

## *Abe Lincoln and the Pacific Northwest*

By Gerry L. Alexander

### EDITOR'S NOTE

*The following essay originates from an address given by Chief Justice Alexander in Tacoma at the Tacoma-Pierce County Bar Association's Annual Lincoln Day Dinner on February 2, 2002.*

Speaking or writing about Abraham Lincoln is a daunting challenge for anyone because, with the possible exception of George Washington, Abraham Lincoln has to be the most venerated American of all time. Indeed, I believe that more books and articles have been written about Lincoln than any other American. In fact, more may have been written about him than any person in history, with the exception of Jesus Christ. In addition, he has been the subject of countless speeches, essays, and plays. He has even been portrayed in motion pictures numerous times. On top of that, just about everyone—including most of you, I'm sure—think that they already know a lot about Lincoln.

My challenge here is to discuss the great man in a way that is accurate and, at the same time, fresh and relevant to the world we live in. As I pondered this challenge, I turned the following question over in my mind: Why is it that this man who, after all, has been dead for so many years, has such a hold on Americans?

Lincoln did not have a long life—he was only 56 years old when he died. We know, also, that Lincoln was born into poverty. His mother died when he was young and he did not get along very well with his father. As we learned in grade school, Lincoln essentially had no formal education. He was, to be sure, a large man, the tallest of all our presidents, but many people thought that he was homely and even a bit crude. Beyond that, by most accounts, Lincoln had a high-pitched, almost falsetto, speaking voice—not a soothing voice like that of actor Henry Fonda who portrayed him on the silver screen.

Lincoln was, of course, president of the United States, but he



did not serve very long in that capacity. He held the office only one four-year term plus a mere month of a second term.

Unlike most of our presidents, Abraham Lincoln did not have a particularly distinguished public career before assuming the presidency. His only military service was in the so-called "Black Hawk" War. He even took the unpopular stance of publicly opposing the Mexican War in the late 1840s. The only elective offices Lincoln held before becoming president were an unremarkable seven-year stint in the Illinois legislature and one term in the United States House of Representatives. In 1858, just two years before he was elected president, he lost his second attempt to be elected to the United States Senate.

Finally, during the entire course of his presidency, Lincoln was occupied with the burden of prosecuting a war against the southern states that had seceded from the Union. This war did not go at all well at first and eventually resulted in more American deaths and casualties than any other conflict. In the one-day Battle of Antietam, which took place on September 17, 1862, the Union and Confederate Armies together suffered 23,000 casualties.

I ask the question again—why is it that Lincoln is so revered?

Well, for essentially the same reasons we were taught as children. He stood firmly, some would say stubbornly, for maintaining the Union and he never wavered from that goal, even though he met opposition and criticism from much of the press of the day as well as many in Congress. On occasion, he didn't even have the full support of his own cabinet members. Toward his goal of maintaining the Union, Lincoln kept after his often timid generals to prosecute the war more vigorously. When he finally found two that would do just that—Ulysses S. Grant and William Tecumseh Sherman—the war came to a swift and successful conclusion.

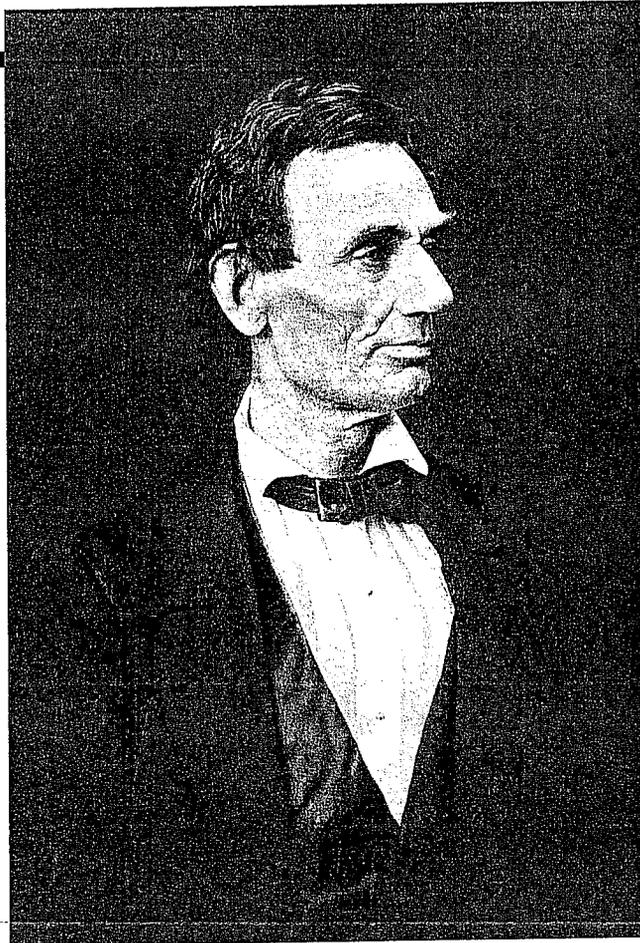
Although he initially put maintenance of the Union before abolition of slavery, he recognized, as he stated in a speech in Springfield, Illinois, that this nation "cannot endure permanently half slave and half free." And, as we know, in the midst of that war he issued his famous Emancipation Proclamation, which abolished slavery in the states that were in rebellion.

Lincoln is also revered for his facility with the language. That was a time before presidential speech writers and spin doctors, and presidents wrote their own speeches and letters.

The prose of this self-taught man from the prairies is among the finest in the English language. His Gettysburg address, which most of us had to memorize in grade school, is an eloquent testimonial to that fact. Lincoln's famous second inaugural address also showed a quality that Americans have traditionally admired—compassion for the vanquished. As historian Richard C. White, Jr., observed in his book *Lincoln's Greatest Speech: The Second Inaugural*, the president wanted this speech to "lay the groundwork for a reconstruction of compassion and reconciliation." That is apparent from these famous words in the speech: "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 do all which may achieve a just and lasting peace among ourselves...."

Finally, of course, Lincoln's place in history was assured when he became a martyred president, struck down on Good Friday, 1865, by a bullet fired by John Wilkes Booth in Ford's Theatre in Washington. While the assassination of a president has always been a traumatic event for our country, the effect of this act was made all the more poignant by the fact that it occurred at the height of Lincoln's success as president, just a month after he was inaugurated for a second term and five days after General Lee surrendered the Army of Northern Virginia to General Grant.

Let me advance another reason for the affection Americans have for Abraham Lincoln that is, perhaps, not as well recognized. I think it is due, in large part, to the fact that he was, more than any of the 15 presidents who preceded him, the authentic American man of his time—warm, compassionate, witty, and earthy. He certainly differed from many of our early presidents who, as great as they were, had much more of a European manner about them. Four of the first five, including George Washington and Thomas Jefferson, were well-to-do Virginians who had an aristocratic bearing. The two Adamses, John and John



*One of the most venerated Americans of all time, Abraham Lincoln was a rough-hewn, plain-spoken man whose homespun, self-deprecating humor contributed to his "common man" image. Although he never visited the Oregon Country or Washington Territory, his influence could be seen and felt through his appointees for territorial governor and supreme court.*

Quincy, presidents number two and six, were not men of great wealth, but they were superbly educated and sophisticated men who had seen many of Europe's capitals before they became president. Most of the other presidents who preceded Lincoln were well educated, and at least three, including Andrew Jackson—the first president to hail from west of the Appalachians—had served as distinguished generals in the army.

Lincoln, though, was unique in that this truly uncommon man seemed nonetheless an average American. He was born in Kentucky on what was then the Western frontier of our nation. As a youth he moved even farther west with his family and eventually settled in Illinois where he became a lawyer. Along the way he picked up what education he could. He could hardly be described as worldly, but rather was seen throughout his life as a man of the people—rough-hewn and plain-spoken—a person with whom farmers,

business persons, and just plain citizens could identify. Lincoln was, as we know, noted for his homespun humor, and a lot has been written about that. Much of his humor was self-deprecating, and it contributed to his image as a common man. Abe as a lawyer, of course, knew a lot of judges and they did not escape his wit. Although this story may be apocryphal, he is credited with saying, "The strongest example of 'regal government' and close construction I ever knew was that of Judge \_\_\_\_\_. It was once said of him that he would hang a man for blowing his nose on the street, but that he would quash the indictment if it failed to specify which hand he blew it with."

**A**lthough I think I have been historically accurate about Abraham Lincoln up to this point, I don't believe I have given you any fresh insight into the life of this remarkable man. That, in my view, is the toughest part of the challenge. In pondering what new information I might give you, it occurred to me that not much has been written about Lincoln's influence on the area of the nation in which we now live. Although Washington was not a state during Lincoln's

presidency, the federal Territory of Washington had been created by Congress in 1853. And although Lincoln clearly had bigger fish to fry during the years of his presidency, I thought that he must have had some influence on the course of events out West here in this new territory. We know that he had always been intrigued by the Far West and that as early as 1859 he favored development of a transcontinental railroad from the Midwest to California.

But what about the Pacific Northwest? Although Lincoln had turned down President Zachary Taylor's offer of the governorship of the Oregon Territory, of which Washington was once a part, he never visited the Northwest. Needless to say, we were a backwater during those war years, and a railroad connecting Puget Sound to the eastern portion of the United States was merely a dream.

As I looked into this, I concluded that Lincoln had a significant impact on Washington Territory—much more than I would have thought. As president, of course, he had the power to appoint territorial governors, and he also had the right to appoint the members of territorial supreme courts. Only the territory's legislative assembly was elected by its resident citizens.

Lincoln appointed the fourth and fifth territorial governors of the Washington Territory, and they were far different men from most of those who had been appointed by Lincoln's predecessors. The second and third territorial governors, both of whom were appointed by President James Buchanan, were not at all distinguished. In fact, the only accomplishment of the second governor, Fayette McMullen, was to rid himself of his wife. He arrived in the territorial capital, Olympia, in September 1857, and in the December session of the territorial legislature got a bill through that body granting him a divorce. He then married another woman and promptly left Olympia, returning to his home in Virginia. During the Civil War he served as a member of the Confederate Congress. Buchanan's other appointee, the third governor, William Gholson, was an ardent "copperhead," which meant that he was a Democrat who favored peace, believing that the northern armies could not conquer the South. He resigned the governorship on the day Lincoln was sworn in as president, saying that he was "unwilling to hold office even for a single day under a Republican president."

Lincoln's appointees were a cut above McMullen and Gholson. His first appointee, William Wallace, was the first governor of the territory to reside in the territory at the time of his appointment. He was a good man but didn't stay governor for long because he was elected as the territory's delegate to Congress. He later served as governor of the Idaho Territory. Eventually he returned to live in Steilacoom, where he served as a probate judge until he died in 1879.

Lincoln's next appointee as governor was William Pickering. The territory's "war governor" because he served in that position from 1862 until the end of the Civil War, Pickering was a good friend of President Lincoln's and had served as chair of the

*William Pickering, appointed governor of Washington Territory by President Lincoln in 1862.*



*James Wyche, one of Abe Lincoln's three appointees to the Supreme Court of Washington Territory.*



*William Wallace, Lincoln's first appointee and the first governor of Washington Territory to reside there at the time of his appointment.*



Illinois delegation to the Republican Convention of 1860 during which Lincoln received the nomination for president. Interestingly, Lincoln actually offered Pickering his choice of the ambassadorship to England or governor of the Washington Territory. Surprisingly, he chose the governorship. During his term in office Pickering favored development in more ways than one, actually encouraging the shipment of the 300 famous "Mercer girls" from Boston to the territory.

It was not Lincoln's executive appointments, though, that had the greatest impact on the territory—it was his judicial appointments. Lincoln appointed three very fine people to the supreme court of the Washington Territory, a three-judge court of "circuit riders." By that I mean for most of the year they literally rode around this vast territory on horseback and heard cases as trial judges. But in December of each year they would assemble in Olympia as a supreme court to hear any appeals from those decisions. Apparently, no one was greatly troubled by the fact that one of the three was necessarily called upon to review his own decision in any appeal.

The three judges Lincoln appointed were Ethelbert Oliphant, James Wyche, and C. C. Hewitt. Hewitt was the chief justice and, incidentally, the great-grandfather of Judge Hewitt Henry, with whom I had the honor of serving on the Thurston County Superior Court. The three Lincoln appointees served as Washington Territory's judges throughout the Civil War and into the late 1860s. These men were very different from the judges who had preceded them. Nowhere is this difference more evident than in cases that came before them involving the native people who lived in the territory. The reported cases between 1853 and 1861 show that the territorial judges who preceded Lincoln's presidency had only slight regard for the Indian people. That is most evident in an opinion of the court upholding the murder conviction of the Indian leader, Chief Leschi.

You may recall that Leschi was charged with killing Colonel Moses in an ambush on Connell's Prairie. Although the evidence was slim that he actually killed Moses, many people, including a number of United States military personnel, felt that even if Leschi had committed the act, the death came about as a result of war between the whites and the Indians. Therefore, they believed, he should be treated as a prisoner of war and not a criminal. Despite a jury instruction from the trial judge that the jury should acquit if they believed the death of Colonel Moses was due to an act of war, the jury at Leschi's first trial was unable to reach a verdict. A member of that jury was the well-known pioneer, Ezra Meeker. At the second trial Leschi was convicted and sentenced to death. Shortly thereafter, the territorial supreme court reviewed the conviction and tipped its hand early in the opinion as to what Leschi's fate would be. They said:

*The prisoner has occupied a position of influence as one of a band of Indians who, in connection with tribes, sacrificed the lives of so*

*many of our citizens in the war so cruelly waged against our people on the waters of Puget Sound.*

*It speaks volumes for our people that, notwithstanding the spirit of indignation and revenge, so natural to the human heart, incited by the ruthless massacre of their families, that at the trial of the accused, deliberate impartiality has been manifested at every stage of the proceedings.*

*... It is to be regretted, for the sake of the accused, as well as the future peace of the Territory, that a more summary mode of trial... had not been adopted.*

Leschi's conviction was upheld and he was hanged very soon thereafter at Fort Steilacoom.

Contrast the above, from the pre-Lincoln territorial court, with an opinion written for the territorial supreme court by Judge Wyche only four years later in *Elick v. The Territory*. The facts there were that Elick, an Indian, had been found guilty of murder and sentenced to death. The supreme court of the territory reversed the non-English speaking defendant's conviction because he had not been afforded an interpreter. The court said:

*In any other view of the matter, his personal attendance would be a meaningless ceremony and the prisoner tried in violation of the laws and Constitution of the land. The Constitution of the United States is coextensive with the vast empire that has grown up under it, and its provisions securing certain rights to the accused in criminal cases, are as living and potent on the shores of the Pacific as in the city of its birth. In the matter of these rights it knows no race. It is the rich inheritance of all, and under its provisions in the Courts of the country, on a trial for life, the savage of the forest is the peer of the President.*

When I read this passage the other day for the first time, chills ran up my spine. This is a terrific passage, particularly when one remembers that this was written more than 30 years before the United States Supreme Court's infamous decision in *Plessy v. Ferguson*, in which Mr. Justice Harlan wrote, albeit in dissent, that "our constitution is colorblind and neither knows nor tolerates classes among citizens." I wondered, could Harlan have known of Wyche's memorable words, that the Constitution "knows no race," when he penned his famous words?

What a proud legacy for all of us in Washington to have such stirring words in an early opinion of the court from which Washington's present-day courts descend. I don't know if we as judges and lawyers have always lived up to those words, but I hope that we have and that we will. When we do, as we should, we can tip our hat to Old Abe for long ago appointing persons to the highest court in Washington who had the courage to act in a way that has served as a fine example for us all.

*After serving for 21 years as a trial and appellate court judge, Gerry L. Alexander became a Washington State Supreme Court justice in 1995, and in 2000 was elected to the position of chief justice.*