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# ABRAHAM LINCOLN AND THE RULE OF LAW BOOKS

MARK E. STEINER\*

We associate Abraham Lincoln with books more than any other president except, perhaps, Thomas Jefferson.<sup>1</sup> But Jefferson's association with books creates more distance, while Lincoln's draws us closer.<sup>2</sup> Lincoln's reading is linked to self-betterment and personal growth.<sup>3</sup> Lincoln is also seen as reader as a boy and a young man, not as an adult. Yet reading would pervade his life.

## I. THE FATHER OF THE MAN AND LINCOLN IN NEW SALEM

The most popular cultural images of Lincoln as reader are his reading as a boy in Indiana and as a young man in New Salem. The image of Lincoln reading by fireside was popularized by Eastman Johnson's 1868 painting, *Boyhood of Lincoln*.<sup>4</sup> Art historian Patricia

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\* Professor of Law, South Texas College of Law. While the good parts of this article are entirely new, certain portions appeared in one form or another in my book and are reprinted by permission of Northern Illinois University Press, which also wanted me to mention that the book is now available in paperback. MARK E. STEINER, *AN HONEST CALLING: THE LAW PRACTICE OF ABRAHAM LINCOLN* (2006). I dedicate this article to the memory of my colleague Richard J. Graving, whose kindness and support I will always appreciate.

1. On Lincoln and Jefferson as readers, see, for example, DOUGLAS L. WILSON, *LINCOLN BEFORE WASHINGTON: NEW PERSPECTIVES ON THE ILLINOIS YEARS 3–17* (1997). See generally ARTHUR E. BESTOR ET AL., *THREE PRESIDENTS AND THEIR BOOKS* 1–88 (1955).

2. The Library of Congress has an ongoing exhibit that reconstructs Jefferson's 6,487-volume library. See Library of Congress, Thomas Jefferson's Library, <http://myloc.gov/Exhibitions/jeffersonslibrary/Pages/Default.aspx> (last visited Aug. 23, 2010). John F. Kennedy's famous remark to a group of Nobel Prize laureates—"I think this is the most extraordinary collection of talent, of human knowledge, that has ever been gathered together at the White House, with the possible exception of when Thomas Jefferson dined alone"—perfectly captures the image of the intellectually aloof Jefferson. John F. Kennedy, Remarks at a Dinner Honoring Nobel Prize Winners of the Western Hemisphere (Apr. 29, 1962), in *PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: JOHN F. KENNEDY, 1962*, at 347 (Warren R. Reid ed., 1963).

3. DOUGLAS L. WILSON, *HONOR'S VOICE: THE TRANSFORMATION OF ABRAHAM LINCOLN* 53–67 (1998).

4. See *infra* Figure 1; MERRILL D. PETERSON, *LINCOLN IN AMERICAN MEMORY* 110–11 (1995); BARRY SCHWARTZ, *ABRAHAM LINCOLN AND THE FORGE OF NATIONAL MEMORY* 150–51 (2000). Even the recent spoof, *Abraham Lincoln: Vampire Hunter*, contains an illustration based upon Johnson's painting. The caption reads: "Young Abe writes in his

Hills has noted that Johnson depicted Lincoln “acting out the moral drilled into every schoolboy, that in America hard work and perseverance” guarantee success.<sup>5</sup> This image still pervades contemporary children’s biographies, whose covers are often adorned with young Lincoln reading.<sup>6</sup> The message intended by these book covers is clear: if you read books, you can become president, or, perhaps more subtly, reading is transformative. This association between young Lincoln and reading remains strong. In 2009, the U.S. Mint struck four different pennies to commemorate the bicentennial of Lincoln’s birth. The penny representing Lincoln in Indiana shows him reading while sitting on a log.<sup>7</sup>

While this “exemplary legend” of young Lincoln reading voraciously has “passed through generations of children,”<sup>8</sup> behind the legend lay a substantial basis of neighbors’ and relatives’ reminiscences portraying Lincoln as a voracious reader. As historian Merrill D. Peterson has noted, “[Lincoln] never became a learned man, but of his eagerness for books and learning there could be no doubt.”<sup>9</sup> Lincoln’s cousin, Dennis Hanks, remembered how “Abe was getting hungry for book[s], reading Evry thing he could lay his hands on.”<sup>10</sup> His stepmother, Sarah Bush Lincoln, also recalled that young Abraham “read diligently—studied in the day time.”<sup>11</sup> His stepsister, Matilda Johnston Moore, recalled that

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journal by firelight, accompanied by some of his early vampire hunting tools.” SETH GRAHAME-SMITH, ABRAHAM LINCOLN: VAMPIRE HUNTER 32 (2010).

5. PATRICIA HILLS, EASTMAN JOHNSON 49–50 (1972).

6. For example, the following children’s biographies all have an illustration of Lincoln reading on their covers: DAVID A. ADLER, A PICTURE BOOK OF ABRAHAM LINCOLN (1989); KEITH BRANDT, ABE LINCOLN: THE YOUNG YEARS (1982); ANNE COLVER, ABRAHAM LINCOLN: FOR THE PEOPLE (1992); RUTH BELOV GROSS, TRUE STORIES ABOUT ABRAHAM LINCOLN (1973); PATRICIA A. PINGRY, THE STORY OF ABRAHAM LINCOLN (2001); JUDITH ST. GEORGE, STAND TALL, ABE LINCOLN (2008); KAY WINTER, ABE LINCOLN: THE BOY WHO LOVED BOOKS (2003); JANET WOODS, YOUNG ABRAHAM LINCOLN (1997). For years my sister, M’Adele Carson, has been sending me Lincoln books for young readers, and I am happy finally to cite some of them.

7. See *infra* Figure 2.

8. PETERSON, *supra* note 4, at 110–11.

9. *Id.* Lincoln scholar William Lee Miller believes that Lincoln’s reading as a boy in Indiana gave him “confidence in himself, that he could take up a subject, read the books about it, and acquire a mastery of it sufficient to his purpose—as he would do repeatedly throughout his life.” WILLIAM LEE MILLER, LINCOLN’S VIRTUES: AN ETHICAL BIOGRAPHY 47 (2002).

10. Interview by William H. Herndon with Dennis F. Hanks (June 13, 1865), in HERNDON’S INFORMANTS: LETTERS, INTERVIEWS, AND STATEMENTS ABOUT ABRAHAM LINCOLN 41 (Douglas L. Wilson & Rodney O. Davis eds., 1998) [hereinafter HERNDON’S INFORMANTS].

11. Interview by William H. Herndon with Sarah Bush Lincoln (Sept. 8, 1865), *id.* at 107.

Lincoln “was active & persistant in learning—read Everything he could.”<sup>12</sup>



Figure 1. Eastman Johnson, *Boyhood of Lincoln* (1868). University of Michigan Museum of Art, Bequest of Henry C. Lewis, 1895.90.

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12. Interview by William H. Herndon with Matilda Johnston Moore (Sept. 8, 1865), *id.* at 109.



Figure 2. Lincoln Bicentennial Penny: Indiana (2009). U.S. Mint image.

Although Lincoln read everything he could get his hands on, he could only get his hands on relatively few books. Borrowing books from neighbors, he read *Aesop's Fables*, *Pilgrim's Progress*, *Robinson Crusoe*, William Grimshaw's *History of the United States*, and Mason Weems's *Life of George Washington*.<sup>13</sup> John L. Scripps, author of an 1860 campaign biography, wrote Lincoln: "In speaking of the books you read in early life, I took the liberty of adding Plutarch's *Lives*. I take it for granted that you had read that book. If you have not, then you must read it at once to make my statement good."<sup>14</sup>

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13. 1 MICHAEL BURLINGAME, *ABRAHAM LINCOLN: A LIFE* 36 (2008); RONALD C. WHITE, JR., *A. LINCOLN: A BIOGRAPHY* 31–32 (2009).

14. Letter from John L. Scripps to Abraham Lincoln (July 17, 1860) (Abraham Lincoln Papers, Library of Congress), available at <http://memory.loc.gov/ammem/malquery.html> (search "John L. Scripps"; then select hyperlink to "John L. Scripps to Abraham Lincoln, Tuesday, July 17, 1860").

America's "collective memory" of Lincoln also commemorates his reading habits as a young man in New Salem.<sup>15</sup> Lincoln moved to New Salem when he was twenty-two and left when he was twenty-eight.<sup>16</sup> New Salem is where Lincoln decided to become a lawyer and then read for the law. Lincoln's self-education in New Salem figured prominently in campaign biographies.<sup>17</sup> David Gilmour Blythe's 1860 painting, *Abraham Lincoln, Rail Splitter*, shows Lincoln splitting rails with an open book in the foreground.<sup>18</sup> In subsequent artistic depictions of Lincoln in New Salem, he picks up the book. At New Salem, Avard Fairbanks's statue, *The Resolute Lincoln*, shows Lincoln striding forward with a law book grasped in his right arm while he drags an axe in his left hand.<sup>19</sup> The book points to his future vocation and the axe to the life he would leave behind.<sup>20</sup> *The Resolute Lincoln* also appeared on the Illinois quarter in the U.S. Mint's statehood quarter series.<sup>21</sup> Illustrations of Lincoln reading in New Salem are almost as prevalent as those of Lincoln reading in Indiana. The most famous is Norman Rockwell's *Lincoln the Railsplitter*, which shows Lincoln walking while reading a book held in one hand with an axe in the other.<sup>22</sup> In these images, Lincoln is reading thick books, obviously intended to represent law books.

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15. BENJAMIN P. THOMAS, LINCOLN'S NEW SALEM 68–69 (1954). On Lincoln and collective memory, see SCHWARTZ, *supra* note 4, at 8–12.

16. See THOMAS, *supra* note 15, at 57, 88–89.

17. See, e.g., RICHARD JOSIAH HINTON, THE LIFE AND PUBLIC SERVICES OF HON. ABRAHAM LINCOLN OF ILLINOIS, AND HON. HANNIBAL HAMLIN, OF MAINE (Boston, Thayer & Eldridge, 1860). Hinton wrote that Lincoln "directed his attention to the law, and borrowing a few books from a neighbor, which he took from the office in the evening and returned in the morning, he learned the rudiments of the profession in which he has since become so distinguished, by the light of a fireplace!" *Id.* at 18.

18. Barry Schwartz, *Picturing Lincoln*, in PICTURING HISTORY: AMERICAN PAINTING 1770–1930, at 150 (William Ayres ed., 1993).

19. See *infra* Figure 3.

20. See ABRAHAM LINCOLN SCULPTURE: CREATED BY AVARD T. FAIRBANKS 36–52 (Eugene F. Fairbanks comp., 2002).

21. See *infra* Figure 4.

22. See *infra* Figure 5.



Figure 3. Avard Fairbanks, *The Resolute Lincoln* (1954). Photograph courtesy of Gary L. Todd, Ph.D.



Figure 4. Statehood Commemorative Quarter: Illinois (2003). U.S. Mint image.





Figure 5. Norman Rockwell, *Lincoln the Railsplitter* (1965). Butler Institute of American Art ([www.butlermuseum.org](http://www.butlermuseum.org)).



Again the Lincoln of history is worthy of the legend, as Lincoln scholar Douglas L. Wilson has noted.<sup>23</sup> Wilson observes that the New Salem years “were a time of intensive reading and study for Lincoln.”<sup>24</sup> Interviews of New Salem residents attest to Lincoln’s devotion to reading while living in New Salem.<sup>25</sup> Robert B. Rutledge recalled seeing Lincoln

reading, walking the streets, occasionally become absorbed with his book, would stop & stand for a few moments, then walk on, or pass from one house in the town to an other, or from one crowd or squad of men to an other, apparently seeking amusement with his book under his arm, when the company or amusement became dry or irksome, he would open his book & commune with it for a time, then return it to its usual resting place, and entertain his audience.<sup>26</sup>

While in New Salem, Lincoln studied grammar and surveying, and “*Devoured* all the Law Books he could get hold of.”<sup>27</sup> Russell Godbey memorably described the first time he saw Lincoln reading a law book: “[T]he first time I Ever Saw him with a law book in his hands he was Sitting astraddle of Jake Bails wood pile in New Salem—Said to him—‘Abe—what are you Studying’ ‘Studying law’—replied Abe. ‘Great God Almighty—’Said Godbey.”<sup>28</sup>

But this association in American memory between Lincoln and law books curiously ends when he actually enters the legal profession. In popular culture, movies and children’s books about Lincoln focus on him as a trial lawyer, not as a “book lawyer.”<sup>29</sup> While scholars have

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23. WILSON, *supra* note 3, at 54.

24. DOUGLAS L. WILSON, *LINCOLN’S SWORD: THE PRESIDENCY AND THE POWER OF WORDS* 26 (2006).

25. WILSON, *supra* note 3, at 59–61, 66–67, 94–97.

26. Letter from Robert B. Rutledge to William H. Herndon (Dec. 4, 1866), in *HERNDON’S INFORMANTS*, *supra* note 10, at 499. *See also* Letter from Caleb Carman to William H. Herndon (Nov. 30, 1866), *id.* at 430 (Lincoln “Read Setting Lying down & walking in the streets he was always Reading if he had Time”).

27. Letter from William B. Greene to William H. Herndon (May 29, 1865), *id.* at 12.

28. Interview by William H. Herndon with Russell Godbey (1865–1866), *id.* at 450.

29. *See, e.g.*, COLVER, *supra* note 6, at 46; YOUNG MR. LINCOLN (Twentieth Century Fox 1939). In *Young Mr. Lincoln*, the importance of law books to Lincoln’s development is stressed in early scenes that depict him first acquiring Blackstone’s *Commentaries* and later reading it under the shade of a tree. “The film’s early glorification of written law,” as Norman Rosenberg notes, “disappears once Lincoln begins the actual practice of law.” Norman Rosenberg, *Young Mr. Lincoln: The Lawyer as Super-Hero*, 15 *LEGAL STUD. F.* 215, 220 (1991). While law books are prominently displayed throughout the courtroom that later

examined Lincoln's readings, they generally overlook what he read as a lawyer.<sup>30</sup> One recent study noted how "[c]ircuit lawyers lived on their wits, without the safety net of precedents and case law to back them in their reasoning."<sup>31</sup> Other students of Lincoln's practice have overstated the scarcity of law books in frontier Illinois. John J. Duff, for example, wrote that "Lincoln had no encyclopaedias of law, no digests to go by—only the maxims of the English common law as set forth in *Blackstone* and applied by a few adjudications in the older sister states."<sup>32</sup>

This neglect of lawyer Lincoln as a reader of law books is strange for several reasons. First, Lincoln's dependence on law books in his practice is easily demonstrated, even on the circuit. Ward Hill Lamon, who practiced law with Lincoln on the circuit, noted that Lincoln "reasoned almost entirely to the court and jury from analogous causes previously decided and reported in the books, and not from the elementary principles of the law, or the great underlying reasons for its existence."<sup>33</sup> Second, antebellum lawyers were a bookish sort, which was acknowledged in the portraits and photographs of lawyers of the era.<sup>34</sup> In the 1841 painting of a Vermont lawyer by Horace Bundy, bookshelves prominently contain treatises by Blackstone, Chitty, and

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becomes the focal point of the film, none of them is relevant to establishing truth and avoiding injustice during trial. Lincoln absentmindedly thumbs through one law book while the prosecuting attorney gives his opening statement; however, as Rosenberg points out, he does not use the book as "textual authority to make a 'legal' argument." *Id.* at 222. The book that actually becomes critical during the course of the trial is the *Farmer's Almanac*, which Lincoln uses to secure his clients' acquittals. *See id.* at 223.

30. *See, e.g.*, FRED KAPLAN, *LINCOLN: THE BIOGRAPHY OF A WRITER* 3–29, 61–62 (2008). *See generally* Robert Bray, *What Abraham Lincoln Read—An Evaluative and Annotated List*, J. ABRAHAM LINCOLN ASS'N, Summer 2007, at 28.

31. BRIAN DIRCK, *LINCOLN THE LAWYER* 45 (2007).

32. JOHN J. DUFF, *A. LINCOLN: PRAIRIE LAWYER* 243 (1960).

33. WARD H. LAMON, *THE LIFE OF ABRAHAM LINCOLN: FROM HIS BIRTH TO HIS INAUGURATION AS PRESIDENT* 316 (Boston, James R. Osgood & Co. 1872). Lamon is not generally noted for his reliability, but this statement about legal practice seems credible simply because lawyers on the circuit prepared for arguments and, in any event, did not forget what they knew simply because they were on circuit. On Lamon's credibility, see Allen C. Guelzo, *The Not-So-Grand Review: Abraham Lincoln in the Journal of American History*, 96 J. AM. HIST. 400, 413 (2009) (Lamon "was also among the least dependable memoirists from Lincoln's inner circle in Washington to write in the postwar years"); *see also* RECOLLECTED WORDS OF ABRAHAM LINCOLN 281 (Don E. Fehrenbacher & Virginia Fehrenbacher comps. & eds., 1996).

34. *See, e.g.*, *infra* Figure 6; *see* M.H. Hoefflich, *Lawyers, Books & Papers*, 5 GREEN BAG 2d 163, 168–70 (2002); *see also* Ann Fidler, "Till You Understand Them in Their Principal Features": *Observations on Form and Function in Nineteenth-Century American Law Books*, 92 PAPERS OF THE BIBLIOGRAPHICAL SOC'Y OF AM. 427, 431 (1998) (examining the status of law books as cultural icon).

Kent.<sup>35</sup> In the earliest known image of Lincoln, a daguerreotype taken in 1848, his left hand is touching a book on a table.<sup>36</sup> In the famous photograph taken by Matthew Brady in 1860, Lincoln is standing, with his left hand resting on a short stack of books.<sup>37</sup>

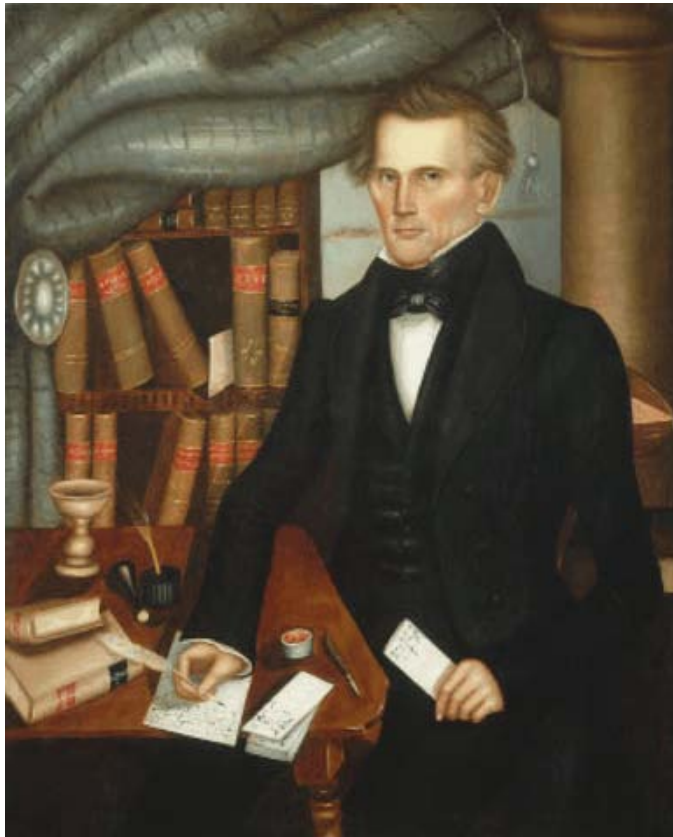


Figure 6. Horace Bundy, *Vermont Lawyer* (1841). Courtesy of the Board of Trustees, National Gallery of Art, Washington, D.C. Gift of Edgar William and Bernice Chrysler Garbisch.

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35. See *infra* Figure 6; see also Fidler, *supra* note 34, at 438 (analyzing Bundy's painting).

36. See *infra* Figure 7.

37. See *infra* Figure 8; Harold Holzer, *The Campaign of 1860: Cooper Union, Matthew Brady, and the Campaign of Words and Images*, in LINCOLN REVISITED: NEW INSIGHTS FROM THE LINCOLN FORUM 57, 60 (John Y. Simon et al. eds., 2007); see also HAROLD HOLZER, LINCOLN AT COOPER UNION: THE SPEECH THAT MADE ABRAHAM LINCOLN PRESIDENT 88–100 (2004) (providing an historical narrative of Brady's famous photograph).

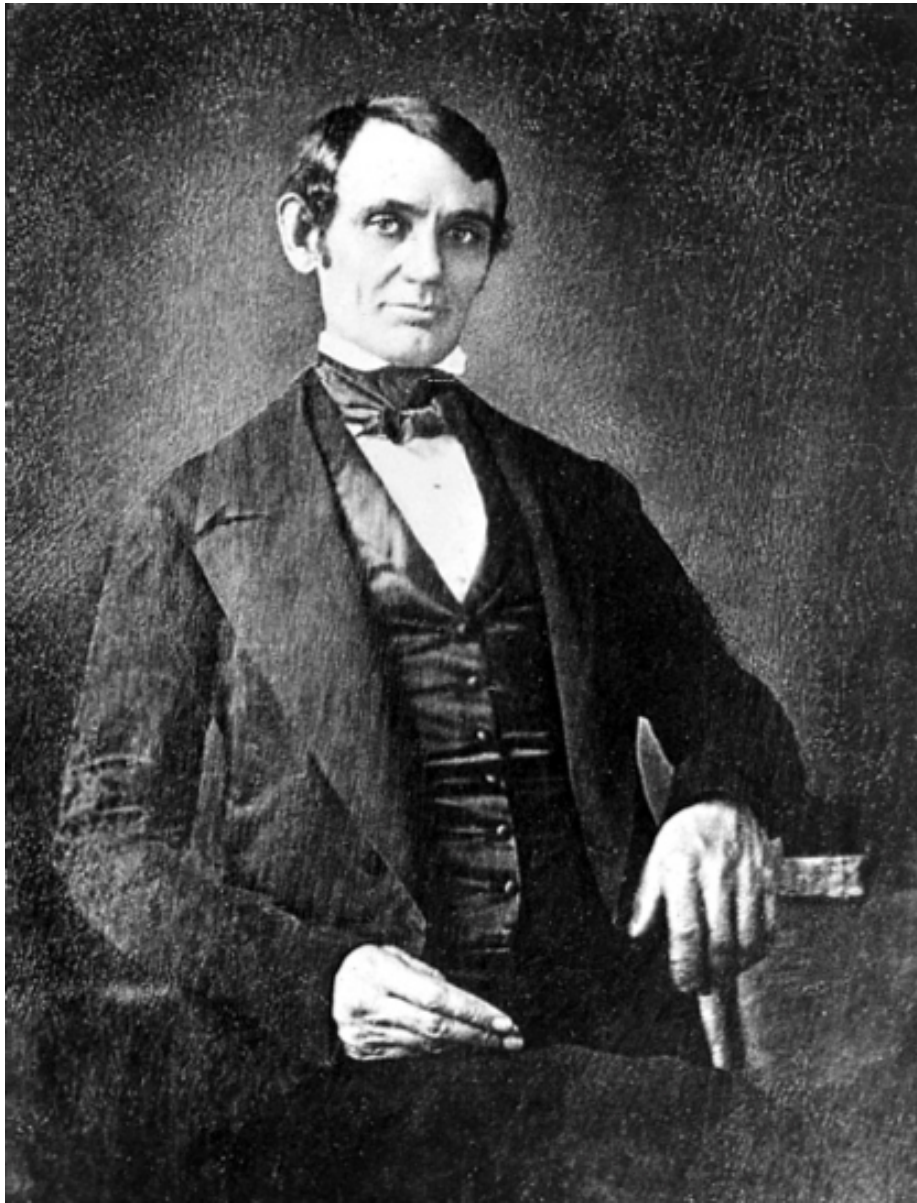


Figure 7. N.H. Shepard, Daguerreotype of Abraham Lincoln (Springfield, 1846).

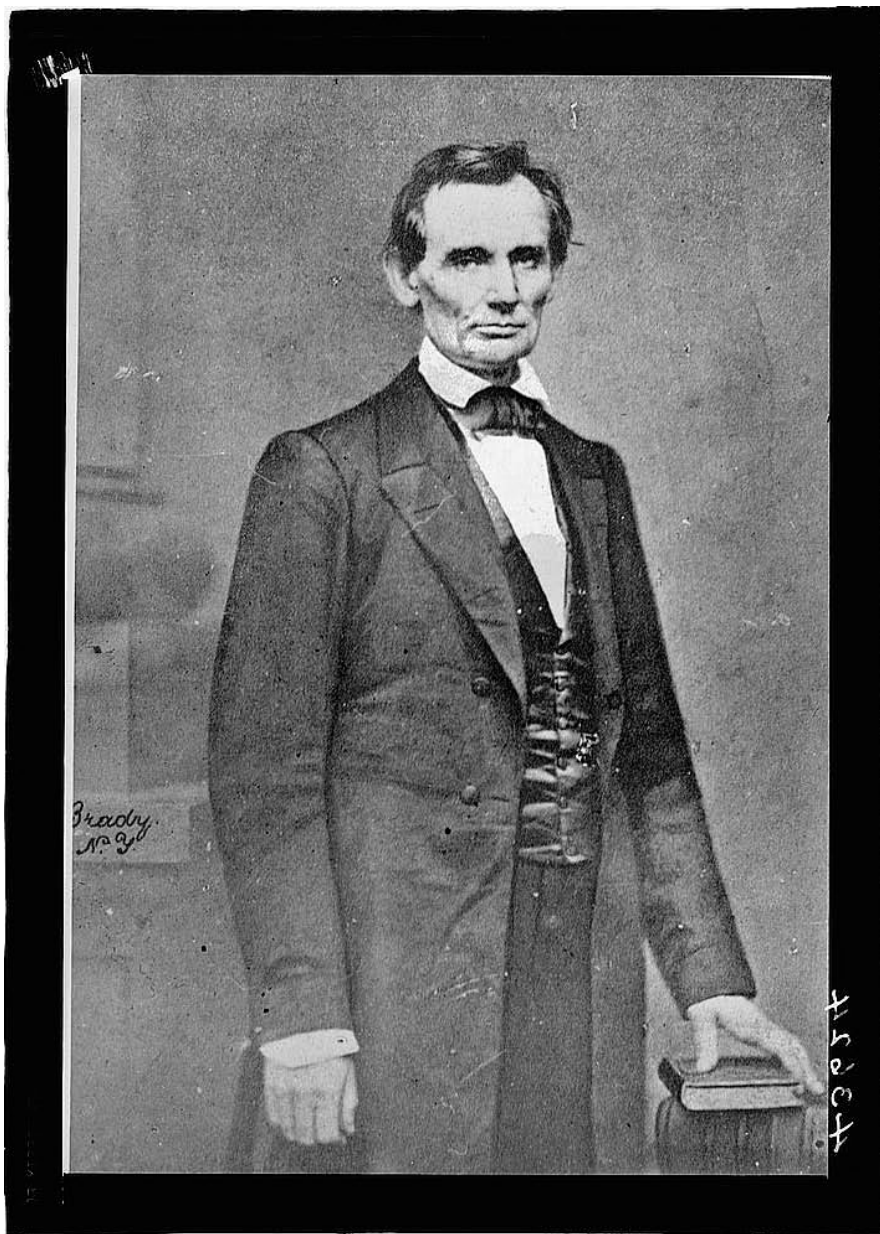


Figure 8. Matthew Brady, Photograph of Abraham Lincoln (New York City, Feb. 27, 1860). Library of Congress, Prints & Photographs Division, LC-DIG-npcc-28318.

## II. LINCOLN READS FOR THE LAW

New Salem residents remembered Lincoln reading law books in 1831 or 1832;<sup>38</sup> however, Lincoln wrote that he only began studying law “in . . . earnest” after the election of 1834.<sup>39</sup> Lincoln biographer Douglas L. Wilson considers the earlier reading “exploratory,” as Lincoln “had been entertaining the hope of becoming a lawyer for some time, perhaps for several years, before finally committing himself to the effort.”<sup>40</sup> In Indiana, Lincoln had attended trials and read the Revised Statutes of Indiana, according to his cousin, Dennis Hanks.<sup>41</sup> Lincoln had been unwilling to commit to the study of law until “a private conversation” during the 1834 canvass with a fellow Whig legislator, John T. Stuart, who “encouraged” Lincoln to study law.<sup>42</sup> This encouragement was important enough for Lincoln to mention Stuart’s role in an 1860 autobiographical note.<sup>43</sup> Lincoln wrote of himself that after the election

he borrowed books of Stuart, took them home with him, and went at it in good earnest. He studied with nobody. He still mixed in the surveying to pay board and clothing bills. When the Legislature met, the law books were dropped, but were taken up again at the end of the session.<sup>44</sup>

When Lincoln once served as a bar examiner, the candidate later recalled that Lincoln’s first question was, “What books have you read?”<sup>45</sup> Lincoln asked the question because antebellum lawyers read for the law.<sup>46</sup> But most aspiring lawyers read in lawyers’ offices as

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38. See, e.g., Letter from James Short to William H. Herndon (July 7, 1865), in *HERNDON’S INFORMANTS*, *supra* note 10, at 74.

39. Abraham Lincoln, *Autobiography Written for John L. Scripps* (June 1860), in 4 *COLLECTED WORKS OF ABRAHAM LINCOLN* 60, 65 (Roy P. Basler et al. eds., 1953) [hereinafter *COLLECTED WORKS*].

40. WILSON, *supra* note 3, at 104.

41. Interview by William H. Herndon with Dennis Hanks (Sept. 8, 1865), in *HERNDON’S INFORMANTS*, *supra* note 10, at 104. As a boy in Indiana, Lincoln may have “formed a fixed determination to study the law and make that his profession.” Interview by William H. Herndon with S.T. Johnson (Sept. 14, 1865), *id.* at 115.

42. Lincoln, *supra* note 39, at 65.

43. *Id.*

44. *Id.*

45. Jesse W. Weik, *A Law Student’s Recollection of Abraham Lincoln*, 97 *OUTLOOK* 311, 312–13 (1911). When the student told Lincoln what he had read, Lincoln said, “Well, that is more than I had read before I was admitted to practice.” *Id.*

46. Fidler, *supra* note 34, at 436.

apprentices. When Lincoln “borrowed books” and “studied with nobody,” he took a different path.

Few would-be lawyers attended law school in the 1830s.<sup>47</sup> Only six law schools existed then in the United States. When Lincoln began his law studies in 1834, a seventh, located in Cincinnati, was operating. The combined enrollment of all seven schools in 1840 was around 350.<sup>48</sup> In 1850, the total law school enrollment was 400, in a nation with almost 24,000 lawyers.<sup>49</sup> Lincoln would not have been able to attend law school in Illinois: there were no law schools in the state in the 1830s.

The dominant form of antebellum legal education was law-office study.<sup>50</sup> Most lawyers came to the bar through apprenticeships. The contours of apprenticeship had been shaped in the colonial period.<sup>51</sup> According to legal historian Christine Ann Fidler, apprenticeship had three major components. First, a lawyer who was a member in good standing of the bar served as a “combination teacher/mentor/supervisor.”<sup>52</sup> Second, the apprentice had access to law books. Third, the course of study emphasized “specialized reading and the drafting of common legal instruments.”<sup>53</sup> Apprentices often paid for the privilege of copying documents.<sup>54</sup>

Lincoln did not miss much by not serving a formal apprenticeship.<sup>55</sup> Josiah Quincy in 1832 summarized law-office study thus: “[r]egular instruction there was none; examination as to progress in acquaintance with the law,—none; occasional lectures,—none; oversight as to general

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47. Andrew M. Siegel, Note, “*To Learn and Make Respectable Hereafter*”: *The Litchfield Law School in Cultural Context*, 73 N.Y.U. L. REV. 1978, 1978–79 (1998).

48. ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA 152 (1921).

49. *Id.* at 442.

50. A. Christopher Bryant, *Reading the Law in the Office of Calvin Fletcher: The Apprenticeship System and the Practice of Law in Frontier Indiana*, 1 NEV. L.J. 19, 19 (2001).

51. Commonplacing was the one aspect of colonial apprenticeship that was largely absent from antebellum legal education. On colonial commonplacing, see Daniel R. Coquillette, *The Legal Education of a Patriot: Josiah Quincy Jr.’s Law Commonplace*, 39 ARIZ. ST. L.J. 317, 325–27 (2007); see also *infra* notes 175–77 and accompanying text.

52. Christine Ann Fidler, “Young Limbs of the Law”: Law Students, Legal Education, and the Occupational Culture of Attorneys, 1820–1860, at 5 (unpublished Ph.D. dissertation, University of California-Berkeley 1996).

53. *Id.*

54. Bryant, *supra* note 50, at 22–23.

55. Fred Kaplan implicitly exaggerates the deficiencies of Lincoln’s law studies when he writes that Lincoln “was not to have the equivalent of an apprenticeship or clerkship.” KAPLAN, *supra* note 30, at 61.



attention and conduct,—none.”<sup>56</sup> New York lawyer Thomas W. Clerke complained in 1840 that students in law offices did not receive any legal instruction: “The practitioners, to whose offices they are attached, do not pretend, generally speaking, to afford them this instruction. Receiving no compensation, and immersed in the cares and labors of practice, they have neither time nor inclination for the performance of this duty.”<sup>57</sup> An Indiana resident in 1819 described the typical preparation of that state’s lawyers: “Blackstone’s *Commentaries* are considered the great medium of instruction. The young man who has carefully read these, and who has for a short time written for a practicing attorney, is admitted to the bar.”<sup>58</sup>

Lincoln gained all the advantages of apprenticeships while missing the disadvantages. Stuart and his partner Henry Dummer provided access to law books. Dummer later recalled that “Lincoln used to come to our office in Spfgd and borrow books.”<sup>59</sup> According to Dummer, Lincoln “did not say much—what he did say he said it strongly—Sharply.”<sup>60</sup> When Lincoln claimed he “studied with nobody,” he may have overstated things; Stuart probably served as Lincoln’s “combination teacher/mentor/supervisor.”<sup>61</sup> Not only did Stuart and Dummer loan Lincoln books, but they would have directed Lincoln’s readings. When Lincoln advised aspiring lawyer Isham Reavis in 1855

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56. Josiah Quincy, Address Delivered at the Dedication of the Dane Law College in Harvard University (Oct. 23, 1832), in *THE LEGAL MIND IN AMERICA: FROM INDEPENDENCE TO THE CIVIL WAR* 203, 210–11 (Perry Miller ed., 1962).

57. Thomas W. Clerke, *An Introductory Discourse, On the Study of the Law, Delivered Before the New York Law School, in the City Hall, in the City of New York* (Nov. 23, 1840), in *RUDIMENTS OF AMERICAN LAW AND PRACTICE*, at xi, xi (New York, Gould, Banks & Co. 1842).

58. James Flint, *Letters from America*, in 9 *EARLY WESTERN TRAVELS, 1748–1846*, at 195 (R. G. Thwaites ed., 1904), quoted in Michael H. Harris, *The Frontier Lawyer’s Library; Southern Indiana, 1800–1850, as a Test Case*, 16 *AM. J. LEG. HIST.* 239, 241 (1972).

59. Interview by William H. Herndon with H.E. Dummer (1865–1866), in *HERNDON’S INFORMANTS*, *supra* note 10, at 442.

60. *Id.* Dummer’s remarks appeared in a footnote in *HERNDON’S LINCOLN*, although they had been rewritten by Jesse Weik. The expanded version stated, “Lincoln used to come to our office—Stuart’s and mine—in Springfield from New Salem and borrow law-books. . . . He seemed to have but little to say; seemed to feel timid, with a tinge of sadness visible in the countenance, but when he did talk all this disappeared for the time and he demonstrated that he was both strong and acute. He surprised us more and more at every visit.” WILLIAM H. HERNDON & JESSE W. WEIK, *HERNDON’S LINCOLN*, at xxx (Douglas L. Wilson & Rodney O. Davis eds., Knox College Lincoln Studies Center 2006) (1889). On Lincoln and Dummer, see Paul M. Angle, *The Record of a Friendship: A Series of Letters from Lincoln to Henry E. Dummer*, 31 *J. ILL. ST. HIST. SOC’Y* 125 (1938).

61. Compare text accompanying notes 42–43 with Fidler, *supra* note 52 and accompanying text.

that Henry Dummer “will cheerfully tell you what books to read, and also loan you the books,” he was undoubtedly speaking from experience.<sup>62</sup> But Stuart and Dummer may have done more than direct Lincoln’s reading. William Greene, a New Salem resident, believed that Stuart provided Lincoln “many explanations & elucidations” of law.<sup>63</sup> While Lincoln missed little by not copying documents in Stuart’s office, his association with Stuart gave him a sponsor, a mentor, and access to law books.

Lincoln, like other antebellum lawyers, was able to read for the law because of the revolution in law books in the early nineteenth century.<sup>64</sup> Legal historian Willard Hurst noted that “the appearance of influential treatises gave great impetus to apprenticeship and self-imposed reading, at the expense of any expansion of training in formal law schools.”<sup>65</sup> An Ohio lawyer in 1856 observed that “[t]he multitude of treatises and commentaries upon every branch of the law, divided and subdivided as they are, have perhaps furnished the means for a more popular mode of study, and a speedier accomplishment of the probation required of the student.”<sup>66</sup>

We have a pretty good idea of some of the law books that Lincoln read in New Salem. Lincoln undoubtedly read William Blackstone’s *Commentaries on English Law*,<sup>67</sup> and he probably also read Joseph Story’s *Equity Jurisprudence*,<sup>68</sup> Chitty’s *Pleadings*,<sup>69</sup> and Kent’s *Commentaries on American Law*.<sup>70</sup> These were the canonical works for

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62. Letter from Abraham Lincoln to Isham Reavis (Nov. 5, 1855), in 2 COLLECTED WORKS, *supra* note 39, at 327, 327.

63. Letter from William G. Greene to William H. Herndon (June 7, 1865), in HERNDON’S INFORMANTS, *supra* note 10, at 26, 26.

64. See Fidler, *supra* note 34, at 437–38. See generally Daniel J. Hulsebosch, *An Empire of Law: Chancellor Kent and the Revolution in Books in the Early Republic*, 60 ALA. L. REV. 377 (2009) (discussing the impact of law books on the legal culture in the years following the American Revolution).

65. JAMES WILLARD HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 256 (1950).

66. BELLAMY STORER, *THE LEGAL PROFESSION: AN ADDRESS DELIVERED BEFORE THE LAW DEPARTMENT OF THE UNIVERSITY OF LOUISVILLE, KENTUCKY, FEBRUARY 20, 1856*, at 10 (Cincinnati, C. Clark & Co. 1856).

67. WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* (University of Chicago Press 1979) (1765–69) (4 vols.).

68. JOSEPH STORY, *COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA* (Boston, Hilliard, Gray & Co. 1836) (2 vols.).

69. JOSEPH CHITTY, *A TREATISE ON PLEADING AND PARTIES TO ACTIONS* (Henry Greening et al. eds., Springfield, Mass., G. & C. Merriam 1844) (3 vols.).

70. JAMES KENT, *COMMENTARIES ON AMERICAN LAW* (New York, O. Halstead, 1826–1830) (4 vols.).

antebellum lawyers.<sup>71</sup> Gibson W. Harris, a law clerk with Lincoln & Herndon in 1845–1847, later pointedly remembered that the “office bookcase” held “a set of Blackstone, Kent’s Commentaries, Chitty’s Pleadings and a very moderate number of other books.”<sup>72</sup> Lincoln later recommended five different legal treatises to law students in the 1850s. In 1858, he advised John H. Widmer to read “Blackstone’s Commentaries, Chitty’s Pleadings—Greenleaf’s Evidence, Story’s Equity, and Story’s Equity Pleadings.”<sup>73</sup> In 1860, he advised John M. Brockman “to get the books, and read, and study them carefully. Begin with Blackstone’s Commentaries, and after reading it carefully through, say twice, take up Chitty’s Pleadings, Greenleaf’s Evidence & Story’s Equity &c. in succession.”<sup>74</sup> Three of Lincoln’s recommended treatises were available when he studied the law.<sup>75</sup> These three were Blackstone, Story’s *Equity Jurisprudence*,<sup>76</sup> and Chitty’s *Pleadings*.<sup>77</sup> Story’s *Equity Pleadings*<sup>78</sup> and Greenleaf’s *Evidence*<sup>79</sup> were published too late to assist Lincoln in his studies.

Lincoln may well also have read Kent’s *Commentaries on American Law* while in New Salem. A New Salem resident recalled Lincoln’s reading Kent, and a law clerk remembered Lincoln’s referring to his “studies of Blackstone and Kent.”<sup>80</sup> As a lawyer, Lincoln owned a copy

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71. Horace Bundy’s *Vermont Lawyer* provides visual confirmation: volumes of Blackstone, Story, Chitty, and Kent all are displayed on the lawyer’s bookshelves. See *supra* Figure 6.

72. Gibson William Harris, *My Recollections of Abraham Lincoln*, WOMAN’S HOME COMPANION, Dec. 1903, at 14, 15. Hat tip to Daniel W. Stowell, director of the Papers of Abraham Lincoln, for providing copies of Harris’s articles.

73. Letter from Abraham Lincoln to James T. Thornton (Dec. 2, 1858), in 3 COLLECTED WORKS, *supra* note 39, at 344, 344.

74. Letter from Abraham Lincoln to John M. Brockman (Sept. 25, 1860), in 4 COLLECTED WORKS, *supra* note 39, at 121, 121.

75. STEPHEN B. OATES, WITH MALICE TOWARD NONE: THE LIFE OF ABRAHAM LINCOLN 28 (1977). Several authors have failed to appreciate that various of these treatises were unavailable when Lincoln read for the bar. See, e.g., MARK E. NEELEY, JR., THE ABRAHAM LINCOLN ENCYCLOPEDIA 33 (1982); PHILIP B. KUNHARDT, JR., ET AL., LINCOLN: AN ILLUSTRATED BIOGRAPHY 48 (1992).

76. STORY, *supra* note 68.

77. The first American edition was JOSEPH CHITTY, A TREATISE ON PLEADING (New York, Robert M’Dermut 1809). Six more American editions had appeared by 1837. Jenni Parrish, *Law Books and Legal Publishing in America, 1760–1840*, 72 LAW LIBR. J. 355, 386 (1979).

78. JOSEPH STORY, COMMENTARIES ON EQUITY PLEADINGS (Boston, Charles C. Little & James Brown 1838).

79. SIMON GREENLEAF, A TREATISE ON THE LAW OF EVIDENCE (Boston, Charles C. Little & James Brown 1842) (3 vols.).

80. *Memories of Lincoln*, BROOKLYN DAILY EAGLE, Oct. 16, 1887, at 7, quoted in

of Kent's *Commentaries* and cited it in appellate cases.<sup>81</sup> Kent had attempted to Americanize the common law in his *Commentaries*, which soon became a standard reference work for American lawyers.<sup>82</sup> Lincoln quoted Kent on the constitutionality of internal improvements during a speech on the floor of Congress. After quoting Kent to support his argument, Lincoln then spent some time trying to bolster Kent's authority:

This is but the opinion of a man, but who was that man? He was one of the ablest and most learned lawyers of his age, or of any age. It is no disparagement to Mr. Polk, nor, indeed to any one who devotes much time to politics, to be placed far behind Chancellor Kent as a lawyer. His attitude was most favorable to correct conclusions. He wrote coolly, and in retirement. He was struggling to rear a durable monument of fame; and he well knew that *truth* and thoroughly sound reasoning were the only sure foundations. Can the party opinion of a party president, on a law question, as this purely is, be at all compared, or set [in] opposition to that of such a man, in such an attitude, as Chancellor Kent?<sup>83</sup>

Lincoln's complimentary words about Kent's writing "in retirement" reflect some particular knowledge about the "American Blackstone."

If Lincoln limited his reading to Blackstone, Story, Chitty, and Kent, then his legal studies were relatively superficial when compared with formal legal education. Lincoln recognized this. After turning down Isham Reavis's request to study law with him, Lincoln suggested that Reavis contact Henry Dummer (who was a graduate of Bowdoin and Harvard Law School), "a very clever man and an excellent lawyer (much better than I, in law-learning)."<sup>84</sup>

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HERNDON & WEIK, *supra* note 60, at 197–98. A New Salem neighbor, William G. Greene, recalled Lincoln's reading "Blackstone—Kent and other law books" borrowed from Stuart. Letter from William G. Greene to William H. Herndon (May 30, 1865), in HERNDON'S INFORMANTS, *supra* note 10, at 18.

81. Louis A. Warren, *Lincoln's Law Library*, LINCOLN LORE (Lincoln National Life Found., Fort Wayne, Ind.), Feb. 17, 1941, at 1; STEINER, *supra* note \*, at 44.

82. See Hulsebosch, *supra* note 64, at 386; John Langbein, *Chancellor Kent and the History of Legal Literature*, 93 COLUM. L. REV. 547, 547–71 (1993).

83. Abraham Lincoln, *Speech in United States House of Representatives on Internal Improvements*, ILL. J., July 20, 1848, reprinted in 1 COLLECTED WORKS, *supra* note 39, at 480, 486.

84. Letter from Abraham Lincoln to Isham Reavis, *supra* note 62.

In letters written in the 1850s, Lincoln advised prospective lawyers to prepare for the bar as Lincoln himself had done twenty years before. The advice was pretty much the same: “get books, sit down anywhere, and go to reading for yourself.”<sup>85</sup> Lincoln never suggested attending law school although law schools were located nearby in Cincinnati and Lexington.<sup>86</sup> Lincoln never suggested first receiving some college education. Lincoln, in fact, never suggested that the would-be lawyer apprentice or study in a lawyer’s office.

Lincoln was clear that he was advising the young man to do exactly what he himself had done in New Salem. He advised James T. Thornton that “[w]hen a man has reached the age that Mr. Widner has, and has already been doing for himself, my judgment is, that he reads the books for himself without an instructor. That is precisely the way I came to the law.”<sup>87</sup> To Isham Reavis, he said that “[i]t is but a small matter whether you read *with* any body or not. I did not read with any one. . . . It is of no consequence to be in a large town while you are reading. I read at New-Salem, which never had three hundred people living in it.”<sup>88</sup>

Lincoln emphasized that one prepared for the bar by reading law books. Lincoln advised Isham Reavis to “[g]et the books, and read and study them till, you understand them in their principal features; and that is the main thing.”<sup>89</sup> Lincoln twice suggested a course of study. He advised John Widmer to “read Blackstone’s Commentaries, Chitty’s Pleading’s—Greenleaf’s Evidence, Story’s Equity, and Story’s Equity Pleading’s, get a license, and go to the practice, and still keep reading.”<sup>90</sup> He advised John H. Brockman to “begin with Blackstone’s Commentaries, and after reading it carefully through, say twice, take up Chitty’s Pleading, Greenleaf’s Evidence, & Story’s Equity &c. in succession.”<sup>91</sup>

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85. Letter from Abraham Lincoln to William H. Grigsby (Aug. 3, 1858), in 2 COLLECTED WORKS, *supra* note 39, at 535, 535.

86. Timothy Walker’s Law Department of Cincinnati College advertised in Springfield. See SANGAMO J., Sept. 24, 1841, at 3.

87. Letter from Abraham Lincoln to James T. Thornton, *supra* note 73. Lincoln variously spells the name “Widmer” and “Widner” in the letter to Thornton. Cf. text accompanying note 73.

88. Letter from Abraham Lincoln to Isham Reavis, *supra* note 62.

89. *Id.*

90. Letter from Abraham Lincoln to James T. Thornton, *supra* note 73.

91. Letter from Abraham Lincoln to John M. Brockman, *supra* note 74.

Lincoln emphasized commitment and hard work: “Work, work, work is the main thing.”<sup>92</sup> He advised Isham Reavis, “If you are resolutely determined to make a lawyer of yourself, the thing is more than half done already.”<sup>93</sup> He told Reavis to “[a]lways bear in mind that your own resolution to succeed, is more important than any other one thing.”<sup>94</sup>

### III. LINCOLN AND BLACKSTONE

Blackstone’s *Commentaries* provided the typical starting point for would-be lawyers in antebellum America.<sup>95</sup> Lincoln advised one would-be lawyer to “[b]egin with Blackstone’s *Commentaries*.”<sup>96</sup> As Ann Fidler has noted, “Blackstone was the urtext of antebellum law students, and the reading of the *Commentaries* was the centerpiece of the system of private rituals practiced by them.”<sup>97</sup>

Blackstone’s *Commentaries* were the first law books purchased by Lincoln.<sup>98</sup> William Dean Howells in his 1860 campaign biography described the “peculiar manner” in which Lincoln “pursued his law studies”:

He bought an old copy of Blackstone, one day, at auction, in Springfield, and on his return to New Salem, attacked the work with characteristic energy.

His favorite place of study was a wooded knoll near New Salem, where he threw himself under a wide-spreading oak, and expansively made a reading desk of the hillside. Here he would pore over Blackstone day after day shifting his position as the sun rose and sank, so as to keep in the shade, and utterly unconscious of everything but the principles of common law.<sup>99</sup>

Lincoln did not change this account in his corrected copy. New Salem resident Henry McHenry had told campaign biographer James Quay Howard in 1860 that Lincoln had been so absorbed in Blackstone

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92. *Id.*

93. Letter from Abraham Lincoln to Isham Reavis, *supra* note 62.

94. *Id.*

95. Fidler, *supra* note 52, at 208–09.

96. Letter from Abraham Lincoln to John M. Brockman, *supra* note 74.

97. Fidler, *supra* note 52, at 208.

98. See Louis A. Warren, *The Lincoln Statue at New Salem*, LINCOLN LORE (Lincoln National Life Found., Fort Wayne, Ind.), June 28, 1954, at 1.

99. WILLIAM DEAN HOWELLS, *LIFE OF ABRAHAM LINCOLN* 30–31 (Ind. Univ. Press 1960) (1860).

that “people said he was crazy.”<sup>100</sup> New Salem resident Isaac Cogdal recalled that Lincoln in 1832 already “was then reading Blackstone—read hard—day & night—terribly hard.”<sup>101</sup>

Lincoln, as Robert A. Ferguson notes, was our “last Blackstone lawyer to lead the nation.”<sup>102</sup> Blackstone’s *Commentaries* had a profound impact on Lincoln. Lincoln has been quoted as saying that he “‘never read anything which so profoundly interested and thrilled me’”<sup>103</sup> and “[n]ever in my whole life was my mind so thoroughly absorbed.”<sup>104</sup> Lincoln at least twice recommended Blackstone’s *Commentaries* to would-be lawyers.<sup>105</sup> Blackstone was the only work that he recommended that he did not regularly cite in his law practice, although Henry C. Whitney recalls Lincoln’s riding the circuit with Blackstone’s *Commentaries* in his saddlebags along with volumes of Illinois statutes and session laws.<sup>106</sup> While Lincoln’s heavy intellectual debt to Blackstone was typical of antebellum lawyers, he apparently did

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100. James Quay Howard’s *Notes on Lincoln*, 4 ABRAHAM LINCOLN Q. 386, 390 (1947).

101. Interview by William H. Herndon with Isaac Cogdal (1865–66), in HERNDON’S INFORMANTS, *supra* note 10, at 441, 441.

102. ROBERT A. FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE 305 (1984).

103. James M. Ogden, *Lincoln’s Early Impressions of the Law in Indiana*, 7 NOTRE DAME LAW. 325, 328 (1932). Fred Kaplan has suggested that Lincoln’s law studies were “the professional equivalent of splitting fence rails. It had to be done, but there was no happiness in doing it.” KAPLAN, *supra* note 30, at 61–62. Kaplan overlooks not only the attributed remark of Lincoln in the text but also the reminiscences by his New Salem neighbors of his complete absorption in his reading of legal treatises.

104. Alban Jasper Conant, *My Acquaintance with Abraham Lincoln*, in LIBER SCRIPTORUM 168, 172 (New York, Authors Club 1893). Conant also described how Lincoln found his copy of Blackstone’s *Commentaries* in a barrel, a story that David C. Mearns, among others, finds “ridiculous.” David C. Mearns, *Mr. Lincoln and the Books He Read*, in BESTOR ET AL., *supra* note 1, at 61. The “Blackstone in a barrel” story found its way to Carl Sandburg’s biography. Sandburg wrote that “[b]y accident, by a streak of luck, he was owner of the one famous book that young men studying law had to read first of all; it had sneaked into his hands without his expecting it . . . . And now the book, Blackstone’s *Commentaries*, had jumped into his hands out of an empty barrel, as if to say, ‘Take me and read me; you were made for a lawyer.’” 1 CARL SANDBURG, ABRAHAM LINCOLN: THE PRAIRIE YEARS 163–64 (1926). The film *Young Mr. Lincoln* follows Sandburg’s account. Lincoln the storekeeper barterers with a homesteading family, trading cloth for a barrel that contains Blackstone’s *Commentaries*. When Abigail Clay, the matriarch of the family, asks Lincoln if he will be able to read the book, he responds, “I expect I could make head or tails out of it, if I set my mind to it.” YOUNG MR. LINCOLN, *supra* note 29.

105. See *supra* notes 90–91 and accompanying text.

106. HENRY CLAY WHITNEY, LIFE ON THE CIRCUIT WITH LINCOLN 40 (Canton Printers, Ltd. 1940) (1892). Lincoln cited Blackstone’s *Commentaries* only three recorded times in appellate cases: *Watkins v. White*, 4 Ill. (3 Scam.) 549, 549 (1842); *Cook v. Hall*, 6 Ill. (1 Gilm.) 575, 575 (1844); *Whitecraft v. Vanderver*, 12 Ill. 235, 237 (1850).



not share the concerns of those lawyers sensitive of the differences between American and British principles of governance.

Lincoln's unqualified admiration for Blackstone is related to how he must have reacted to first reading the *Commentaries*. The *Commentaries* had one quality with particular significance for Lincoln: Blackstone presented an orderly system in a comprehensible manner. This quality stemmed from Blackstone's intended audience. Blackstone's *Commentaries*, as Frederick Ritso pointed out in 1815, "were not designed for students at law, but for students at the University; they were not addressed to professional but to unprofessional readers."<sup>107</sup>

Because Blackstone was addressing lay readers, he tried to give an "overall view from the outside."<sup>108</sup> Blackstone rejected the haphazard arrangement previously given by the writ system and organized his materials around "the relationships of life."<sup>109</sup> According to S.F.C. Milsom, Blackstone's achievement was that, trying to give lay readers "a view from above the procedural technicalities, he had given lawyers a new vision of the law."<sup>110</sup> Unlike earlier English treatise writers, Blackstone instead presented a "coherent substantive system."<sup>111</sup>

Josiah Quincy, in an address at Harvard in 1832, declared that Blackstone represented the "first successful attempt to reduce the English law into an orderly system."<sup>112</sup> The *Commentaries* "formed a new era in the study of the law."<sup>113</sup> After Blackstone, "the law assumed the aspect of a well-defined science, which had its limits, its proportions, its divisions, its principles, its objects, all arranged in an orderly method."<sup>114</sup> Quincy believed that Blackstone had an enormous impact on law:

If we were to say that all the improvements, which had been introduced into the study and science of the law since the middle of the last century, were the consequence of the publication of the single work of

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107. J.G. MARVIN, LEGAL BIBLIOGRAPHY 124 (Phila., T. & J.W. Johnson 1847).

108. S.F.C. Milsom, *The Nature of Blackstone's Achievement*, 1 OXFORD J. LEG. STUD. 1, 2 (1981).

109. *Id.* at 3.

110. *Id.* at 10.

111. *Id.* at 10–11.

112. Quincy, *supra* note 56, at 205.

113. *Id.* at 206.

114. *Id.*

Blackstone, we should assert, perhaps, more than we could prove, through possibly not more than is true.<sup>115</sup>

Indeed, Quincy concluded, “By the labors of Blackstone, the rough scene was changed.”<sup>116</sup>

Joseph Story, like Quincy, believed that “the publication of Blackstone’s *Commentaries* (in 1765) constituted a new epoch in the annals of the common law.”<sup>117</sup> Story asserted that “the most incontestible proof of the excellence of the work is to be found in the striking effects which its publication produced in every department of the common law.”<sup>118</sup> Story’s student, Timothy Walker, wrote in his *Introduction to American Law* that with the publication of Blackstone’s *Commentaries* “the scene all at once changed; and from a repulsive mass of disjointed fragments, the law suddenly became a connected and methodical science.”<sup>119</sup> Walker concluded: “This transformation was effected by the comprehensive knowledge, luminous method, and beautiful style of Sir William Blackstone. There is probably no branch of knowledge, towards the perfecting of which, a single mind has accomplished more.”<sup>120</sup>

While Lincoln’s admiration for Blackstone apparently was without reservation, other lawyers were painfully aware of the problem that Blackstone presented republican America. While Blackstone was omnipresent in antebellum legal literature, his ideas often came under “vigorous assault.”<sup>121</sup> American independence prompted careful consideration of the concepts presented in the *Commentaries*. The newness of the American nation posed difficult challenges for its courts and legislatures.

In 1793, Nathaniel Chipman in *Sketches of the Principles of Government* warned that the governments of “the several American states” were “of the democratic republican kind” but that Blackstone was a “British subject, highly in favor with the government”: “He was

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115. *Id.* at 208.

116. *Id.*

117. Book Review of DAVID HOFFMAN, A COURSE OF LEGAL STUDY, in 6 N. AM. REV. 45, 52 (Nov. 1817).

118. *Id.* at 53.

119. TIMOTHY WALKER, AN INTRODUCTION TO AMERICAN LAW 12 (Da Capo Press 1972) (1837).

120. *Id.*

121. WILLIAM J. NOVAK, THE PEOPLE’S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA 32 (1996).

enamored with its principles.”<sup>122</sup> Blackstone was a writer “who has, in a masterly manner, delineated the laws and jurisprudence of a foreign nation, under a government very different from our own.”<sup>123</sup> Unfortunately, the *Commentaries* formed the only treatise of law to which American law students had access. The American law student, according to Chipman, had to learn that many of the principles contained in the *Commentaries* “are not universal; that in a democratic republic, they are wholly inadmissible.”<sup>124</sup> The student needed to be led “through a system of laws applicable to our governments, and a train of reasoning congenial to their principles. Such a system we yet want. Surely genius is not wanting in America.”<sup>125</sup>

Timothy Walker’s *Introduction to American Law*, which was published the same year that Lincoln became a lawyer (1837), was one of many books designed for Chipman’s American law student. Walker wrote this about Blackstone’s *Commentaries*:

Yet this work, admirable as it is, was written for *English students*; and of course contains much that is inapplicable to this country. The American student, who reads it without a guide, obtains many erroneous impressions, and much useless learning. We have innovated upon the institutions of our English ancestors, with an unsparing hand; and not merely in minute details, but also in fundamental principles. We cannot therefore find in Blackstone, an accurate outline of American law.<sup>126</sup>

Walker’s *Introduction* was well-received. An 1837 review in the *North American Review* stated “it is an admirable First Book for Students of Law. It is also thoroughly American.”<sup>127</sup> This reviewer found two principal objections to placing Blackstone in the hands of American law students. First, the *Commentaries* “contai[n] much that is antiquated and obsolete, even in England; much that is irrelevant in this country, that has never been adopted among us at law, and that is entirely uncongenial with our existing institutions.”<sup>128</sup> Second, the *Commentaries* were written in an “apologetic and servile spirit,” which

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122. NATHANIEL CHIPMAN, *SKETCHES OF THE PRINCIPLES OF GOVERNMENT* (1793), reprinted in *THE LEGAL MIND IN AMERICA*, *supra* note 56, at 29.

123. *Id.*

124. *Id.*

125. *Id.*

126. WALKER, *supra* note 119, at 13.

127. Book Review, 45 N. AM. REV. 485, 485 (1837).

128. *Id.*

was “entirely at variance with the whole tone of American institutions and character.”<sup>129</sup> An 1844 review in the *Western Literary Journal and Monthly Review* stated that it was “absurd to make the Commentaries of Blackstone the first book for American students, when we have so clear an exposition of our political and juridical system.”<sup>130</sup> The reviewer sarcastically noted:

The justly renowned work of Blackstone has been universally, and continues to be generally, the first book put into the hand of the American Student; and, after he has tortured himself, and exhausted his patience for six long months in memorizing the prerogatives of the crown, the sources of revenue, hereditary rights, the political and ecclesiastical constitution of the government, the feudal services, relations of knights and vassal, and the history of English jurisprudence from the invasion of William the Norman, he will be found on examination about as wise a lawyer as he would be, had he spent the same time upon the novels of Sir Walter Scott.<sup>131</sup>

Other treatise writers also presented works that could supplant American dependence on Blackstone. In his *Compendium of the Common Law in Force in Kentucky*, Charles Humphreys proposed to go through Blackstone’s *Commentaries* and “to select what appears to be in force in this country; without taking any notice of the observations of the authors as to what the law has been in times past.”<sup>132</sup> Humphreys was critical of Blackstone:

The judge also often stops by the way to expatiate on the beauty of the scenery by which he is surrounded. He seldom loses an opportunity of eulogizing the perfection of the body politic of his own country, the transcendent excellence of all its parts, the mildness and justice of the laws, their great partiality for the ladies in particular, the vast advantages of monarchy, the sublime influence of royalty, the benignity of the king who can do no wrong, the next to omnipotence of parliament, the great

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129. *Id.*

130. *Walker’s Introduction*, 1 W. LITERARY J. & MONTHLY REV. 107, 107 (1844) (book review).

131. *Id.*

132. CHARLES HUMPHREYS, *COMPENDIUM OF THE COMMON LAW IN FORCE IN KENTUCKY*, at vii (Lexington, W.G. Hunt 1822).

superiority of ancient usages, the dangers of modern innovations, and the manifold benefits of conducting judicial proceedings in Latin, the superior beauty of the old black letter, or German text, and divers other good things not exactly suited to the tastes of our republicans on this side of the Atlantic.<sup>133</sup>

Similarly, Francis Hilliard, in *Elements of Law*, stated that Blackstone's *Commentaries* "contain a large amount of matter, which is either in its nature not *legal*, but *historical*, and *political*, or has no applicability, and even to the professional reader is of little use, in this country."<sup>134</sup>

American law writers were intellectually enthralled but politically wary of Blackstone. This tension created an anxiety about Blackstone's influence. His enormous influence meant that there were at least sixteen American editions of the *Commentaries* by the time Lincoln read for the bar and twenty-five American editions by 1860.<sup>135</sup> The first American edition, published by Robert Bell in 1771–72, was "Re-printed from the British copy, page for page with the last edition."<sup>136</sup> After independence, a mere reprint was not enough. Thus, the most famous American edition of Blackstone was by St. George Tucker. Robert M. Cover notes that Tucker's edition was "not only a publication of the Blackstone text but also an engagement of it in combat."<sup>137</sup> Tucker acknowledged that with "the appearance of the *Commentaries*, the laws of England, from a rude chaos, instantly assumed the semblance of a regular system."<sup>138</sup> But Tucker also realized that "the revolution which separated the present United States of America from Britain" produced "a corresponding revolution not only in the principles of our government, but in the laws which relate to property, and in a variety of other cases, equally contradictory to the law, and irreconcilable to the principles contained in the

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133. *Id.* at x.

134. FRANCIS HILLIARD, *THE ELEMENTS OF LAW; BEING A COMPREHENSIVE SUMMARY OF AMERICAN JURISPRUDENCE*, at iv (2d ed. New York, John S. Voorhies 1848).

135. CATHERINE SPICER ELLER, *THE WILLIAM BLACKSTONE COLLECTION IN THE YALE LAW LIBRARY* 37–51 (Lawbook Exchange, Ltd. 1993) (1938); *see also* MARVIN, *supra* note 107, at 122–27.

136. WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* (Robert Bell reprint 1771–72) (1765) (subtitle of reprint).

137. Robert M. Cover, Book Review, 70 COLUM. L. REV. 1475, 1477 (1970).

138. 1 ST. GEORGE TUCKER, *BLACKSTONE'S COMMENTARIES: WITH NOTES OF REFERENCE TO THE CONSTITUTION AND LAWS, OF THE FEDERAL GOVERNMENT OF THE UNITED STATES AND OF THE COMMONWEALTH OF VIRGINIA*, at iii (Lawbook Exchange, Ltd. 1996) (1803).

*Commentaries*.<sup>139</sup> Tucker's solution was to produce an edition that was supplemented by American precedents and republican annotations.<sup>140</sup>

Other American editors followed Tucker's lead. Hugh Henry Brackenridge planned a similar edition for Pennsylvania. Although he abandoned his plan, he did publish his *Notes on Blackstone's Commentaries pointing out variations in the law of Pennsylvania from the common and statute law of England*.<sup>141</sup> In 1831, John Reed, a court of common pleas judge in Pennsylvania, published his *Pennsylvania Blackstone*, which was represented as a "modification of the Commentaries of Sir William Blackstone, with numerous alterations and additions."<sup>142</sup> In 1852, John L. Wendell edited another edition of Blackstone's *Commentaries*, which included notes "adapting the work to the American student."<sup>143</sup>

Lincoln did not share this concern about Blackstone. Blackstone presented Lincoln with a comprehensible, orderly system. For would-be lawyers like Lincoln, Blackstone "presented a comprehensible and comprehensive summary of that incomprehensible and incompressible system that underpinned American legal activities—the common law."<sup>144</sup> This was particularly true for Lincoln, who had decided against studying law in 1832 because he believed "he could not succeed at that without a better education."<sup>145</sup> Lincoln believed that his education was "defective."<sup>146</sup> Reading the *Commentaries* helped assure Lincoln that, despite his earlier insecurity about his inferior education, he could succeed as a lawyer. Moreover, Lincoln, whose "search for order was the defining characteristic of his adult life," would have deeply appreciated Blackstone's orderly system.<sup>147</sup>

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139. *Id.* at iv–v.

140. See generally *id.* at iii–xviii; Dennis R. Nolan, *Sir William Blackstone and the New American Republic: A Study of Intellectual Impact*, 51 N.Y.U. L. REV. 731, 737–38 (1976).

141. ELLER, *supra* note 135, at 60–61.

142. *Id.* at 46. Reed's *Pennsylvania Blackstone* was reprinted recently by Lawbook Exchange. JOHN REED, PENNSYLVANIA BLACKSTONE: BEING A MODIFICATION OF THE COMMENTARIES OF SIR WILLIAM BLACKSTONE, WITH NUMEROUS ALTERATIONS AND ADDITIONS, DESIGNED TO PRESENT AN ELEMENTARY EXPOSITION OF THE ENTIRE LAWS OF PENNSYLVANIA (Lawbook Exchange, Ltd. 2006) (1831) (3 vols.).

143. ELLER, *supra* note 135, at 49–50.

144. Fidler, *supra* note 52, at 207.

145. Lincoln, *supra* note 39, at 65.

146. Abraham Lincoln, *Brief Autobiography*, in DICTIONARY OF THE UNITED STATES CONGRESS (Charles Lanman comp., 1859), reprinted in 2 COLLECTED WORKS, *supra* note 39, at 459.

147. CHARLES B. STROZIER, LINCOLN'S QUEST FOR UNION: PUBLIC AND PRIVATE MEANINGS 139 (1982).

## IV. LINCOLN'S LAW LIBRARY

Lincoln, like most antebellum lawyers, came to the bar with minimal preparation. His early legal training and the rapid changes in antebellum law ensured that his legal education continued throughout his law career. Lincoln was called a "case lawyer" by lawyers who practiced alongside him. They seem to have intended a negative connotation. Lincoln, according to Herndon, "was in every respect a case lawyer, never cramming himself on any question till he had a case in which the question was involved."<sup>148</sup> Lincoln "never studied law books unless a case was on hand for consideration."<sup>149</sup> Although Lincoln advised would-be lawyers to "still keep reading" after becoming licensed, Lincoln's reading instead was directed toward the case before him.<sup>150</sup> Ward Hill Lamon said Lincoln was a "case lawyer" because he based his arguments on analogous cases instead of grand legal principles.<sup>151</sup> In the late nineteenth and early twentieth century, the term "case lawyer" became a criticism associated with the still controversial case method. Case lawyers, according to legal historian William P. LaPiana, were, "[i]n the view of critics . . . , a reprehensible subspecies of the profession who devoted themselves to the mindless collection of precedents in an attempt to win judgments for their clients based only on the assumed weight of the collected cases rather than by an appeal to the principles of the common law."<sup>152</sup> Lawyers writing in this period about lawyer Lincoln dismissed the notion that he might have been a mere case lawyer.<sup>153</sup>

Lincoln's approach to reading law books was typical for a lawyer. In the Herndon-Weik biography of Lincoln, Herndon says, "In fact, I may

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148. HERNDON & WEIK, *supra* note 60, at 210. Orlando B. Ficklin, another colleague in the Illinois bar, also called Lincoln a "case lawyer." Letter from Ficklin to William H. Herndon (June 25, 1865), in HERNDON'S INFORMANTS, *supra* note 10, at 58. Josiah Gilbert Holland in an 1866 biography also said that Lincoln was a "case lawyer." JOSIAH GILBERT HOLLAND, LIFE OF ABRAHAM LINCOLN 77 (Springfield, Mass., Gurdon Bill 1866).

149. HERNDON & WEIK, *supra* note 60, at 207. David Davis similarly believed that Lincoln "read law books but little, except when the cause in hand made it necessary." Letter from William H. Herndon to Jesse Weik (Dec. 9, 1888) (quoting Judge David Davis), in THE HIDDEN LINCOLN: FROM THE LETTERS AND PAPERS OF WILLIAM H. HERNDON 148 (Emanuel Hertz ed., 1938) [hereinafter THE HIDDEN LINCOLN].

150. Letter from Abraham Lincoln to James T. Thornton, *supra* note 73.

151. LAMON, *supra* note 33, at 316.

152. WILLIAM P. LAPIANA, LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION 132-33 (1994).

153. See, e.g., Frederick Trevor Hill, *Lincoln the Lawyer*, 71 CENTURY ILLUSTRATED MAG. 587, 595 (1906); JOHN MAXCY ZANE, LINCOLN: THE CONSTITUTIONAL LAWYER 26-27 (1932).



truthfully say, I never knew him to read through a law book of any kind.”<sup>154</sup> But in an earlier letter, Herndon completed this thought by adding “and no one else ever did.”<sup>155</sup> Lawyers read “purposively”; as legal historian M.H. Hoeflich notes, they “read to acquire knowledge with a specific end in sight. . . . They seek to find the specific nuggets of information they require for purposes wholly external to the text itself.”<sup>156</sup> Lincoln’s approach can be seen in his actions that he took after he received New York bookseller John Livingston’s catalogue of law books.<sup>157</sup> Lincoln kept the catalogue, which listed over 1100 English and American treatises by subject, but he also wrote “Too deep for me” on the outside of the envelope.<sup>158</sup>

In any event, Lincoln needed to find legal authority. For some authority, he did not venture far or deep. John H. Littlefield, who studied in Lincoln’s law office in 1858, later recalled that the office contained about “200 volumes of law as well as miscellaneous books.”<sup>159</sup> Lincoln, by the standards of the day, had a “fairly sophisticated collection of law books.”<sup>160</sup> Judge David Davis, who rode the circuit with Lincoln, owned fifty-four legal treatises in 1848.<sup>161</sup> A drawing of Lincoln’s law office which appeared in 1860 shows several bookcases and books stacked on top of a small cabinet.<sup>162</sup> Lincoln owned case reporters from Illinois and English courts, treatises, federal and state statutes and session laws, digests, and formbooks.<sup>163</sup> Lincoln also used books from the Illinois Supreme Court library.<sup>164</sup>

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154. HERNDON & WEIK, *supra* note 60, at 209–10.

155. Herndon to Weik (Feb. 18, 1887), in *THE HIDDEN LINCOLN*, *supra* note 149, at 177. Herndon also wrote that Lincoln was “not well read in the elementary books.” Herndon to Weik (Oct. 22, 1885), Herndon-Weik Collection, Library of Congress, reel nine.

156. M.H. Hoeflich, *The Lawyer as Pragmatic Reader: The History of Legal Common-Placing*, 55 *ARK. L. REV.* 87, 88–89 (2002).

157. On Livingston, see generally M.H. Hoeflich, *John Livingston & the Business of Law in Nineteenth-Century America*, 44 *AM. J. LEGAL HIST.* 347 (2000).

158. Letter from John Livingston to Abraham Lincoln (May 21, 1859) (Lincoln Papers, Library of Congress), available at <http://memory.loc.gov/mss/mal/mal1/017/0174200/001.jpg>.

159. HERNDON & WEIK, *supra* note 60, at 198 (quoting John H. Littlefield, *BROOKLYN DAILY EAGLE*, Oct. 16, 1887 at 7).

160. Robert A. Mead & M.H. Hoeflich, *Lawyers and Law Books in Nineteenth-Century Kansas*, 50 *U. KAN. L. REV.* 1051, 1056–57 n.26 (2002).

161. David Davis, List of Law Books Belonging to David Davis (Dec. 4, 1848), in *Bound Volume Three* (David Davis Papers, Abraham Lincoln Presidential Library).

162. See *infra* Figure 9.

163. *Lincoln’s Law Library*, *supra* note 81, at 1. Lincoln kept sets of federal and state statutes.

164. See Letter from William H. Herndon to Jesse Weik (July 10, 1888), in *THE HIDDEN LINCOLN*, *supra* note 149, at 215.

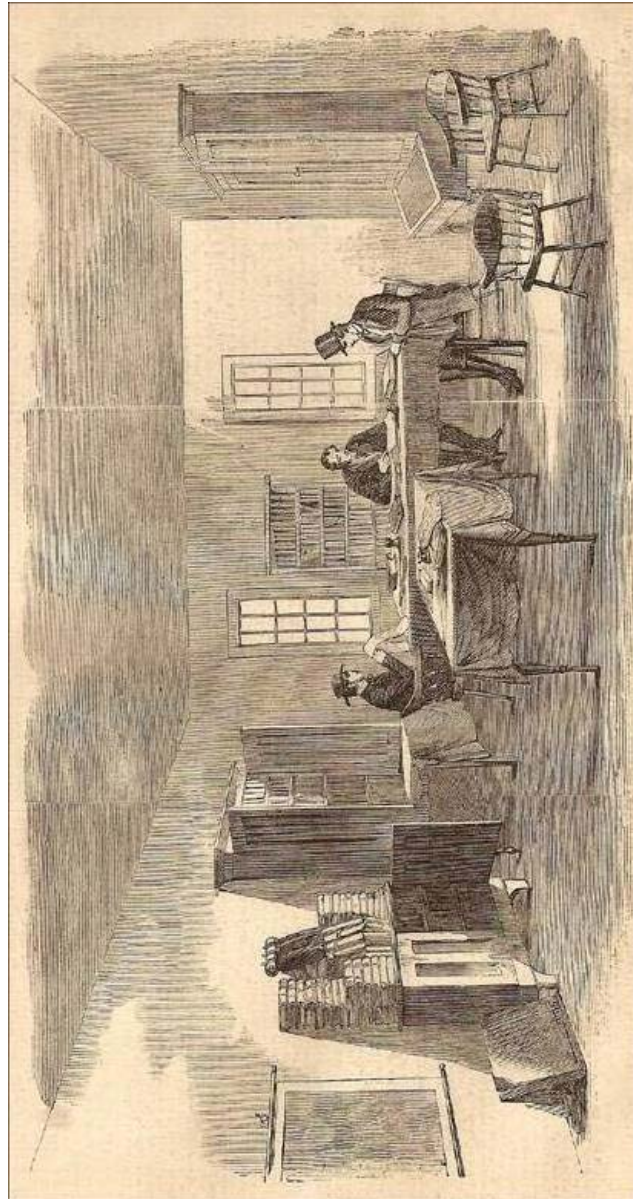


Figure 9. *The Present Law Office of Abraham Lincoln, the President Elect, on Fifth Street, West Side of the Public Square, Springfield, Illinois, Frank Leslie's Illustrated Newspaper* (Dec. 22, 1860).

When researching, Lincoln was looking for either a statute or a case on point. In one letter, he reported finding a precedent that was “full and plump.”<sup>165</sup> In looking for case law, Lincoln was not confined to Illinois authority. While decisions from other jurisdictions were not technically binding, they could not be ignored. One commentator explained that decisions from other jurisdictions “weigh so powerfully upon all doubtful questions, that no well-read lawyer dares be ignorant of them.”<sup>166</sup> In one trial brief in a will contest, Lincoln cited twenty cases from eleven jurisdictions.<sup>167</sup> In the *Illinois Central Railroad v. McLean County* appeal, Lincoln cited three Illinois cases, sixteen decisions from thirteen other state courts, and one United States Supreme Court opinion.<sup>168</sup>

Lincoln also cited English case law. English decisions had to be examined because they were “of more weight than those of the sister States—partly through prestige, but more through merit: and they are more numerous than all the American decisions put together.”<sup>169</sup> In 1847, J.G. Marvin noted that “[t]he absolute necessity to the American lawyer, of keeping up an acquaintance with the English decisions, is well understood.”<sup>170</sup> Lincoln had some English reports in his office and easy access to others.<sup>171</sup> He also owned a copy of the index to an American reprint series, *English Common Law Reports*.<sup>172</sup> In an 1843 appeal, Lincoln cited five cases, four of which were English decisions.<sup>173</sup>

Herndon wrote that Lincoln “never followed up the decisions of the supreme courts, as other lawyers did.”<sup>174</sup> Unlike Herndon, he did not

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165. Letter from Abraham Lincoln to William Martin (Mar. 6, 1851), in 2 THE PAPERS OF ABRAHAM LINCOLN: LEGAL DOCUMENTS AND CASES 185, 186 (Daniel W. Stowell ed., 2008) [hereinafter PAPERS OF ABRAHAM LINCOLN].

166. *Law Reports*, 14 S. LITERARY MESSENGER 255, 255 (1848).

167. Brief of Defendants, *Correll v. McDaniel* (Nov. 1855), in 3 PAPERS OF ABRAHAM LINCOLN, *supra* note 165, at 103, 103–05.

168. Brief of Plaintiffs, *Ill. Cent. R.R. v. McLean County* (Jan. 1856), in 2 PAPERS OF ABRAHAM LINCOLN, *supra* note 165, at 391, 391–94.

169. *Law Reports*, *supra* note 166, at 255.

170. MARVIN, *supra* note 107, at 294–95.

171. *Lincoln's Law Library*, *supra* note 81, at 1.

172. *Id.*; see GEORGE W. BIDDLE & RICHARD C. MCMURTRIE, A GENERAL INDEX TO THE ENGLISH COMMON LAW REPORTS (2d ed. Phila., T. & J.W. Johnson & Co. 1857).

173. *England v. Clark*, 5 Ill. (4 Scam.) 486, 486 (1843). In this appeal, Lincoln also cited a case from New York and an English treatise. *Id.* For a description of the *English Common Law Reports*, see MARVIN, *supra* note 107, at 294–95. Lincoln also cited the *English Common Law Reports* in *Hawks v. Lands*, 8 Ill. (3 Gil.) 227, 228 (1846).

174. HERNDON & WEIK, *supra* note 60, at 207.

keep a commonplace book of reported decisions.<sup>175</sup> Commonplace books were notebooks kept by law students and lawyers that contained “the principles of law extracted from statutes and decisions, and arranged by topics.”<sup>176</sup> But commonplacing was in decline in the nineteenth century. Joseph Story believed that lawyers’ commonplace books were “gradually” being replaced by “indexes, digests, compends, concordances, dictionaries, and other abridgments.”<sup>177</sup>

Lincoln relied heavily on legal treatises in his law practice.<sup>178</sup> Lincoln’s appellate cases attest to his frequent use of treatises. Lincoln cited thirty-four treatises in thirty-nine trial and appellate cases.<sup>179</sup> Twenty-eight authors were represented. Ten were American: Joseph K. Angell, Samuel Ames, John Bouvier, James Gould, Simon Greenleaf, James Kent, James T. Morehead, Tapping Reeve, Joseph Story, and William Wetmore Story. Lincoln cited four different treatises by Joseph Story.<sup>180</sup> All twenty-one English treatises that Lincoln cited had American editions. In antebellum America, publishers “shamelessly pirated the works of British authors.”<sup>181</sup> When they did so, they typically added annotations to American precedents.<sup>182</sup> Lincoln did not necessarily own every treatise he cited. Only a small handful of these cited treatises appear on Louis A. Warren’s list of Lincoln’s law books.<sup>183</sup>

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175. WHITNEY, *supra* note 106, at 122. The online Law Practice of Abraham Lincoln has uploaded Herndon’s two commonplace books. See William H. Herndon, *Commonplace Book* (1854), and William H. Herndon, *Commonplace Book* (1861), available at The Law Practice of Abraham Lincoln: Complete Documentary Edition (Martha L. Benner & Cullom Davis et al. eds., Illinois Historic Preservation Agency 2d ed., 2009), <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=141500>.

176. Erwin C. Surrency, *Law Reports in the United States*, 25 AM. J. LEG. HIST. 48, 50 (1981). Thomas Jefferson thus advised law students: “In reading the Reporters, enter in a common-place book every case of value, condensed into the narrowest compass possible which will admit of presenting distinctly the principles of the case.” Letter from Thomas Jefferson to John Minor (Aug. 30, 1814) (quoting a letter from Thomas Jefferson to Bernard Moore), in 11 THE WORKS OF THOMAS JEFFERSON 420, 423 (Paul Leicester Ford ed., 1905).

177. JOSEPH STORY, *Digests of the Common Law*, in THE MISCELLANEOUS WRITINGS OF JOSEPH STORY 379, 380 (William W. Story ed., Da Capo Press 1972) (1852).

178. Louis A. Warren attempted to list Lincoln’s law books in *Lincoln’s Law Library*, *supra* note 81, at 1.

179. This is an incomplete sample. The decisions that list the authorities that Lincoln cited on appeal represent roughly ten percent of Lincoln’s appellate cases.

180. Story’s dominant presence confirms Roscoe Pound’s conclusion that “[w]hat Story the judge could not do, Story the text writer largely accomplished.” ROSCOE POUND, THE FORMATIVE ERA OF AMERICAN LAW 154 (2d prtg. 1939).

181. Robert Feikema Karachuk, *A Workman’s Tools: The Law Library of Henry Adams Bullard*, 42 AM. J. LEGAL HIST. 160, 176 (1998).

182. *Id.*

183. See *Lincoln’s Law Library*, *supra* note 81, at 1.

Lincoln also owned treatises that do not show up in citations in his written pleadings or briefs or recorded in appellate decisions. These included treatises on such substantive areas as criminal law,<sup>184</sup> railroad law,<sup>185</sup> landlord and tenant,<sup>186</sup> and common carriers.<sup>187</sup> In addition to treatises on pleading by Story and Chitty, Lincoln owned *Stephen on Pleading*.<sup>188</sup>

Lincoln & Herndon, in all likelihood, subscribed to the *Law Library*, a 104-volume series of American reprints of English legal treatises.<sup>189</sup> J.G. Marvin in his *Legal Bibliography* (in 1847) hailed this series as furnishing “at reduced price the best elementary legal Treatises of Great Britain.”<sup>190</sup> A portion of a treatise was published as a pamphlet and mailed each month to subscribers. Four pamphlets would make up one volume. The pamphlet form allowed the treatises to be shipped through the mails and avoid the higher shipping charges on books, which had to be shipped as freight.<sup>191</sup> In appellate cases, Lincoln cited Richard Babington’s *Treatise on the Law of Auctions* and Frederick Calvert’s *Treatise upon the Law Respecting to Suits in Equity*.<sup>192</sup> Herndon in his notes in the *St. Louis, Alton & Chicago Railroad Co. v. Dalby* appeal referred to *Smith on Master and Servant* and *Grant on Corporations*.<sup>193</sup>

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184. JOHN FREDERICK ARCHBOLD, ARCHBOLD’S SUMMARY OF THE LAW RELATING TO PLEADING AND EVIDENCE IN CRIMINAL CASES (John Jervis ed., 4th Am. ed., New York, Gould, Banks & Co. 1840); see *Lincoln’s Law Library*, *supra* note 81, at 1 (listing this book among Lincoln’s collection).

185. ISAAC F. REDFIELD, A PRACTICAL TREATISE UPON THE LAW OF RAILWAYS (2d ed., Boston, Little, Brown & Co. 1858); see *Lincoln’s Law Library*, *supra* note 81, at 1 (listing Redfield’s treatise).

186. JOHN WILLIAM SMITH, THE LAW OF LANDLORD AND TENANT (Phineas Pemberton Morris ed., Phila., T. & J.W. Johnson & Co. 1856); see *Lincoln’s Law Library*, *supra* note 81, at 1 (listing Smith’s treatise).

187. TOMPSON CHITTY & LEOFRIC TEMPLE, A PRACTICAL TREATISE ON THE LAW OF CARRIERS OF GOODS AND PASSENGERS BY LANDS, INLAND NAVIGATION, AND IN SHIPS (David Sellers ed., Phila., T. & J.W. Johnson & Co. 1857); see *Lincoln’s Law Library*, *supra* note 81, at 1 (listing Chitty & Temple’s treatise).

188. HENRY JOHN STEPHEN, A TREATISE ON THE PRINCIPLES OF PLEADING IN CIVIL ACTIONS (Francis J. Troubat ed., 7th Am. ed., Phila., J.C. Kilpatrick 1854); see *Lincoln’s Law Library*, *supra* note 81, at 1 (listing this book among Lincoln’s books).

189. The complete series is listed at 319 LIBRARY OF CONGRESS, NATIONAL UNION CATALOG 300–01 (1974).

190. MARVIN, *supra* note 107, at 449; see also *Critical Notice*, 5 AM. L. MAG. 246 (1845).

191. ERWIN C. SURRENCY, A HISTORY OF AMERICAN LAW PUBLISHING 167 (1990).

192. *Webster v. French*, 11 Ill. 254, 257 (1849) (citing Babington); *Martin v. Dryden*, 6 Ill. (1 Gilm.) 187, 198 (1844) (citing Calvert).

193. Brief for Respondent, *St. Louis, Alton & Chicago R.R. v. Dalby* (Ill., Dec. 1857), available at The Law Practice of Abraham Lincoln, *supra* note 175, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=136136>.

Lincoln apparently also owned Robert Joseph Phillimore's *Commentaries upon International Law*.<sup>194</sup> All five treatises were published in the *Law Library* series.

Although Lincoln did not read law books until “the cause in hand made it necessary,”<sup>195</sup> he effectively used what was available to him in his law office and at the supreme court library. In the motion for rehearing in *Patterson v. Edwards*, Lincoln offered to “furnish the court, if they desire, with a new edition, in two volumes of *Starkie on Slander*.”<sup>196</sup> Lincoln's offer meant that he knew that the judges did not have ready access to the “new edition” of the treatise. The offer also meant he knew that Starkie's treatise would be accorded some deference by the court. Lincoln made a similar offer in an 1847 motion for rehearing that he wrote for another attorney. There, Lincoln relied on “one of the latest editions of Chitty's *Pleadings*,” and then stated that the edition was “in the library of Mssrs Lincoln & Herndon which I hope they will allow use of to the court in the investigation of this petition.”<sup>197</sup> Lincoln also frequently cited relatively new legal treatises. For example, in an 1849 appeal he referred to the second volume of *American Leading Cases*, which had been published the previous year.<sup>198</sup> He kept track of the books in the supreme court library. In an 1857 letter to his co-counsel in an admiralty case, he wrote, “I understand they have some new Admiralty Books here, but I have not examined them.”<sup>199</sup>

Lincoln, like other antebellum lawyers, also relied on published digests of reported decisions. Digests provided concise summaries of the various points of law found in the decisions. The summaries would

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194. ROBERT PHILLIMORE, COMMENTARIES UPON INTERNATIONAL LAW (Phila., T. & J.W. Johnson 1854–1857) (3 vols.); see also 2 MORRIS L. COHEN, BIBLIOGRAPHY OF AMERICAN LAW 801 (1998); *Lincoln's Law Library*, *supra* note 81, at 1.

195. FRANCIS FISHER BROWNE, THE EVERYDAY LIFE OF ABRAHAM LINCOLN 238 (Minneapolis, Nw. Publ'g Co. 1887).

196. Petition for Rehearing, *Patterson v. Edwards* (Ill. Jan. 28, 1846), available at The Law Practice of Abraham Lincoln, *supra* note 175, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=135953>.

197. Petition for Rehearing, *Gear v. Clark*, at 1–2 (Ill. Jan. 12, 1847), available at The Law Practice of Abraham Lincoln, *supra* note 175, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=137875>. Lincoln wrote this motion for Jacksonville attorney David A. Smith, whose name Lincoln affixed to the document.

198. *Pearl v. Wellman*, 11 Ill. 352, 353 (1849); 2 J.I. CLARK HARE & H.B. WALLACE, SELECT DECISIONS OF AMERICAN COURTS (Phila., T. & J.W. Johnson 1848).

199. Letter from Abraham Lincoln to Newton Deming and George P. Strong (May 25, 1857), in 11 THE COLLECTED WORKS OF ABRAHAM LINCOLN: SECOND SUPPLEMENT 1848–1865, at 13, 13 (Roy P. Basler & Christian O. Basler eds., 1990).

be arranged under a system of classified headings.<sup>200</sup> Norman L. Freeman, the author of the 1856 *Illinois Digest*, said that “[d]igests have become almost a necessary evil in the practising lawyer’s library.”<sup>201</sup> Freeman noted that “the rapidly increasing number of reports of adjudged cases had become a source of great inconvenience.”<sup>202</sup> The availability of digests meant that lawyers did not have to read every published decision to stay abreast of legal developments. Digests thus served two purposes for antebellum lawyers. One was as a case-finding tool. In its review of the *United States Digest*, the *Western Law Journal* noted that “[t]he chief use of all digests is to assist lawyers in the preparation of their cases. They are not of themselves *authorities*, but only guides to authorities.”<sup>203</sup> Beyond this, because lawyers did not necessarily have access to the hundreds of reporters that already had been published, digests often were also used as a substitute for the reported cases. The *American Law Magazine* in 1846 pointed out that “[s]uch is the number of American reports, increasing too at the rate of between thirty and forty every year, that it is scarcely possible for the practising lawyer to possess them.”<sup>204</sup> The *United States Digest* “will be a little library in itself.”<sup>205</sup>

Lincoln often used and cited digests in appellate cases. His favorite was the *United States Digest*, which was the “first comprehensive American digest, covering both law and equity and both state and federal courts.”<sup>206</sup> In *Risinger v. Cheney*, a contract case, Lincoln’s clients had lost in the trial court. Lincoln argued that his client’s non-performance of a contract was excused by an injunction against the plaintiff that affected the property that was the focus of the agreement. To support this argument, Lincoln gave but one citation: “1 U. S. Dig. 540, § 66.”<sup>207</sup> The exact citation was to the following section under the topic “Condition”:

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200. ARTHUR S. BEARDSLEY, *LEGAL BIBLIOGRAPHY AND THE USE OF LAW BOOKS* 411 (2d ed. 1947); Karachuk, *supra* note 181, at 163; SURRENCY, *supra* note 191, at 111–13.

201. 1 NORMAN L. FREEMAN, *THE “ILLINOIS DIGEST:” BEING A FULL AND COMPLETE DIGEST AND COMPILATION OF ALL THE DECISIONS OF THE SUPREME COURT*, at iii (Cincinnati, Moore, Wiltach, Keys & Co. 1856).

202. *Id.*

203. *United States Digest*, 3 W.L. J. 239, 240 (1846).

204. *Critical Notices*, 6 AM. L. MAG. 467, 471 (1846).

205. *Id.* at 472.

206. MORRIS L. COHEN ET AL., *HOW TO FIND THE LAW* 83 (9th ed. 1989).

207. *Risinger v. Cheney*, 7 Ill. (2 Gilm.) 84 (1845).



He who prevents or dispenses with the performance of a condition cannot take advantage of the non-performance. *Majors v. Hickman*, 2 Bibb, 218. *Williams v. Bank of United States*, 2 Pet. 102. *Marshall v. Craig*, 1 Bibb, 380. *Carrel v. Collins*, 2 Bibb, 431. See also *Morford v. Ambrose*, 3 J. J. Marsh. 690. *Crump v. Mead*, 3 Mis. 233. *Miller v. Ward*, 2 Conn. 494. *Clendennen v. Paulsel*, 3 Mis. 230. *Webster v. Coffin*, 14 Mass. 196. 1 Pick. 287. *Seymour v. Bennet*, 14 Mass. 268. *Clark v. Moody*, 17 Mass. 149. *Cooper v. Mowry*, 16 Mass. 7.<sup>208</sup>

Lincoln won this appeal when the court reversed the judgment against his clients. The court relied solely on Lincoln's meager but well-chosen citation. It first quoted, without attribution, the black-letter statement from the digest: "[It] is well settled, that *he who prevents, or dispenses with the performance of a condition, cannot take advantage of the non-performance*."<sup>209</sup> It then cited seven cases to support this statement of law. All seven were listed in the digest; the first five cases were cited in the order they appear in the digest.<sup>210</sup>

Lincoln used the *United States Digest* as both a case-finding tool and as a substitute for the reported cases. An 1851 letter shows how Lincoln relied on the digest. In this letter, Lincoln discussed "the competency of a Stockholder to testify" in a stock subscription case.<sup>211</sup> He cited two cases. He first gave his client a citation to a Pennsylvania case but acknowledged "[t]his book is not here, & I find a reference to it in the Suplt. U. S. Dig: Vol. 2 page 976. Sec. 405."<sup>212</sup> Lincoln was referring to the 1847 Supplement to the *United States Digest*.<sup>213</sup> The case that Lincoln cited was summarized under the topic "Witnesses" and was under the heading "Members of Corporations, and unincorporated Societies."<sup>214</sup> Lincoln next cited a Kentucky case, "7 Dana 99."<sup>215</sup> Lincoln also had found this case using the 1847 Supplement. It was

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208. 1 THERON METCALF & JONATHAN C. PERKINS, DIGEST OF THE DECISIONS OF THE COURTS OF COMMON LAW AND ADMIRALTY IN THE UNITED STATES 540 (Boston, Charles C. Little & James Brown 1840).

209. *Risinger*, 7 Ill. (2 Gilm.) at 90 (emphasis added).

210. Compare *id.* with METCALF & PERKINS, *supra* note 208, at 540.

211. Letter from Abraham Lincoln to William Martin, *supra* note 165, at 186.

212. *Id.*

213. 2 JOHN PHELPS PUTNAM, A SUPPLEMENT TO THE UNITED STATES DIGEST 976 (Boston, Charles C. Little & James Brown 1851).

214. *Id.*

215. Letter from Abraham Lincoln to William Martin, *supra* note 165, at 186.

listed on the same page as the other case.<sup>216</sup> Lincoln, however, had read this case; he reported that “[t]his case is full and plump; and is, perhaps, the only reported case, exactly in point.”<sup>217</sup>

Lincoln also relied on the *Illinois Digest*, which collected decisions from the Illinois Supreme Court.<sup>218</sup> In one brief, Lincoln cited three Illinois cases to support his argument that the appeal should be dismissed because the judgment was against three defendants but the appellate bond named only two of the defendants.<sup>219</sup> Lincoln did not search long for authority. All three cases he cited were in the section entitled “Appeals and Writs of Error” in the 1856 *Illinois Digest*. Two cases appeared under the heading “When Appeal is Prayed by Several, etc.”<sup>220</sup> The synopsis of these cases explained that “the appeal was dismissed because all the defendants did not join in the bond.”<sup>221</sup> The third case Lincoln cited appeared under the heading “When They Will Be Dismissed.”<sup>222</sup> Using the digest, Lincoln would have found all three cases in less than five minutes. Digests, like treatises, allowed a lawyer like Lincoln to wait “till he had a case in which the question was involved” to study the law.<sup>223</sup>

Lincoln also relied upon formbooks, a practice he had begun before he became a lawyer. New Salem resident Abner Y. Ellis remembered that Lincoln “had an old form Book from which he used in writing Deeds, Wills & Letters when desired to do so by his friends and neighbours.”<sup>224</sup> Among those early legal documents that Lincoln wrote for his neighbors are an 1832 bill of sale for the “right and title” to the New Salem ferry, an 1833 summons for a suit on a \$21.57 note (against

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216. 2 PUTNAM, *supra* note 213, at 976. Section 409 on this page summarizes “*Turnpike Co. v. Burdett*, 7 Dana, 99.”

217. Letter from Abraham Lincoln to William Martin, *supra* note 165, at 186.

218. On the rise of state digests, see generally Joel Fishman, *The Digests of Pennsylvania*, 90 LAW LIBR. J. 481 (1998); Kurt X. Metzmeier, *Blazing Trails in a New Kentucky Wilderness: Early Kentucky Case Law Digests*, 93 LAW LIBR. J. 93 (2001); and SURRENCY, *supra* note 191, at 114.

219. Motion to Dismiss, *Headen v. True* (Jan. 5, 1860), available at The Law Practice of Abraham Lincoln, *supra* note 175, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=135873> (unreported case from the Jan. 1860 Term).

220. 1 FREEMAN, *supra* note 201, at 193.

221. *Id.*

222. *Id.* at 201. Herndon also cited the *Illinois Digest* in Brief for Appellee, *Smith v. Smith* (Ill. Jan. 1858), available at The Law Practice of Abraham Lincoln, *supra* note 175, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=135876> (doc. no. 5612).

223. Cf. *supra* text accompanying note 148.

224. Written Statement of Abner Y. Ellis for William H. Herndon (Jan. 23, 1866), in HERNDON’S INFORMANTS, *supra* note 10, at 170.

Jason Duncan), and three deeds written in 1833 or 1834.<sup>225</sup> Formbooks such as Charles Gilman's *Illinois Conveyancer* supplied labor-saving templates for simple transactions such as deeds.<sup>226</sup> Other books such as *Chitty on Pleadings* and F.M. Van Heythuysen's *The Equity Draftsman* supplied forms for pleadings.<sup>227</sup> In one letter to a client, Lincoln addressed what needed to be pleaded in a declaration. Lincoln wrote that he had "examined the books, and reflected a good deal" and concluded that "nothing more than a common count was necessary."<sup>228</sup> He then added, "You will find a very apt precedent for such a count in 2. Chitty's Pleadings 52."<sup>229</sup> Legal historian M.H. Hoeflich has noted the logic of the "legal culture of reproduction."<sup>230</sup> Nineteenth-century lawyers charged fees on a transactional basis, not on an hourly basis. Lawyers saved time and money by using forms.<sup>231</sup>

#### V. "BUT HE WOULD STUDY OUT HIS CASE"

Lincoln learned to keenly analyze legal issues and then research those issues to find applicable precedents. He developed those skills during his partnership with Stephen T. Logan. Logan later recalled that

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225. Bill of Sale for Alexander Ferguson (Jan. 25, 1832), *available at* The Law Practice of Abraham Lincoln, *supra* note 175, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=141152>; Summons, Alley v. Duncan (Sangamon (Ill.) Cty. J.P. Ct. May 23, 1833), *available at* The Law Practice of Abraham Lincoln, *supra*, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=141775>; Deed Between Jesse and Christina Baker and James Eastep (July 26, 1833), *available at* The Law Practice of Abraham Lincoln, *supra*, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=141170>; Deed Between James and Nancy Cox and Matthew Marsh and J.L. Clark (May 22, 1834), *available at* The Law Practice of Abraham Lincoln, *supra*, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=141355>; Deed Between Isaac and Jane Colson and Matthew Young (Mar. 22, 1834), *available at* The Law Practice of Abraham Lincoln, *supra*, at <http://www.lawpracticeofabrahamlincoln.org/Details.aspx?case=141320>.

226. CHARLES GILMAN, *THE ILLINOIS CONVEYANCER: BEING A COLLECTION OF ORIGINAL AND SELECTED FORMS FOR POPULAR USE, WITH OCCASIONAL REFERENCES TO THE REVISED STATUTES* (Quincy, Ill., Woods & Flagg 1846).

227. F.M. VAN HEYTHUYSEN, *THE EQUITY DRAFTSMAN: BEING A SELECTION OF FORMS OF PLEADINGS IN SUITS IN EQUITY* (New York, John S. Voorhies 1842); JOSEPH CHITTY, *A TREATISE ON PLEADING AND PARTIES TO ACTIONS* (9th Am. ed., J.C. Perkins, ed., Springfield, Mass., G. & C. Merriam 1844) (1809) (3 vols.).

228. Letter from Abraham Lincoln to William Martin (Feb. 19, 1851), *in* 2 *PAPERS OF ABRAHAM LINCOLN*, *supra* note 165, at 175, 176.

229. *Id.*

230. M.H. Hoeflich, *Law Blanks & Form Books: A Chapter in the Early History of Document Production*, 11 *GREEN BAG* 2d 189, 189 (2008).

231. *Id.* at 189-91.

“Lincoln’s knowledge of law was very small when I took him in.”<sup>232</sup>  
Logan explained:

I don’t think he studied very much. I think he learned his law more in the study of cases. He would work hard and learn all there was in a case he had in hand. He got to be a pretty good lawyer though his general knowledge of law was never very formidable. But he would study out his case and make about as much of it as anybody.<sup>233</sup>

John H. Littlefield, who studied law in Lincoln & Herndon’s office, later described Lincoln studying out his cases: “Lincoln’s favorite position when unraveling some knotty law point was to stretch both of his legs at full length upon a chair in front of him. In this position, with books on the table near by and in his lap, he worked up his case.”<sup>234</sup> Littlefield also recalled that whenever Lincoln “had an important case on hand he would withdraw himself more or less from society, and would devote himself with great care to the case.”<sup>235</sup> Judge David Davis remembered how Lincoln “was Slow to form his Opinions—he was deliberate.”<sup>236</sup>

Lincoln was an excellent appellate lawyer, and argued hundreds of cases to the Illinois Supreme Court, where he developed sophisticated (and technical) legal arguments.<sup>237</sup> He or his partners handled several thousand cases during his nearly twenty-five-year career, more than 400 of which were appeals to the Illinois Supreme Court; in over 160 cases, Lincoln was hired for the appeal.<sup>238</sup> Lincoln handled enough appeals that a victory he gained in one case ensured a defeat in a subsequent appeal (before he was president, Lincoln was, at least, precedential). Lincoln argued both sides of this evidentiary matter: whether the

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232. *Stephen T. Logan Talks About Lincoln*, LINCOLN CENTENNIAL ASS’N BULL. (Lincoln Centennial Ass’n, Springfield, Ill.), Sept. 1, 1928, at 3.

233. *Id.*

234. HERNDON & WEIK, *supra* note 60, at 199.

235. John H. Littlefield, *Personal Recollections on Abraham Lincoln*, THE INDEPENDENT, reprinted in LINCOLN AS I KNEW HIM: GOSSIP, TRIBUTES AND REVELATIONS FROM HIS BEST FRIENDS AND WORST ENEMIES 72–73 (Harold Holzer ed., 2009).

236. Interview by William H. Herndon with David Davis (Sept. 20, 1866), in HERNDON’S INFORMANTS, *supra* note 10, at 348, 351.

237. Lincoln’s success as an appellate lawyer refutes the notion that he “never fully mastered the principles of legal research, organization, and application, and he tended to rely on intuition rather than preparation.” KAPLAN, *supra* note 30, at 62.

238. 1 PAPERS OF ABRAHAM LINCOLN, *supra* note 165, at xxxvi.

relative wealth of the plaintiff and the defendant could be considered by the jury when it assessed compensatory and punitive damages.<sup>239</sup>

Herndon thought Lincoln a better appellate lawyer than trial lawyer:

He was greatest in my opinion as a lawyer in the Supreme Court of Illinois. There the cases were never hurried. The attorneys generally prepared their cases in the form of briefs, and the movements of the court and counsel were so slow that no one need be caught by surprise.<sup>240</sup>

He took advantage of legal technicalities when he could, arguing that appellants had failed to follow the formal requirements of pleadings and appeal bonds in order to obtain dismissals.<sup>241</sup>

William Herndon described Lincoln arguing before the Illinois Supreme Court:

I heard him once argue a case and it was argued extremely well—it was logical—eloquent. In making his argument he referred to the history of the law, a useless part as I then thought, but know better now. After the speech was through and Lincoln came into the law library room where the lawyers tell stories and prepare their cases I said, “Lincoln, why did you go so far back in the history of the law as applicable to this case” & to which he instantly replied, “I dare not trust this case on the presumptions that the court knows all things. I argued the case on the presumption that the court did not know anything.”<sup>242</sup>

## VI. LINCOLN AS POLITICIAN AND PRESIDENT

Lincoln as a politician in 1850s Illinois reflected the research and analytical skills he had honed as a lawyer. Lincoln was incensed when the Kansas–Nebraska Act was passed by Congress in May 1854. But he did not say anything publicly until he had “studied out his case.” He

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239. Compare *Grable v. Margrave*, 4 Ill. (3 Scam.) 372, 373 (1842), with *McNamara v. King*, 7 Ill. (2 Gilm.) 432, 435 (1845). On “vindictive” damages or “smart money,” see THEODORE SEDGWICK, A TREATISE ON THE MEASURE OF DAMAGES 39–46 (New York, John S. Voorhies 1847). Sedgwick cites *Grable* in the second edition of his treatise. THEODORE SEDGWICK, A TREATISE ON THE MEASURE OF DAMAGES 464 (2d ed. New York, John S. Voorhies 1852) (citing “Grabe”).

240. HERNDON & WEIK, *supra* note 60, at 210.

241. See, e.g., *Maus v. Worthing*, 4 Ill. (3 Scam.) 26, 26 (1841).

242. 1 PAPERS OF ABRAHAM LINCOLN, *supra* note 165, at 61.

spent “months of solitary reading and preparation” before he began giving speeches about the act.<sup>243</sup> His criticism of the act was based upon history and precedent.<sup>244</sup> When Lincoln directly responded to one of Stephen A. Douglas’s speeches, he used old speeches by Douglas to good effect, noting how Douglas had praised the Missouri Compromise as “a sacred thing, which no ruthless hand should attempt to disturb.”<sup>245</sup> Similarly, Lincoln studied the *Dred Scott* opinion for two weeks in the Illinois Supreme Court library before giving his first public pronouncement about the decision. On the evening of the speech, he walked into the statehouse with “law books under his arm.”<sup>246</sup> The research showed. Lincoln attacked the “assumed historical facts which are not really true” in the court’s opinion.<sup>247</sup>

Lincoln took the same approach when he prepared to give a major speech at Cooper Union in New York. Lincoln decided to give a talk about slavery, “citing the lessons and precedents of the American past.”<sup>248</sup> Herndon noted Lincoln’s “meticulous preparation”<sup>249</sup> for the Cooper Union speech. Lincoln “searched through the dusty volumes of congressional proceedings in the State library, and dug deeply into political history. He was painstaking and thorough in the study of his subject.”<sup>250</sup> From his own library, Lincoln consulted Elliott’s *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*, Sanderson’s *Biography of the Signers to the Declaration of Independence*, and Story’s *Commentaries on the Constitution*.<sup>251</sup> At the supreme court library, he studied *The Papers of James Madison*, *Debates in the Federal Convention of 1787*, the *Letters of George Washington*, the *Congressional Globe*, and the *Annals of Congress*.<sup>252</sup> The finished product was a “combination of legal brief and history lesson.”<sup>253</sup>

During the “secession winter” of 1860, journalist Henry Villard observed that Lincoln was “indefatigable in his efforts to arrive at the

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243. WHITE, *supra* note 13, at 198.

244. *Id.* at 196–98.

245. Abraham Lincoln, *Speech at Bloomington, Illinois*, WEEKLY REPUBLICAN (Peoria), Oct. 6, 1854, *reprinted in* 2 COLLECTED WORKS, *supra* note 39, at 234, 236.

246. WHITE, *supra* note 13, at 238.

247. Abraham Lincoln, *Speech at Springfield, Illinois*, ILL. STATE J., June 29, 1857, *reprinted in* 2 COLLECTED WORKS, *supra* note 39, at 399, 401.

248. HOLZER, LINCOLN AT COOPER UNION, *supra* note 37, at 31.

249. *Id.* at 32.

250. HERNDON & WEIK, *supra* note 60, at 274.

251. HOLZER, LINCOLN AT COOPER UNION, *supra* note 37, at 50–52.

252. *Id.* at 51–52.

253. *Id.* at 121.

fullest comprehension of the present situation of public affairs and the most proper conclusions as to its probable consequences.”<sup>254</sup> Villard noted that Lincoln “never contents himself with a superficial opinion based on newspaper accounts and arguments, but always fortifies his position by faithful researches for precedents, analogies, authorities, etc. He is at all times surrounded by piles of standard works to which constant reference is made.”<sup>255</sup> Lincoln’s “faithful researches” for precedents and authorities reflected his training as a lawyer and the results of his continuing legal education.

As president, Lincoln was suddenly required to understand a subject upon which he previously had given little thought: military strategy. Lincoln is widely perceived as an outstanding war president.<sup>256</sup> Civil War historian T. Harry Williams, author of *Lincoln and His Generals*, called Lincoln “a great war president, probably the greatest in our history, and a great natural strategist.”<sup>257</sup> But, as historian James M. McPherson has recently argued, Lincoln was not a natural strategist.<sup>258</sup> Once again, Lincoln had mastered a subject through deep study. Lincoln’s private secretaries, John G. Nicolay and John Hay, recalled how Lincoln “gave himself, night and day, to the study of the military situation. He read a large number of strategical works. He pored over the reports from the various departments and districts of the field of war.”<sup>259</sup> McPherson fittingly concludes that Lincoln “worked hard to master this subject, just as he had done to become a lawyer.”<sup>260</sup> William Lee Miller in his recent study of President Lincoln concluded that Lincoln was not “intimidated by the arcana or mystique of military strategy. He did what he had done on other subjects all his life: he obtained the books and taught himself.”<sup>261</sup>

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254. HENRY VILLARD, *LINCOLN ON THE EVE OF '61: A JOURNALIST'S STORY* 37 (Harold G. & Oswald Garrison Villard eds., 1941).

255. *Id.*

256. See generally LINCOLN, *THE WAR PRESIDENT: THE GETTYSBURG LECTURES* (Gabor Boritt ed., 1992).

257. T. HARRY WILLIAMS, *LINCOLN AND HIS GENERALS*, at vii (1952).

258. JAMES M. MCPHERSON, *TRIED BY WAR: ABRAHAM LINCOLN AS COMMANDER IN CHIEF* 3–4 (2008).

259. 5 JOHN G. NICOLAY & JOHN HAY, *ABRAHAM LINCOLN: A HISTORY* 155–56 (New York, Century Co. 1890).

260. MCPHERSON, *supra* note 258, at 4. Michael Burlingame reached a similar conclusion: “Lincoln *acquired* a better understanding of strategy than most of his generals.” 2 MICHAEL BURLINGAME, *ABRAHAM LINCOLN: A LIFE* 248 (2008) (emphasis added).

261. WILLIAM LEE MILLER, *PRESIDENT LINCOLN: THE DUTY OF A STATESMAN* 41–42 (2008).