# Lincoln Lore

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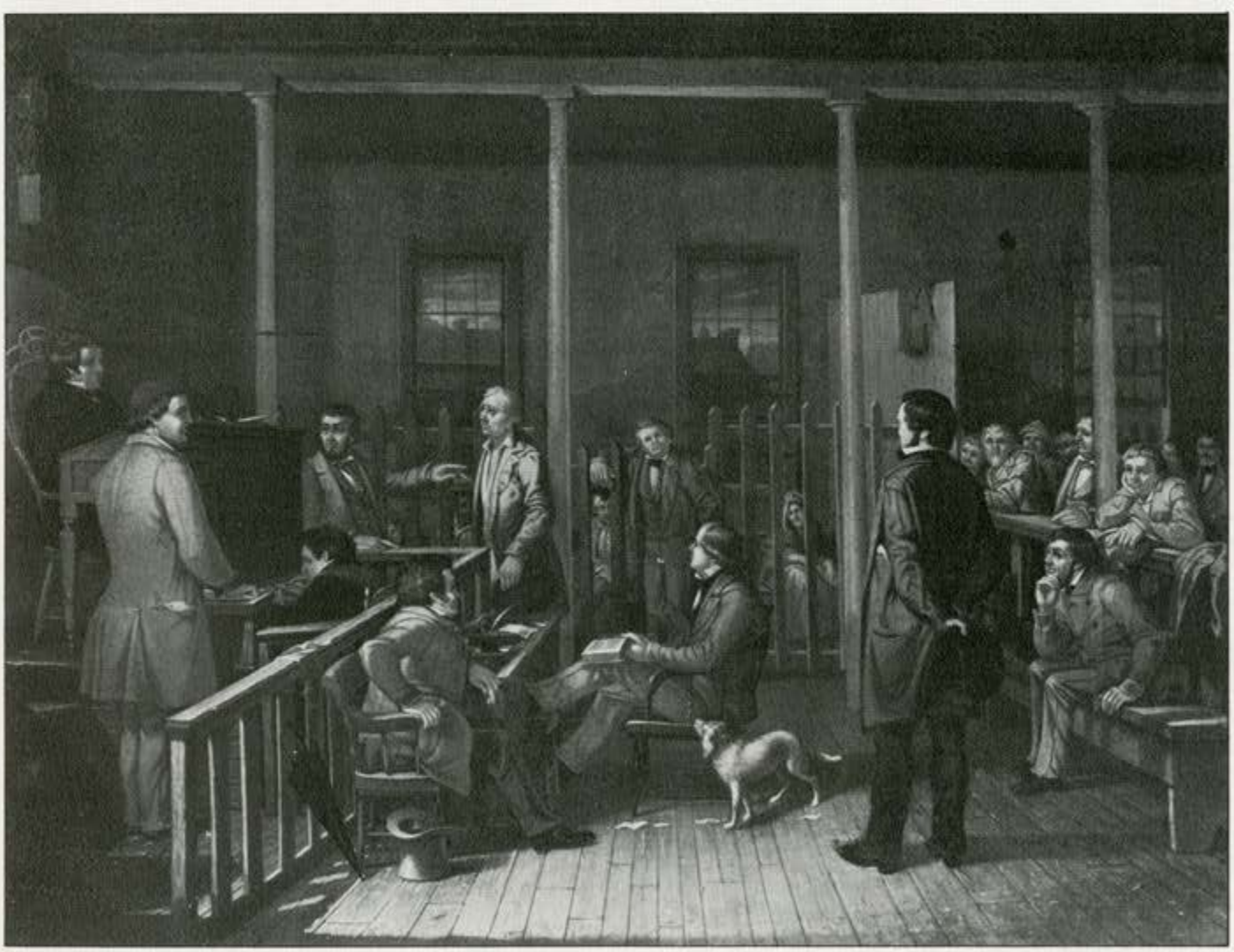
## THE INSANITY DEFENSE IN LINCOLN'S ILLINOIS

The recent verdict in the case of John W. Hinckley, Jr., has provoked a great outcry against the insanity defense. Indiana's "guilty but mentally ill" verdict, itself the product of the outraged aftermath of two recent successful insanity defenses in the state, has become the focus of national attention. Numerous journalists are discussing the virtues of placing the burden of proof on the defendant who claims insanity as a defense. The feeling is widespread, as Robert Coles said in *The New Yorker*, that "the law . . . has changed from what is once was," and people are worried about it.

There are many new things in the law, but the insanity defense is not one of them. Critics seem to think of it as a newfangled product of a degenerate age. The insanity defense is depicted as a dirty trick played on justice by a post-Freudian



*Courtesy of National Collection of Fine Arts, Smithsonian Institution*

**FIGURE 1. Justice appears primitive in William Brickey's painting of a *Missouri Courtroom*. Yet in such surroundings sharp lawyers occasionally argued the insanity defense for their clients.**

society incapable of telling right from wrong. In truth, the insanity defense is much older than Freudian psychology. It is an aged institution in American and English law. It was well established when Abraham Lincoln practiced law. He might have used it for his own clients, and he certainly saw it used in Illinois courtrooms. He never complained about its use, and the Illinois Supreme Court of Lincoln's day upheld the insanity defense and met some of the same arguments that are used against it today.

In June, 1855, a man name Isaac Wyant became embroiled in a street brawl over a land boundary dispute. One Anson Rusk shot Wyant in the arm. After the limb was amputated near the shoulder, Wyant murdered Rusk in the County Clerk's office in Clinton, Illinois, on October 12, 1855. He shot him four times in broad daylight and in the presence of several witnesses. In 1857 the case (The People *v.* Wyant) was tried in Bloomington, Illinois (March 31-April 5), on a change of venue. David Davis was the judge, and Lincoln aided the prosecution.

Wyant pleaded not guilty by reason of insanity. His sanity had been questionable long before the murder, and several doctors, including the Superintendent of the State Hospital for the Insane at Jacksonville, testified for the defense. Wyant was acquitted and became an inmate at Jacksonville for several years thereafter. He was eventually released on condition that he return to his native Indiana to stay.

Joseph E. McDonald met Lincoln and other lawyers when they were discussing the case in Danville. Lincoln "had made a vigorous fight for the prosecution" and was surprised to learn that Wyant was an old friend of McDonald's. McDonald had frequently represented him as his counsel in various scrapes in the past. Lincoln wanted to know all about the defendant, and McDonald filled him in. As the lawyers headed to the courthouse the next day, Lincoln told McDonald that he had been much disturbed by what he had learned about Wyant. He had had trouble sleeping, fearing that "he had been too bitter and unrelenting in his prosecution." "I acted," Lincoln said, "on the theory that he was 'possuming' insanity, and now I fear I have been too severe and that the poor fellow may be insane after all. If he cannot realize the wrong of his crime, then I was wrong in aiding to punish him."

Lincoln had learned his lesson. Within a few months of the Wyant trial, Robert Sloo of Shawneetown, Illinois, killed a man who had written a newspaper article critical of Sloo's father. The father had been running for a minor office and was a friend of Lincoln's. He wrote Lincoln to ask for help in his son's defense. Lincoln could not go, but he recommended the lawyer who had successfully defended Wyant. Sloo, too, was found not guilty by reason of insanity.

There may well have been other instances of Lincoln's involvement with the insanity defense, but the lack of a definitive edition of Lincoln's legal papers makes it impossible to tell. By examining the statements of the state supreme court in the period, however, one can gain an appreciation for the reasonable nature of the use of the insanity defense in Lincoln's Illinois.

On July 18, 1859, Wesley B. Fisher murdered his wife Clarissa, apparently in LaSalle, Illinois. In the ensuing trial, the attempt by defendant's counsel to prove his wife's infidelity was forbidden on objection from the prosecutor. When the defense "offered in evidence Chitty's Medical Jurisprudence, Shelford on Lunacy, Beck's Medical Jurisprudence, Taylor's Medical Jurisprudence, and Wharton's Medical Jurisprudence, for the purpose of throwing light on the indications or symptoms of insanity" in Fisher's case, the court refused to admit them in evidence.

In its instructions to the jury, the court stated:

> The law presumes every man to be sane until the contrary is shown, and when insanity is set up as a defense, by a person accused of crime, the jury should be satisfied, from all of the proofs in the case, that at the time of the commission of the crime his mind was so far affected with insanity as to render him incapable of distinguishing between right and wrong, in respect to the killing, or if he were conscious of the act he was doing, and knew its consequences, he was, in consequence of his insanity, wrought up to a frenzy which rendered him *unable* to control his actions or direct his movements.

There followed other controversial instructions which the Supreme Court was later to single out for special comment:

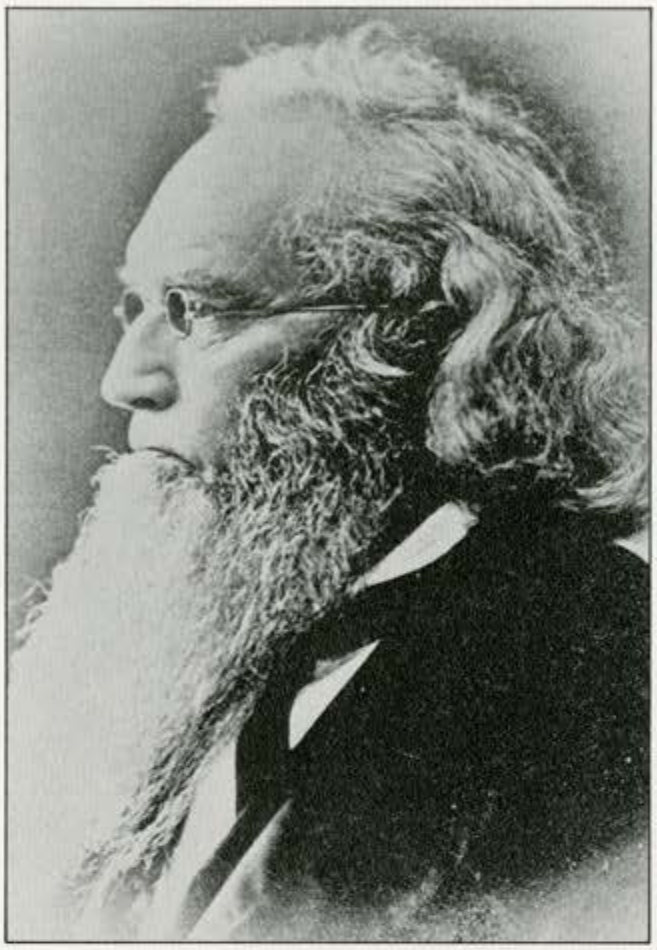
> 5th. In arriving at the conclusion whether the prisoner was sane or insane, at the time of the killing, the jury should begin with the presumption of the prisoner's sanity, and take into account all the evidence in the case of his previous history, habits and conduct, the circumstances immediately connected with the act of killing and his subsequent conduct and deportment, and unless the evidence preponderates in favor of his insanity at the time of the act, the jury cannot excuse the prisoner on the plea of insanity.
>
> 6th. Even if there should be evidence tending to show that the prisoner was insane, or affected with insanity previous to the act of killing, yet the question for the jury on this point is, whether he was insane at the time of the act complained of, and unless the jury are satisfied, from *all* the proof in the case, that the prisoner was insane *at the time of the act of killing*, they should not excuse him on that ground.
>
> 7th. Before the jury can be justified in rendering a verdict of acquittal on the ground of moral insanity, they must be satisfied by *clear* and *undoubted proof* that the accused was acting under an uncontrollable impulse, a frenzy which rendered him unable to control his actions or direct his movements, and not in a spirit of revenge for real or imagined wrong.
>
> 9th. The prosecution are not bound to prove that the defendant was sane at the time of the act complained of, and if the whole evidence in the case should leave it doubtful in the minds of the jury whether the prisoner was sane or insane at the time, they should not in that case excuse the prisoner on the ground of insanity.

These instructions came very close to putting the burden of proof on the defendant.

The Fisher case was a remarkable one not only because of the court's controversial instructions to the jury but also because the defense attempted what might be called an "insanity mitigation" of the crime as well as a traditional insanity defense. Counsel for the defense asked the court to instruct the jury thus:

> Although the prisoner may not have been so insane as to excuse him entirely, yet, in determining whether at the time of the killing he acted without deliberation, and under the influence of such a sudden and irresistible passion as would reduce the grade of the offense from murder to manslaughter, it is proper for the jury, if they believe that the same provocation would arouse such a sudden and irresistible passion in his mind, if so affected by jealousy, when it would not have aroused it if he had not been jealous, to take into consideration the fact, if proven, that he was jealous, in determining the degree and extent of the passion which existed at the time of the killing.
>
> . . . Although the prisoner may not have been so insane as to excuse him entirely, yet in determining whether at the time of the killing he acted without deliberation, and under the influence of such a sudden and irresistible passion as would reduce the grade of the offense from murder to manslaughter, it is proper for the jury, if they believe that the same provocation would arouse such a sudden and irresistible passion in his mind, if so affected by drunkenness, when it would not have aroused it if he had not been affected with drunkenness, to take into consideration the fact, if proven, that he was affected with drunkenness, in determining the degree and extent of the passion which existed at the time of the killing.

The jury was perplexed by the complicated instructions and



*From the Louis A. Warren Lincoln Library and Museum*

**FIGURE 2. Sidney Breese.**

asked for clarification from the court. One juror even asked whether it was "lawful for a juryman to go behind our statute law and search the Bible to see whether our statute laws are not void in consequence of their disagreement with the higher law." The jury also wanted to know whether it was "lawful for a juror to go behind the testimony and read medical books to see whether the doctors and others examined on the trial testified correctly or not." The court directed the jury to be governed by Illinois's statutes and by the sworn testimony in the case, not by the Bible and medical books.

Further questions poured from the jury room. Could a juryman "go behind the instructions of the court and search law books for the purpose of finding some error in said instructions"? No, responded the judge, "It is not the law that the jury can go outside of the case, as given to them by the testimony and the instructions of the court, and determine for themselves whether the law, as given to them, is or is not the law." In a final bizarre question, the foreman asked:

> Is it lawful for a juror, after admitting the proof of every essential fact which constitutes a certain crime, to bring in a different verdict, because he, the said juror, does not approve of the penalty attached to the first.
>
> If so, how long must we remain in this worse than purgatory, and be abused and villified by a fanatical *madman*.

The court said no. The judge believed firmly that the jury "must take the instructions, as they receive them from the court, to be the law by which they are to be governed in the case."

After several days of deliberation, the foreman of the jury told the judge that there was little likelihood the jury would ever reach agreement and asked him to discharge them. The judge refused, saying "that before the next term of this court, the witnesses may be in their graves, and justice may be cheated of its victim." Again, the defense objected, as it had to several of the judge's statements. The jury finally found Fisher guilty, and the defense appealed the verdict.

The Supreme Court entertained the idea of rejecting the verdict because of the "loose and disconnected manner" in which the record of the trial was made up but decided not to because the case involved the life of an individual. In the April term of the Supreme Court, 1860, Justice Sidney Breese delivered the court's opinion.

The Supreme Court found little fault with most of the instructions given to the jury or with the lower court's refusal to instruct the jury as the defense requested.

> The jury [Breese wrote], in all cases where such a defense is interposed, should be distinctly told that every man is presumed to be sane, until the contrary is shown — that is his normal condition. Before such a plea can be allowed to prevail, satisfactory evidence should be offered that the accused, in the language of the criminal code, was "affected with insanity," and at the time he committed the act, was incapable of appreciating its enormity. This rule is founded in long experience, and is essential to the safety of the citizen. Sanity being the normal condition, it must be shown, by sufficient proof, that from some cause, it has ceased to be the condition of the accused.

The Supreme Court thus appeared to endorse the idea that the burden of proof was on the defendant who used the insanity defense.

With one of the lower court's instructions, however, Justice Breese took sharp exception:

> Section 188 of the criminal code, (Scates' Comp. 408,) declares in the most pointed and emphatic language, that "Juries, in all cases, shall be judges of the law and the fact." This power is conferred in the most unqualified terms, and has no limits which we can assign to it. We have said, in the case of *Schneir* v. *The People, ante*, p. 17, that, being judges of the law and the fact, they are not bound by the law, as given to them by the court, but can assume the responsibility of deciding, each juror for himself, what the law is. If they can say, upon their oaths, that they know the law better than the court, they have the power so to do. If they are prepared to say the law is different from what it is declared to be by the court, they have a perfect legal right to say so, and find the verdict according to their own notions of the law. It is a matter between their consciences and their God, with which no power can interfere. There can be no apprehension of oppression to the citizen in so looping this power, for an erroneous decision of the jury against a prisoner can be corrected by the power remaining in the court to award a new trial. The jury were not bound to take the law as "laid down" to them by the court, but had the undoubted right to decide it for themselves, and in refusing so to declare, the court erred.

Justice Breese also thought that the instruction requested by the defense which might have reduced the crime to manslaughter should have been given to the jury.

Thus Illinois's highest tribunal was quite willing to admit a consideration which had a tendency to "psychologize the crime away," as the modern saying goes. On the other hand, it appeared to place the burden of proof in a case involving the insanity defense on the defendant.

The Supreme Court of Illinois clarified their views on the tangled question of the insanity defense in a decision handed down while Lincoln was President. In Hopps *v.* The People, decided in the court's April term in 1863, Justice Breese himself altered what he seemed to have said in the Fisher case, stating flatly and clearly: "When a defendant who is being tried upon a criminal charge, sets up insanity as an excuse for the act, he does not thereby assume the burthen of proof upon that question. Such a defense is only a denial of one of the essential allegations against him." He added, tellingly: "And in sustain-

ing such a defense, it is not necessary that the insanity of the accused be established even by a preponderance of proof; but if, upon the whole evidence, the jury entertain a reasonable doubt of his sanity, they must acquit." Breese frankly acknowledged the error in his previous decision:

> The rule here announced, differs from that laid down in *Fisher's case*, 23 Ill. 293. In that case we said, sanity being the normal condition, it must be shown by sufficient proof, that from some cause, it has ceased to be the condition of the accused. The opinion in that case, was prepared under peculiar circumstances not admitting of much deliberation, and this point was not pressed upon the attention of the court, or argued at length. Further reflection has satisfied us, it was too broadly laid down, and that justice and humanity demand, the jury should be satisfied, beyond a reasonable, well-founded doubt, of the sanity of the accused. The human mind revolts at the idea of executing a person whose guilt is not proved, a well-founded doubt of his sanity being entertained by the jury.

Chief Justice John Dean Caton filed a separate opinion, upholding the same point. "Is it any less revolting," he asked, "to an enlightened humanity to hang an innocent crazy man than one who is sane?" The "all-pervading sentiment of civilized man" demanded the "general rule in all criminal trials, that if, from the whole evidence, the jury entertain a reasonable doubt, it is their duty to acquit; and the reason is, that it is better that many guilty persons should be acquitted, than that one innocent person should be convicted."

Justice Pinkney H. Walker filed a partially dissenting opinion. "The plea of insanity," he argued, "like all other special pleas, confesses the act charged and avoids its consequences, by showing circumstances which establish a defense." It seemed logical that "the proof must devolve upon the party interposing the defense." Reasonable doubt of the defendant's sanity was not enough to cause acquittal. The rule announced in the Fisher case, though "not the uniform rule of the American courts," was the rule of "a large majority" of them, Walker said. It was a rule "well calculated to protect community against the perpetration of crime."

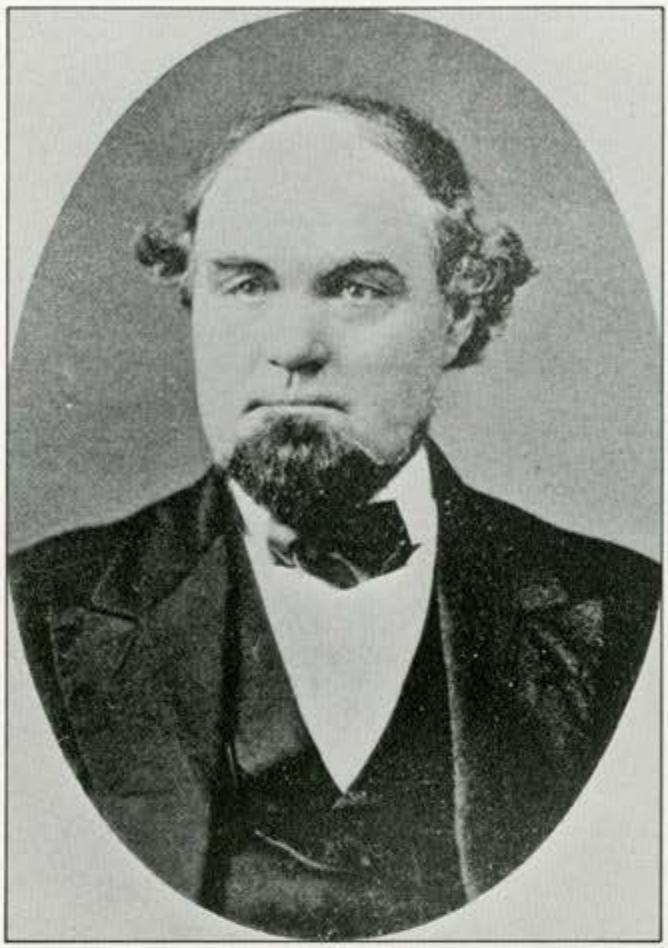
Caton and Breese represented the majority of the court, and the verdict in the Hopps case was reversed (Hopps had murdered his wife and had been found guilty).

Over a hundred years ago, Illinois law upheld the insanity defense. After an awkward start, its highest tribunal ruled that the burden of proof was on the prosecution and that a reasonable doubt of the defendant's sanity dictated an acquittal. "Sanity is guilt," said Justice Breese, "insanity is innocence; therefore, a reasonable doubt of the sanity of the accused, on the long and well-recognized principles of the common law, must acquit." Lincoln's was not a simpler era because it was an earlier era. The judges and lawyers faced the same difficulties that modern judges and lawyers do: conflicting testimony from expert medical witnesses, considerable disagreement among medical authorities who wrote on insanity, awareness that defendants could "possum" insanity, and the all-important necessity to balance the safety of the community against the sanctity of an individual's life and liberty.

Breese admitted that writers on the subject "furnish, as yet, no true and safe guide for courts and juries." Pinkney Walker knew "that there are few questions which present greater difficulties in their solution, than this of insanity. It assumes such a variety of forms, . . . that it has almost been denied, that any person is perfectly sane, on every subject." In a hotly contested case, one Justice noted, "One of the physicians, . . . states that, from complainant's evidence, he thinks it difficult to tell whether Waggoner was sane or insane. . . . The other physician gives it, as his opinion, that he was insane." Caton knew that "insanity may be simulated," but "So may any other fictitious defense be got up to screen the guilty." None of these difficulties challenged the place of the insanity defense as far as Illinois's greatest lawyers in Lincoln's era were concerned.

They were aware, of course, that they dealt with a "science" as yet in its infancy. "To say that men by careful study and investigation," Caton argued, "can acquire no skill on this subject, while the same study and investigation will constantly develop new truths on all other subjects, would be a daring assumption upon which we cannot consent to hang a fellow man." Breese, too, upheld the insanity defense even though he knew that science as yet offered "no true and safe guide for courts and juries." He hoped that someday a rule would be established which, "whilst it shall throw around these poor unfortunates a sufficient shield, shall, at the same time, place no great interest of community in jeopardy."

That day never came — all the more reason that modern Americans should look to the past for guidance when examining the fundamental parts of their legal system.



*From the Louis A. Warren Lincoln Library and Museum*

**FIGURE 3. Pinkney H. Walker.**

## JAMES ANTHONY MUDD

Dr. Richard Mudd, who watches out for the reputations of his ancestors, noted that the James Mudd referred to in *Lincoln Lore* Number 1721 must have been James Anthony Mudd, Dr. Samuel A. Mudd's older brother. "Jim" Mudd was born in Bryantown, Maryland, in 1829. He lived in or near Bryantown most of his life, moving to Baltimore in the 1880s. During the Civil War, he was a farmer. He was drafted, but his family paid for a substitute.

Richard Mudd's useful book, *The Mudd Family of the United States*, does not mention James Mudd's pro-Confederate activities, but the doctor assures us that he learned about them too late to include mention in the first edition of his book. "Jim" Mudd's wife, Emily, testified in Dr. Samuel A. Mudd's behalf at the trial of the alleged conspirators in Abraham Lincoln's assassination.