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Abraham Lincoln and Civil Liberties in Wartime

The Honorable Frank J. Williams

This month, several individuals detained as "enemy combatants" will make their appeals for freedom to the highest court in the land. Perhaps now, more than any other time in recent memory, the eyes of the world are intensely focused on the United States Supreme Court. In making their decisions, they must walk a fine line between protecting the civil liberties we all hold so dear and guarding the safety of our country's citizens. These nine Justices, with their decisions in these cases, will shape the course of history and, no doubt, further fuel debate surrounding the indefinite detention of "enemy combatants" and the use of military tribunals.

Military tribunals hold a significant place in American history, and they have always spawned public debate. During the American Civil War, Abraham Lincoln declared martial law and authorized such forums to try terrorists because military tribunals had the capacity to act quickly, to gather intelligence through interrogation, and to prevent confidential life-saving information from becoming public.

In 1942, the United States Supreme Court decided *Ex parte Quirin*,[1] a case in which prisoners detained for trial by military commission appealed a denial of their motions for writ of *habeas corpus*. The Supreme Court held that "military tribunals are not courts in the sense of the Judiciary Article [of the Constitution]."[2] Rather, they are the military's administrative

1. 317 U.S. 1 (1942).
2. 317 U.S. at 39.

Talking Points

- As we were during Lincoln's era, we are once again a nation at war. Most people today are not used to thinking in terms of wartime and peacetime, but in reality, the laws of war *are* different.
- There is only one standard of treatment for any person, American or foreign, being held as an unlawful combatant. Those individuals are *not* entitled to the legal rights that we have come to hold so dear. Neither are they entitled to protection under the Geneva Convention for lawful combatants, or POWs. *This* is the reality of wartime.
- It is a difficult maxim to fathom and represents the difficulty Americans and many across the seas have in understanding the different forums of law for trying civilians and those tried by the military. The laws of war are not the same as the laws we are used to in this democratic jurisprudence. But this dual system of law is the reality of wartime.

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bodies to determine the guilt of declared enemies, and pass judgment.

Ex parte Quirin has since become the foundation of President George W. Bush's claim that the government has the right to hold "enemy combatants"—even Americans—indefinitely, without evidence, charge or trial. I never thought, as a veteran, lawyer, and now a judge, that I would be living through a situation where the issue of homeland security—not to be confused with that new Cabinet department—and civil liberties would once again be in conflict as it was during the Civil War.

A Nation at War

As we were during Lincoln's era, we are once again a nation at war, and the laws of war are different. I know that this is a difficult concept to grasp, because most people today are not used to thinking in terms of wartime and peacetime. But in reality, the laws of war *are* different.

Think about this: We lost 620,000 people over the four years of the Civil War. We could lose that many people in one day if we realized a chemical or biological attack at the hands of terrorists.

The horror of, and after, September 11, 2001, has again raised tensions between and dialog about American security and personal liberty. As Lyndon B. Johnson said on January 20, 1965, while taking the presidential oath, "We can never again stand aside, prideful in isolation. Terrific dangers and troubles that we once called 'foreign' now constantly live among us."[3]

Today, I hope to provoke not only thought, but also comments and questions from you regarding those issues that President Lincoln confronted in the area of civil liberties and those facing our current Commander in Chief.

Abraham Lincoln: The Verdict of History

During Lincoln's presidency, he was criticized for taking what were considered "extra-constitutional measures." But in the end, the verdict of history is that Lincoln's use of power did not constitute abuse since every survey of historians ranks Lincoln as number one among the great presidents.[4]

Far harsher would have been his denunciation if the whole American experiment of a democratic Union had failed—as seemed possible given the circumstances. If such a disaster occurred, what benefit would have been gained by adhering to a fallen Constitution? It was a classic example of the age-old conflict in a democracy: how to balance individual rights with security for a nation.

In the words of historian James G. Randall: "No president has carried the power of presidential edict and executive order (independently of Congress) so far as [Lincoln] did…. It would not be easy to state what Lincoln conceived to be the limit of his powers."[5]

In the 80 days that elapsed between Abraham Lincoln's April 1861 call for troops—the beginning of the Civil War—and the official convening of Congress in special session on July 4, 1861, Lincoln performed a whole series of important acts by sheer assumption of presidential power. Lincoln, without congressional approval, called forth the militia to "suppress said combinations,"[6] which he ordered "to disperse and retire peacefully" to their homes.[7] He increased the size of the Army and Navy, expended funds for the purchase of weapons, instituted a blockade—an act of war—and suspended the precious writ of *habeas corpus*, all without congressional approval.

Lincoln termed these actions not the declaration of "civil war," but rather the suppression of rebellion.[8]

3. Lyndon Baines Johnson, Inaugural Address, January 20, 1965.
4. See, e.g., Arthur M. Schlesinger, Jr., "The Ultimate Approval Ratings," *New York Times Magazine*, Dec. 15, 1996, at 46–51. Lincoln did well, too, in a survey of "famous" people in the second millennium. He ranks 32nd behind Gutenburg (1) and Hitler (20). See Agnes Hoope Gottlieb *et al., 1,000 Years, 10,000 People: Ranking the Men and Women Who Shaped the Millennium* (Kodansha International, Ltd., 1998).
5. J. G. Randall, *Lincoln the Liberal Statesman* 123 (Dodd, Mead & Co., 1947).
6. See 4 *The Collected Works of Abraham Lincoln* 332 (Roy P. Basler *et al.* eds., Rutgers University Press, 1953–55) (hereinafter referred to as *Coll. Works*).
7. See *id.*

We all know that only Congress is constitutionally empowered to declare war, but suppression of rebellion has been recognized as an executive function, for which the prerogative of setting aside civil procedures has been placed in the President's hands.[9]

For example, at this very moment, our country is involved in a war with Iraq. The war has not been formally declared. Where Lincoln used the term "suppression of rebellion," President Bush has couched this effort as a movement to liberate Iraq's people from their dictator and to prevent acts of terrorism against Americans and the citizens of other countries.

Suspending *Habeas Corpus*

Lincoln suspended the writ of *habeas corpus*, a procedural method by which one who is imprisoned can be immediately released if his imprisonment is found not to conform to law. With suspension of the writ, this immediate judicial review of detention becomes unavailable. This suspension triggered the most heated and serious constitutional disputes of the Lincoln Administration.

In April 1861, a dissatisfied Marylander named John Merryman dissented from the course being chartered by Lincoln. He expressed this dissent in both word and deed. He spoke out vigorously against the Union and in favor of the South and recruited a company of soldiers for the Confederate Army. Thus, he not only exercised his constitutional right to disagree with what the government was doing, but engaged in raising an armed group to attack and attempt to destroy the government.

On May 25, Merryman was arrested by the military and lodged in Fort McHenry, Baltimore, for various alleged acts of treason. His counsel sought a writ of *habeas corpus* from Chief Justice Roger B. Taney, alleging that Merryman was being illegally held at Fort McHenry. Taney issued a writ to fort commander George Cadwalader directing him to produce Merryman before the Court the next day at 11:00 a.m. Cadwalader respectfully refused on the ground that President Lincoln had authorized the suspension of the writ of *habeas corpus*.

Taney immediately issued an attachment for Cadwalader for contempt. The marshal could not enter the fort to serve the attachment, so the old justice, recognizing the impossibility of enforcing his order, settled back and produced the now-famous opinion, *Ex parte Merryman*.[10] The Chief Justice vigorously defended the power of Congress alone to suspend the writ of *habeas corpus*.

Keep in mind that the Constitution permits the suspension of the writ in "cases of rebellion and when the public safety" requires it. But it is unclear who has the power, Congress or the President.

Taney relied on the fact that the right to suspend the writ was in Article I, section 9 of the Constitution, the section describing congressional duties. Dean of Lincoln historians Richard Nelson Current believes that it was put in this article because the Committee on Style could find no other place for it.

Taney failed to acknowledge that a rebellion was in progress and that the fate of the nation was, in fact, at stake. Taney missed the crucial point made in the draft of Lincoln's report to Congress on July 4:

> [T]he whole of the laws which I was sworn to [execute] were being resisted…in nearly one-third of the states. Must I have allowed them to finally fail of execution?… Are all the laws but one [the right to *habeas corpus*] to go unexecuted, and the government itself…go to pieces, lest that one be violated?[11]

Two years later, Congress resolved the ambiguity in the Constitution and permitted the President the right to suspend the writ while the rebellion continued.[12] Imagine the reaction of our fellow American citizens today if an anti-war demonstrator was treated as Merryman was in 1861 or if the writ of *habeas corpus* was suspended.

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8. See *id.*
9. *The Oxford Companion to the Supreme Court of the United States* 428–29 (Kermit L. Hall ed., Oxford University Press, 1992).
10. 5 U.S. 137 (1803).
11. 4 *Coll. Works* 430.
12. *Habeas corpus* Act of March 3, 1863.

The Emancipation Proclamation

What about the Emancipation Proclamation? Nothing in the Constitution authorized the Congress or the President to confiscate property without compensation. The Emancipation Proclamation declared slaves in the states still in rebellion to be free. By the time of the final Emancipation Proclamation on January 1, 1863, Lincoln had concluded his act to be a war measure taken by the Commander in Chief to weaken the enemy:

> Now, therefore, 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, in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion, do…Order and declare that all persons held as slaves within said designated States and parts of States are, and henceforward shall be free.[13]

The Proclamation may have had all "the moral grandeur of a bill of lading," as historian Richard Hofstader later charged,[14] but everyone could understand the basic legal argument for the validity of Lincoln's action. To a critic, James Conkling, the President wrote:

> You dislike the Emancipation Proclamation, and perhaps would have it retracted. You say it is unconstitutional. I think differently. I think the Constitution invests its Commander-in-Chief with the law of war. The most that can be said—if so much—is that slaves are property. Is there—has there ever been—any question that by the law of war, property, both of friends and enemies, may be taken when needed? And is it not needed whenever taking it helps us, or hurts the enemy?[15]

In his 1991 Pulitzer prize–winning book, *The Fate of Liberty*, historian Mark E. Neely, Jr., closes by admitting:

> If a situation were to arise again in the United States when the writ of *habeas corpus* were suspended, government would probably be as ill-prepared to define the legal situation as it was in 1861. The clearest lesson is that there is no clear lesson in the Civil War—no neat precedents, no ground rules, no map. War and its effect on civil liberties remains a frightening unknown.[16]

Neely's point is well-taken today. Since September 11, 2001, many scholars and citizens have questioned how President Bush's actions and reactions to the problems of national security and war will affect his legacy and civil liberties.

Many parallels can be drawn from Lincoln's experience with that facing President Bush, though it is yet too soon to know what legacy he will leave to history. Even though Lincoln improvised on civil liberties during the Civil War, he ultimately preserved the American system itself—especially by permitting elections in 1862 and 1864. While "it is encouraging to know that this nation has endured such troubles before and survived them,"[17] measures regarded as severe in Lincoln's time seem mild when compared to those of Osama bin Laden or Saddam Hussein.

Dealing with "Enemy Combatants"

After Osama bin Laden and his forces of al-Qaeda admitted to masterminding the horror that was September 11, hundreds of suspected al-Qaeda associates were arrested and detained in Guantanamo Bay, Cuba, as "enemy combatants." Soon after September 11, President Bush proposed the use of military tribunals to try those individuals charged with terrorism.

Such commissions do not enforce national laws, but a body of international law that has evolved over

13. 4 *Coll. Works* 29–30.

14. Richard Hofstader, *The American Political Tradition* 169 (Vintage Books, 1974).

15. 6 *Coll. Works* 29–30.

16. Mark E. Neely, Jr., *The Fate of Liberty: Abraham Lincoln and Civil Liberties* 235 (Oxford University Press, 1991).

17. John Lockwood, "We Had Terrorists Even in the Time of Lincoln," *Washington Post*, Feb. 16, 2003, at B8; see also Edward Steers, Jr., "Terror: 1860s Style," *North & South*, Vol. 5, No. 4 (May 2002).

the centuries. Known as the law of war, one of its fundamental axioms is that combatants cannot target civilians.

Historically, military commissions during wartime began as traveling courts when there was a need to impose quick punishment. Military tribunals, rather than the normal justice system, were used not only during the Civil War, but also during the Revolutionary War, Mexican War, and both World Wars.

During the Civil War, the Union Army conducted at least 4,271 trials by military commission, which reflected the disorder of the time. Lincoln answered his critics with a reasoned, constitutional argument. A national crisis existed, and in the interest of self-preservation he had to act. At the same time, he realized Congress had the ultimate responsibility to pass judgment on the measures he had taken.

He found the right of self-preservation in Article II, section 1 of the Constitution, whereby the chief executive is required "to preserve, protect and defend" it, and in section 3, that he "take care that the laws be faithfully executed." All of the laws which were required to be "faithfully executed" were being resisted and "failed of execution" in nearly one-third of the states.

Clement Laird Vallandigham, the best-known anti-war Copperhead[18] of the Civil War, was perhaps President Lincoln's sharpest critic. He charged Lincoln with the "wicked and hazardous experiment" of calling the people to arms without counsel and authority of Congress, with suspending the writ of *habeas corpus*, and with "coolly" coming before the Congress and pleading that he was only "preserving and protecting" the Constitution and demanding and expecting the thanks of Congress and the country for his "usurpations of power."[19]

Vallandigham was speaking at a Democratic mass meeting at Mt. Vernon, Ohio, when he was arrested by Major General Ambrose E. Burnside. He was escorted to Kemper Barracks, the military prison in Cincinnati, and tried by a military commission. He was found guilty and sentenced to imprisonment for the duration of the war.[20]

After being denied a writ of *habeas corpus*, he applied for a writ of certiorari to bring the proceedings of the military commission for review before the Supreme Court of the United States. In the opinion *Ex parte Vallandigham*,[21] his application was denied on the grounds that the Supreme Court had no jurisdiction over a military tribunal.[22]

Of course, when the Court addressed the issue five years later in *Ex parte Milligan*,[23] after the war was over, it held that the writ of *habeas corpus* could only be suspended by Congress, and even then only in a situation where the civil courts were not operating—not even if the charge was fomenting an armed uprising in a time of civil war. The Supreme Court, in *Ex parte Quirin*, distinguishes *Milligan* by saying the defendants in *Quirin* were in the German military but Milligan was a civilian.

The arrest, military trial, conviction, and sentence of Vallandigham aroused excitement throughout the country. Orator after orator expressed outrage against the allegedly arbitrary action of the Administration in suppressing the liberty of speech and of the press, the right of trial by jury, the law of evidence and the right of *habeas corpus*, and, in gen-

18. "Copperhead," a reproachful epithet, was used to denote Northerners who sided with the South in the Civil War and were therefore deemed traitors, particularly those so-named Peace Democrats who assailed the Lincoln Administration. It was borrowed from the poisonous snake of the same name that lies in hiding and strikes without warning. However, "Copperheads" regarded themselves as lovers of liberty, and some of them wore a lapel pin with the head of the Goddess of Liberty cut out of the large copper penny minted by the Federal treasury.

19. *Congressional Globe*, 37th Cong., 1st Sess., 23, 100, 348. See also Frank L. Klement, *The Limits of Dissent: Clement L. Vallandigham and the Civil War* (Fordham University Press, 1998).

20. *Congressional Globe*, 37th Cong., 2nd Sess., Appendix 52–60.

21. 68 U.S. 243 (1864).

22. See *id.* at 171.

23. 71 U.S. 2 (1866).

eral, its assertion of the supremacy of military over civil law.

Rationale for Military Tribunals

Like Lincoln's critics during the Civil War, many today have expressed their concern about the modern use of military tribunals.[24] Today, the issue of whether or not military tribunals should exist is simply one layer of this complex debate.

Terrorists are not members of an organized command structure with someone responsible for their actions; they do not wear a military uniform so that the other side can spare civilians without fear of counterattacks by disguised fighters; they do not carry arms openly; and there is no respect for the laws of war.

In order for the Geneva Conventions to apply, the detainees must be members of an adversary state's armed forces or part of an identifiable militia group that abides by the laws of war. Al-Qaeda members do not wear identifying insignia, nor do they abide by the laws of war. Similarly, our soldiers are facing renegade fighters in Iraq—who wear no uniform and drive non-military vehicles.

To address some of the confusion, the Pentagon issued regulations to govern tribunals. Under Military Commission Order No. 1, issued in March 2002, the Secretary of Defense was vested with the power to "issue orders from time to time appointing one or more military commissions to try individuals subject to the President's Military Order and appointing any other personnel necessary to facilitate such trials."[25]

The military commissions established under President Bush will be composed of military personnel sitting as trier of both fact and law. Some of you may be aware that I have been chosen to be one of four individuals who will sit on a military Review Panel for military commissions. I cannot talk about any pending cases, nor can I discuss the possible outcomes of matters that have been heard. I can tell you that my responsibilities on this Review Panel will be much the same as my responsibilities as a Justice on the Supreme Court. In fact, the only instruction I have been given thus far is to be fair and impartial. I take comfort in that instruction as that is the only way I know how to judge.

During military commission hearings, any evidence may be admitted as long as, according to a reasonable person, it will have probative value. The defendant is entitled to a presumption of innocence and must be convicted beyond a reasonable doubt. However, only two-thirds of the panel is needed to convict. The Department of Defense and the President may review the sentence.

Despite efforts to clearly regulate the parameters of these tribunals, criticism has remained. A *New York Times* editorial issued after the establishment of these regulations noted that, despite the fact that the idea of military tribunals for suspected terrorists is less troubling than it was at inception, "there is still no practical or legal justification for having the tribunals. The United States has a criminal justice system that is a model for the rest of the world. There is no reason to scrap it in these cases."[26]

This criticism, however, is refuted by the government. With over 90 million cases in our justice system each year, it is clear that the federal courts are ill-equipped to efficiently adjudicate terrorism cases—unique issues like witness and jury security and preservation of intelligence have caused and will cause even more extraordinary delay.

24. Ironically, the case of Lincoln assassin John Wilkes Booth was tried before a military tribunal. Although Booth was already dead, eight defendants were put on trial. Among them was Dr. Samuel Mudd, the physician who set Booth's broken leg and sent him on his way. Dr. Mudd was accused of abetting Booth's escape. He escaped the death penalty and served four years of a life sentence. See James H. Johnston, "Swift and Terrible: A Military Tribunal Rushed to Convict After Lincoln's Murder," at *www.washingtonpost.com/ac2/wp-dyn/A9010-2001Dec7?language=printer*, Dec. 11, 2001, at F1. Interestingly, Dr. Mudd's grandson brought the case before a federal appeals court in September 2002. He sought to have the conviction overturned, arguing that his grandfather had only been doing his duty as a doctor. Unfortunately for Dr. Mudd's family, in November 8, 2002, the court dismissed the case. Judge Harry Edwards wrote that the law under which the Mudd family was seeking to have Samuel Mudd's conspiracy conviction expunged applied only to records involving members of the military. Although Mudd was tried by a military tribunal, he was not a member of the military.

25. Department of Defense, Military Commission Order No. 1, March 21, 2002.

26. *Id.*

When Lincoln was President, all of the defendants in the military commissions were American citizens. The main difference between these defendants was their allegiance and origin—North or South. That fact most distinguishes today's debate from Lincoln's civil liberty dilemma, since most of the modern prospective defendants are non-citizens.

Presently, about 600 detainees are being held in Guantanamo Bay, Cuba. Most are captives of the Afghan war; some are from Iraq. Shortly, military tribunals will be held there as well. The defendants in today's military commissions are being held as "enemy combatants." According to William J. Haynes II, General Counsel of the Department of Defense, "an enemy combatant is an individual who, under the laws and customs of war, may be detained for the duration of an armed conflict."[27]

Lawful and Unlawful Combatants

"Enemy combatant" is a general category that subsumes two subcategories: lawful and unlawful combatants.[28] "Lawful combatants," according to Haynes, "receive prisoner of war (POW) status and the protections of the Third Geneva Convention. Unlawful combatants do not receive POW status and do not receive the full protections of the Third Geneva Convention."[29]

The government takes the position that, as unlawful combatants, members of al-Qaeda therefore do not receive protections of the Geneva Convention. Notwithstanding, almost all protections of the Geneva accords are given the detainees.

But what about those presently detained who are, in fact, American citizens? Many argue that there should be two standards of treatment depending on one's citizenship. Americans, it is argued, should be afforded all the protections of our democratic justice system—right to an attorney, right to a swift hearing, to name a couple. The non-citizens can be held according to the standards usually applied to wartime detainees.

Wars, including this war, are fought under well-understood rules, and they don't include providing Miranda warnings when capturing an enemy, nor employing the legal niceties of the Federal Rules of Criminal Procedure when trying them. There is only one standard of treatment for any person, American or foreign, being held as an unlawful combatant. Those individuals are *not* entitled to the legal rights that we have come to hold so dear. Neither are they entitled to protection under the Geneva Convention. *This*, my friends, is the reality of wartime.

This is a difficult maxim to fathom and represents the difficulty Americans and many across the seas have in understanding the different forums of law for trying civilians and those tried by the military. The laws of war are not the same as the laws we are used to in this democratic jurisprudence. They are the laws of war.

Cases Before the Supreme Court

On April 20, the United States Supreme Court considered the arguments made by two separate groups of detainees (*Rasul* v. *Bush* and *Al Odah* v. *United States*) challenging their indefinite detention as "enemy combatants" at Guantanamo Bay, Cuba. In response to the defendants' claims, the government argues that the courts do not have jurisdiction to hear these men's appeals. An article in *The New York Times* quotes the Bush Administration as saying "judicial review would place the federal courts in the unprecedented position of micromanaging the executive's handling of captured enemy combatants from a distant combat zone" and of "superintending the executive's conduct of an armed conflict."[30]

Yasser Esam Hamdi. On April 28, the Supreme Court will also consider the case of Yasser Esam Hamdi, an American-born suspected terrorist. Mr. Hamdi was fighting with the Taliban in Afghanistan in 2001 when his unit surrendered to the Northern Alliance, with which American forces were aligned. He has been held at a military brig in Charleston, South Carolina, for two years without being for-

27. William J. Haynes II, Council on Foreign Relations (visited April 18, 2004), *www.cfr.org/publication.php?id=5312*.

28. See *Quirin*, 317 U.S. at 37–38.

29. See Haynes, *supra*, note 27.

30. Linda Greenhouse, "Detention Cases Before Supreme Court Will Test Limits of Presidential Power," *New York Times*, Apr. 18, 2004, at 18.

mally charged. Until December, Hamdi was not given access to an attorney.

The Federal Appeals Court in Virginia ruled that the government had submitted sufficient evidence to support Hamdi's seizure as an "enemy combatant" and that "enemy combatants" can be held indefinitely without access to legal counsel. Hamdi's appeal to the Supreme Court challenges the government's treatment of him as an "enemy combatant."

José Padilla. Together with Hamdi, the United States Supreme Court will hear the appeal of José Padilla, also a U.S. citizen, who has been held as an "enemy combatant" in the same Navy brig as Mr. Hamdi. Padilla was arrested in May 2002 after arriving at O'Hare International Airport in Chicago from Pakistan. He was initially held as a material witness on suspicion of involvement in a plot to detonate a "dirty bomb" in the United States, but he has never been formally charged.

In December 2003, the United States Court of Appeals for the Second Circuit, in New York, ruled that the government lacked the authority to hold Padilla in military custody. The Second Circuit determined that Padilla's case differed from Hamdi's because Padilla was seized on American soil rather than in a combat zone. Therefore, the Court ruled, Padilla could not be detained as an "enemy combatant." The United States Supreme Court granted the Solicitor General's motion to expedite consideration of the government's petition for a writ of certiorari.

Conclusion

It is clear that our nation is engaged in another conflict that may be as difficult as it is different from the Civil War. It is a war waged against us by an almost unknown and indiscernible enemy.

How do we account for President Lincoln's continuing reputation for leadership and as a supporter of democracy? Clearly, for the 16th President to have survived the Civil War and his use of war measures, he needed the support of a majority of Americans. This he received. No President can successfully conduct a war, with the actions that go with it, without the support of a large segment of the American people.

That Lincoln emerges from the perennial controversy that afflicted his Administration over civil liberties with a reputation for statesmanship may be the most powerful argument for his judicious application of executive authority during a national emergency. As historian Don E. Fehrenbacher has noted, "Although Lincoln, in a general sense, proved to be right, the history of the United States in the twentieth century suggests that he brushed aside too lightly the problem of the example that he might be setting for future presidents."[31]

Whether President Bush will emerge similarly unscathed—and we hope he will—is yet to be determined. While the full impact of Lincoln's legacy on President Bush is yet to be fully realized, the United States was and still is, in Lincoln's words, "the last best hope of earth" and the survival of democracy in the world.

—Rhode Island Supreme Court Chief Justice Frank Williams was recently appointed to the review panel for appeals from the military commission to be held at Guantanamo Bay. A former Army infantry officer, he will be commissioned as a Major General. He also serves on the U.S. Abraham Lincoln Bicentennial Commission. The author is deeply grateful to his former law clerk, Andrea H. Krupp, Esquire, for her invaluable assistance in the preparation of this speech.

31. Don E. Fehrenbacher, *Lincoln in Text and Context: Collected Essays* 139 (Stanford University Press, 1987).