ARTHUR L. RIZER, III



LINCOLN'S COUNSEL

LESSONS FROM AMERICA'S MOST PERSUASIVE SPEAKER



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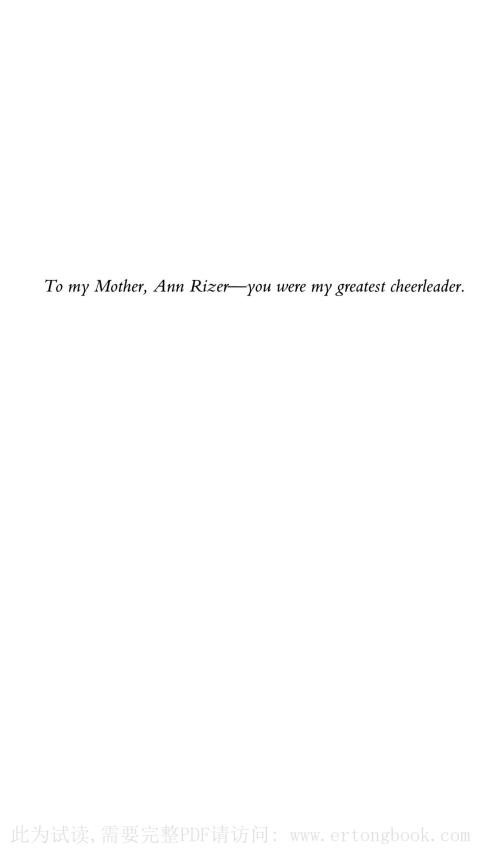
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A majority of this book was drafted while I was deployed to Iraq as a Captain in the United States Army. Despite the horrors of war, I was always encouraged by the outstanding quality of our men and women in uniform—they truly are our country's greatest treasure. This book is dedicated to our soldiers, marines, sailors, and airmen, and a portion of the proceeds from this book will be donated to "Our Military Kids," a charity that sponsors military children while a parent is deployed.

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PROLOGUE

Many books have been written about Lincoln; almost all of them about his presidency. However, for lawyers and persuasive speakers of all stripes, his years as a lawyer may offer more "lessons." This book attempts to analyze and extract some of those lessons, so that we might be able to improve our own careers by examining Lincoln's successes and failures. This is not a history book, but every attempt has been made to be historically accurate. Even if not proven to be true, some anecdotes are included if they illustrate the greater "truth" of Lincoln's style and personality.

Before Abraham Lincoln was called "Mr. President," he was called "counselor" and "esquire." Some consider him to be one of the nation's greatest attorneys and an enormously persuasive speaker. He spent more years practicing law than any other president, and his years in the legal profession were essential to his eventual election to the presidency.¹

This book does not attempt to replace those books that describe his presidency, or that laud his tremendous achievements as president. Most Americans recognize President Abraham Lincoln as one of the greatest—perhaps the greatest—president the Unites States has had. His careful leadership during a war that claimed more American lives than any other probably preserved this nation. His title as "the Great Emancipator" is deserved (even though his role is more nuanced than most people understand), because as president, Lincoln acted honorably because it was the right thing to do. He built those skills and a sense of honor while serving as a lawyer.

Herbert Stern, a renowned trial attorney and former federal judge, once asked a rhetorical question: "would you rather (1) be head counsel in a case where you had mastered the facts, (2) try a case in an area wherein you have mastered the law, or (3) hire Abraham Lincoln to try the case for you?" The point was that a lawyer who can emulate Lincoln's skills of persuasion holds the key to legal greatness.

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Many great lawyers come to be called "great" because of a single case—a pinnacle they never again achieve. Although he did not win every case he tried or participated in, Lincoln was widely recognized as one of the nation's foremost trial lawyers. He did not earn this reputation because of a single dramatic event. It was earned through consistent smart practice of the law in virtually every case he took on; sheer brilliance can be seen in several of his cases for which we have records.

During more than twenty-three years of practice in both state and federal courts, Lincoln handled more than five thousand cases. It is impossible to determine his win/loss record with precision because many case files were lost in the Great Chicago Fire of 1871, and others have succumbed to the ravages of time. However, what is known about his intact record suggests he did *not* have a remarkably impressive win rate. Of the eighty-seven cases argued before a judge without a jury for which there are extant records, verdicts were entered against Lincoln's clients 45 percent of the time. His numbers are slightly better with a jury present, winning forty-three of the eighty-two cases for which we have uncontaminated trial records.

These numbers do not seem to indicate that Lincoln was a power-house in the courtroom. However, this is an admittedly small sampling of his trial record, and it is not reasonable to equate his prowess for trial work from the 169 cases where court records exist—a mere .3 percent of the total five thousand cases he handled.

In order to see Lincoln's capacity for oral arguments and his capability to persuade, we must look past simple numbers. One Lincoln commentator said, "[d]efeats and victories in legal contests, depending as they do upon other antecedent facts and circumstances, are those ultimate results that may or may not prove anything in so far as the respective abilities of the contesting lawyers are concerned." Any lawyer or persuasive speaker who has lost a slam-dunk case or an easy sale knows how true this statement is. Perhaps the best indicator of Lincoln's excellence in law is demonstrated by looking at his reputation in the legal community. In an era before multimedia, the single most important factor to the success of an attorney's practice was his standing in the community. Thus, Lincoln's client list is a powerful indicator of Lincoln's prowess.

Daniel Webster, one of the greatest attorneys of his time, hired Lincoln to represent him in a land dispute in Illinois. The Illinois Central Railroad also used Lincoln consistently for many years. Lincoln would not have gained Mr. Webster or the Illinois Central Railroad as clients if he were only batting .500. Indeed, Lincoln may have been the busiest lawyer of his time, arguing at least 172 cases in front of the Illinois Supreme Court and at least 1 in front of the United States Supreme Court, suggesting that he was extremely successful. Consuming such a heavy caseload

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also meant that Lincoln's less-talented colleagues struggled to make legal careers for themselves.

Other evidence suggests Lincoln was much more effective than indicated in the intact legal records. For instance, Stephen Logan, a prominent member of the bar, lost at least three appeals to Lincoln and was so impressed with Lincoln's capabilities in court that he asked him to join his firm as a junior partner—even with Lincoln's abilities in court, Logan would not have done this if Lincoln had had a mediocre win/loss record.

Above all, it was his presence in front of the jury, his mastery of facts, and his passion for the law that gave him the reputation of a great lawyer. All attorneys and persuasive speakers today, including salespeople, pastors, lobbyists, parents, teachers, and anybody else who spends their days convincing others they are right, can learn something from the greatest trial attorney of all time.

In addition to telling Lincoln's stories, this book takes "time-outs" to explicitly describe **lessons** (noted in bold face) we can glean from his life. Additionally, key lessons are collected at the end of chapters under "**Lessons Learned**." By examining Lincoln's triumphs, blunders, and God-given skills, this book attempts to help us learn from the best so that we can become better persuaders ourselves.

The idea for this book took root after I read the Gettysburg Address for what felt like the thousandth time. I was "forced" to memorize the Address in eighth grade by my history teacher, and it has stuck with me ever since. Since then I'd made it a point to read it a few times a year to make sure I could still sound smart at cocktail parties if the subject of Lincoln or great speeches ever came up (at which time, I would of course rattle it off). It was not until I started law school and was learning how to deliver a persuasive opening and closing statement that I realized how amazing a speech it really is. I was struck at how many rules on "how to write a persuasive closing argument" the Gettysburg Address follows.

This book was originally written as a short article to be published in a law journal; the article argued that students of persuasive speaking should look to the Gettysburg Address for learning points. While doing research for this paper, I became more and more aware of how powerful Lincoln was as a persuader, not only in the legal realm but also as a salesman, a politician, and even in his very brief stint as a soldier. As a young, aspiring trial lawyer, I was hooked—I read everything I could about Lincoln, making a journal about how I could become a better persuader and attorney by emulating his life and career. Those notes eventually became this book. While Lincoln's example was not the primary reason I entered into the practice of law, I'm sure that learning from him has made me a better trial attorney and a better persuader.

Notes

- 1. America's Lawyer-Presidents: From Law Office to Oval Office 128 (Norman Gross ed., Northwestern Univ. Press 2004).
- 2. Albert A. Woldman, Lawyer Lincoln 247 (Carroll & Graf 2001) (1936).

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№ CHAPTER 1

EDUCATING A GENIUS

To understand Lincoln's skill as a persuader, it is important to understand his education, and to understand his education, one must first understand his background and family.

In today's legal community, great credence is placed on formal education—the more elite, the better. This is a bit ironic considering many of our most revered lawyers were educated at relatively inconspicuous schools. In Lincoln's case, the road he took to become a lawyer was the most humble of all—self-education.

Learning to Learn

The Lincoln family pedigree is one of pioneers and farmers who emigrated from Hingham, England, to Hingham, Massachusetts, and later to Kentucky. Lincoln's father, Thomas Lincoln, was a frontiersman who enjoyed the hard life of the wilderness. On June 12, 1806, Thomas Lincoln married Nancy Hanks. Regrettably, almost nothing is known about Lincoln's mother. She came from an impoverished family in Virginia and is said to have been thin, tall, and dark-haired—all three attributes which she obviously passed on to her son. Soon after their marriage, the newlyweds moved from Hardin County, Kentucky, to Elizabethtown, Kentucky. In Elizabethtown, Thomas Lincoln made a living as a handyman and part-time carpenter.

In 1807, the Lincoln family grew to include a daughter, Sarah. The small family then moved to the south fork of Nolin Creek, what is now known as Hodgenville, Kentucky, where Thomas built a small cabin. It was there on February 12, 1809, that Nancy bore a son they named Abraham. Abraham was named after his grandfather, who was killed by a Native American while he was building a farm near Louisville, Kentucky. (Lincoln's brother, Thomas Lincoln, was later born in this same little log cabin but died in infancy.)

When Lincoln was two years old, the family moved to another farm in Kentucky, on Knob Creek. Five years later, the future president and his family moved to Pigeon Creek, in what is now known as Gentryville, Indiana. In all, the family moved four times during Lincoln's childhood.

Lincoln's parents lacked a formal education. His father, Thomas Lincoln, was, in his son's words, a "wandering labor boy, [who] grew up literally without education. He never did more in the way of writing than to bunglingly sign his own name." Lincoln's mother was wholly illiterate, to the point that she signed her name with an "X."

Lincoln's parents' lack of schooling aside, they taught their son the values that molded him into the man he was. As Baptists, they were abolitionists, which is likely where Lincoln's disdain of slavery was born. In fact, it was partly because of Thomas Lincoln's absolute opposition to slavery and not wanting to live in a slave state that the family moved to Indiana from Kentucky.

The move did more than influence Abraham's opinion on slavery; it also was one of the early events that fashioned his views on the law. Another reason Thomas was anxious to move out of Kentucky was his constant legal disputes over his claims to land, which he ultimately lost.¹

Perhaps this issue impressed on the young Lincoln the understanding that knowledge is power, especially knowledge of the law.

On October 5, 1818, Lincoln's mother died from "milk sick," an illness that spread throughout the frontier. Milk sick was caused by drinking poisoned milk from cows that had eaten the snakeroot plant. Her death was a huge blow to Abraham, who suffered from bouts of depression throughout the remainder of his life.

In 1819, Thomas Lincoln left his family in Indiana and traveled to Elizabethtown, Kentucky, in search of a wife. He found and married Sarah Bush Johnston, a widow with three children, and took the family, old and new, back to the farm at Pigeon Creek. Abraham called his new mother Aunt Sarah and described her as his "angel mother." It was Sarah who spurred his quest for an education; she was continuously encouraging him to seek knowledge, because she understood that it was an escape from their harsh surroundings to a better life.

When Lincoln was not clearing the forest of his father's farm with an ax or splitting rails (the origin of his first presidential campaign nickname, "Rail Splitter"), he attended "ABC schools," which were frontier schools that taught basic reading, writing, and arithmetic. These schools were substandard by any stretch of the imagination. The job of "teacher" was given to someone in the community who could read and write. Because paper currency was somewhat rare, teachers were often paid by the parents of schoolchildren with produce, meat, and animal skins. Class was held in a one-room log cabin; there was no fixed school year, as students went to school whenever there was an available teacher.

Lincoln first attended school in the winter of 1815 at the age of six. Much frontier schooling was conducted in the winter, when students were not needed for farm chores. Lincoln walked four miles to school, where his fellow classmates were of all ages. He attended a formal school in Kentucky and Illinois when he was 6, 7, 11, 13, and 15; however, the entire amount of schooling he received did not total more than one full year. Among Lincoln's teachers were Andrew Crawford, Azel W. Dorsey, and a man named Mr. Sweeney.

People who knew Lincoln during this time have attested that his minimal time in school had more to do with the primitive education system than his ability or desire to attend. It is said that it was not long before Lincoln was ahead of his masters, as is evidenced by his later writing that there was "absolutely nothing to excite ambition for education." Thus, when Lincoln's teachers could teach him no more, he attended classes no more. From this experience, Lincoln learned the critical **lesson** that a person must have the ability to recognize that he has learned everything of value from a place or event and it is time to move on. **This concept can**