

WHAT MODERN LAWYERS CAN LEARN FROM LINCOLN



Presented to the Faculty of Federal Advocates
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by Boyd N. Boland

LINCOLN'S CAREER:

- Farmer (youth)
- Railsplitter (youth through 1830)
- Boatman (1827-31)
- Militiaman (1831: served 51 days)
- Clerk (1833)
- Postmaster (1833-36)
- Surveyor (1833-34)
- Politician
 - Illinois State Legislature (1834-42)
 - United States House of Representatives (1846-48)
- Lawyer (1837-60)
- President of the United States (1861-65)

LINCOLN'S ADMISSION TO THE BAR:

- March 14, 1836: Order entered by Sangamon County Circuit Court that "Abraham Lincoln is a person of good moral character"
- September 9, 1836: License to practice law issued to Abraham Lincoln by two justices of the Illinois Supreme Court
- March 1, 1837: Lincoln appears before the Clerk of the Illinois Supreme Court and his name is added to the roll of lawyers authorized to practice law in all Illinois state courts
- December 3, 1839: Lincoln is admitted to the bar of the Illinois federal district court
- March 7, 1849: Lincoln is admitted to the bar of the United States Supreme Court

LINCOLN'S FIRST CASE:

Hawthorne v. Wooldridge, July 1, 1836.

Most of Lincoln's trials occurred while he rode Illinois' Eighth Judicial Circuit.



Lincoln was not unusually successful in winning the lawsuits entrusted to him.

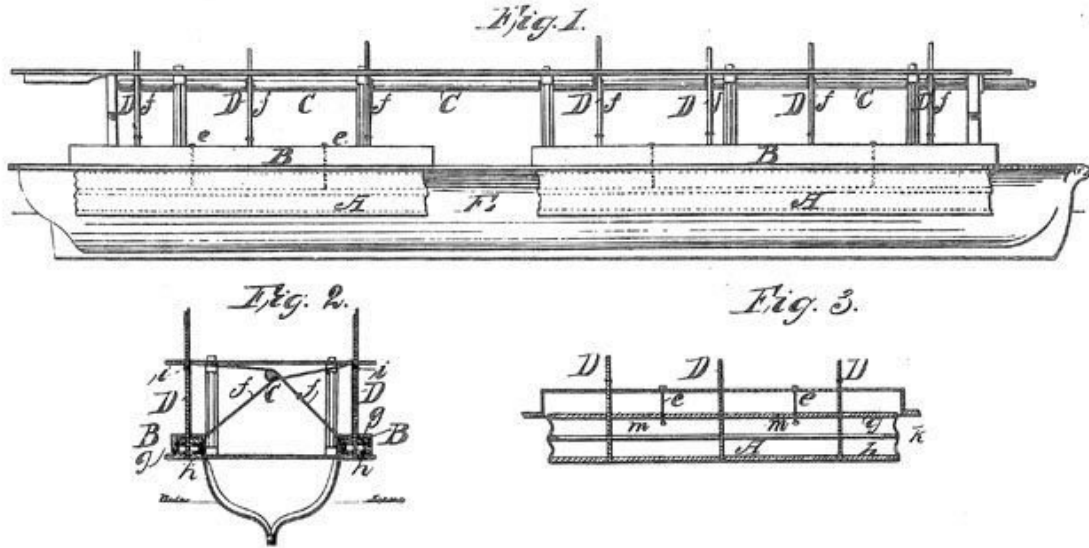
Record before the Illinois Supreme Court:

- 178 appearances
- 96 cases won
- 81 cases lost
- 1 case appearance withdrawn

Lincoln is the only American President to hold a United States patent.

ABRAHAM LINCOLN

MANNER OF BOUYING VESSELS • NO. 6,469 • PATENTED MAY 22, 1849



The Claim:

What I claim as my invention and desire to secure by letters patent is the combination of expansible buoyant chambers placed at the sides of a vessel with the main shaft or shafts C by means of the sliding spars or shafts D which pass down through the buoyant chambers and are made fast to their bottoms and the series of ropes and pulleys or their equivalents in such a manner that by turning the main shaft or shafts in one direction the buoyant chambers will be forced downwards into the water and at the same time expanded and filled with air for buoying up the vessel by the displacement of water and by turning the shaft in an opposite direction the buoyant chambers will be contracted into a small space and secured against injury.

A. Lincoln

FIVE LESSONS MODERN LAWYERS CAN LEARN FROM LINCOLN

- 1. How to deal with a demanding client.**
- 2. The importance of an adequate filing system.**
- 3. How to respond to a hostile email.**
- 4. How to resolve a tough case.**
- 5. Getting paid.**

1. HOW TO DEAL WITH A DEMANDING CLIENT

Lincoln was irritated by out-of-state clients that didn't defer to his judgment. He resented the quickened pace and impersonal style of lawyering that his corporate clients demanded, and he disliked the loss of autonomy that came with the increased supervision by his corporate clients.

One of his most difficult clients was S.C. Davis & Co., a St. Louis wholesale merchant that sold goods on credit. During the 1858 term of court, Lincoln filed at least 25 suits on its behalf, for amounts ranging from \$10,000.00 to \$500.00. Lincoln was adept at obtaining the judgments, but not at executing on real property which required careful review of public records. Lincoln hired William Fishback to assist with the records review.

S.C. Davis repeatedly wrote Lincoln about his failure quickly to collect on the judgments. It reminded Lincoln that he had "especially desired its business" and had agreed to "attend to collection, Sales &c." Lincoln answered that "undoubtedly taking the business implied a promise that we would do what is usual for lawyers to do in such cases, and we have not blamed you for expecting this much of us." However, Lincoln did not intend in the future to "follow executions all over the world." Accordingly, Lincoln informed S.C. Davis & Co. that he would no longer handle "this class of business."

2. THE IMPORTANCE OF AN ADEQUATE FILING SYSTEM

Colorado Rule of Professional Conduct 1.3 provides that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

In the mid-19th Century, legal regulation as we know it did not exist. Lawyers, by and large, were left to their own devices. When Lincoln acted ethically, it was on principle and not because he feared censure.

We all know the importance of an adequate filing system, and how stressful it can be when a document is misplaced. Lincoln experienced this problem frequently, and a letter written in 1850 explains its cause:

“I am ashamed of not sooner answering your letter . . . and my apologies are . . . that when I received the letter I put it in my old hat, and buying a new one the next day, the old one was set aside, and so, the letter lost sight of for a time. . . .

Yours as ever,
A. Lincoln”

William Herndon, Lincoln’s last law partner, confirmed that Lincoln regularly stuck documents and correspondence in his stovepipe hat, which Herndon referred to as Lincoln’s “desk and memorandum book.”



3. RESPONDING TO A HOSTILE EMAIL

The Hostile Correspondence:

Dear Sir,

On our first meeting, on Wednesday last, a difficulty ensued between us, which I deem it my duty to notice further. I think you were the aggressor. Your words imported insult, and whether you meant them as such is for you to say. You will therefore please inform me on this point, and if you designed to offend me, please communicate to me your present feelings on the subject, and whether you persist in the stand you took.

Your obedient servant,

W.G. Anderson

Lincoln's Response:

Dear Sir,

Your note of yesterday is received. In the difficulty between us of which you speak, you say you think I was the aggressor. I do not think I was. You say my "words imported insult." I meant them as a fair set-off to your own statements, and not otherwise; and in that light alone I now wish you to understand them. You ask for my present "feelings on the subject." I entertain no unkind feelings to you, and none of any sort upon the subject, except a sincere regret that I permitted myself to get into such an altercation.

Yours,

A. Lincoln

Three take-aways from Lincoln's response:

1. Lincoln did not escalate the conflict.
2. Lincoln maintained a cool professionalism.
3. Lincoln wrote the letter as if others would read it.

Notice how Lincoln parries:

1. You think I was the aggressor. I disagree.
2. You thought I insulted you. I was just responding to what you said.
3. You asked if I designed to offend you. I am not mad at you, and I am sorry the whole thing happened.

4. HOW THE RESOLVE A TOUGH CASE

A. Settle

- In Lincoln's Letter to Young Lawyers:

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser--in fees, and expenses, and waste of time. As a peace-maker the lawyer has a superior opportunity of being a good man. There will still be business enough.

"Never stir up litigation. A worse man can scarcely be found than one who does this."

- In a case where Lincoln sued to recover unpaid sums owed to his client:

"I sincerely hope you will settle it. I think you *can* if you *will*, for I have always found Mr. Hickox [the defendant] a fair man in his dealings. . . . By settling, you will most likely get your money sooner; and with much less trouble and expense."

- In a more colorful statement:

"Quarrel not at all. . . . Better give your path to a dog than be bitten by him in contesting the right. Even killing the dog will not cure the bite."

- In refusing to take a case to sue a widow for \$600:

"Yes, we can doubtless gain your case for you. We can set a whole neighborhood at loggerheads. We can distress a widowed mother and her six fatherless children, and thereby get for you six hundred dollars to which you seem to have legal claim, but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you. You must remember that some things legally right are not morally right. We shall not take your case, but will give a little advice for which we will charge you nothing. You seem to be a sprightly, energetic man; we would advise you to try your hand at making six hundred dollars in some other way."

- In his advice to Uncle Tommy, a farmer friend on the Circuit:

Uncle Tom hailed Lincoln and sought to retain him to "git the law" on Jim Adams, a neighbor, concerning a land line in dispute.

"Uncle Tommy, you haven't had any fights with Jim, have you?"

"No."

"He's a fair to middling neighbor, isn't he?"

“Only tollable, Abe.”

“He’s been a neighbor of yours for a long time, hasn’t he?”

“Nigh onto fifteen years.”

“Part of the time you get along all right, don’t you?”

“I reckon we do, Abe.”

“Well, now, Uncle Tommy, you see this horse of mine. He isn’t as good a horse as I could straddle and I sometimes get out of patience with him, but I know his faults. He does fairly well as horses go, and it might take me a long time to get used to some other horse’s faults. You and Uncle Jimmy must put up with each other, as I and my horse do with one another.”

B. Don’t Quibble Over Trifles--Get To the Heart of the Case

Lincoln rarely objected when his opponent sought to introduce evidence, saying instead that he “reckoned it would be fair to let that in”; or “we will give them that point”; or “I reckon they were right there”; or “Oh! I’ll freely admit that.”

And then he would rise and slowly explain: “Here, gentlemen, is the real point of the matter, and on it we rest our case.”

Consider the case of *The People of the State of Illinois v. William “Duff” Armstrong*:

At the trial, the state’s star witness was Charles Allen who claimed to have been an eye witness. He testified to seeing Armstrong deliver the fatal blows, and described them repeatedly and in detail.

On cross-examination, Lincoln asked Armstrong to describe the fatal blows yet again:

“Did you actually see the fight?” “Yes.”

“Well, where were you standing?” “About 150 feet away from the combatants.”

“Describe the weapon again.” The sling shot was pictured in detail.

“And what time did you say all this occurred?” “Eleven o’clock at night.”

“How could you see from such a distance at 11:00 at night?” “The moon was shining real bright.”

“A full moon?” “Yes, a full moon, and as high in the heavens as the sun would be at ten o’clock in the morning.” He was positive about this.

Then Lincoln requested that the sheriff bring him an almanac for the year 1857. Turning to the date of August 29, the night of the murder, he pointed a long finger to the page and bade Allen to read. Did not the almanac specifically say that the moon on that night was barely past the first quarter? And wasn’t it a fact that the almanac revealed that instead of the moon being high in the heavens in the position of the morning sun, it had actually disappeared by 11:00? And wasn’t it a

further fact that it was actually so dark at the time that it was impossible to see distinctly from a distance of 150 feet?

The jury acquitted Armstrong on the first ballot.

Not every case has such compelling facts. Lincoln once defended a vagrant accused of murder, where the evidence against his client was generally circumstantial.

Consider Lincoln's plea for reasonable doubt:

"While I concede that the testimony bears against my client, I am not sure that he is guilty. Are you?"

C. Other Lessons

•**Thoroughness:** When asked by his partner, William Herndon, why he had spent so much time preparing a case argued to the Illinois Supreme Court, Lincoln responded: "I dare not trust this case on presumptions that the court knows all things. I argued the case on the presumption that the court did not know anything."

•**The benefits of brevity, simplicity and directness:** In legal papers, Lincoln kept to simple, pithy statements, devoid of ornamentation and *ad hominem* attacks. He is quoted as saying, "In law, it is good policy to never plead what you need not, lest you oblige yourself to prove what you cannot."

5. GETTING PAID

- Usual fee: \$5.00
- Largest fee: \$5,000.00

- Lincoln sued his clients on at least 19 separate occasions to collect his fee, including the \$5,000.00 fee from the Illinois Central Railroad.

- Lincoln's philosophy about determining a fair fee:

“Are, or are not the amount of labor, the doubtfulness and difficulty of the question, the degree of success in the result; and the amount of pecuniary interest involved, not merely in the particular case, but covered by the principle decided, and thereby secured, to the client, all proper elements, by the custom of the profession, to consider in determining what is a reasonable fee in a given case?”

LINCOLN'S FAREWELL TO SPRINGFIELD AND TO THE PRACTICE OF LAW:

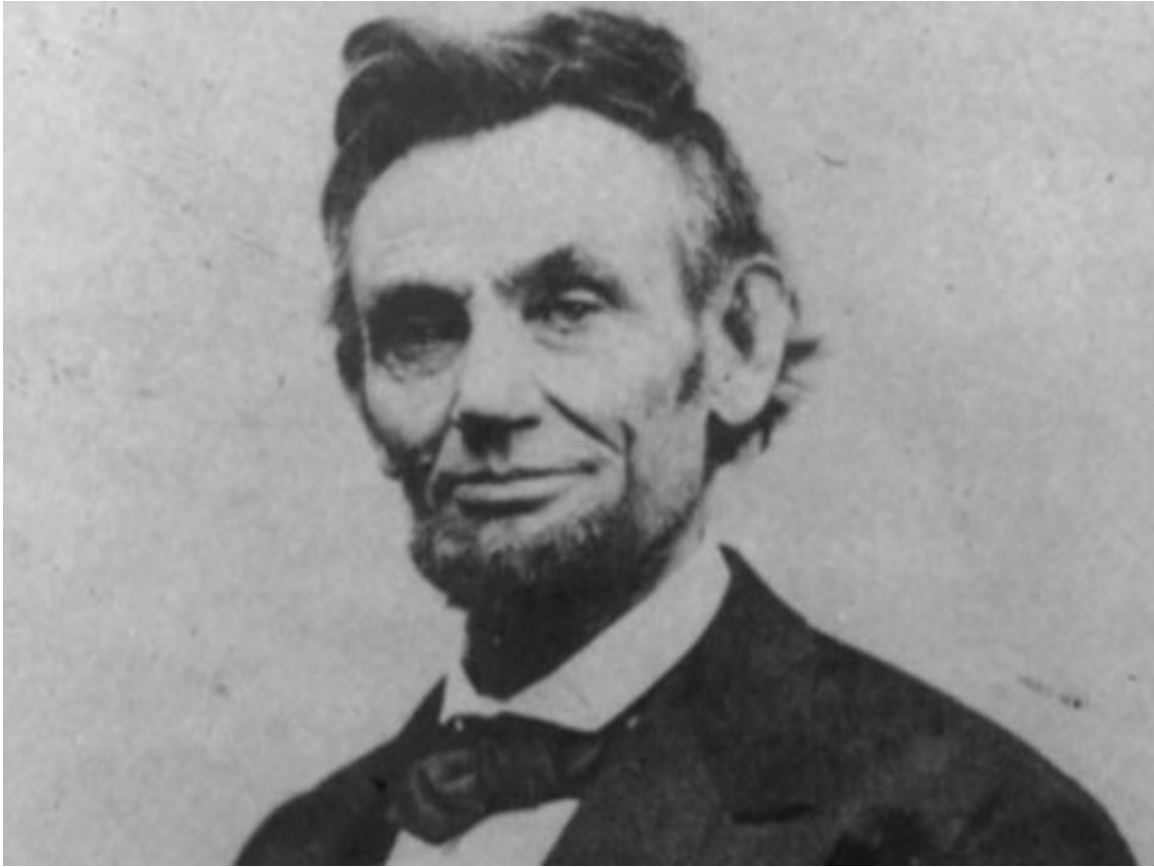
On the afternoon of February 6, 1861, five days before he left Springfield for Washington, D.C., Lincoln made a final visit to his law office. The firm's shingle caught his eye, and he said to his partner, Herndon:

"Let it hang there undisturbed. Give our clients to understand that the election of a President makes no change in the firm of Lincoln and Herndon. If I live I'm coming back some time, and then we'll go right on practicing law as if nothing had happened."

* * *

On the morning of his departure from Springfield on February 11, 1861, a cold and rainy day, Lincoln was called upon by the crowd to make remarks, which have become known as Lincoln's Farewell Address to Springfield:

"My friends--No one, not in my situation, can appreciate my feeling of sadness at this parting. To this place, and the kindness of these people, I owe every thing. Here I have lived a quarter of a century, and have passed from a young man to an old man. Here my children have been born, and one is buried. I now leave, not knowing when, or whether ever, I may return, with a task before me greater than that which rested upon Washington. Without the assistance of that Divine Being, who ever attended him, I cannot succeed. With that assistance I cannot fail. Let us confidently hope that all will yet be well. To His care commending you, as I hope in your prayers you will commend me, I bid you an affectionate farewell."



THE LINCOLN QUIZ

1. What was the name of Lincoln's horse? _____

_____.

2. What was the name of Lincoln's dog? _____.

3. What was the name of Lincoln's cat? _____

_____.

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