last two sentences. Italicized first-person language has, from Faulkner on, often been used conventionally in modern American fiction to represent narrative consciousness. Without being certain, I would say that this may be what Oates intends here—a glimpse into the private, innermost Lincoln. If so, does he further want us to believe that Lincoln "actually"--at a moment in history, defined and recorded--thought the italicized thoughts? Granting the biographer appropriate artistic leeway, we would still expect Oates to produce evidence that Lincoln said or wrote at least the equivalent of "*I am your man. I, a pure Republican*," if not the words themselves. I can find no such evidence in Oates's reference notes (447), nor have I seen any elsewhere in my Lincoln reading. And even if a documentary warrant should appear, it would merely narrow, not bridge, the vast epistemological distance between something written and something thought. It may be that the scrutiny of any text causes it to begin to unravel, to "deconstruct" as the popular critical theory insists. All I know is that the closer I looked at passages like the one ending "*I am your man. I, a pure Republican*, the less "real Lincoln" and the more "Stephen Oates" I found.

Why did Stephen Oates surreptitiously travel on Sandburg's (or Herndon's or Ida Tarbell's) poetic license in *With Malice Toward None?* My best guess--and psychologizing is something I'm far from comfortable with--is that Oates wanted through his work to be esteemed both an artist and a historian--a bellelettrist, in other words. As an artist, he would use what he called "the techniques of dramatic narration and character development, of graphic scenes and telling quotations. . . (xvi)." As a historian he would depict "the Lincoln who actually lived (xv)." The popularity of *With Malice Toward None* (the last paperback printing I saw was the book's 17th) indicates that Oates achieved his artistic aim with a general audience, while critical acclaim shows success with Lincolnists, a priesthood generally hard to please, especially in the area of popularization of the god. Yet if my analysis of Oates's fictionalizing is sound, we must reconsider the place of *With Malice Toward None* both in Lincoln studies and as the "standard one-volume life" for the public. When artistic and historical motives conflict, as we have seen that they do in this book, art ends up driving history, just as it does in a historical novel--say, in Vidal's *Lincoln*, so widely read and admired by the many, so scorned by the ultra-specialist few. But Vidal can get away with dismissing his Lincolnist critics as "squirrel-scholars," intent (to mix the metaphor) on picking all the nits themselves and keeping the "chestnut horse" hidden in the barn--dead or alive. He can laugh at "historicity" as merely a matter of "the agreed upon facts" of Lincoln's life.[364] Oates, however, does not have Vidal's liberty: for along with the writer's he has also claimed the historian's high ground: realism, "the life as actually lived," and so on. But the

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[364]In a pair of famous "exchanges" in the *New York Review of Books,* Gore Vidal fought with his Lincoln establishment critics over the historical accuracy of his novel *Lincoln*. Vidal notably ridiculed Harold Holzer, whom he scorned as a "caption-writer," and Richard Current, Vidal's arch- "Squirrel-Scholar." [*New York Review of Books,* 28 April and 18 August 1988 (56-8 and 66-9 respectively).]

task was too great. He could not deliver both art and history in one Lincoln volume (perhaps no one could), and in the attempt he fails to manage either distinctively. Both by my reading and by Oates's own program for biography, *With Malice Toward None* is not a good book.

So why, to conclude, did Oates plagiarize Benjamin Thomas? Because of intertextuality, Lincoln biography is a palimpsest, a text "written over" with the ghosts of countless earlier subtexts a dimly visible haunting; and because of the historical and popular fascination with the subject, Lincoln is also "over written." Thus a genuinely *new* life is impossible. These constraints are givens for any aspiring writer on Lincoln. Add to them, in Oates's case, a literarily and philosophically naive commitment to "realism" and the prospect is all the more difficult, if not a sure recipe for failure. Oates tried hard to create the illusion of the "real Lincoln," but he relied too much, as biographies of biographies will do, on mostly stale secondary materials--an imitation of an imitation. With the authority of Thomas ever-present, Oates must have had an anxious struggle. He *had* to stand on his Lincoln father's shoulders, but he could not admit to the reading world that that was what he was doing. On the contrary, Thomas, as the threatening precursor, must be banished. As can be seen on any of his "clear-text" pages, the goal was the illusion of an author positioned in an unmediated relationship with his subject, face-to-face and ultimately merging: Abraham Lincoln and Stephen Oates, one in the same, and nothing else: "*I am your man. I, a pure biographer*." But when Oates did not know enough, or perhaps did not care enough, as in the case of Lincoln's early life in Indiana and Illinois, he turned to one who knew immensely more, one who had already written those years superbly well (and carefully). By hiding both the intertextual relation and the

presence of Benjamin Thomas in *With Malice Toward None*, Oates ironically confirms the importance of both: plagiarism is absolute intertextuality.

2. Robert Bray: "A Response to Stephen Oates" and "Lincoln Staring into Fire

These two short essays were written in the spring of 1991, the first as an answer to the part of Stephen Oates's "Refutation" that concerned Bray's "Reading Between the Texts;" the second in an attempt to give the "Gang of 23" something more to think about, in hopes that some of them, at least, would change their minds.

A Response to Stephen Oates, by Robert Bray, Illinois Wesleyan University

Points in response to Oates, pertinent to the "deep snow/autumnal ague" episode:

1. Oates's strategy is to compile extracts from a list of sources *none of which he actually used in his narrative* .

2. The single source he cites, Beveridge, lacks much of the information he *does* use.

3. The extracts he provides *do not* have the details, ordering and language he uses; *only Thomas does*.

4. His insistence on the number of sources giving the twelve below zero temperature obscures the fact that the *duration* of the cold comes from Thomas.

Detailed Exposition:

In my essay, "Reading Between the Texts: Benjamin Thomas's *Abraham Lincoln* and Stephen Oates's *With Malice Toward None* ," the argument I make that Oates borrowed from Thomas without crediting him rests on two related kinds of analysis: style and sources. The first begins with an ordinary act of reading that notices linguistic similarities between passages. Any reader, professionally trained or casual, can make this identification.[365] Source analysis follows, basically a laborious checking and comparing of references; the goal is to see whether the two texts in question have a common source behind them from which they both borrowed independently. Finally, if no such common ancestor is discovered, I return to linguistic analysis, attempting to show that one text was in fact written out of the other. This is a common-sense method, tried and true in academia, used on everything from student papers to theses and published articles and books.

Therefore, any refutation of my argument, to be sound, must address the particular points raised in my scrutiny of parallel passages. Anything less strikes me as avoiding the issue of plagiarism, which is essentially a relationship between texts.

I have seen a copy of Stephen Oates's "Refutation" document. Among many other counter-charges, Oates accuses me of "ignorance of the Lincoln literature," the "traditional body" of information out of which Lincoln books are made. True,

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[365]To see the truth of this, I invite readers to play the following game: type up all the versions of the "deep snow/autumnal ague" episode--including those by Oates and Thomas--from Oates's extracts; put each on a separate sheet of paper without identifying authors. Lay them all out on a table and invite a student (or anyone else) in to take a look and tell you which two are the most similar. I'll wager that Oates and Thomas come up every time.

I am no specialist in Lincoln, but I have read most of the major biographies, including Herndon and Tarbell and Beveridge and Sandburg and Barton and Randall and Luthin and Thomas and Oates. Some of these, especially Herndon and Beveridge and Sandburg, I know in detail. In addition, I have read quite a number of monographs, particularly those that treat Lincoln's life in Illinois, since I have an academic specialty in Illinois literature and am interested in the social, cultural and political backgrounds of the historical Lincoln. While I readily admit not having read as much Lincoln as Oates, I must challenge the claim that I am ignorant of the subject.

Credentials aside, however, I return to the necessity of *looking closely* at parallel passages and my analyses of them. Let me focus on one, the "big snow" narrative, and Oates's response to my argument there.

In the section entitled "Reference Notes" at the conclusion of *With Malice Toward None* , Stephen Oates asserts that his references do not "mention all the scores of manuscript collections, published documents, books, and journal articles" that he "consulted but did not specifically use. . . (437)." Rather, his "citations list only those materials from which I extracted quotations and factual matter or derived my interpretations (437)." Moreover, he declares that "[s]o far as possible, sources are listed in the order I used them in preparing the text of each section (437)." I inferred from these statements that when Oates cites pages from a specific work within what he calls a "collective reference," it is to that work and those particular pages that one should go to see what he used: "extracted quotations and factual matter" or the derivations of "interpretations." At this beginning stage of source-analysis I simply took Oates at his word, seeing no reason to go further: to go, that is, into any part of the vast *uncited* body of

"Lincoln literature" that Oates could have used but by his own declaration *did not* .

Thus, for the "autumnal ague" narrative (Oates: 15; Thomas: 20-21) I focused on the sole source Oates cites--Albert J. Beveridge, *Abraham Lincoln* , I: 77-109 (see Oates: 439 for "Reference Notes, Pages 14-17")--expecting to find one or more among "extracted quotations," "factual matter" or "interpretations." The relevant pages from Beveridge within Oates's blanket citation are104-5, beginning with the second full paragraph on 104 and continuing through the first two sentences of the first full paragraph on 105 (see attached photocopy; Oates now asserts [Refutation 14] that he cites Beveridge 1: 105, but he did not: I did it for him in my essay. The scholarly problem with "blanket citations" such as Oates routinely uses is that they tend to obscure rather than identify particular references). What I read in this passage showed me that, while both Thomas and Oates probably took some "factual matter" from Beveridge, neither writer borrowed much, if any, of Beveridge's language.

In his specific rebuttal to my analysis of this episode, Oates makes the points that "various authors utilized a common body of knowledge in describing a minor episode in Lincoln's early life," and that "Thomas is hardly the only author to describe the Lincolns' ague, the terrible snow, the wolves feeding on the other animals, the specific reference to the temperature being twelve below zero, or the reference to the 'winter of the deep snow'" (Refutation 10). My response to the first of these points is, of course they have, I have never said otherwise, but in this case that is beside the point; to the second I answer that I never suggested Thomas *was* the first or only Lincoln biographer to write these details. Both of these objections are red herrings.

What is important here is that, despite the list of sources he lists and extracts, ranging from Nicolay and Hay to Harry Pratt and Carl Sandburg, Beveridge is the only one Oates cited for the passage--that is, Beveridge 1:104-5 is *the only source Oates admits to having used*. Thus that many of the details occur in other sources is irrelevant: what is in Beveridge is what he supposedly used. Details not in Beveridge necessarily come from somewhere else; if from the "traditional body" of information, why not cite one or more of these sources in addition to (or instead of) Beveridge? And if from Thomas, then why not cite him? There are, as I pointed out in the essay, several details that Beveridge does not have: no fever and ague, no northwest wind, no animals falling through the snow crust and dying, no twelve below zero, and, most important, no phrase "the winter of the deep snow."

Oates finds all these details in one or another source, but he does not find them all in any *single* source among his extracts--other than in Thomas. Indeed, every detail Oates uses except one is also in Thomas. It may be true, as Oates asserts, that Thomas himself paraphrased from "a common body of knowledge," but, again, that's not the point: Thomas alone among the sources has all these details, and all these details appear in Oates. Further, Oates cites none of the many writers whose words he quotes to show "a common body of knowledge" grown up around the episode of the "deep snow;" while, as I've already pointed out, the single source he does cite, Beveridge, lacks many of these same details. Oates says, "I did not deem it necessary in my notes to list the many earlier unfootnoted biographies that had described the winter" (Refutation 15). Yet no one is asking that he do this; all Oates needed to do to meet the mimimum academic standards of reference was to cite what he actually used. In this

instance a single reference would have taken care of the problem: "Thomas, *Abraham Lincoln* 20-21."

Strictly on the level of information, then, Oates cites what he doesn't use and uses what he doesn't cite. And he appears to believe that borrowing details from "a common body of knowledge" without giving credit is an acceptable practice in Lincoln biography. In embracing Beveridge as his source, incomplete in detail, Oates wants it both ways: freedom to use other sources without citation, and credit for having cited sources when he chooses to. I have difficulty understanding how this loose approach to references would pass muster with historians or their graduate students.

If it were merely a question of detail, however, I might agree to disagree with Oates. After all, the "deep snow" episode does qualify as a set-piece, though as Oates says a minor one in Lincoln's early life. Biographers who knew the material, accepted it as true and chose to use it--some, like Herndon, did not--would inevitably have included many of the same incidents. But the Oates-Thomas parallels are far more than incidental. I argue that Oates *borrowed Thomas's account* of the "deep snow," and by this I mean that he followed Thomas's choice of detail, ordered the details the same way, and used some of the same language and syntax. In brief, Oates constructed his paragraph after Thomas, in the process re-writing the latter's prose.

1. Note the choice and ordering of detail:

Thomas: autumn, Lincoln family get the ague, [common affliction], [decided to move next spring], hard winter, December, raging blizzard, snow piled up,

freezing rain, clearing, lashing wind, snow in blinding swirls, [tracks wiped out], [crust supports a man], cows and horses break through, deer prey of wolves, [fodder in fields], [stock feed low],temperature at -12, spring thaw, flooded countryside

Oates: autumn, Lincoln family ague, [malarial fever], December blizzard, snow piled up, freezing rain, northwest wind, blinding swirls of snow, cows, horses and deer break through crust, freeze or are prey of wolves, temp. at -12 for nine weeks, winter of deep snow, worst winter

2. The bracketed items in Thomas are those that don't occur in Oates (the "spring thaw" detail is not bracketed because it is the lead sentence in Oates's second full paragraph on page 16). Except for "malarial fever," all the details In Oates are found in Thomas, *and in the same order* (the "deep snow" phrase occurs early in Thomas's next paragraph on page 21). If this is a co-incidence, it's an extraordinary one, even in a set-piece. Writers of Lincoln biography may be bound, as Oates contends, to use the same small fund of detail when treating their subject's early life, but they are not constrained to tell the same story in the same way. When details are embodied in similar syntax, the supposition that one account is written out of another strengthens. Thomas writes: "In December a raging blizzard set in." Oates writes: "Then in December a blizzard came raging across the prairie. . . ." Even more arresting is the opening main clause in the first sentence of each account. Thomas: "In the autumn almost all the Lincoln family came down with fever and ague. . . ." Oates: "That autumn everybody on the Lincoln claim fell sick with the ague. . . ." This language in this syntax is nowhere to be found in any of the extracts Oates compiles. There is absolutely nothing in the canons of Lincoln biography that requires Oates to put the same details in the

same sort of sentences in the same sort of narrative paragraph. On the contrary, all the scholarly and writerly rules I know oblige him not to.

3. On the level of language, Oates admits the obvious: that "blinding swirls" occurs in both accounts. He says, "Frankly, I had forgotten that Thomas used the words 'blinding' and 'swirls,' along with 'choking,' until I read Bray's paper (Refutation 15)." Oates defends himself here by claiming that such identical language is impossible to avoid. He also says that his Texas Panhandle boyhood gave him plenty of experience with blizzards: "I did not need Thomas to tell me the way a prairie blizzard rages." Granting Oates his youthful experience with blizzards, I fail to see how this affects the writerly decision of what to call the "deep snow" in central Illinois in 1830 and how to describe it. Significantly, among Oates's extracts, only Sandburg's account (*Prairie Years* 1:107) even uses the word "blizzard," and in his own inimitable style, so different from Oates's and Thomas's: ". . . the battalions of a blizzard filled the sky. . . ." All the other sources speak more generically of snow storms or simply snow. This particular blizzard--". . . a lashing northwest wind drove the sharp crystals across the prairie in blinding, choking swirls"--remains, to my mind, Thomas's creation and Oates's source; the "accidental" occurrence of "blinding swirls" in both Thomas and Oates, is plausible in isolation, but telling in context. Finally, the matter of the temperature and the snow on the ground. Oates makes a great deal of the many sources that say the temperature was twelve below zero. What he doesn't say is that those sources that specify the length of the cold spell say *two weeks* , not nine, which, as I noted in the essay, is climatologically absurd. Oates's sentence, "For nine weeks the temperature held at about twelve below zero" is best explained as a careless conflation of Thomas's "Day after day the temperature rose no higher than twelve below zero. For nine weeks the snow lay

deep." I must continue to see it this way until I hear a better explanation. Oates's "Refutation" is silent on this point.

This, then, is the sort of analysis my essay attempted with several textual parallels; many others not mentioned in the essay could likewise be analyzed. Readers who would understand a pattern of unacknowledged borrowing must look at such parallel texts long and minutely. I urge interested readers not to be bothered by Oates's smokescreen of dozens of bogus sources from "a common body of knowledge," but to look within *Abraham Lincoln* and *With Malice Toward None* for themselves, where they may find and analyze their own parallels. There are many of them waiting. As the "deep snow" episode shows, the Oates-Thomas parallels are best--and perhaps only fully--explicable either as coincidence or as one author writing out of another. I have chosen the second explanation and stand by my choice.

Lincoln Staring into the Fire

A brief anecdote from Lincoln's life on the 8th Judicial Circuit in the 1850s nicely illustrates Stephen Oates's casual manner in *With Malice Toward None* of adapting Benjamin Thomas's *Abraham Lincoln* . In this instance Oates uses Thomas's information, language and interpretations--all without acknowledgement. Here is the complete passage from *With Malice Toward None,* both the anecdote and its narrative and chronological sandwiching :

> In 1853, Lincoln was riding circuit when reports came of new Congressional skirmishing over slavery in the territories. It appeared that Stephen A. Douglas was trying to organize a Nebraska Territory out of the American heartland, but free-soil and proslavery forces were wrangling bitterly over the status of slavery there. Lincoln followed the course of Douglas's territorial bill as it was reported in the *Congressional Globe* , and he became melancholy again. Friends who saw him sitting alone in rural courthouses thought him more withdrawn than ever. Once when they went to bed in a rude hostelry, they left him sitting in front of the fireplace staring intently at the flames. The next morning he was still there, studying the ashes and charred logs. . . .[ellipses in original]
>
> In May, 1854, while Lincoln was attending court in Urbana, news flashed over the telegraphs that a momentous new Kansas-Nebraska bill had emerged from Congress. When Lincoln read the provisions of the bill in the newspapers, he was "thunderstruck and stunned," he was aroused "as he had never been aroused before." In a single blow, the bill had obliterated the Missouri Compromise

> line and in Lincoln's view had profoundly altered the course of the Republic so far as slavery was concerned (107-8).

Now Thomas:

> As news of this ominous skirmishing in Congress reached the quiet towns of central Illinois, Lincoln's companions on the circuit noted that he kept more and more to himself. His thoughts seemed far away. Many a time he sat in reverie while all the others slept; waking in the morning, they found him sitting lost in thought before the fire (139-40).
>
> Abraham Lincoln heard about its [the Kansas-Nebraska bill's] passage at Urbana, where he was attending court. The news roused him, he said, "as he had never been before" (143).

Before discussing the anecdote itself, I should point out that the quotation from Oates comprises an entire narrative segment in *With Malice Toward None*--extremely short, but perhaps for the dramatic effect of ending a chapter--which makes it easier to check his references at the back of the book. On page 445, under the rubric of "Pages 105-108," I found three citations: "Lincoln, *CW*, II, 121-132. His reactions to the Kansas-Nebraska Act in *ibid*, II, 282, IV, 67." Only the last two of these are relevant here (the first is to passages from the Clay eulogy quoted by Oates on pages 105-107); and they mark respectively the two quotations at the end of the second paragraph: "thunderstruck and stunned," which is taken (misleadingly out of context) from the speech in Peoria (16 Oct. 1854); and "as he had never been aroused before," from the 1860 autobiography (here misquoted by Oates, possibly an indication he was looking at Thomas rather than the original). As readers can see, *there are no references to any secondary sources covering material on pages 105-108.*

Without such references we can't immediately know where Oates got the incident, though similarities of language and context make Thomas a strong presumptive source. But where did Thomas himself find the "staring into the fire" anecdote? Probably from Beveridge,[366] one of his favorite sources, who got it in turn from Frederick Trevor Hill's *Lincoln the Lawyer* (1906).[367] Hill's informant was Lawrence Weldon, one of Lincoln's 8th Circuit companions, who told the story this way:

> He [Lincoln] would frequently lapse into reverie and remain lost in thought long after the rest of us had retired for the night, and more than once I remember waking up early in the morning to find him sitting before the fire, his mind apparently concentrated on some subject, and with the saddest expression I have ever seen in a human being's eyes (Hill 190-91).

Similarities in language between Hill and Thomas indicate that the former (via Beveridge) was Thomas's source. Be that as it may, however, the more important point is that Oates is once again re-writing Thomas to suit his narrative needs. If Oates should claim, as he repeatedly does in his "Refutation," that he, like all Lincoln biographers, is borrowing from a "traditional body of knowledge" widely known to the field and needing no references, one can emphatically respond, no sir, not this time! For the Weldon anecdote is hardly a part of such

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[366]Albert J. Beveridge, *Abraham Lincoln* , I: 523. Lawrence Weldon's story is part of a 4-page excursus (521-24) on Lincoln's behavior and psychology during the circuit years after his return from Congress. Because Thomas does not cite Hill's *Lincoln the Lawyer,* the presumption of Beveridge as his source for the story is strengthened.

[367]Thomas acknowledges Beveridge, Allan Nevins's *Ordeal of the Union* (1947), his own *Lincoln, 1847-1853,* and Paul Angle's sequel, *Lincoln, 1854-61* as important sources for Lincoln's circuit years, 1853-58 (Thomas 536-37).

tradition. It occurs in Beveridge and Thomas but not, so far as I can determine, in any of the other notable biographies or even in the standard specialized studies of Lincoln's law career (Arthur Woldman's *Lawyer Lincoln* and John Duff's *A. Lincoln: Prairie Lawyer*). The story's line of descent is perfectly clear: Weldon to Hill; Hill to Beveridge to Thomas to Oates. Since Oates apparently doesn't know Hill's book (at least he nowhere cites it in his notes), he must have had Weldon's story from Beveridge or Thomas. This being so, what is Oates's responsibility regarding references? *For the anecdote alone, putting aside for the moment the narrative "bread" of its sandwich, he is obliged to cite* ***something****--and he does not.*

The similarity between Oates's "Congressional skirmishing" and Thomas's "skirmishing in Congress" is the first clue that Oates is here following Thomas (besides the language, the fact that Oates capitalizes "congressional" is a tip-off that Thomas is open before him as he writes). More importantly, Thomas connects Weldon's introspective Lincoln to this "skirmishing in Congress" over slavery: it is the *cause* of Lincoln's keeping "more and more to himself" and spending time fire-gazing while the other circuit lawyers slept. To my knowledge, Thomas is the first biographer to make this interpretation, and Oates repeats it--without giving Thomas credit. Moreover, had Oates bothered to look back to either Hill or Beveridge he would have realized that the original would not support his re-writing: Lincoln did not sit lost in thought *once* but "more than once," according to Hill, who does not specify any particular time or place for the story, simply saying that during this period Lincoln would "frequently lapse into reverie." Oates's "rural courthouses" and "rude hostelry" are actually less accurate (and less concrete) than Hill's general observation about Lincoln's behavior, since we don't know which (if any) 8th Circuit courthouse is meant, nor what (if any) hotel. Thomas, on the other hand, stays closer to the source

with his "[m]any a time he sat in reverie. . . ." And in so doing Thomas also reinforces the sense of Lincoln's growing tendency to brood over slavery and the ongoing "skirmishing in Congress"--which is one important part of the biographical point of the episode.

The other is Lincoln's arousal from reverie. Oates writes, "In May, 1854, while Lincoln was attending court in Urbana, news flashed over the telegraphs that a momentous new Kansas-Nebraska bill had emerged from Congress." One wonders *when* in May this happened--how could Lincoln learn what was virtually an instantaneous piece of information over the period of an entire month; why does not Oates say the day? And how does Oates know that Lincoln was in Urbana? Thomas figures the chronology of the Kansas-Nebraska legislation this way: "After six weeks of debate, culminating in a continuous session of seventeen hours during much of which Douglas held the floor, the [Kansas-Nebraska] bill passed the Senate at daybreak on March 4. Eleven weeks more were needed to force it through the House (143)." These are the final sentences of the paragraph immediately preceeding the one which begins "Abraham Lincoln heard about its passage at Urbana. . . ." Eleven weeks from March 4 would be the week of May 21, 1854. So the same question: How did Thomas know that Lincoln was in Urbana during that week? He knew because he had done the original research that located Lincoln there, then. In his essay, "Lincoln and the Courts, 1854-1861" (*Abraham Lincoln Association Papers* , 1934, 47-103), Thomas had worked out the 8th Circuit calendar, which showed that court's spring term convened in Champaign County (Urbana) on May 22 (a Monday).[368] Then he confirmed Lincoln's presence there through court records

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[368]Benjamin P. Thomas, "Lincoln and the Courts, 1854-61," *Abraham Lincoln Association Papers*, 1934 (Springfield: Abraham Lincoln Association, 1934), 50n.

and newspaper files. Much of Thomas's "where and when" work for Lincoln's circuit years was done during the early 1930s and went into the volume of *Lincoln, 18 54-61* , under Paul Angle's editorship. In his "Compiler's Note" Angle forthrightly acknowledged Thomas's research: "Doctor Thomas has shared a great deal of the laborious investigation necessary in such a work as this, and has made many valuable contributions, particularly to the record of Lincoln's court work."[369]

The "day-by-day" entry for Monday, May 22, documents Lincoln's being in Urbana and concludes with this bracketed sentence: "[The House of Representatives passes the Kansas-Nebraska Bill.] (21)." This is without much doubt Thomas's own information, the fruit of his hard, basic research, and not superceded or in any way changed by the sesquicentennial revisions of *Lincoln Day-by-Day*. Ironically, had Stephen Oates cited *Lincoln Day-by-Day* he would have been citing Benjamin Thomas. Had he cited Thomas's *Abraham Lincoln* he would have been recognizing Thomas's own later use of his primary-source research. But Oates cites neither; he cites in fact nothing. Oates could have mined the "fire-staring" anecdote from Beveridge, but if he did he failed to cite his source. But without Thomas Oates wouldn't even have known where Lincoln was in May of 1854. Nor would he have been able to assert a connection between an introspective Lincoln and the "ominous skirmishing in Congress." Nor, finally, would he have had this fine phrase to adapt. The language, the contextual information, indeed the very idea of Lincoln's arousal from melancholy fire-staring are Thomas's, a small part of his large legacy to Lincoln biography. Is it too much to ask of Stephen Oates, that he give Benjamin Thomas his due--a reference?

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[369]Paul Angle, ed., *Lincoln, 1854-61* (Springfield: Abraham Lincoln Association, 1933), vi.

3. Michael Burlingame: The "Smoking Arsenal"

"What one wants [to demonstrate plagiarism] are smoking guns, whole phrases appropriated like thy neighbor's wife, and forced into adulterous proximity with whatever the plagiarist can manage to create himself." Thomas Mallon[370]

The following examples of "whole phrases appropriated like they neighbor's wife" were adduced by many people in addition to myself: Walter Stewart, Ned Feder, Laurin A. Wollan, Jr., Robert Bray, and a group of Faulkner scholars organized by Noel Polk.

4. Statement and List of Names and Academic Affiliations of the "Gang of 23"

FOR IMMEDIATE RELEASE

WEDNESDAY, APRIL 29 [1991]

CONTACT: Harold Holzer

212-930-0307

FOR PROF. OATES:

Samantha Dean

212-391-2675

STATEMENT BY LINCOLN SCHOLARS AND CIVIL WAR HISTORIANS ON PLAGIARISM CHARGES AGAINST PROF. STEPHEN OATES

As scholars of the Civil Ear [sic] era and the life of Abraham Lincoln, we have examined with particular care and keen interest the recent charges of plagiarism against Professor Stephen B. Oates with regard to his 1977 Lincoln biography, With Malice Toward none.

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[370]Stolen Words, pp. 221-222.

We have reviewed the allegations introduced at a 1990 Illinois State Historical Society symposium, together with material subsequently submitted to the American Historical Association. And we have studied the refutation released in response by Professor Oates several weeks ago.

We conclude that the charges against Professor Oates are totally unfounded. We find no evidence of the appropriation of either the ideas or the language of other scholars without attribution--the only legitimate test of plagiarism.

The charge of plagiarism is surely the most serious that can be leveled against a scholar. That is precisely why we believe it crucial that the record show that the undersigned historians have examined this issue--and reject the complaint against Professor Oates as groundless.

SIGNED

(Affiliation for identification purposes only)

Herman Belz, Professor of History, University of Maryland

Gabor S. Boritt, Fluhrer Professor of Civil War Studies, and Director, Civil War Institute, Gettysburg College

Robert V. Bruce, Professor of History Emeritus, Boston University

Richard Nelson Current, University Distinguished Professor of History Emeritus, University of North Carolina at Greensboro

[page 2]

David Herbert Donald, Charles Warren Professor of American History, Harvard University

Eric Foner, DeWitt Clinton Professor of History, Columbia University

John Hope Franklin, James B. Duke Professor of History, Duke University

Gary W. Gallagher, Professor of History, Penn State University

Harold Holzer, Director, Lincoln on Democracy Project

Robert W. Johannsen, James G. Randall Distinguished Professor of History, University of Illinois, Champaign-Urbana

William S. McFeely, Richard B. Russell Professor of History, University of Georgia

James M. McPherson, Edwards Professor of History, Princeton University

Mark E. Neely, Jr., Director, The Lincoln Museum

Ralph G. Newman, President Emeritus, The Ulysses S. Grant Association

John Y. Simon, Professor of History, Southern Illinois University, and Executive Director, the Ulysses S. Grant Association

Kenneth M. Stampp, Morrison Professor of History Emeritus, University of California at Berkeley

Emory Thomas, Professor of History, The University of Georgia

Hans L. Trefousse, Distinguished Professor of History, Brooklyn College

Thomas R. Turner, Professor of History, Bridgewater State College

Frank J. Williams, President, The Abraham Lincoln Association

Major L. Wilson, Professor of History, Memphis State University

C. Vann Woodward, Sterling Professor of History Emeritus, Yale University

Robert V. Remini, Distinguished Professor of History, University of Illinois, Chicago [Remini signed the list a few days after its release]

(LIST IN PROGRESS)

5. The American Historical Association's Findings on the Two Plagiarism Complaints Against Stephen B. Oates

[Note: these two findings (May 1992 and January 1994) were not made public by the AHA; rather they were sent to the complaining and defending parties. Both Bray and Burlingame thus received copies of the first statement, Burlingame alone the second.]

[May 1992]

Between December 17, 1990 and June 19, 1991, the American Historical Association received five separate formal complaints that Stephen B. Oates plagiarized Benjamin Thomas's *Abraham Lincoln* in writing his own Lincoln biography *With Malice Toward None.* Although Mr. Oates is not a member of the AHA and has claimed that the Association therefore does not have jurisdiction, the AHA agreed to review the complaints, citing its 1889 charter from the U.S. Congress, which specifically authorizes the Association to act "in the interest of American history, and of history in America." This statute makes no reference to membership in the Association as a limitation in scope. Standards of professional conduct are essential to the health of the discipline, which is threatened whenever those standards are compromised. Within that context, the AHA has adopted a *Statement on Standards of Professional Conduct* and vested responsibility for these matters in its Professional Division, a five-member elected body, under the supervision of the Council, the Association's governing board.

Mr. Oates also has raised questions regarding the timing of the complaints, coming over 14 years after the publication of his book. The Association's policies and procedures, included in the *Statement on Standards of Professional Conduct*, do not establish any chronological limitations but instead recognize that past conduct, even many years later, may have continuing

consequences for the discipline, particularly when the publication at issue is still in print and widely used.

Before reaching a finding, the Association reviewed 258 pages of material submitted by the five complainants as well as 62 pages of rebuttal prepared by Mr. Oates. Only six pages of the latter were addressed directly to the Association: the remainder were prepared by Mr. Oates for other groups and came to the AHA's attention indirectly. Correspondence and other material not addressing the substance of the complaints or submitted by individuals not party to the case (an additional 190 pages) were segregated from the case file as not pertinent to the review. In order to ensure that Mr. Oates had adequate time (ninety days as called for in the AHA's policies and procedures) to respond to the complaints prior to review by the AHA's Professional Division at its fall 1991 meeting, all material submitted after July 1, 1991 was tabled. The Association also obtained copies of the Thomas and Oates biographies and secured outside review of both books and the original source material by an ad hoc committee composed of three recognized experts on Lincoln and mid-century U.S. political history and biography.

Within the above context, the American Historical Association finds that Stephen Oates's account of Lincoln's early years in *With Malice Toward None* is derivative to a degree requiring greater acknowledgement of Benjamin Thomas's earlier biography of Lincoln. The Association recognizes Mr. Oates's original contribution and style but concludes that he failed to give Mr. Thomas sufficient attribution for the material he used. In reaching this conclusion, the Association refers to its own statement: "Historians should carefully document their findings. . . ." (*Statement on Standards of Professional Conduct,* 1990, p. 5). It now reaffirms the necessity of appropriate attribution of sources in biographies and other publications written for general audiences as well as in scholarly writing. The

Association strongly recommends that any future editions of Mr. Oates's *With Malice Toward None* include appropriate acknowledgement of Mr. Thomas's *Abraham Lincoln.*

One of the five complaints also charged Mr. Oates with plagiarism in the writing of his biographies of Martin Luther King, Jr. and William Faulkner. The Association decided to focus its review on the more detailed charges regarding Mr. Oates's Lincoln biography and did not reaching a finding on the other two charges.

[January 1994]
FINDING IN FEDER AND STEWART/OATES AND BURLINGAME/OATES

The Professional Division of the American Historical Association received two formal complaints--one on February 25, 1993 and a second on June 1, 1993--charging that Stephen B. Oates plagiarized the work of other authors in writing his *William Faulkner: The Man and the Artist, Let the Trumpet Sound: The Life of Martin Luther King, Jr.,* and *The Fires of Jubilee: Nat Turner's Fierce Rebellion.* Before reaching a finding, the Division reviewed 126 pages of material submitted by the complainants as well as 54 pages submitted by Mr. Oates' attorney on his behalf. Correspondence and other material not addressing the substance of the complaints or submitted by individuals not party to the case (an additional 181 pages) were segregated from the case file as not pertinent to the review. The Division also obtained copies of the three biographies written by Mr. Oates and of the works he was alleged to have plagiarized:

Bennett, Lerone, Jr. *What Manner of Man: A Biography or Martin Luther King, Jr., 1929-1968.*

Blotner, Joseph. *Faulkner: A Biography,* 2 vols.

Blotner, Joseph, *Faulkner: A Biography,* 1 vol. edition.

King, Coretta Scott. *My Life with Martin Luther King, Jr.*

King, Martin Luther, Jr. *Stride Toward Freedom: The Montgomery Story*

King, Martin Luther, Sr. *Daddy King: An Autobiography*

Lewis, David L. *King: A Critical Biography.*

Reddick, L.D. *Crusader without Violence: A Biography of Martin Luther King, Jr.*

Styron, William. *This Quiet Dust.*

Time. "The South: Attack on the Conscience." February 18, 1957.

Tragle, Henry Irving. *The Southhampton Slave Revolt of 1831: A Compilation of Source Marerial.*

Wilde, Meta Carpenter, and Orin Borstein. *A Loving Gentleman: The Love Story of William Faulkner and Meta Carpenter.*

Within the above context, the Professional Division of the American Historical Association finds no evidence that Stephen Oates committed plagiarism as it is conventionally understood, i.e. the "expropriation of another author's text, and the presentation of it as one's own. . . ." (AHA, *Statement on Standards of Professional Conduct,* 1993). The Division, however, does find evidence in Mr. Oates' work of too great and too continuous dependence, even with attribution, on the structure, distinctive language, and rhetorical strategies of other scholars and sources. Mr. Oates does not sufficiently distinguish between the use of conventional language or widely shared factual material and the borrowing of distinctive language and rhetorical strategies from the work of others.

The Division also notes that computer-assisted identification of similar words and phrases in itself does not constitute a sufficient basis for a plagiarism or misuse complaint. At issue is not the number of identical words used but rather the quality of language, characteristic phrases, structure, or other

distinctive contributions, and such charges thus cannot be based on words or phrases isolated from the broader context in which they are used.