

ABRAHAM LINCOLN

Takes a Break from Politics, 1849 To 1854

By HON. HENRY S. COHN

THIS ARTICLE REVIEWS THE PERIOD FROM 1849 TO 1854 during which Abraham Lincoln fully developed his legal skills and appeared to set aside his burning desire to succeed politically.

After eight years of service in the Illinois legislature, Lincoln achieved his goal of serving in the U.S. House of Representatives. Elected in 1846, he served one unhappy term from 1847 to 1849 in the House.

The first upset involved his future election plans. He had, in 1846, committed to running only once, allowing his Whig Party of Springfield, IL, to name another candidate for the 1848 election. But during his term in Congress, he was encouraged by certain Illinois Whigs to break his promise and seek a second term. However, in the midst of his term, he was informed that his local Whig Party in Springfield was not going to nominate him again. The party had made promises to another person interested in running in November 1848 as the Whig nominee.

Secondly, Lincoln's legislative agenda was a disaster. During Lincoln's term in the House, he abandoned, for lack of support, his effort to abolish slavery in the District of Columbia. He also created an embarrassing situation for himself by opposing President Polk's ongoing Mexican War. He demanded to know the exact "spot" where American blood had been shed by the Mexicans, Polk's ground for starting a war with Mexico. Lincoln's opponents accused him of being unpatriotic and mocked him as "Spotty Lincoln."

In 1848, Lincoln vigorously cam-

paigned throughout New England for Zachary Taylor, the Whig candidate for president, and Taylor won the 1848 election. Lincoln was disappointed not to be offered a patronage appointment by the Taylor administration, other than an offer to become governor of the Oregon Territory, which he rejected.

Lincoln returned to Springfield in 1849 without a legislative job, and with his law practice, except for longstanding debt collection matters, less than active. He vowed to abandon any further political involvement. Rather, he would devote his energy, as he put it, "more assiduously," to the practice of law.

One of the first cases that he accepted after his congressional term ended was *McAtee v. Enyert* (1849-1852). The *McAtee* case is one example of why Lincoln is known as "Honest Abe." In this case Lincoln championed honesty in land transactions.

On his father's death, Enyert inherited 15 acres of land from him. Shortly after, Enyert was charged with larceny for stealing a pair of shoes. McAtee, a supposed friend of Enyert, met Enyert in a local tavern. He offered to give Enyert a horse and saddle as well as \$200 so that Enyert could leave town and avoid the pending criminal charge. In exchange, Enyert would have to deed the 15 acres to McA-



tee. Enyert agreed and deeded the land to McAtee.

But Enyert never left town. Instead, he pled guilty to larceny and received a sentence of a \$10 fine. Enyert had realized that he had made a bad bargain with McAtee, because his land was worth more than a horse, saddle, and \$200. Enyert retained Lincoln to obtain an increased price for the acreage.

Lincoln had handled at least 30 cases where he sued buyers to increase the amount that they had paid for land under similar circumstances. In representing Enyert, Lincoln had to overcome the fact that McAtee had received a ruling of a board of three commissioners that had reviewed the transaction and found it fair.

Lincoln developed proof for the court that Enyert was an alcoholic and that the deal between Enyert and McAtee had

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occurred in a tavern when Enyert was inebriated. The trial judge, David Davis, found for Enyert. Shortly after the ruling, McAtee died and his heir took an appeal to the Illinois Supreme Court. Lincoln continued as Enyert's attorney on appeal.

On February 11, 1852, Chief Justice Treat wrote an opinion for the Illinois Supreme Court affirming Judge Davis's finding that McAtee had taken advantage of Enyert. McAtee was "shrewd and unscrupulous," while Enyert was "an ignorant and weak-minded man at best, and incapable of the rational management of his affairs when under the influence of spirituous liquor."¹ The case became an important precedent for setting aside improper or dishonest Illinois land transactions.

After returning to Illinois, Lincoln renewed his grueling travel through the Eighth Judicial Circuit. In 1849, there were

nine county seats in the Circuit, and by 1852, the legislature had increased them to fourteen.

The distance between each county seat was far, and the travel was difficult. Lincoln and his fellow attorneys traveled by horse and cart in rough weather and through much mud. They roomed in run-down inns and endured bad food. Lincoln was a close friend of Judge Davis, who traveled with the attorneys through the Circuit. Later, when president, Lincoln appointed Davis to the U.S. Supreme Court.

While most attorneys complained about the traveling conditions, Lincoln enjoyed himself much of the time.² Local citizenry flocked to county seats in the Circuit to watch the attorneys try cases and, after court adjourned, to enjoy the entertainment provided by the attorneys, such as poetry reading or storytelling. The

locals later served as resources for historians, relating how thrilled they were by Lincoln's clever cross-examinations and summations to the jury.³

The civil cases that Lincoln tried from 1849 to 1854 on the Circuit were often family matters. For example, in a divorce case, Lincoln represented a woman trying to obtain a real property award from her husband, who owned several tracts of land. Failing in the trial court to obtain for her what he considered appropriate, Lincoln took an appeal to the Illinois Supreme Court, but, in *Stewardsen v. Stewardsen* (1852), he lost there too. In *Ex Parte Milikin* (1850), however, Lincoln was successful in obtaining a conservatorship for a man who claimed that his wealthy brother was incapable of managing his own finances.

Lincoln also frequently represented

plaintiffs in suits for slander under an Illinois state statute. He received several favorable verdicts, but, as Lincoln scholar Mark Steiner has noted, Lincoln also tried to be a peacemaker between the parties. He urged the parties to mediate or negotiate to achieve a non-monetary compromise. Often, the slander was tragically interfamilial, where payment of money was hurtful.⁴

A good example of Lincoln's criminal cases from this period is *State v. Loe* (1852). Lincoln, on a court appointment, represented Loe on a charge of murder. The prosecutor seemed to have a strong case, because Moses Loe had struck and stabbed his victim. Due to Lincoln's efforts, however, the jury acquitted Loe of murder and found him guilty only of manslaughter. The judge imposed a sentence of eight years. After four years, Lincoln, members of the jury, and community figures petitioned the governor for a pardon, which he granted.

Upon release, Loe took up farming, married, and had children. During the Civil War, he joined the Union army and became a casualty in 1864. It seems ironic that, after Lincoln had benefited Loe as his attorney, Loe benefited the Union cause, which Lincoln led.

In 1849, Lincoln found another set of clients, representing the newly booming Illinois railroad corporations. He took on a variety of railroad cases, sometimes as a plaintiff's attorney and sometimes representing a railroad as defendant. He disputed the state's imposition of taxes on railroad businesses, litigated a railroad's claims of breach of contract, and defended the railroads against suits for injuries caused by railroads. Lincoln received his largest fee as an attorney, \$5000, for his successful representation of the Illinois Central Railroad in a tax case.

One of the first railroad cases that Lincoln handled commenced in the trial court and found its way to the Supreme Court in 1851. *Alton & Sangamon Railroad v. Barrett* featured a defendant who refused to pay his subscription to support the railroad. These pledges or subscriptions, authorized by the Illinois legislature, were sought by a new railroad to support its commencing operations.

The defendant claimed that the railroad planners had changed the course



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of the line to a route not to his liking. He argued that this excused his obligation to pay the amount he had promised to pay to the railroad.

Lincoln convinced the Illinois Supreme Court that the change of the route, except if extraordinary, did not excuse the defendant from his pledge. Lincoln had several other cases where he prevailed for railroads seeking to enforce pledges.

These non-political years were not always pleasant for Lincoln. A politician whom he greatly admired, Henry Clay, died in 1852. After Clay's passing, Lincoln addressed a gathering of Whig officials and said that Clay, who had been a slave owner, was devoted "to the cause of human liberty." Clay, stated Lincoln, supported the gradual emancipation of slaves in Clay's home state of Kentucky.

During these years, Lincoln worried about his future career and occasionally suffered from depression. He was buffeted by the death of his father on January 17, 1851, and even more by that of his three-year-old son Eddie on February 1, 1850.⁵

In May 1854, with Illinois Senator Stephen A. Douglas as its leading proponent, Congress passed the Kansas-Nebraska Act, which allowed newly admitted states to vote whether to accept slavery. Douglas called his doctrine "popular sovereignty."

Lincoln furiously objected to popular sovereignty. He traveled to Peoria, IL on October 16, 1854 to deliver an address attacking the doctrine. According to Lincoln, popular sovereignty, in effect, repealed the Missouri Compromise and the Northwest Ordinance, both of which had limited slavery in specified areas. Lincoln declared that no human being had a right to enslave another human being. With the Peoria address, as a member of the newly created Republican Party, Lincoln again took up politics. ■

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NOTES

- 1 From 13 Ill. 242.
- 2 In 1849 on the circuit, Lincoln met attorney Leonard Swett and they became lifelong friends. Swett was an advisor to Lincoln as president and accompanied him to Gettysburg. After Lincoln's death, Swett established a successful law firm in Chicago. He was an attorney for an executive of a Hartford insurance company, the Charter Oak Life Insurance Company, in 1878.
- 3 H. Cohn, *Abraham Lincoln at the Bar*, The Federal Lawyer, May, 2012, p.52.
- 4 See Steiner, Volume 16, Journal of the Abraham Lincoln Association, p.2.
- 5 Lincoln had four sons, Robert, Eddie, Willie, and Tad. Only Robert lived to adulthood. He became a prominent attorney in Chicago.