

The Agelessness of Abraham Lincoln's Advice to Attorneys

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*"I am not an accomplished lawyer"*¹

Abraham Lincoln wrote these candid words in 1850 as he was preparing to give a lecture on the law. Lincoln's White House secretaries, John Nicolay and John Hay, found the fragment of notes among Lincoln's manuscripts after his death.

Lincoln went on to admit:

"I find quite as much material for a lecture in those points wherein I have failed, as in those wherein I have been moderately successful."

It is not known if Lincoln ever delivered this lecture.

However, the notes give us a chance to see not the icon, but the lawyer that practiced for decades before becoming President. While the notes prove that Lincoln's "Honest Abe" moniker was well deserved, they also reveal an attorney deeply concerned about the reputation of the legal profession and calling for a re-dedication to ethics and professionalism. Lincoln wrote:

"There is a vague popular belief that lawyers are necessarily dishonest. I say

vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal."

He reasoned that this impression was caused by certain dishonest and unscrupulous members of the bar, calling them "fiends" and "knaves." To address the public's distrust of lawyers, Lincoln urged attorneys to, above all else, simply be diligent:

"The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for tomorrow which can be done to-day. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can then be done. When you bring a common-law suit, if you have the facts for doing so, write the declaration at once."

Almost two centuries later, this advice is still followed. The American Bar Association's Model Rule of Professional Conduct Rule 1.3 provides:

"A lawyer shall act with reasonable diligence and promptness in representing a client."

What's so surprising about Lincoln's call for diligence is not the call itself, but the list of examples he offers and how such examples still resonate even 165 years later. Lincoln urges attorneys to promptly respond to correspondence and quickly write declarations of suit.

Today it is the foolish attorney who fails to promptly respond to emails or fails to promptly file an action which is ready for suit. Most ethics complaints stem from a failure of communication or a missed deadline.

A prompt response to a client email or phone call can prevent failures of communication – even if the response is simply to tell the client something is not yet done, but will be taken care of promptly. Clients are much more willing to forgive a problem if they know they are dealing with an “Honest Abe” than if they are simply being ignored.

For example, Lincoln had no real bookkeeping system other than to keep papers in his famous stove pipe hat. On one occasion he bought a new hat, and in doing so, misplaced a client’s letter and failed to make a prompt response. Rather than ignore his mistake, Lincoln apologized in writing for his delay in answering:

“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.”ⁱⁱ

Losing sight of filing deadlines is another way in which even modern-day attorneys can prompt an ethics complaint. Yet the threat of a delay which causes a missed deadline is avoided the sooner an action is put into suit. The structure provided by scheduling orders and court rules can assist an attorney in moving a case forward and ultimately resolving an action. Lincoln wrote of the danger posed when an attorney spends too much time making speeches and engaging in delay rather than working a file and moving the case along:

“And yet there is not a more fatal error to young lawyers than relying too much on speech-making. If any one, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance.”

However, just because Lincoln urged the prompt filing of actions, does not mean he would encourage a rush to the courtroom. To the contrary, Lincoln was very concerned about the cost of litigation and urged attorneys to discuss restraint and compromise with their clients. He wrote:

“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, expenses, and waste of time. As a peacemaker 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.

Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it.”

Again, today these words are echoed in the American Bar Association’s Model Rules of Professional Conduct Rule 1.3 which provides that an attorney “must abide by a client’s decision whether to settle a matter.” Further, an attorney must also assist the client in making decisions by:

“...discussing the legal consequences of any proposed course of conduct...and assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.”

As Lincoln stressed, “there will still be business enough” even for the attorney who advocates restraint. Indeed, when the client is given an honest assessment of their case, that client is more likely to trust his or her attorney with future business.

Further, no client wants to spend money on taking a case to trial where the risk is greater than the reward. Attorneys must explain such risk fully so that a client can truly weigh whether compromise and settlement are appropriate. This includes explaining to a client that juries are unpredictable. Juries do not always decide a case on the law or facts, but often can apply unknown

or disjointed reasoning to reach a decision. It must also be stressed that Juries can award insufficient or inexplicable damages. Further, as Lincoln urges, an attorney must point out that even “winners” at trial may lose after the costs, fees and expenses are considered.

“Mr. Lincoln was an honest lawyer. He carried his personal and individual honor to the bar. He kept his integrity and individuality through his professional career.”

After Lincoln’s death, his law partner of 17 years, William Herndon, stressed: “It is this enduring sense of honor and integrity which modern lawyers must also strive to carry throughout their careers.”

ⁱ Lincoln’s writings are public domain. A well-curated collection of his writings can be found at Abraham Lincoln Online © 2015, www.abrahamlincolnonline.org. Quotations from that collection have been used with permission.

ⁱⁱ See; Charles B. Strozier, *Lincoln’s Quest for Union: Public and Private Meetings* p. 141-4, Paul Dry Books, (1982, 2001).