Teaching Lincoln’s Legacy
4. Lawyer Lincoln, by Brian Dirck, Anderson University, offers background on Lincoln’s legal career and examines how the skills he learned as a lawyer influenced his leadership as president.

8. A Railroad Lawyer’s Finest Hour, by Paul Finkelman, Albany Law School, traces the conditions during the Civil War that allowed the “Great Emancipator” to issue his Emancipation Proclamation and analyzes the document.

12. The Limits of Presidential War Powers, by Matthew Pinsker, Dickinson College, explains how Lincoln tried to maintain the delicate balance between protecting civil liberties and strengthening national security during the Civil War.

16. “Now He Belongs to the Ages,” by Christine Corcos, Louisiana State University, surveys Abraham Lincoln’s appearances in film, television, and advertising.

18. Perspectives: An Interview with Senator George McGovern, by Tiffany Willey, focuses on the former senator’s experiences writing his most recent book, Abraham Lincoln, and how Lincoln continues to inspire Americans today.

20. Students in Action: Students as Historians, by Colleen Danz, highlights students from East to West Coast America who traveled to Washington, D.C., to watch the inauguration of Barack Obama and experience history and American democracy firsthand.

22. Learning Gateways: Lincoln’s Gettysburg Address Then and Now, offers teachers and students an opportunity to consider the meaning of government “of the people,” “by the people,” and “for the people,” and make connections between the Gettysburg Address and relevant issues today.

24. Law Review: Lincoln’s other War: The 1862 Dakota Sioux Trials of 1862, by Charles Williams and Rachel Van Heel, explore the Lincoln administration’s lesser known policies regarding Native Americans.
Director’s Note

As we commemorate the bicentennial of Lincoln’s birth, we are reminded of the extraordinary qualities of our nation’s sixteenth president as he worked to sustain the union in the face of civil war, tested constitutional boundaries, and emancipated four million slaves from sanctioned bondage. We are also reminded of how relevant the lessons of his presidency are to our lives today. This issue of Insights will be a lasting resource for teaching about Lincoln’s legacy in your classroom.

Each of the featured articles explores an element of the Lincoln legacy that shapes our understanding of the importance of his time as the nation’s leader. Historian Brian Dirck spotlights Lincoln’s career as a lawyer, reflecting on how it prepared him for the presidency. Noted legal historian Paul Finkelman provides readers with an insightful examination of the legal reasoning and context surrounding Lincoln’s Emancipation Proclamation. Lincoln scholar Matthew Pinsker explains the challenges that Lincoln faced as he made and defended his decisions regarding his presidential powers during the Civil War. Finally, law professor Christine Corcos leads readers on an entertaining tour of the role that American popular culture has played in shaping our perception of Lincoln nearly a century and a half after his death.

Insights managing editor, Tiffany Willey shares her one on one interview with former U.S. senator George McGovern, while he was in Chicago discussing his newest book — a biography of Abraham Lincoln. In Students in Action, Colleen Danz interviews student historians whose experiences at the Obama inauguration make for a rich tapestry that preserves the memory of this historic moment by linking it to the reflections and memories of seminal events of the past. Learning Gateways features a “reader’s theater” on the Gettysburg Address. Finally, Preview on Supreme Court Cases editor Charles Williams joins his daughter, author Rachel Van Heel, in presenting the fascinating story of Lincoln’s role in the 1862 Dakota Sioux Trials in Law Review.

As always, visit Insights Online at www.insightsmagazine.org, to take advantage of a wide range of supplemental resources selected especially for this issue. I urge you to take advantage of this Lincoln bicentennial commemoration if you are not already doing so. As President Obama has reminded us, we can learn much from this iconic president as we address the challenges our nation faces today.

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Abraham Lincoln was the most experienced trial lawyer Americans have ever placed in the White House. While over half of our nation’s presidents have been attorneys, none possessed Lincoln’s extensive courtroom experience: approximately 3,800 known cases, litigated during a quarter century at the Illinois bar. ¹

But the law’s influence on Lincoln extended far beyond the mere number of cases he litigated. It was his only steady source of income. It gave him important political contacts within the state’s bench and bar. It was the means by which he met an extraordinary number of his constituents. As a lawyer, Lincoln also learned how to communicate with the people he confronted in jury boxes and courtroom galleries, how to resolve disputes among family members and neighbors, and how to preserve law and order to maintain community harmony — all lessons that would serve him well as president.

The law was not a natural choice for Lincoln. “I was raised to do farm work,” he later wrote. He struck out on his own in 1831 at the age of 22, arriving in the Illinois village of New Salem like a piece of “floating driftwood.” He tried many occupations, such as postmaster and land surveyor, in an attempt to earn a living. He “thought of trying to study law,” he later wrote, but “rather thought he could not succeed at that without a better education.” ²

Eventually, however, Lincoln decided that the law was his best hope for earning decent money, achieving respectability, and feeding his growing political ambitions. He never attended a law school; few lawyers back then did so. Rather, he borrowed the necessary books from a friend, attorney John Todd Stuart of Springfield, studied those books carefully, and then took an oral exam. Upon passing, he was entered into the Sangamon County, Illinois, docket book as a man of “good moral character” on March 24, 1836.³

Stuart became Lincoln’s first law partner. Theirs was a profitable if somewhat difficult partnership. It was complicated by Stuart’s frequent absences, including...
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his election to Congress in 1838. Neophyte Lincoln was left alone to manage their sprawling practice. Lincoln was still raw around the edges, unsure of himself, and given to sloppiness in handling paperwork and the minutiae of everyday life as an attorney. He also sometimes entered courtrooms improperly attired. One client exclaimed that Lincoln looked like “a country rustic on his visit to the circus,” and fired him on the spot.4

Stuart and Lincoln parted ways in 1841. Lincoln then partnered with Stephen Logan, an irascible but brilliant local judge who had decided to re-enter private practice. In many ways, Logan helped professionalize Lincoln, teaching him the fundamentals of paperwork, administration, and proper courtroom behavior. Lincoln’s “knowledge of the law was very small when I took him in,” Logan later claimed. But Logan admired his partner’s work ethic and his tenacity. “He would get a case and try to know all there was connected with it,” Logan believed, and in this way Lincoln “got to be quite a formidable lawyer.”5

In 1844, Logan decided to create a new firm with his son, and Lincoln again found himself without a partner. By this point, Lincoln was an experienced attorney who had litigated over one thousand cases. He was the senior partner, looking for a junior partner to complement his skills and expertise. Lincoln found such a man in William H. Herndon; his third and final law partner.

Herndon was in many respects a different man from Lincoln. He was nine years younger than Lincon, he came from a comfortable middle-class household, and enjoyed a brief stint in college before entering the bar. Where Lincoln was at his best delivering jury speeches, Herndon’s strong suit was research. And while their politics were similar (both were antislavery, for example), Herndon was very much the dreamer and philosopher, contrasting with Lincoln’s eminently pragmatic approach to life. He was also an alcoholic. Lincoln bailed him out of jail on at least one occasion after a drinking spree. “In his treatment of me Mr. Lincoln was the most generous, forbearing, and charitable man I ever knew,” Herndon recalled.6

The firm of Lincoln and Herndon had several law offices at various times, all located in or near Springfield’s bustling town square. By all accounts, their housekeeping skills were appallingly limited. A large envelope in the office, crammed full of papers, bore a note in Lincoln’s handwriting, “When you can’t find it anyplace else, look in this.” Dusty, dirty and unkempt, desk and table surfaces covered with papers and books, the office was Lincoln and Herndon’s workplace, refuge, and think-tank, all rolled into one. “Lincoln’s favorite position when unraveling some knotty law point was to stretch both of his legs at full length upon a chair in front of him,” Herndon recalled, and “in this position, with books on the table near by and in his lap, he worked up his case.”7

Lincoln did not actually spend an inordinate amount of time in the office. Much of his practice focused on “riding the circuit,” the Eighth Judicial Circuit that encompassed much of central Illinois. At least twice a year Lincoln would pack a few lawbooks, grab his blue cloak and faded green umbrella with a broken handle, and accompany a judge and half dozen or so other fellow lawyers to try cases in courthouses throughout the circuit. The roads were bad (the Eighth was nicknamed the “mud circuit”) the food and accommodations were worse — and Lincoln loved every minute of it. “If every other fellow grumbled at the bill-of-fare which greeted us at many of the dingy taverns,” remembered a fellow attorney, “Lincoln said nothing.”8

Litigating cases from his Springfield office and throughout central Illinois, Lincoln encountered a wide variety of cases and clients. Bankruptcy, contract law, probate, real estate transactions, partnership dissolutions, slander, negligence, divorce, larceny, assault, murder — Lincoln’s practice ran the gamut of possible litigation, from the everyday to the oddball. He once represented a family accused of stealing fruit trees. On another occasion, he represented a group of temperance-minded citizens who had broken into a Tazewell County “grocery” (the preferred term of the time for a saloon) and destroyed the property. On yet another occasion, he became involved in a complex patent lawsuit concerning a self-rocking baby cradle. Lincoln had a scale model of the contraption in his office, which he showed to visitors and joked that it was “like some of the glib talkers you and I know … when it gets going it don’t know when to stop.”9
Few lawyers in his day specialized; there was not enough litigation in any one area of the law for most lawyers to earn a steady living by doing so. But if Lincoln did not specialize, he did display a marked tendency toward one type of case: debt collection. Of the 3,800 extant cases of his practice, over half involved some form of debt litigation. During the year 1850, for example, Lincoln appeared as an attorney of record in 73 cases; 42 of those cases involved some form of debt litigation.

Most of Lincoln’s debt work was fairly straightforward. During that same year of 1850, Lincoln and Herndon successfully represented the firm of B. C. Webster and company, which sued a local man named Henry Dresser over an unpaid promissory note and was awarded one hundred and eighty dollars. In another case that same year, Lincoln represented his friend Edward Baker in a lawsuit to recover payment on three promissory notes given to him by a man named John D. Moffett. And, in a third case, Lincoln and Herndon represented a Menard County man named Abraham Bale, who sued Virgil Hickox and Asa Wright concerning the proceeds from a sale of wheat; that matter was settled out of court.

This was not very glamorous work, nor was it likely very interesting. But it was important. Illinois’ economy was cash-poor, operating largely on the credit represented by promissory notes and other debt agreements. Creditors needed to have confidence that they could turn to a lawyer like Lincoln to collect their money. Otherwise, they would have been less likely to make loans in the first place, to the detriment of the area’s economic development. At the same time, debtors had to know they could turn to lawyers like Lincoln for protection from their creditors during bad times. Otherwise, they might have been less likely to take the entrepreneurial risks necessary to develop their businesses. Either way, Lincoln was a quiet but vitally necessary cog in the economy’s machinery.

In later years, he represented increasingly well-heeled clients for larger sums of money. In 1857, Lincoln defended the Illinois Central railroad’s interests in a high-profile case involving a steamboat accident, during which a vessel called the Effie Afton accidentally rammed a railroad bridge spanning the Mississippi River and sank. Lincoln argued that the vessel's crew, rather than the engineers who designed the bridge, were responsible for the accident. The case resulted in a hung jury. On another occasion, Lincoln represented the Illinois Central in a case involving an attempt by McLean County officials to tax the railroad. Lincoln won the case and received a princely $5,000 fee (although he was compelled to sue the railroad to get paid). “Lincoln gave me my half,” Herndon recalled, “and much as we deprecated the avarice of great corporations, we both thanked the Lord for letting the Illinois Central Railroad to fall into our hands.”

Through it all, Lincoln remained a workmanlike lawyer. His practice was overwhelmingly centered on the local courts around Springfield and the Eighth Judicial Circuit, with occasional appearances in the Illinois appellate courts, and even rarer forays into the federal system. He was steady but not spectacular, earned a comfortable living for himself and his family, and provided his clients with solid, reliable legal services. Lincoln was not a legal superstar or genius. But he was good at his job, with a knack for persuading juries and pitching complex arguments in such a way that ordinary people could follow his reasoning. “Billy, don’t shoot too high,” Lincoln once advised his partner, “shoot low down, and the common people will understand you. They are the ones you wish to reach; at least, they are the ones whom you ought to reach. The educated ones will understand you anyhow.” It was an insight honed before jury boxes filled with those “common people” during twenty-five years worth of courtroom experiences.

He was also an ethical attorney, who represented his clients to the best of his
ability, within the accepted professional boundaries of law. “There is a vague popular belief that lawyers are necessarily dishonest,” Lincoln once wrote, but “let no young man choosing the law for a calling for a moment yield to the popular belief — 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. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.”15

His political career was an on-again, off-again affair; but there was always his law practice. And as he left for Washington, D.C., to assume the mantle of the presidency in 1861, he made it clear that, once his political career was concluded, he fully intended to return to the law. According to Herndon, Lincoln pointed to the shingle suspended over their office and said “Let it hang there undisturbed, … Give our clients to understand that the election of a President makes no change in the firm Lincoln and Herndon. If I live I’m going right on practising [sic] the law as if coming back some time, and then we’ll go right on practising [sic] the law as if nothing had ever happened.”16

Notes
1 Numbers based on search string, “Abraham Lincoln” in cases where his name appears as an attorney of record, Lincoln Legal Papers DVD-ROM database (Urbana: University of Illinois Press, 2000; hereinafter cited as LLP).
3 Order admitting Lincoln to the Illinois bar, March 24, 1836, LLP.
4 Henry C. Whitney, Life on the Circuit with Lincoln (Boston: Estes and Lauriat, 1892), 56-57.
8 Whitney, Life on the Circuit, 100.
10 Numbers based on search “Abraham Lincoln” as an attorney of record in cases under the heading “Debtor and Creditor,” LLP; search yielded 2,290 extant cases.
11 Numbers based on search string, “Abraham Lincoln” appearing as an attorney of record during the year 1850, subdivided by category “Debtor and Creditor,” ibid.
16 Herndon, Herndon’s Lincoln, 290.

Additional Resources
Dirck, Brian, Lincoln the Lawyer (Chicago: University of Illinois Press, 2007).
Young Mr. Lincoln, directed by John Ford, 1939.
As a competent and successful lawyer, and a student of the U.S. Constitution, Lincoln began his presidency with a strong sense of the limitations that the Constitution placed on emancipation. In his first inaugural address, he declared: “I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.” This position reflected the orthodox interpretation of the U.S. Constitution that the national government had no power to interfere with the “domestic institutions” of the states. Thus the states, and not the national government, had sole power to regulate all laws concerning personal status, such as marriage, divorce, child custody, inheritance, voting, and freedom — whether one was a slave or a free person.

The development of American constitutional law from ratification to Lincoln’s election had created a government of limited powers. Any powers not explicitly given to the national government were retained by the states. Constitutional jurisprudence in the three decades before Lincoln took office had not only strengthened this understanding, but had actually expanded it to encroach on the powers of Congress. Only a few radical antislavery politicians or legal scholars believed Congress had the power to regulate slavery in the states. In 1860, a claim of federal power to end slavery in the states was simply unthinkable for someone like Lincoln, who took law and constitutionalism seriously.

Critics of Lincoln argue his inaugural address shows that Lincoln had no personal interest or desire in ending slavery. But Lincoln chose his words carefully. His personal views on slavery were clear: he hated slavery and had always believed that “If slavery is not wrong, nothing is wrong.” But, his personal desires could not overcome the constitutional realities of his age. Because he had no power to touch slavery where it existed he could honestly say he had “no inclination to do so.” He clearly had “no inclination” to attempt to do what was not constitutionally, legally, or politically possible to accomplish. But, when circumstances changed, so would Lincoln’s “inclination.”

Lincoln is often remembered as the “Great Emancipator,” after his 1863 Emancipation Proclamation, which freed slaves in Confederate states. Several conditions had to be met, however, before Lincoln could legally emancipate slaves.

His personal views were clear: he hated slavery and had always believed that “if slavery is not wrong, then nothing is wrong.”

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In addition to the constitutional limitation on federal power, there was also an issue of property rights. The Fifth Amendment declares that “No person ... shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.” In *Dred Scott v. Sandford* (1857), Chief Justice Roger B. Taney had used this clause to strike down federal legislation, banning slavery in the territories. Lincoln and most Republicans rejected the legitimacy of this holding, arguing that Congress could ban slavery from the territories because Congress had the power to completely regulate the territories. But there was a huge difference between banning slavery in new territories and taking slave property from people in the states or even in federal jurisdictions, such as Washington, D.C., where slavery was legal. Lincoln, like almost all lawyers at the time, understood that even if Congress had the power to take slaves from American citizens, it could only be done through compensation, as required by the Fifth Amendment.

Lincoln also understood, as all Americans did, that slavery was the reason for secession and the cause of the war. As the Confederate vice president, Alexander Stephens, put it, slavery was the “Cornerstone” of the Confederacy. Similarly, in his second inaugural, Abraham Lincoln would assert that in 1861 “All knew” that slavery “was somehow the cause of the war.” Thus, if everyone understood that slavery was the cause of secession and the war, it would seem that attacking slavery should have been the first goal of the Lincoln administration. Root out the problem, destroy the institution, and the Union could be restored. Such a simplistic response did not comport with the reality of the crisis Lincoln faced.

From the moment the war began, Lincoln faced demands for emancipation. Abolitionists and antislavery Republicans wanted Lincoln to make the conflict a war against slavery. Northern free blacks were anxious to serve in a war of liberation. From the beginning of the war, slaves escaped to U.S. Army lines. But, the seriously committed opponents of slavery in the North were relatively few in number, and southern slaves had no political influence, at least in the first year of the war. Most Northerners wanted a quick end to the conflict and a restoration of the Union. Emancipation did not fit into that formula, just as it did not fit into any generally recognized interpretation of the Constitution. As much as he hated slavery and would have liked to destroy it, Lincoln understood that an assault on slavery required the complete or partial fulfillment of four essential preconditions: 1) securing the loyal slave states; 2) gaining support in the North for emancipation; 3) developing a legal and constitutional theory for emancipation; and, 4) achieving a United States military victory. Without these preconditions emancipation was impossible and any proclamation to free the slaves would have been counterproductive and empty. But, when these preconditions were met, Lincoln could and did move against slavery. In doing so, he was able to fulfill his “soft-expressed personal wish that all men every where could be free.”

1: Securing the Border States
First, Lincoln had to secure the loyal slave states — Kentucky, Missouri, Maryland, and Delaware. If he moved against slavery too quickly, he risked pushing these slave states into the Confederacy. If Missouri and Kentucky seceded, they would become the second and third largest states in the Confederacy. If Maryland joined the Confederacy, the nation’s capital would be completely surrounded by the enemy. If Missouri joined the rebel nation, there would be a Confederate army on the upper Mississippi poised to threaten Lincoln’s home state of Illinois and able to penetrate into Iowa and Minnesota.

Most crucial of all was Kentucky. A Confederate army on the southern bank of the Ohio River would interrupt east-west commerce and troop movements, threaten the vast agricultural heartland of the midwest, and endanger Cincinnati, Chicago, Columbus, Indianapolis, and Pittsburgh. With more than 200,000 slaves in the state, Kentucky was vulnerable to Confederate entreaties. A precipitous movement toward emancipation would push the Bluegrass State into the hands of the enemy and would probably send Missouri to the Confederacy as well. Early in the war, a group of ministers urged Lincoln to free the slaves because God would be on his side. He allegedly responded, “I hope to have God on my side, but I must have Kentucky.” In the fall of 1861, Major General John C. Frémont declared martial law in Missouri and announced that all slaves owned by
Confederate activists in that state were free. This order was outside the scope of the general’s powers and well beyond anything Lincoln contemplated at that time. Lincoln immediately and unambiguously urged Frémont to withdraw his proclamation. When the stubborn and insubordinate Frémont refused to act, Lincoln countermanded the order, because he understood that moving against slavery in a loyal state was both unconstitutional and likely to push Missouri, and more importantly, Kentucky, into the Confederacy. As Lincoln told Senator Orville Browning “to lose Kentucky is nearly … to lose the whole game.”

Abolitionists were aghast at Lincoln’s action. He privately assured Senator Charles Sumner that the difference between them on emancipation was only a matter of time — a month or six weeks. Sumner accepted this statement and promised to “not say another word to you about it till the longest time you name has passed by.” The situation in the loyal slave states changed dramatically in early 1862, when General Ulysses S. Grant captured Fort Henry on the Tennessee River, followed by Fort Donelson on the Cumberland River in northern Tennessee. These twin victories established a United States presence in the Confederate state of Tennessee and emphatically secured Kentucky for the Union. By the end of February 1862 the United States Army was sitting in Nashville, Tennessee, the first Confederate state capital to fall. Instead of Kentucky possibly going into the Confederacy, it was now more likely that Tennessee would return to the United States.

2: Gaining Support in the North
To move toward emancipation, Lincoln also needed support in the North. At the beginning of the war, only a minority of Northerners thought the administration should move against slavery. Most Northerners believed the war would end quickly and the South would return to the Union if there was no attempt to end slavery. But, as the war dragged on, sentiment shifted in support of abolition.

In August 1862, Horace Greeley urged Lincoln to end slavery in an editorial titled “The Prayer of Twenty Millions.” By this time, Lincoln had already drafted the Emancipation Proclamation but was waiting for the right moment — for the preconditions necessary for emancipation — to be in place. Greeley’s editorial helped with this by showing that northern public opinion was moving in the direction Lincoln wanted. In his famous response letter to the New York Tribune, Lincoln was able to further help shape public opinion. Lincoln declared that his goal was to “save the Union,” and that he would accomplish this anyway he could. He would free some slaves, all slaves, or no slaves to save the Union. He noted this described his “official duty” and not a change in his “oft-expressed personal wish that all men every where could be free.”

This letter allowed Lincoln to signal to the North that emancipation would come if it was necessary. In fact, he had been quietly and secretly moving toward this result all summer. His letter was a prelude to what he had already determined to do. No Northerner could be surprised when he did it. Abolitionists could be heartened by having a president who believed, as they did, that “all men every where” should “be free.” Conservatives would understand that they had to accept emancipation as a necessity. Thus, by the end of the summer of 1862, Lincoln knew that if he moved against slavery most of the North would support him.

3: A Constitutional Theory
As a lawyer and a student of the Constitution, Lincoln understood that emancipation required justification under the rule of law. Lincoln had to develop a legal theory that allowed him to take slave property from Confederates who claimed to be outside the Union but who he claimed still owed allegiance to the United States. He believed he could only urge the loyal slave states to end slavery but could not force them to do so short of a constitutional amendment. As he had all his life, Lincoln believed that Congress had the power to end slavery in the District of Columbia and the federal territories and he happily signed legislation in the summer of 1862 to accomplish this. In the Washington, D.C., emancipation, Congress provided a small compensation for each slave freed, thus avoiding any claim that emancipation was an unconstitutional taking.

The war had hardly begun when slaves began to stream into the camps and forts of the United States army. The army was not a social welfare agency and was unprepared to feed, clothe, or house masses of propertyless refugees. Initially the army returned slaves to masters. This situation undermined the morale of United States troops who fully understood that they were returning valuable property to their enemies. Slaves grew the food that fed the Confederate army, cared for the horses Confederates rode into battle, and labored in the workshops that produced the weapons necessary to fight the war. As Frederick Douglass noted, “The very stomach of this Rebellion is the negro in the form of a slave.” Douglass correctly understood that “arrest that hoe in the hands of the Negro, and you smite the rebellion in the very seat of its life.” Returning slaves to Confederate masters was hardly different than returning guns or horses to them.
Out of this concern for supplying the enemy, Lincoln was able to justify emancipation. Slaves provided necessary labor and resources to the Confederacy. Lincoln, as Commander in Chief of the war effort, would deprive the enemy of valuable capital in the form of slaves. On July 22, 1862, Lincoln presented his cabinet with his first draft of the Emancipation Proclamation. The draft concluded with a powerful constitutional claim: Lincoln declared that “as a fit and necessary military measure” he did “order and declare” as “Commander-in-Chief of the Army and Navy of the United States,” that as of January 1, 1863, “all persons held as slaves within any state or states, wherein the constitutional authority of the United States shall not then be practically recognized, submitted to, and maintained, shall then, thenceforward, and forever be free.” On January 1, 1863, the final proclamation was put into effect. He issued it “by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States in time of actual armed rebellion.” This was, constitutionally, a measure designed to cripple the ability of those in rebellion to resist the lawful authority of the United States. It applied only to those states and parts of states that were still in rebellion. This was constitutionally essential. Lincoln only had power to touch slavery where, as he had told the ministers from Chicago, he could not “enforce the Constitution.” Where the Constitution was in force, federalism and the Fifth Amendment prevented presidential emancipation. The document was narrowly written, carefully designed to withstand the scrutiny of the Supreme Court, still presided over by Chief Justice Taney, whose opinion in Dred Scott denied the power of Congress to end slavery anywhere. Lincoln’s proclamation narrowly applied only to the states in rebellion. It would not threaten Kentucky or Missouri, and it would not threaten the constitutional relationship of the states and the federal government.

4: Winning the War
Although he drafted the Proclamation in July 1862, Lincoln could not move against slavery until he was sure that the United States would either win the war or at least control a significant portion of the Confederacy. To declare emancipation was foolish and counterproductive if he could not actually enforce his order. Thus Lincoln told a group of ministers that emancipation was useless without a military victory and would be “like the Pope’s bull against the comet.” He asked how he “could free the slaves” when he could not “enforce the Constitution in the rebel States.”

This analysis turns modern critiques of Lincoln on their head. Historians hostile to Lincoln argue that he moved toward emancipation for military and diplomatic reasons: because he needed black troops to repopulate his army and to prevent Britain and France from giving diplomatic recognition to the Confederacy. Emancipation is explained as a desperate act to save the Union, reflecting the title of Leone Bennett’s book that Lincoln was “forced into glory” by circumstances.

The chronology of emancipation does not support this analysis. Both Lincoln and Congress began to move toward emancipation only after a series of United States victories in early 1862. Lincoln then waited to announce emancipation until after a major victory that stopped Lee’s army dead in its tracks — with huge casualties — at Antietam. While emancipation may be properly seen as one of the elements of victory, it must also be seen as an outcome of the likelihood of ultimate victory. Victory would probably have been possible without emancipation, although it would have been more difficult and perhaps taken longer. But, while victory was possible without emancipation, emancipation was clearly impossible.

Additional Resources
Allen Guelzo, Lincoln’s Emancipation Proclamation: The End of Slavery in America (Simon and Schuster, 2006).


The Limits of Presidential War Powers

The law of war, in time of war

by Matthew Pinsker

Abraham Lincoln has long been the Great Example in American history and never more so than whenever presidents claim sweeping war powers in the name of national security. Yet those who invoke Lincoln on behalf of aggressive presidential action should be wary of the precedents which they seek to enshrine, because as much as the great Civil War commander-in-chief assumed vast power to meet the nation’s gravest crisis, he also set important limits on his own authority. Unfortunately, those limits have been poorly understood or at least distorted in the inevitable partisan bickering that comes with each contested episode of national crisis management. The result has been a debate that often misses the nuances of Lincoln’s measured approach to civil liberties during wartime.

Most notably, President Lincoln set four significant limits on his war powers. First, he always argued that presidents should follow the Constitution and claimed repeatedly that he had done so. However, as any good student realizes, the question inevitably becomes whose Constitution? Yet this interpretive challenge represented a second limitation for Lincoln. Though he sometimes asserted, like many nineteenth-century political figures, that the three branches of the federal government were co-equal in their abilities to decide constitutional questions, Lincoln also respected what might be termed a doctrine for the chronology of powers. In other words, he believed that, in times of crisis, the branches operated in a certain chronological order that subjected the decisions of a wartime executive to significant constraints imposed afterwards. Third, Lincoln also believed that even where the commander-in-chief had his widest latitude, such as in the conduct of the war itself, he was still bound, however loosely, by international law. This international legal limitation has not been well understood, but nonetheless...
it was a real one for Lincoln. Finally, President Lincoln never ignored or forgot the most important fixed American bulwark against executive tyranny: the election process. “We cannot have free government without elections,” Lincoln said on November 10, 1864, but he actually meant it, an expression of extraordinary faith in the principle of popular sovereignty.

Constitutional Limitations
The U.S. Constitution does not employ the phrase “war powers,” nor does it delegate to the president any explicit military authority other than to describe him as “commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States.” But what does that mean?

Lincoln was compelled to provide an answer almost from the outset of his administration. He faced not only a secession movement sparked by his election, but also an unprecedented internal threat to the government. During times of crisis, people always fear spies and sabotage, but in April 1861, there was real and widespread disloyalty among federal office-holders, including even Supreme Court justices, leading military officers, senators, congressmen, and powerful bureaucrats. To make matters worse, in a struggle where slavery was “somehow” the cause of the conflict, as Lincoln put it in the Second Inaugural Address, both the nation’s capital and the surrounding states were slave territory. Numerous reports suggested that secessionist sympathizers around Washington aimed to cut off the capital and overthrow the government. With essentially no military experience, having not even visited Washington for a dozen years prior to his inauguration and with Congress out of session, the amiable attorney from Springfield, Illinois, seemed ill-prepared for such dire circumstances.

Yet the new president acted with stunning dispatch. He called up the militia, authorized the expenditure of funds, suspended habeas corpus along the train routes into Washington, and declared an embargo on southern ports—all without congressional approval. The situation intensified even further at the end of May when the government declined to obey an order from the chief justice of the United States, Roger B. Taney, demanding the release a political prisoner named John Merryman, who was being held at Fort McHenry in Baltimore. Writing in *Ex Parte Merryman* (1861), Taney concluded that if Lincoln had his way on the question of civil liberties, “the people of the United States are no longer living under a government of laws.”

Many people and some legal scholars have since characterized Lincoln’s response in utterly pragmatic terms. They claim, usually with a measure of disapproval, that he ignored the chief justice and then rationalized his actions with a flat-out utilitarian appeal that expressed itself most famously in a line to Congress from July 1861: “are all the laws, but one, to go unexecuted, and the government itself go to pieces,” he asked, “lest that one be violated?” Lincoln did write those words for a special message delivered to Congress on July 4, 1861, but the question, as profound and troubling as it might be, was one that Lincoln considered to be hypothetical. “But it was not believed that this question was presented,” he stated, adding firmly, “It was not believed that any law was violated.”

Lincoln never once backed down from this claim that his executive actions were legal. According to his view, the Constitution inherently authorized extraordinary measures during periods of rebellion or invasion, especially by a president who was “vested” with the nation’s “executive power” and bound by oath to “preserve, protect and defend the Constitution of the United States.” This was an argument Lincoln repeated on numerous occasions, but toward the end of the Civil War, he put the issue in its clearest and most profound terms. “I felt that measures, otherwise unconstitutional, might become lawful,” he wrote on April 4, 1864, “by becoming indispensable to the preservation of the constitution, through the preservation of the nation. Right or wrong, I assumed this ground, and now avow it.”

Chronology of Powers
Critics of what is now often labeled the “imperial presidency” might be especially unimpressed by Lincoln’s invocation of broad executive power, an inherent “emergency constitution,” and the inevitable
claims of necessity. These have become all too familiar battlegrounds in the contest over separation of powers issues during an age dominated by the growing national security state. But it is important to remember that nineteenth-century America was a much different place with a far weaker government apparatus and that the Civil War was a uniquely dangerous conflict. It is also critical to acknowledge that despite his sweeping claims for executive action, Lincoln never envisioned that his decisions would go unchallenged. In other words, Lincoln quite consciously accepted a chronology of powers.

Consider Lincoln’s famous special message to Congress on July 4, 1861. By taking his dispute with Chief Justice Taney to the Congress, Lincoln was disregarding an order from the nation’s leading jurist, but he wasn’t asserting any plenary or full powers. Rather, he was appealing to Congress for a response to his decisions. For Lincoln, this was the only sensible course. The president acted. The Congress needed to react. Then the courts could review. The executive, he wrote, “has, so far, done what he has deemed his duty,” adding pointedly, “You will now, according to your own judgment, perform yours.” Later, when the issue of the president’s actions at the outset of the war reached the full Supreme Court in the form of The Prize Cases (1863), with the cantankerous Taney still sitting as chief justice, Lincoln and his administration appeared ready to accept the verdict of the court, whatever it may have been.

Admittedly, skeptics doubt Lincoln’s sincerity on these matters. The Congress was in Republican hands. He appealed to them on Independence Day confident of their support. And by 1863, the Taney Court was shifting toward a unionist if not necessarily a Republican majority (and would soon also be temporarily “packed” with a tenth justice for good measure). All of Lincoln’s supposed respect for process might have been merely for show. However, this criticism fails to take into account the fact that the supposedly deferential Republican Congress was no sure thing. The Congress did not authorize Lincoln’s actions on habeas corpus suspension until the spring of 1863 and then pointedly ignored any effort to retrospectively confirm what he had done in April 1861. Also, the Supreme Court’s endorsement of the Administration in 1863 was by a slim 5–4 majority and was nervously awaited by all friends of the unionist coalition. Lincoln tangled with both the Congress and the courts repeatedly during his wartime administration, yet never denied their prerogatives to second (or third) guess him.

International law
If there was one exception to Lincoln’s patience with meddling from the other branches of government, it came on the question of emancipation. Here President Lincoln was adamant. He claimed that he alone wielded the emancipation power and only then as a matter of military necessity in his role as commander in chief. Read the Emancipation Proclamation of January 1, 1863, and look carefully at the words that are missing from the original language of that final document. There is no mention of Congress or the courts. It is a stark executive proclamation. “I, Abraham Lincoln, President of the United States, by virtue of the power in me vested as Commander-in-Chief, of the Army and Navy of the United States ... do order and declare ... and that the Executive government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons.”

This much of the story is well known. But within Lincoln’s sweeping assertion of executive authority to emancipate slaves there was also a subtle recognition of a new type of limitation on his power. The document invoked international law in a manner that has since mostly escaped public attention. Declaring his proclamation to be “an act of justice,” Lincoln stated that in addition to the constitutional authority of military necessity, he was also invoking “the considerate judgment of mankind, and the gracious favor of Almighty God.” These words, which echo the Declaration of Independence and refer to universal natural rights, were not simply rhetorical flourishes. According to the most recent scholarship on the subject, they consciously drew upon an understanding of nineteenth-century international law that made freedom for an oppressed people both “an act of justice” and a legitimate object of war.

What international law authorizes, however, it can also limit. When Lincoln later defended his emancipation policy in a public letter on August 26, 1863, he wrote famously, “I think the constitution invests its commander-in-chief, with the law of war, in time of war.” What did he mean by the “law of war”? The answer was international law. Such “law” was neither statutory nor even fully binding, but it was important enough to Lincoln that his administration had asked noted legal scholar Francis Lieber to draft a pioneering code for the conduct of its armies that drew upon the best international traditions and customs of warfare. The Lieber Code (as the directive came to be known) was one of the precedents that informed the development of modern international conventions on war such as those later adopted at The Hague or Geneva. Naturally, the Lieber Code was loose enough to justify what General William
T. Sherman notoriously called on Christmas Eve 1864, the “hard hand of war,” but it was still an extraordinary effort to define clear limits on the violence of warfare.

**Electoral Necessity**

Anyone who continues to doubt Lincoln’s underlying restraint as a wartime executive should look no further than August 1864. This was the moment when Lincoln contemplated the real possibility of his defeat for reelection, yet decided to plough ahead anyway. “This morning, as for some days past,” he wrote in a secret memorandum on August 23, 1864, “it seems exceedingly probable that this Administration will not be re-elected.” Yet Lincoln’s solution to this dilemma was not to change his unpopular policies (such as emancipation), step aside as his party’s nominee (as he was being pressed very hard to do), or, most notably, cancel the elections. Instead, Lincoln vowed to honor the results, whatever they were, and to pledge to work with his opponent in a kind of coalition government during what was then the long transition period between November election and March inauguration.

If that commitment to the electoral process sounds unexceptional, just recall every other bold executive action that Lincoln had already undertaken. President Lincoln believed that there could be free government without civil liberties, or full property rights, but not without elections, which he deemed a special “necessity” on November 10, 1864. Why? The answer lies with his deep, abiding sense of popular sovereignty. “Public sentiment is everything,” he had said during the Lincoln-Douglas Debates of 1858, “With public sentiment, nothing can fail; without it, nothing can succeed.” This faith in people to settle the great questions of their nation also represented a final bulwark in the containment of executive usurpation. A president elected by the people and subject to their reelection, according to the Lincolnian view, was not, and could never be, a tyrant. More important, a people who truly governed themselves could never be slaves.

**Conclusion**

No matter how deep our understanding of Lincoln’s example, however, the subject of war and liberty is far too weighty for any single conclusion to rule. Lincoln faced criticism not only from Chief Justice Taney but also from thousands of others in his day, both Northerners and Southerners, who worried over his painful trade-offs and the appearance of constitutional improvisation. These debates continued after the Civil War and have appeared in different moments and various forms throughout American history up to the present day. We cannot resolve them certainly, but we can resolve to study them carefully and to begin by more fully contemplating the complicated example of Abraham Lincoln, an aggressive commander in chief who also had somehow maintained a deep sense of the essential limits of power.

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**FOR DISCUSSION**

President Lincoln used his executive power as Commander in Chief to suspend the writ of habeas corpus. What is the source of this power? Do you think Lincoln appropriately exercised his presidential powers to take this action? What checks and balances does the Constitution provide to restrain the exercise of executive power?

Do you agree with Matthew Pinsker that Lincoln took a “measured approach” to protect civil liberties during the Civil War? Why or why not? Why is it important to protect civil liberties and the rule of law in times of national crisis?

What international laws guided Lincoln? How does international law guide presidents today?

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**Further Reading**


**Online Resources**


In 2009, the bicentennial of Abraham Lincoln's birth, we would expect to be inundated by references to our sixteenth President. But the fact is that ever since his assassination, people have been using the image of “Honest Abe” in many different ways to represent many different things. Lincoln represents the presidency in time of crisis. He represents a man who rose from poverty to the greatest office in the land. He represents a man, who doubting himself and the decisions he made, nevertheless led his nation through civil war and through one of the greatest struggles it has ever faced. At the end of that war, he and his administration faced the challenge of bringing the newly reunited nation back into a time of peace. The symbolism of that struggle is difficult to overstate. Lincoln represents a family man whose wife practiced somewhat unusual religious beliefs (Spiritualism) and suffered from mental instability and who knew personal tragedy through the death of his son in 1862. He was the first Commander in Chief to be murdered when the actor John Wilkes Booth shot him on Good Friday, April 14, 1865. Only recently have scholars begun to reassess, and, in some cases, to criticize, Lincoln’s actions as Commander in Chief during the Civil War, such as the suspension of the writ of habeas corpus.1

Americans have a shared, if superficial, knowledge of Lincoln gained through formal education, but popular culture plays on that knowledge by making constant references to our sixteenth president. In addition to those daily images which surround us (the Lincoln Memorial, the Lincoln penny, and the five dollar bill), the associations that are most common are those that refer to his appearance, his actions in issuing the Emancipation Proclamation, his character (honesty, loyalty, kindness), his willingness to defend the poor and unfortunate, the manner of his death, and, above all, his image as a man who led his country in time of peril. Here are a few examples of popular culture references to Lincoln, through television, film, and advertising.

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Television

Lincoln has been featured in many television shows. In the classic *Dick van Dyke Show* episode “The Great Petrie Fortune,” Rob and Laura Petrie try to figure out what “fortune” they’ve inherited from Rob’s recently deceased great-uncle. Eventually they discover a photograph of Rob’s great-uncle as a baby in Gettysburg, Pennsylvania, in 1863, with Abraham Lincoln in the background. What’s particularly notable about the *Dick van Dyke Show* is that it first began airing during the administration of another celebrated President who also died tragically, John F. Kennedy. The analogies between Lincoln and Kennedy have often been made, particularly in their commitments to civil rights. Rob and Laura learn that the photograph they inherit is valuable not simply because of its age, but because of its link to an important period in American history, and its depiction of a figure whose monumental contribution to human rights continues to resonate today.

In the series *Star Trek*, which ran from 1966 to 1969, Lincoln makes an appearance as a symbol of good in the episode titled “The Savage Curtain.” The captain of the starship *Enterprise*, James Kirk, admires Lincoln, so the aliens who have manufactured a good vs. evil encounter make an image of the president appear and entice Kirk and his colleague Spock down to the planet’s surface. The Lincoln figure (played by Lee Bergere) helps Kirk and Spock wage a battle for good; he eventually “dies,” inspiring Kirk to continue fighting. The notion that Captain Kirk would choose Lincoln as a personal hero suggests not just that contemporary audiences in the 1960s would recognize Lincoln as a symbol of good, but that the sixteenth president would continue to represent goodness, peace, and heroism so far into the future for a starship captain, himself a heroic figure. Note also that one of the themes in *Star Trek* and its spinoffs is that of human rights, which is closely associated with Lincoln. The episode brings this particular theme home to viewers in the scene in which Lieutenant Uhura, the black communications officer, meets “Lincoln.”

In the 1980s series *Voyagers!* Abraham Lincoln (John Anderson) makes yet another television appearance. In the episode titled “The Day the Rebs Took Lincoln,” the series heroes help the president escape first from a Confederate prison camp and then from a trap set for him in Washington, D.C. More heroic than aiding the President’s escape from a Confederate prison camp, is late night television host Conan O’Brien’s short comedy scene in which he saves Lincoln from assassination. The skit was written during the recent Hollywood writer’s strike, and continues to generate laughs with viewers.

Lincoln is mentioned again, even in the cult science fiction series *Third Rock from the Sun* when the character Sally receives a marriage proposal from a visiting Frenchman named Michel, who wants to stay in the United States, in the episode, “Dick on One Knee.” While Michel expresses some doubt about Americans, Sally eagerly counters that Abraham Lincoln is wonderful. Michel must like Abraham Lincoln. Lincoln represents what is best about American culture, including the legal system. Of course, Michel, who faces deportation unless he marries an American citizen, is doubtful about that point. What is particularly noteworthy about Sally’s mention of Lincoln in “Dick on One Knee” is that the aliens in the series are on Earth to discover as much as they can about Earth culture, and, as it happens, U.S. culture, during their stay on the planet. What they take in is somewhat haphazard, consisting as it does of information about the Super Bowl, psychics, Canada, and other unrelated topics. But they do manage to learn about certain iconic figures, including Abraham Lincoln. Lincoln represents, in his own phrase, “the better angels of our nature.” During their time on earth, the aliens on the show absorb a good many human characteristics. Acquiring an appreciation for Lincoln is one of them.

Lincoln has not lost his resonance with Gen Y viewers. On the new hit CBS show *The Big Bang Theory*, physicists Leonard and Sheldon discuss replacing their colleague Raj with a “multilingual Abraham Lincoln robot” when Raj succumbs to the ego-inflating charms of a *People* magazine photo shoot. Why Lincoln? Perhaps Lincoln’s reputation for honesty and loyalty appeals to at least one of the betrayed scientists—Sheldon, who resents Raj’s seemingly abandonment of his friend, must be an alien to him.

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**TW:** I know from reading your book that you think Lincoln was a great president. Was he also a great lawyer?

**GM:** Yeah, he worked at it very hard. Somebody asked him one day what it takes to be a good lawyer, and he said, “Work, work, work, work,” and that’s what he did. He had a year of formal education, no college, no high school, no graduate school, no law school, but in that one year of education, he learned to read and he learned to write, and the rest of his life he worked at those two arts. He didn’t have a lot of books in those days to read, but whatever he could get his hands on, he read thoughtfully, carefully, retentively. He worked hard in his office and in the field. He traveled the Illinois circuit yearly. He’d be out for weeks at a time. And he enjoyed that.

**TW:** Why did the editor of this series come to you to write about Lincoln?

**GM:** Yeah, that’s kind of daunting, writing a book about Lincoln. Far, far more than any other president, he’s had books written about him. Scores of books on every aspect of him. One of the really revealing books I read after I had completed most of my work was a book that just came out, called *Lincoln’s Sword,* [by Douglas Wilson] and it’s an analysis of Lincoln the writer and Lincoln the speech composer. We all know the Gettysburg Address, two and a half minutes long, it’s one of the great summaries of what our politics and democracy are all about. That Second Inaugural [speech] is angelic.

**TW:** How did you approach your subject?

**GM:** It’s kind of daunting, writing a book about Lincoln. Far, far more than any other president, he’s had books written about him. Scores of books on every aspect of him. One of the really revealing books I read after I had completed most of my work was a book that just came out, called *Lincoln’s Sword,* [by Douglas Wilson] and it’s an analysis of Lincoln the writer and Lincoln the speech composer. We all know the Gettysburg Address, two and a half minutes long, it’s one of the great summaries of what our politics and democracy are all about. That Second Inaugural [speech] is angelic.

**TW:** Why did the editor of this series come to you to write about Lincoln?

**GM:** I’m an almost lifetime friend of Arthur Schlesinger [series editor] and he sought me out one day when I was in New York and we had lunch. He told me that he was editing a series on all of the presidents, beginning with George Washington and coming right down to the present-day. He asked me if I wouldn’t like to do one of those books, and I begged off on it at first. I had a busy lecture schedule, I was teaching one course at a university, I was writing books on other subjects, writings articles, op-ed pieces, and so on. “Aw,” he said, ‘Come on now, you’ve got a Ph.D. from Northwestern in history, you can knock this out in two years.’ I said, “yeah two years, that’s a lot of time for a guy that’s 86.” I was then 84. Anyway, I said I guess if I could get Abraham Lincoln I would do it. And he said, “Too bad, Bill Clinton has [that assignment] already.” Then he said, “George, this may come as a surprise to you, but a man who actually was elected president rates a notch above one who just got nominated to the presidency.” That was Schlesinger humor. Anyway, I said, “Well look, let me off this time, but if Bill decides he doesn’t want to do it, give me a call.” A year later, guess what?

**TW:** He called you.

**GM:** Schlesinger said that Bill’s decided he just can’t do the book and do justice to it, so I took over a year behind everybody else. Instead of having two years to write it, I wrote it in one. I worked my buns off, but I think I did a good job. You know, we were told by the publisher to hold it somewhere around 165 pages. Sometimes it’s easier to write a long book than a short book ’cause I had to keep going back over each chapter and knocking out things that I thought were priceless. But, anyway, it pleased the editor that I got it down to 165 pages. I think it’s a good solid summary of the Lincoln presidency, and an analysis of what they did right, and what they did wrong. I’m proud of the book.

**TW:** How did you approach your subject?

**GM:** It’s kind of daunting, writing a book about Lincoln. Far, far more than any other president, he’s had books written about him. Scores of books on every aspect of him. One of the really revealing books I read after I had completed most of my work was a book that just came out, called *Lincoln’s Sword,* [by Douglas Wilson] and it’s an analysis of Lincoln the writer and Lincoln the speech composer. We all know the Gettysburg Address, two and a half minutes long, it’s one of the great summaries of what our politics and democracy are all about. That Second Inaugural [speech] is angelic.

I did two things. I started reading the books that have already been written on Lincoln, and I gleaned something from every one of them. Then I went to a Lincoln scholar in Montana. He’s
a high school history teacher, who has studied Lincoln all his life, and he gave me a number of tips and helped me with some of the research, and even some of the composition. But it’s my book. I wrote every word in there more than anybody else did, put it in my words, knocked things out, added things, so that by the time I got through a year of hard work, I think I came up with a book that’s mine and that’s going to stand the reviews and the test of time.

**TW:** Why do you think Lincoln is so important for Americans today?

**GM:** Well, he genuinely loved this country. He had no desire to migrate to any other country. He loved politics. I mean the down and dirty, not dirty in the sense of being dishonest, but dirty in the sense of being right down at the roots. And he could deal with people on that level in such a way that almost everybody he met became a supporter. Beyond that, he was a great statesman. I would say that the one thing I got out of this book above all else is the way Lincoln blended practical politics and pragmatic judgment with the highest standards of intellect. He was a great statesman. He was also a skillful, successful politician.

**TW:** Given your own war service in WWII and opposition to Vietnam during your 1972 presidential campaign, what can we learn from Abraham Lincoln about governing in wartime?

**Editor’s Note:** Abraham Lincoln served one term in Congress, 1846-48, during which he opposed the United States’ involvement in the Mexican War. Lincoln accused President Polk of provoking the war to get votes and voted for a resolution that would have declared the war unnecessary and unconstitutional. He was criticized for being unpatriotic, but insisted, “I stake my life, that if you would have been in my place, you would have voted as I did.”

**GM:** Well, first of all, you can learn that a dissenter against a popular war, which the Mexican War was, can still survive in politics. Now it’s true, he only served that one term in Congress, but, a few years later, he’s the Republican nominee for president and then was elected, notwithstanding that in his one term in Congress, he really gave President Polk fits by his opposition. He was a freshman member of the House. That takes guts. It also takes intelligence. I opposed the war in Vietnam the first year I was in the Senate in 1963. I opposed the Iraq War before we ever went in there and I’m as proud of those two things as I am of my positions on any of the other issues, because I think I was right, and I think I had the courage to speak out. If my campaign for the presidency did nothing else, since I lost, at least, I think, it stopped the war. After almost 40% of the American public voted for a junior senator from a sparsely populated state like South Dakota, who was known to favor terminating that war, I don’t think they could continue the war any longer. Nixon was smart. He saw that coming, even though all along he had supported the war, he wound it up pretty fast.

**TW:** Thank you, Senator, for speaking with me today.

George McGovern represented South Dakota in the U.S. Senate from 1963 to 1981 and was the Democratic nominee for president in 1972. He was a decorated bomber pilot in WWII, after which he earned his Ph.D. in American history and government at Northwestern University. A recipient of the Presidential Medal of Freedom and the World Food Prize, he lives in Mitchell, S.D.
Nearly two million people traveled from all over the country, and the world, to attend the swearing in of Barack Obama, as the first African American president of the United States. Crowded on the National Mall in Washington, D.C., on January 20, 2009, people from all walks of life and of all ages attended the inauguration not only to get a glimpse of the president, but to bear witness to such a historic occasion.

The inauguration was the culmination of a campaign season that had Americans participating in town hall meetings online, had people captivated by Super Tuesday results in February 2008, and saw long lines at voting sites on Election Day in November 2008. The 2008 election also recorded a surge of interest and participation by young Americans. According to the Center for Information & Research on Civic Learning and Engagement (CRICLE), an estimated 23 million young Americans under the age of 30 voted, an increase of 3.4 million compared to 2004.

As young Americans became increasingly more excited during the 2008 campaign and election, many schools incorporated the American election process into their curricula. For example, Springfield High School, in Pennsylvania, sent a ground team of student reporters, bloggers, videographers, and anchors to Washington, D.C., to capture the inauguration events and send live reports to students back home. The Close Up Foundation welcomed over 3,000 students to Washington, D.C., during the inauguration festivities, where students participated in mock elections complete with state primaries, national conventions, campaigns, and a national election, in which the winner gave an inaugural address. From the West Coast, after closely following the primaries and the election, 34 students at the La Jolla Country Day School (LJCD) in California traveled to D.C. to conduct “man-on-the-street” interviews for their 2009 Inauguration Project. The LJCD students served as historians not only for their school and community, but for all who visited their website at www.ljcdsinauguration2009.org.

For the project, the LJCD students interviewed people from all walks of life and from other countries to discuss the differences and similarities among political systems and the diverse perspectives of people witnessing the same event. This interview experience expanded the students’ views of the American political process by interviewing people with all different perspectives; from servicemen and women to MSNBC reporters.

“I realized the magnitude of the occasion, and I knew the extent to which some people would be moved by this inauguration, but I never thought about the stories and backgrounds of the people who would be surrounding me at this event,” Liz Peto, senior at LJCD, commented.

Jonathan Shulman, head of the Social Science department and AP Government teacher at LJCD, began thinking about the 2009 Inauguration Project in February 2008, when his students took an interest in staging Republican and Democratic debates with all candidates who were vying for both party nominations.
“Our students really latched onto the election process even before the primaries,” Mr. Shulman commented. He believed attending the inauguration would be important for students to witness the peaceful passing of power from one party to another.

Students saw the 2009 Inauguration Project as an experience of a lifetime and an opportunity to actively participate in the American democratic process. For many of the students this was their first experience with an election and for seniors their first time voting. Senior Dan Stein, who had interned as a U.S. Senate page, saw this experience as a chance to affirm his interest in politics.

“It continually reminds me of the excitement of the process,” Stein reflected. “Anything is possible if we believe it’s possible, and it inspires me to continue to study political science in college.”

One of the main components of the 2009 Inauguration Project was “Teens Across Time.” Students recorded comments by inauguration attendees about their political views when they were teenagers and asked them to reflect on their first voting experience. In light of the historic moment of electing America’s first African American president, the students also asked interviewees to comment on the historic moments which shaped their teenage years.

Depending on the person’s age and experience, some interviewees commented on the excitement at John F Kennedy’s 1961 inauguration and the optimism during the Civil Rights Movement as defining moments during their youth. Others recalled the Vietnam War, the fear of the Cold War and nuclear proliferation, and the Challenger explosion as pivotal moments from their teenage years.

“We were training the students to be historians,” Mr. Shulman notes. “Perhaps they stumbled across situations that were uncomfortable for them or they came across opinions they had never experienced before, but their goal was to remain objective and record their findings.”

“At the National Mall, we were interviewing people who had come from literally all over the world to see Barack Obama,” junior Cassie Won explained. “In one day, we met a family from London, two women from North Carolina, one from Jamaica, and, best of all, two men from New Jersey, a father and a son. What I did not expect was the passion that lay behind the interview. The father was present for the [1963 Reverend Martin Luther King, Jr.] ‘I Have A Dream’ speech at the very location the inauguration was taking place — the National Mall; the son was around 30 years old and was looking for a historical experience himself.”

With over 100 interviews videotaped or recorded, the students gained valuable firsthand eyewitness accounts of various historic events.

“Teens Across Time made it a unique experience,” senior Kara Kubarych stated. “We were not just part of the crowd, but we were getting to know the crowd.”

For many of the students hearing the various perspectives and the contrasts among the perspectives made the project an educational and “eye opening experience” as senior Roya Bagheri reflected.

“This was a huge step to see how the government runs and how the government affects people directly,” Bagheri said. “It reaffirmed my interest in government and in the future I will be more compelled to be engaged, whether working on a campaign or writing a letter to my congressman.”

While the 34 high school students from LJCDS were only in Washington, D.C. for a few days, the 2009 Inauguration Project will have a lasting impression on the students, school, and community. The purpose of the project was to have

**continued on page 29**
Lincoln’s Gettysburg Address Then and Now

Use this lesson with secondary students to study how the Gettysburg Address is still relevant today.

Overview

The Gettysburg Address, November 19, 1863, was relatively overlooked by contemporaries. President Lincoln was not the featured speaker at the dedication of Gettysburg National Cemetery that day, and spoke for only three minutes following the real two-hour “Gettysburg Address” by Edward Everett. Media dissemination in the wake of the speech and Lincoln’s assassination propelled the “dedicatory remarks” to one of the most famous orations in American history. In this lesson, students will read and analyze President Lincoln’s Gettysburg Address during a Reader’s Theater, then compare the role of the media in shaping the speech’s historic (in)significance and its significance today.

Preparation

1. Download the following supplemental resources from the Insights website, www.insightsmagazine.org:
   - Gettysburg Address allows students to examine a high-resolution image of the actual document and analyze it as a primary source;
   - Gettysburg Address Reader’s Theater, with corresponding Power Point presentation presents an illustrated version of the Gettysburg Address with primary source images, in both print and Power Point formats to accommodate learners in the classroom; and
   - Civic Participation Chart asks students to outline what it means to have a government “of the people,” “by the people,” and “for the people” today.

2. Make photocopies of the Gettysburg Address facsimile, Gettysburg Address Reader’s Theater, and Civic Participation Chart as needed to provide one of each to each student.

Procedure

1. Distribute the Gettysburg Address Reader’s Theater to students, assign parts, and read the speech aloud with students. If possible, project the corresponding Power Point presentation images while students are reading.
2. To debrief the Gettysburg Address:
   - What is a “score?”
   - Who did Lincoln mean when he talked about “our fathers?”
   - Lincoln referenced the Declaration of Independence when he said, “all men are created equal.” Why did he refer to this document and not the U.S. Constitution?
   - According to Lincoln, what is the responsibility of those who are still living?

3. The last sentence of the Gettysburg Address is a call to action for all Americans, and an opportunity to consider the role of citizens in government. Distribute the Civic Participation Chart to students, and then assign each third of the class one section to brainstorm what Lincoln refers to with government (1) of the people, (2) by the people, and (3) for the people.

4. Reporters from the three groups will explain how Americans ensure “a new birth of freedom — and that, government of the people, by the people, for the people, shall not perish from the earth.” Students should complete their Civic Participation Charts as their classmates report.

5. Students should use their charts to consider the following discussion questions:
   - How have Americans helped to create the “new birth of freedom” that Lincoln described?
   - Is the “new birth of freedom” finished, or is there more to do?
   - What might they do as individual citizens or residents of the country...
to contribute to the “new birth of freedom?”

6. Lincoln said “the world will little note, nor long remember, what we say here…” Ask students to consider what he meant by that quote. How did people get news in Lincoln’s time?

How did the media impact the Gettysburg Address? How do people get news today? Which do you think has greater impact and why?
The Great Emancipator’s record on Native American issues is decidedly less understood than his records on other issues during his presidency. When the first major American Indian crisis arose during his administration, Lincoln was preoccupied with other crises, most pressingly, the nearly 23,000 total casualties (Union 12,401; Confederate 10,318) suffered at the Battle of Antietam in western Maryland, on September 17, 1862. That day was, and remains, the bloodiest day in U.S. military history, easily eclipsing the very worst days in either World War I or World War II. It was in the midst of this crisis — on September 28, 1862 — that a series of murder trials were being held before a military commission in a log kitchen just outside a refugee camp in far-off western Minnesota.

On August 17, 1862, four Dakota Indians murdered several settlers, and longstanding friction between some members of the Dakota Sioux tribe and white settlers erupted in war. With soldiers away from their frontier posts providing much-needed help on eastern battlefields, the conflict escalated. For six weeks, lightning attacks by small bands of Dakota warriors emptied communities as residents were killed, held captive, or fled to the safety of larger towns or forts. Major General John Pope finally led a force large enough to win decisive victory against the Dakota at the Battle of New Ulm. Shortly thereafter, 1,200 Dakota men, women, and children surrendered to U.S. troops and released over 269 white hostages, mostly women and small children. Many of the Dakota who surrendered took no part in the fighting; most of the Dakota military leaders and other fighters fled north or further west to avoid surrender.

Minnesotans were screaming for revenge. Newspaper editorials called for the universal hanging of every Dakota man. That the accused warriors would receive fair trials was unlikely.

Chaska, a Dakota Sioux farmer, was the third man tried. The charges against him read as follows:

[Chaska] did, on or about the 18th day of August 1862, kill George H. Gleason, a white citizen of the United States, and has likewise committed sundry hostile acts against the whites. .... This near the Red Wood River, and at other places on the Minnesota River.

English was not Chaska’s first language, but he spoke it well enough to plead not guilty. He admitted to “snapping his gun” and shooting over the head of a white man. The first witness, a doctor’s wife named Sarah Wakefield, described how Chaska had repeatedly saved her life and those of her young children. The second witness, a white man, stated: “this Indian is a very good Indian.” Chaska surrendered to U.S. troops with little fear, given that his role in the war had been to protect white civilians. Chaska was found guilty and sentenced to death by hanging.

Over the next several days, the military commission tried 393 Dakota cases, convicting 323 and sentencing 303 to death by hanging. The majority of Dakota men were read the charges against them through a translator, allowed to give a short statement, and then convicted. Many trials took less than five minutes from start to finish. It is doubtful whether many of the defendants understood they were on trial for their lives.

As the military commission moved through its cases, its members were under immense pressure from the media, politicians, and area citizens to convict quickly. The commission members themselves were all military leaders who had lost soldiers to the Dakota War — presumably killed by the same Dakota who now stood before them in the docket. They also had all come face to face with some of the heartbreaking civilian casualties suffered by white settlers in this brutal war.

After the trial, Chaska and several hundred other Dakota were transported...
to Mankato, Minnesota, where they were crowded into prison to await execution. The Dakota women and children were shipped to a prison camp near Fort Snelling for the winter. As the Dakota prisoners passed through towns, a heavy military guard helped ward off beatings by angry mobs of white settlers. When a group of Dakotas traveled through New Ulm, the town’s women attacked the prisoners with knives and clubs. When passing through the town of Henderson, a Dakota baby was pulled from its mother’s arms and beaten to death.

**Why Military Commissions?**

At all stages of the 1862 uprising, from the first skirmishes to the capture, trial, conviction, and sentencing of 303 Sioux to death, Minnesota and the United States viewed the Dakota Sioux as a sovereign nation. The captured warriors were not domestic criminals triable in the available federal and state courts, but rather were “belligerents of a sovereign nation.”

On the one hand, this determination made some contemporary sense. First, the Dakota in 1862 were not citizens. (It wasn’t until 1924 that Congress conferred all native-born Indians with U.S. citizenship — which, in accordance with the 14th Amendment, also granted them citizenship of the states in which they lived). Second, there was immense public and political pressure for quick executions in a time frame incompatible with more measured civilian trials. General Pope made that much clear early on, writing Colonel Henry Sibley:

> The horrible massacres of women and children and the outrageous abuse of female prisoners, still alive, call for punishment beyond human power to inflict. There will be no peace in this region by virtue of treaties and Indian faith. It is my purpose utterly to exterminate the Sioux if I have the power to do so and even if it requires a campaign lasting the whole of next year. Destroy everything belonging to them and force them out to the plains, unless, as I suggest, you can capture them. They are to be treated as maniacs or wild beasts, and by no means as people with whom treaties or compromises can be made.¹

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¹ Execution order, handwritten and signed by Abraham Lincoln, December 6, 1863. Facsimile courtesy of the Minnesota Historical Society.
In sum, Minnesota and the military wanted these captured Dakota warriors dead — hence the near-universal support for Pope’s order creating a military commission to “try summarily the mulatto, mixed bloods, and Indians engaged in the sioux raids and massacres” [emphasis added by author]. These prisoners were not allowed to consult with attorneys, nor were they tried by juries of their peers or independent judges with lifetime tenure.

Yet there was one problem with establishing military commissions for the purpose of obtaining death sentences for every Indian who participated in the uprising, often on the mere basis that they had participated in battle against U.S. troops: it had not previously been the policy of the United States to execute captured soldiers for the crime of firing on U.S. troops. At the height of the Civil War, both the North and the South held thousands of enemy soldiers prisoner. While prisoners of war on both sides were subject to brutally harsh conditions, it was recognized that it was the very nature of war for clashing armies to fire on one another. Thus neither the Union nor the Confederacy endorsed the summary execution of captured enemy soldiers, and both sides distinguished between criminals and soldiers.

If the captured Dakota were in fact the warriors of a separate, sovereign nation as the federal and state governments all proclaimed, surely these warriors were entitled to at least the same rights accorded Confederate soldiers caught fighting for a putative Confederacy whose sovereignty had never been recognized as legitimate by the North?

No. Minnesota’s Sen. Morton Wilkinson put it this way, in a conclusory letter to the president: “These Indians are called by some prisoners of war. There was no war about it. It was wholesale robbery, rape, murder. These Indians were not at war with their murdered victims.” The Dakota prisoners were not civilian criminals because they were warriors of a sovereign Indian nation, and they were not prisoners of war because the war they fought was not a proper war.

Moreover, the trial records indicate that no distinction was made between those men who only fought in actual battles against the U.S. military and those who brutally murdered civilians. The sentence — death by hanging — was the same for a man who fired a rifle in the direction of soldiers and one who nailed a baby to a tree. The trial recorder, after commenting on the unfortunate situation of condemning a man who both rescued civilians and fired a gun in battle, stated: “Some have criticized the action of the court because of the great number of the condemned. Great also was the number of crimes of which they were accused.”

While Minnesota politicians plied Congress with graphic tales of rape and murder, and Gen. Pope frantically telegraphed for permission to execute the condemned at once, President Lincoln balked and asked to review the trial transcripts. His choice was supported by one other voice, Minnesota Episcopalian Bishop Henry Whipple, who had worked among the Dakota and met with Lincoln. Of this meeting, Lincoln later said: “He came here the other day and talked with me about the rascality of this Indian business until I felt it down to my boots.”

The frontier media then vilified Bishop Whipple nearly as furiously as they denounced the warriors.

The legal understanding of the time — similar to arguments made by the Bush administration regarding the Al-Qaeda and Taliban suspects held at Guantanamo Bay, Cuba, in the wake of the U.S. invasion of Afghanistan in 2001 — was that the sentences of a military commission were not reviewable by a civilian court but only by the president as commander in chief.

Among the more than 300 condemned, Lincoln’s clerks found only 39 instances of murdering civilians. They found only two instances of rape, despite the claims by Minnesota politicians that every white woman attacked by the Dakota had been sexually assaulted. Lincoln wrote out the names, trial numbers, and death sentences of the 39 men who appeared most likely to have committed murder. All other men were ordered to be held “subject to further orders, taking care that they neither escape, nor are subjected to any unlawful violence.” The farmer Chaska was one of the spared.

On Christmas Eve, 1862, the 38 (one man had received a last minute reprieve) condemned prisoners were allowed to speak with two or three visitors each. The prisoners spent Christmas day in leg irons. Late that night or early the next morning, many of them donned traditional paint. At 7:30 the morning of December 26, the leg irons were knocked off one by one, and each man’s arms were tightly bound at both the elbows and wrists. The men strove to die with their sense of Dakota honor intact, and many of them walked about calmly bidding each other, guards, and reporters goodbye. Two Christian missionaries read Dakota language prayers; most of the condemned listened attentively.

Muslin caps were placed over each man’s head, but left rolled up to allow him to navigate his way toward special gallows built to accommodate the mass hanging. As they walked out, some prisoners sang Dakota death songs, some prayed, and one smoked a cigar. Each man

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A Railroad Lawyer’s Finest Hour
continued from page 11

without victory. Conditions looked bright after Antietam, when the preliminary proclamation was announced, and Lincoln assumed they would look just as bright in a hundred days, when he planned to sign the Proclamation on January 1, 1863. Thus, rather and than being forced into glory when he announced emancipation, Lincoln understood that moral glory — emancipation — could only be possible through military glory.

Critics of the Proclamation have attacked its narrowness, and its lack of stirring language. Lincoln was one of the greatest craftsmen of the English language in American political history. But here, in the most important moment of his life, he drafted a turgid and almost incomprehensible legal document. The great historian Richard Hofstadter caustically observed the Proclamation had “all the moral grandeur of a bill of lading.”13 Unlike almost every other he wrote, the Proclamation itself was dull. Even historians who admire Lincoln think it was “boring” and “pedestrian.”14

These criticisms are superficially correct, but they miss their mark. In the Emancipation Proclamation, Lincoln was not trying to be a great moral leader or offering stirring rhetoric. He was trying to write a careful legal document that would withstand judicial scrutiny. Thus, Professor Hofstadter was right. It did have “all the moral grandeur of a bill of lading.” But, Hofstadter failed to understand the significance of a bill of lading to a skilled railroad lawyer, which is what Lincoln had been before the war. A bill of lading was the key legal instrument that was used to guarantee the delivery of goods between parties that were far apart and may never have met each other. A bill of lading allowed a seller in New York to safely ship goods to a buyer in Illinois, with both knowing the transaction would work. One contemporary living in Britain fully understood the highly legalistic nature of the Proclamation. Writing for a London newspaper during the War, Karl Marx had a clear fix on what Lincoln had done, and why he did it the way he did: the “most formidable decrees which he hurls at the enemy and which will never lose their historic significance, resemble — as the author intends them to — ordinary summons, sent by one lawyer to another.”15

So, in the end, when all the preconditions were met — the Border States secured, military victory likely, political support in place, and the constitutional/legal framework developed — Lincoln went back to his roots as a lawyer and wrote a carefully crafted, narrow document: a bill of lading for the delivery of freedom to some three million southern slaves. The vehicle for delivery would be the army and navy — for which he was Commander-in-Chief. As the armies of the United States moved deeper into the Confederacy, they would bring the power of the proclamation with them, freeing slaves every day as more and more of the Confederacy was redeemed by military success. This was the moral grandeur of the Proclamation and of Lincoln’s careful and complicated strategy to achieve his personal goal that “all men every where could be free”16

Notes
2 Lincoln to Albert G. Hodges, April 4, 1864, CW, 7:281.
4 Lincoln to Horace Greeley, August 22, 1862, CW, 5:388-89.
7 Lincoln to Orville H. Browning, Sept. 22, 1861, CW, 4:531-32.
9 Lincoln to Horace Greeley, August 22, 1862, CW, 5:388-89.
11 Reply to Emancipation Memorial Presented by Chicago Christians of All Denominations,” September 13, 1862, CW, 5:419-25 [quotations on 420].
16 Abraham Lincoln to Horace Greeley, August 22, 1862, CW, 5:388-89.
of them. Lincoln would surely not do what Raj has done. The choice of Lincoln also refers to the “team of rivals” discussion that has been in the media lately, since The Big Bang Theory focuses on the close but often contentious friendship among the four scientists on the show.

Movies

Movies in which Abraham Lincoln is the main or a supporting character are as nearly old as the movie industry itself. The earliest film featuring Lincoln is 1908’s The Reprieve, a short directed by Van Dyke Brooke in which Lincoln pardons a sentry who has fallen asleep at his post. The portrayal of Lincoln’s compassion is in line with the notion that he is understanding and all-knowing as Commander in Chief, possibly more so than his generals on the battlefields. Lincoln was known for issuing pardons and amnesty to soldiers. It is the basis not only for short films but also for other, equally morally uplifting scenes in movies that bolster his image as a man intent on healing the wounds brought about by the Civil War.

A number of other films have featured Lincoln as the main character. D. W. Griffith’s Abraham Lincoln, filmed in 1930 with Walter Huston in the title role, details Lincoln’s life, from birth in a small log cabin to assassination. The film ends with a tribute to the martyred Lincoln, complete with an angelic halo around the sculpture of Lincoln inside the Lincoln Memorial. The classic Young Mr. Lincoln (1939) stars Henry Fonda in a fictionalized version of Lincoln’s life as a defense attorney. Young Mr. Lincoln incorporates much of the Lincoln mythology with which we are familiar: the poverty, the honesty, the loss of his first love, Ann Rutledge, the willingness to take on a seemingly hopeless case because it’s the right thing to do. Another well-known actor, Jason Robards, portrayed Lincoln in a Hallmark Hall of Fame television movie in Abe Lincoln In Illinois (1964).

Lincoln has appeared as a character in science fiction movies as well, proving that he is enduringly familiar to generations. In Lincoln vs. Bush (2004), he comes back (having been cryogenically frozen) to “save the country.” The idea that he is the “right person” to “save the country” also suggests that the public would continue to recognize him as a savior in time of crisis. Amazingly, the 2008 film Night of the Raving Dead even sports a zombie Abraham Lincoln as a character and The Transient (2008) features a vampire Abraham Lincoln.

The newest Abraham Lincoln for the screen will be Liam Neeson, who will play the sixteenth president in Lincoln, Steven Spielberg’s screen adaptation of Doris Kearns Goodwin’s collective biography Team of Rivals. The film is due out in 2010.

Advertising

The classic toy Lincoln Logs were marketed to Lincoln-revering youngsters. The popular miniature building logs were invented by John Lloyd Wright, son of architect Frank Lloyd Wright, and made their appearance in 1916. Lincoln logs were an instant hit. Still today, they allow small children to build recreations of Lincoln’s boyhood home and, possibly, dream of being president one day.

Lincoln is such a part of our lives that advertisers think nothing of using him to sell consumer products. That Lincoln suffered from depression is a fact played somewhat for laughs in a popular series of sleep aid commercials for the prescription medication Risperdal. In this particular marketing campaign, the president co-stars with a groundhog, a possible reference to the

Additional Resources


Steers, Edward Steers, Jr., Lincoln Legends: Myths, Hoaxes, and Confabulations Associated with Our Greatest President (University Press of Kentucky, 2007).

relevance after the inauguration. The website continues to be updated online and the students are scheduled to present their findings during a school assembly and to their community at large.

Dialogue on Lincoln

Lincoln consistently ranks as one of our greatest leaders. He redefined the role of president as commander in chief in ways that are still relevant to Americans today. Start a discussion about Lincoln, his presidency, and his memory with the Dialogue on Lincoln: A Legacy of Liberty.

Dialogue on Lincoln: A Legacy of Liberty is available for free download: http://www.abanet.org/publiced/features/dialogues.html

Notes
2 The Great Petrie Fortune, aired October 27, 1965.
4 First aired March 7, 1969.
6 First aired Nov. 21, 1982.
10 http://pharmamktng.blogspot.com/2006/11/am-i-dreaming-or-is-this-rozerem-ad.html
12 Check out one of the Rozerem “Your dreams miss you” ads here (http://www.youtube.com/watch?v=wdpOlAGmzV)
13 See http://blindie.com/2008/10/18/subway uses-urban-slang-to-sell-sandwiches/.
14 Obama Chooses Lincoln’s Bible for Inauguration at (http://www.msnbc.msn.com/id/28366158/).
15 For more similarities and inspiration that Obama has taken from Lincoln, see Michael E. Ruane and Theola Labbé-DeBose, “Words of Lincoln Will Be Woven Into Obama Inaugural Activities,” Wash. Post, Nov. 6, 2008, at A29.

Students In Action

relevance after the inauguration. The website continues to be updated online and the students are scheduled to present their findings during a school assembly and to their community at large.

As students began cataloging all the data from the 2009 Inauguration Project to create the school’s first digital archive, the project became a catalyst for future historic cataloging by LJCDS students. This spring, a group will visit New Orleans for rebuilding efforts. Students will be armed with their interviewing skills and videography techniques as they record oral accounts of Hurricane Katrina and the aftermath. This new project will add to the school’s digital archive and enhance student’s interest in current events and skills as active historians.

Current Political References to Lincoln

Although Abraham Lincoln was a Republican, President Barack Obama, a Democrat, quite obviously takes inspiration from him. A professed Lincoln enthusiast, he chose to take the oath of office on the same Bible that Lincoln used over one century ago.14 The “team of rivals” analogy, taken from Doris Kearns Goodwin’s book, has become such a media craze that they have attributed it to President Obama’s strategy in offering administrative positions to both Democrats and Republicans. The Obama inauguration theme was, fittingly, “A New Birth of Freedom,” taken from the Gettysburg Address.15 ■

Students In Action continued from page 21

month February for President’s Day and Groundhog Day. Both Lincoln and the groundhog are counseling a sleep-deprived man to try the advertiser’s product. The unspoken message in such an advertisement is that Honest Abe wouldn’t lie to us, so the product must be effective. Not everyone agrees, however, that Lincoln represents honesty; in a blog entry at Adfreak.com, several commentators suggest that he represents “money,” or “freedom,” or even “ambition.”11,12

Subway Sandwiches is using Lincoln, mixed with urban slang, to sell its sandwiches. Advertisers for the company have transformed Lincoln into an earring-and-sunglasses-wearing spokesperson from the five dollar bill as part of their “Home of Da $5 Footlong” campaign.13
took his assigned place on the platform and was fitted with a noose. Three drumbeats were struck, and as the last drumbeat sounded, a survivor of one of the attacks raised an axe and cut the single rope supporting the platform. The ropes snapped taut, and the crowd gave one loud cheer before quietly peering at the briefly jerking bodies. One man’s rope snapped, and he had to be rehung. The men were pronounced dead within 20 minutes. All 38 were buried in a mass grave, although local physicians soon exhumed some bodies for anatomical study.

Although not on Lincoln’s list, Chaska was one of the 38 who died on the scaffold that day as part of the largest mass hanging in U.S. history. He was executed in place of a man with a similar name who had been charged with slicing open the belly of a pregnant woman. The official excuse was that Indian names sound alike, and that when his name was called, Chaska had stepped forward. There is considerable evidence that Chaska was not the only innocent Indian who was hung on December 26, 1862.

In 1863 all treaties with the Dakota were revoked, and the Dakota lost both ownership of their remaining land in Minnesota and payment for the land that had already been sold. All Dakota, regardless of participation in the war, were expelled from the state. A $75 bounty was placed on Dakota scalps, and scouts patrolled Minnesota’s borders with orders to shoot any Dakota upon sight.

The Dakota women and children spent the winter in a crowded prison camp at Fort Snelling in Saint Paul, before being relocated to a reservation in Crow Creek, South Dakota. Many died of disease and hunger in both locations. The death rate was also high amongst the remaining Dakota men, who were shipped to a prison in Iowa. In 1866, the men were released from prison and allowed to join their families, but only 177 survived the ordeal.

Today, the cruelty of that collective punishment remains a cautionary tale of flagrant racism and a startling miscarriage of justice.

Nevertheless it also seems fair to say that Lincoln, operating under nearly unimaginable political and wartime pressures and handicapped by the great distance between the capital and Minnesota, probably did the best he could. His stands out as alonely voice insisting on some measure of proportionality between crime and punishment, and seeking to distinguish between battlefield warriors and war criminals. Lincoln dreaded deciding who should live and who should die among the condemned Dakota. At one point, he wrote Judge Advocate General Joseph Holt, asking almost wistfully whether “if I should conclude to execute only a part of them, I must myself designate which, or could I leave the designation to some officer on the ground?”

One can almost imagine Lincoln’s feeling of weary resignation upon receiving Holt’s legal opinion that his decision could not be delegated.

Lincoln was keenly aware that his interventions would be immensely unpopular in Minnesota, a key state in his upcoming reelection bid. But he acted anyway, his respect for the rule of law and his deep humanity trumping political considerations. When pressed by Minnesota Governor Alexander Ramsey, said that “if [Lincoln] had hung more Indians, we should have given him his old majority,” Lincoln replied with a single sentence that still stands today as one of the finest of private rebukes: “I could not afford to hang men for votes.”

Notes
4 Ibid.
5 Ibid.
7 Qtd. in Kenneth Carley, The Dakota War of 1812: Minnesota’s Other Civil War, Minnesota Historical Society Press, 1976.
8 Qtd. in Chomsky.
10 For information, see Chomsky.
11 Chomsky.
12 Qtd. in Tanick.
**It’s not summer break yet …**

With only a few months left in the school year, keep your students engaged by celebrating Law Day, May 1, 2009.

As we mark the bicentennial of the birth of Abraham Lincoln, regarded by many as our nation’s greatest and most eloquent president, people across the nation will be celebrating his influence during Law Day with the theme *A Legacy of Liberty — Celebrating Lincoln's Bicentennial.*

Visit [www.lawday.org](http://www.lawday.org) for all your Law Day planning needs. From educational lesson plans, talking points for presentations and youth outreach, and program materials, the Law Day website is your one stop for planning your event.

In addition, visit the Law Day calendar to see what others in your community are doing for Law Day. Download the *Dialogue on Lincoln* and invite legal professionals into the classroom to lead a discussion on the legacy of Abraham Lincoln.

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