

On October 1 and 2, 2009, the Law School, together with the Marquette University Department of History, sponsored a conference entitled “Legacies of Lincoln.” The conference marked both the bicentennial of Lincoln’s birth and the sesquicentennial of his visit to Milwaukee to speak at the Wisconsin state fair. The following is an abridged version of a paper prepared for that conference by Mark E. Steiner, professor of law at South Texas College of Law, and drawing on Steiner’s well-received book, *An Honest Calling: The Law Practice of Abraham Lincoln*, published in 2006. Professor Steiner relates that “while the good parts of this article are entirely new, other 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.” The unabridged article, including footnotes and together with other conference proceedings, will appear in the summer 2010 issue of the *Marquette Law Review*.

LINCOLN’S LAW BOOKS

by Mark E. Steiner

LINCOLN IN MEMORY

We associate Abraham Lincoln with books more than any other president except, perhaps, Thomas Jefferson. But Jefferson’s association with books creates more distance, while Lincoln’s draws us closer. Lincoln’s reading is linked to self-betterment and personal growth. Lincoln is also seen as a reader as a boy and a young man, not as an adult.

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, Ill. The image of Lincoln reading by fireside was popularized by Eastman Johnson’s 1868 painting, *Boyhood of Lincoln*.

Art historian Patricia Hills has noted that Johnson depicted Lincoln “acting out the moral drilled into every schoolboy, that in America hard work and perseverance” guarantee success. This image still pervades contemporary children’s biographies whose covers are adorned with young Lincoln reading. The message intended by these book covers is clear: if you read books, you can become president, or, perhaps more subtly, reading is transformative.

Behind the legend of Lincoln and books 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 learn-

ing there could be no doubt.” Lincoln’s cousin, Dennis Hanks, remembered how “Abe was getting hungry for book[s], reading Evry thing he could lay his hands on.” His stepsister, Matilda Johnston Moore, recalled that Lincoln “was active & persistant in learning—read Every-thing he could.”

While 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*. 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.”

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



America's collective memory of Lincoln also commemorates his reading habits as a young man in New Salem. Lincoln moved to New Salem when he was 22 and left when he was 28. 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. David Gilmour Blythe's 1860 painting, *Abraham Lincoln, Rail Splitter*, shows Lincoln splitting rails with an open book in the foreground. In subsequent artistic depictions of Lincoln in New Salem, he picks up the book. At New Salem, Avard Fairbanks's 1954 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. The book points to his future vocation and the axe to the life he would leave behind. The most famous is Norman Rockwell's *Lincoln the Railsplitter* (1965), which shows Lincoln walking while reading a book held in one hand and an axe in the other. In these images, Lincoln is reading thick books, obviously intended to represent law books.

Again the Lincoln of history is worthy of the legend, as Lincoln scholar Douglas L. Wilson has noted. Wilson notes that the New Salem years "were a time of intensive reading and study for Lincoln." Interviews of New Salem residents attest to Lincoln's devotion to reading while living in New Salem. Robert B. Rutledge recalled seeing Lincoln thus:

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.

While in New Salem, Lincoln studied grammar and surveying, and "*Devoured* all the Law Books he could get hold of." Russell Godbey memorably described the first time he saw Lincoln reading a law book: "The 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."

But this association in American memory between Lincoln and law books curiously ends when he actually



Lincoln the Railsplitter (1965), Norman Rockwell.
Collection of The Butler Institute of American Art, Youngstown, Ohio

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." Lincoln scholars also tend to overlook this aspect of Lincoln's practice. 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." 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."

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." In his use of law books, Lincoln was a typical antebellum lawyer. Second, antebellum lawyers were a bookish sort, which was acknowledged in the portraits and photographs of lawyers of the era. In the earliest known image of Lincoln, a daguerreotype taken in 1848, his left hand is touching a book on a table. In the famous photograph taken by Matthew Brady in 1860, Lincoln is standing, with his left hand resting on a short stack of books.

LINCOLN READS FOR THE LAW

New Salem residents remembered Lincoln reading law books in 1831 or 1832; however, Lincoln wrote that he only began studying law "in . . . earnest" after the election of 1834. 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." In Indiana, Lincoln had attended trials and read the Revised Statutes of Indiana, according to his cousin, Dennis Hanks. Lincoln had been unwilling to commit to the study of law until "a private conversation" during the 1834 canvass with his fellow Whig legislator, John T. Stuart, who encouraged Lincoln to study law.

When Lincoln once served as a bar examiner, the candidate later recalled that Lincoln's first question was, "What books have you read?" Lincoln asked the question because antebellum lawyers read for the law. But most aspiring lawyers read in lawyers' offices as apprentices. When Lincoln "borrowed books" and "studied with nobody," he took a different path.

The dominant form of antebellum legal education was law-office study. Most lawyers came to the bar through apprenticeships. Lincoln didn't miss much by not serving a formal apprenticeship. Josiah Quincy in 1832 summarized law-office study as "[r]egular instruction there was none; examination as to progress in acquaintance with the law,—none; occasional lectures,—none; oversight as to

general attention and conduct,—none."

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." According to Dummer, Lincoln "did not say much—what he did say he said it strongly—Sharply." When Lincoln claimed he "studied with nobody," he may have overstated things. Stuart probably served as Lincoln's "combination teacher/mentor/supervisor." 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. Lincoln missed little by not copying documents in Stuart's office. His association with Stuart, however, 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. 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."

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*, and he probably also read Joseph Story's *Equity Jurisprudence*, Chitty's *Pleadings*, and Joseph Kent's *Commentaries on American Law*. Lincoln later recommended five different legal treatises to law students in the 1850s.

Lincoln may well have read Kent's *Commentaries on American Law* while in New Salem. A New Salem resident also recalled Lincoln's reading Kent, and a law clerk remembered Lincoln's referring to his "studies of Blackstone and Kent." Kent attempted to Americanize the common law in his *Commentaries*, and they soon became a standard reference work for American lawyers.

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)."

In letters written in the 1850s, Lincoln advised prospec-

tive lawyers to prepare for the bar as Lincoln himself did twenty years before. The advice was pretty much the same: “get books, sit down anywhere, and go to reading for yourself.” Lincoln never suggested attending law school, although law schools were located nearby in Cincinnati and Lexington. 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. To Isham Reavis, he said that “it 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.”

Lincoln emphasized commitment and hard work: “Work, work, work is the main thing,” he advised Isham Reavis. “If you are resolutely determined to make a lawyer of yourself, the thing is more than half done already.”

LINCOLN AND BLACKSTONE

Lincoln’s having begun his law studies by reading Blackstone’s *Commentaries*—the typical starting point for would-be lawyers in antebellum America—is a matter of particular interest. 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.”



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 (December 22, 1860)

Blackstone’s *Commentaries* were the first books purchased by Lincoln. 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.

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 that “people said he was crazy.”

Lincoln, as Robert A. Ferguson notes, was our “last Blackstone lawyer to lead the nation.” 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” and “never in my whole life was my mind so thoroughly absorbed.” 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. While Lincoln’s heavy intellectual debt to Blackstone was typical of antebellum lawyers, he apparently did not

share the concerns of those lawyers sensitive to the differences between American and British principles of governance.

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.”

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.” After Blackstone, “the law assumed the aspect of a well-defined science, which had its limits, its proportions, its divisions, its principles, its



Abraham Lincoln (1848)

objects, all arranged in an orderly method.”

Lincoln had decided against studying law in 1832 because he believed “he could not succeed at that without a better education.” Lincoln believed that his education was “defective.” 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. Lincoln would still need Stuart’s encouragement before he could finally commit to the study of law.

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.” Lincoln “never studied law books unless a case was on hand for consideration.” Although Lincoln advised would-be

lawyers to “still keep reading” after becoming licensed, Lincoln’s reading instead was directed toward the case before him. Ward Hill Lamon said Lincoln was a “case lawyer” because he based his arguments on analogous cases instead of grand legal principles. In the late nineteenth and early twentieth century, the term “case lawyer” became a criticism associated with the still controversial case method.

Lincoln’s approach to reading law books was typical for a lawyer. Herndon noted that “Lincoln never read much law, and never did I see him read a law book through,” completing the sentence by noting “and no one else ever did.” 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. Lincoln kept the catalogue, which listed over 1,100 English and American treatises by subject, but he also wrote “[t]oo deep for me” on the outside of the envelope.

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.” A drawing of Lincoln’s law office that appeared in 1860 shows several bookcases and books stacked on top of a small cabinet. Lincoln owned case reporters from Illinois and English courts, treatises, federal and state statute and session laws, digests, and formbooks. Lincoln also used books from the Illinois Supreme Court library.

When 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. In one trial brief in a will contest, Lincoln cited twenty cases from eleven jurisdictions. In the *Illinois Central Railroad v. McLean County* appeal, Lincoln cited three Illinois cases, 16 decisions from 13 other state courts, and one United States Supreme Court opinion.

Lincoln also cited English case law. 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.” Lincoln had some English reports in his office and had easy access to others.

Lincoln relied heavily on legal treatises in his law practice. Lincoln’s appellate cases attest to his frequent use of treatises. Lincoln cited 34 treatises in 39 trial and appellate cases. Twenty-eight authors were represented. Lincoln also owned treatises that do not show up in citations in his

written pleadings or briefs or recorded in appellate decisions. Lincoln owned treatises on such substantive areas as criminal law, railroad law, landlord and tenant law, and common carriers.

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 reported decisions. The summaries would be arranged under a system of classified headings. 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.”

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.” 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. Lincoln in this letter discussed “the competency of a Stockholder to testify” in a stock subscription case. He cited two cases. He first gave his client a citation to a Pennsylvania case but admitted “this book is not here & I find a reference to it in the Suplt. U. S. Dig: Vol. 2 page 976. Sec. 405.” Lincoln was referring to the 1847 Supplement to the United States Digest. Lincoln next cited a Kentucky case, “7 Dana 99.” Lincoln also had found this case using the 1847 supplement. It was listed on the same page as the other case. 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.” 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.

Lincoln also relied upon formbooks, a practice he had begun before he became a lawyer. New Salem resident Abner Y. Ellis remembered that, before he became a lawyer, 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.” 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, and three deeds written in 1833 or 1834. Formbooks such as Charles Gilman’s *Illinois Conveyancer* (1846) supplied labor-saving templates for simple transactions such as deeds.



Abraham Lincoln (1860). Matthew Brady

“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 “Lincoln’s knowledge of law was very small when I took him in.” Logan explained that:

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.

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.” Judge David Davis remembered how Lincoln

“was Slow to form his Opinions—he was deliberate.”

Lincoln was an excellent appellate lawyer, arguing hundreds of cases to the Illinois Supreme Court, where he developed sophisticated (and technical) legal arguments. He or his partners handled several thousand cases during his nearly 25-year career—and over 400 of those were appeals to the Illinois Supreme Court (in more than 160 of these Lincoln had been hired for the appeal). Before he was president, Lincoln was, at any rate, precedential. For example, in different cases, Lincoln argued both sides of an evidentiary matter: whether the relative wealth of the plaintiff and the defendant could be considered by the jury when it assessed compensatory and punitive damages.

Herndon thought Lincoln was 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.” 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.

LINCOLN AS POLITICIAN AND PRESIDENT

Lincoln as a politician in Illinois in the 1850s 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 spent “months of solitary reading and preparation” before he began giving speeches about the act. His criticism of the act was based upon history and precedent. When Lincoln directly responded to one of 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.” 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.” The research showed: Lincoln attacked the “assumed historical facts which are not really true” in the court’s opinion.

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.” Herndon noted that 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.” 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*. At the supreme court library, Lincoln 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*. The finished product was a “combination of legal brief and history lesson.”

During the “secession winter” of 1860, journalist Henry Villard observed that Lincoln was “indefatigable in his efforts to arrive at the fullest comprehension of the present situation of public affairs and the most proper conclusions as to its probable consequences.” 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. 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.” But, as historian James M. McPherson has recently argued, Lincoln was not a natural strategist. 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.” McPherson fittingly concludes that Lincoln “worked hard to master this subject, just as he had done to become a lawyer.” 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.” ■