



Department of Justice

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REMARKS

BY

THE HONORABLE EDWARD H. LEVI
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE LINCOLN ACADEMY OF ILLINOIS

UPON

RECEIPT OF THE ORDER OF LINCOLN

6:00 P.M.
SATURDAY, MAY 22, 1976
HOUSE CHAMBER
OLD STATE CAPITOL
SPRINGFIELD, ILLINOIS

It is an honor to be a Laureate in the Lincoln Academy of Illinois and to receive the Order of Lincoln -- an accolade enhanced by the distinction of my "classmates," Preston Bradley, Louis Goldblatt, Gaylord Freeman, Louis Sudler and Burl Ives.

When Governor Walker informed me that I had been awarded the Order of Lincoln, he asked if I would speak to you about Lincoln as a lawyer. I agreed on the condition that my remarks could be brief. This is a fitting condition. Lincoln is so much remembered for his terse eloquence, exemplified by the Gettysburg Address. Edward Everett, who was the main speaker at Gettysburg that day, later wrote Lincoln that he wished he had come "as near to the central idea of the occasion in two hours, as you did in two minutes." As those of you who were there will recall, Everett really did speak for two hours. While I do not think I can do justice to Mr. Lincoln as a lawyer in two minutes, I believe I can keep my remarks to somewhat less than two hours.

Lincoln's law partner, William Herndon, once objected to a co-biographer's desire to stress Lincoln's legal eminence, arguing "how are you going to make a great lawyer out of Lincoln. His soul was afire with its own ambition and that was not law." Herndon was referring, of course, to Lincoln's avid interest in politics. But Lincoln did practice law for most of his adult life. Lincoln the lawyer, politician and statesman are closely related.

Lincoln was a courtroom lawyer. His work consisted of trying cases, arguing appeals in Springfield, "travelling the circuit." As my grandfather, Emil Hirsch, who gave the traditional Abraham Lincoln address in New York, said in 1896, "In the courts of Illinois Lincoln won his first spurs, riding the circuit and learning to read men as thoroughly as to decipher intricate precedents and paragraphs of law."

In this day of specialization among lawyers, the number and breadth of matters Lincoln regularly handled is striking. In a 2-week period in 1844, Lincoln and his partner appeared before the Springfield Circuit Court on 83 different matters. Their 2-man firm was frequently engaged in from one-fifth to one-third of all of the cases in Springfield.

To be sure, virtually all of these cases involved routine matters. But routine matters have their nuances and complications. Cumulatively, these cases gave Lincoln exposure and insight into the widest range of human experience. Reviewing the scope of the cases he handled, Carl Sandburg concluded that "Lincoln's memory was cross-indexed with tangled human causes." John Duff, who chronicled Lincoln's legal career, has said that "the most convincing impression. . . of Lincoln's law career is that his first, his essential characteristic as a lawyer was an understanding of the foibles of men and a vast tolerance for the infirmities of humankind."

In his pre-Presidential public life, Lincoln was very much the lawyer. He warned in a speech in 1838 that disrespect for legal observances might destroy free institutions in America and urged that "reverence for law. . . be the political religion of the nation." He consistently condemned abolitionists who fought slavery by extraconstitutional means and their opponents who wished to deny them their constitutional rights. Similarly, Lincoln's arguments in the 1858 debates with Stephen Douglas are essentially a legal brief regarding the expansion of slavery into the territories.

As his reputation as a lawyer and a politician grew, Lincoln as a lawyer increasingly represented parties in cases of public importance. These included prominent criminal trials and, on occasion, litigation involving political opponents at election time. While a member of Congress, Lincoln argued and lost a complex case in the United States Supreme Court. He was also engaged to protect the patent on Cyrus McCormick's revolutionary reaper. In 1856 he successfully represented a railroad company in a suit resulting from a steamboat collision with a railroad bridge. The suit, as Lincoln recognized and argued, involved the question of whether the railroads would be sharply inhibited in facilitating the nation's westward expansion. It was a key issue of his time, arising and being resolved, in a limited, but important way, in a narrow legal context.

In another 1856 case involving similar questions and consequences, Lincoln persuaded the Illinois Supreme Court to re-

verse a lower court and exempt a railroad company from millions of dollars in taxes, a levy which would have put it out of business. Lincoln's effort, however, was apparently not fully appreciated. He presented his bill for \$2,000, which a company official refused to pay, declaring "Why, this is as much as a first class lawyer would have charged." Lincoln persisted, however, sued the company and was awarded a fee of \$5,000. I am not sure I want my friends in private practice to find a lesson in this somewhere.

Although it is not surprising that the nature of Lincoln's practice was shifting late in his career, it is noteworthy that he still continued to handle a significant number of small matters. For example, in March 1859, after the Lincoln-Douglas debates, he drafted an affidavit asserting that one Nazareth Norton would be able to testify in a case to recover a mule that the mule "had a bad and plain scar on one of its legs." Lincoln's continued willingness to accept such cases reflected an enduring interest and understanding of individual people and their problems. He never lost the human touch and this was what helped him achieve such eloquence when he spoke of uncommon matters.

As President, Lincoln was faced with the most fundamental legal questions. His first inaugural address is a brief against secession and as the Civil War came, he realized that those who had undertaken to destroy the Constitution and the Union expected to be assisted in their effort by the constitutional

limitations placed on the powers of the government they attacked. The issues Lincoln dealt with daily remain with us today: Do constitutional rights vary with the degree of danger to the survival of the nation? What is the effect of adopting measures in wartime which would otherwise be unacceptable? And who should resolve these questions?

Lincoln's response was to reduce these rather complex issues to simple, human terms -- a technique he developed, indeed mastered, in appealing to countless juries. Some asserted that we would lose our love of liberty if the nation took strong measures in time of rebellion. Lincoln argued that their view was like saying "a particular drug is not good medicine for a sick man because it cannot be shown to be good food for a well one."

Similarly, to those who questioned the authority for military arrest of those who urged draft resistance and desertion, Lincoln replied:

"Long experience has shown that armies cannot be maintained unless desertions shall be punished by the severe penalty of death. The case requires and the law and the Constitution sanction, this punishment. Must I shoot a simple-minded soldier boy who deserts, while I must not touch a hair of the wily agitator who induces him to desert? . . . I think in such a case to silence the agitator and spare the boy is not only constitutional, but a great mercy."

Lincoln's expressed concern was no rhetorical device.

John Hay, Lincoln's secretary, described in his diary how Lincoln would sometimes spend six hours a day on court martial transcripts, searching for any fact which would justify saving a life.

Many of Lincoln's acts as President are now properly viewed as constitutionally questionable. Moreover, recent disclosures must make us wonder whether certain medicines prescribed in wartime are not more addictive than Lincoln thought. This is one of the penalties which wars impose. It is part of the human dilemma and tragedy which Lincoln recognized.

Lincoln, to the end, retained his "vast tolerance for the infirmities of humankind." The offer of "malice toward none; . . . charity for all" was remarkable. It came from a lawyer who learned well that it is possible to prevail, but not punish -- to have adversaries who are not enemies. It was a plea which Lincoln could not live to fulfill.

While Lincoln now belongs to much more than Illinois, his memory is indeed our special legacy. As my grandfather said in 1896, "A nation over whose stage giants have passed will ever be measured by their gigantic stature," and "The people of Illinois feel that much distinction, the ownership and trusteeship of such a memory, inspires and entails higher obligations." It is a memory we need and must revere, not only in Illinois, but in the world. The memory is a national, indeed an international, treasure. It is one in which Illinois can take great pride, and that memory places a special glow upon this Academy.