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What We Can Learn About the Art of Persuasion from Candidate Abraham Lincoln: A Rhetorical Analysis of the Three Speeches That Propelled Lincoln into the Presidency

by Michael W. Loudenslager*

"True ease in writing comes from art, not chance."¹

I. INTRODUCTION

Abraham Lincoln is renowned as an impressive orator and writer. Historians have long studied his life and writings, some dedicating their whole careers to this task. However, few commentators have focused upon how studying the persuasive techniques utilized by Lincoln in his speeches can help lawyers to improve their own persuasive writing and speaking. Lincoln was an experienced litigator, and over the course of his legal career, he tried a voluminous number of cases, was involved in several appeals before the United States Supreme Court, and argued

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¹ This quote comes from a poem by Alexander Pope included in a literary anthology, William Scott's LESSONS IN ELOCUTION, that Abraham Lincoln studied as a child. WILLIAM SCOTT, LESSONS IN ELOCUTION, OR, A SELECTION OF PIECES IN PROSE AND VERSE FOR THE IMPROVEMENT OF YOUTH IN READING AND SPEAKING 390 (1829); FRED KAPLAN, LINCOLN: THE BIOGRAPHY OF A WRITER 32, 43 (1st ed. 2008) (stating "two of the poetic maxims from Pope that includes, 'True ease in writing comes from art, not chance' and 'Two principles in human nature reign, / Self-love to urge, and reason to restrain,' express the fundamentals of Lincoln's art and mind").
numerous times before the Illinois Supreme Court. These experiences helped Lincoln to cultivate various manners of persuading judges and juries. Similarly, one major goal of Lincoln's speeches, as with any politician, was to persuade listeners to agree with the positions that he took on important issues of the day. Upon close examination and deconstruction, one can discern several persuasive techniques that Lincoln used effectively in his speeches. These techniques include repetition, alliteration, metaphor, theme, and affirmatively dealing with adverse arguments, to name a few. Therefore, Lincoln's speeches provide attorneys with excellent examples of persuasive techniques that attorneys can use to improve their legal arguments.

In particular, the period from 1854 to 1860, which began with Lincoln re-entering the political arena to speak against the expansion of slavery into United States territories and ended with Lincoln being elected president, is especially interesting. This was the time in which Lincoln developed, articulated, and repeated basic themes concerning the institution of slavery that, ultimately, would propel him into the presidency. In 1854, Congress passed the Kansas-Nebraska Act, which allowed these territories to vote on whether to have slavery. This legislation repealed the agreement between "free" Northern states and slave-holding Southern states that slavery would not exist in new states north of Missouri arrived at through the Missouri Compromise. After the enactment of the Kansas-Nebraska Act, Lincoln argued that the expansion of slavery, if not slavery itself, violated the principles laid out in the Declaration of Independence. Lincoln then went on, immediately prior to becoming the Republican presidential candidate in 1860, to


argue that the stance that the federal government could not prohibit slavery in United States territories was contrary to the views of America's founding fathers.6

This Article examines three major speeches made by Lincoln during this time period: (1) Lincoln's October 16, 1854 speech on the Kansas-Nebraska Act at Peoria, Illinois; (2) Lincoln's June 16, 1858 "House Divided" speech at the Illinois Republican State Convention; and (3) Lincoln's February 27, 1860 Cooper Union, New York speech, which he gave a few months prior to his nomination as the Republican presidential candidate. Through these speeches, Lincoln articulated and developed his arguments against the expansion of slavery, which ultimately established him as the Republican presidential candidate in 1860.

In Section II, this Article briefly discusses Lincoln's legal career, in which he learned and mastered the persuasive techniques used in his speeches. Section III of this Article gives an overview of some of the techniques identified in Lincoln's speeches. In Section IV, the Article deconstructs key passages from the three speeches mentioned above and demonstrates exactly how Lincoln used specific rhetorical devices to good effect to persuade audiences of the correctness of his position on the slavery issue. Section V of this Article sets out several lessons from these speeches that attorneys can use to improve their own persuasive writing and speaking.

II. LINCOLN'S LEGAL CAREER

Lincoln practiced law for almost twenty-five years.7 He received his license in 1836 and practiced until the summer of 1860 when he suspended his practice to focus on his campaign for the United States presidency.8 Lincoln was a prodigious litigator, being involved in as

7. BRIAN DIRCK, LINCOLN THE LAWYER x-xi (2007) (noting that "[w]ith only a brief respite during his congressional term, [Lincoln] practiced law for a quarter of a century prior to his presidency"); Davis, supra note 2, at 61 (noting that "[f]or twenty-four years, essentially the span of his residency in Springfield, Lincoln devoted most of his time and effort to legal practice"); Julie A. Oseid, The Power of Brevity: Adopt Lincoln's Habits, 6 J. ALWD 28, 33 (2009) (acknowledging that "Lincoln spent twenty-five years practicing law before becoming President of the United States").
8. Lupton, supra note 2, at 22, 49.
many as five thousand cases during his career, which averages out to about two hundred cases a year. Lincoln was a part of three different legal partnerships during his career. He started practicing law with John Todd Stuart, the cousin of his wife, Mary Todd Lincoln. After four years, Lincoln left the partnership and formed a partnership with Stephen Logan, a former state circuit judge. Lincoln practiced with Logan for almost four years. Then, Lincoln formed another partnership, this time with Lincoln as the senior partner, with William Herndon, who at the time had recently become a member of the bar and had studied law with the Logan and Lincoln partnership. Lincoln practiced law with Herndon for almost seventeen years before focusing on his presidential campaign.

Throughout his career, Lincoln represented people from all walks of life as well as different companies. “[Lincoln] represented plaintiffs and defendants, the guilty and the innocent, the rich and the poor, and nearly all of the various possible sides in divorce cases, contract disputes, property disputes, and so forth.” However, “[t]he Illinois Central Railroad was Lincoln’s biggest and most frequent client during his entire career: he litigated over fifty cases on [its] behalf.” One commentator asserts that Lincoln’s representation of various railroads, such as the Illinois Central, “catapulted [Lincoln] from local to much wider prominence . . . and created his ultimate standing as a leading attorney of the American West.” Despite this, Lincoln ended up opposing railroads in cases about as often as he represented them.

Lincoln engaged in the general practice of law with cases involving debt collection, bankruptcy, wills and trusts, mortgage foreclosure, divorce, slander, medical malpractice, railroads, and criminal law, including some murder trials. However, the majority of his cases

9. Dirck, supra note 2, at 68; Holzer, supra note 2, at 9; RIZER, supra note 2, at xiv.
11. Lupton, supra note 2, at 22; DIRCK, supra note 7, at 25.
12. Lupton, supra note 2, at 25; see DIRCK, supra note 7, at 25 (describing Logan as an Illinois circuit court judge).
13. Lupton, supra note 2, at 28; DIRCK, supra note 7, at 27, 29.
14. Lupton, supra note 2, at 28; DIRCK, supra note 7, at 29-30.
15. Lupton, supra note 2, at 31, 49.
16. Dirck, supra note 2, at 73.
17. DIRCK, supra note 7, at 97.
18. Davis, supra note 2, at 67.
19. Dirck, supra note 7, at 97-98; Lupton, supra note 2, at 39.
20. Lupton, supra note 2, at 22; Dirck, supra note 2, at 69, 71.
21. Dirck, supra note 7, at 115 (noting that Lincoln was involved in twenty-seven murder trials “usually as a defense attorney”).
dealt with debtor-creditor law. Moreover, Lincoln appeared at all levels of the state and federal court systems.

Lincoln would spend as much as six months out of the year traveling "the circuit" as part of his law practice. This involved traveling from county to county along with a judge and other attorneys to try whatever controversies existed in a particular locale in state court. Attorneys and judges could spend up to three weeks in one locale before disposing of all of the litigation in the area. Lincoln rode the Eighth Circuit in Illinois, which was comprised of differing counties throughout the central portion of Illinois, including Sangamon County where Lincoln's office was located. The Eighth Circuit "was known as the 'mud circuit' because of its awful roads and rural conditions." Lincoln usually would stay at small town taverns, eat at common tables with other traveling attorneys, and often have to share beds with those same attorneys "because of the meager accommodations that were available."

22. RIZER, supra note 2, at 30; Dirck, supra note 2, at 69.
23. See supra note 2.
24. RIZER, supra note 2, at 29; Davis, supra note 2, at 62 (noting that “[n]early every year he spent between four and six months visiting the dispersed county courthouses of the Eighth Judicial Circuit in central and eastern Illinois”).
25. Dirck, supra note 7, at 44 (stating that “[m]any American states at one time or another relied on lawyers like Lincoln to join with other lawyers and itinerant judges and travel through an area, stopping at county seats and litigating cases in short order for whomever it was necessary to do so”). One commentator described the scene when Lincoln arrived in town when riding the circuit:

Upon arriving in a county seat, circuit-riding lawyers set up ambulatory law offices on the sunny side of the courthouse or under a shady tree. Prospective clients approached Lincoln and asked him to write a legal document for a case. Local attorneys asked Lincoln to assist them with a case or make the arguments before a jury. Usually, Lincoln prepared for five or six cases in a three- or four-day term of court.

Lupton, supra note 2, at 36-37.
26. Dirck, supra note 7, at 45.
27. Id.; Davis, supra note 2, at 62.
28. Dirck, supra note 7, at 45. One author has described travel in the Eighth Circuit during this time in the following manner:

The caravan could usually travel only about four miles an hour, because the roads were atrocious. Most were little more than trails, and when the heavy black loam of the Illinois prairie began to thaw in the spring, it became fathomless mud, dangerous not merely to carriages but to horseback riders as well.

29. RIZER, supra note 2, at 29. Judge Davis, who was the presiding judge in the Eighth Circuit, described in letters to his wife the conditions at the accommodations available when traveling the Eighth Circuit in the following manner:
Lincoln also had a significant federal practice. After Lincoln had practiced for several years and developed his reputation, out-of-state creditors began to seek him out to bring debt collection cases in federal court against Illinois residents. Moreover, at this point in his legal career, other attorneys often sought out Lincoln for advice on conducting cases in federal court.

In addition to handling numerous trials, Lincoln developed an extensive appellate practice. “In whole, work before the Illinois [Supreme Court] represented 10 percent of Lincoln's legal work.” During the course of his partnership with Herndon, the firm “averaged fifteen cases per year on appeal to the [Illinois Supreme Court],” and Lincoln and his partners appeared in over four hundred cases before the Illinois high court. “Lincoln was also the attorney of record for at least six cases that were before the United States Supreme Court,” and he even argued one case before the Supreme Court in 1849 while he was a United States congressman. One commentator describes the Lincoln and Herndon partnership as having “one of the largest appellate practices in the state [of Illinois].” Lincoln was known as a “lawyer's lawyer” because many lawyers picked Lincoln to handle the appeals of their cases. Lincoln’s involvement dealt solely with handling the

[There was mud in the winter and dust in the summer; taverns were overrun with mosquitoes, fleas, and bedbugs; the dining rooms were dirty and typically the “table was greasy—table cloth greasy—floor greasy and every thing else ditto”; the waitress was so filthy that he guessed “the dirt must be half an inch thick all over her.” Worst of all was the food “hardly fit for the stomach of a horse.”

DONALD, supra note 28, at 147.

30. Lupton, supra note 2, at 33 (“In federal court, Lincoln & Herndon’s litigation consisted mainly of debt collection by out-of-state creditors who sued Illinois residents. More than half of the creditors came from major metropolitan areas such as Boston, Cincinnati, New York, Philadelphia, and St. Louis.”).

31. Id. (“Lincoln was considerably knowledgeable about federal law. Illinois attorneys who were not familiar with federal practice wrote Lincoln asking for advice in the federal court. Lincoln made additions and corrections on the pertinent documents and filed them for other lawyers.”).

32. RIZER, supra note 2, at 34.

33. Lupton, supra note 2, at 32.

34. Davis, supra note 2, at 62.

35. RIZER, supra note 2, at 35. See KAPLAN, supra note 1, at 198-203, for an extensive discussion of the case that Lincoln argued before the United States Supreme Court while he was a congressman.

36. RIZER, supra note 2, at 34.

37. Mark E. Steiner, Does Lawyer Lincoln Matter? in ABRAHAM LINCOLN, ESQ.: THE LEGAL CAREER OF AMERICA'S GREATEST PRESIDENT 45, 49 (Roger Billings & Frank J. Williams eds., 2010) (“Lincoln’s being hired for appeals meant he was a ‘lawyer’s lawyer.’”); see also Holzer, supra note 2, at 10 (“Lincoln was also the professional to whom other
appeal, and not as trial counsel, in close to half of the cases in which Lincoln appeared before the Illinois Supreme Court. 38 Lincoln's long-
time partner William Herndon "claimed that when it came to appellate
work, Lincoln was at his best because he had time to ponder the facts of
a case and thoroughly prepare his arguments." 39

By the time that Lincoln left the practice of law in 1860, he had
reached the top of the profession in Illinois. 40 Lincoln's success in the
legal profession, as well as in his political endeavors, was built on his
ability to think critically and logically, to persuade a decision maker, to
engage in extensive research of the issues involved in a particular
situation, to write and speak in simple and clear language, and to work
hard day in and day out. 41 Out of all of these skills, Lincoln's abilities
as a persuasive speaker may stand out the most. "[Lincoln] had the
uncanny ability to win over a jury, a judge, and the audience in a
courtroom." 42 In this respect, Lincoln provides an excellent example of
a persuasive public speaker, and deconstructing his political speeches to
better understand the techniques that he used can teach us much about

attorneys turned over their cases for appeal."); Lupton, supra note 2, at 28 (stating that
"Lincoln's peers considered him a 'lawyer's lawyer').

38. Steiner, supra note 37, at 49 ([Lincoln], or his partners, handled over four hundred
appeals to the Illinois Supreme Court, and in nearly two hundred Lincoln had not tried the
case in the circuit court but was hired for the appeal.").

39. RIZER, supra note 2, at 34.

40. Lupton, supra note 2, at 33 ("During the late 1850s, Lincoln was among the leaders
of the bar in Illinois. East Coast attorneys and potential clients sought him out requesting
legal assistance."); RIZER, supra note 2, at 39 ("By the time Lincoln left the legal field to
run for the presidency, he was at the apex of the legal community in Illinois and was held
in great esteem by the east coast elites because of his dominating trial record.").

41. See RIZER, supra note 2, at 46 ("Lincoln's long time partner, William Herndon,
praised his partner's ability to think critically, prepare a case, and persuade a decision
maker."); Holzer, supra note 2, at 8 ("[The law refined Lincoln's speaking style, and
sharpened his powers of reasoning."); John A. Lupton, The Power of Lincoln's Legal Words,
in ABRAHAM LINCOLN, ESQ.: THE LEGAL CAREER OF AMERICA'S GREATEST PRESIDENT 119,
( Roger Billings & Frank J. Williams eds., 2010) ("The power of Lincoln's written words
as a lawyer helped to explain the law to juries and to summarize the facts in bills of
exceptions."); Lupton, supra note 2, at 19, 46 (noting that "[i]n his courtroom appearances,
Lincoln used logic, oratory, and his native intelligence to become a leading attorney in
Illinois" and that among other characteristics "that contributed to his success and
reputation" Lincoln possessed "restrained but effective verbal expression, a highly retentive
mind, and a willingness to work very hard"); cf. FONER, supra note 3, at 65, 136-37
(discussing the extensive research that Lincoln engaged in prior to giving both his Peoria
and Cooper Union speeches). See also RIZER, supra note 2, at 57 ("Herndon said of
Lincoln's research that if he 'had occasion to learn or investigate any subject he was
thorough and indefatigable in his search. He not only went to the root of the question, but
dug up the root, and separated and analyzed every fiber of it.'").

42. RIZER, supra note 2, at 45.
how to speak and write persuasively. In fact, Arthur Rizer has stated
that “[a]ll attorneys and persuasive speakers today, including salespeo-
ple, pastors, lobbyists, parents, teachers, and anybody else who spends
their days convincing others they are right, can learn something from
[Lincoln].”

Furthermore, the skills Lincoln developed as an attorney helped him
to succeed as president. Harold Holzer contends that “[t]he fact is,
Lincoln’s life as a lawyer informed nearly every aspect of his future” as
president. Brian Dirck notes that Lincoln’s law practice “shaped his
use of language at various points throughout his political career, giving
him a high degree of clarity and a judicious use of words.” Cullom
Davis recognizes that Lincoln developed “certain writing and speaking
habits” that he employed in both legal and political settings. These
habits included: “simplicity and economy of language, empathy,
illustrative anecdotes or analogies, calculated dramatic outbursts, a taste
for verbal antitheses, and a talent for riveting audience attention on
fundamental issues of logic or equity.” Furthermore, “[Lincoln]
ocasionally set up his political arguments concerning slavery, emancipa-
tion, and freedom as if they were legal briefs in the moot court of
American public opinion.” Harold Holzer concludes, “Lincoln might
have become a successful lawyer without becoming a politician. But it
is doubtful that he would have become a successful politician without
becoming a lawyer . . .

III. OVERVIEW OF VARIOUS RHETORICAL TECHNIQUES

A basic explanation of some of the rhetorical techniques used by
Lincoln in the speeches examined in this Article will be helpful prior to
analyzing those speeches. First, the Article will discuss the three main
concepts derived from classical rhetoric. Second, the Article will explain
generally some specific stylistic and legal argumentation techniques that
Lincoln included in his speeches.

43. Id. at xv.
44. Julie Oseid provides one specific example of this: “Lincoln’s First Inaugural was
delivered by Lincoln, the lawyer, making a case to the jury, the people of the North and
South.” Oseid, supra note 7, at 35.
45. Holzer, supra note 2, at 8.
46. DIRCK, supra note 7, at 152.
47. Davis, supra note 2, at 72.
48. Id.
49. DIRCK, supra note 7, at 152.
50. Holzer, supra note 2, at 14.
A. Main Concepts from Classical Rhetoric

The three main manners of persuasion according to classical rhetoric are logos, pathos, and ethos.\textsuperscript{51} Logos involves persuading a reader or listener through the logical substance of the arguments presented.\textsuperscript{52} Michael Smith has stated that "[i]n the context of persuasive legal writing [and speaking], logos refers to persuasion through legal reasoning based on established legal authorities."\textsuperscript{53}

Pathos concerns persuading through the emotion evoked through the writing or speech concerned.\textsuperscript{54} Pathos can be achieved in two main ways. The first involves arousing an emotional reaction through the substance of the argument concerned.\textsuperscript{55} Smith terms this "[p]ersuasion through emotional substance."\textsuperscript{56} This entails mainly persuading "by appealing to the audience's values and emotions."\textsuperscript{57} The second method consists of arousing a positive emotional reaction through the form or manner in which a document is written or in which a speech is given.\textsuperscript{58} This is called "medium mood control."\textsuperscript{59} In the context of persuasive writing and speaking, medium mood control refers to "stylistic strategies and techniques used by a writer [or speaker] to capture a reader's [or listener's] attention and put the reader [or listener] in a contented and receptive mood."\textsuperscript{60} A few examples of persuasive stylistic strategies are the use of metaphor and literary allusion.\textsuperscript{61}

Ethos involves a writer or speaker persuading by establishing credibility in the eyes of the reader.\textsuperscript{62} According to classic rhetoricians, three main qualities evidence credibility: intelligence, character, and


\textsuperscript{52} Smith, supra note 51, at 10; see also Robbins-Tiscione, supra note 51, at 101 (noting that "[a]ppeals to logos rely on logic or analytical reasoning").

\textsuperscript{53} Smith, supra note 51, at 22.

\textsuperscript{54} Id. at 11; Robbins-Tiscione, supra note 51, at 101.

\textsuperscript{55} Smith, supra note 51, at 11.

\textsuperscript{56} Id.

\textsuperscript{57} Id. at 23.

\textsuperscript{58} Id. at 12.

\textsuperscript{59} Id.

\textsuperscript{60} Id. at 24 (emphasis omitted).

\textsuperscript{61} Id. at 25.

\textsuperscript{62} Id. at 13; see also Robbins-Tiscione, supra note 51, at 101 ("Appeals to ethos are those aspects of the speaker's character that lead the audience to believe she is credible.").
A writer or speaker may demonstrate intelligence in several ways. For example, eloquent writing or plain and effective metaphors evidence intelligence and can persuade a reader or listener to trust what the writer or speaker is advocating. The traits that writers and speakers can project in order to demonstrate they are of good moral character include truthfulness, candor, respect, and professionalism. Good will “refers to how an advocate feels or is disposed toward others involved in the matter under discussion.” For instance, Michael Smith has stated that if a decision maker believes “that an advocate is angry at, resentful of, or otherwise malevolent toward the decision-maker or an adverse party, the decision-maker will likely be skeptical about the advocate’s advice on the matter” because the decision-maker may believe that the advocate is “speaking not out of logic or a sense of justice, but out of spite and anger.”

B. Specific Rhetorical Techniques

Some specific techniques help promote the three main classical rhetoric concepts. The first category of techniques is called rhetorical figures of speech. The Article then will discuss creating a theme to further persuasive arguments, dealing affirmatively with an opponent’s arguments in persuasive writing and speech, dealing with adverse authority in persuasive writing and speech, and finally, using literary references and allusion in persuasive writing and speech.

1. Figures of Speech. “Rhetorical figures of speech are stylistic devices that help give writing eloquence” and create drama in the writing or speech concerned. The first figure of speech to be identified is repetition. Repeating certain terms or language in a speech or writing, according to Michael Smith, can be of “inestimable value when seeking to emphasize key points in an argument.” Repetition increases the likelihood that a reader or listener will remember the concept or term being repeated.

63. SMITH, supra note 51, at 125.
64. Id. at 235.
65. Id. at 125-26.
66. Id. at 143.
67. Id.
68. Id. at 195.
69. Id. at 334.
70. See LAUREL CURRIE OATES & ANNE ENQUIST, THE LEGAL WRITING HANDBOOK: ANALYSIS, RESEARCH, AND WRITING 271 (5th ed. 2010) (“Just as listeners remember best the songs that get the most airtime, readers remember best the facts that get the most words. Consequently, favorable facts should be given considerable ‘air time,’ while
The second figure of speech is alliteration. Alliteration involves “the use of two or more words in close proximity to each other that begin with (or prominently contain) the same letter sound.” The use of alliteration makes the argument more pleasing to the listener or reader’s ear. An idea or concept presented to the reader or listener “often stands out in the mind of a reader [or listener]” as a result.

The third rhetorical figure of speech is metaphor. A metaphor involves an implicit figurative or symbolic comparison between two things by equating one thing to another or by discussing the things in close proximity to one another. The comparison involved is implicit rather than explicit. In other words, the writer or speaker does not use words such as “like” or “as” in comparing the things involved. Metaphors are effective because they allow a reader or listener to understand one event in terms of another and relate what is being discussed to their universal experience.

The fourth relevant figure of speech is allusion. Allusion consists of a speaker or author’s subtle or indirect reference to a person, idea, event, or work by another that is known to the reader or listener. In order for an allusion to be effective, the reader or listener must understand to what the author is referring, and, therefore, the allusion “must be clear to the reader [or listener].”

The fifth and final figure of speech to be examined is the use of rhetorical questions. “A rhetorical question is a question asked by a writer [or speaker] with . . . no hope or expectation of an answer from the reader [or listener].” The question is included “for effect [and] not to elicit an answer from the reader.” Writers or speakers can use rhetorical questions for two different purposes. First, a writer or speaker can use a transitional rhetorical question “to set up an unfavorable ones should be given little or no ‘play.’”

71. Smith, supra note 51, at 316.
72. Id. at 315-16 (defining euphony as a “term used to describe discussions that are pleasing to the ear” and stating that “[a]lliteration contributes to the euphony of writing”).
73. Id. at 316.
74. Id. at 199-200.
75. Id. at 200. A writer or speaker uses a simile rather than a metaphor when he or she explicitly makes a figurative comparison by using terms such as “like” or “as.” Id.
77. Smith, supra note 51, at 319.
78. Id.
79. Id. at 336.
80. Id.
immediate answer or to transition to a new point of discussion.\textsuperscript{81} Second, a writer or speaker can use a rhetorical question to make "a substantive point by stating it in the form of a self-answering question rather than as an assertive statement."\textsuperscript{82} In this manner, writers or speakers make their point "obliquely rather than directly."\textsuperscript{83} A rhetorical question used in this way is called a substantive rhetorical question.\textsuperscript{84}

2. **Theme.** Providing an overall theme to a writing or speech and relating the advocate's position to a larger societal goal can be an effective persuasive technique.\textsuperscript{85} In persuasive writing, an effective theme deals with how the result advocated for will further a particular social policy or laudable societal goal.\textsuperscript{86} A good theme will convince a reader or listener why in a particular situation the policy supporting the advocate's position is more important than competing or contrary policies.\textsuperscript{87} Ruth Anne Robbins and Brian Foley have discussed how to describe in litigation documents a particular conflict in traditional literary and narrative terms to make a reader or listener desire the particular result for which the writer or speaker advocates.\textsuperscript{88} Other legal writing experts discuss the importance of putting the conflict concerned in a favorable context and of describing the conflict from the point of view of the represented party.\textsuperscript{89} All of these techniques are effective manners of presenting a favorable theme.

3. **Dealing with an Opponent's Arguments in an Affirmative Manner.** Persuasive writers or speakers must deal with their

\begin{itemize}
\item \textsuperscript{81} Id.
\item \textsuperscript{82} Id. at 337.
\item \textsuperscript{83} Id.
\item \textsuperscript{84} Id.
\item \textsuperscript{85} MARY BETH BEAZLEY, A PRACTICAL GUIDE TO APPELLATE ADVOCACY 45 (3d ed. 2010). In persuasive legal writing, "[a] theme is particularly important when arguing issues for which no mandatory authority governs the outcome, or when arguing to a court of last resort." Id.
\item \textsuperscript{86} Id. at 45 (stating that "[g]ood themes are often policy-based").
\item \textsuperscript{87} See id. ("When courts must choose between two competing interpretations of the law, they often do so by identifying (explicitly or implicitly) which of two competing policy arguments is more important in this situation.").
\item \textsuperscript{88} Brian J. Foley & Ruth Anne Robbins, Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections, 31 Rutgers L.J. 459, 470 (2001).
\item \textsuperscript{89} E.g., OATES & ENQUIST, supra note 70, at 269-70, 350-53; HELENE S. SHAPO ET AL., WRITING AND ANALYSIS IN THE LAW 411 (5th ed. 2008).
\end{itemize}
opponents' arguments to be effective advocates. Leaving an opponent's arguments unaddressed can lead a decision maker to believe that those arguments are valid. However, an advocate does not want to make an opponent's arguments the focus of the overall presentation. Instead, an advocate usually can best address adverse arguments within the framework of his or her affirmative arguments. An advocate sometimes can answer an opponent's argument implicitly by simply presenting the advocate's answer without explicitly stating the opponent's point. At other times, to deal with an opponent's arguments effectively, writers or speakers will need to explicitly state those arguments. Nevertheless, this usually should not be done at the beginning or end of a section of a writing or speech in order to avoid overemphasizing the opponent's point. Moreover, an advocate should be careful about the language used to respond to a contrary argument.

90. SHAPO, supra note 89, at 467 ("Establishing your own argument requires rebutting opposing argument."); Antonin Scalia & Bryan A. Garner, Making Your Case: The Art of Persuading Judges 10 (1st ed. 2008) ("Your case must take into account the points the other side is likely to make.").

91. Richard K. Neumann, Jr., Legal Reasoning and Legal Writing: Structure, Strategy, and Style 321 (2009) ("If you do not [deal with the difficulties in your case], the court will assume that you have no arguments worth making on the subject."); Scalia & Garner, supra note 90, at 16 ("[A]ny judge who thinks of these objections even before your opponent raises them will believe that you've overlooked the obvious problems with your argument.").

92. See Oates & Enquist, supra note 70, at 296 ("Your goal is to respond to or counter the other side's arguments without giving them too much airtime."); SHAPO, supra note 89, at 467 ("Yet you do not want to overemphasize those opposing arguments by setting them forth in all their untarnished glory and then scrambling to recoup your losses.").

93. Oates & Enquist, supra note 70, at 295 ("As a general rule, you set out your own arguments first, give your own arguments the most airtime, and use language that strengthens your arguments and undermines the other side's arguments."); SHAPO, supra note 89, at 467 ("[M]ake your counter-argument affirmatively and as an integral part of your case, rather than as a separate section devoted only to counter-argument.").

94. Oates & Enquist, supra note 70, at 386 ("In responding to the other side's arguments, avoid repeating the other side's argument. Instead, respond to the argument."); SHAPO, supra note 89, at 467 ("[A]ddress the argument opposing counsel is likely to make implicitly rather than explicitly, by answering it as you present it.").

95. SHAPO, supra note 89, at 468 ("[P]otential weaknesses in your theory of the case should not be discussed at the beginning of an issue or subissue or at the end of such a discussion. Deal with them in the middle of the argument concerning that point."); Scalia & Garner, supra note 90, at 15 ("It's an age-old rule of advocacy that the first to argue must refute in the middle, not at the beginning or the end. Refuting first puts you in a defensive posture; refuting last leaves the audience focused on your opponent's arguments rather than your own."); see also Beazley, supra note 85, at 98 ("[A]ddressing negative authorities almost never means that you should begin your argument by addressing negative authorities."
or point. To avoid appearing defensive, writers or speakers usually will need to reword the response to an opponent's argument so that their position is stated in the affirmative rather than phrased as a denial of the opponent's argument.96

4. Dealing with Adverse Authority. Similarly, an effective advocate must deal with existing authority that may suggest a result contrary to the one being sought.97 A legal advocate has a professional ethical obligation to disclose adverse authority in the controlling jurisdiction of which the advocate is aware that is directly adverse to the advocate's position when the opposing side has failed to do so.98 Distinguishing adverse authority from the present circumstances is one of the most common ways to deal with adverse authority.99 Another way to deal with adverse authority, although disfavored unless absolutely necessary,100 is to explain why the authority should be overturned and not followed.101 An advocate might describe how the rule from the authority was unfounded and constructed on shaky footing when originally enacted.102 An advocate alternatively might discuss how the decision is no longer appropriate given current public policy.103

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96. See OATES & ENQUIST, supra note 70, at 295 ("[U]se language that strengthens your arguments and undermines the other side's arguments."); NEUMANN, supra note 91, at 325 ("You will win more easily if the court's dominant impression is that you deserve to win, rather than that your adversary deserves to lose. A defensive tone can undermine an otherwise worthwhile argument.").

97. SHAPO, supra note 89, at 469 ("Your brief will be taken more seriously if you go below the surface to rebut adverse authority with reasonable arguments. By doing so, you show the strength of your client's position."). See also NEUMANN, supra note 91, at 324 ("Adverse authority will not go away just because you ignore it: if the court does not find it, opposing counsel probably will.").


99. NEUMANN, supra note 91, at 324 ("If the adverse authority is precedent, consider distinguishing it, focusing on significant—and not merely coincidental—differences between the precedent and your case."); SHAPO, supra note 89, at 469 ("The easiest way to overcome contrary authority is to distinguish the cases on the facts.").

100. NEUMANN, supra note 91, at 324 ("In general, do not ask a court to overrule mandatory authority if you can win through distinguishing, reconciliation, or some other skill of precedent analysis. Judges simply prefer distinguishing and reconciling precedent to overruling it."); SCALIA & GARNER, supra note 90, at 19 ("If, for example, a leading case comes out differently from your desired result, don't argue that it should be overruled if there is a reasonable basis for distinguishing it.").

101. SHAPO, supra note 89, at 469 ("[A]n advocate can] ask a court to overturn a decision because it is no longer sound public policy.").

102. See NEUMANN, supra note 91, at 324 (noting that "another approach is to attack the precedent head-on, challenging its validity on the grounds that it is poorly reasoned").

103. SHAPO, supra note 89, at 469 ("Here you might look at persuasive precedents from other jurisdictions that have rules you believe are more indicative of current public policy").
Even another strategy is for an advocate to demonstrate how the rule concerned is not working well. Nevertheless, to effectively persuade a decision maker, a writer or speaker must deal with adverse authority.

5. Literary Reference or Allusion for Nonthematic Metaphoric Comparison. As stated above, an allusion consists of a subtle or indirect reference to another’s work with which a reader is familiar. Within the many types of allusions or references that an author or speaker can use, a literary reference or allusion can be particularly effective. One major use of a literary reference is for nonthematic metaphoric comparison. According to Michael Smith, in a nonthematic literary reference, the writer or speaker “makes reference to a literary work in an effort to draw a comparison between some person or event in his or her [situation] and a character or scene in the literary work.” The comparison “is not made to evoke the general theme of the literary work,” and in that way is nonthematic.

A writer or speaker can use such nonthematic literary references to introduce a metaphor. When using a literary reference for nonthematic metaphoric comparison, writers or speakers compare some aspect of their situation “to a character, scene, or event from a literary work,” but the comparison is figurative or symbolic rather than literal. Such use of a literary reference can help “communicate the substance of an argument quickly and efficiently” because the reference should be familiar to the reader or listener and, therefore, draws upon the reader or listener's past experiences. Nonthematic metaphoric literary references further all three of the manners of persuasion from classic rhetoric. Such references advance the logos function by helping to communicate the substance of the writer or speaker’s argument. Additionally, depending on the particular manner in which they are

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104. Id. ("You could also demonstrate that, as a practical matter, a rule is not working well—it is too difficult to administer or too vague.").
105. SMITH, supra note 51, at 319. See also supra note 77 and corresponding text.
106. See generally SMITH, supra note 51, at 251-307 (discussing the various uses of literary references).
107. Id. at 253.
108. Id.
109. Id.
110. Id.
111. Id.
112. Id. at 258.
113. See supra notes 51–67 and accompanying text (providing a brief overview of classic rhetoric).
114. SMITH, supra note 51, at 259.
used, a nonthematic metaphoric allusion to a literary work can enhance an argument’s emotional force, furthering the pathos function, by evoking the reader or listener’s feelings when reading the original work. Finally, such a literary reference can advance the ethos function by demonstrating the writer or speaker’s creativity and resourcefulness, and that the writer or speaker is educated and well-read. Thus, nonthematic literary references can be a powerful rhetorical technique.

IV. ANALYZING THE THREE MAJOR SPEECHES OF CANDIDATE LINCOLN

Lincoln’s speeches were especially important to his rise as a prominent national figure. As Eric Foner recognized, Lincoln “rose to prominence on the basis of oratory, not a record of public service.” Unlike many politicians of today, “Lincoln wrote his speeches himself . . . and because he preferred to speak from a written text, his writing style lives on through his speeches.” The practice at the time was for presidential candidates not to campaign on their own behalf once officially nominated. Instead, speeches made by the candidate prior to his official nomination were “extensively circulated as campaign texts.” In fact, Lincoln wrote his Cooper Union address with the goal of it “not only playing well” during its live recitation, but so that it also would “impress newspaper readers around the country.” The specific manner in which the speech appeared in print was so important to Lincoln that during his presidential campaign, Lincoln himself “prepared

115. Id. at 260.
116. Id. at 261.
117. FONER, supra note 3, at 64.
118. Judith D. Fischer, Abraham Lincoln as a Legal Writer, 11 NEV. L.J. 82, 86 (2010). See also KAPLAN, supra note 1, at 1 (“Since Lincoln, no president has written his own words and addressed his contemporary audience or posterity with equal and enduring effectiveness.”); HAROLD HOLZER, LINCOLN AT COOPER UNION: THE SPEECH THAT MADE ABRAHAM LINCOLN PRESIDENT 32 (2004) (“Lincoln wrote all of his speeches himself, pen to paper, word by word.”).
119. ADAM GOODHEART, 1861: THE CIVIL WAR AWAKENING 32 (2011) (“Following the precedent set by nearly every presidential nominee since Washington, [Lincoln] did not go out on the stump himself, which would have been unseemly.”); RICHARD CARWARDINE, LINCOLN: A LIFE OF PURPOSE AND POWER 114 (2006) (“Lincoln followed custom for the duration of the campaign, by avoiding any suggestion of direct personal involvement. He made no speeches, gave no public interviews, issued no letters or statements of public policy.”).
120. CARWARDINE, supra note 119, at 117.
121. HOLZER, supra note 118, at 115.
his Cooper Union speech for publication." Therefore, the customs of the times with regard to presidential campaigns increased the importance of prior speeches of presidential candidates, and the texts of Lincoln's previous, prominent speeches were an important component of his presidential campaign.

A. Peoria, Illinois Speech (October 16, 1854)

1. Context and Significance of The Speech. At the time of the Peoria speech, Lincoln had been campaigning for the re-election of United States Congressman Richard Yates and running himself for a seat in the Illinois legislature. The last political office that he had held was five years earlier as a United States congressman. Earlier in the year, United States Senator Stephen Douglas of Illinois had steered to passage in Congress the Kansas-Nebraska Act, which allowed settlers in these frontier areas to vote on whether to have slavery. This legislation repealed the agreement between free Northern states and slave-holding Southern states, arrived at through the Missouri Compromise of 1820, that slavery would not exist in new states north of Missouri.

Lincoln began speaking out against the Kansas-Nebraska Act in August 1854. The most famous representation of Lincoln's arguments against the Act is the speech that he made at Peoria, Illinois on October 16, 1854. The speech was the longest of his political career consisting of seventeen thousand words, taking over three hours to give, and taking up forty-one pages in Lincoln's collected works. Lincoln used the speech to set out his basic argument that the Kansas-Nebraska Act departed from the founding fathers' original intent, as set

122. CARWARDINE, supra note 119, at 117. Julie Oseid notes that Lincoln as president "wrote [his speeches] for the reader, knowing that [they] would be transcribed in newspapers across the country." Oseid, supra note 7, at 36.
123. CARWARDINE, supra note 119, at 60-61; LEHRMAN, supra note 4, at 14.
124. RIZER, supra note 2, at 71-73; Davis, supra note 2, at 67. See generally DONALD, supra note 28, at 119-41 (discussing Lincoln's term in the United States House of Representatives).
125. FONER, supra note 3, at 63.
126. Id.; LEHRMAN, supra note 4, at 8; RIZER, supra note 2, at 73.
127. CARWARDINE, supra note 119, at 60-61; FONER, supra note 3, at 65.
128. LINCOLN SPEECHES 1832-1858, supra note 5, at 307-48.
129. FONER, supra note 3, at 65.
131. LINCOLN SPEECHES 1832-1858, supra note 5, at 307-48.
out in the Declaration of Independence, to prevent the spread of slavery.\textsuperscript{132}

Lincoln historian Douglas Wilson describes the speech as “the keystone of Lincoln’s political career.”\textsuperscript{133} Lincoln would return to the arguments and themes set out in the Peoria speech repeatedly over the next six years until he won the presidency in 1860.\textsuperscript{134} Lincoln presented his arguments in the Peoria speech in such a brilliant manner that the soon-to-be editor-in-chief of the \textit{Chicago Tribune}, Horace White, described the speech as the “greatest” ever delivered in Illinois, and half a century later, he proclaimed, “I feel under its spell to this day.”\textsuperscript{135}

2. Analysis of The Speech. In the following passages of the Peoria speech, Lincoln uses several persuasive techniques effectively. First, Lincoln presents his arguments against the Kansas-Nebraska Act and deals with Douglas’s arguments for the Kansas-Nebraska Act as well as adverse authority, in the form of the United States Constitution, in an affirmative manner. Second, Lincoln uses carefully chosen language designed to arouse the listener’s emotions, serving the pathos function. Third, he uses repetition for emphasis and to advance the logic of his argument, serving the logos function. Finally, Lincoln uses allusion and metaphor to elucidate and drive home his arguments concerning the harmful effects of slavery.

Lincoln begins the speech by providing an extensive and detailed examination of how slavery had been treated in the development of new United States territories. He discusses the Northwest Ordinance of 1787, which prohibited the establishment of slavery in the territory formerly owned by Virginia and that eventually became Ohio, Indiana, Illinois, Michigan, and Wisconsin.\textsuperscript{136} Lincoln also talks about the Missouri Compromise of 1820, which allowed Missouri and states south of thirty-six degrees and thirty minutes north latitude, formed out of the territory received from France in the Louisiana Purchase, to have slavery but prohibited slavery in any states formed out of the territory north of that line.\textsuperscript{137} He also examines the Compromise of 1850, which allowed California to become a “free” state, but allowed residents of the

\textsuperscript{132} \textit{Id.} at 315, 328, 339-40.

\textsuperscript{133} WILSON, \textit{supra} note 130, at 37.

\textsuperscript{134} See FONER, \textit{supra} note 3, at 70 (“[T]he Peoria speech laid the foundation for [Lincoln’s] approach to the slavery question for the next six years.”); LEHRMAN, \textit{supra} note 4, at 101 (stating that the Peoria “speech established the principles, the policies, and arguments whereby he made his way on an improbable pilgrimage to the presidency”).

\textsuperscript{135} FONER, \textit{supra} note 3, at 70.

\textsuperscript{136} LINCOLN SPEECHES 1832-1858, \textit{supra} note 5, at 308-09.

\textsuperscript{137} \textit{Id.} at 310-11.
Utah and New Mexico territories to decide for themselves when they applied for statehood whether to allow slavery.\footnote{Id. at 313-14.} Lincoln goes through this historical explanation to establish how the Kansas-Nebraska Act unmistakably repealed the Missouri Compromise of 1820.\footnote{Id. at 315.}

Lincoln goes on to explain why the Act’s repeal of the Missouri Compromise is wrong:

This declared indifference, but as I must think, covert real zeal for the spread of slavery, I can not but hate. I hate it because of the monstrous injustice of slavery itself. I hate it because it deprives our republican example of its just influence in the world—enables the enemies of free institutions, with plausibility, to taunt us as hypocrites—causes the real friends of freedom to doubt our sincerity, and especially because it forces so many really good men amongst ourselves into an open war with the very fundamental principles of civil liberty—criticizing the Declaration of Independence, and insisting that there is no right principle of action but self-interest.\footnote{Id.}

To start, Lincoln deals with Senator Stephen Douglas’s adverse argument. Lincoln re-characterizes Douglas’s argument that the Kansas-Nebraska Act is indifferent to whether the new territories allow slavery, and Lincoln asserts that instead the Act actually demonstrates a “real zeal for the spread of slavery.”\footnote{Id.}

Lincoln then uses very strong language to describe his feelings about this desire to spread slavery. He states twice in very short phrases that he “hate[s]” it, explaining that he “hate[s]” it because of the “monstrous injustice of slavery itself.”\footnote{Id. Lincoln often included italicized words in the written versions of his speeches. Therefore, readers should assume that italics used in the text of Lincoln’s speeches are original unless indicated otherwise.} Presumably, Lincoln used such passionate terms to arouse the emotions of listeners, and subsequent readers, serving the pathos function. Lincoln then, in an extremely long sentence, goes on to list exactly what he “hate[s],” using that term again, about the institution of slavery itself.\footnote{Id. The sentence, in fact, is eighty-one words long. Id.} The repetition of the term “hate” serves to emphasize his stated points. It also introduces the substantive points that follow.
Lincoln's main argument is set out first: slavery hurts the United States' world influence. The subsequent points listed then serve to explain exactly how the existence of slavery in the United States hurts its world influence: (1) slavery gives credibility to the charges of “enemies of free institutions” that Americans are “hypocrites,” (2) slavery causes the friends of the United States “to doubt our sincerity,” and (3) slavery “forces . . . good men . . . into an open war with the very fundamental principles of civil liberty” as set out in the Declaration of Independence and to “insist[] that there is no right principle of action but self-interest.” Therefore, Lincoln's repetition of the word “hate” serves the pathos function and reinforces the logic of his arguments by capturing the reader's attention and transitioning the reader into Lincoln's substantive arguments about how slavery hurts American interests.

Through his third point, Lincoln reinforces the main theme of the speech that the spread of slavery, if not the institution itself, goes against the principles set out in the Declaration of Independence. He also equates the support of slavery to a criticism of the Declaration of Independence and asserts that the only justification for slavery is self-interest. Consequently, the entire listing of ills caused by the existence of slavery serves the logos function by demonstrating in a concrete and specific fashion exactly how slavery hurts American interests.

In this next excerpt from the speech, Lincoln uses repetition and allusion to advance the logic of his arguments against slavery:

The doctrine of self government [sic] is right—absolutely and eternally right—but it has no just application, as here attempted. Or perhaps I should rather say that whether it has such just application depends upon whether a negro is not or is a man. If he is not a man, why in that case, he who is a man may, as a matter of self-government, do just as he pleases with him. But if the negro is a man, is it not to that extent, a total destruction of self-government, to say that he too shall not govern himself? When the white man governs himself that is self-government; but when he governs himself, and also governs another man, that is more than self-government—that is despotism. If the negro is a man, why then my ancient faith teaches me that “all men are created equal;” and that there can be no moral right in . . . one man's making a slave of another.

144. See id.
145. Id. (emphasis omitted).
146. Id.
147. Id. at 328.
Here, Lincoln again is dealing with one of Douglas's arguments, specifically the argument that the Kansas-Nebraska Act is beneficial because it furthers "self-government" by allowing territories to vote on whether to allow slavery. However, Lincoln explains that while the concept of "self-government" is "right" as an abstract concept, when the concept is applied to the extension of slavery, in the form of the Kansas-Nebraska Act, it is not "just."  

Lincoln begins this explanation by contrasting the terms "right" and "just" in the first two sentences of the excerpt. He asserts that "self-government" is not only right, but is "absolutely and eternally right." Nevertheless, self-government "has no just application" as attempted by the Kansas-Nebraska Act. Rather whether it has "just application depends upon whether a negro is not or is a man." Lincoln goes on to demonstrate the logical fallacy of the Kansas-Nebraska Act promoting self-government by repeating and contrasting the term "self-government" with the terms "govern" and "governs," while also repeating and contrasting the terms "negro," "man," and "white man." As long as one considers "negros" to be "men," then the expansion of slavery constitutes "despotism" rather than "self-government" because it allows the "white man" to "govern[]" "another man," the "negro." This repetition of the terms "negro," "white man," and "man" culminates in Lincoln's reference to the Declaration of Independence that "all men are created equal" and statement that "there can be no moral right in . . . one man's making a slave of another."

This last sentence shows Lincoln effectively using allusion and diction. He alludes to the Declaration of Independence being comparable to the Bible by referring to the Declaration as "my ancient faith." He then furthers this allusion by stating, "[T]here can be no moral right in . . . one man's making a slave of another." In this way, Lincoln demonstrates the immorality of the institution of slavery itself.

Lincoln's allusion also helps him to deal implicitly with adverse authority. The adverse authority in this case is the United States Constitution. The United States Constitution made compromises

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148. Id.
149. Id.
150. Id.
151. Id.
152. Id.
153. Id. (emphasis omitted).
154. Id. (emphasis added).
155. Id.
156. Id.
concerning slavery that were awkward for Lincoln's position on slavery. For example, the Constitution originally counted a slave as only three-fifths of a person for the purposes of figuring out how to apportion representation in the House of Representatives. The Constitution also required that runaway slaves be returned to their owners and that no state could enact laws that would free a runaway slave. The Constitution also did not allow the prohibition of the slave trade until the year 1808. However, Lincoln simply ignored the Constitution altogether in the text of the speech and, instead, looked to the principles of equality set out in the Declaration of Independence as the true touchstone of American values. Referring to the Declaration as his "ancient faith" furthers this concept of the Declaration as the true origin of American beliefs.

In this last excerpt from the Peoria speech, Lincoln uses metaphor and repetition to underscore his arguments:

Our republican robe is soiled, and trailed in the dust. Let us repurify it. Let us turn and wash it white, in the spirit, if not the blood, of the Revolution. Let us turn slavery from its claims of "moral right," back upon its existing legal rights, and its arguments of "necessity." Let us return it to the position our fathers gave it; and there let it rest in peace. Let us re-adopt the Declaration of Independence, and with it, the practices, and policy, which harmonize with it. Let north and south—let all Americans—let all lovers of liberty everywhere—join in the great and good work. If we do this, we shall not only have saved the Union; but we shall have so saved it, as to make, and to keep it, forever worthy of the saving. We shall have so saved it, that the succeeding millions of free happy people, the world over, shall rise up, and call us blessed, to the latest generations.

Lincoln begins the passage by using a concrete metaphor comparing the republican ideals of the United States to a robe which "is soiled" by the institution of slavery and "trailed in the dust." He calls for "us" to "repurify it" and "wash it white, in the spirit, if not the blood, of the Revolution." This metaphor serves both to evoke emotion in listeners, and subsequent readers, through this vivid language and to clarify Lincoln's points that the institution of slavery continues to taint the

158. U.S. CONST. art. IV, § 2, cl. 3.
160. LINCOLN SPEECHES 1832-1858, supra note 5, at 339-40.
161. Id. at 339.
162. Id. at 339-40.
United States and that the country needs to return to its founding principles of equality as set out in the Declaration of Independence.

Lincoln repeats the term "let," using it nine times throughout this passage, for emphasis and to include and unify listeners in his call to end the expansion of slavery.163 This technique culminates in his call to "[l]et north and south—let all Americans—let all lovers of liberty everywhere—join in the great and good work."164 Lincoln uses a death metaphor to further the theme of return to the values embodied by the Declaration of Independence. He states, "Let us return [slavery] to the position our fathers gave it; and there let it rest in peace."165

Lincoln can also be seen dealing with adverse authority, the Constitution, implicitly by calling listeners to "re-adopt the Declaration of Independence, and with it, the practices, and policy, which harmonize with it."166 Lincoln again uses the Declaration of Independence as the exemplar of American ideals and ignores the uncomfortable compromises, noted above, made between the "free" and slave-holder states in the Constitution. Lincoln may have used the term "re-adopt" to imply that the United States had strayed in the Constitution from the egalitarian principles expressed in the Declaration of Independence, which ultimately injured American interests. Thus, only by going back and more closely adhering to the principles from the Declaration of Independence could the United States remedy the mistaken course concerning slavery contained in the Constitution.

This use of the Declaration of Independence allowed Lincoln to present his opposition to the expansion of slavery as a conservative position because it appeared to simply call for a "return to the policy inaugurated by the revolutionary generation."167 However, according to Eric Foner, Lincoln's position actually was "a form of antislavery advocacy that marked a radical departure from national policies that for decades had fostered the spread of slavery."168 The anti-slavery credentials of many of the nation's founders were not as strong as Lincoln implied.169

163. Id. This specific use of repetition, repeating the same word at the beginning of successive clauses or sentences, is termed anaphora. SMITH, supra note 51, at 334.
164. LINCOLN SPEECHES 1832-1858, supra note 5, at 340.
165. Id.
166. Id.
167. FONER, supra note 3, at 72.
168. Id.
169. See id. at 71 ("Many of the founders did profess antislavery ideas, but few did anything to implement them and some had no desire whatever to see slavery end."). But see LEHRMAN, supra note 4, at 105 ("There was, during the Founding era, a common sense, admittedly not universal, that slavery must be restricted, both for high-minded and self-interested motives. Thus arose during this period the hope for the ultimate extinction of
Nevertheless, Lincoln finesses these inconsistencies by repeatedly referring back to the egalitarian language and principles presented in the Declaration of Independence.

Lincoln ends this passage by repeating and playing off the terms “saved” and “saving:”

If we do this, we shall not only have saved the Union; but we shall have so saved it, as to make, and to keep it, forever worthy of the saving. We shall have so saved it, that the succeeding millions of free happy people, the world over, shall rise up, and call us blessed, to the latest generations. This technique serves the pathos function of making his ending pleasing to the ear. The particular choice of the words “saved” and “saving” also advances the logic of Lincoln’s arguments by emphasizing that his countrymen should not only be concerned about saving the Union by keeping the southern states from seceding, but also saving the country from the evils of the institution of slavery. The last sentence presumably refers back to Lincoln’s listing the manners in which slavery hurts the United States’ world influence because, according to Lincoln, once the blight of slavery is eliminated from the United States, the country will be restored to its proper influence, and people “the world over” will sing its praises.

B. “House Divided” Speech (June 16, 1858)

1. Context and Significance of The Speech. Despite his eloquence in describing the foibles of the Kansas-Nebraska Act, Lincoln would not serve in a political office in 1854 or shortly thereafter. Although elected to the Illinois legislature in the fall of 1854, Lincoln resigned so that he could be eligible to be the United States senator for Illinois. However, that winter the Illinois legislature would elect
anti-slavery Democrat Lyman Trumbull to that post.  

Following this defeat, Lincoln would play a key role in 1856 in the formation of the Republican Party in Illinois. Although Lincoln extensively campaigned throughout the state for Republican presidential candidate John Frémont, a Democrat, James Buchanan, carried Illinois and was elected president in 1856.

A Supreme Court decision early the following year would further set back the efforts of anti-slavery activists. In March 1857, the United States Supreme Court issued the Dred Scott v. Sanford decision, authored by Chief Justice Roger Taney, which declared that African-Americans had no rights as citizens under the United States Constitution. Furthermore, the opinion asserted that "because the Constitution 'distinctly and expressly affirmed' the right to property in slaves, slaveholders could bring them into the federal territories." The Court even stated in dicta that the Missouri Compromise had been unconstitutional. This led President Buchanan to announce "that slavery now existed in all the territories, 'by virtue of the Constitution.'" Through what was known as the Lecompton Constitution, Buchanan then attempted to permit slavery in the territory of Kansas.

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173. CARWARDINE, supra note 119, at 64; FONER, supra note 3, at 75-76.
174. CARWARDINE, supra note 119, at 66-68 (noting that in February 1856 Lincoln "played a leading role in drafting the declaration of principles and the resolutions" for a state gathering of anti-slavery journalists and describing Lincoln's leading role in May 1856 at an Illinois state "anti-Nebraska convention"); FONER, supra note 3, at 78 (noting that Lincoln at a February 1856 meeting of anti-slavery editors "helped to draft resolutions that deftly covered both moderate and radical antislavery ground").
175. FONER, supra note 3, at 81 ("Lincoln threw himself into the [1856 presidential] campaign, all but abandoning his law practice in the fall to deliver over 100 speeches for Frémont.").
176. CARWARDINE, supra note 119, at 70; FONER, supra note 3, at 82.
177. 60 U.S. 393 (1857).
178. Id. at 406 ("[T]he plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the Constitution of the United States, and, consequently, was not entitled to sue in its courts."). See also FONER, supra note 3, at 92; CARWARDINE, supra note 119, at 71.
179. FONER, supra note 3, at 92. See also Dred Scott, 60 U.S. at 451 ("[T]he right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every State that might desire it, for twenty years.").
180. Dred Scott, 60 U.S. at 452 ("[I]t is the opinion of the court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void . . . .").
181. FONER, supra note 3, at 98.
when it became a state, against the wishes of a majority of its residents. Stephen Douglas, though, opposed the legislation because it defied the principle of popular sovereignty and successfully aided its defeat in Congress.

This effort by Senator Douglas to defeat the Lecompton Constitution led some Republicans, most prominently the editor of the *New York Tribune*, Horace Greeley, to suggest Douglas not be opposed in his reelection campaign in 1858 to the United States Senate seat for Illinois. Illinois Republicans spurned such proposals and, at a convention in June of 1858, nominated Lincoln as their candidate for the Senate. Before the popular election of senators, it was unprecedented to nominate a person as the party candidate prior to the state legislature’s meeting to elect the state’s United States senator. Therefore, when Lincoln gave his “House Divided” speech, speaking at the end of the convention in order to accept his nomination and launching his senatorial campaign, he “set out to demolish the idea that Republicans could in good conscience support Douglas.” Lincoln linked Douglas to a Southern conspiracy to extend slavery throughout the United States and contrasted this with Lincoln’s unassailable credibility as an opponent of the extension of slavery. After the speech, some of Lincoln’s supporters feared that Lincoln was too effective and had opened himself up to charges that he was an anti-slavery radical.

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182. *Id.*
184. CARWARDINE, *supra* note 119, at 74 (“Greeley began to contemplate giving anti-Lecompton Democrats a clear run in the fall elections, perhaps even welcoming them into the party.”); FONER, *supra* note 3, at 98 (“Horace Greeley, perhaps the most influential Republican journalist, whose *New York Tribune* circulated widely throughout the North, urged Illinois Republicans to support Douglas’s reelection to the Senate.”).
186. CARWARDINE, *supra* note 119, at 75 (“[W]hat they did, imposing on the state legislature a subordinate role in selecting a U.S. senator by morally removing its freedom to choose, was practically unheard of.”); FONER, *supra* note 3, at 99 (“In an unprecedented move, the delegates named Lincoln the party’s candidate for the U.S. Senate. (Normally, such a decision awaited the convening of the next legislative session.”).
188. See infra Section IV.B.2.
189. See WILSON, *supra* note 130, at 99 (“[M]any of his closest associates thought the image [of a “house divided”] had been too successful and, having been turned into a rallying cry for the opposition, was responsible for the Republican defeat.”); FONER, *supra* note 3, at 101 (“Some of Lincoln’s friends feared the speech would injure his chances in central Illinois, enabling Democrats to portray him as a dangerous radical.”); LEHRMAN, *supra* note 4, at 198 (“Some of Mr. Lincoln’s supporters and opponents thought his [‘House Divided’] speech so radical that it would doom his chances to win the Senate seat in Illinois.”).
2. Analysis of The Speech. In the first excerpt from the speech, Lincoln can be seen using alliteration, literary reference, metaphor, repetition, and affirmative, responsive arguments all to his advantage to argue persuasively that he is the proper politician to prevent the expansion of slavery:

If we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it.

We are now far into the fifth year, since a policy was initiated, with the avowed object, and confident promise, of putting an end to slavery agitation.

Under the operation of that policy, that agitation has not only, not ceased, but has constantly augmented.

In my opinion, it will not cease, until a crisis shall have been reached, and passed.

“A house divided against itself cannot stand.”

I believe this government cannot endure, permanently half slave and half free.

I do not expect the Union to be dissolved—I do not expect the house to fall—but I do expect it will cease to be divided.

It will become all one thing, or all the other.

Either the opponents of slavery, will arrest the further spread of it, and place it where the public mind shall rest in the belief that it is in course of ultimate extinction; or its advocates will push it forward, till it shall become alike lawful in all the States, old as well as new—North as well as South.

Have we no tendency to the latter condition?

Let any one who doubts, carefully contemplate that now almost complete legal combination—piece of machinery so to speak—compounded of the Nebraska doctrine, and the Dred Scott decision. Let him consider not only what work the machinery is adapted to do, and how well adapted; but also, let him study the history of its construction, and trace, if he can, or rather fail, if he can, to trace the evidences of design, and concert of action, among its chief bosses, from the beginning.190

Lincoln begins his speech by using alliteration effectively by repeating the “wh” sound in using the words “where,” “whither,” and “what”: “If we could first know where we are, and whither we are tending, we could then better judge what to do, and how to do it.”191 In this sentence, Lincoln also sets out a clear roadmap of the topics that he will cover in his speech. This roadmap allows the reader to better recognize the
points that Lincoln will make throughout the speech. The alliteration strengthens this effect by making these points stand out.

Lincoln then attacks one of Senator Douglas's primary arguments for enacting the Kansas-Nebraska Act: that passage of the Act would quiet disputes concerning the institution of slavery. Lincoln states, "We are now far into the fifth year, since a policy was initiated, with the avowed object, and confident promise, of putting an end to slavery agitation." In this manner, Lincoln emphasizes that almost five years have passed since Congress enacted the Act. However, over that time, the Act had not achieved the goal of quieting "slavery agitation," but had the opposite effect: "Under the operation of that policy, that agitation has not only, not ceased, but has constantly augmented." Lincoln then describes what he believes will be the result of the increased agitation over the issue of slavery: "In my opinion, it will not cease, until a crisis shall have been reached, and passed." Lincoln next provides an excellent example of using a literary reference effectively for nonthematic metaphoric comparison. Lincoln demonstrates the deleterious effect on the nation of the countervailing forces simultaneously attempting to constrict and expand the institution of slavery. Lincoln quotes from the Bible to make his point in an especially memorable manner: "A house divided against itself cannot stand." In this passage from the Bible, Jesus is answering the Pharisees who charged that Jesus had used the power of the devil in order to heal a possessed person. Jesus states that if in saving the person concerned the devil cast himself out, he would be "divided against himself," and "how shall then his kingdom stand?" Lincoln, however, does not necessarily use the biblical quote to refer to this specific theme. Instead, Lincoln uses the reference to emphasize how the United States is "divided" between the opponents and advocates of slavery and how this is harmful for the nation. Lincoln uses the quote to introduce the section of the speech where he talks about the dichotomy between these two groups and their differing goals. He also emphasizes the consequences of this struggle by talking about how the

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192. Id.
193. Id.
194. Id.
195. See supra Section III.B.5 (explaining the use of literary references for non-thematic metaphoric comparison).
196. LINCOLN SPEECHES 1832-1858, supra note 5, at 426.
197. Matthew 12:24-28 (King James). The exact quote from which Lincoln borrowed is: "Every kingdom divided against itself is brought to desolation; and every city or house divided against itself shall not stand . . . ." Matthew 12:25.
United States government “cannot endure, permanently half slave and half free.”

Lincoln also uses the biblical quote to introduce the metaphor of the United States dealing with the slavery issue as being a “house divided.” However, in Lincoln’s view, the United States ultimately will “cease to be divided.” In the end, either the opponents of slavery will do away with the institution or the advocates of slavery will succeed in having it pervade all states. Therefore, in Lincoln’s words, the United States “will become all one thing, or all the other.” Thus, Lincoln uses the biblical reference to introduce in an especially memorable manner his discussion of the battle between the supporters and opponents of slavery.

Lincoln goes on to emphasize the two contrasting potential outcomes and the opposing goals of the opponents and advocates of slavery:

Either the opponents of slavery, will arrest the further spread of it, and place it where . . . it is in course of ultimate extinction; or its advocates will push it forward, till it shall become alike lawful in all the States, old as well as new—North as well as South.

Lincoln uses some vivid and effective terms in this passage when describing the desired result of each group. First, he talks of the opponents of slavery “arrest[ing] the further spread of it.” By using the words “arrest” and “spread,” Lincoln evokes the image of halting the outbreak of a contagious disease. Second, he discusses opponents of slavery putting it on the “course of ultimate extinction.” While Lincoln was not the first person to use this language, the terms are well chosen because they make clear the goal of the opponents of slavery.

Third, Lincoln uses vivid imagery to demonstrate the active efforts of the advocates of slavery to spread the institution by “push[ing]” it forward. Thus, slavery advocates are taking affirmative and intentional steps to expand slavery in the United States. Finally,
Lincoln emphasizes the desired final result of slavery advocates by not stopping at stating simply that slavery will exist in "all the States," but by using repetition for emphasis and restating the result twice: slavery will exist in "old [states] as well as new—North as well as South." This imagery combines to provide the impression of slavery spreading unchecked in every direction.

Following this, Lincoln asks, "Have we no tendency to the latter condition?" With this rhetorical question, Lincoln transitions into his extensive discussion of the actions of the advocates of slavery to bring about the expansion of slavery throughout the United States. Lincoln begins this discussion with a simile comparing these efforts to "machinery" set up to expand slavery: "Let any one who doubts, carefully contemplate that now almost complete legal combination—piece of machinery so to speak—compounded of the Nebraska doctrine, and the Dred Scott decision." Lincoln then uses this comparison to set out a clear roadmap of what exactly he will be discussing:

Let him consider not only what work the machinery is adapted to do, and how well adapted; but also, let him study the history of its construction, and trace, if he can, or rather fail, if he can, to trace the evidences of design, and concert of action, among its chief bosses, from the beginning.

In referring to "the evidences of design, and concert of action" between the machine's "chief bosses," Lincoln begins presenting the support for his argument that a conspiracy to nationalize slavery existed between Senator Stephen Douglas who steered the Kansas-Nebraska Act through Congress to eventual passage, Chief Justice Roger Taney who authored the Dred Scott decision, and Presidents Franklin Pierce and James Buchanan. Lincoln then focuses on the history of the "machine" created by advocates of slavery. He explains how the Kansas-Nebraska Act worked in concert with the Supreme Court's Dred Scott decision to further the expansion of slavery, and how both President Pierce in his outgoing speech and President Buchanan in his inaugural address,
before the Court issued *Dred Scott*, advised the public to adhere to and abide by the upcoming decision of the Supreme Court.\(^\text{214}\)

In the next passage, Lincoln sets up an effective metaphor to demonstrate the evidence that he saw of the conspiracy between these actors. Lincoln begins by examining a statement by Douglas that the Kansas-Nebraska Act would allow settlers in these territories to be “perfectly free” to decide on their own whether to allow slavery “subject only to the Constitution”\(^\text{215}\) and how this statement later left room for the Supreme Court in the *Dred Scott* opinion to conclude that settlers in fact did not have the right to decide this:

This shows exactly where we now are; and partially also, whither we are tending.

It will throw additional light on the latter, to go back, and run the mind over the string of historical facts already stated. Several things will now appear less dark and mysterious than they did when they were transpiring. The people were to be left “perfectly free” “subject only to the Constitution.” What the *Constitution* had to do with it, outsiders could not then see. Plainly enough now, it was an exactly fitted niche, for the Dred Scott decision to afterwards come in, and declare the perfect freedom of the people, to be just no freedom at all.\(^\text{216}\)

Lincoln uses repetition and plays on the term “perfect freedom” by concluding that the Supreme Court in the *Dred Scott* decision decided that this meant “no freedom at all.”\(^\text{217}\)

Furthermore, by discussing how Douglas’s statement created “an exactly fitted niche,” Lincoln sets up the use of a very effective metaphor comparing the plan to expand slavery in the United States to a “plan or draft” to build a house.\(^\text{218}\) The purpose of this metaphor is to explain why although Lincoln cannot “know” that a conspiracy existed, he can still “believe” this conspiracy existed:

We can not [sic] absolutely know that all these exact adaptations are the result of preconcert. But when we see a lot of framed timbers, different portions of which we know have been gotten out at different times and places and by different workmen—Stephen, Franklin, Roger and James, for instance—and when we see these timbers joined together, and see they exactly make the frame of a house or a mill, all the tenons and mortices exactly fitting, and all the lengths and

\(^{215}\) *LEHRMAN*, *supra* note 4, at 126-27 (setting out Douglas's argument on this point).
\(^{216}\) *LINCOLN SPEECHES* 1832-1858, *supra* note 5, at 430.
\(^{217}\) *Id.*
\(^{218}\) *Id.* at 430-31 (emphasis omitted).
proportions of the different pieces exactly adapted to their respective places, and not a piece too many or too few—not omitting even scaffolding—or, if a single piece be lacking, we can see the place in the frame exactly fitted and prepared to yet bring such piece in—in such a case, we find it impossible to not believe that Stephen and Franklin and Roger and James all understood one another from the beginning, and all worked upon a common plan or draft drawn up before the first lick was struck.\textsuperscript{219}

By using this house-building metaphor, Lincoln drives home in a vivid manner, his argument that a conspiracy existed between Douglas, Pierce, Taney, and Buchanan, referred to in the passage as “Stephen, Franklin, Roger and James,” to expand slavery throughout the United States.\textsuperscript{220} This metaphor also furthers the “house divided” theme by comparing the plan to build a house to evidence of a conspiracy between Douglas, Pierce, Taney, and Buchanan to expand slavery. Lincoln later in the speech goes on to assert that the “single piece . . . lacking” and to be brought in is “another Supreme Court decision, declaring that the Constitution of the United States does not permit a state to exclude slavery from its limits.”\textsuperscript{221}

Then, having used the majority of the speech to demonstrate how Stephen Douglas had in the past worked in concert with the advocates of slavery and why Stephen Douglas could not be trusted to combat the expansion of slavery in the future, Lincoln closes the speech by explaining why Lincoln can be trusted to do this work:

But clearly, he is not now with us—he does not pretend to be—he does not promise to ever be.

Our cause, then, must be intrusted [sic] to, and conducted by its own undoubted friends—those whose hands are free, whose hearts are in the work—who do care for the result.

Two years ago the Republicans of the nation mustered over thirteen hundred thousand strong.

We did this under the single impulse of resistance to a common danger, with every external circumstance against us.

\begin{footnotes}
\item[219.] \textit{Id.} at 431.
\item[220.] \textsc{Carwardine, supra} note 119, at 77 (“Through the combined energies of Douglas, Pierce, Taney, and Buchanan (‘Stephen, Franklin, Roger and James’), the Nebraska doctrine and the \textit{Dred Scott} decision had forced open all the territories to slavery.”).
\item[221.] \textsc{Lincoln Speeches 1832-1858, supra} note 5, at 431-32 (“Put that and that together, and we have another nice little niche, which we may, ere long, see filled with another Supreme Court decision, declaring that the Constitution of the United States does not permit a state to exclude slavery from its limits.”).
\end{footnotes}
Of strange, discordant, and even, hostile elements, we gathered from the four winds, and formed and fought the battle through, under the constant hot fire of a disciplined, proud, and pampered enemy.

Did we brave all then, to falter now?—now—when that same enemy is wavering, dissembled and belligerent?

The result is not doubtful. We shall not fail—if we stand firm, we shall not fail.

Wise councils may accelerate or mistakes delay it, but, sooner or later the victory is sure to come.222

Lincoln starts by using alliteration by repeating the “pr” sound to emphasize that Douglas is not “with” the opponents of slavery. Lincoln states that Douglas does not “pretend” to be a part of the cause and does not “promise to ever be.”223 Lincoln sets up the contrast with his own qualifications as an anti-slavery politician.

Lincoln then uses alliteration to emphasize who should be chosen to take on the important work of combating the expansion of slavery, repeating the terms “whose” and “who” and stating that the cause “must be intrusted to . . . its own undoubted friends—those whose hands are free, whose hearts are in the work—who do care for the result.”224 In this last phrase, by emphasizing that the task must be taken on by those “who do care for the result,” Lincoln plays on Douglas’s statement that he did not care whether slavery was allowed in the Kansas-Nebraska territory.225

Furthermore, Lincoln also uses the terms “us,” “our,” and “we” to describe the anti-slavery movement and presumably to emphasize his membership in this movement and his credentials as an opponent of slavery: “But clearly, he is not now with us . . . . Our cause, then, must be intrusted [sic] to . . . . We did this under the single impulse of resistance to a common danger, with every external circumstance against us.”226

Lincoln then uses carefully chosen language to describe how “every external circumstance” was against the Republican Party in the past election.227 He talks of how the party “gathered” “[of] strange, discordant, and even, hostile elements” and how it battled “a disciplined,
These words further the pathos function by increasing the drama of the events described as he sets out the obstacles that the Republican Party overcame in the last election. Lincoln again uses alliteration to his advantage by repeating the “f” sound when describing how the different components of the Republican Party “gathered from the four winds, and formed and fought the battle though, under the constant hot fire of a disciplined, proud, and pampered enemy.” The use of alliteration furthers the dramatic nature of this passage and allows Lincoln to describe the past battles of Lincoln and his fellow Republicans elegantly.

Lincoln uses the next sentence to contrast the state of their enemy before—when it was “disciplined, proud, and pampered”—to how it is now—“wavering, dissevered and belligerent” and states that the opponents of slavery should not then “falter now.” Lincoln then uses repetition to emphasize his confidence that the opponents of slavery will succeed if they take proper measures, repeating twice that they will not fail: “The result is not doubtful. We shall not fail—if we stand firm, we shall not fail.” He ends the passage restating his confidence in their ultimate victory: “Wise councils may accelerate or mistakes delay it, but, sooner or later the victory is sure to come.” In this manner, Lincoln ends the speech in dramatic fashion.

228. Id.
229. Id. (emphasis added).
230. Id.
231. Id.
232. Id.
C. Address at Cooper Union,\textsuperscript{233} New York, New York (February 27, 1860)

1. Context and Significance of The Speech. The primary goal of Lincoln's address at Cooper Union in New York City was to raise his national prominence and thrust himself into the discussion as a potential Republican presidential nominee.\textsuperscript{234} Several people who opposed New York Senator William Seward had organized the event.\textsuperscript{235} Lincoln spent much of his time prior to the address doing extensive research on "the public statements, votes in Congress, and writings of men who had framed the Constitution."\textsuperscript{236} Lincoln provided a serious, at times almost scholarly, speech that discussed the framers' views on the ability of Congress to control slavery in federal territories, answered charges that Republicans were radicals whose stances ultimately would destroy the Union, and explained the need for Republicans to stand firm...
in the face of such accusations. According to Eric Foner, Lincoln used the occasion "to strike blows against" two potential presidential challengers, Seward and Douglas, "as well as Chief Justice Taney, and to demonstrate to a demanding eastern audience his command of the slavery question, commitment to Republican principles, and availability as a candidate should Seward falter." Lincolns spoke to an almost capacity crowd in a hall designed to seat one thousand eight hundred people.

The speech proved to be a resounding success. Horace Greeley, the editor of the New York Tribune and an organizer of the address, stated afterwards that the speech was "one of the happiest and most convincing political arguments ever made in this city." Moreover, the New York Times "extolled [Lincoln's] ability to elucidate and convince...to delight and electrify," and the New York Post noted that while in its opinion much of the content of the speech was not new, its substance was "most logically and convincingly stated in the speech—and it is wonderful how much a truth gains by a certain mastery of clear and impressive statement." Soon after, the speech appeared in its entirety in all four New York City newspapers, as well as others, and was published in pamphlet form.

2. Analysis of The Speech. In the Cooper Union address, Lincoln uses theme to further his arguments on slavery, uses extensive research to advance those arguments, deals directly with adverse legal authority, and continues to use metaphor, repetition, and alliteration effectively. Lincoln begins his speech by drawing on a sentence from a speech by Senator Stephen Douglas in the fall of 1859, recounted in the New York Times, stating that "[o]ur fathers, when they framed the Government under which we live, understood this question just as well, and even better, than we do now." The "question" about which Douglas spoke

237. Id. at 136.
238. Id.; but see HOLZER, supra note 118, at 105 ("Although as much as a fourth of the hall's eighteen hundred seats remained unfilled, co-organizer Henry C. Bowen seemed 'astonished to see a crowded house.'").
239. LEHRMAN, supra note 4, at 214 (noting that after Lincoln's address at Cooper Union "he was recognized as a national Republican leader and a dark horse presidential contender"); WILSON, supra note 130, at 43 ("The speech had been a great success in the hall and was fulsomely praised in the New York papers.").
240. WILSON, supra note 130, at 43; FONER, supra note 3, at 138.
241. CARWARDINE, supra note 119, at 98.
242. WILSON, supra note 130, at 43.
243. FONER, supra note 3, at 138; CARWARDINE, supra note 119, at 98.
244. LINCOLN SPEECHES 1859-1865, supra note 6, at 111 (emphasis omitted).
was whether the federal government could regulate slavery in federal territories. Lincoln creates a recurring theme by repeating segments of this language throughout this section. In this portion of the speech, Lincoln, using exhaustive research, examines the legislative votes of "[o]ur fathers" who "framed the Government under which we live" bearing on the issue of whether the federal government had the authority to control slavery in federal territories.

Lincoln in his Peoria speech avoided direct references to the Constitution and instead looked to the Declaration of Independence as the touchstone for the values of America's founders. Contrastingly, in his Cooper Union address, Lincoln examines the views of the signers of the Constitution directly by first assuming that the "fathers" Douglas spoke of were signers of the Constitution. Thus, Lincoln presents the legislative votes of the signers of the Constitution who had voted on the prohibition of slavery in the Northwest Territory in 1784, when the measure did not pass, and in 1787, when the measure did pass, and a measure in 1789 to enforce the prohibition. Lincoln also notes that President George Washington, a signer of the Constitution, signed the latter bill into law. Lincoln additionally considers the votes of signers of the Constitution on the laws organizing the Mississippi, Louisiana, and Missouri territories, all of which prohibited slavery in some respect. After this exhaustive examination of the voting history of the signers of the Constitution on measures dealing with the authority of the federal government to control slavery in federal territories, Lincoln concludes that out of twenty-three of the "fathers" who voted on such legislation, twenty-one voted to approve prohibiting slavery in a federal territory. Thus, these "fathers" demonstrated their belief that "no proper division of local from federal authority, nor

245. Id. at 111-12. See also HOLZER, supra note 118, at 120 ("The 'question,' of course, is the extension of slavery.").
246. As Harold Holzer notes, "Lincoln will utter this exact phrase no fewer than fifteen times in his speech, and one can only imagine how he delights his audience each time he renewes the refrain." HOLZER, supra note 118, at 122.
247. LINCOLN SPEECHES 1859-1865, supra note 6, at 111-18.
248. See supra notes 154-64 and accompanying text.
249. LINCOLN SPEECHES 1859-1865, supra note 6, at 112-13.
250. Id. at 113.
251. Id. at 114-15. See also HOLZER, supra note 118, at 126-27 (noting that the legislation organizing the Mississippi Territory "authorized restrictions on the importation of new slaves" and that the legislation dealing with the Louisiana Territory contained "similar restrictions").
252. LINCOLN SPEECHES 1859-1865, supra note 6, at 117. Lincoln also notes that this twenty-one of the "fathers" constituted a "clear majority" of the "thirty-nine fathers who framed the original Constitution." Id.
any part of the Constitution, forbade the Federal Government to control
slavery in the federal territories.\textsuperscript{253}

Second, Lincoln assumes instead that the "fathers" of "the Government
under which we live" were members of "the first Congress which sat
under the Constitution" who voted on the original ten amendments to
the Constitution, also known as the Bill of Rights.\textsuperscript{254} Lincoln makes
this assumption due to the members of the United States Supreme Court
in the \textit{Dred Scott} case "plant[ing] themselves upon the fifth amendment"
to the Constitution and "Senator Douglas and his peculiar adherents
plant[ing] themselves upon the tenth amendment."\textsuperscript{255} Lincoln notes
that at the same legislative session that the original Constitutional
amendments were voted upon, Congress passed the Northwest Ordin-
nance of 1787, which prohibited slavery in the territory concerned.\textsuperscript{256}
Consequently, Lincoln asks, "Is it not a little presumptuous in any one
at this day to affirm that the two things which that Congress deliberate-
ly framed, and carried to maturity at the same time, are absolutely
inconsistent with each other?"\textsuperscript{257} In this manner, Lincoln concludes
with a substantive rhetorical question emphasizing the point to which
he has been leading. In the first section of the speech, Lincoln builds
piece-by-piece and block-by-block the wall of his argument that the
founders believed Congress had the authority to prohibit slavery in
federal territories, using his exhaustive research on these legislative
votes as the bricks and the mortar.

However, Lincoln culminates this thorough, and almost scholarly,
assessment by engaging in a bit of hyperbole for emphasis in order to
drive home his ultimate point:

It is surely safe to assume that the thirty-nine framers of the original
Constitution, and the seventy-six members of the Congress which
framed the amendments thereto, taken together, do certainly include
those who may be fairly called "our fathers who framed the Govern-
ment under which we live." And so assuming, I defy any man to show
that any one of them ever, in his whole life, declared that, in his
understanding, any proper division of local from federal authority, or
any part of the Constitution, forbade the Federal Government to

\textsuperscript{253} \textit{Id.}
\textsuperscript{254} \textit{Id. at} 117-18.
\textsuperscript{255} \textit{Id. at} 117. The Fifth Amendment of the United States Constitution prohibits the
federal government from "depriv[ing]" a "person" of "property, without due process of law." U.S. CONST. amend. V. Furthermore, the Tenth Amendment states that "[t]he powers not
delegated to the United States by the Constitution, nor prohibited by it to the States, are
reserved to the States respectively, or to the people." U.S. CONST. amend. X.
\textsuperscript{256} \textit{LINCOLN SPEECHES} 1859-1865, \textit{supra} note 6, at 117-18.
\textsuperscript{257} \textit{Id. at} 118.
control as to slavery in the federal territories. I go a step further. I
defy any one to show that any living man in the whole world ever did,
prior to the beginning of the present century, (and I might almost say
prior to the beginning of the last half of the present century,) declare
that, in his understanding, any proper division of local from federal
authority, or any part of the Constitution, forbade the Federal
Government to control as to slavery in the federal territories. To those
who now so declare, I give, not only “our fathers who framed the
Government under which we live,” but with them all other living men
within the century in which it was framed, among whom to search, and
they shall not be able to find the evidence of a single man agreeing
with them.258

Hyperbole and exaggeration are discouraged generally in legal dis-
course.259 Lincoln’s use of exaggeration is effective here, though,
specifically because it comes after Lincoln has carefully set out in minute
detail the evidence proving his point. Therefore, the hyperbole
emphasizes how thoroughly Lincoln has proven his argument.

Lincoln then uses this evidence of the views of America’s “fathers” on
the ability of the federal government to control slavery in federal
territories to combat charges by Southerners that Republicans are
radicals:

But you say you are conservative—eminently conservative—while we
are revolutionary, destructive, or something of the sort. What is
conservatism? Is it not adherence to the old and tried, against the new
and untried? We stick to, contend for, the identical old policy on the
point in controversy which was adopted by “our fathers who framed the
Government under which we live;” while you with one accord reject,
and scout, and spit upon that old policy, and insist upon substituting
something new. True, you disagree among yourselves as to what that
substitute shall be. You are divided on new propositions and plans, but
you are unanimous in rejecting and denouncing the old policy of the
fathers . . . . [B]ut never a man among you in favor of federal prohibi-
tion of slavery in federal territories, according to the practice of “our
fathers who framed the Government under which we live.” Not one of
all your various plans can show a precedent or an advocate in the
century within which our Government originated. Consider, then,
whether your claim of conservatism for yourselves, and your charge of

258. Id. at 118-19.
259. See SMITH, supra note 51, at 328-29 (“Although hyperbole is commonly used in
everyday speech, it is not recommended in persuasive legal writing. Lawyers are required
to be precise, credible, and professional. The exaggeration of hyperbole is inconsistent with
these traits.”).
Lincoln starts this excerpt by choosing his terms carefully, contrasting Southerners' description of themselves as "conservative—eminently conservative" with charges that Republicans are "revolutionary" and "destructive." But Lincoln turns this charge on its head by explaining that Republicans "stick to, contend for, the identical old policy on the point in controversy" that the nation's "fathers" held. Meanwhile, using particularly vivid language and a little alliteration, repeating the "s" sound, Lincoln states that Southerners "reject, and scout, and spit upon that old policy, and insist upon substituting something new." By establishing through their voting histories that America's founding "fathers" endorsed federal regulation of slavery, Lincoln can now present Republicans as being conservative and Southerners as being radicals.

Lincoln leads into these points by using rhetorical questions, one transitional and the other substantive, to create drama and emphasis by asking, "What is conservatism?" and then setting out his definition of "conservatism" in a question. Furthermore, Lincoln ends this segment of the speech by noting that none of the "various plans" put forth by advocates of the Southern position "can show a precedent or an advocate in the century within which our Government originated." Lincoln again contrasts Southern claims of conservatism and charges of radicalism against Republicans by stating that Southerners should "[c]onsider . . . whether your claim of conservatism for yourselves, and your charge of destructiveness against us, are based on the most clear and stable foundations." Thus, Lincoln uses descriptive language and rhetorical questions to reinforce and emphasize the logical substance of his arguments that Southern positions on slavery were not based on the views of America's founding "fathers."

This speech also shows Lincoln dealing effectively with adverse authority by explicitly condemning the Dred Scott decision:

260. LINCOLN SPEECHES 1859-1865, supra note 6, at 122.
261. Id.
262. Id.
263. Id.
264. See HOLZER, supra note 118, at 131 (discussing how Lincoln established that "[t]he Republicans, not the Democrats, are the true heirs to America's fathers").
265. LINCOLN SPEECHES 1859-1865, supra note 6, at 122.
266. Id.
267. Id.
Perhaps you will say the Supreme Court has decided the disputed Constitutional question in your favor. Not quite so. But waiving the lawyer’s distinction between dictum and decision, the Court have [sic] decided the question for you in a sort of way. The Court have [sic] substantially said, it is your Constitutional right to take slaves into the federal territories, and to hold them there as property. When I say the decision was made in a sort of way, I mean it was made in a divided Court, by a bare majority of the Judges, and they not quite agreeing with one another in the reasons for making it; that it is so made as that its avowed supporters disagree with one another about its meaning, and that it was mainly based upon a mistaken statement of fact—the statement in the opinion that “the right of property in a slave is distinctly and expressly affirmed in the Constitution.”

Lincoln begins discrediting the Court’s statement in *Dred Scott* concerning the right to take slaves into federal territory by implying that the Court’s statement was dicta, stating “[n]ot quite so” to the proposition that the opinion decided the issue and going on to waive “the lawyer’s distinction between dictum and decision.” He then goes on to assail the authority of the decision due to a lack of cohesion in the views of the United States Supreme Court justices on the point, noting the decision “was made in a divided Court, by a bare majority of the Judges, and they not quite agreeing with one another in the reasons for making it,” and also highlighting the lack of unity in explaining exactly what the Court meant by the statement.

However, Lincoln’s most damning criticism of the decision is “that it was mainly based upon a mistaken statement of fact . . . that ‘the right of property in a slave is distinctly and expressly affirmed in the Constitution.’” In this way, Lincoln directly attacks the basis for the majority’s decision in *Dred Scott* and begins to demonstrate why the Court decided the case wrongly. To establish why the Court was mistaken in the statement that the Constitution “distinctly and expressly” affirms “the right of property in a slave,” Lincoln starts by defining the terms “distinctly” and “expressly”: “‘[D]istinctly,’ that is, not mingled with anything else—‘expressly,’ that is, in words meaning just that, without aid of any inference, and susceptible of no other meaning.” He goes on then to explain exactly how the right of

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268. *Id.* at 126.
269. *Id.*
270. *Id.*
271. *Id.*
272. *Id.*
property in a slave is neither distinctly nor expressly set out in the Constitution:

[N]either the word "slave" nor "slavery" is to be found in the Constitution, nor the word "property" even, in any connection with language alluding to the things slave, or slavery, and that wherever in that instrument the slave is alluded to, he is called a "person,"—and wherever his master's legal right in relation to him is alluded to, it is spoken of as "service or labor which may be due,"—as a debt payable in service or labor. Also, it would be open to show, by contemporaneous history, that this mode of alluding to slaves and slavery, instead of speaking of them, was employed on purpose to exclude from the Constitution the idea that there could be property in man.

To show all this, is easy and certain. 273

By thoroughly reviewing the text of the Constitution itself, revealing its vague references to slavery, and noting the absence of the use of the term "property" in combination with references to slavery, Lincoln invalidates the Court's statement that the Constitution "distinctly and expressly" affirms "the right of property in a slave." 274 Lincoln emphasizes the lack of authority in the Constitution for the Court's assertion by ending the section stating, "To show all this, is easy and certain." 275 Use of the Constitution here as support for Lincoln's arguments against the spread of slavery is interesting when in several of his prior speeches, namely the Peoria speech, he chose to ignore the Constitution and to look instead to the Declaration of Independence.

Thus, having disproved the distinct and express right to property in a slave in the Constitution, Lincoln goes on to assail the threats of the Southern states to secede unless such a right is affirmed and the people of the South's refusal to accept a Republican president:

Under all these circumstances, do you really feel yourselves justified to break up this Government, unless such a court decision as yours is, shall be at once submitted to as a conclusive and final rule of political action? But you will not abide the election of a Republican President! In that supposed event, you say, you will destroy the Union; and then, you say, the great crime of having destroyed it will be upon us! That is cool. A highwayman holds a pistol to my ear, and mutters through his teeth, "Stand and deliver, or I shall kill you, and then you will be a murderer."

To be sure, what the robber demanded of me—my money—was my own; and I had a clear right to keep it; but it was no more my own

273. Id. at 127.
274. Id. at 126-27.
275. Id. at 127.
than my vote is my own; and the threat of death to me, to extort my money, and the threat of destruction to the Union, to extort my vote, can scarcely be distinguished in principle.276

Once more, at the beginning of this passage, Lincoln uses a substantive rhetorical question to create drama and for emphasis. Here, he uses the rhetorical question to emphasize how unjustified he feels the people of the South are in threatening to secede if the Northern states do not ensure their right to keep slaves as property.

This passage also shows Lincoln using metaphor to effectively compare the South's threats to secede upon the election of a Republican president to an armed highwayman's threat to kill a traveler unless the traveler gives up his or her money.277 Lincoln also compares the assertion that such secession would be the fault of the Northern states to the highwayman stating that the victim will be the murderer in the event the traveler does not give up the traveler's money and is shot and killed.278 Lincoln then mixes in simile and expressly compares the highwayman's threat to kill the traveler in order to steal the traveler's money to the South's attempt to extort the votes of residents of the Northern states by threatening to secede.279 Therefore, Lincoln graphically illustrates the effect of the Southern states' threat to secede if the residents of the states of the North did not acquiesce in the election of a president looked upon favorably by the Southern populace.

Lincoln then ends his speech in a particularly vehement manner, calling for Republicans to stand their ground and hold steady in the fight:

Neither let us be slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves. LET US HAVE FAITH THAT RIGHT MAKES MIGHT, AND IN THAT FAITH, LET US, TO THE END, DARE TO DO OUR DUTY AS WE UNDERSTAND IT.280

Lincoln uses dramatic language to list the contrary forces facing Republicans and keeping them “from [doing their] duty.”281 Lincoln first emphasizes that Republicans should not be “slandered from our duty by false accusations,” such as that they are radicals and are

276. Id. at 127-28.
277. Id. at 127.
278. Id.
279. Id. at 127-28.
280. Id. at 130. The original text of the speech used all capital letters in the last sentence. See HOLZER, supra note 118, at 143 (“The capitalization of the last sentence was Lincoln's idea—at least he sanctioned it in reprints.”).
281. LINCOLN SPEECHES 1859-1865, supra note 6, at 130.
responsible for breaking up the Union. 282 Second, he notes that Republicans should not be “frightened . . . by menaces of destruction to the Government” through the threatened secession of the Southern states. 283 Finally, Republicans should not be impeded by threats “of dungeons to ourselves,” referring possibly to the threat of being jailed through Southern sedition laws that outlawed statements disapproving of slavery as well as the call for national sedition laws with the same effect. 284 Lincoln then finishes by playing off the saying that “might makes right,” but he reverses the saying by calling on Republicans to “HAVE FAITH THAT RIGHT MAKES MIGHT,” stressing that because the Republicans are “right” on the issue of the expansion of slavery they eventually will win. 285 Lincoln follows up this clever play on words with some alliteration by calling on Republicans to “DARE TO DO OUR DUTY AS WE UNDERSTAND IT.” 286 Lincoln, through careful word choice, use of alliteration, and use of theme ends in a manner that stirs the emotions of listeners, and eventual readers, and inspires them to take action for Lincoln’s cause. 287

V. LESSONS FOR ATTORNEYS IN LINCOLN’S SPEECHES

These three speeches demonstrate several techniques, manners, and practices that attorneys would be well advised to emulate in their persuasive writing and speaking. Each of these methods strengthened the logos function by advancing the substantive logic of Lincoln’s arguments about why slavery should not expand within the United States. Several of them also advanced the pathos function and stirred the emotions of readers or listeners of Lincoln’s speeches. Some additionally served the ethos function and established Lincoln’s credibility with the readers or listeners of speeches. Attorneys who are able to master these techniques and practices similarly will benefit in their interactions, both written and oral, with the court.

282. Id.
283. Id.
284. Id.
285. Id.
286. Id.
287. RIZER, supra note 2, at 80 (stating that in the last paragraph of the Cooper Union speech “Lincoln’s message was delivered in a way that both stirred emotion and immediately got the audience’s minds agreeing with his message” and that “Lincoln often used such language in the end of his addresses and closing arguments with the goal of rousing the audience or jury into action for his cause”).
A. Use Plain and Descriptive Language

Examples of Lincoln using plain and easily understood language are replete throughout the three speeches examined in this Article. Use of language that was easy for readers and listeners to access was essential to Lincoln effectively communicating his ideas. However, Lincoln also chose to include especially vivid and descriptive terms as well. For example, in his “House Divided” speech, Lincoln describes slavery opponents as “arrest[ing] the further spread of it” and placing slavery “in course of ultimate extinction” and slavery advocates as “push[ing]” slavery forward until it expands into all states. Lincoln ends his Cooper Union address stating that Republicans should not be “slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves” and having faith that “RIGHT MAKES MIGHT.” Such vivid and descriptive language helped Lincoln to paint a picture in the minds of listeners or readers of his speeches, to communicate his arguments effectively, and to arouse the emotions of listeners and eventual readers.

Attorneys should follow Lincoln’s example and use vivid and descriptive language in their briefs and at oral argument to effectively communicate their arguments. When attorneys pay attention to diction and describe arguments with concrete and vivid language, they paint a picture in the mind of readers and listeners. Such careful use of language serves the logos function by more effectively communicating the concepts discussed to readers and listeners. When writers or speakers demonstrate the ability to choose the particular word that will communicate the exact intended meaning, they build credibility with the reader or listener serving the ethos function.

B. Use Repetition

Throughout the three speeches, one can see Lincoln using repetition to emphasize and clarify his substantive points. One example of this is the repetition of the term “hate” in the Peoria speech to introduce the damage to American interests caused by slavery. Another example of this in the Peoria speech is the repetition of the terms “self-government,” “governs,” and “govern” when describing the effect of the Kansas-

288. See supra notes 200-06 and accompanying text.
289. See supra notes 277-84 and accompanying text.
290. See supra note 140.
Nebraska Act.291 By repeating these terms while discussing the effect of whether one considers a "negro" to be a man, Lincoln demonstrates how the Kansas-Nebraska Act furthered despotism rather than self-government.292 In the "House Divided" speech, at one point early in the speech, Lincoln repeats the ultimate effect of slavery advocates "push[ing]" slavery "forward" until it exists lawfully "in all the States, old as well as new—North as well as South" rather than stopping just at stating that advocates of slavery would expand it into all states.293 Such repetition furthers the logos function by emphasizing the substantive points being made and also making it easier for the reader or listener to understand the exact argument being made, be it in a political speech, a written brief, or an oral argument.

C. Use Allusions and Metaphors

Attorneys have excellent examples in Lincoln's speeches of allusions and metaphors used to advance the logic of a writer or speaker's arguments. For example, in the Peoria speech, Lincoln alludes to the Declaration of Independence as being comparable to the Bible by referring to the Declaration as "my ancient faith."294 In that same speech, Lincoln refers to the soiling of America's "republican robe" by slavery.295 Both this allusion and this metaphor further the logic of Lincoln's arguments on slavery. The allusion to the Declaration being similar to the Bible furthers Lincoln's attempt to get listeners to look past the Constitution to the Declaration of Independence as the touchstone of American values. The robe metaphor provides a vivid image for listeners of the damage done by slavery to American interests. These vivid references evoke particular emotions favorable to Lincoln's arguments by connecting the Declaration of Independence to the Holy Bible and America's Republican values to an elegant robe, thus serving the pathos function.

In the "House Divided" speech, Lincoln provides us with an excellent example of a nonthematic metaphoric literary allusion. Lincoln very early in the speech uses a biblical reference, "[a] house divided against itself cannot stand," to introduce the metaphor of the United States as a "house divided against itself" on the slavery issue.296 Not only does this literary reference and metaphor make the speech especially

291. See supra notes 144-49 and accompanying text.
292. See supra note 150 and accompanying text.
293. See supra note 206 and accompanying text.
294. See supra note 152 and accompanying text.
295. See supra note 160.
296. See supra notes 192-97 and accompanying text.
memorable, but it also allows Lincoln to introduce in a very effective manner his argument that eventually slavery either would cease to exist altogether in the United States or would expand into every state in the Union. Later in the speech, Lincoln uses the metaphor of the plan by the “chief bosses” to expand slavery throughout the United States as being similar to the plan or draft for the building of a house.\textsuperscript{297} In this manner, Lincoln effectively illustrates his “evidence” of a conspiracy between Presidents Pierce and Buchanan, Chief Justice Taney, and Senator Douglas to expand slavery throughout the United States.

In his Cooper Union address, Lincoln effectively uses a metaphor to compare the Southern states’ threat to secede from the Union upon election of a Republican president to a highway robber’s threat to kill a traveler unless handed money.\textsuperscript{298} Lincoln couples this metaphor with a simile to compare assertions by Southerners that the North would be responsible for the secession of the Southern states upon the election of a Republican president to the highway robber blaming the traveler for the traveler’s own death.\textsuperscript{299}

Lincoln’s use of metaphors in these three speeches demonstrates the power of metaphors to elucidate the substantive points that an attorney is making. The above examples show how a metaphor can effectively relate an argument to readers’ or listeners’ common experiences so that they better understand the topic being discussed. Attorneys can better communicate the substance of their arguments if they can relate them to the common knowledge of readers and listeners through the use of metaphors. The effective use of metaphor also demonstrates intelligence, which will cause readers and listeners to trust writers or speakers and to more readily accept the information they are conveying.

D. Include the Logical Building Blocks for Your Arguments

Throughout the three speeches examined in this Article, one can see Lincoln supporting his arguments concerning slavery in a step-by-step and systematic manner. In this way, Lincoln explicitly presents the listener or reader with the logical building blocks for his arguments against the expansion of slavery in the United States. Perhaps the two most exemplary instances of this occur in the Cooper Union address. First, at the beginning of the address, Lincoln presents the votes of the signers of the Constitution and members of the first United States Congress on legislation prohibiting slavery in federal territories. Lincoln

\textsuperscript{297} See supra notes 216-18 and accompanying text.
\textsuperscript{298} See supra notes 274-75 and accompanying text.
\textsuperscript{299} See supra note 276 and accompanying text.
goes into extensive detail about what each piece of legislation concerned in order to demonstrate almost irrefutably that the overwhelming majority of America's "founding fathers" believed that Congress had the ability to regulate slavery in federal territories.  

Second, later on in the Cooper Union address, Lincoln challenges the Supreme Court's assertion in the Dred Scott decision that "the right of property in a slave is distinctly and expressly affirmed in the Constitution." In disproving this assertion, Lincoln recounts each reference in the Constitution to slavery, the exact language used to refer to slavery, how each reference to slavery is vague, and how none of these references are made in conjunction with the use of the term "property." In this manner, Lincoln step-by-step and point by specific point discredits the statement by the majority in the Dred Scott case. Similarly, attorneys are well served in their court briefs and at oral argument by expressly setting out the logical steps in their analysis that support their arguments, which not only advances the logos of the arguments concerned but also helps to build credibility with readers and listeners, thus serving the ethos function.

E. Engage in Thorough Legal Research

In parts of these speeches, one can see evidence of Lincoln having engaged in exhaustive research in order to support his arguments on slavery. In fact, some historians have noted the extensive research that Lincoln undertook before drafting important speeches. For example, Eric Foner has recounted a Democratic journalist who commented that, prior to his giving any version of the Peoria speech in the fall of 1854, "Lincoln had been 'nosing around for weeks in the state library.'" In doing so, Lincoln "consulted the founders' statements about slavery, previous congressional debates, Douglas's own speeches, and even census returns." At the beginning of the Peoria speech, one sees the product of this research as Lincoln recounts the history of the regulation of slavery in new territories.

An even better example of the product of exhaustive research is Lincoln's relating in the Cooper Union address the legislative record of the signers of the Constitution and the members of the first Congress on legislation bearing on the ability of the federal government to regulate

300. LINCOLN SPEECHES 1859-1865, supra note 6, at 112-14.
301. See supra note 268-71 and accompanying text.
302. See supra note 271 and accompanying text.
303. FONER, supra note 3, at 65.
304. Id.
305. See supra notes 133-36 and accompanying text.
slavery in federal territories. Only by extensively researching the congressional record could Lincoln have produced such evidence. Eric Foner has explained that prior to traveling to New York to give this address, "Lincoln spent much of the time... in the Illinois State Library in Springfield, where he exhaustively researched the public statements, votes in Congress, and writings of men who had framed the Constitution." These portions of Lincoln's speeches demonstrate how important thorough research often is to an attorney's efforts to provide legal arguments in a step-by-step, systematic, and detailed manner.

F. Possess the Ability to Deal with Adverse Arguments and Authority Both Implicitly and Head-On

These three speeches by Lincoln also provide excellent examples of manners in which to deal effectively with adverse arguments and authority. In the Peoria speech, Lincoln deftly deals with Senator Douglas's argument that the Kansas-Nebraska Act was disinterested as to whether slavery spread and that, therefore, it furthered self-govern-ment. Lincoln re-characterizes this argument, showing instead how the Kansas-Nebraska Act furthered a zeal for the spread of slavery and advanced despotism rather than self-government.  

In this speech, Lincoln also provides an excellent example of dealing with adverse authority implicitly. Lincoln deals implicitly with the Constitution and some of the compromises made in that document to accommodate slavery by looking past it. Instead, Lincoln directs listeners and readers to the principles and concepts presented in the Declaration of Independence as the true touchstone of American values.

Contrastingly, in the Cooper Union speech, Lincoln provides a good example of attacking adverse authority head-on and criticizing the basis for its initial creation. Lincoln addresses the Dred Scott decision first by attacking its authoritativeness. He implies that the portion of the opinion indicating that the federal government could not regulate slavery in federal territories was dicta. He also notes that a divided Court decided the case "by a bare majority" and that there was a lack of cohesion on the part of the Justices who joined the majority opinion on the exact justification for the decision as well as outside supporters of the decision.

306. FONER, supra note 3, at 136-37.
307. See supra note 138 and accompanying text.
308. See supra notes 154-64 and accompanying text.
309. See supra note 266 and accompanying text.
310. See supra note 267 and accompanying text.
Secondly, Lincoln goes on to explicitly demonstrate how there was no basis for the majority’s assertion that the Constitution “distinctly and expressly” affirmed “the right of property in a slave” by pointing out that the term “slavery” is never expressly set out in the Constitution and that this was done purposely in order “to exclude from the Constitution the idea that there could be property in a man.”\textsuperscript{311} Lincoln mentions that in the spots in which the Constitution makes oblique references to slavery, the word “property” is not included.\textsuperscript{312} In this way, Lincoln effectively discredits the \textit{Dred Scott} decision, although, at the time, he was powerless to have it formally superseded or overruled. Thus, Lincoln’s speeches provide attorneys with great examples of how to attack adverse authority both implicitly and directly.

\textbf{G. Create a Theme}

In each of the speeches examined in this Article, Lincoln creates themes that advance his arguments on slavery. Throughout the Peoria Speech, Lincoln, by careful use of diction, allusion, and metaphor, presents the Declaration of Independence and its egalitarian principles as the touchstone of American values concerning civil liberty. In the “House Divided” speech, Lincoln, through diction and metaphor, presents the themes of the destructive effects of the battle between supporters and opponents of slavery on the United States and the evidence of the conspiracy of the “chief [political] bosses” supporting slavery to “push” it forward until it exists in every state in the Union.\textsuperscript{313} Finally, the Cooper Union address shows Lincoln using Senator Douglas’s own language, stating that “[o]ur fathers when they framed the Government under which we live, understood this question just as well, and even better, than we do now,” against Douglas by repeating similar language throughout the first part of the speech.\textsuperscript{314} Meanwhile, in that address, Lincoln demonstrates definitively through a systematic and step-by-step examination of the legislative votes of America’s founding fathers that they well recognized that the federal government could prohibit slavery in its territories. Attorneys would be well served in their court briefs to emulate Lincoln and create themes that will aid them in convincing courts to take action in favor of their clients. In fact, use of many of the other techniques mentioned above—descriptive language, repetition,

\footnotesize{311. Lincoln speeches 1859-1865, supra note 6, at 126-27 (emphasis omitted). See also supra notes 254-56 and accompanying text.  
312. Lincoln speeches 1859-1865, supra note 6, at 127.  
313. See supra note 199.  
314. See supra note 221.}
allusion, metaphor, systematic analysis, and exhaustive research—all can aid attorneys' efforts in putting forth a compelling theme.

H. Take Your Audience into Account

While Lincoln displays the recurring use of several persuasive techniques in each of these speeches, his strategic choices of how much to emphasize certain techniques can be explained, at least in part, by the primary audience for his speeches. Lincoln’s emphasis of certain techniques in his “House Divided” speech versus his Cooper Union address perhaps demonstrates his ability to account for the preferences of an audience. Lincoln made the “House Divided” speech before the Illinois party faithful at the Republican Convention of 1858 and with the intended purpose of proving his bona fides as a tried and true opponent of the expansion of slavery.\(^{315}\) Therefore, there is an element to the speech of firing up the troops for the coming election battle, and Lincoln emphasizes the pathos function in many parts of the speech. This helps to explain Lincoln’s use of uncompromising language throughout the speech, his fiery rhetoric at the end of the speech, and also the use of the “house divided” metaphor at the beginning of the speech to display how the differing visions held by slavery’s opponents and slavery’s supporters for the future of America would play out to their logical conclusions.

Lincoln’s audience for his Cooper Union address, however, was the eastern political elite, a group perhaps more sophisticated than Lincoln’s Illinois supporters, but definitely more skeptical of Lincoln and his abilities. In that speech, Lincoln wanted to demonstrate that he had a strong command of the slavery issue and also to show that he should be taken seriously as a national candidate for the presidency. Consequently, the tone of the speech is largely scholarly,\(^{316}\) and Lincoln, especially at the beginning of the speech, emphasizes the logos function by demonstrating in minute detail how the legislative voting histories of the founding fathers indicated that the overwhelming majority of them believed that the federal government could regulate slavery in federal territories. This speech also shows Lincoln dismantling the main premise of the *Dred Scott* decision with a step-by-step, bit-by-bit, detailed analysis showing that the United States Constitution most definitely did not set out the right to property in a slave “distinctly and expressly.” In this manner, Lincoln displayed his intellectual acumen to his sophisticated eastern audience and built credibility with that

\(^{315}\) FONER, *supra* note 3, at 99.

\(^{316}\) See HOLZER, *supra* note 118, at 128 (stating that the Cooper Union address “was clearly organized as a lecture by a ‘professor’ who had mastered his history and was spilling over with facts and figures to buttress his position on founding principles”).
audience. Lincoln was so successful in this regard that he ultimately secured the Republican presidential nomination. Similarly, attorneys need to consider the preferences of their audience when making tactical decisions about which persuasive techniques to use and when to use them in their writings and at oral argument, and Lincoln's speeches provide excellent examples of how to do this effectively.

VI. CONCLUSION

Throughout his legal career, Lincoln refined his persuasive writing and speaking skills. These skills made him effective in persuading listeners and readers of his political speeches about the correctness of his position on the slavery issue, which ultimately propelled Lincoln into the presidency. The careful analysis of the three speeches discussed in this Article demonstrates several rhetorical techniques used adeptly by Lincoln. The skillful use of these techniques by attorneys today in their court briefs and at oral argument can only serve to enhance the persuasiveness of their legal arguments and improve their chances of succeeding on behalf of their clients.