



Your Local Lawyer

*by Guy O. Kornblum, Certified Civil Trial Advocate,
National Board of Trial Advocacy and
Member Million Dollar Advocates Forum*

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Is the Legal System Any Different from Lincoln's Day?

Some years have passed since our 16th President, Abraham Lincoln, practiced law in Springfield, Illinois. According to biographed information, he charged \$5 to \$20 per case for his services and was very successful.

This is certainly quite different from today's environment of large legal bills for a complex case, but the complexities of this case is far greater than in Lincoln's era. One of my favorite judges and long time friends observed a few years ago that if Lincoln walked into a courtroom today, having practiced in the near middle Nineteenth Century, he would still know where to sit and what to do. Not so with other professions, particularly medicine. There is no way that a surgeon from the middle of the Nineteenth Century could even begin performing surgeries today by modern standards, or render health care with all the advanced techniques that are available.

Is what my judge friend said still true? Are we still practicing law in the same manner as Lincoln? If so, is that good or bad, or somewhere in between?

Well, first of all, it is not totally true. The law has changed dramatically. New subjects have been addressed since Lincoln's day – consider the anti-trust laws, bio-medical issues, challenges to corporate practices which are deemed predatory or fraudulent, and laws relating to the Internet, which are certainly evolving. New issues have been addressed in our courts and refined.

But the law moves slowly, and Lincoln would understand the essential principles that are used to refine these much more sophisticated issues. Likewise, doctors of Lincoln's era, once informed, would still understand basic principles of anatomy and physiology. With some explanation, I would imagine a lawyer or doctor from Lincoln's day might very well "catch up," so at least they would have a basic understanding of how their respective professions function today.

In the legal world, what has changed? First, what has not changed much is the courtroom. It is basically designed the same way. A judge presides, there are clerks who record what takes place, there is a place for the jury, and there are tables for counsel. Reporters also take notes, although, today, computers assist them, which was not the case in Lincoln's day. If there was a reporter, they recorded the testimony and proceedings by shorthand or hand written notes.

The surgical suite, on the other hand, is much different – lots of changes there. So the place where lawyers work may be similar to Lincoln's era. It is not similar today to where doctors practiced then.

Today, our courtrooms rely heavily on technology. We have "real time" transcripts, which means that testimony shows up on individual computers of the lawyers and judges as it is recorded as the witness testifies. (This is similar to the text on television that you see at the bottom or the screen.) Likewise, exhibits and other documentary and demonstrative evidence is displayed by imaging. Some trials are virtually paperless.

I recently completed an 8 week jury trial in Orange County. The courtroom looks about the same as the courtrooms in Lincoln's time. The process is quite similar: jury selection, opening statements, direct and cross-examination of witnesses, rulings by the judge during trial, objections to questions asked of witnesses, closing argument, jury instructions, jury deliberations and verdict! That is the strength of our Legal System. The process has not changed. The Rules of Due Process and Constitutional guarantees have assured us that our Legal System remains in tact and that what takes place is consistent with the Basic Principles of American Government as outlined by our Founding Fathers in our U.S. Constitution and the legal precedents that have developed in court decisions since its adoption. Good for us. While the subject matter of lawsuits today may have changed considerably, Lincoln still would know where to sit when he entered the courtroom. And, you know what? I think he might know something about how to try a case.

**Guy and his wife, Victoria, are long-time residents of our neighborhood. Guy's firm, Guy Kornblum & Associates, specializes in personal injury cases, insurance matters, including insurance bad faith and coverage matters of all kinds, and other civil actions on behalf of plaintiffs who are injured or who are policyholders. He also is a mediator, specializing in early resolution of cases. His office is located at 1388 Sutter Street, Suite 820, tel: 415-440-7800. He can be reached at gtkornblum@kornblumlaw.com and welcomes your comments.*