The Court Archive:
Theophilus Smith Impeachment

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In Illinois's 203-year history, only one Illinois Supreme Court justice was impeached by the Illinois House with a Senate trial.

Theophilus W. Smith was born in New York, New York in 1784. He studied law in the office of Aaron Burr, later Vice President and most famous for killing Alexander Hamilton in a duel. Smith received his law license in 1805. In 1816, Smith moved to Illinois, settling in Edwardsville. Smith was elected to the state senate in 1822 and became a proponent of returning slavery to Illinois. In 1825, the Illinois legislature elected Smith to the Illinois Supreme Court.

While on the Court, Smith maintained his political interests, hoping for an opportunity to be elected to the U.S. Senate. His Senate aspirations never materialized, but Smith remained an "indefatigable schemer." In 1828, Smith confronted Illinois Governor Ninian Edwards with a loaded pistol. In defending himself, the much larger Edwards knocked the pistol away from Smith and broke Smith's jaw in the process.

By the early 1830s, Smith had made plenty of political enemies. In 1832, Smith was impeached by the Illinois House of Representatives for oppressive conduct, corruption, and high misdemeanors, specifically selling a circuit clerk's office, swearing out fictitious writs, suspending a lawyer from practice because the lawyer wanted to change the venue in a case away from Smith's circuit court, and imprisoning a Quaker for refusal to remove his hat in court. Smith's defense team consisted of three future Illinois Supreme Court justices: Sidney Breese, Richard M. Young, and Thomas Ford.

The senate trial lasted nearly a month in January and February 1833. Ever the schemer, Smith was able to obtain scraps of paper on which the senators had taken notes during the trial. This allowed Smith to tailor his defense accordingly. At the end of the trial, 12 senators voted to convict and 10 voted to acquit with 4 not voting. Since conviction required a two-thirds majority, 15 votes were needed, resulting in Smith's acquittal, and Smith remained on the Court.

The formerly pro-slavery judge wrote an opinion in 1836 which limited the expansion of slavery in Illinois. In *Boon v. Juliet*, 2 Ill. 258 (1836), Smith held that an 1807 territorial act regarding

registration of servants did not affect the children, writing “I am clearly of the opinion that the children of registered negroes and mulattoes are unquestionably free.”

In the early 1840s, Smith continued to make enemies. An avowed Democrat, Smith was harshly criticized by the Springfield Democratic newspaper for drunkenness, nepotism, and harassment. In December 1842, after a 17-year term on the supreme bench, Smith resigned from the Court. He died four years later in Chicago.

Until Governor Rod Blagojevich’s impeachment and conviction in 2010, Justice Smith had been the only Illinois official impeached. In 1842, legislators unsuccessfully tried to remove Illinois Supreme Court justice Thomas Browne by “address.” In the 1990s, the Illinois House held hearings to impeach Justice James D. Heiple but failed to secure enough votes to move the case to the senate.