



Lincoln Lore

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LINCOLN AND LEGAL EDUCATION IN ANTEBELLUM AMERICA (PART I)

by Matthew Noah Vosmeier

In September 1855, Lincoln traveled from Illinois to Cincinnati to act as associate counsel with George Harding and Edwin M. Stanton in the *McCormick v. Manny & Company* case. Lincoln had prepared well, he thought, but was snubbed by his two fellow lawyers, who left him little to do: "Freed from any care in the law case that brought him here, it was to him a week of relaxation," said George M. Dickson, Lincoln's Cincinnati host and husband of Mary Lincoln's cousin. In fact, Lincoln was so irritated by his treatment that he claimed that "things have so happened here as to make it undesirable for me ever to return" to Cincinnati. This trial was the first meeting of the future President and future Secretary of War, and Stanton was not impressed by the Illinois lawyer. Lincoln was largely unknown outside of his state, while Stanton had become a well-known lawyer in Ohio. After attending Kenyon College in Gambier, Ohio, Stanton began his legal career in 1836, and eventually moved to a larger practice in Pittsburgh in 1847.¹

Ida Tarbell's *Life of Abraham Lincoln* contains an interesting apocryphal story related to Lincoln's Cincinnati experience, told by a Ralph Emerson of Rockford, Illinois, an acquaintance of Lincoln's. Emerson was in Cincinnati during the trial, and recalled that Stanton's final summary

was very able, and Mr. Lincoln was throughout the whole of it a rapt listener. Mr. Stanton closed his speech in a flight of impassioned eloquence. Then the court adjourned for the day, and Mr. Lincoln invited me [Emerson] to take a long walk with him. For block after block he walked rapidly forward, not saying a word, evidently deeply dejected. At last he turned suddenly to me, exclaiming, "Emerson, I am going." A pause. "I am going home to study law." "Why," I exclaimed, "Mr. Lincoln, you stand at the head of the bar in Illinois now. What are you talking about?" "Ah, yes," he said, "I do occupy a good position there, and I think I can get along with the ways things are done there now. But these college-trained men,

who have devoted their whole lives to study, are coming West, don't you see? And they study their cases as we never do. They have got so far as Cincinnati now. They will soon be in Illinois." Another long pause. Then stopping and turning toward me, his countenance suddenly assuming that look of strong determination which those who knew him best sometimes saw upon his face, he exclaimed, "I am going home to study law. I am as good as any of them, and when they get out to Illinois I will be ready for them."²

In another story, with a rather different message, President Lincoln converses in 1864 with his son Robert, who has just

graduated from Harvard University. Lincoln asks: "Son, what are you going to do now?" Robert replies: "As long as you object to my joining the Army, I am going back to Harvard to study law." "If you do," his father remarks, "you should learn more than I ever did, but you will never have so good a time."³

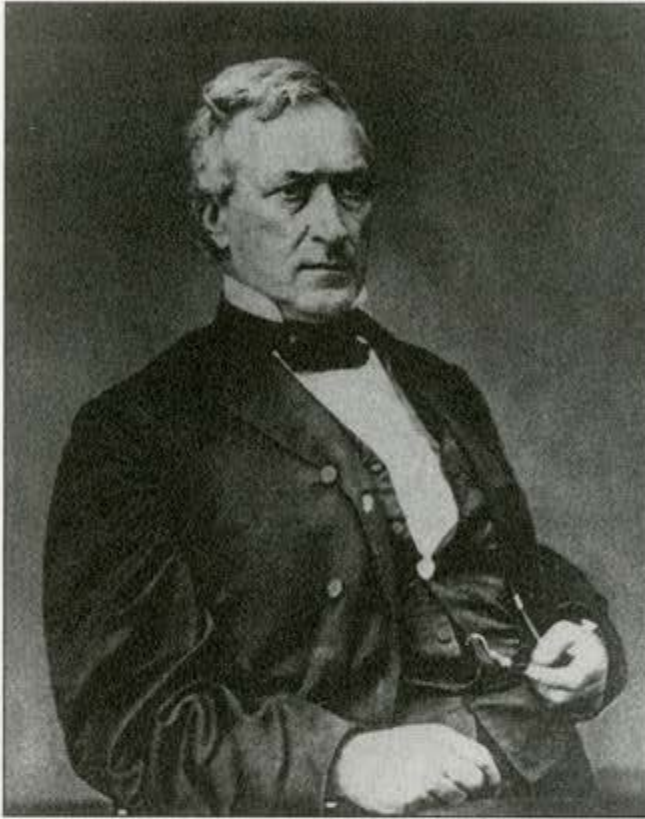
Of the two stories, the latter sounds more true to Lincoln, who probably was recalling his days reading law books and riding the Eighth Judicial Circuit in Illinois with men who would remain his friends and supporters for the rest of his life. The exchange with Emerson would seem reasonable if seen as an outburst of frustration about his treatment during the trial, but otherwise implies more of a bitter anti-intellectualism, uncharacteristic of Lincoln, than regret at his lack of schooling. By 1855, Lincoln had been practicing law successfully for nearly twenty years, and it is unlikely that he felt himself less than equal to his colleagues, some of whom were college graduates. John P. Frank, in his book, *Lincoln as a Lawyer*, points out that Lincoln's lack of a formal education "set him apart more severely from his fellow practitioners than did his lack of formal legal education," but this would have been more true early in his career, before he had established himself: "As Judge Logan put it 'by close study of each case as it came up, he got to be quite a formidable lawyer.'"⁴

Another story casts doubt on



From the Lincoln Museum

FIGURE 1. Edwin McMasters Stanton.



From the Lincoln Museum

FIGURE 2. John Todd Stuart encouraged Lincoln to study law, and became his first law partner.

Emerson's veracity. Emerson tells us that he once asked Lincoln whether one could practice law successfully and still "always do by others as he would be done by?" Lincoln's head dropped on his breast, and he walked in silence for a long way; then he heaved a heavy sigh. When he finally spoke, it was of a foreign matter.⁵ Emerson believed he had his answer, and decided not to enter law.⁶ Although Lincoln may not have commented directly on the practice of law and the Golden Rule, we know that he fought the popular notion that the profession was essentially unethical, and in his "Notes for a Law Lecture," told aspiring lawyers to "resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave."⁶ Thus, in Lincoln's view, it was clearly possible for a practitioner of law to rise above temptation and unethical practice.

Emerson's reminiscences perhaps tell us more about Emerson than they do Lincoln. Emerson recalled two stories which would startle readers with Lincoln's doubts about himself and the profession to which he devoted almost half of his life. He also asserts for Tarbell's readers that his acquaintance with Lincoln was close enough that he could identify "that look of strong determination which those who knew him best sometimes saw upon his face."

Both the Cincinnati trial story and Lincoln's advice to Robert, however, point to Lincoln's painful awareness that his own education was "defective." As his formal schooling had lasted less than a year, he compensated for his want by reading on his own. By contrast, several of his contemporaries had received college educations, and a few of them had even attended law school. David Davis had attended Kenyon College, and studied law for less than a year at New Haven Law School in addition to studying in a law office. John Todd Stuart, Lincoln's first law partner, was an alumnus of Centre College in Danville, Kentucky. Henry E. Dummer, who preceded Lincoln in partnership with Stuart before leaving to establish his own practice, had attended Bowdoin College and Harvard Law School. Dan Stone, a fellow

Whig and one of the "Long Nine" in the Illinois legislature, graduated from Middlebury College in Vermont. John J. Hardin, a fellow Whig and Mary Lincoln's cousin, had studied at Transylvania University's Law Department, as did Ninian Wirt Edwards, the husband of Mary Todd Lincoln's sister, Elizabeth.⁷ However much Lincoln regretted not having received the formal education of such contemporaries as these, he clearly believed a young man could learn law without having a college education, let alone the rarer experience, a formal legal education. He even believed that reading in a law office, which was a far more common route to the bar, was unnecessary, as he wrote to an aspiring lawyer:

If you are resolutely determined to make a lawyer of yourself the thing is more than half done already. It is but a small matter whether you read with anybody or not. I did not read with anyone. Get the books, and read and study them till, you understand them and their principal features; and that is the main thing. 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. The books and your capacity for understanding them, are just the same in all places.⁸

These stories concerning Lincoln as a law student and practitioner point out the fragmented nature of the literature about Lincoln as a lawyer. Cullom Davis, who directs the modern-day Lincoln Legal Papers Project, has noted that much has been written about Lincoln's twenty-four years in law practice, "but most of it is dated, impressionistic, or factually incomplete."⁹ As the Lincoln Legal Papers project continues its comprehensive editing of documents from Lincoln's career, these neglected, but significant, years of Lincoln's life will be brought out of the forgotten past. A further sign of increased interest in Lincoln's legal career is a forthcoming bibliography concerned wholly with Lincoln as a lawyer, compiled by Elizabeth Mathews, law librarian at Southern Illinois University.¹⁰

As Cullom Davis implies, and as numerous other tales of Lincoln's life and law career show, fact and folklore have become intertwined in the Lincoln legend. According to one tale, Lincoln got his first chance to read law as a boy in Indiana when he obtained a copy of *The Revised Statutes of Indiana*. But as John Duff, author of *A. Lincoln: Prairie Lawyer*, points out, it is unlikely that "Lincoln's interest in the law should have been aroused by anything so painfully dull as a compendium of statutes." Another story tells that Lincoln obtained his copy of Blackstone's *Commentaries* at the bottom of a barrel he had bought for fifty cents while working as a storekeeper, but it is more likely that he found the book by a less serendipitous means. When Lincoln read Samuel C. Park's copy of William Dean Howells' 1860 campaign biography of the Republican presidential nominee, he marked in the margin that he had "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."¹¹

In any case, the beginnings of Lincoln's legal career are probably irretrievable. The often-told tale begins when he first considered studying for the profession in 1832. Lincoln, however, delayed pursuing a legal career until 1834, apparently believing "he could not succeed at that without a better education." Whatever preparation Lincoln made toward law is unclear, and John Duff "searched in vain" for clues that would explain Lincoln's wait. Charles Strozier, who studied Lincoln's "search for identity and love," saw Lincoln's "long, stumbling search for satisfying work" as more than a "reflection of his lack of a formal education." It was perhaps also a "part of a larger search for personal coherence and integrity."¹² It has been said that during the election of 1834, which took Lincoln to the Illinois Legislature, John Todd Stuart encouraged Lincoln to study law, after which Lincoln began to study "in good earnest." Duff explains, too, that Lincoln spent a great deal of time in the Sangamon County Courthouse in 1833 as a juror and witness, and could not help but notice that lawyers need not have been formally educated, but did need "acumen, intelligence and the ability to express one's self clearly and convincingly." Lincoln must have known already of his talent for articulate speaking, as he had been a member of the New Salem Debating Club in 1831-1832. There, as one witness recalled, during a debate, he

"pursued the question with reason and argument so pithy and forcible that all were amazed."¹³

Once he had decided to pursue law, Lincoln began to borrow law books from Stuart, and taking them home, would "seek a secluded spot where he might study, often lying on his back in the shade of a tree, with his long legs aloft against its trunk." Stuart's partner, Henry Dummer, recalled that Lincoln would come to the office to borrow books, "the most uncouth looking young man I ever saw. 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."¹⁴

These stories of lawyer Lincoln tell something of the nature of the law and legal education in the first half of the nineteenth century, when training in the profession, and the role of the law school, were different from what they would be later in the century. What comprised legal education in Jacksonian America, and how did Lincoln's Illinois experiences fit in with larger trends in legal education?

Whatever Lincoln said in his conversations with Ralph Emerson and about Robert's career plans, doubtless he recognized

that his profession had changed in the quarter-century since he had purchased his copy of Blackstone. In fact, in the eighty years between the Revolution and the Civil War, and perhaps particularly in those years Lincoln practiced, the law had experienced both good and bad fortune as it adapted itself to a changing and expanding America. In studying this period of American history and the changes within the profession, however, legal historians have disagreed as to which events signaled ascension or declension for the law. According to the traditional outline, the profession suffered a decline immediately after the Revolution, but recovered in the early decades of the nineteenth century, "the Formative Era of American Law," only to suffer the leveling attacks of an aggressive Jacksonian Democracy in the thirty years prior to the Civil War. More recently, some legal historians, while acknowledging that lawyers experienced fluctuations in anti-lawyer sentiment and saw their profession changing in the antebellum years, have interpreted these changes as indications of internal adaptation or "intense legal development," rather than as signs of declension.¹⁵

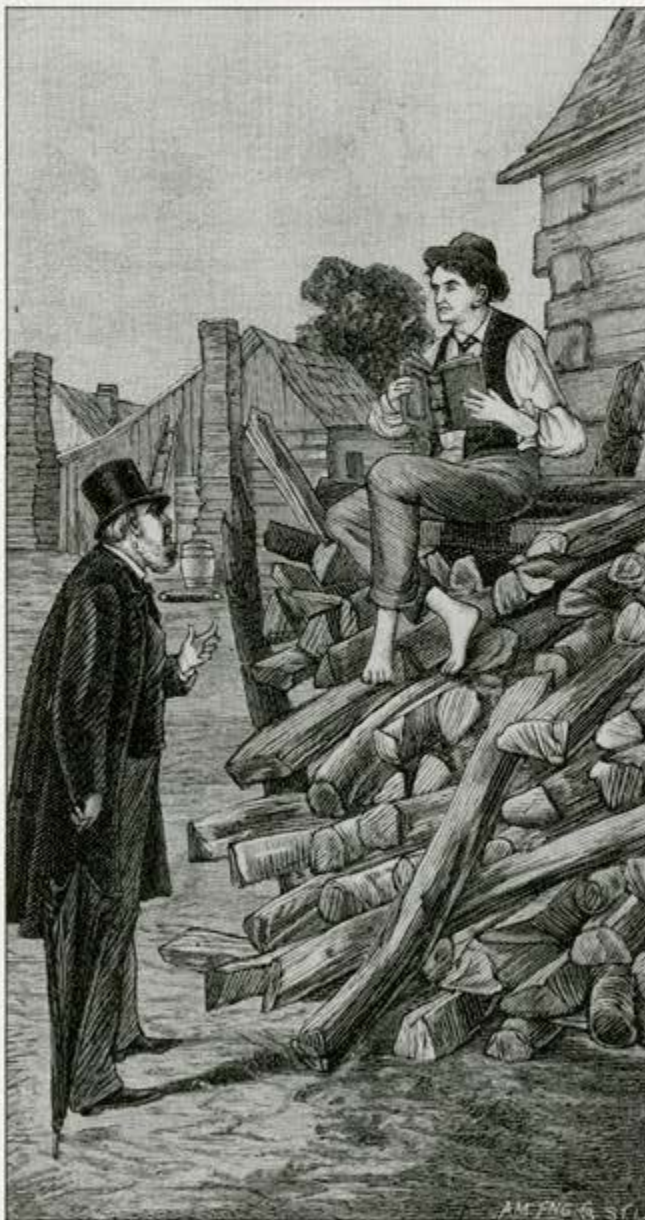
Lincoln was aware of Americans' paradoxical expressions of honor and distrust of lawyers: "There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal." This popular distrust of lawyers had preceded Lincoln, and had become particularly evident in

the years immediately following the Revolution, when the profession suffered the attacks of a revolutionary republicanism which branded lawyers as an elite class having "no place in a true republic."¹⁶

Yet, for legal historian Anton-Hermann Chroust, this post-war decline was followed by a "formative era" or "golden age" of American law, during which outstanding lawyers successfully applied "traditional legal materials to the specific American circumstances . . ."

By arguing, demonstrating, and determining what was applicable and what was not applicable to the new and unique American social scene, and by creating an apparatus of rules and precepts equal to the early American life, the young American legal profession not only helped the courts in developing and stabilizing a body of laws in each jurisdiction, but it also rose to unprecedented heights of professional excellence and accomplishments.¹⁷

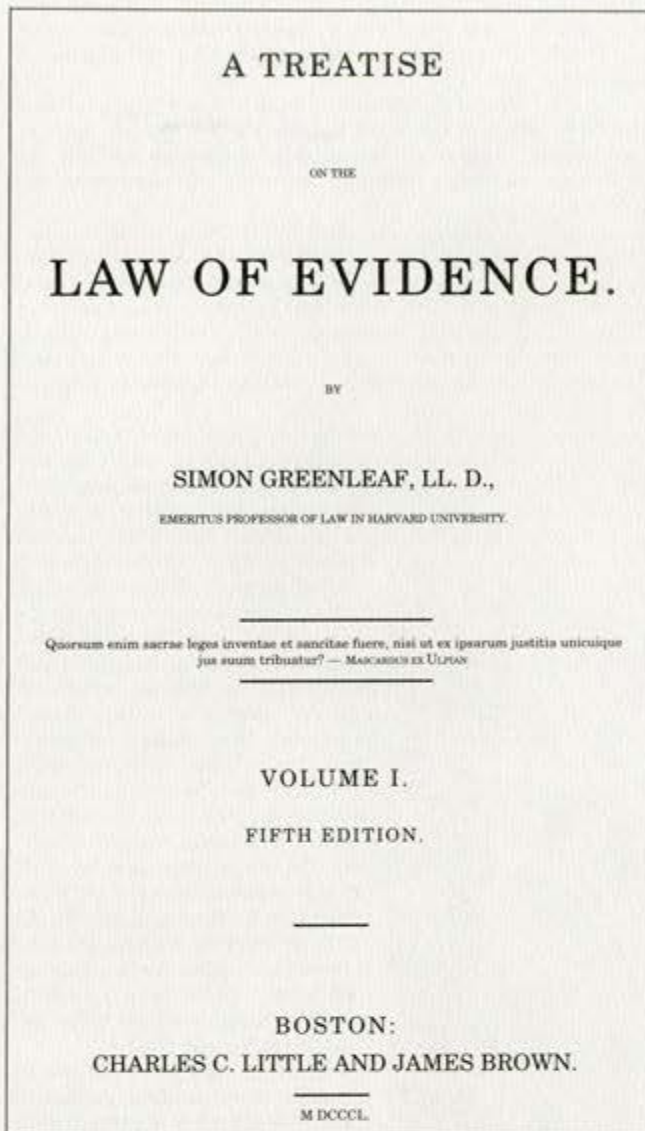
This period, too, saw the foundation of a number of law professorships in colleges, although these college courses were not intended to prepare students for law practice. Instead, says legal historian William Johnson, they were to see that liberally educated men were prepared for public life. The earliest



From the Lincoln Museum
 "sitting astride Jake Bates' woodpile in New Salem." From
 Francis Browne's *Every-Day Life of Abraham Lincoln*
 (1886).

American law professorships, created during the republic's first half-century at colleges such as Harvard, Yale, and Columbia, south to the University of Maryland and the College of William and Mary, offered courses of study based largely on Blackstone's *Commentaries*, which had been intended originally for "every gentleman and scholar." In these "formative years" of American legal education, the only college that lay west of the Appalachians was Transylvania at Lexington, Kentucky. In 1833, about the time Lincoln considered starting his studies, Cincinnati Law School was founded, which became associated with Cincinnati College in 1835.¹⁸

In contrast, lawyers in the early republic were trained primarily through a system of apprenticeship and formal examination, rather than through law schools attached to colleges. Out of this system of formalized apprenticeship in law offices, private law schools developed, the most famous of which were Tapping Reeve's in Litchfield, Connecticut, and the schools that later joined Yale and Harvard. Generally, the liberal arts approach to the study of law proved less successful than the more practical approach taken at the private law schools, and it happened that the more successful college-sponsored law schools were those that adopted a more practical curriculum. However, the first law professors did succeed in several of their goals, says Johnson, though not necessarily in the ways they had intended. The treatises they wrote became the books that aspirants studied in law offices. At the same time, these professors sought to impose order and a scientific approach on the discipline. For example, with scientific order in mind, David Hoffman, a professor of law at the University of



From the Lincoln Museum

FIGURE 4. One of Lincoln's suggested readings in law.

Maryland, organized and wrote *A Course of Legal Study*, originally published in 1817, but released in a second edition in 1836. This two-volume annotated bibliography set down in great detail which books an aspiring lawyer should read in particular areas of the profession. Hoffman admitted that

The Course . . . is extensive, but can be thoroughly accomplished, we compute, in six or seven years, making due allowance for other necessary reading. This may appear to some a very long period, and, indeed, is nearly double that which is usually allotted. But the student should bear in mind the extent, difficulty, and importance of the science, and how necessary it is to treasure up an ample fund of knowledge before he becomes fully engaged in practice, after which he will scarce be able to pursue any study with much perseverance or method.

So as not to discourage a student from this arduous undertaking, however, Hoffman marked the text to indicate which books could be omitted to lessen the time of study to three years.¹⁹

In Lincoln's time, students who learned on their own or in law apprenticeships studied such treatises as St. George Tucker's American edition of Blackstone's *Commentaries*, published in 1803; James Kent's *Commentaries on American Law*, originally published between 1826 and 1830; and Joseph Story's *Commentaries*, first published between 1832 and 1845. Lincoln's own reading list is suggested by a letter he wrote in 1858 for an aspiring lawyer: ". . . my judgment is, that he reads the books for

himself without an instructor. That is precisely the way I came to the law. Let Mr. Widney 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. That is my judgment of the cheapest, quickest, and best way for Mr. Widner to make a lawyer of himself."²⁰

FOOTNOTES

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10. Elizabeth W. Mathews, "Lincoln as a Lawyer and Other Lincolniana: Selected Bibliography," Southern Illinois University School of Law Publications Series, Number 7 (Carbondale: Southern Illinois University, 1987). Mathews' forthcoming bibliography is expected in the Spring of 1991.
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14. Thomas, *Abraham Lincoln*, 43.
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18. William R. Johnson, *Schooled Lawyers: A Study in the Clash of Professional Cultures* (New York: New York University Press 1978) pp. 3-5; Chroust, *Rise of the Legal Profession*, 2:216.
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