

Lessons for Trial Lawyers from Lincoln's Second Inaugural Address

by Patrick A. Malone

Schoolchildren read the Gettysburg Address as Abraham Lincoln's most famous speech, but his Second Inaugural Address is in many ways his best. In the Second Inaugural, Lincoln sketches a path for reuniting a country as bitterly divided in its day as Iraq is now. This speech offers timeless lessons for trial lawyers who can see why Lincoln's powerful words endure and continue to persuade.

March 4, 1865: A rainy, blustery day in Washington, D.C. The city, even the capitol building itself with its newly finished iron dome, is filled with wounded soldiers, many of them missing arms and legs. Armed patrols on horseback guard every intersection, and sharpshooters are perched in high windows to guard against the rumors that someone would try to assassinate the president. The capitol grounds are a muddy quagmire. Just before Lincoln's second swearing in, his new vice president, Andrew Johnson, has been sworn in at a small ceremony inside the capitol building, where onlookers noticed the liquor on his breath and slur in his speech. Then the assembly moved outdoors for Lincoln's speech. Published accounts say the sun broke through the clouds just as Lincoln began speaking.

Lincoln always spoke slowly—some 105 words a minute, according to Ronald White, a Lincoln historian. (White's book, *Lincoln's Greatest Speech: The Second Inaugural* (2003), inspired many of the ideas in this article and is well worth reading.) The average public speaker talks at a rate of about 150 words a minute. The second inaugural contained just 701 words, and its delivery took Lincoln six to seven minutes. He slowed his delivery to help his listeners in an era without loud-speakers. Working alone, he had written and rewritten this speech in the weeks leading up to the Inauguration. The text of his handwritten original, including Lincoln's spelling and editing marks, is set forth below. Here is what he said:

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Fellow Countrymen

At this second appearing to take the oath of the presidential office, there is less occasion for an extended address than there was at the first. Then a statement, somewhat in detail, of a course to be pursued, seemed fitting and proper. Now, at the expiration of four years, during which public declarations have been constantly called forth on every point and phase of the great contest which still absorbs the attention, and engrosses the energies of the nation, little that is new could be presented. The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself; and it is, I trust, reasonably satisfactory and encouraging to all. With high hope for the future, no prediction in regard to it is ventured.

On the occasion corresponding to this four years ago, all thoughts were anxiously directed to an impending civil-war. All dreaded it—all sought to avert it. While the inaugural address was being delivered from this place, devoted altogether to saving the Union without war, insurgent agents were in the city seeking to destroy it without war—seeking to dissolve the Union, and divide effects, by negotiation. Both parties deprecated war; but one of them would make war rather than let the nation survive; and the other would accept war rather than let it perish. And the war came.

One eighth of the whole population were colored slaves, not distributed generally over the Union, but localized in the Southern half part of it. These slaves constituted a peculiar and powerful interest. All knew that this interest was, somehow, the cause of the war. To strengthen, perpetuate, and extend this interest was the object for which the insurgents would rend the Union, even by war; while the government claimed no right to do more than to restrict the territorial

enlargement of it. Neither party expected for the war, the magnitude, or the duration, which it has already attained. Neither anticipated that the cause of the conflict might cease with, or even before, the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible, and pray to the same God; and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces; but let us judge not that we be not judged. The prayers of both could not be answered; that of neither has been answered fully. The Almighty has His own purposes. "Woe unto the world because of offences! for it must needs be that offences come; but woe to that man by whom the offence cometh!" If we shall suppose that American Slavery is one of those offences which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South, this terrible war, as the woe due to those by whom the offence came, shall we discern therein any departure from those divine attributes which the believers in a Living God always ascribe to Him? Fondly do we hope—fervently do we pray—that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue, until all the wealth piled by the bond-man's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash, shall be paid by another drawn with the sword, as was said f[or] three thousand years ago, so still it must be said "the judgments of the Lord, are true and righteous altogether."

With malice toward none; with charity for all; with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow, and his orphan—to achieve and cherish a lasting peace among ourselves and with the world: to do all which may achieve and cherish a just, and a lasting peace, among ourselves, and with the world: all nations.

If you have read this text slowly—and, better yet, out loud—you know you are in the presence of genius. The last lines are especially resonant. Yet when we circle back to the beginning, the entire first paragraph sounds a little ponderous to the modern ear, filled as it is with the passive voice. Would we teach any budding lawyer to open a closing argument this way? But before we get out our editing pencils to “fix” this one flaw, let us look at what Lincoln is trying to accomplish with this speech and how he deliberately uses what might seem to be a clumsy structure as a persuasive device.

Lincoln's first tactic as he opens the Second Inaugural is to deflect attention away from himself. This stands in contrast to presidents who use their inaugural speeches to flatter their supporters for having had the good sense to vote for them. In the Second Inaugural, the word “I” is mentioned only once, near the end of the first paragraph, and never again. Instead, Lincoln repeatedly uses the passive voice, especially in the early part of the speech. He also, at a time that could have been filled with jubilant partisan declarations, works to lower expectations by repeatedly using negative phrases—“little that is new” and “no prediction”—and by muting his positive statements: “reasonably satisfactory.”

Lincoln spoke in an era familiar with muscular, first-person rhetoric. Compare the style of the abolitionist William Lloyd Garrison: “I am in earnest—I will not equivocate—I will not excuse—I will not retreat a single inch—and I will be heard.”

Lincoln easily could have triggered partisan war whoops by demonizing the South. Virtually everyone, North and South, had been scarred by this war that had claimed 623,000 lives. Nearly all had lost family members to the war, and many listeners that day themselves were missing arms and legs, feet and hands (three of every four battlefield surgeries were amputations).

But in this speech, given just 36 days before the Appomattox surrender, Lincoln avoids cheap rhetoric. He aims to stir his audience to think about the peace ahead, and the task of reuniting a divided country. So after his muted and almost stilted introduction, he moves into his second paragraph by first describing the commonality of North and South: “all dreaded it, all sought to avert it.” Then when he singles out the South, he names no names; he uses no terms like “enemy” or “rebels.” Instead he uses the term “one of them” to refer to the South. “One of them would make war . . .”

In the third paragraph, when Lincoln begins to talk about slavery as the cause of the war, he again uses inclusive language to suggest that slavery—and what to do in its aftermath—was a problem for both North and South. “All knew . . .” “Neither party expected . . .” “Neither anticipated . . .”

Exactly halfway through the third paragraph, he reaches the emotional turning point of his argument when he first introduces the idea of a theological, not merely a secular, explanation for the war. Again, Lincoln uses inclusive language: “Both read the same Bible, and pray to the same God; and each invokes His aid against the other.”

His next sentence uses a Biblical allusion to deliver perhaps the harshest condemnation of the entire speech; yet he instantly almost apologizes with another Biblical allusion: “It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces; but let us judge not that we be not judged.” And he continues with more inclusive language: “The prayers of both could not be answered; that of neither has been answered fully.” Then we reach the heart of his argument, and the emotional height of the speech: “The Almighty has His own purposes.”

Lincoln as a uniter, not a divider, tells a partisan audience that God may have wished to punish both sides for allowing slavery to have existed for so many years. Not a message his audience had come prepared to embrace, but one to which he deftly leads them.

With the words “Fondly do we hope—fervently do we pray,” Lincoln reaches an emotional high pitch. He becomes more elegiac, more metrical, as he moves to the end of this paragraph and the climax of his argument.

In the final paragraph of his address, Lincoln the uniter sets out a plan for Reconstruction: honoring the dead, taking care of the living, reuniting the country, again using inclusive language: “With malice toward none; with charity for all.”

Having looked at the structure and goals of Lincoln's speech, we are ready to plunge deeper and look for the concrete lessons that this speech offers for trial lawyers. And Lincoln was, of course, a trial lawyer of accomplishment and skill. He knew the value of a good speech for a lawyer. In his

Notes for a Law Lecture, dated 1850 and discovered after his death, he wrote:

Extemporaneous speaking should be practiced and cultivated. It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business if he cannot make a speech. And yet there is not a more fatal error to young lawyers than relying too much on speech-making. If any one, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance.

What can we, as lawyers, learn from his genius? In one sense, it is enough to admire his prose in a general way and hope that some of his brilliance pollinates our own work, but there are also specific lessons.

The first lesson Lincoln hands down with his Second Inaugural to his fellow trial lawyers is courage—courage underlined with humility. It would have been easy for any president at that time—with Grant in his final siege of Lee's army, which would surrender on April 9 at Appomattox—to give a boastful, proud, arrogant, but empty speech. Lincoln instead draws the two sides together with lines like this: "Each looked for an easier triumph, and a result less fundamental and astounding." Yet he insists on telling his listeners something that they would have resisted hearing: that both sides had a role in the perpetuation of slavery and that both deservedly suffered for it. It was a painful but necessary statement along the path toward healing and reconciliation.

So the first lesson is that we sometimes must have the courage to tell our listeners things they would rather not hear.

How does a great speaker do that and maintain his persuasive power? Our second lesson from Lincoln is the power of structure, the power of the slow and quiet and understated development of one's theme. Lincoln's Second Inaugural thus embodies an important lesson: Establish credibility first. Do not get ahead of the listeners' emotions. Build slowly. Prefer understatement to overstatement.

How does Lincoln embody that lesson? Great speakers can break the usual rules of public speaking, but only for a good purpose. Here, Lincoln breaks one usual rule of dynamic, forceful speaking—use the active voice—to serve a more important goal: to gradually bring his audience along where he wants to take them. He puts himself in the background. He begins with a dry recitation of understated facts, almost as if he is trying to bore the audience. He uses muted language, especially in reference to slavery, which at the time had been the subject of much heated rhetoric.

Lincoln uses a second technique to bring his audience to a place they did not want to go. He emphasizes the shared values of the two conflicting sides—mainly, their religious beliefs. He salts the speech with Biblical references that would have been familiar to his audience. The American Bible Society printed hundreds of thousands of Bibles, some full and some abridged, which were delivered to troops everywhere. So when he said "wringing their bread from the sweat of other men's faces," everyone would know that was from the Book of Genesis. And when he immediately followed it with "let us judge not that we be not judged," everyone knew this was a saying of Jesus in the Book of Matthew.

His Biblical references, and his insistence that God was on both sides and on neither side of this war, must have been especially disconcerting to his Southern listeners. The Confederacy had adopted as its official motto: "Deo Vindice," God Will Avenge. The Confederate Constitution explicitly invoked "the favor and guidance of Almighty God." Everyone in a war wants to believe that God favors his side. So when Lincoln said, "Both read the same Bible, and pray to the same God," this must have stung. He could have made the irony more explicit, but that would have ruined his subtle point, which was to make his listeners wonder whether their God could really be so exclusive as to favor only their own side.

So that is our third Lincoln lesson: the use of shared values to draw listeners toward his conclusion.

A fourth lesson lies in Lincoln's use of emotion. Lincoln knew that powerful arguments must have an emotional core. Humans are not persuaded by logic alone. A persuasive speaker touches—but does not try to mangle—our hearts. Lincoln delivered a powerfully negative message to his listeners—that both sides, North and South, share the guilt for slavery and the just punishment for it. As he reaches this point in the speech, his cadences become more rhythmic and his words more poetic, even as his imagery turns more awful: "every drop of blood drawn with the lash shall be paid by another drawn with the sword."

Notice what he does immediately after that line. He quickly moves from the negative to the positive with the final paragraph of his speech: "With malice toward none; with charity

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for all." And this presents another lesson for us. How much more are we moved by Lincoln's speech because of that final paragraph? Lincoln's lesson is that negative messages can be delivered, and delivered strongly, but they must be wrapped in a positive message at the end. As Lincoln appeals to his listeners to join in a positive mission at the end of the war, so too we must appeal to our listeners to do something positive, and not just to condemn our adversaries.

The structure of Lincoln's words and sentences also gives us something to think about. This is a 700-word speech. One of its most powerful sentences has only four words: "And the war came." With the shortest of sentences, Lincoln gives his listeners a first taste of high drama when he uses these four plain words to suggest how war, far from being in the control of the actors who start it, veers out of control and takes on its own life. "And the war came."

Note the power achieved by what is left out, by understatement. A lesser speech writer, even if he had had the idea of using war as the subject creating action, not the object being acted upon, might have said something like: "And the war, with all its terrible suffering and needless bloodshed, came about despite all our efforts to prevent it." No. "And the war came."

By the end of the speech, by contrast, his final sentence has 75 words. “With malice toward none . . .” The lengthy sentence, along with lyrical language, signals to the listener that the end is approaching. Thus we see how a great speaker can achieve power and balance with long sentences as well as short ones.

Lincoln favors direct, strong, short words, except when he wants to mute his tone. He repeatedly uses the word “all” to gem-like effect: “All dreaded it—all sought to avert it. . . . All knew that this interest was, somehow, the cause of the war. . . . with charity for all . . . to do all which may achieve.” He even adds extra words that are not strictly necessary to serve a higher goal. In his last paragraph, for example, he adds the word “all” twice. And he changes “lasting peace” to “a just and a lasting peace.” The result is a more lyrical, more powerful sentence. And it is no accident that his words become more metrical, his sounds more poetic, as he nears the end of this speech.

Repetition must serve a purpose. Listeners do not like hearing the same point made over and over. But subtle repetition of words and of sounds turns ordinary prose memorable. The techniques Lincoln uses—alliteration, parallel structure, antithesis, rhyme—are all methods of using repeating sounds to stitch the fragments of sound into a whole cloth of profound meaning. And that is perhaps our final lesson as trial lawyers from Lincoln’s final speech: the power of rhetorical devices, used judiciously. Let us look at some examples.

Alliteration, the repetition of consonant sounds, is one of the methods of making words echo. It is a form of stitching that binds together the fabric of sound. A subtle example from the second paragraph is the series of strong verbs starting with the letter “d”: *directed, dreaded, delivered, devoted, destroy, dissolve, divide, deprecated*.

Alliteration can show up at the end of words, too, or in the middle. Here are two examples, back to back, in the last sentence: “to do all which may achieve and cherish a just, and a lasting peace.” “Achieve and cherish”: the repeated

“ch” caresses the listener. And then: “Just and lasting.” Try to substitute some other word for “just,” or some other word for “lasting,” and you will see how they are married by that “st” sound.

Another favorite Lincoln rhetorical device is the use of parallel structures and antithesis, which can be found throughout the Second Inaugural. A few examples:

- One of them would make war rather than let the nation *survive*, and the other would accept war rather than let it *perish*.
- Fondly do we hope—fervently do we pray
- Drawn with the lash—drawn with the sword
- As was said—must still be said

The final technique, where he soars to lyrical heights, employs meter and rhyme, which he uses with increasing urgency and effect as he nears the close of his speech. It works as poetry. Listen to this:

Fondly do we hope,
fervently do we pray,
that this mighty scourge of war
might speedily pass away.

And note how he rewrites the final sentence of the speech to improve the meter: He starts with something pretty good: “to achieve and cherish a lasting peace among ourselves and with the world.” He inserts “all” twice. He adds “a just” before “lasting.” He turns “the world” into “all nations.” Listen to the sound of the final version of that last line. “To do all which may achieve and cherish a just, and a lasting peace, among ourselves, and with all nations.”

Observers said that Lincoln took about seven minutes to give this last and greatest of his speeches. Forty-one days later, on Good Friday, April 14, 1865, a man who watched the Second Inaugural, but who must not have listened to it, put a bullet in the back of Lincoln’s head. Thus what was intended as the opening statement for Lincoln’s second four years in office turned out to be the closing argument for his greatness. □