



## Bench and Bar

**Penelope D. Clute**

# **The Historical Society of the New York Courts County Legal History**

## **Franklin County**

Penelope D. Clute

### **County Introductory Essay (Origins & History)**

Franklin County was formed on March 11, 1808 from Clinton County. By state law in 1809, the town of Malone was established as the county seat, and the location for a courthouse was determined to be “on the rising ground a few rods west of the bridge in Malone, where the dwelling house of Noah Moody stood.”

Franklin County was settled later than counties that were on waterways. According to Seaver's *Historical Sketches of Franklin County*, this was part of the Old Military Tract established in 1786, providing homesteads for Revolutionary War soldiers under the war land-bounty acts. He says no one claimed any land.

In the *History of Clinton and Franklin Counties*, Hurd describes the first settlement as at St. Regis by a group of Indians, who came from Caughnawaga in Quebec under the leadership of the Jesuit Father Anthony Gordon in 1760. The first white settlers were Benjamin Roberts of Ferrisburgh, Vermont and Nathan Beman of Plattsburgh, who came to what is now the Town of Chateaugay. As a young boy in 1775, Beman had guided Ethan Allen, Benedict Arnold, and other colonists in a raid capturing Ft. Ticonderoga from the British.

Seaver's account is somewhat different. He reports that the first white settlers were two brothers named Tarbell, who were whites kidnapped as boys in Groton, Massachusetts in about 1723 and taken to Caughnawaga. He says they were adopted by natives and married the daughters of chiefs. Because of disputes and jealousies within the community, they and their wives' families left and went to St. Regis Ak-sis-sas-ne in 1750. A colony from Caughnawaga under Father Gordon then joined them in 1760.

## Timeline

- 1760** First Indian settlement
- 1802** Malone's first pioneers were the brothers Enos, Nathan, and John Wood of St. Albans, Vermont, who came in 1802. Many Vermonters followed, attracted by the "healthful climate and fertility of the soil" according to Hurd.
- 1808** On February 14, 1808, citizens of Clinton County petitioned the New York State Assembly to create a new county called "Norfolk," because "the settlements in the western part of said [Clinton] county are so remote from the site of the courts . . . as to render their attendance extremely difficult and burthensome." Less than a month later, Franklin County was created from Clinton County.

The law creating the new county required establishing a Court of Common Pleas and one of General Sessions of the Peace, and directed that they each hold two sessions a year. The first session was to be on the 3<sup>rd</sup> Tuesday of April 1808, and the second on the 2<sup>nd</sup> Tuesday in October 1808.

## County Courthouses

### First Courthouse

#### Malone

1813

The Act of March 11, 1808 mandated that both courts be held “at the academy in the township of Malone.” Monies were appropriated in 1809-10 for building a courthouse and jail. The supervisors authorized raising \$250 in taxes “to strengthen and secure one room in the said academy as a gaol for said county.” That money was never spent, so it was authorized to be applied to the construction of the new building. The building committee was directed by the supervisors to model their courthouse after that in Clinton County.

Until the courthouse was complete, after the War of 1812, court was held in the old Academy. A wooden structure, the courthouse built by Noah Moody was completed in 1813. The total spent was \$5757.25, plus some fees and commissions. The original courthouse was hip-roofed and had a basement in part of which was a kitchen for the sheriff and the other part was the jail. This consisted of “two tiers of cells – dark, damp and dismal, without a particle of furniture except one chair in each cell. Straw scattered on the floor had to serve for beds for the luckless prisoners.” Seaver at 73-74.



1st Courthouse 1813

“The ceiling was made of blocks of wood dovetailed together and once in an attempt to escape, the prisoners heated a poker undertook to burn off the dowels, with the result that they set fire to the building and had a decided fright.” Seaver at 74.

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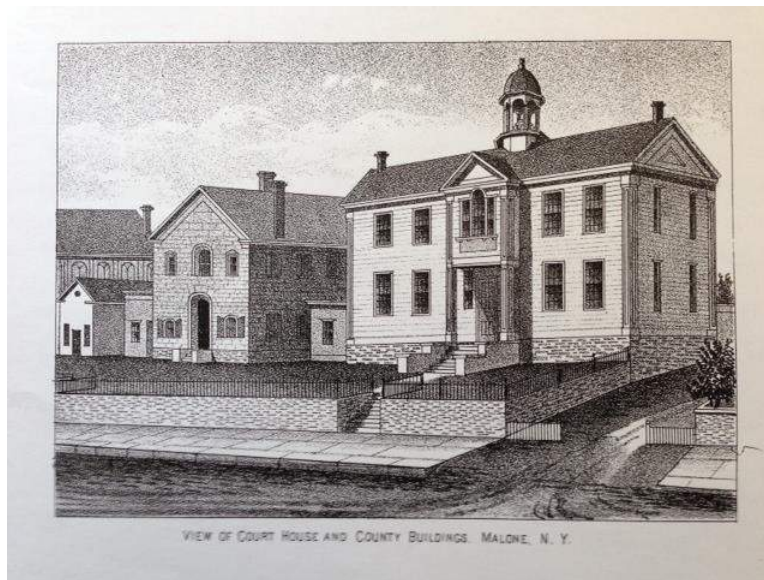
## **2nd Courthouse**

**1852**

**Malone - same site as 1st Courthouse**

In 1847, a grand jury found the jail to be unfit and unsanitary and “condemned” it in a report to the court. A new stone jail, containing living apartments for the sheriff, was built in 1852 and used until 1892, when it was demolished.

The first courthouse had been built on high ground, above all other buildings. Later the earth was scraped away, so that the 1852 courthouse sat lower. The jail was no longer in the same building once the 1852 courthouse was built.



**2nd Courthouse 1852**

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## **3rd Courthouse**

**Malone - same site as two previous courthouses**

**1883**

The old 1852 courthouse was sold at auction in 1883 for \$93. The new third courthouse cost \$35,000, including a 30-foot-wide strip of land east of the county land on West Main Street.

The building did not include the jail or the county clerk's office. That building continued in use for 50 years, until a new fourth courthouse was built in 1930, financed by \$425,000 in bonds.



**3rd Courthouse 1893**

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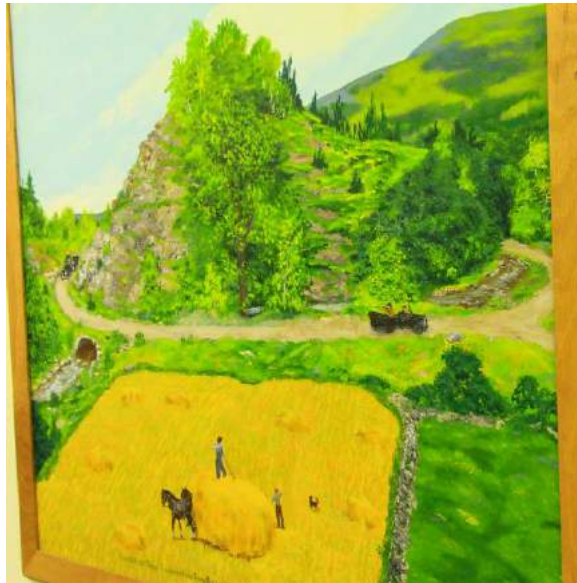
**4th and Present Courthouse  
Malone - same site  
1930**

This 1930 courthouse was expanded in 1988 with a 4-story addition attached to the north side of the building for county offices. The court-related spaces were remodeled in 2007-08, and the main courtroom was restored to its original look in 2009.



**Present Courthouse**

The art in the courthouse is unique to Franklin County, as there are numerous large paintings by Elvira Manning Hosson (1914-1988) showing scenes and events in local history. Several of these, depict criminal activity, including *Prohibition Days: Troopers from Troop B Chasing Bootleggers*, *Bar Room Scene* showing many activities, among them a fight over cheating at cards, both of which hang in the District Attorney's Hallway, *Moment of Terror* depicting a man in a buggy being shot by a man behind him [the 1903 Orrando Dexter murder near Santa Clara] in the Probation Department, and *Wolf Bounty Scandal* in the County Clerk's Office.



**"Troop B State Troopers Chasing Bootleggers" by Elvira Hosson – hanging in 4<sup>th</sup> floor District Attorney's hallway**

In 1976, the Malone Arts Council commissioned Elvira Hosson to paint local history scenes for the Bicentennial. Thereafter, the County Legislature commissioned additional historical paintings. By Resolutions adopted on December 30, 2008, the county legislature proclaimed Ms. Hosson to be Franklin County's Historical Folk Artist, and committed "to display and care for her Folk Art paintings as part of Franklin County's history through perpetuity."

## The Bench

On the first Common Pleas Court, the First Judge was **Ebenezer Brownson**, appointed February 21, 1809, and the Associate Judges were **Asa Wheeler**, **Joshua Nichols**, and **Albon Man**, with **Jesse Chapman** as Assistant Justice. Joshua Nichols was also the Surrogate, appointed to that position on March 23, 1808.

The first session of the Court of Common Pleas and General Sessions was held on October 9, 1810. The judges appointed Julius C. Hubbell, of Chazy in Clinton County, as the District Attorney for that first term. He prosecuted at least three criminal jury trials, all of which ended in acquittal by the juries. These defendants were James A. Mott, Henry S. Waterhouse, and Zurr Johnson. Several civil jury trials were also held.

One of the local magistrates in 1814 was **James Bradley Spencer (1781-1848)**, who was born in Salisbury, Connecticut and then moved to Franklin County, settling in Fort Covington. He had limited education, but served in several important offices: Surrogate 1828-37, New York State Assembly 1831 & 1832, and U.S. House of Representatives 1837-39.

A responsibility of the early judges was the inspection or examination of woolen cloth. According to Seaver, a state law passed in 1812 provided for "payment of premiums of \$100, \$50 and \$30 for the best, second best and third best specimens of woolen cloths" made in New York from wool grown in New York, and also "premiums of \$40, \$35 and \$30 for specimens made in families."

"In each county the cloths were to be judged by the judges of the court of common pleas, and the samples approved by them were to be sent to Albany for final judgment for the State as a whole. The judges were to be paid two dollars each per day for their services in this capacity."

The supervisors' records for 1813 show that Ebenezer Brownson and Joshua Nichols each spent two days examining woolen cloth and were each paid \$4, while Asa Wheeler spent one day and was paid \$2.

## The Wolf Bounty Scandal

Another judicial duty was to certify bounties for wolves and other animals. As early as 1790, New York law established bounties for wolves, panthers, and other wild animals. To obtain the bounty, the law required the hunter to bring the animal's head to a justice of the peace. The cost of the bounties was divided between the state and the county; the amount per wolf gradually increasing to \$40. According to the Seaver, the state's share of bounties paid in Franklin County from 1815 to 1820 ranged from about \$500 to \$1000. Then in 1821, it rose to \$14,000, and continued to rise in 1822.

A state investigation followed, which found that “while so great a number of wolves had been slaughtered, it could not be found that the wolves had killed a single sheep or done any damage.” During the same time period, the bounties paid in all other counties of the state greatly decreased. The 1823 report from the comptroller to the State Legislature also described that dogs' heads had been successfully submitted as wolves' and even a deer's head on one occasion.

Seaver, at p 633, tells of stories he heard as a boy “that after a hunter had presented a wolf's head and a justice had examined it, it would be placed on a table or chair behind the justice while he was executing his certificate, whence a collusive hand would pass it through a window to some waiting member of the gang and that thus a single pate might draw a number of bounties through the negligence or connivance of an accommodating magistrate.” This account comes to life in Elvira Hosson's painting *Wolf Bounty Scandal*, which hangs in the County Clerk's Office at the Courthouse.



As a result of this scandal, two new laws were passed in 1822. The wolf bounty was reduced to \$10, and a \$1000 per year limit was placed on Franklin County. More requirements had to be met to claim a bounty: in addition to bringing the wolf head to a magistrate, the hunter had to make an affidavit describing the circumstances of the killing. Furthermore, another official had to sit with the justice, and the ears of the animal had to be cut off and burned when a bounty certificate was issued. The value of bounties paid in 1823 dropped to only hundreds of dollars.

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**George S. Adams, 1817-88**, was born in Bangor and educated at Franklin Academy, then studied law. After leaving the judiciary, he practiced law in Burke, then spent an unsuccessful period in the lumbering business, and returned to practice in Malone in 1878.

**Position:**

1855-60      County Judge

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**Frederick Howard Bryant, 1877-1945**, was born in Lincoln, Vermont, and graduated from Middlebury College in 1900. He “read law” in the office of Gordon H. Main and was admitted to the bar in 1903. He practiced law in Malone with the firm of Main & Bryant from about 1903-07, thereafter Bryant & Lawrence. In 1927, he was appointed by President Calvin Coolidge to a newly-created federal judgeship for the Northern District of New York. In 1935, he presided over the Dutch Schultz trial in Malone, which is described under the “Notorious & Interesting” section below. On October 22, 1907, he married **Florence Bessie Boyce**, the only female attorney in Franklin County.

**Position:**

1927-1945      District Court Judge, United States District Court, Northern District of New York

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**Albert Hobbs, 1820-97**, was born at Ogdensburg, came to Constable as a boy. Admitted to practice 1850 after studying law in the office of Joseph Hall Jackson.

**Positions:**

1856              NY State Assembly  
1864-66          NY State Senate  
1867-71          Franklin County Judge

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**John Hutton, 1809-62**, was born in Glasgow, Scotland in 1809 and settled in Upper Canada with his parents in 1821. Educated at the University of Vermont, and became a teacher there; he was the tutor of Henry J. Raymond, founder of the *New York Times*. He left Vermont and studied law in the office of Asa Hascall in Malone. After his admission to the bar, he practiced law with Joseph H. Jackson, then William P. Cantwell, and later with Col. Wead.

**Position:**

1851-56          Franklin County Judge.

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**Ellsworth C. Lawrence, 1876-1954**, was born in Albany, Vermont, graduated from Middlebury College and was admitted to the Bar in 1904.

**Positions:**

1917-22	Franklin County District Attorney
1925-32	Franklin County Judge and Surrogate in 1925
1933-46	First Supreme Court Justice in the Third Department elected from Franklin County
1945-46	Justice of the Appellate Division, Third Department

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**Robert Gordon Main, Sr., 1917-1998**, was born in Malone and graduated from Franklin Academy, Peddie Preparatory School in New Jersey, and Colgate University. He entered Albany Law School in 1940, but left after his second year to enlist in the U.S. Marine Corps. He served in the 1<sup>st</sup> Marine Division in the Pacific, including campaigns at Cape Gloucester, Peleliu, New Guinea and Okinawa. In 1946, he was honorably discharged to the Marine Corps Reserve and completed law school. He was admitted to the New York Bar in 1946 and joined the law firm of Main and Pond in Malone.

**Positions:**

1951-60	NY State Assembly
1960-87	NY State Supreme Court Justice
1973-87	Justice of Appellate Division, Third Department

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**Henry A. Paddock, 1823-84**, was born in Fort Covington, attended Fort Covington Academy, and entered Middlebury College in 1838. At the age of 21, he began the study of law with Wallace & Flanders in Fort Covington; four years later he was admitted to the bar. For several years, he held positions with national banks. He also was a member of the firm of Cantwell, Paddock and Cantwell beginning in 1874.

**Positions:**

1853	District Attorney
1859-67	County Judge

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**James C. Spencer, 1825-1902**, was admitted to practice in 1848 and opened a law practice in Fort Covington in 1849, then moved to Ogdensburg in St. Lawrence County in 1854. While there, he was in private practice and was the U.S. Attorney for the Northern District of New York. In 1864, he relocated to New York City and practiced law there. In 1866, he entered a partnership with Charles A. Rapallo, who later served on the Court of Appeals. Spencer served on the Superior Court of New York City from 1869-72. When he returned to practice, he also became the reporter of the Superior Court. His father was James Bradley Spencer, Surrogate in 1814.

**Position:**

1869-72      Superior Court of New York

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**Horace A. Taylor, 1824-93**, was born in St. Lawrence County, moving to Franklin County with his parents in 1828. Educated at Franklin Academy, he later became an assistant teacher there. At age 21, he was elected "town superintendent of common schools of the town of Bangor," which he held for several years. He studied law in office of William A. Wheeler in Malone and was admitted to the bar in 1851. He first practiced law with Mr. Wheeler and Mr. Flanders, then a series of other attorneys.

**Positions:**

1862-68      District Attorney of Franklin County

1877-83      County Judge from 1877-83 [Seaver says he was County Judge 1878-90].

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**County Judges from Courts and Lawyers of New York**  
(beginning in 1847; before then the title was First Judge)

1809   Ebenezer Brownson  
1814   George H. Harrison  
1815   Joshua Nichols  
1816   Albon Man  
1820   Hiram Horton  
1823   Ebenezer Brownson  
1825   Benjamin Clark  
1829   William Hogan  
1837   Roswell Bates  
1843   Henry B. Smith  
1847   Joseph R. Flanders  
1851   John Hutton  
1855   George S. Adams  
1859   Henry A. Paddock  
1867   Albert Hobbs  
1877   Horace A. Taylor  
1889   Samuel A. Beman  
1907   Frederick G. Paddock

**Surrogates**

1808 Joshua Nicholls

1814 Albon Man

1816 Ebenezer Brownson

1828 James B. Spencer

1837 Sidney Lawrence

1843 Martin L. Parlin

1847 henceforth the County Judge also acted as Surrogate

## The Bar

**Florence Boyce Bryant, 1883-1968**, is believed to be the first woman to practice law in Franklin County; she was born in Malone, graduated from New York University Law School in 1905, and was admitted to the bar on September 13, 1906. She married **Frederick Howard Bryant** on October 22, 1907. The wedding announcement of October 9 in the *Utica Herald Dispatch* stated "she enjoys the distinction of being the only woman attorney of Franklin County. She has practiced law for some time." Florence's name appears with Frederick's as attorneys in the Appellate Division case of *Boyce v. Walker & Walker*, 130 AD 305 (3<sup>rd</sup> Dept. 1909). She was appointed the Clerk of the Surrogate's Court of Franklin County in 1908, then again from 1917-1919, after several others held the position. Her husband was appointed a federal judge for the District Court of the Northern District of New York in 1927. In 1936, on her petition, Judge Bryant granted their son, **Frederick Boyce Bryant**, admission to practice law in the federal courts.

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**William P. Cantwell, 1829-1905**, was born in Quebec and educated in Canada and Vermont. He earned a Master of Arts degree from the University of Vermont and then studied law in Montreal for 4 years. He was admitted to the bar in Quebec in 1851, practiced law in Montreal for two years, then moved to Malone in 1853, having been admitted to the New York bar in 1854. He practiced law for a time with John Hutton and temporarily acted as district attorney while the DA was absent. Hurd reports that during this time "he carried to a successful termination one of the most interesting and intricate criminal prosecutions which has ever occurred in the county" which involved the defendant "girdling the orchard of a neighbor."

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**Asa Hascall, 1788-1852**, was born in Vermont, studied law in Essex County NY, settled in Malone in 1815.

### Positions:

1818-1838	Supervisor of Malone
1840-43	Supervisor of Malone
1818	District Attorney
??-??	Justice of the Peace
??-??	NYS Assembly

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**Azel Hayward, 1802-1835**, graduated from Middlebury College, studied law in Salem, NY, and came to Fort Covington, Franklin County in 1829. He was soon appointed District Attorney by Governor Martin Van Buren, and held that office until his death at 33 years of age in 1835.

**Position:**

1829-35      District Attorney

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**Joseph Hall Jackson, 1787-1856**, was born in New Durham, NH, read law in New York City, admitted to practice in 1811. He practiced in Orange, Ulster and Sullivan Counties before moving north. From 1844-56, he practiced law in Malone with a series of different attorneys

**Positions:**

1841-43      District Attorney of Franklin County

1843          NY State Assembly

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**Gilbert Sweet Main, 1788-1878**, was born in Milton, Vermont.

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**Gordon Hiram Main, 1852-1911**, was born in Russeltown Flats, Quebec, came to Burke as a child with his parents, and graduated from Franklin Academy.

**Position:**

1891-1907      District Attorney

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**Harold Ward Main, 1885-1962**

1922          District Attorney

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**Mary Louise Mills, 1921-2002**, was born in New York City, graduated from Hunter College in 1941, and received a J.D. *summa cum laude* from Brooklyn Law School in 1945. In 1946, she and her husband moved to the North Country and set up a law practice in Fort Covington. She served as Franklin County Attorney and Franklin County Social Services Attorney, among other positions. In 1983, she and her husband moved to Florida, where she practiced law beginning in 1986, served as a hearing officer for the Pinellas County School System, and a volunteer attorney with Gulf Coast Legal Services.

Judge Robert G. Main, Jr. remembers her well: "They raised seven children in the same house as the law office Mary Louise went back and forth from office to house with the assistance of an office staff . . . and a housekeeper. Mary Louise was nearly blind; that did not deter her. She studied assiduously for the Florida bar, passing, as a senior citizen with a handicap, with flying

colors. She was sharp as a tack, utterly respected and beloved by the bar. She served as corporate counsel for many municipalities, including Franklin County, and was a member of the original board of North Country Community College. Great lady!"

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**Jabez Parkhurst, 1785-1865**, was born in Vermont and graduated from Vermont University in 1810. Soon after, he came to Malone, where he taught at Franklin Academy and studied law. He was admitted to the bar in 1814 and commenced practice in Fort Covington with Jonathan Wallace in 1815. In 1833, he was elected to the State Legislature by the Anti-Mason party, but never held another office. According to Hurd's *History of Clinton and Franklin Counties*, Parkhurst "was one of the first anti-slavery men in the county and State, and always adhered to his anti-slavery principles."

**Position:**

1833                      NY State Assembly

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**Walter H. Payne, 1831-63**, was born in Fort Covington, educated at Fort Covington Academy, and studied law with James C. Spencer. He was admitted to the bar in 1853 or 1854 and was elected district attorney in 1856, serving for one term.

**Position:**

1857                      District Attorney

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**Jonathan Wallace, 1788-1856**, was born in Essex County and came to Fort Covington in Franklin County in 1815. He had received a bounty-land warrant for his volunteer service in the Battle of Plattsburgh. In 1818, he was appointed Justice of the Peace by Governor Clinton, which he held until his death in 1856, except for two years.

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**William Almon Wheeler, 1819-1887**, was born in Malone, attended Franklin Academy and the University of Vermont, although he dropped out before graduating because of lack of finances. He was admitted to the bar in 1845, then practiced law in Malone.

**Positions:**

1847-50                  District Attorney  
1850-51                  NY State Assembly  
1858-59                  NY State Senate  
1867-68                  President of NY State Constitutional Convention

1861-63 US House of Representatives  
1869-71 US House of Representatives  
1877-81 Vice President of the United States with President Rutherford B. Hayes  
When Wheeler was in Congress in 1873, the House voted itself a pay raise and made it retroactive for five years. Wheeler voted against it and returned his salary increase to the Treasury Department. His reputation for honesty was praised by historian Allen Nevins in the introduction to John F. Kennedy's *Profiles in Courage* (1956, p xiv).

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### **District Attorneys**

1818 Asa Hascall  
1829 Azel Hayward  
1841 Joseph H. Jackson  
1843 Asa Hascall  
1847 William A. Wheeler  
1850 Ashbel B. Parmelee  
1853 Henry A. Paddock  
1856 Walter H. Payne  
1859 Albon Man\*  
1861 William P. Cantwell, temporarily during the Civil War absence of Major Man  
1862 Horace A. Taylor  
1868 Samuel A. Beman  
1877 John P. Badger  
1883 Henry G. Kilburn  
1892 Frederick G. Paddock  
1898 Gordon H. Main  
1907 John W. Genaway  
1916 Ellsworth C. Lawrence  
1922 Harold W. Main

## County Trials

### Scholarly

***United States v. Sing Tuck***, 194 U.S. 161 (1903)

Chinese workers were valued in the United States during the California Gold Rush and the building of railroads. However, once the Intercontinental Railroad was completed in 1869, whites complained of competition from Chinese. In 1882, the US Congress passed the Chinese Exclusion Act, which prohibited the immigration of all Chinese laborers. This law was tightened even further in 1884 and 1888, including a requirement that if a Chinese resident of the US left the country, he needed to obtain a certificate to re-enter.

Malone was one of only four ports of entry for Chinese seeking to enter the US. If their destination was New York City, then Malone was where they entered. It appears that many Chinese travelled by train from the west coast of Canada. The first Canadian transcontinental passenger train, the Pacific Express, passed through Ottawa from the west coast on June 28, 1886. Canadian Pacific assumed control of the Ottawa, Northern & Western Railway in May 1902. In 1891, the Malone & St. Lawrence Railroad was created to build from Malone to the international border. Other railroads were built in 1892 and 1893 extending south from Malone through the Adirondacks.

After sailing from China to Vancouver, British Columbia, each paid a \$500 “head tax” to enter Canada, then came east by Canadian Pacific Railway, en route to Chinatown in New York City. When the train crossed into the United States at Malone, the Chinese passengers were arrested on the grounds that they were entering the country illegally, in violation of the Chinese Exclusion Act. They were detained in the Franklin County Jail, awaiting hearings before a US Commissioner. Seaver, at p 89, describes that “[a]fter a time such arrivals became numerous, overcrowding the jail, and it became necessary to make other provisions for their care.”

In late 1901, the New York State prison commission adopted a resolution requesting the United States government to provide a prison or house of detention near the Canadian border for Chinese prisoners because they were overcrowding the jails of Clinton, Essex, and St. Lawrence Counties, as well as Franklin. Seaver reports that Franklin County remodeled a barn for \$3,410 on its land “into a detention house for Chinese prisoners.”

The first Chinese were brought there in July 1903. “At times there were more than 200 Chinamen in the jail, and 300 or 400 in the detention house.” The federal government paid the county \$3 per week for each Chinese inmate, while the “actual cost for their board was under a dollar a week per head.” This continued until 1911. (Seaver p 90).

It also appears that the Chinese who arrived by Canadian Pacific Railway had agreements with the railroad company, that the railway would return the men to the west coast of Canada then back to China, if they were refused admission to the United States. In the case of *In re Lee San*, the Supreme Court of British Columbia, vol vii, p 427 (1904), ruled that “a Chinaman who is only

admitted into Canada as a through passenger bonded in transit to the United States and who is refused admission, is not entitled to obtain his release on habeas corpus in Canada while being returned by the transportation company." Seaver states, at p 89, that "the railroad company... contracted with our government to bear the expense of caring for them [in the detention house], and if they should be denied admittance to return them to China."

There were many articles in the newspaper, *Malone Palladium*, in 1897 reporting on the arrests and hearing results of the "Chinamen" who were arrested at the Malone border crossing. An April 29 article says in part, "All that it seems necessary to do whenever one of the heathen is arrested is to report the fact to an association in New York city which has been organized to handle the business, and a father is promptly found for the prisoner, sent to Malone, and here testifies that the captive is his son and was born in this country, whereupon the United States commissioner discharges the immigrant."

The government was very frustrated by the failure to deport them, and at times there were allegations of collusion and conspiracy against lawyers and government officials in Malone. These were all found to be groundless, but caused the federal authorities to change their policy about the place of arrest, delaying it until the trains reached New York City. *Malone Palladium*, August 12, 1897. That did not affect the hearing results, however. The October 7, 1897 *Malone Palladium* reported that "the entire gang [of 13 Chinese who were arrested in New York the previous week] being permitted to go free, which means that they stay in the country until they shall have accumulated enough money to satisfy them and enable then to live as nabobs in China." The article concludes: "Thus both expedients of trying such cases here and of fighting them in New York have been tested, and have failed. What remains to prevent any Chinaman from coming here and mocking at the law and the authorities in the attempt to send them back?"

Significant constitutional due process issues were disputed for years regarding the rights and procedures applicable to Chinese applying for entry to the United States. The federal immigration authorities argued that the vast majority, if not all, of the hundreds of men crossing at Malone were illegally entering in violation of the Chinese Exclusion Act. However, in almost every hearing before a US Commissioner, testimony was presented that the detainee was born in the United States, and he was discharged from custody.

The federal government asserted that the courts did not have power to review the immigration officer's decision regarding the "Chinaman's" right to enter. The attorneys for the Chinese argued that the Exclusion Act applied only to aliens, so it did not apply to Chinese who had the right to be in this country. Attorney Robert M. Moore represented many of the Chinese. As did attorney David H. Agnew of Plattsburgh, who was actually arrested and charged with "assisting Chinamen to illegally enter" the United States. The charges were soon dropped on the condition that he "not prosecute the officers who caused his . . . arrest."

The federal government gradually succeeded in restricting the role of the courts, both legislatively and through decisions of the United States Supreme Court. Malone attorney Robert

M. Moore frequently represented many of the Chinese. One of the cases he brought went all of the way to the United States Supreme Court. In *US v. Sing Tuck*, 194 US 161(1903), attorneys Moore and W.W. Cantwell argued that the men who entered into the US at Malone were entitled to a judicial hearing on the question of their citizenship.

The Supreme Court ruled against them, reversing the Second Circuit Court of Appeals, on the procedural ground that the detainees had not exhausted their administrative remedies before appealing to the courts. Two years later in *US v. Ju Toy*, 198 US 253 (1905), the Supreme Court again ruled for the government, this time holding that there was no right to a judicial trial “whatever the ground on which the right to enter the country is claimed,” even when a citizen is applying for admission back into the United States.

This did not stop the legal efforts for court review. Instead of their clients applying for admission to enter the US, for which it now was clear that the administrative decision of the immigration officer was final, they entered the country “illegally.” Therefore, they were arrested and their attorneys filed writs of *habeas corpus*, obtaining judicial evidentiary hearings on whether they were lawfully in the U.S.

The Chinese detention house in Malone was also challenged. According to the July 1903 issue of the *Malone Farmer*, the Chinamen were being held in there “without warrant in care of the inspectors and an interesting question regarding the right to hold them in this way has arisen. A test case had therefore been inaugurated by Attorney Moore who has secured a writ of habeas corpus from Judge Beman.”

In 1901, Congress passed a law allowing the US Attorney to choose which commissioner would hold the hearing, instead of going to the nearest one. That apparently did not improve the government's results, since in 1908 the government started arresting Chinese for deportation under general immigration laws, which did not provide the right to a judicial hearing, instead of under the Chinese Exclusion Act, which then did include such a hearing. This policy was upheld by the US Supreme Court in 1912. A 1913 report of the Commissioner of Immigration asserted that this policy change away from the Chinese Exclusion Act, produced “valuable results in discouraging illegal entries.”

In 1917, Congress removed the right to a judicial deportation hearing under the Chinese Exclusion Act. The Exclusion Act itself was repealed in 1943, while China was a US ally against Japan in World War II.

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## Notorious

According to Hurd, five murder trials were held in the 1800's, each ending in conviction.

The first, *People v. Stephen Videto* was in 1825; on February 2, Videto killed Mrs. Fanny Mosley in Fort Covington and blamed it on an Indian attack. Trial was held at the court of Oyer and Terminer for Franklin County, in July 1825. The presiding judge was Hon. Reuben H. Walworth, Circuit Judge, and four County Judges. The prosecution was conducted by District Attorney Asa Hascall and Ezra C. Gross, Esq. There was a defense team of four attorneys: William Sweatland, John Lynde, Almon Wheeler, and Jabez Parkhurst. According to the report of the trial, "the jury retired a little after sunrise . . . and in about fifteen minutes they agreed on a verdict of GUILTY. After the verdict was rendered, the court took a recess of one hour." Then Judge Walworth pronounced the sentence of death. In doing so, the judge noted that he had imposed the death sentence "upon five of my fellow beings" in the past six months. [One of these was Peggy Facto, who was hanged in Plattsburgh after being convicted of murdering her new-born infant. Please see the Clinton County Legal History for more detail.] He concluded a strongly-worded lecture to the defendant by saying, "If the disembodied spirit of the murdered Fanny Mosely has not already visited your broken slumbers, and awakened in your guilty conscience the gnawings of that worm which never dies, I pray you commence the work of repentance speedily." Videto was executed on August 26, 1825. A verbatim report of the trial and sentence is at the Franklin County Historical and Museum Society.

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On January 10, 1838, Oliver Pierce was killed by his son William, when he was struck by an axe while working in the woods. William was convicted and sentenced to hang, but Governor Seward commuted his sentence.

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Ira Sherwin killed Justin Bell on November 2, 1851 while preparing for hunting in the woods near Owl's Head Pond, Bellmont. He claimed it was an accident, that he was "trying to discharge he gun, so that he might reload it to go out night-hunting." Those who came to the scene after Sherwin reported it, said that Bell was lying dead in his bunk, with the ball entering below his left eye and passing entirely through his head. The jury did not believe Sherwin's version and convicted him. He was sentenced to be hung, but the Governor commuted his sentence.

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On June 6, 1853, James M. Bickford of Dickinson killed John B. Secor of Westchester County, who was traveling through the area buying horses. When Secor and a companion were on their way home on the Hopkinton & Port Kent Turnpike, "suddenly a rifle was discharged from the roadside about four rods ahead of them, and Secor fell dead from his horse." After a 24-hour pursuit, Bickford and a youth named Thomas Cook were arrested, with Secor's companion

identifying Bickford as the man he saw immediately after the shot was fired. Both Bickford and Cook were convicted after trial; Bickford was executed, and Cook's sentence was commuted to life imprisonment. A verbatim report of the trial testimony can be found at the Franklin County Historical and Museum Society. According to Seaver, at p 371, Cook was later pardoned. He moved away, but returned to Dickinson and married. "One night... when he was in bed and asleep someone placed a keg of powder under the bed, and fired it. Cook was killed."

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Stephen Barber was murdered in his bed in Bellmont on August 26, 1877 by a tramp he had given food three days before. The "tramp" was known as Joseph Woods and other aliases. Both Mr. and Mrs. Barber were shot while they slept, but Mrs. Barber survived and gave a detailed description of the man who shot them. Woods was arrested two days later on a stagecoach running from Dannemora to Plattsburgh. He had a revolver in his possession. He was sentenced to death and hanged in Malone on February 1, 1878, the last hanging held in the county. While in jail, he corresponded with the editor of the *Malone Palladium* newspaper; copies of the letters are at the courthouse. In them, Woods repeatedly expresses concern about being able to have a fair and impartial trial, and his wish to have "some choice in the selection of my counsel." He infers that the lack of evidence presented in his defense was against his wishes and insisted upon by the attorney. He claims that, at their first meeting, the attorney told him that he would have nothing to do with his case and objected in court to be appointed to represent Woods. In addition to the letters from Joe Woods to the editor, the Records Management Office at the Franklin County Courthouse also has photographs of the hanging, and a newspaper article captioned "The Bellmont Murder – Testimony at the Coroner's Inquest" from September 1877.

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## **Notorious**

### **The Dexter Murder - Unsolved**

#### **1903**

A notorious unsolved murder was that of millionaire Orrando P. Dexter on September 9, 1903. Dexter was from New York City, but moved to Connecticut, reportedly to avoid New York taxes, or to be able to bring his many legal actions in federal court. He owned more than 10,000 acres of the Adirondack wilderness near Santa Clara. On this private preserve, he built a four-story house, a copy of the home of 16th century of German artist and printmaker Albrecht Durer, and closed off the vast property from hunting, fishing and lumbering.

Dexter actively pursued trespass charges against the locals and brought many civil and criminal proceedings. The acrimony was very apparent in the multiple lawsuits between Dexter and Warren Joseph Alfred. Dexter sued in New York City Courts as well as in Franklin County, appealed every adverse ruling, and even challenged a jury verdict in his favor that awarded him six cents in damages.

According to Seaver's *Historical Sketches of Franklin County*, he also filed charges against the county district attorney with the governor, sued "many well-known residents also for alleged conspiracy," and sued a newspaper publisher for libel. It is an understatement to say that Dexter made many enemies.

It was Mr. Dexter's daily routine to drive his buggy to town for the mail. On the fateful day, one or more assassins lay in wait along his route. When he passed by, only about half a mile from his home on Dexter Lake in the Town of Waverly, he was shot from behind and died at the scene. Accounts vary as to whether there were one or two bullets, as a bullet passed through the rear of the buggy, and a bullet lodged in the rump of his horse. One of Elvira Hosson's paintings, *Moment of Terror*, which hangs in the Probation Department at the County Courthouse depicts the scene.



Dexter's father Henry Dexter, founder of the American News Company, offered a reward and sent Pinkerton detectives to investigate. No one was ever arrested. When the elder Mr. Dexter died in 1910, there was a codicil to his will offering \$10,000 for evidence leading to the conviction of the murderer. Still no one came forward. To honor his son, Henry Dexter donated \$250,000 to the construction of the New-York Historical Society's home on Central Park West in New York City. There is a memorial to Orrando on the doorway of the Robert H. Smith Auditorium in that building.

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## **Notorious**

***United States of America v. "Arthur Flegenheimer alias 'Dutch' Schultz alias Arthur Schultz alias George Schultz alias Charles Harmon alias Joseph Harmon alias Arthur New alias Charles New"***

**July, 1935 - Acquittal**

**US District Court held at Franklin County Courthouse, Malone**

A federal income tax evasion trial was held in Malone in July, 1935, resulting in the acquittal of Arthur Flegenheimer aka Dutch Schultz. US District Court Judge Frederick H. Bryant often held court during the summer in his hometown of Malone, instead of its regular site of Syracuse. In April 1935, Schultz's first tax evasion trial, held in Syracuse, ended in a hung jury. At the time, Dutch Schultz was a "notorious beer bootlegger" and often referred to as New York's "Public Enemy Number One."

A copy of the card for Docket 26200 is on file at the Franklin County Courthouse, and it shows that the indictment was filed on February 14, 1935. It charges three defendants with violating the Income Tax Law. The first defendant is "Arthur Flegenheimer alias 'Dutch' Schultz alias Arthur Schultz alias George Schultz alias Charles Harmon alias Joseph Harmon alias Arthur New alias Charles New". The other two are Henry Margolis alias Henry Stevens (correct name) and Frank J. Ahearn alias Frank Ryan alias James Knight alias Joe Martin.

After arraignment on February 20, 1935, Dutch Schultz was released upon posting a \$75,000 bond, secured by U.S. Government bonds. He was tried in Syracuse from April 15-27 on the first four counts of the indictment. The docket card reads, "Jury disagrees & is thereupon discharged. Defts bail continued."

A week before his new trial, Shultz came to Malone, checking into a suite at the best hotel, the Flanagan. He went to local restaurants and nightspots, buying meals and drinks for everyone. Two local attorneys were part of his defense team, Harold W. "Bud" Main, former District Attorney and grandfather of current Franklin County Judge Robert G. Main, Jr., and George Moore. In the week before trial, Main's teenage son, took Schultz horseback riding on a bridge path along the Salmon River.

On July 23, 1935, a jury was "drawn and sworn" in Malone, then, in front of the jury, Judge Bryant "direct[ed] that deft be committed to the Marshal for the duration of the trial." Two days later, the judge also ordered four witnesses committed to the custody of the Marshal for the duration of the trial, then set \$10,000 bail on two of them the next day. However, on July 30, one of the witnesses, Rocco DiLarmi, refused to answer "certain questions put to him by the U.S. Attorney" and was "adjudged to be in Contempt of Court & is ordered committed to the Franklin Co. Jail for six months."

On August 1 at 8:55 PM, after a 28-hour and 20-minute deliberation, the jury acquitted Dutch Schultz. According to the *Malone Evening Telegram* headline on that date, "Judge Rebukes

Jurymen for 'Striking Blow to Law Enforcement.'" He told them, "your verdict shakes the confidence of law abiding people in the reliability of juries." The newspaper reported that, when the "not guilty" verdict was announced, a "cheer went up from the throng of spectators," both inside the courtroom and on the street.

The Attorney General of the United States called the verdict a "terrible miscarriage of justice." The foreman, Leon Chapin, however, explained that "I am sure that no man on the jury approves of racketeering or anyone connected with it. In fact, the jury considers Schultz to be a public enemy. But the fact that he was a racketeer and in the beer business could have no bearing on the case. We felt that the Government did not prove its case. The whole discussion centered around whether or not he was guilty of willfully evading tax payments. We were instructed to follow the evidence and that's what we did."

Three months later on October 23, 1935, thirty-three-year-old Schultz, his chauffeur, and two companions were gunned down by a rival gang at the Palace Chop House and Tavern in Newark, New Jersey.

*Biography Channel A&E "Dutch Schultz Menace to Society" 1997* includes interviews with Robert G. Main, Sr. regarding his father's role as defense counsel and his horseback ride with the man he said "didn't fit the gangster-movie mold."

## County Resources

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**Trial of Stephen Videto**, July 1825 for the murder of Mrs. Fanny Mosely

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