The Matter of Fees is Important

ROGER D. BILLINGS, JR.

Lincoln made his living almost entirely from the legal fees he earned. He started each case by setting the amount he would charge, estimating the hours he would spend and the difficulty of the case. Today most lawyers charge for hours worked at a set amount per hour, but Lincoln fixed his fee in advance and drafted a fee note for the client to sign.

Collecting fee notes was a challenge. Ideally, the client would pay in gold coins, but coins were scarce. If clients could not pay with coins, their real estate could be sold to pay the fee, but assuming they had real estate, its sale took time. When there was no other way to get paid, goods were acceptable as a last resort. Lincoln once took his fee in bricks! Occasionally he donated his services to needy clients, especially women.

An enduring myth is that Lincoln charged lower fees than other lawyers. Albert Beveridge maintained, however, that "Lincoln's fees were normal, except that his meticulous honesty would not permit him to overcharge."[1] A few examples support Beveridge's view. Once a client for whom Lincoln secured a lease sent him $25 for the fee. Lincoln wrote back, "You must think I am a high-priced man. You are too liberal with your money. Fifteen dollars is enough for the job. I send you a receipt for fifteen dollars and return to you a ten-dollar bill."[2] Another time he won a case involving a disputed title to a farm and charged a $200 fee, but the lawyer on the losing side charged $300. Lincoln simply felt $200 dollars was fair, given the amount of work done.[3] These incidents show that Lincoln was careful not to overcharge. They say nothing about undercharging.

Historians who believe Lincoln charged low fees were influenced by a story about his work on a case with Ward Hill Lamon as his

1. Albert J. Beveridge, *Abraham Lincoln 1809–1858*, 2 vols. (Boston: Houghton, Mifflin, 1928) 1:554.

2. Roy P. Basler, et al., eds., *The Collected Works of Abraham Lincoln*, 8 vols. plus index (New Brunswick, N.J.: Rutgers University Press, 1953–1955, for the Abraham Lincoln Association), 2:332–33; hereinafter, CW.

3. Jesse W. Weik, *The Real Lincoln* (Boston: Houghton, Mifflin, 1922), 164–65.

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co-counsel. Lamon told the client that their fee would be $250, and the case was tried in fewer than 20 minutes. After the client paid Lamon $250, Lincoln asked, "What did you charge that man?" Lamon replied, "$250 dollars." Lincoln allegedly replied, "Lamon that is all wrong. The service was not worth that sum. Give him at least half of it." Lamon protested that the fee had been fixed in advance and the client was perfectly satisfied with the results. "That may be," retorted Lincoln, "but I am not satisfied." Overhearing the conversation, Judge David Davis supposedly said to Lincoln, "You are impoverishing this bar by your picayune charge of fees." That night the lawyers and the judge got together to relax and tell stories at their hotel. Judge Davis jokingly convened a mock tribunal he called an "Orgamathorical Court" and fined Lincoln "for his awful crime against the pockets of his brethren of the bar."[4] The story is questionable, but even if true it would not establish that Lincoln charged anything other than normal fees. Rather, it illustrates that Lincoln insisted on charging reasonable and fair fees, not simply whatever the market would bear.

In his "Notes for a Law Lecture" Lincoln wrote, "The matter of fees is important . . . An exorbitant fee should never be claimed . . ."[5] This was an early statement of the American Bar Association rule now adopted in some form by the Supreme Court of each state: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee . . ."[6] Lawyers in antebellum Illinois had no bar association that could develop guidelines, and there were no rules about fees issued by the Supreme Court of Illinois. The American legal system was in its infancy, and rules of professional responsibility were not promulgated until the 20th century.

What, then, were Lincoln's typical fees? In his first partnership with John Todd Stuart (1837–1841) he charged $2.50 to $5 on average for his services; in his partnership with Stephen T. Logan (1841–1844) the average went up slightly to $5 or $10 per case. In his last partnership with William Herndon (1844–1861) fees ranged between $10 and $20. For steady income, however, nothing surpassed his fees for arguing appeals in the Illinois Supreme Court. Between 1838 and 1861 there were at least 333 Supreme Court cases involving Lincoln and, while his fee is known for only 6% of them, the average seems to have been

4. Ward Hill Lamon, *Recollections of Abraham Lincoln* (ed. and pub. Washington, D.C.: Dorothy Lamon Teillard, 1911), 17–19.

5. CW 2:82. These notes were found among Lincoln's papers, but he is not known to have delivered the lecture.

6. ABA Model Rules of Professional Responsibility, Rule 1.5a (2020).

around $60.[7] Lincoln's fees did not increase greatly over the time of his practice on the Eighth Judicial Circuit, 1839–1861,[8] although in the 1850's work for the railroads brought some larger fees, including the once-in-a-lifetime fee of $5,000 for handling *Illinois Central Railroad v. McLean County, Illinois & Parke*.[9]

Lincoln's income was almost solely from fees, unlike colleagues Judge David Davis, Jesse Fell, and others who made fortunes in land speculation.[10] Harry Pratt wrote that "Acquisitions of land and property occupied a minor place among his incentives to action."[11] For that reason Lincoln felt the need to attend all the court sessions on the Eighth Circuit, riding about 10 weeks around the circuit twice a year. His portion of partnership fees during his years with John Todd Stuart was about $1,000 per year. For the next three years with Stephen T. Logan, it rose to about $1,500 dollars per year, even though Logan, like Stuart before him, took two-thirds of the fees. Starting in 1843 (formally in 1844), Lincoln and William Herndon split fees 50–50, and income for each rose to more than $2,000 a year. Michael Burlingame said it reached roughly $4,000 to $5,000 in the late 1850's, but most biographers agree on an estimate of $1,000 annual income at first, rising to $2,000 per year in the 1850's.[12] John P. Frank simply said, "The income from Lincoln's practice cannot be known in dollars . . . Lincoln earned enough to live pleasantly by the standards of Springfield."[13] This comfortable income early in his career allowed him to pay off debts incurred in the 1830's at New Salem, buy a house for $1,500 dollars at Eighth and Jackson Streets in 1844, and pay for a maid to help his wife, Mary, while he was on the circuit.

7. Dan W. Bannister, *Lincoln and the Illinois Supreme Court* (Springfield: Dan W. Bannister, 1995), ix; Daniel W. Stowell, ed., *The Papers of Abraham Lincoln: Legal Documents and Cases*, 4 vols. (Charlottesville: U. of Virginia Press 2008), 2:104, hereinafter cited as Stowell, ed.

8. Harry E. Pratt, *The Personal Finances of Abraham Lincoln* (Springfield: The Abraham Lincoln Association 1943), 25–57; David Herbert Donald, *Lincoln* (New York: Simon and Schuster 1995), 73, 148, 151; Michael Burlingame, *Abraham Lincoln: A Life*, 2 vols. (Baltimore: The Johns Hopkins University Press, 2008), 1:332–34; John P. Frank, *Lincoln as a Lawyer* (Urbana: University of Illinois Press, 1961), 39.

9. *Illinois Central RR v. McLean County, Illinois & Parke*, *lawpracticeofabrahamlincoln .org* (LPAL), case L01655; 17 Ill. 291 (1855).

10. Lincoln earned some interest income from loans and mortgages in the later years of his practice. See, e.g., AL to R. Irwin, February 9, 1861, CW 4:188–89.

11. Pratt, *Finances*, 58–70; 25.

12. Burlingame, *Lincoln*, 1:333. See, e.g., Pratt, *Finances*, 84; Donald, *Lincoln*, 151. See also Albert A. Woldman, *Lawyer Lincoln* (Boston: Houghton, Mifflin Co., 1936), 236.

13. Frank, *Lincoln as a Lawyer*, 40.

Lincoln's fees and the price of his house seem tiny today. The value of income can be understood, however, by comparing today's prices with prices in antebellum Springfield. From 1850 to 1860, laborers earned from 75 cents to $1.05 for an 11- or 12-hour day. Land could be purchased from the General land Office at $1.25 an acre for virgin tracts to $5 an acre for improved farms. Room and board at the Globe Tavern for newlyweds Abraham and Mary were four dollars a week.[14] On the circuit, Lincoln once paid only 75 cents for supper, lodging, and breakfast as well as the feed and stabling of two horses. A fine suit of clothes cost Lincoln less than $20.[15] Surviving Springfield store ledgers reveal that the family purchased items such as a pair of boy's boots ($1.50), an ounce of syrup of ipecac (15 cents), and 6 dozen eggs (50 cents).[16]

Of Lincoln's 5,000-plus legal actions, 3,145 involved some aspect of debt collection.[17] Fees for most of this work were of the $5 variety because the work was minimal. Debtors seldom showed up in court, and Lincoln had only to appear and ask for a default judgment. Debtor-creditor work abounded when Lincoln began his practice in 1837 as the country sank into a depression (called a "panic"). The depression was timely for the firm of Lincoln and Stuart to earn fees for collecting debts, although untimely for the debtors who defaulted. The depression looked as if it might end in 1839, but it gained new life and continued for another three years.[18] Lincoln's business continued to boom when the United States enacted the Second Bankruptcy Act in 1841.[19] The Constitution authorized, but did not require, Congress to pass a bankruptcy law.[20] The Act gave relief to the many debtors who could not survive the long depression, but it was in force only until 1843 when it was repealed, leaving a short window of opportunity for lawyers like Logan and Lincoln to handle bankruptcy cases.[21]

14. Stephen B. Oates, *With Malice Toward None: The Life of Abraham Lincoln* (New York: Harper & Row Publishers, 1977), 63.

15. Beveridge, *Lincoln*, 1:552.

16. Pratt, *Finances*, 145–61.

17. Martha L. Benner and Cullom Davis, eds., *The Law Practice of Abraham Lincoln: Complete Documentary Edition* (Urbana: U. of Illinois Press, 2000), available at abraham lincolnassociation.org, hereinafter cited as LPAL.

18. See Roger D. Billings, Jr., "Lincoln and the Panics," *For the People: A Newsletter of the Abraham Lincoln Association* 13:2 (Spring 2011), 1–2.

19. An Act to Establish a Uniform System of Bankruptcy Throughout the United States, 19 August 1841, *U.S. Statutes at Large* 5 (1835–45), cit. as 5 Stat. 440, 27th Congress, 1st Session, Ch. 9.

20. United States Constitution, Article I, Section 8.

21. Act of 19 August 1841.

The Bankruptcy Act favored lawyers in Springfield because cases had to be filed in the federal court there. Lawyers from around the state referred cases to Springfield lawyers; records show that Logan and Lincoln handled a whopping 72 cases during this period. Although the firm's bankruptcy files were destroyed by the Chicago fire of 1871, the number of cases is known because the Act required debtors to notify creditors of their bankruptcy filing by posting an announcement in a Springfield newspaper.[22] Counting the newspaper ads produces a fairly accurate count of cases. Lincoln required out-of-town lawyers to pay a $10 fee in advance and up to $20 more for court costs and newspaper notices.[23] He wrote one of his referral attorneys: "Be sure that [the schedules] contain the creditors' *names*, their *residences*, the *amounts* due each, the *debtors* names, their *residences*, and the *amounts* they owe, also all property and where located."[24] Interestingly, bankruptcy lawyers give those same instructions to their clients today. The brief but intense bankruptcy practice made Lincoln an experienced debtor-creditor lawyer early in his career.

Before Lincoln performed legal services involving a substantial fee he usually took a fee note, drafted by himself and signed by the client. For example, in *Newlan v. Perryman* he drafted a simple note for the clients to sign.

> Sullivan, May 28, 1851
>
> Five months after date we or either of us promise to pay A. Lincoln fifty dollars, for value received.
>
> H.C. Carney
> Joseph Mark Clark[25]

The fee note for a large amount might provide for interest payments. Although the following note is for repayment of a loan, it is similar in form to a note for payment of a fee with interest:

> Springfield, August 15, 1851
>
> On or before the 25th day of December 1854, I promise to pay Abraham Lincoln three hundred dollars, together with interest thereon at the rate of ten percent per annum, from the 25th day of December next until paid, the interest payable annually, and

22. John J. Duff, *A. Lincoln, Prairie Lawyer* (New York: Rinehart & Co., 1960), 230, hereinafter cited as Duff.

23. *Ibid*. 232.

24. Lincoln to Garland B. Shelledy, February 16, 1842, CW 1:270.

25. LPAL file L00659; "for value received" refers to Lincoln's legal services.

on any default in the payment of interest, the principal to be due, for value received.

D. E. Ruckel[26]

As of January 2, 1857, Ruckel had paid Lincoln only $146. The note was earning 10% interest and Lincoln was apparently in no hurry to collect it because Ruckel, a cabinetmaker, had given Lincoln a mortgage on four lots to secure the note.[27]

The exception to the need for a fee note was a referral from an out-of-town lawyer. In 1857, Lincoln sent the prominent Chicago law firm of Cornell, Waite & Jameson the following letter:

Messrs. Cornell, Waite & Jameson — Springfield
Chicago, Ills. — June 2, 1857

Gentlemen: Yours of the 29th was duly received. This morning I went to the Register with four hundred dollars in gold in my hand and tendered to the Register of the Land Office a written application to enter the land, as you requested, all which the Register declined. I have made a written memorandum of the facts, deposited the gold with J. Bunn (who furnished it to me on the draft you sent) and took his Certificate of deposite, which certificate and memorandum I hold subject to your order.

Now, if you please, send me ten dollars, as a fee. Yours Truly

A. Lincoln[28]

The fee note accomplished two things: It established the amount of the fee before performance of services and deferred payment until after services were performed. Fee notes are less common in the practice of law today. In Lincoln's time, however, notes were indispensable where an efficient banking system did not exist. Lincoln could easily sell his notes, if necessary, because people traded them as a substitute for money.[29] Eventually clients paid their notes in money, bank notes, or barter, but instead of collecting from the client, Lincoln sometimes simply sold the note at a moderate discount to merchants or tavern keepers in the county seat where he had just concluded a case.[30]

Lincoln wrote about the ethical reasons for taking a note *before* performing services for the client. He said, "As a general rule never take

26. CW 2:109; Pratt, *Finances*, 74. In an endorsement on a letter dated March 13, 1862, Lincoln said Ruckel "was a dear friend of mine." CW 5:157.

27. CW 2:109 n.1.

28. Lincoln to Cornell, Waite & Jameson, CW 2:396.

29. Beveridge, *Lincoln* 1:555.

30. Beveridge, *Lincoln*, 1:555.

your whole fee in advance . . . When fully paid beforehand you are more than a common mortal if you can feel the same interest in the case, as if something was still in prospect for you . . ." He concluded that when payment is taken in advance, "[T]he job will very likely lack skill and diligence in the performance."[31] Thus Lincoln resisted the temptation to take large retainers even in criminal cases, when clients were (and still are) notoriously reluctant to pay after their case ends in a court judgment. Once Lincoln agreed on a fee, he was impatient with a client who later failed to pay it. "We win our case," he wrote to Andrew McCallen, "As the dutch Justice said, when he married folks 'Now, vere ish my hundred tollars.'"[32]

The ideal fee note was secured by collateral, usually in the form of real estate. Such a note was little different from today's bank loan secured by a mortgage on real estate.[33] A note so secured made payment later almost a certainty because failure of the client to pay in money would result in the real estate collateral's being liquidated. When a client defaulted on a fee note that was not secured by real estate, however, the only way to get paid was to sue and hope the client could pay cash. Lincoln would file the fee note in the circuit court of the county where the client lived, and the court would then routinely enter a default judgment for Lincoln unless the client appeared and contested the fee. For example, John B. Moffett refused to pay Lincoln and Herndon's fee note of $100 for handling the "atmospheric churn" patent case.[34] Lincoln's fee of $100 was higher than he usually charged for similar services, according to Harry Pratt.[35] Perhaps Moffett refused to pay because he thought the fee too high. On the other hand, he might have been short of cash, although he did own valuable real estate. No doubt Lincoln regretted that he had neglected to get a mortgage on the land when he took the fee note, because this meant tedious collection work.

First, he sued Moffett for $150 in Christian County Circuit Court where Moffett lived.[36] By agreement of the parties, the court awarded Lincoln and Herndon a reduced fee of $75. Moffett still would not pay, so Lincoln had the clerk of court issue a "writ of execution" that

31. "Notes for a Law Lecture," 1850, CW 2:82.

32. Lincoln to Andrew McCallen, July 4, 1851, CW 2:106.

33. See Roger D. Billings, "Lincoln and Illinois Real Estate: The Making of a Mortgage Lawyer," in Roger D. Billings, Jr., and Frank J. Williams, eds., *Abraham Lincoln, Esq.: The Legal Career of America's Greatest President* (Lexington: U. Press of Kentucky, 2010), 105.

34. *Lewis v. Moffett & Johnson*, LPAL file L03866.

35. Pratt, *Finances*, 46.

36. *Lincoln and Herndon v. Moffett*, LPAL file L03869.

authorized the sheriff to seize enough of Moffett's property as would satisfy the judgment.[37] Unfortunately, the sheriff returned the execution to the clerk marked "no property found" in Christian County.

Lincoln then tried something else. He knew Moffett owned real estate in contiguous Sangamon County and caused another writ of execution to be issued to the sheriff there. The writ instructed the sheriff to levy on 80 acres of Moffett's land. Armed with the power to levy, on March 24, 1851, the sheriff transferred the land to Lincoln and Herndon. Lincoln was getting close to his fee, but there was even more delay. One year later Lincoln and Herndon finally sold the 80 acres to William T. Moffett (probably a relative of John Moffett) for $99.06, which covered the $75 fee plus costs and interest. Thankfully, Herndon noted that Moffett paid the $99.06 in gold and silver coin.[38]

Lincoln preferred that clients pay fee notes with gold coins, rather than with real estate or bank notes.[39] Payment in money brought its own troubles, however. Gold or silver coins, called specie, were minted by the U.S. Treasury in values of three cents to twenty dollars. As there was not enough gold and silver to satisfy the national need, when Lincoln did get paid in specie, he was obliged to inspect the coins carefully. Gold was shaved off the edges of some coins; others were counterfeit. Lincoln needed to be sure that the coin edges were intact and that the coins were genuine.[40]

Sometimes clients paid Lincoln with a note that the client had received from someone else. This was a three-party note with the following persons' names on it: the maker (promisor), the payee (promisee), and the indorsee (the client). The client could simply reindorse this note to Lincoln, who then had the right to collect from the maker. If Lincoln determined that the maker was a person of solid financial reputation or, even better, the note was secured by a mortgage on the maker's real estate, he would readily accept it. Such "good" notes circulated like money.

Instead of signing and giving his own note, or indorsing a note, a client might simply tell someone who owed him money to pay Lincoln instead. For example, in *Rugg v. Haines* Lincoln won a judgment for Jonathan Haines of $2,300 for infringement of his patented "Haines Illinois Harvester," a machine for cutting grains such as wheat, barley,

37. An "execution" is the process of carrying a court's order into effect. Stowell, ed., *Documents*, 4:396, 404.

38. Pratt, *Finances*, 46–47.

39. Beveridge, *Lincoln*, 1:55 at n. 1.

40. Paul M. Angle, '*Here I Have Lived': A History of Lincoln's Springfield, 1821–1865* (Springfield: Abraham Lincoln Association, 1935), 23, 158.

and rye.[41] Lincoln wrote Haines, "I have received of Fox one hundred dollars . . . and credited it on one of your [fee] notes."[42] Fox owed Haines, who told Fox to pay Lincoln.

Other notes that Lincoln took in lieu of specie were called "bank notes." After the legislature voted to establish the State Bank of Illinois in 1835 (with Representative Abraham Lincoln voting "aye"), the bank began to accept deposits of specie and issue promissory notes to the depositor. These were "bearer notes" that were transferred like money from hand to hand without indorsement. The bearer could take the note to a bank branch at any time and present it for its face value in specie. Most bank notes circulated for some time before being presented.

Use of bank notes for payment worked well as long as the bank's guarantee of redemption in coins was believable, but that soon became a problem when it was rumored that the bank had made too many bad loans and did not have enough specie in the vaults. Prior to the Panic of 1837 the State Bank of Illinois had loaned out much of the specie it had taken in deposit. As a result of the panic, borrowers defaulted on their debts to the Bank (i.e. did not pay back the deposit specie plus interest), leaving the Bank without enough specie to redeem all the bank notes in circulation. As long as bearers did not present their notes to the Bank there was no problem, but word got out that the Bank was short of specie. Lincoln began to require clients to give him a discount from the face value of bank notes to account for the uncertainty of payment by the Bank. Gradually, the notes sank in value to less than fifty cents on the dollar.[43] At this point promissory notes of successful farmers became more valuable than bank notes. Notes of banks all over the country were so unreliable that weekly publications circulated with estimates of their discounted value. One publication deemed indispensable was called the "Counterfeit Detector."[44]

There is evidence that Lincoln took discounted bank notes in payment of fees. In a letter dated July 14, 1842, he wrote a client as to the fee, "[S]end me five dollars in good money or the equivalent of it in our Illinois paper."[45] "Illinois paper" referred to State Bank of Illinois

41. *Rugg v. Haines*, LPAL file L02344.

42. Lincoln to Jonathan Haines, June 9, 1859, CW 3:384. See Stowell, ed., *Documents*, 3:280 n. 67. "Fox . . . may have given money he owed to Haines to Lincoln to pay part of the bill Haines owed Lincoln for legal fees."

43. Angle, *Here I Have Lived*, 120–21; Roger Billings, "A. Lincoln, Debtor-Creditor Lawyer," in Billings and Williams, eds., *Abraham Lincoln, Esq*., 91.

44. Beveridge, *Lincoln*, 1:556.

45. Lincoln to Samuel D. Marshall, July 14, 1842, CW 1:290.

bank notes, and "the equivalent" referred to the fact that they had to be discounted. Lincoln was aware that in February 1842, the State Bank of Illinois announced its failure and the value of its bank notes fell to 44 cents on the dollar.[46] Perhaps bank note problems would not have existed had there been national bank regulations, but Andrew Jackson had opposed establishment of a national bank, and his view prevailed until the Civil War.[47]

Discounted bank notes were at the heart of an embarrassing case Lincoln handled for his father-in-law, Robert S. Todd. On May 10, 1842, Todd tried to pay part of a debt he owed to Nathanial Ware with bank notes of the State Bank of Illinois. Ware refused to accept them at par (100 cents on the dollar) because the note said it was to be repaid in "current bankable paper." The question was, were discounted bank notes "currently bankable?" Lincoln filed a complaint in chancery asking for an order that Ware must accept the notes at face value, even though they had fallen in value to 44 cents on the dollar. Lincoln, however, a champion of the now-failing State Bank when he was a legislator, lost the case.[48] As a result, Todd had to assemble enough discounted notes to equal the debt.

Between 1835 and 1842 Lincoln was a customer of the State Bank of Illinois.[49] After he collected his fees, however, what could Lincoln do to safekeep the specie and bank notes he received? Certainly he could not trust the State Bank of Illinois with his money. Fortunately, successful merchants offered limited services to Lincoln and many others. At first, Lincoln's deposits were handled by the successful merchant Robert Irwin, of Irwin & Co., who could keep his funds in heavy safes and strongboxes and even perform the services of transferring money for him. He used Irwin's services until 1849 when he withdrew all $309 in his account.[50] It is not clear who kept Lincoln's money for the next two years, but it might have been Jacob Bunn, who with John Williams conducted an unofficial banking business in Springfield.[51] In 1851 the Illinois legislature chartered the Springfield Marine and Fire Insurance Company with many of Lincoln's friends as incorporators, and Robert Irwin as an officer. The company provided extensive

46. Stowell, *Documents*, 1:302. "In June, the bank suspended operations."

47. See George William Dowrie, doctoral thesis, *The Development of Banking in Illinois, 1817–1863* (Urbana:© 1913 by the University of Illinois), 30; Angle, *Here I Have Lived*, 23, 158.

48. *Todd v. Ware*, LPAL file L04845.

49. Pratt, *Finances*, 121–22.

50. *Ibid*.

51. Angle, *Here I Have Lived*, 171.

banking services, and Lincoln immediately took advantage of them. Illinois forbade bank charters in the 1848 Constitution, but there was no prohibition on insurance companies performing the same services as banks. During the 1850's, Lincoln's larger clients could pay him with drafts on their banks which Lincoln could deposit in his account at Springfield Marine and Fire Insurance Co.[52] Out-of-town banks were also useful. For example, in the following letter, Lincoln used an out-of-town bank at Bloomington to collect a fee from the Illinois Central Railroad:

J. F. Joy, Esq. Bloomington,
Chicago, Ills. Sept. 14, 1855

> Dear Sir I have to day drawn on you in favor of the McLean County Bank, or rather it's cashier, for one hundred and fifty dollars. This is intended as a fee for all services done by me for the Illinois Central Railroad, since last September, within the counties of McLean and DeWitt. Within that term, and in the two counties, I have assisted, for the road, in at least fifteen cases (I believe, one or two more) and I have concluded to lump them off at ten dollars a case. With this explanation, I shall be obliged if you will honor the draft Yours truly A. Lincoln[53]

Lincoln sometimes used a time-honored way to get paid: the contingency fee agreement. It is routinely used today in personal injury cases and is designed to give ordinary Americans access to the services of skilled lawyers.[54] In a contingent fee arrangement the client does not have to pay a retainer fee before the lawyer begins to work. Rather, the fee is deducted from the amount of money damages, if any, that the lawyer wins for the client. Thus the fee is contingent on the lawyer's success.

A contingent fee agreement must be signed by the client and state the percentage that goes to the lawyer in the event of settlement, trial, or appeal, and expenses to be deducted.[55] A fee contingent upon securing a divorce, or the amount of alimony or settlement, and a

52. *Ibid*.

53. CW 2:325.

54. See Mark E. Steiner, *An Honest Calling*: *The Law Practice of Abraham Lincoln* (DeKalb: Northern Illinois University Press, 2006), 71 at n. 135.

55. American Bar Association Model Rule 1.5(c): "A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter which is prohibited by paragraph (d) or other law. [fees contingent upon the outcome of a divorce or criminal case.]."

contingent fee for representing a defendant in a criminal case, however, violates the modern ethics rule.[56]

The following promissory note drafted by Lincoln contained a contingent fee agreement:

> Danville, Ills. May 15, 1852
>
> For value received I promise to pay O. L. Davis, and A. Lincoln, eighty dollars, whenever the five suits brought in the Vermillion county circuit court, by the People of the State of Illinois against me, on five several Recognizances of bail, shall be finally decided in my favor, and not before—
>
> C. L. Pate[57]

On its face this would violate today's ethics rule prohibiting an agreement contingent on a satisfactory criminal case outcome.[58] Of course, that rule did not exist when Lincoln practiced.

In an artful twist on the contingency theme, Lincoln once promised a *refund* if he failed to win his client's case:

> Received May 16, 1855. Of W. H. Hanna twenty dollars, my half of our joint advance fee, in a case we are to bring in McLean County, for some people by the name of Whitelock, and others, perhaps which fee we are to refund, in case we have not success in their case—[59]

A more customary contingent fee agreement is found in *Wright v. Adams*.[60] In that case Lincoln, John Todd Stuart, and Stephen T. Logan represented the widow of Joseph Anderson who had allegedly lost 10 acres of land through the fraud of James Adams. In the contingent fee contract the widow promised to pay the lawyers "one half of the said piece of ground for their services, provided they recover the same, but are not bound to pay anything unless the said piece of ground be recovered."[61] Similarly Lincoln and Ward Hill Lamon represented Isaac Cossens who agreed to pay one-half of "whatever judgment may

56. *Ibid*.
57. Pratt, *Finances*, 47.
58. *Ibid*.
59. Duff, *Prairie Lawyer*, 225.
60. Contingent Fee Agreement, May 26, 1837, LPAL doc. 5253 in case L03870, *Wright v. Adams*. See Steiner, *Honest Calling*, 71.
61. *Ibid*.

be recovered."[62] These are two classic contingency fee agreements that stipulate a percentage of the recovery in land or money.

Today, most contingency fee agreements arise out of personal injury litigation.[63] Lincoln handled five personal injury cases that arose while clients were injured riding on stagecoaches or trains.[64] In two other cases he sued towns on behalf of pedestrians injured on unrepaired streets and sidewalks, but the written contingency fee agreements, if any, have not survived for these cases.[65] A final way for Lincoln to collect his fee was by barter when a client had no other means to pay. Once Lincoln loaned money to a client who paid back part of the loan with a donation to the First Presbyterian Church where the Lincolns rented a pew. The same debtor also paid Lincoln with some bricks for home improvements. Lincoln's explanation is as follows:

> In April 1849 I loaned Nathaniel Hay two hundred dollars for which I took his note at six percent for first six months and ten percent afterward. At the time, he owed me some trifle for fees. Afterwards from time to time I had bricks of him, and once he paid me ten dollars in money. In January or February 1855 we made a turn by which he paid the First Presbyterian Church twelve or fourteen dollars for me. On the 2nd of March 1855, we had a settlement including all these things, and as the old note was already nearly covered with former settlements and credits, he took it up, and gave me the note and due bill herewith filed, the note being for the original principal loaned and the due bill for a balance of interest due. After this, in June 1855, he furnished me bricks for the foundation of a fence, amounting to fifteen or sixteen dollars, which I have always considered as having substantially paid the due bill. In August 1855, he furnished me bricks for the pit of a privy, for which he or his estate is entitled to a credit on the note. The exact amount of this last lot of bricks I never knew but I suppose the Administrator can find it on Mr. Hay's books.
>
> June 9, 1856 A. Lincoln[66]

62. Contingent Fee Agreement April 14, 1855, LPAL doc. 132040 in case L01879, *Cossens v. Parrish*.

63. *Ibid*. Lincoln also defended clients in personal injury cases.

64. Stowell, ed., *Documents* 2:307 at n.10.

65. *Ibid.*

66. CW 2:397.

One fee note called for payment in firewood because Lincoln's client, a bankrupt, could not pay the note in cash:

> Springfield, Feby. 24th, 1842
>
> On or before the first day of November next I promise to pay A. Lincoln twenty dollars in good fire wood about four feet in length, at the selling price when delivered, to be delivered at any place designated by said Lincoln, in the city of Springfield—for value received.
>
> James Gambrel[67]

After winning an appeal for Samuel D. Marshall, publisher of the *Illinois Republican*, Lincoln wrote:

> Springfield, July 14, 1842
>
> Friend Sam,
>
> Yours of the 15th June relative to the suit of Grable vs. Margrave was duly received . . . The judgment is affirmed . . .
>
> As to the fee, if you are agreed, let it be as follows. Give me credit for two years subscription to your paper and send me five dollars in good money . . .
>
> A. Lincoln[68]

Another time, early in his career, Lincoln collected his fee from a Springfield hotel keeper in the form of $6 worth of board.[69]

Lincoln prized his freedom to choose any case or any client, and to represent any side of a dispute, but from 1853 to 1861 he agreed not to take any cases against the Illinois Central Railroad. The deal was sealed with a check for $250 from Mason Brayman, the solicitor of the railroad, as a "general retainer."[70] Under the retainer Lincoln agreed to handle the railroad's cases in the Eighth Judicial Circuit but later showed some regret about the surrender of his independence. He wrote Brayman that an "old man from DeWitt" asked him to sue the railroad but he declined to take the case "as I had sold myself out to you."[71]

67. *In re Gambrel*, LPAL doc 93555 in case L02392. See Duff, *Prairie Lawyer*, 233, and CW 1:279.

68. CW 2:290. See Allen D. Spiegel, *A. Lincoln, Esquire* (Macon, Ga.: Mercer University Press, 2002), 231.

69. Donald, *Lincoln*, 73.

70. Mason Brayman to AL (Oct. 7, 1853); Mason Brayman Papers, Chicago Historical Society, Chicago, Illinois, cited in Steiner, *Honest Calling*, 169. See also, Burlingame, *Lincoln*, 1:334.

71. Lincoln to Mason Brayman, March 31, 1854, LPAL file L30031. He continued to sue railroads other than the Illinois Central, however.

Lincoln did not consider the retainer an advance payment of fees. Rather, he deposited the money and billed the railroad for work as it arose. He soon drew a $100 draft on the railroad for work done. He wrote Brayman, "The reason I have taken this liberty is that since last fall, by your request, I have declined all business against the road."[72]

Lincoln had few disputes with clients over fees, perhaps because he charged the lower end of customary fees. His rule to defer collecting fees until the work was done inevitably resulted in collection problems, however. He confessed to his banker, James S. Irwin, "As to fees . . . we believe we are never accused of being very unreasonable . . . but whatever fees we earn at a distance, if not paid *before*, we have noticed, we never hear of after the work is done. We, therefore, are growing a little sensitive on that point."[73] Lincoln's reminder to a client that a fee was due could be polite and gentle. He wrote Samuel Marshall, "I write you as to the decision in the Supreme Court . . . I would like to have a little fee in the case, if convenient."[74] But his reminder could also be forceful, as in this letter:

> Springfield, Ills, July 23, 1859
>
> T. A. Howland, Esq.
> Dear Sir:
>
> . . . As you seemed to think probable, the draft you drew is back upon us; and, as you directed, we have, to-day, drawn upon you for $100.84, the 84 cents, being for charges. Do not let it come upon us again, or we might be provoked to dismiss your suit.
>
> Yours truly
> A. Lincoln.[75]

Lincoln did not consider himself forceful, however. He wrote a friend, "I am the poorest hand living to get others to pay."[76]

Since the vast majority of his fees were small, he must have often given up trying to collect. But when a fee was substantial he did not hesitate to take the client to court. Lincoln and his partners sued at

72. Lincoln to Mason Brayman, September 23, 1854, CW 2:234.
73. Lincoln to James S. Irwin, November 2, 1842, CW 1:304.
74. Lincoln to Samuel D. Marshall, June 20, 1845, CW 1:345.
75. Stowell, ed., *Documents* 1:18.
76. Lincoln to Norman B. Judd, November 16, 1858, CW 3:337.

least 19 times to recover their fees.[77] In these cases he took the risk that a jury in sympathy with the client might reduce the fee, and sometimes it did. In *Logan & Lincoln v. John Atchison*, Lincoln sued for his fee of $200 but the jury verdict awarded only $100.[78]

Lincoln's largest collection case was for his work on *Illinois Central Railroad v. McLean County, Illinois & Parke*.[79] The case started when the Railroad learned that McLean County (Bloomington its seat) planned to tax railroad property within the county. The 1848 Illinois Constitution seemed to allow the taxation in that it vested the county "with power to assess and collect taxes" provided they were "uniform in respect to persons and property in the county."[80] But the charter for the railroad from the Illinois legislature required the railroad to pay only a state tax of 5% of its gross proceeds from running the railroad and exempted it from all other forms of taxation.[81] Did the legislation contradict the Constitution? If so, then every county through which the railroad ran could tax it at will. McLean County and the Illinois Central agreed to allow the Illinois Supreme Court to decide the question without a trial. Both parties knew that it was a vital case, and so did Lincoln. He said it was "the largest law question that can now be got up in the state; and therefore, in justice to myself, I cannot afford, if I can help it, to miss a fee altogether."[82] Initially he talked to McLean County officials about being their lawyer. "If you wish to retain me, you better get authority from your court . . ."[83]

77. Steiner, *Honest Calling*, 71–72 at n. 143, cites these 17 cases: *Herndon v. Todd et ux.* LPAL file L03542; *Lincoln & Herndon v. Moffett*, L03869; *Lincoln v. Alexander*, L01275; *Lincoln v. Hawley*, L01274; *Lincoln v. Huston*, L01709; *Lincoln v. Illinois Central R.R.*, L01660; *Lincoln v. McGraw*, L00574; *Lincoln v. Pollock*, L01661; *Lincoln v. Read*, L04947; *Logan & Lincoln ex rel. Tucker v. Smith*, L02510; *Logan & Lincoln v. Atchison*, L04001; *Logan & Lincoln v. Craig & Warner*, L02080; *Logan & Lincoln v. McClun & Harkness*, L01662; *Logan & Lincoln v. Smith*, L03897; *Lincoln v. Brown*, L01616; *Lincoln v. Gwinn*, L00711; and *Lincoln v. Hall*, L01275. Albert Beveridge cites two more: *Lincoln vs. Spencer and William Turner*, De Witt Circuit Court, Clinton, 1841, on fee note; *Lincoln vs. Samuel Sidner*, Sangamon Circuit Court, August 1854, on fee note and foreclosure; judgment Nov. 21, 1854, for $594.30. Lincoln bought property at foreclosure sale, Feb. 5, 1855. Beveridge, *Lincoln*, 1:555 at n. 2. See also William H. Townsend, *Lincoln the Litigant* (Boston: Houghton, Mifflin Co. 1925); and Stowell, ed., *Documents*, 2:412.

78. *Logan and Lincoln v. Atchison*, LPAL file L04001.

79. *Illinois Central RR v. McLean County, Illinois & Parke*, LPAL file L01655.

80. Illinois Constitution, art. 9 §5(1848); Stowell, ed., *Documents*, 2:388.

81. "An Act to Incorporate the Illinois Central Railroad Company," 10 February 1851, Private laws of the State of Illinois (1851), §22.

82. Lincoln to Thompson R. Webber, September 12, 1853, CW 2:202.

83. *Ibid*.

Apparently their offer of a fee did not please him, however, because he decided not to represent the county. The Railroad had already consulted Lincoln about the case and wanted his services. Lincoln wrote to Mason Brayman, solicitor of the Railroad, "I am now free to make an engagement for the Road; and if you think fit you may count me in."[84] To make sure Lincoln was on board, Brayman immediately sent him $200 as a general retainer that would ensure his availability in the case.[85] Interestingly, except for that payment, Brayman did not learn what Lincoln would charge for a fee until after he had won the case for the Railroad.[86]

Lincoln stated the legal issue in a letter to his co-counsel appointed by the railroad, James Joy. "I suppose you are aware that the point to be made against is, the constitution *secures* to the counties the right to tax all property *beyond* the *power* of the legislature to take it away."[87]

Lincoln's partner, William Herndon, sprang into action. He began to do the research that ultimately produced many of the out-of-state precedents Lincoln used in his argument.[88] There were two separate hearings before the Supreme Court, one on February 28, 1854, and another on January 16 and 17, 1856, until finally on February 26, the Court decided for the Railroad.[89] It ruled that sections 18 and 22 of the Illinois Central charter did not contradict the Illinois Constitution requirement that taxes must be uniform.[90] Thus, the railroad needed only to pay taxes to the state and was exempt from county taxation.

The case having been concluded successfully, a contentious fee dispute between Lincoln and the Illinois Central was about to begin. The story told by William Herndon is that "Mr. Lincoln soon went to Chicago and presented our bill for legal services. We only asked for $2,000 more [than the $200 retainer]." Herndon thought that Lincoln went to see the superintendent, George B. McClellan, and that McClellan said, "We cannot allow such a claim."[91] The story is faithfully

84. Lincoln to Mason Brayman, October 3, 1853, CW 2:205.

85. Mason Brayman to Abraham Lincoln, October 7, 1853, Stowell, ed., *Documents*, 2:384. See also, Woldman, *Lawyer Lincoln*, 177–78.

86. See Receipt, Stowell, ed., *Documents*, 2:391.

87. Lincoln to James F. Joy, January 25, 1854, CW 2:209–10.

88. See Stowell, ed., *Documents*, 2:389, 392–93.

89. *Ibid*., 389, 394–404.

90. *Ibid*., 401.

91. Douglas L. Wilson and Rodney O. Davis, eds., *Herndon's Lincoln* (Urbana: U. of Illinois Press 2006), 218. The editors comment that it could have not been McClellan because he was not then an employee. See *ibid*., n.20.

reported in biographies, but some are careful to note that Herndon is the only source for it and that Railroad sources indicated Lincoln originally asked for $5,000. Various theories about what happened next are neatly summarized by Mark E. Steiner, who concludes that Lincoln's co-counsel, James Joy, who had clashed with Lincoln before, caused the railroad to reject the $5,000, which incidentally equaled his own yearly salary from the Railroad.[92]

After the Railroad ignored Lincoln's bill for months, he sued it for $5,000 in McLean County Circuit Court on January 3, 1857.[93] The trial was set for June 18 at a special term of the Court, Jesse O. Norton presiding in place of David Davis, who as Lincoln's friend had asked for someone else to preside. Lincoln prepared carefully to make his case that his services were worth $5,000. He consulted leading attorneys who allowed him to sign their names to a document called a "Professional Opinion" that he intended to introduce at the trial. It concluded, "We . . . are of opinion that the sum above charged, as a fee, is not unreasonable."[94] He also sent an affidavit to the court to serve notice that he desired to take depositions of some of the opinion signers and two more.[95] The lawyers he called on for support were a "who's who" of the Illinois bar. Absent a trial record it is unknown whether depositions were entered as evidence; it is likely, however, that the affidavit was.

The trial was one-sided because the Railroad's lawyer, John Douglass, did not appear, causing the court to enter a default judgment of $5,000 after the jury decided for Lincoln.[96] An observer of the trial said that Lincoln, "who had been attending the McLean County Court for years, knew every one of them and they knew him, and it would have taken a good deal of evidence on the part of the railroad to convince them that Lincoln was asking an excessive fee."[97] But Lincoln did not

92. Steiner, *Honest Calling*, 170–72. See also Stowell, ed., *Documents*, 2:404, n. 107.

93. *Lincoln v. Illinois Central RR*, LPAL file L01660. Stowell, ed., *Documents*, 2:406.

94. Stowell, ed., *Documents*, 2:408. The signers were Grant Goodrich, N. B. Judd, Archibald Williams, N. H. Purple, O. H. Browning, and R. S. Blackwell.

95. *Ibid*., 407. The lawyers were Norman B. Judd, Isaac N. Arnold, and Grant Goodrich of Chicago; Archibald Williams and Orville H. Browning of Quincy; and Stephen T. Logan of Springfield.

96. *Ibid*., 410.

97. Ezra M. Prince to John G. Drennan, April 5, 1906, Illinois Central Railroad Archives, Newberry Library, Chicago, Illinois, quoted in Steiner, *Honest Calling*, 175.

take the friendly jury for granted. The carefully drafted brief he used for his argument has survived:

Proof

Retainer.

Brayman & Joy's letters, with proof of their signatures, and that they were the active agents of the Company.

That I did the service, arguing the case twice.

Logan & Stuart.

[. . .] What was the question. How decided, & on what point.

The record, the final order, & the opinion.

That I, and not Joy, made the point & argument on which the case turned.

Logan & Stuart.

The Company own near two million acres; & their road runs through twenty six counties.

That half a million, put at interest, would scarcely pay the tax.

~~That the~~ ∧Are, or not the∧ *amount* of *labor*, the *doubtfulness* and *difficulty* of the *question*, the *degree* of *success* in the *result*; and the *amount* of pecuniary interest *involved*, not merely in the particular case, but covered by the principle decided, and thereby *secured* to the client, [. . .] all proper elements, by the custom of the profession ∧to consider∧ in determining what is a reasonable fee in a given case.

That $5000 is not an unreasonable fee in this case.[98]

Lincoln argued that his services saved the railroad at least half a million dollars in taxes each year. He concluded the brief with a list of criteria that should be used in determining the amount of a fee. It is remarkable how well these factors correspond with those in present American Bar Association ethical standards:

Lincoln in 1857	ABA Model Rule 1.5
The amount of labor involved	-1.5(a)(1)—"the time and labor involved"
The doubtfulness of the question	-1.5(a)(1)—"the skill requisite to perform the legal service properly"
The difficulty of the question	-1.5(a)(1)—"the novelty and difficulty of the questions involved"

98. Stowell, ed., *Documents*, 2:409.

The amount of pecuniary interest	-1.5(a)(3)—"the amount and the involved results obtained"[99]

The default judgment was an embarrassment to John Douglass, who arrived in Bloomington on June 22, two days after the trial. Douglass requested a new trial and, without objection from Lincoln, Judge Norton set aside the verdict and called a jury for a second trial. This trial on June 23 lasted but minutes with the same result except for deducting the $200 retainer from the $5,000 award.[100]

But still no check was forthcoming from the Illinois Central, and collection proceedings were necessary. On August 1, the McLean County circuit clerk gave a writ of execution to the county sheriff authorizing him to collect the judgment by levy on railroad property, if necessary. At Lincoln's request, the sheriff held back, and on August 12, the Illinois Central finally deposited $4,800 dollars in Lincoln's account at the Springfield Marine and Fire Insurance Company, soon to be split 50–50 with his partner, William Herndon.[101] Lincoln presumed the Illinois Central wanted no more of his services, but in fact he continued to represent the Railroad in numerous cases during and after the fee dispute.[102] He collected his fee in the nick of time. The Panic of 1857 caused all New York banks except The Chemical Bank to suspend specie payments, and on October 9 the Illinois Central was also forced to suspend payment of its debts, according to Albert J. Beveridge.[103] Another source said that the Panic "nearly caused the railroad to default on several loans."[104] What is clear is that had it not been for Lincoln's victory, the tax burden together with the Panic might have forced the Railroad out of business.

Aside from the McLean County case, Lincoln had few important disputes over fees, but one dispute with his best friend, Joshua Speed, was more than a fee dispute—it was personal and caused a temporary cooling of their friendship. Their first meeting as told in Speed's reminiscences could hardly be more colorful. When Lincoln decided

99. The chart is by William T. Ellis and Billie J. Ellis, Jr., "Competence, Diligence and Getting Paid," in Billings and. Williams, eds., *Abraham Lincoln, Esq.*, 149. The ABA rules are from the American Bar Association Model rules of Professional Responsibility (2020).

100. Judge Norton denied Douglass's request for a new trial but allowed Douglass to file an appeal within 30 days. When the railroad did not appeal, Lincoln's award became final. Stowell, ed., *Documents*, 2:410–11.

101. *Ibid*.

102. Donald, *Lincoln*, 156; Beveridge, *Lincoln*, 1:593.

103. Beveridge, *Lincoln*, 1:593.

104. Stowell, ed., *Documents*, 2:414.

to move from New Salem to Springfield in 1837 as a newly licensed lawyer, he rode into town on a borrowed horse, almost penniless and burdened with debt. He went to a store at the southwest corner of Fifth and Washington Streets, introduced himself to the storekeeper, and asked how much a mattress, sheets, and pillow would cost. The storekeeper introduced himself as Joshua Speed and said the items would cost $17. Lincoln replied that the price was fair but he didn't have the money, that he was in town to "experiment as a lawyer." "If I fail in this, I do not know that I can ever repay you," he said, and asked for credit until Christmas [1837].[105]

Speed already knew of Lincoln's reputation and had even heard him speak. Lincoln could avoid incurring debt, he said, since "I have a large room with a double bed up-stairs, which you are very welcome to share with me." Lincoln picked up his saddlebags, went upstairs, came back down, and announced, "Well, Speed, I am moved." His mood had gone from discouraged to hopeful, thanks to Speed.[106]

Speed's story is widely accepted as true, and was the beginning of the closest friendship Lincoln ever had. Soon a business relationship developed when Lincoln began to collect debts for Speed after he dissolved his store partnership. As Charles Strozier puts it, "Lincoln handled his friend's law cases, those testy suits against late or non-payment of debts, of deadbeats fleeing town, or sorting out estates of the dead who left obligations."[107] Strozier noted that Speed wanted regular reports and "hounded Lincoln to hound others."[108] Lincoln and his partners represented Speed in 19 cases; five related to debts owed to James Bell & Company (Speed's partnership) and the rest related to Speed personally after he dissolved the partnership and left Springfield in 1841.[109] In her study of the Lincoln-Speed business relationship, Susan Krause found no evidence of any fees Lincoln charged. She surmised that "the arrangement might well have been for a percentage of the debt collected."[110] Perhaps Lincoln handled some of Speed's cases in gratitude for the way Speed helped him get

105. Joshua F. Speed, *Reminiscences of Abraham Lincoln and Notes of a Visit to California. Two Lectures* (Louisville: John P. Morton & Co., 1884), 21–22. See also, *Herndon's Informants*, 477, on Speed's prior knowledge of Lincoln. See generally, Charles B. Strozier, *Your Friend Forever, A. Lincoln* (New York: Columbia University Press, 2016).

106. *Ibid*.

107. Strozier, *Your Friend Forever*, 23.

108. *Ibid*., 211.

109. Stowell, ed., *Documents*, 1:252; Strozier, *Your Friend Forever*, 23.

110. Susan Krause, "Abraham Lincoln and Joshua Speed, Attorney and Client," *Illinois History Journal*, Vol. 89 (Spring 1996), 40–49.

started in Springfield, but Krause wrote, "[I]t was apparent that the business relationship was profitable for both men."[111]

Speed stayed in Springfield until his father died, when he returned to his hometown of Louisville in early 1841. The James Bell & Company partnership was dissolved, but it lived on for the limited purpose of winding down the partnership and collecting its debt. It would be many years before the process was completed and Speed received his share. At first Lincoln cheerfully plunged into the collection work, but over the years it became tiresome.

Letters in 1841 and 1842 between Speed in Louisville and Lincoln in Springfield reflected their deep devotion to each other. They discussed their troubles in deciding whether to marry and even counseled each other during bouts of depression.[112] Then business matters intruded. In his letters on and after March 27, 1842, Lincoln carefully segregated business information from the personal.[113] The collection work for Speed was time-consuming and complex. For example, in his letter of May 18, 1843, Lincoln wrote,

> the note you enclosed on Cannan & Harlan, I have placed in Moffett's hands according to your directions. . . . I have called three times to get the note, you mention, on B. C. Webster & Co., but did not find Hurst. . . . At the April court at Tazewell, I saw Hall, and he then gave me an order on Jewett to draw of him, all rent which may fall due . . . You ask for the amount of interest on your Van Bergen note of $572.32, and also upon the judgement against Van assigned to Baker . . ."
>
> and on and on for several other debts.[114]

Lincoln did not like a client to keep too tight a leash on his collection work. He made this clear in comments to other clients such as S. C. Davis & Company, one of the few clients whom he represented in a large number of cases.[115] Exasperated by complaints that he was not collecting debts fast enough, Lincoln wrote, "My mind is made

111. *Ibid*., 49.

112. Lincoln to Joshua F. Speed, June 19, 1841, CW 1:254; February 3, 1842, CW 1:267; February 13, 1842, CW 1:269.

113. Lincoln to Joshua F. Speed, March 27, 1842, CW 1:282.

114. Lincoln to Joshua F. Speed, May 18, 1843, CW 1:323.

115. Stowell, ed., *Documents*, 4:54. Lincoln and Herndon represented S. C. Davis in 25 cases. Other repeat clients were Illinois Central Railroad, Sangamon County school commissioner Erastus Wright, Sangamon County landowner Archer Herndon (William's father), and Springfield merchant Jacob Bunn. *Ibid*.

up. I will have no more to do with this class of business."[116] Similarly, he wrote Speed, "I declare I am almost out of patience with Everett's endless importunity. It seems like he not only writes all the letters he can himself; but gets every body else in Louisville and vicinity to be constantly writing to us about his claim. . . . I say we would thank him to transfer his business to some other, without any compensation for what we have done, provided he will see the court cost paid . . ."[117]

Toward the end of the work for Speed, Lincoln became impatient with Speed himself. Eight letters from July 4, 1842, to December 2, 1848, reflect that Speed was pushing Lincoln hard for results.[118] In 1846 he patiently answered Speed's needling questions about the law. "It may be that you do not precisely understand the nature and result of the suit against you and Bell's estate," Lincoln wrote,[119] and proceeded to give an explanation of the chancery law involved.

Some time after this 1846 letter, Speed wrote to Herndon, who was wrapping up loose ends for Speed while Lincoln was in Congress. Speed demanded a $5 rebate for Lincoln's loss of a promissory note against Judge Thomas C. Browne and he also claimed that Lincoln owed him $86.57.[120] Lincoln was accused of holding back money collected for Speed! Normally this would have provoked outrage, for it insinuated dishonesty, and Lincoln was undoubtedly irritated that Speed would do this. With professional restraint he wrote Speed as follows in a letter from Washington: "[N]either side likes to lose money. You think the loss comes of our fault, and that therefore we should bear it; but we do not remember ever having had the note . . . We, like you, would rather lose it, than have any hard thoughts."[121]

Strozier noted that a letter as far back as July 1842 indicated a gradually increasing strain on their friendship. Lincoln wrote defensively to Speed, "You speak of the great time that has elapsed since I wrote you." It was striking to Strozier that such a complaint arose at all.[122] But during the 1840's Speed and Lincoln corresponded less and less. Speaking of the "suspension of our correspondence" in October 1846 Lincoln noted, "this is rather a cold reason for allowing a friendship,

116. Lincoln to S. C. Davis & Company, November 17, 1858, CW 3:338.

117. Lincoln to Joshua F. Speed, March 27, 1842, CW 1:282.

118. Lincoln to Joshua F. Speed, July 4, 1842, CW 1:288; October 5, 1842, CW 1:302; January 18, 1843, CW 1:305; March 24, 1843, CW 1:319; May 18, 1843, CW 1:323; July 26, 1843, CW 1:328; October 22, 1846, CW 1:389; December 25, 1848, CW 2:17.

119. Lincoln to Speed, Oct. 22nd, 1846, CW 1:389.

120. Strozier, *Your Friend Forever*, 213, n. 7, citing LPAL, Document No. 94784.

121. *Supra*, n. 115.

122. *Ibid*.; Strozier, *Your Friend Forever*, 193; July 4, 1842, CW 1:288.

such as ours, to die by degrees."[123] The deterioration of their business relationship together with Lincoln's failure to keep in touch on personal matters strained the friendship, but nevertheless it survived into the Civil War.

Then as now it was customary for lawyers to donate some of their time as a public service. Lincoln did work without a fee (pro bono) on numerous occasions. ABA model ethics rules say that every lawyer has a professional responsibility to provide at least 50 hours per year of legal services to those unable to pay.[124] Lincoln fulfilled this responsibility easily without the mandate of any ethics rules. In fact, he seemed rather proud of his pro bono record and allowed it to be discussed in a campaign biography for the 1860 election:

> Another peculiarity of Mr. Lincoln as a lawyer, is the fact that he is ever ready to give his assistance gratuitously to a poor client who has justice and right on his side. He has managed many such cases from considerations of a purely benevolent character, which he would not have undertaken for a fee. More than this, in cases of peculiar hardship, he has been known, again and again, after throwing all of his power and ability as a lawyer into the management of the case, without charge, or any other gratification of a noble nature, on bidding his client adieu, and when receiving his cordial thanks and the warm grasp of his hand, to slip into his palm a five or a ten dollar bill, bidding him to say nothing about it, but to take heart and be hopeful. Those who know him intimately will not be surprised at this relation, because it harmonizes well with his whole character; but so careful has he always been to conceal his charitable deeds that the knowledge of such actions on his part is confined to those who have come into possession of it without his agency.[125]

Lincoln seemed most inclined to perform pro bono service for women he deemed to be helpless. A woman's well-being in the early 19th century was dependent on her marriage, the family with whom she lived, or an inheritance or pension. Explaining English common

123. Strozier, *Ibid*.; October 22, 1846, CW 1:391.

124. ABA Model Rules of Professional Responsibility Rule 6.1: Voluntary Pro Bono Public Service, 2020.

125. [John Locke Scripps], *Life of Abraham Lincoln* (Chicago: Press and Tribune, 1860). This was the only biography that Lincoln authorized. Among the reprints are M. L. Houser, ed., *John Locke Scripps' 1860 Campaign Life of Abraham Lincoln* (Peoria: E. J. Jacob, 1931); and Basler and Dunlap, eds., *Life of Abraham Lincoln* (Bloomington: Indiana Univ. Press, 1961).

law, William Blackstone wrote, "The very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs everything."[126] Lincoln read this passage or a later version of it as he prepared to become a lawyer.[127] Single women over 18 and widowed women had equal standing in court as men, but most antebellum Illinois women were married and their standing depended on their husband's. Their reputations were destroyed when they were indicted for sexual misconduct, and so they had to defend themselves by filing a slander case. Slanderous words accusing a woman of adultery, fornication, or prostitution endangered her prospects for marriage as well as her reputation in the community. Lincoln knew how serious a slander suit could be for women and also knew that many of them had little money for a fee.[128] To add to a woman's woes, Blackstone's *Commentaries* said that in bringing such cases a woman must get her husband's concurrence and sue in his name as well as her own.[129] Realizing the helpless situation, the sympathetic Lincoln took many women's slander cases pro bono.

Divorce was much less common in Lincoln's day, and divorced women were stigmatized. Stacy Pratt McDermott observed that Lincoln and his partners handled a high percentage of divorce cases and that the law exempted most women who petitioned for divorce from paying court costs and attorney fees.[130] Therefore, although attorneys had little financial incentive to take divorce cases, Lincoln took them anyway and they were a large part of his pro bono practice. McDermott notes that in 25 years of practice Lincoln and his partners handled 88 divorce cases in Sangamon County alone, 40 percent of all divorce cases in that county.[131] She says an examination of these and other cases reveals Lincoln's gentle nature regarding women and his concern for their economic and social status.[132]

A few cases illustrate Lincoln's sympathy for women. In the murder case of *People v. Anderson and Anderson*, a bad feeling in the community

126. William Blackstone, *Commentaries on the Laws of England*, 4 vols. (1765–69; rpt., Chicago: U. of Chicago Press, 1979), 1:430.

127. See Daniel W. Stowell, "Femes Un Covert: Women's Encounters with the Law," in Daniel W. Stowell ed., *In Tender Consideration: Women, Families, and the Law in Abraham Lincoln's Illinois* (Urbana: U. of Illinois Press 2002), 38 n.1.

128. *Ibid*., 28.

129. *Ibid*., 28.

130. McDermott, "Dissolving the Bonds of Matrimony: Women and Divorce in Sangamon County, Illinois, 1837–60," in *Ibid*., 94–96.

131. *Ibid*. 54% of their divorce litigants were women.

132. *Ibid*., 96.

had sprung up against the defendant, Jane Anderson, and people raised $200 to employ a lawyer to assist the prosecutor.[133] With the money in hand the prosecutor offered the position first to Lincoln. He declined. He said, "he would sooner defend the woman for nothing than prosecute her for $200."[134]

A dramatic illustration of Lincoln's sympathy for women is the case of *Thomas v. Wright*.[135] Rebecca Thomas was the aged widow of a Revolutionary War soldier who asked the help of the local pension agent, Erastus Wright, in securing her pension. Wright proceeded to overcharge her for his services. Lincoln thought Wright should give the money back to her and sued him. His anger about the way widow Thomas was treated by the pension agent is evident in the following rare example of notes he wrote for argument to the jury:

> No contract.—Not professional services.—Unreasonable charge. —Money retained by Def't not given by Pl'ff.—Revolutionary War.—Describe Valley Forge privations.—Ice—Soldier's bleeding feet.—Pl'ff's husband.—Soldier leaving home for army.—*Skin Def't*.—Close.[136]

Lincoln won the case, charged no fee, and even paid for the widow's hotel bill and journey home.[137]

Similarly, Lincoln took pity on newlyweds William and Rebecca Dorman. She inherited property from her uncle, but the administrator of her uncle's estate argued that he had a longstanding claim himself for $1,000 against the property. She sued him for the property and lost at trial. Then Lincoln took the case on appeal to the Illinois Supreme Court, won a reversal, and got Rebecca her property. He said his services were a wedding present for Rebecca and William.[138]

In the most famous pro bono case, the so-called almanac case of *People v. Armstrong*, Hannah Armstrong, who had befriended and helped Lincoln in his New Salem days 26 years earlier, came to Lincoln with a pathetic story. Her rowdy son, Jack, was accused of murder.

133. *People v. [Jane] Anderson and [Theodore] Anderson*, LPAL file L04190.

134. Thomas Lewis's letter, "Springfield of the Past," in *Illinois State Register*, July 10, 1899, quoted in H. E. Pratt, *Finances*, 39. See also Julie M. Fenster, *The Case of Abraham Lincoln* (New York: Palgrave Macmillan, 2007), 205–6.

135. *Thomas v. Wright*, LPAL file L04728.

136. Notes for argument in Douglas L. Wilson and Rodney O. Davis, eds., *Herndon's Lincoln* (Urbana: U. of Illinois Press, 2006), 213. For another example see *supra*, n. 89.

137. Ibid. See also, Brian Dirck, *Lincoln the Lawyer* (Urbana: University of Illinois Press, 2007), 103; and Burlingame, *Lincoln* 1:349.

138. *Dorman et ux. v. Lane*, Dec. 1844, LPAL file L02445. See also Beveridge, *Lincoln*, 1:557–58.

Would Lincoln help? He did: He won acquittal, and he charged her not a penny.[139]

Lincoln's handling of fees reveals much about his character. His nickname "Honest Abe" is substantiated by the care he took to charge reasonable fees. His compassion toward women is substantiated by the numerous cases he took for them without a fee. At the same time he did not hesitate to sue clients who refused to pay fees. Little evidence exists that his services were ever thought unworthy of the fees he charged. His large debtor-creditor practice and ability to navigate the chaotic monetary system in Antebellum Illinois provided Lincoln's family with a comfortable life.

139. *People v. Armstrong*, May 1858, LPAL file L00800. Stowell, ed., *Documents*, 4:1.