Lessons in Leadership from Lincoln the Lawyer

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LESSONS IN LEADERSHIP FROM LINCOLN THE LAWYER

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The topic of my lecture is "Lessons in Leadership from Lincoln the Lawyer". I intended the title as a tribute to Abraham Lincoln's love of words, though I must admit that my simple alliteration is rather pedestrian when compared to Lincoln's sophisticated use of language. It has also subjected me to the abuse of at least one of my faculty, who took some pleasure in remarking on the lecture by "our alliterate dean," without emphasizing the "a" as I just did.

It takes no great insight to see Lincoln as a great leader. In fact, in preparing this lecture, I read a relatively new book by Donald T. Phillips called LINCOLN ON LEADERSHIP: EXECUTIVE STRATEGIES FOR TOUGH TIMES.1 Although Phillips seems to me to be reverse engineering history to fit contemporary management theory, the book is illuminating both on leadership and Lincoln.

What I hope to add to an understanding of Lincoln's leadership in this lecture is some reflection on how his training and experience as a lawyer may have contributed to his success as a leader. In doing so, I suspect that I will also be guilty of some manipulation of the historical record to fit my purposes.

Given the status of lawyers in public opinion, it is perhaps risky to attempt to credit any of Lincoln's leadership to his profession as a lawyer. But it is natural to do so, in our effort to make connections with great people, whether based on place of birth (after last week's election, I heard a South Dakotan note that Skip Humphrey was not a South Dakotan, while his father Hubert, a great man, was), college or university attended (a fruitless endeavor in Lincoln's case), profession, or some other characteristic.

Lawyers are particularly prone to claim great persons. Some I like to claim are Mahatma Gandhi, Hoagy Carmichael, and even Tony La Russa. I try to ignore Spiro Agnew and Geraldo Rivera. And perhaps more relevant to today's topic, you will not hear me discussing how James Buchanan's legal training and experience contributed to his presidential leadership.

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It is not a stretch, however, for a lawyer to take some professional pride in Lincoln's leadership. At least since 1906, when Frederick Trevor Hill published LINCOLN THE LAWYER, there has been good historical evidence of the connection between Lincoln's experiences as a lawyer and his later achievements. There is support in an even earlier record, the 1888 biography by Lincoln's law partner, William Herndon.

The purpose of this lecture is not, however, to glorify lawyers. Its purpose is to draw from Lincoln's life some lessons of leadership and then discuss how these might have been influenced by Lincoln's legal training and experience. So let me begin by summarizing the lessons in leadership that I plan to discuss today:

First, leadership requires hard work.
Second, leadership requires careful, clear thinking.
Third, leadership requires effective communication.
Fourth, leadership requires that a leader take less credit and more blame.
Fifth, and most important, leadership requires firm commitment to principles.

Let's start with hard work. The historical record is replete with accounts of Lincoln's willingness to work hard, whether splitting rails or studying Euclid. Interestingly enough, there is some conflict over his work habits as a lawyer.

There is no question that Lincoln's quantity of legal work was prodigious. He was easily the busiest lawyer of his place and time. Hill documents that Lincoln argued 172 cases before the Illinois Supreme Court, and at least one other source places the number considerably higher. He tried hundreds of cases in both state and federal courts, including cases involving such highly specialized areas of law as patents and admiralty. He also argued before the federal appellate courts, including the United States Supreme Court. His reputation as a lawyer was sufficient to cause Daniel Webster, arguably the greatest lawyer of his day, to retain Lincoln to represent him on a land title dispute in Illinois.

Judged by outcomes, there is no dispute over the quality of Lincoln's legal work. He won most of the time. In fact, Lincoln's success against Stephen Logan, one of the leaders of the Illinois bar, in at least three appeals must have influenced Logan's decision to bring Lincoln into his firm as a junior partner.

The questions about Lincoln's work habits involve his manner of preparation, especially in the earliest years of his career, before he

4. HILL, supra note 2, at 248.
associated with Logan. It appears that Lincoln, in those first years, relied on his exceptional extemporaneous speaking ability and the paucity of legal precedents for most of the cases he handled. Logan’s mentorship led him to more thorough preparation of his cases, though subsequently Lincoln’s junior partner, Herndon, called into question Lincoln’s commitment to researching the law.

Anyone who has listened to a law firm’s associates and junior partners discuss the senior partners must discount somewhat Herndon’s opinion. In addition, it probably reflects Herndon’s personal interest in legal research, which certainly exceeded Lincoln’s, as well as Herndon’s reaction to the fact that Lincoln was a more effective advocate than he. It should be noted that Lincoln remarked that he had brought Herndon into the firm to compensate for Lincoln’s lack of attention to the business side of the practice. He told a friend that he soon learned that Herndon was also uninterested in law practice management—as we would call it today—but was a good lawyer. Lincoln described Herndon’s weakness in management and talent as a lawyer as “doubly disappoint[ing].”

Herndon’s quibbles with Lincoln’s approach to the law is in no respect a derogation of his capacity for hard work. All sources confirm that as Lincoln rode the circuit trying cases in central Illinois he worked longer and harder than any of his professional colleagues. While there is good evidence that his hard work resulted in part from his inability to charge appropriately for his services and his unwillingness to avoid debts he had accumulated in an unsuccessful retail venture and perhaps even from his desire to avoid returning home to a less than ideal marriage, there is ample evidence that it resulted in large part from his professional commitment to representing his clients to the best of his ability. When his client became the Union that he sought to preserve, his tirelessness—even to the point of exhaustion—was an indispensable aspect of his leadership.

Lincoln’s attitude toward hard work is captured by a story he told to one of his generals who was stalled in the field. Lincoln told of an acquaintance who had managed to scratch out some crops from a particularly rough piece of prairie land. When asked by a stranger how he managed to cultivate so rough a spot, the farmer replied, “Well, . . . some of it is pretty rough. The smaller stumps I can generally root out or burn out; but now and then there is an old settler that bothers me, and there is no other way but to plow around it.” Lincoln concluded his advice to the general: “Now, general, at such time as this, troublesome cases are constantly coming up, and the only way to get along at all is to plow around them.” In his law practice and as President, Lincoln had to make practical decisions about which issues to root out and which to plow

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6. HERNDON & WEIK, supra note 3, at 252.
8. Id.
9. Id.
around, but he never quit plowing ahead.

The second lesson is that leadership requires careful, clear thinking. Hill notes Lincoln's "power of analysis, pitiless logic, and comprehensive mental grasp of large subjects."\textsuperscript{10} Herndon, the sometimes critical junior partner, says of Lincoln that "[n]o man had greater power of application than he."\textsuperscript{11}

Careful, clear analysis is one of the hallmarks of the legal profession, at least as idealized by law professors. We spend much of our time, and certainly most of our emotional energy, trying to get law students to "think like a lawyer." We admire, and of course take credit for, those lawyers who exhibit superior analytical skills, though few ever meet our demanding standards.

Analytical skill is essential to leadership. Leaders must make decisions, often many decisions. While decisions need not and often cannot be perfect within the time allowed, they must be good decisions, at least more often than not. While factors other than blind rationality must be taken into account, rational decision-making is generally preferable to its opposite. Certainly, Lincoln valued rationality, advocating in an 1838 public lecture that the nation rely on "'reason, cold, calculating, unimpassioned reason.'"

Lincoln's careful, clear thinking as a lawyer is perhaps captured by his approach to evidentiary and procedural objections at trial and to weaknesses in his positions on appeal. He was known for conceding most of these points, but never the one on which the outcome of the trial or appeal turned.

There was, by the way, a very practical advantage in this approach. As a former chief justice of the Illinois Supreme Court noted in an 1865 memorial: "'If he discovered a weak point in his cause, he frankly admitted it, and thereby prepared the mind to accept more readily his mode of avoiding it.'"

Hill credits Lincoln's senior partner Logan for developing Lincoln's skill in preparing cases. He suggests that Logan transformed Lincoln from being "occasionally dangerous" to "a formidable opponent whenever he believed in a cause."\textsuperscript{14}

One lawyering technique that Logan apparently cultivated in Lincoln was careful analysis of the other side's case. As a result, Hill reports Lincoln's comment that he "was never once surprised by the strength of his opponent's cause, and often found it much weaker than he had hoped."\textsuperscript{15} This technique certainly paid dividends when he debated

\textsuperscript{10} HILL, supra note 2, at 258.
\textsuperscript{11} HERNDON & WEIK, supra note 6, at 248.
\textsuperscript{12} DAVID HERBERT DONALD, LINCOLN 82 (1995).
\textsuperscript{13} HILL, supra note 2, app. I at 314 (quoting Hon. J.D. Caton)
\textsuperscript{14} Id. at 120.
\textsuperscript{15} Id. at 121.
momentous public issues.

David Herbert Donald, in an excellent new biography, records Lincoln's application of this technique in response to Stephen Douglas's case for the Kansas-Nebraska Act, which guaranteed territorial sovereignty and thus the right of new territories to permit slavery. In Donald's words, "It was a powerful case, and Douglas presented it with passion and sincerity."

Donald continues:

Lincoln was eager for an opportunity to challenge it. Thoroughly familiar with all of the senator's arguments, he carefully prepared to attack them, reading over the voluminous pamphlet literature, reviewing the laws and the speeches in Congress, and studying the census reports. The hostile Illinois State Register said that Lincoln "had been nosing for weeks in the State Library, pumping his brain and his imagination for points and arguments."

Lincoln honed his analytical skills through the lawyer's exercise of cross-examining witnesses, at which he was the most feared practitioner of his time. As Hill explains:

Although there was something mysterious in Lincoln's personality which played an important part in his success as a cross-examiner, his mastery of the art was acquired in the only way it can be acquired, and that is by constant, daily practice in the courts. He was a natural logician, and by slow degrees he cultivated this gift until he could detect faulty reasoning, no matter how skillfully it was disguised. In almost every instance he saw the logical conclusion of an answer long before it dawned upon the witness, and was thus able to lead him without appearing to do so.

The lawyer's art of cross-examining stood Lincoln in good stead in the political arena, whether he was propounding interrogatories to President Polk as a freshman Congressman opposing the Mexican War—even chiding the President for his gaps in evidence and logic, noting that "Mr. Polk is too good a lawyer not to know that it is wrong."—or posing questions to Douglas about the Dred Scott decision.

One of Lincoln's most famous cross-examinations demonstrates another aspect of his careful, clear thinking—his attention to the facts of his case. Law schools are sometimes criticized for overemphasizing points of law and failing to teach students the importance of facts. To the extent that criticism is valid, and of course it is not for at least one law school, Lincoln's career stands as strong evidence for the importance of knowing the facts.

In Lincoln's defense of William Armstrong, who was charged with

16. DONALD, supra note 12, at 173.
17. Id.
18. HILL, supra note 2, at 228.
19. DONALD, supra note 12, 123
20. HILL, supra note 2, at 275-76.
murder, the case turned on the testimony of an eyewitness who claimed to have seen the defendant strike the fatal blow in a melee involving the victim and two attackers. The witness was adamant that he had seen the incident clearly, even though it occurred at eleven o'clock at night, by means of the light from an almost full moon. After Lincoln confronted the witness with an almanac that indicated that there was almost no moonlight on that night at that time, the jury acquitted Lincoln's client. This careful attention to facts was typical of Lincoln's thinking and decision-making, whether as a lawyer or as a president. As he spent long nights in the telegraph room of the War Department or went into the battlefield, he was in search of the facts that would allow him to make the decisions that would win the Civil War.

Third, leadership requires effective communication. The record of Lincoln's skill as a communicator is so great that there is no way to do it justice in a short lecture. It has occurred to me that it is not coincidental that the most famous biography of Lincoln—who studied grammar and rhetoric, engaged in long discussions of philology, and even wrote poetry—was written by the renowned poet Carl Sandburg.

One of the best expositions of Lincoln's excellent communication skills is Garry Wills's Pulitzer Prize winning LINCOLN AT GETTYSBURG: THE WORDS THAT REMADE AMERICA. In the chapter entitled "Revolution in Style," Wills documents Lincoln's determined study of the art of communication, culminating in the Gettysburg Address, a mere 272 words that not only immortalized Lincoln, but also changed fundamentally the way in which Americans perceived the Declaration of Independence, the Constitution, and the Union that Lincoln and those who died at Gettysburg were fighting to preserve.

It would be tempting to attribute Lincoln's success as a communicator solely to his training and experience as a lawyer. One could cite Frederick Trevor Hill's description of Lincoln's speech on slavery at Cooper Union, New York, in 1860:

The speech he delivered on that occasion was neither oratorical nor partisan. It was a calm, dispassionate, lawyer-like argument, keyed to the high intelligence of the audience to which it was addressed, and it exhibited Lincoln as a master of all the historical and legal data involved in the subject. No one but a fully equipped lawyer experienced in the handling of facts, and one trained to make their legal bearing clear to the layman by logical analysis, could possibly have held his critical hearers as Lincoln held them, and his triumph

21. See id. at 230-34; DONALD, supra note 11, at 150-51.
22. HILL, supra note 2, at 233.
23. Id.
26. Id. at 148-75.
was the direct result of three-and-twenty years of service in the courts.\textsuperscript{27}

In fact, Lincoln's success as a communicator, both as a lawyer and political leader, was the product of his passion for the study of language and his continuous practice of writing and especially of public speaking. While he undoubtedly refined his writing and speaking skills in the courts, he also developed them listening to and telling stories in the stores in which he worked as a clerk and proprietor. He developed his public speaking by taking every opportunity he could find to speak in public on issues of the day, whether at a formal Lyceum or on a stump with an audience of his fellow farm hands.

One aspect of Lincoln's communication skills was his understanding of human nature and thus of the audiences he addressed. His representation of clients and experience with juries certainly contributed to this, but so did his experiences outside the courtroom. Successful lawyers and leaders in all walks of life must learn to see all of life's experiences as opportunities to learn, and especially to learn about human nature.

Before I end the discussion of communication, I must address one other issue, technology. Given the drilling that has been going on at the Law School the last week as computer wire is pulled throughout the building, it is impossible to avoid thinking about this aspect. In addition, I must address this issue because you may be surprised, as I was, by Lincoln's attitude toward technology.

To put it succinctly, Lincoln embraced the new technology of his day. In fact, he even created some of it, holding a patent on a mechanical device for boats. He constantly searched for new weaponry that would bring a speedier end to the Civil War. Most relevant to the topic of communication, he was fascinated by the telegraph and its effect on communication, as Garry Wills describes:

Television and other modern developments are blamed for a shortening of the modern attention span. But a similar process was at work in Lincoln's time, and he welcomed it. The railroad, the telegraph, the steamship had quickened the pace of events. Thoughts and words took on new and nervous rhythms. Lincoln, who considered language the world's great invention, welcomed a cognate invention, telegraphy. He used the telegraph to keep up with his generals—he even experimented with telegraph wires strung to reconnaissance balloons.\textsuperscript{28}

Wills goes on to explain that Lincoln worked closely with telegraphy's American developer, Joseph Henry, who was the president of the Smithsonian Institution.\textsuperscript{29} He notes Lincoln's frustration with those who could not use the new technology effectively and his pleasure in

\begin{itemize}
  \item \textsuperscript{27} Hill, supra note 2, at 282.
  \item \textsuperscript{28} Wills, supra note 25, at 169.
  \item \textsuperscript{29} Id. at 170.
\end{itemize}
finding a railroad man whose efficient use of modern language matched the demands of the new technology. From Wills's account, one is left with little doubt that Lincoln, if alive today, would not only be using a computer but would be engaged in enthusiastic discussion of the interplay between language and technology.

Fourth, leadership requires that a leader take less credit and more blame. Lincoln, in his relationships with his generals, and especially with those few he could find who were willing to engage Robert E. Lee and his generals in battle, was famous for taking responsibility and allowing others to take the credit for successes. After the capture of Savannah, Lincoln wrote to General Sherman: "'Now, the undertaking being a success, the honor is all yours.'" He even wrote to General Grant after the victory at Vicksburg to say that he, Lincoln, had been wrong in doubting Grant's plan of attack. Lincoln's modesty allowed him, Donald suggests, to modify Grant's strategy later in the War while giving Grant the impression that he had a free hand.

I would not suggest that the origin of this leadership trait can be traced to Lincoln's career in the law. It was undoubtedly based in his self-reliance and self-confidence. Those qualities, though not originating in the practice of law, were nevertheless nurtured there. Lincoln was known for avoiding personal animosity with opposing counsel while trying cases. His self-confidence, however, is perhaps best displayed in two accounts of his relationship to lawyers with whom he was associated on the same side of the case.

The first involves a less experienced lawyer who brought in Lincoln to help him with a case. Rather than taking over, Lincoln counseled the younger lawyer and insisted that he make the opening argument to the jury. "'I want you to open the case,'" Lincoln is quoted as saying, "'and when you are doing it talk to the jury as though your client's fate depends on every word you utter. Forget that you have any one to fall back upon, and you will do justice to yourself and your client.'"

In the second incident, Lincoln unexpectedly found himself second-chairing a major case with the noted Pittsburgh lawyer, Edwin M. Stanton. Unlike Lincoln, Stanton showed no regard for his less famous associate, commenting negatively on both Lincoln's appearance and competence. Nevertheless, Lincoln subsequently made Stanton his Secretary of War, put up with his arrogance in order to win the War, and ultimately won Stanton's admiration and friendship.

Fifth, and finally, leadership requires firm commitment to principles. This is the most important lesson we learn from Lincoln. As James

30. PHILLIPS, supra note 1, at 105.
31. Id. at 104.
32. DONALD, supra note 12, at 498.
33. HILL, supra note 2, at 186.
34. Id. at 257-58; DONALD, supra note 12, at 186-87.
MacGregor Burns explains: "Divorced from ethics, leadership is reduced to management and politics to mere technique."\(^{35}\)

Again, it would be exaggeration to claim that Lincoln's firm commitment to principles can be attributed to his membership in the legal profession. If the popularity of lawyer jokes is a fair gauge, it would be safe to assume that most non-lawyers would see no connection between Lincoln's profession and his reputation for solid principles. In Lincoln's time, Hill tells us, one authority remarked that "a license to practice could be obtained by any applicant of good moral standing, which was about the only qualification most of the practitioners lacked . . . ."\(^{36}\)

Lincoln's reputation for high principles, and specifically honesty, was well-developed before he became a lawyer and was based on his conduct as a store clerk and proprietor. While Lincoln's principles predated his practice of law, there can be no doubt that his experiences as a lawyer were a crucible for the testing and refinement of those principles. As Hill notes, "Yet, despite the humorist and the cynic, there is probably no profession in the world which makes greater demands upon integrity, or presents nicer questions of honor, or offers wider opportunities for fairness, than the profession of the law."\(^{37}\)

Lincoln repeatedly demonstrated his integrity by refusing to present legal arguments that were without factual basis. In this regard, his principles were practical as well as aspirational. He counseled an associate: "In law it is good policy never to *plead* what you need not, lest you oblige yourself to *prove* what you *can* not."\(^{38}\) That is still good advice, if only because of the existence of monetary sanctions for frivolous pleadings.

Lincoln's honesty was also demonstrated by his regular practice of undercharging clients for his services. He was criticized by other lawyers and even a judge for "impoverishing the bar."\(^{39}\) He was even subject to a mock trial by the other circuit-riding lawyers and was fined for undercharging. He is reported to have good naturedly paid the fine. His practices with respect to fees are particularly noteworthy in light of the massive debt—he and his friends referred to it as his "national debt"—he carried as a result of his unsuccessful retail venture, which was compounded by the death of his partner in the store.

One of Lincoln's most important principles was a commitment to justice, which was based on his belief in the equality of citizens before the law. Wills credits Lincoln, in the Gettysburg Address, with raising the

\(^{35}\) JAMES MACGREGOR BURNS, LEADERSHIP 389 (1978).
\(^{36}\) HILL, *supra* note 2, at 21-22.
\(^{37}\) *Id.* at 31-32.
\(^{39}\) HILL, *supra* note 2, at 242-43.
concept of equality, as expressed in the Declaration of Independence, to the level of a constitutional principle. Citing Robert Bork for the proposition that "equality as a national commitment has been sneaked into the Constitution," Wills explains:

There can be little doubt about the principal culprit. . . . [T]he professors, the textbooks, the politicians, the press have overwhelmingly accepted Lincoln's vision. The Gettysburg Address has become an authoritative expression of the American spirit—as authoritative as the Declaration itself, and perhaps even more influential, since it determines how we read the Declaration. For most people now, the Declaration means what Lincoln told us it means, as a way of correcting the Constitution itself without overthrowing it. . . . By accepting the Gettysburg Address, its concept of a single people dedicated to a proposition, we have been changed. Because of it, we live in a different America.4

It is perhaps this commitment to justice based on equality that we lawyers can most safely claim as a product of Lincoln's training and experience as a lawyer. Aside from the philosophical underpinnings of these principles that he found in his study of the law, he practiced these principles in his representation of clients from all stations of life. He demonstrated his belief in equality by treating common folk who served on juries with the same respect and regard as he showed for other lawyers and judges. No doubt, his success as a trial lawyer was due in no small part to this practice.

I want to end with one other story—from an unexpected source—that demonstrates Lincoln's commitment to the principle of justice. It, in fact, was the genesis of my interest in Lincoln. It is an account from Dee Brown's BURY MY HEART AT WOUNDED KNEE,41 which I first read probably twenty years ago.

Brown recounts the story of Little Crow's War, which occurred in what is now Minnesota in 1862.42 The conflict resulted in the military authorities convening a military tribunal to "try" 303 Santee Sioux for the murder of white settlers. Not surprisingly, the defendants, who were not provided defense counsel, were convicted and sentenced to hang.43 It is at this point that Lincoln enters the story.

"Being a man of conscience," Brown relates, Lincoln requested the complete court record of all the convictions and had it reviewed by two lawyers.44 Over the strong objections of the military authorities, thirty-eight, rather than 303, Santees were hanged.45

One could, of course, spend hours debating the justice of executing

40. WILLS, supra note 25, at 146-47 (emphasis in original).
42. Id. at 37-65.
43. Id. at 58-59.
44. Id. at 59.
45. Id. at 59-60.
even one person under these circumstances—or any circumstances, for that matter—but the story is nevertheless a compelling example of Lincoln’s commitment to justice. He was, after all, a product of the prairie, where he would have been raised to view Indians as the enemy. His only military experience was as a captain in an Indian skirmish known as the Black Hawk War. Even though Lincoln made it clear, at a time when overblown military credentials were a stock in trade in political campaigns, that the only blood he shed in the War was as the result of mosquitoes, he nevertheless would not have been expected to extend his belief in justice and due process to the Santee Sioux. And yet he did, saving the lives of 265 men in the process.

Lincoln’s firm commitment to principles is perhaps best summarized in a comment he included in an 1850 law lecture. Noting the common belief that lawyers are dishonest, he advised: “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.”

Surely the same applies to leaders, both in Lincoln’s time and now: if you cannot be an honest leader, resolve to be honest without being a leader. That is perhaps the most important lesson for leaders from Lincoln the lawyer.

46. DONALD, supra note 12, at 45.
47. THE LIVING LINCOLN, supra note 38, at 145.