For the People

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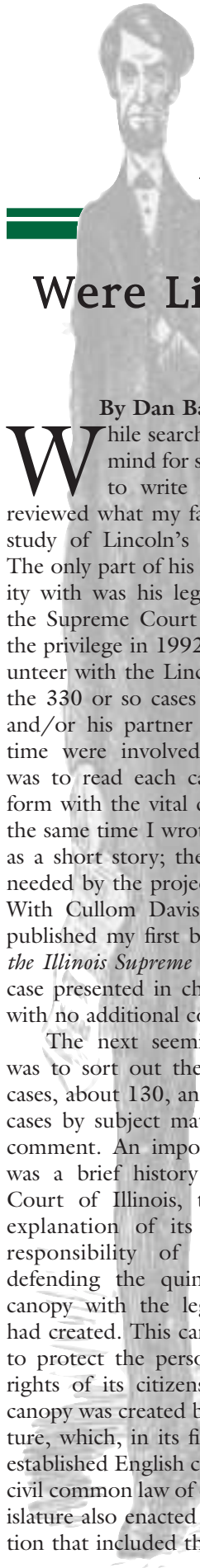

Were Lincoln's Aspirations for the Highest Court Thwarted by Politics?

By Dan Bannister

While searching around in my mind for something original to write about Lincoln, I reviewed what my fairly short shallow study of Lincoln's life could reveal. The only part of his life I had familiarity with was his legal practice before the Supreme Court of Illinois. I had the privilege in 1992 to read, as a volunteer with the Lincoln Legal Papers, the 330 or so cases in which Lincoln and/or his partner at that particular time were involved. My assignment was to read each case and fill out a form with the vital details of each. At the same time I wrote about each case as a short story; the stories were not needed by the project for publication. With Cullom Davis's blessing, I self published my first book, *Lincoln and the Illinois Supreme Court,* with every case presented in chronological order with no additional commentary.

The next seemingly logical step was to sort out the most interesting cases, about 130, and to present these cases by subject matter with editorial comment. An important part of this was a brief history of the Supreme Court of Illinois, together with an explanation of its most important responsibility of monitoring and defending the quintessential judicial canopy with the legislature in 1819 had created. This canopy was essential to protect the personal and property rights of its citizens. This protective canopy was created by the state legislature, which, in its first passed statute, established English common law as the civil common law of our state. The legislature also enacted additional legislation that included the common law of the Territorial government before 1818 and any of its statues that were deemed "suited to our condition," as part of that canopy. This self-published book, *Lincoln and the Illinois Supreme Court,* was a much more interesting "read" in my opinion.

This work whet my interest in the Supreme Court and, as I read the other 90 percent of the cases in which Lincoln was not involved, I wondered if Lincoln had ever lusted to be on the Supreme Court himself. Then when some kind person suggested I might write an article for this publication, I started the mind search for something original (to me, at least) to write about, and, remembering Edgar Allen Poe's Purloined Letter, I found my answer in the obvious place—my long-ago wondering whether Lincoln ever wanted to be one of the Justices on the highest court of this state.

Lincoln certainly had the intelligence, compassion, and intuitive sense to recognize the common sense of the English common law, as well as a sincere desire to lend his talents to assist his fellow men. Some of the reasons why he never saw a role in the state Supreme Court as his main ambition could have been: first, he was a very proactive man who wanted to be in the main legal action, advising and representing clients in the judicial arena, where his competitive spirit could be better satisfied. Second, he seemed to thrive in the company of people where his people skills were better served. Third, personal and financial rewards were more readily won by him in the active practice of law. Fourth, as suggested by some psychohistory scholars, his home life was not conducive, in his mind, to a nine-to-five job where he spent every evening at home. He certainly seemed to thrive on the circuit court practice in his earlier years when he was not at home for weeks at a time.

Perhaps the most pragmatic answer to the question is there were very few, if any, opportunities for a Whig/Republican to be appointed to the Supreme Court in the antebellum times. Most of the appointments after the first four Justices were appointed in 1819 went to Democrats. In 1840 there were five more Justices appointed, and since the legislature had a Democratic majority, all of those appointed were Democrats. In 1848 the Court was reduced to three Justices who were elected by the people. A review of the appointments to the court in this period compared with Lincoln's own career development reveals limited opportunities for his appointment to the Illinois Supreme Court, if he had sought the job.

Lincoln was admitted to the bar in Illinois in 1837 at the age of twenty-eight. He commenced his practice in partnership with John Todd Stuart, who spent about half of his time in this partnership in the United States Congress, so Lincoln's on-the-job training depended to a large extent quite on his own special talents. He was involved in eight state Supreme Court cases by 1840, when the court was increased to nine members. Having been an attorney for only three years, however, he was too inexperienced to be considered for membership on the court at this time, even if he had the requisite political-party affiliation. The 1818 four-justice court was composed of

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Lincoln's Springfield
The Underground Railroad
Part 3

By Richard E. Hart

Parts 1 and 2 of "Lincoln's Springfield: The Underground Railroad" focused on activity in and around what is now known as Farmingdale, Illinois, and began the story of Springfield's involvement in the Underground Railroad and introduced some of the African American conductors.

Reverend Henry Brown

African American Henry Brown was born in Raleigh, North Carolina, on April 17, 1823. In 1835 he moved to Ohio, and one year later to Rush County, Indiana, where from 1837 to 1843 he was a farm laborer for a Quaker family. Brown was of immense physical stature, standing six feet three inches and weighing 250 pounds.

Brown studied to become an African Methodist Episcopal Church preacher and was licensed to preach about 1846. He then began an itinerant ministry, walking from town to town. He was often refused meals and lodging because of his race. In 1847 he married at Paris, Illinois, and shortly thereafter moved to Springfield. Except for four years residence at Galena and Quincy, he lived in Springfield. In 1860 he lived at the northeast corner of Tenth and Madison streets, and later at 1530 East Mason Street.[58]

In both Quincy and Springfield Brown helped runaway slaves move north on the Underground Railroad. On one occasion he reportedly gave his own coat and vest to a poor black man. "Many a poor slave escaping by means of the underground railway during the civil war, was upheld on his way by Mr. Brown, who acted as a 'conductor' at Quincy and Springfield stations. His idea of the golden rule was illustrated by one instance when he gave his own coat and vest to a poor fellow who was without one."[59]

Brown was a great admirer of Abraham Lincoln and served him in various capacities until he went to Washington as president. When Lincoln's body was brought back to Springfield in May 1865, Brown was sent a telegram requesting that he come from Quincy to Springfield for the Lincoln funeral. He and another local minister, Reverend W. C. Trevan, led Lincoln's old family horse "Bob" in the funeral procession.[60]

Henry Brown died at his Springfield residence on September 3, 1906, at age eighty-three. The headline of his obituary read: "NEGRO EMPLOYED BY LINCOLN DEAD . . . Was of Massive Build and With Rev. W. C. Trevan Led Lincoln's Horses in Martyred President's Funeral Cortege."[61]

Aaron Dyer

African American Aaron Dyer was born a slave in Richmond, Virginia, on November 15, 1818. In 1840 at age twenty-one, Dyer was given his freedom. He came to Springfield, Illinois, in 1846.[62] Dyer "was employed by the underground railway. He drove his horse and wagon at night, taking runaway slaves to the next underground station. When they reached Springfield, where the feeling against slavery was strong, they were fairly safe, although there were times when their masters traced them there and then they would be kept in hiding for as long as three weeks, or until the chase was given up and their masters returned without them. Springfield was a center for the underground railway."[63]

In Springfield, Dyer worked as a blacksmith and drayman. His family consisted of his wife, Harriet Welden Dyer, who was born a slave in North Carolina about 1827, and three children, all born in Illinois: John, Elizabeth, and Aaron.[64] They lived in a small African American residential cluster on the north side of the three hundred block of West Washington Street, "between Rutledge and Klein" and "west of Gas Works."[65] Maria Vance, the Lincoln maid, was their neighbor.[66]

In 1877 Aaron and Harriet Dyer moved to Lincoln, Illinois, to be near their daughter and have her family's assistance as they grew older. Their grandson, William, was a neighbor and childhood friend of William Maxwell, who became the noted editor of the *New Yorker* magazine. In a poignant reminiscence of his boyhood days in Lincoln, Maxwell described his friend "Billie Dyer," and in doing so Billie's grandfather, Aaron.[67]

> Billie Dyer's grandfather, Aaron Dyer, was born a slave in Richmond, Virginia, and given his freedom when he turned twenty-one. He made his way north to Springfield, Illinois, because it was a station of the Underground Railroad. . . . In Springfield, the feeling against slavery was strong; a runaway slave would be hidden sometimes for weeks until the owner who had traced him that far gave up and went home. Then Aaron Dyer would hitch up the horse and wagon he had been provided with, and at night the fugitive, covered with gunnysacks or an old horse blanket, would be driven along some winding wagon trail that led through the prairie. Clop, clop, clopty clop. Past farm buildings that were all dark and ominous. Fording shallow streams and crossing bridges with loose wooden floorboards that rumbled. Arousing the comment of owls. Sometime Aaron Dyer sang softly to himself. Uppermost in his mind, who can doubt, was the thought of a hand pulling back those gunnysacks to see what was under them.[68]

Jenkins, Donnegan, Brown, and Dyer are known not for their service as Underground Railroad conductors, but for other events and relationships in their lives.

Jenkins was a Lincoln neighbor, living in the block south of the Lincoln home. On February 11, 1861, he drove Lincoln on his final Springfield

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Lincoln's Springfield
The Underground Railroad
Part 3

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trip to the Great Western Railroad depot, where Lincoln gave his Farewell Address and left Springfield for Washington.

Donnegan was Lincoln's friend and shoemaker. He was murdered by a mob in the 1908 Springfield Race Riot, prompting the formation of the National Association for the Advancement of Colored People.

Brown did personal work for Lincoln and was summoned to lead Lincoln's horse, "Old Bob," in Lincoln's Springfield funeral procession.

Dyer was the grandfather of William "Billie" Dyer, the first African American physician from Lincoln, Illinois. William was the author of a classic World War I diary, and his youthful days in Lincoln, Illinois, and grandfather Aaron's Underground Railroad activities are immortalized in William Maxwell's short story, *Billie Dyer and Other Stories*.

Yes, there were a few brave souls in Lincoln's Springfield who took enormous personal risks to help runaway slaves move north from Springfield on the Underground Railroad. Lincoln knew these men to be Underground Railroad conductors as surely as he knew that one of them made his boots and another drove for him on his last Springfield carriage ride. Alas, he did not know that Brown would lead his horse in his final journey to Oak Ridge Cemetery, but he had to know that his friend Brown was also among those brave souls—African American conductors on the Under-ground Railroad at Springfield.

Jenkins, Donnegan, and Brown are all buried close to one another in the "Colored Section" of Oak Ridge Cemetery,[69] just across the way from their friend, Abraham Lincoln, and seven miles east of Farmington.

[58]Brown was listed as living at the same address in 1873, 1874, and 1875. David B. Gould & Co., *Gould's Springfield Directory for 1873–4* (Springfield, Ill.: Journal Co., 1873); Julius Babeuf, comp., *Babeuf's Directory of Springfield, Illinois for the year 1875,* 3d rd. (Springfield: Illinois Journal Co., 1875).

[59]*History of Sangamon County, Illinois* (Chicago: Inter-State Publishing, 1881), 736.

[60]Ibid.; William Ray Wood, MS, 1–2, Sangamon Valley Collection, Lincoln Library, Springfield, Illinois.

[61]*Illinois State Journal*, Sept. 4, 1906.

[62]*1870 United States Census.*

[63]"Memoirs of African American Harriet Dyer Brummel," in Raymond Dooley, ed., *The Namesake Town: A Centennial History of Lincoln, Illinois* (Lincoln, Ill., 1953), 33. Harriet Dyer Brummel was the sister of Billie Dyer, the subject of *Billie Dyer and Other Stories* by William Maxwell.

[64]*1850 United States Census.*

[65]*1860 United States Census,* 454; C. S. Williams, comp., *Williams' Springfield Directory, City Guide and Business Mirror, for 1860-61* (Springfield, Ill.: Johnson & Bradford, 1860).

[66]*1870 United States Census*; R. L. Dudley & Co., *Springfield City Directory, For 1869-70, Containing a Complete List of All Residents in the City; Also, a Classified Business Directory of the Merchants and Professional Men in the City* (Springfield, Ill.: Daily State Register Steam Printing House, 1869).

[67]*Lincoln Daily Courier,* Sept. 3, 1900. They lived on West Eighth Street at the time of Harriet's death on March 5, 1897. At the time of Aaron's death on September 2, 1900, he was living at the corner of Tenth and Madison streets. Their funerals were conducted from the African Methodist Episcopal Church at 910 Broadway, and they were buried in Union Cemetery, Lincoln, Illinois. Death Record, Illinois Department of Public Health, Springfield.

[68]William Maxwell, *Billie Dyer and Other Stories* (New York: Alfred A. Knopf, 1992), 6–7.

[69]Oak Ridge Cemetery Records, Springfield, Ill. Jamieson Jenkins is buried in Lot 16, Block 5. William Donnegan is buried in Lot 83, S ½, Block 5. Henry Brown is buried in Lot 118, Block 5.

Were Lincoln's Aspirations for the Highest Court Thwarted by Politics?

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three Whigs and one Democrat. The five new appointees were all Democrats.

The change from four to nine justices had a major influence on the development of Illinois. A brief review of the court both before and after one of the most important Supreme Court cases in the antebellum period, *Field v. The People ex. rel. McClernand*, identifies a major impediment that Lincoln would have encountered if he had tried to be appointed to the court after 1840.

The first four justices were chosen by the constitutional convention, which produced the state's original Constitution. The first four Justices were Joseph Phillips, John Reynolds, Thomas C. Browne, and William P. Foster. Phillips was chosen Chief Justice and had a reputation as a fine lawyer of intellectual endowments. He held office four years, resigned to run for governor, lost, and left the state. Reynolds was admitted to the bar in 1812 and apparently was better known as a politician than as a lawyer. He was not reelected to the bar at the end of his term in 1825, but he did have enough talent and popularity to be elected governor in 1830. Browne, the lone Democrat, served on the court until 1848, when the court was reduced to three members. He did not write an opinion of any weight during the entire period. During his term there was an attempt, which failed, to impeach him for general incompetence. Foster was a total bust. He obviously was a man of great charm, but as it turned out he had no knowledge of the law. Thomas Ford, in his *History of Illinois* (1854), said of Foster: "He was assigned to hold courts in the circuit on the Wabash, but being fearful of exposing his utter incompetence, he never went near any one of them. In the course of one year, he resigned his high office, but took first to pocket his salary, and then moved out of the state. He afterwards became a noted swindler, moving from city to city, swindling strangers, and prostituting his daughter, who was very beautiful."

The Foster debacle provided a good reason for having Justices elected by the people, which finally was accomplished in the Constitution of 1848. A more immediate benefit was the selection of William Wilson to replace Foster. Wilson was a lawyer trained in Virginia, and had finished fifth on the original list the delegates made for the choice of justices at the constitutional convention. He served until 1848, and was Chief Justice for the last twenty years. He was a Whig and definitely one of the better Justices in the antebellum period. So was Samuel D. Lockwood, who had the same two qualities, who replaced John Reynolds in 1825. He was licensed to practice law in New York in 1811 and in Illinois in 1818. Thomas Reynolds replaced Phillips in 1822. He was admitted to the bar in Illinois in 1812 and served as Chief Justice until 1825, when he moved to Missouri. He was replaced by Theopolis Smith who studied law in Aaron Burr's law office and had a reputation as an active politician when he joined the court. He was acquitted of impeachment charges in 1833, and served on the court until 1848.

The court served in harmony with quintessential service rendered to the development of our state in the 1830s. Lincoln argued his first case before this tribunal in 1837. In 1839 the Field case reported next triggered a serious disharmony between the two dominant political parties—the Whigs and Democrats. This relationship was exacerbated by the Spragins case discussed after the Field case.

In *Field*, Governor Thomas Carlin, a Democrat, attempted to fire the incumbent Whig Secretary of State, Alexander P. Field, immediately after being elected. He wanted to fill that office with John A. McClernand, a fellow Democrat. Field refused to leave, and an action of *quo warranto* was brought, which in common law is a claim to office. The People were represented by Jesse B. Thomas, Stephen A. Douglas, James Shields, John A. McClernand, and Attorney General Wicliff. Field was represented by himself, Clyde Walker, Justin Butterfield, and Levi Davis.

The case was brought before Judge Sidney Breese (a Democrat) who ruled for the people holding that Field had to vacate the office. The decision was reversed by the Illinois Supreme Court, with Justices Wilson and Lockwood, both Whigs, concurring in favor of Field; Justice Smith, a Democrat, dissenting; and Justice Browne, a Whig, not sitting in the case because of his relationship with McClernand.

Chief Justice Wilson's forty-four-page opinion stated that neither the executive nor the judiciary could execute any authority of power, except such as is clearly granted by the constitution. Under the Illinois Constitution, the appointing power does not have the automatic power to remove an incumbent from office. The secretary of state is a constitutional officer whose role and powers are specified in the constitution, and his tenure is undefined and unlimited. The legislature has the power to limit the term of his office, but until it does so, the secretary can hold office.

Justice Wilson cited two Illinois cases that held that incumbents in government offices could not be removed from office at the will or pleasure of their superior officers. Breese, the circuit court judge, said he knew about those cases, but since he did not agree with them, he was not going to be very clear: when the Supreme Court decides what the law is on a given point, in instances coming up again in litigation, all the other courts in the state are bound to conform to the law. Wilson wrote: "A different rule would destroy all stability and uniformity in the rules of law, which is so essential to the administration of justice, and the

safety of the citizens. If every judge can decide according to his private sentiments, without regard to precedent or authority, there may be as many rules of decision as there are circuits, and the decision of one day would furnish no rule for the decision of the next."

Justice Smith, in his dissenting opinion, wrote that under the United States Constitution, the president could dismiss the national secretary of state. The Illinois Constitution, he emphasized, was patterned after the nation's Constitution, and as the state constitution was adopted in 1818, thirty one years after that of the United States, it is fair legal inference that by the adoption, it was intended to adopt the construction given to that from which it was taken, and to which it is in so many essential parts entirely analogous.

Justice Lockwood, agreeing with the majority, pointed out the essential differences in the two offices. The United States secretary of state assists the president in the management of peace and war, the negotiation of treaties with foreign nations, and in the regulation of commerce. There must be a confidential relationship between the two, and the president must be able to control the secretary. The power to remove a secretary in the constitution, rendered to both the governor and the legislature. The secretary has no confidential role with the governor, and is not under the governor's control. The settled doctrine is that construction for the purpose of conferring power should be resorted to with great caution, and only for the most persuasive reasons. Such reasons as are not present in this case.

Another case that was extremely important to both political parties was finally decided in December 1840, a very short time before the election of William Henry Harrison, a Whig, as President of the United States. The case is *Spragins v. Houghton,* and action under an election statue against Spragins who was an election judge in an election in 1838 for state and local offices allowed one Jeremiah Kyle, a native of Ireland and not a naturalized citizen, to vote. The 1818 constitution provided that all white male inhabitants above the age of twenty-one years, having resided in the state six months next preceding the election, shall enjoy the right of an elector. The only question in which both parties agreed was whether the word "resident" means "citizen" or not. Both parties agreed the case should be appealed to the Supreme Court for an answer to that question.

It was ultimately decided by the court, albeit after the presidential election of 1840, that the word "inhabitant" meant "one who dwells, lives, resides, or has his home in a place," and the word "citizen" means in the United States "a person native born, or naturalized according to the acts of congress." Thus Jeremiah Kyle was entitled to vote. The important political influence of this case is explained in a book written by John Moses entitled *Illinois Historical and Statistical* published by Fergus Printing Company in 1889:

It was the opinion of many leading Whigs that the right of suffrage was limited to citizens of the United States and that the courts would so decide. There were at this time about 10,000 foreigners in the state, 9/10 of whom allied themselves with the Democratic Party. Their vote at the election of 1840 might not only determine the political contest for the control of the state, but possibly for that of the United States. TO retain their support on one hand or eliminate it on the other had therefore become a question of vital importance to both parties. To bring it to an issue an agreed case was made in Galena, in which Judge Stone decided against the right of aliens to vote. It was carried to the Supreme Court where it was heard in 1839, at which the excitement and turmoil of the presidential election was at its zenith. If, as feared by the Democrats, the case should be decided adversely to the right of aliens to vote, they would unquestionably lose the state. Justice Smith, however, had discovered a serious defect in the record, in which, instead of 1838, the year 1839 had been alleged as that in which the general election occurred, communicated that fact to counsel, who succeeded by showing this error in continuing this case to the December term which would carry it beyond the Presidential election.

The Whigs elected the president but failed to carry Illinois—the majority being in favor of Martin Van Buren. The foreign vote along the canal in Cook and LaSalle counties and in St. Clair, more than turned the scale. The Democrats also succeeded in electing a large majority of the Twelfth General Assembly; the Senate standing twenty-six Democrats and fourteen Whigs; the House fifty-one Democrats and forty Whigs.

The governor availed himself of the first opportunity, offering to override and virtually to reverse the decision of the Supreme Court by promptly confirming Stephen A. Douglas, whose nomination as Secretary of State was among the first official acts of the governor after the assembling of the called session on November 30, 1840.

Douglas served until February 24, 1841, when he was appointed to the Illinois Supreme Court. Douglas was succeeded by Lyman Trumbull who was confirmed by a vote of 22 to 13.

Moses further explains:

[W]hile in the passage of the local measures (in the legislature) relating to improvements, taxes, and the payment of interest, party lines were not drawn, the resentments engendered by the late stormy presidential contest were still bitter and deep seated. The Democrats who deeply felt their loss of control of national affairs, determined to make the most of their supremacy in the state, and looked with jealous eyes on the Supreme Court which was composed of three Whigs and one Democrat. A pretext to change its political makeup was not wanting. Its decision in one case (Field) and its failure to decide in another (Spragins) in both of which the party was directly concerned, had been exceedingly obnoxious. . . . The Democrats however were determined to run no further risk of what they termed political decisions against them by the Supreme Court, and on December 10, 1840 Senator Adam W. Snyder introduced a bill to reorganize the judiciary by which the judges of the circuit court were to be legislated out of office

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and provision made for the appointment, by the legislature of five additional justices of the Supreme Court, who, together with the four existing members should hold the circuit courts. In the meantime, the Supreme Court had decided the case (Spragins) in which it was found that under the record the constitutional question was not involved, but merely one of construction under the election law of 1829. It was alleged however, that this decision had been rendered in order to mislead the dominant party as to the ultimate result of the litigation, and a view to affect pending legislative action against the judiciary. It was even charged on no less authority than Justice Smith was ultimately forced to join. The discussion of the bill continued with great bitterness for several weeks, its passage being opposed by not only the Whigs but by a few Democrats as well, and especially by the friends of the incumbent circuit judges. Most of the judges however, were won over by promises of re-election. The measure was finally passes, and was returned by the Council of Revision with their objections, but was reenacted by the bare majority, however, by one vote in the House. Governor Ford, though he owed to it his election to the Supreme bench, characterizes the actions of the General Assembly as "confusedly violent and somewhat revolutionary measure which could never have succeeded except at times of great party excitement."

This momentous change in the increase in numbers of Justices from four to nine, and from a Whig-dominated court to a Democratic six-to-three majority, was accomplished by one single vote. Fortunately for Illinois, the five new Democrats, and Justice John Dean Caton, who replaced Justice Ford a year later, were outstanding jurists, and finding political prejudice in their decisions is beyond my ability.

Perhaps earlier historians did not view the performance of the nine-Justice court as rising above political considerations, as it seems to us 160 years later. The animosities engendered by the Field and Spragins cases continued in the Democratic-controlled legislature. Elliott Anthony in *The Constitutional History of Illinois,* published in 1891, reasoned:

> The bill (increasing the Justices to nine), was, however, passed by a majority of one, and that vote was given by a member who opposed the bill on its passage and who immediately after was appointed clerk of the Supreme Court as newly organized, the five new judges, without any consultation whatever with their associates, turning out the old clerk and putting this very conscientious and reformatory member in his place. But this was not all. The old judges, it mattered not where they lived, were assigned to circuits so far removed from their homes as possible, and they were treated with every mark of discourtesy within their power. Old Judge Brown, whose home was in Shawneetown in the extreme southern part of the State, was assigned to the Galena district.

The legislature appointed five new Justices, all Democrats: Samuel H. Treat, Thomas Ford, Sidney Breese, Walter B. Scates, and Stephen A. Douglas. Treat settled in Springfield, and was appointed to the Circuit Court in 1846. Thomas Ford, a native Pennsylvanian, moved to Springfield, and was admitted to the bar in 1829. He was prosecuting attorney and circuit judge. He was elected governor in 1842. Breese was editor of the first volume of the *Illinois Reports.* He was appointed circuit court judge in 1835. He was elected to the United States Senate in 1842. Scates was admitted to the bar in 1833 and also was circuit court judge. Douglas, a native of Vermont, studied law in New York, and moved to Illinois in 1833. In 1835 he was appointed by the legislature as state's attorney. He was elected to the House of Representatives in 1842 and the United States Senate in 1846, being reelected to that post in 1852. The five new Justices were appointed on February 15, 1841, and the first meeting of the nine Justices was for the July term, 1841.

Three of the Justices resigned in 1842. Ford resigned on August 1, 1842, to run for governor, and was replaced by Caton, who was born in New York and practiced law there. He moved to Chicago in 1833 to practice law, and was twenty-nine when appointed to the court. Justice Breese resigned effective December 19, 1842. He was replaced by James Semple, who practiced law in Kentucky, and was a brigadier general in the Black Hawk War. Smith, who had been on the court since 1825, resigned on December 26, 1842, and was replaced by Richard M. Young, who had served as a circuit court judge in Chicago. All three of these replacements were Democrats, so Lincoln was left out again because the Democrats were still savoring the results of their victory in taking over the Supreme Court, and enjoying the spoils.

This euphoria continued up to and beyond the Constitution of 1848. Some justices resigned during this period and were replaced by Democrats. The replacements were John M. Robinson, Jesse B. Thomas, James Shields, Norman H. Purple, Gustavus Koerner, and William A. Denning. The population of Illinois was 476,183 in 1840, and grew to 851,470 in 1850 under the quintessential judicial canopy enabled by the Illinois Supreme Court.

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In Memoriam

Marvin Sanderman, a devoted member of the Board of Directors, died on June 27. His interest in the Civil War and Abraham Lincoln was a deep and abiding passion. A regular participant in the annual Civil War Roundtable battlefield tours, Sanderman had stories of these tours dating back decades. He also was a past president of this, the first of the Civil War Roundtables, founded by the Ralph Newman. Having created his own accounting business, Federated Tax Services, Sanderman excelled at unraveling the technical balance sheets of the many boards and philanthropic organizations to which he devoted his spare time. Besides the Abraham Lincoln Association, Sanderman was also a member of the Board of Trustees of Lincoln College and a life member in the Stephen A. Douglas Association.

James Harvey Young of Decatur, Georgia, died on July 29, 2006, following a long illness. The son of Reverend William Harvey Young and Blanche DeBra, he was born in Brooklyn, New York, in 1915 and grew up in several small communities in Illinois and Indiana. He graduated from Knox College and received his Ph.D. in history from the University of Illinois at Urbana-Champaign, studying with the legendary James Garfield Randall. He taught at Emory University from 1941 until his retirement in 1984. An author of nine books and more than 140 articles, Young specialized in the history of medical quackery and of food and drug regulation in the United States. He also wrote the first online article for the Abraham Lincoln Association examining the illustrations of famous Americans to promote the sale of Cuban cigars during the Civil War.

John R. Chapin died March 1, 2006. He was one of the longest serving members on the Board of Directors spanning three decades of service. Under his leadership the Lincoln Legal Papers was begun and created the compilation of a three DVD-ROM edition of all Lincoln's known legal cases. A lawyer himself, Chapin also served for many years on the committee that selected the Association's "Lincoln the Lawyer Award" originally created by Harlington Wood Jr. to honor members of the legal profession that best exemplify the qualities of Abraham Lincoln. Chapin was a leader in the Springfield community, serving on numerous boards and commissions. His love of history was reflected in his service on the Abraham Lincoln Association Board as well as his long association and service with the Sangamon County Historical Society. Chapin's brutal honesty and sardonic quips at meeting are legendary and can be seen in a recollection that he provided of the early Association dinners and dinner speakers.

Dan Bannister died on March 27, 2006. He was a past president of the Abraham Lincoln Association as well as a long serving member of the Board of Directors. Bannister held both an M.B.A. as well as a J.D. that served him well in the corporate world. He served as president of many companies and it was his tenure as C.E.O. of the Horace Mann Insurance Company in the 1960s and 1970s that brought him to Springfield, Illinois. Always a visionary, Bannister hired Minoru Yamasaki to create the current corporate office. Yamasaki would later be known for his design of the World Trade Towers in New York City. As president of the Abraham Lincoln Association, it was Bannister who led the Association's efforts to create a Web site and begin to digitize its publications. To date, the Abraham Lincoln Association is the only Lincoln organization to place an index of its holdings online as well as the complete text of many of its seminal publications, including the *Collected Works of Abraham Lincoln* and the *Journal of the Abraham Lincoln Association* in searchable formats. Bannister's interest in Lincoln's legal career resulted in two books *Lincoln and the Common Law* (1992) and *Lincoln and the Illinois Supreme Court* (1995). His last article submitted to the newsletter is presented in this issue.

APPLICATION FOR MEMBERSHIP

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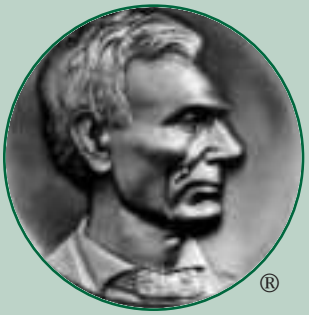

Web site:
abrahamlincolnassociation.org

Were Lincoln's Aspirations for the Highest Court Thwarted by Politics?

continued from page 6

Robert Howard believes that the 1847 constitutional convention was called because of the goals pursued by various interests:

Jacksonian Democrats were anxious to end the life terms of Supreme Court justices, they opposed banks, and they wanted the Governor to have an effective veto power. The Whigs desired to stop voting by aliens, and the belief became widespread that the rapid development of Illinois made a revision advisable. After a failure by a narrow margin in 1842, a convention proposal passed with 72 percent of the voted in 1846, the year for the first time a Yankee occupied the governor's office. The next summer an unwieldy assemblage of 162 delegates sat from June 7 to August 31 and produced a bulky set of compromises three times the length of the original document.

The new constitution corrected some of the faults of its predecessor but it also proved to be imperfect. Sweeping in its reorganization and acceptance of new concepts, it made many changes. Not all were to the liking of the majority, since the Whigs had elected a strong minority of seventy-one and carried important roll calls in a coalition with conservative Democrats. As the chief differences, the power of the legislature was curbed and provision made for election of all state and county officials. To prevent the legislature from packing the Supreme Court clerks also dates back from the 1818 constitution. The council of revision was abolished in an elimination of another court function, but the governor received only a limited veto power, which could be overridden by a bare majority of the legislative houses . . . The Whig coalition insisted that only citizens could vote, and triumphed over a democratic effort to continue the 1818 provision under which white male inhabitants of twenty-one and over could vote. The proposal of a northern Illinois delegate who wanted to extend the right of suffrage to Negroes was defeated, 137 to 7.

Two of the three justices elected by the people were two members of the court before September 4, 1848, John Dean Caton and Samuel H. Treat. The third justice elected was Lyman Trumbull, who had practiced law, served in the legislature, and had succeeded Douglas as Secretary of State in 1842. All were Democrats, and either had no opposition (Treat) or Whig/Republican opponents who were defeated. Trumbull was an anti-Nebraska Democrat, and later a Republican. Lincoln didn't run against any one of the three. Lincoln was elected to the United States Congress in 1847, which precluded him from being able to participate even if he wanted to at that time. He served two years in Congress, and possibly his unpopular, in Illinois at least, stand on the Mexican War lost him some Whig support in Illinois in the beginning years of the 1850s. During the remaining years of the antebellum period, four Democrats won the vacated positions on the Supreme Court: Walter B. Scates in 1854, Onias C. Skinner in 1855, Sidney Breese in 1857, and Pinkney H. Walker in 1858. During this period Lincoln became increasingly busy in his law practice, and in political activity on behalf of Whigs and later Republicans. He lost to Douglas when he ran for reelection to the United States Senate in 1858. It seems clear he could have had a nomination from his party to run for the Supreme Court of Illinois against any of those Democrats. However, he had his eye on higher positions on a national basis—and the country was better off that he did.

For the People

A Newsletter of the Abraham Lincoln Association
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