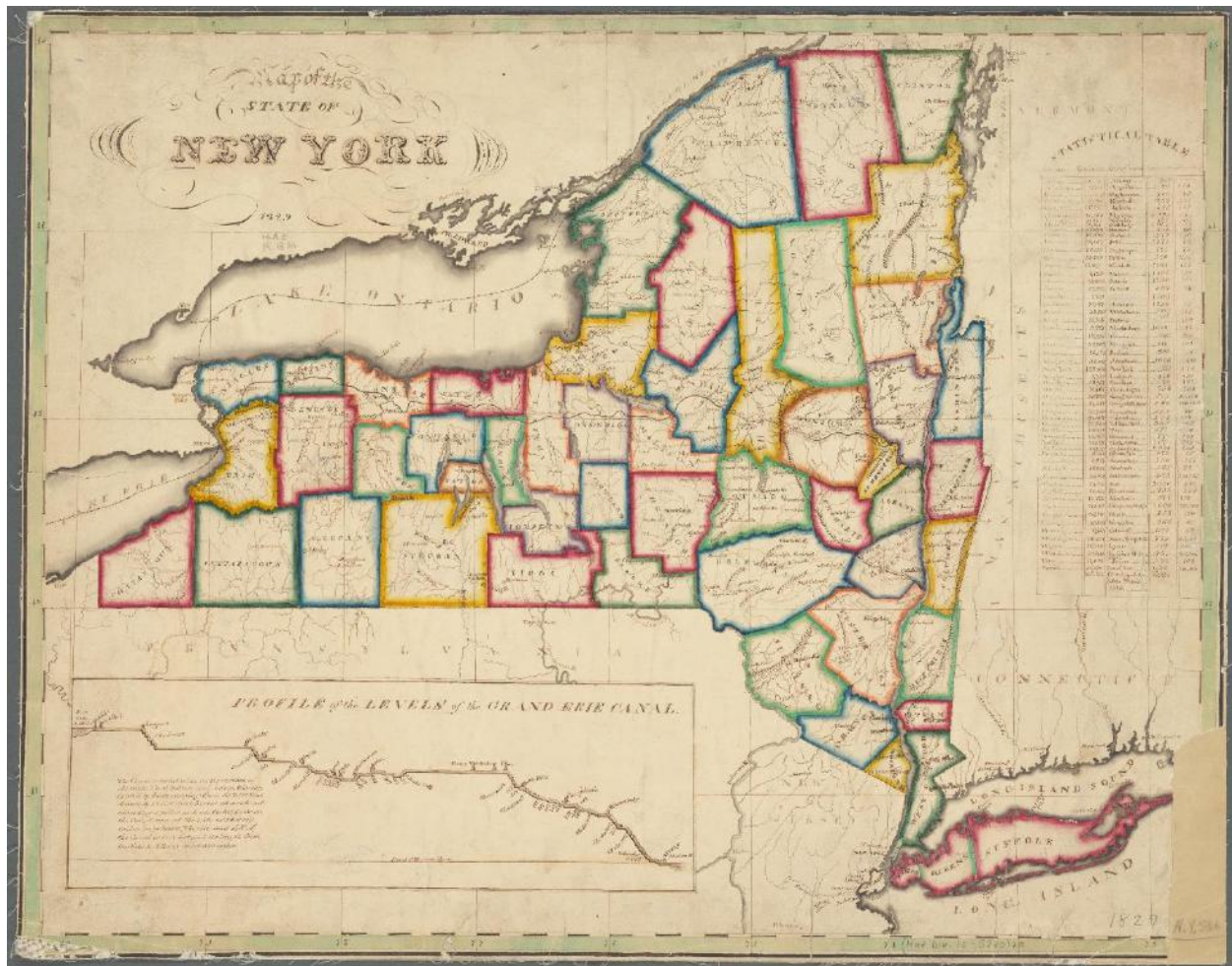




HISTORICAL SOCIETY *of the* NEW YORK COURTS

History of Genesee County

Bench and Bar



Dr. Michael J. Eula, LL.M.; Ph.D.

*Flexible Tradition: The History of the Courts in Genesee County, New York,
1802 to the Present*

Michael J. Eula, LL.M.; Ph.D.¹

1. The Origins of the County	3
A. The Historical Narrative	3
B. Legal Beginnings	4
C. Chronology	8
2. Early County Courthouses through the Present	9
3. The Profession of Law in Genesee County – its Bench and Bar	13
A. The Judiciary	13
B. Attorneys and District Attorneys	14
C. The Bar Association of Genesee County	16
D. Women in the Legal Profession	16
E. Minorities in the Legal Profession	17
F. The Judiciary of 2020 in Genesee County	18
4. Famous Cases and Trials in Genesee County	20
5. The Resources of Genesee County	25
A. Selected Bibliography	25
B. The Locations of Genesee County Legal Records	27
6. Genesee County History Contacts	27
A. County, City, Town, and Village Historians	27
B. Locations of Records	29
C. County Clerk Records Index	29
7. Additional Commentary on the Use of Executive Orders during the COVID-19 Crisis	29

¹ Dr. Michael J. Eula is an honors graduate of Rutgers University, California State University, Fullerton, the University of California, Irvine, and the Regent University School of Law. Along with over eleven years of military service, he served as an Administrative Law Judge in Riverside County, California, for thirteen years. He is a Professor Emeritus of History at El Camino College in California. He has also served as the Genesee County, New York historian since 2014.

Acknowledgements

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1. County Origins

A. The Historical Narrative

Genesee County was established in 1802 as a result of an act of the New York State Legislature.² As a consequence of the county's establishment, four towns were created in the initial organization of Genesee County. These towns were Batavia, Northampton, Southampton, and Leicester. The 1802 Act was largely the consequence of one person's efforts—Joseph Ellicott.³ In 1797, the *Holland Land Company* hired Ellicott as a land agent. Ellicott was ultimately responsible for the organization of the Holland Land Company's possessions throughout western New York.

Before the completion of the American Revolution and the formal establishment of Genesee County, this area was part of what was known as the "Six Nations Indian Country."⁴ Prior to the arrival of the Holland Land Company, this area of about three million acres featured forests and numerous Native American villages. Despite the density of the forests, Native Americans already explored the rich soil typical of this region. Accordingly, areas had already been developed so as to plant and harvest beans, squash, pumpkins, and corn.

By the early nineteenth century, Native Americans living in what became Genesee County had long had a lifestyle different from the nomadic peoples of the American West. Seneca and other tribes of the Six Nations—including Canadian—born Iroquois—were more often than not farmers. Along with growing crops, they raised sheep, cattle, and hogs. Some even maintained fruit trees—especially apple trees. The architecture of these Native Americans also illustrated just how different they were from Native Americans elsewhere in much of North America. Log cabins and framed buildings had generally replaced the longhouses of traditional Iroquois which themselves were, of course, by their nature distinct from the dwellings of nomadic peoples. It was out of this milieu that Ely S. Parker emerged. The son of a Baptist minister, Parker was eventually a Lieutenant

² For a general overview of Genesee County history, see Mary McCulley, ed., *History of Genesee County, New York, 1890-1982* (Interloken, New York: Heart of the Lakes Publishing, 1985).

³ William Chazanof's *Joseph Ellicott and the Holland Land Company: The Opening of Western New York* (Syracuse, New York: Syracuse University Press, 1970), is indispensable.

⁴ McCulley, *History of Genesee County*, p. 5.

Colonel during the Civil War, and authored the final draft of the Confederate surrender at war's end.⁵

Rich soil, an agricultural tradition predating European settlement, and the construction of grist and sawmills—again, largely the result of Ellicott's efforts in Batavia—all combined to encourage movement into Genesee County. Men arrived ahead of their families, only to return to such places as New England to speak glowingly of the potential for farmers in Genesee County. Indeed, historians such as Virginia M. Barons tells us that it “was not unusual to find to find almost an entire community made up of former residents of the same New England town.”⁶ With the subsiding of the turmoil caused by the War of 1812, the county's growth accelerated. The construction of the Erie Canal was one of the last factors in the early history of Genesee County that brought people to an area replete with opportunity. However, economic development, settlements, and an increasing population also brought disputes of all sorts. These conflicts were also in need of mediation, and that is where we discover the origins of the county's legal history.

B. Legal Beginnings

The political history of Genesee County began in the colonial period. New York was one of the first colonies on the Atlantic coast. Indeed, it was in the seventeenth century that the first steps were taken to create county governments in New York Colony. This eventually culminated in the formation of the thirty-second county in New York State—Genesee.

While still a colony of Great Britain, New York was divided into counties. On 1 November in 1683 the Colonial Assembly enacted legislation dividing what became eastern New York State into ten counties.⁷ These counties included Dutchess, Albany, Queens, Kings, Orange, Richmond, Suffolk, Westchester, Ulster, and New York. In the years that followed, the population grew in the territory

⁵ An excellent biography of Parker is that of William H. Armstrong, *Warrior in Two Camps: Ely S. Parker, Union General and Seneca Chief* (Syracuse, New York: Syracuse University Press, 1989).

⁶ Barons, “Genesee County,” in *History of Genesee County*, p. 6.

⁷ Alvin R. Stripp, “Political Background,” in McCulley, ed., *History of Genesee County, New York, 1890-1982*, p. 1.

around Albany County.⁸ In 1772, on March 12th, the Colonial Legislature divided Albany County into three sections after concluding that the county had become too large to administer as just one governmental unit. Accordingly, the southeastern area remained Albany County while the northern district was named Charlotte County. The remainder of what had been Albany County was renamed Tryon County.

Between 1775 and 1783 the inhabitants of New York were immersed in the Revolutionary War.⁹ The end of the struggle against Great Britain spawned numerous pieces of legislation having a direct bearing on the political and legal organization of New York. For example, the New York Legislature passed legislation on April 2, 1784, that renamed Tryon County “Montgomery” County. Even more dramatically, in 1785 Massachusetts surrendered its land claims to parts of New York State. The source of the dispute between New York and Massachusetts lie in earlier royal gifts and charters. Nevertheless, in 1786, at the Hartford, Connecticut convention, New York State received full political control over the disputed lands with Massachusetts. This led to numerous and complicated real estate transactions that eventually led to the creation of Ontario County.¹⁰

The complexity of land transactions in this area included the inconvenience of recording legal documents at Canandaigua, which was Ontario County’s seat. It was a lengthy and hard trip from western New York to Canandaigua. Therefore, the New York State Legislature created Genesee County as, at least in part, a response to the need for making the recording of legal documents in western New York more efficient.

Because Batavia in Genesee County became the center for the recording of legal documents in western New York, it is not surprising that the bench and bar of western New York finds its origins here. Those origins, of course, cannot be separated from the overall legal history of New York State. In the colonial period,

⁸ Ibid.

⁹ A classic work on the political and legal consequences of the American Revolution remains Gordon S. Wood’s *The Creation of the American Republic, 1776-1787* (New York: W.W. Norton & Company, 1972).

¹⁰ Stripp, “Political Background,” p. 2.

the governor enjoyed extensive powers, such as serving as the final arbiter of legal disputes, and applying, as a royal authority, colonial and English laws.¹¹

However, New York's first constitution stripped the governor of these powers. The State Senate and the Supreme Court judges all represented a separation of powers not evident during the colonial period. The Constitution of 1846 continued the process of separating political and judicial powers. The electorate itself further enhanced the democratic tone of the judiciary through the election of judges.

Throughout the nineteenth century, Genesee County featured a number of judges and practicing members of the bar who served the county with distinction. Prior to the ratification of the 1846 New York State Constitution, Joseph Ellicott, the same person who had worked as a land agent for the Holland Land Company, became Genesee County's first judge. While Ellicott is a name well known among those familiar with Genesee County's history, another name, less known except by county residents in the 1800s, is that of another judge, Phineas L. Tracy. Arriving in Genesee County in 1813 after being admitted to the bar two years earlier in Albany, he built a flourishing law practice. He subsequently entered politics and was elected to Congress in 1827.¹² Reelected in 1829, he then became a county judge in 1841.¹³

Moving further into the nineteenth century, a number of other Genesee County judges stand out due to their unique characteristics. One of these is Joshua L. Brown, who became a county judge in 1856.¹⁴ He was known for his unusual behavior during criminal trials in his court. As discussed by Safford E. North in *Our County and its People: A Descriptive and Biographical Record of Genesee County, New York* in 1899, Judge Brown would, as a

. . . member of the bar now living tells (us) . . . had the habit during the trial of criminal causes, where, as often occurs, the defense was conducted by some young man designated by the court, of taking a seat near the junior

¹¹ See Safford E. North, ed., *Our County and its People: A Descriptive and Biographical Record of Genesee County, New York* (Boston: The Boston History Company, 1899), p. 333.

¹² North, "The Bench and Bar," in *Our County and its People*, p. 342.

¹³ *Ibid.*

¹⁴ *Ibid.*, p. 343.

thus assigned, when, as the trial proceeded, he (Brown) would draw his chair up and make suggestions.¹⁵

North then added that Judge Brown:

After a little (while) would be on his feet arguing a law point, and in one case, at the close of the evidence (Brown) proceeded at once to sum up to the jury, much to the discomfiture of the young lawyer who had prepared, with great care, an address which was to make his reputation.¹⁶

Along with such judges, one can discover a number of prominent practicing attorneys who laid the foundation for the future direction of the bar in Genesee County in the twentieth century. Among these was Levi Ramsey, who served as the District Attorney in Genesee County between 1829 and 1834. Jacob Bartow of LeRoy was not only a practicing attorney but was also someone recognized for his scholarly achievement. He was a law student colleague of Aaron Burr.¹⁷ The firm of Wakeman and Bryan was a large firm known for its handling of a variety of cases in the county. The partners in this firm also displayed an influence beyond the narrow confines of the law. William G. Bryan's wife, Ruth, served as the principal of the Bryan Seminary.¹⁸ These judges and practicing lawyers visible in Genesee County in the nineteenth century are only a small sampling of the richness discernible in this group of professionals. In all cases—and in those of many not mentioned in this brief survey—we can perceive the outline of the county's most prominent citizens.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid., p. 345.

¹⁸ Ibid., p. 350.

C. Chronology

- 1779 The Big Tree Treaty entered into with the Seneca Native Americans provides for a clear title and the growth of settlements, and the development of land, throughout western New York.
- 1801 In LeRoy, the first school in what will be Genesee County is constructed.
- 1802 On March 30th Genesee County and the Town of Batavia are both created.
- 1803 The first courthouse west of the Genesee River is established.
- 1807 The first of seven public hangings for murder takes place.
- 1810 The Holland Land Company sells its pre-emption rights to the Seneca Reservation to the Ogden Land Company.
- 1811 In Alexander, Genesee County's first library is established.
- 1815 The Holland Land Office is built.
- 1816 An arsenal was constructed subsequent to the War of 1812. It was designed to protect Genesee County.
- 1820 The Federal Census lists a total of thirty-three slaves in Genesee County. This included nineteen males and fourteen females.
- 1828 Ely Parker, a Seneca Native American, was born near Indian Falls. During the Civil War he served as an aide to General Ulysses S. Grant, and wrote the surrender documents used at war's end in 1865.

- 1829 The Bank of Genesee was established. It was the first bank west of the Genesee River.
- 1836 The Tonawanda Railroad reaches Bergen. At the time it was the furthest west the railroad extended in New York State.
- 1841 The second courthouse in Genesee County undergoes construction. In 1973, this courthouse was placed on the National Register of Historic Landmarks.
- 1842 The Second Treaty of Buffalo Creek is entered into. The Treaty served to divide the Tonawanda Seneca from the remainder of the Seneca Nation.
- 1932-1933 The Department of Veterans Affairs Hospital was constructed.
- 1996 Ground was broken for the building of a new courthouse. This was the Genesee County Courts Facilities Building located in Batavia.

2. Early County Courthouses through the Present

The Genesee County Courthouses are part of New York State's 8th Judicial District. The county seat for Genesee County is in the City of Batavia, and its legislative body is housed on the third floor of what is referred to as the "Old Courthouse" located at 7 Main Street. This building, comprised of stone, was constructed in 1841.

This building is situated at the junction of Main and Ellicott Streets in downtown Batavia. The "Old Courthouse" replaced an even earlier structure, first built in 1802. This frame building faced Court Street and came to be called Ellicott Hall. This original courthouse was named for Joseph Ellicott, who, as we have

seen, worked as an agent for the Holland Land Company. This frame structure was destroyed by fire on January 5, 1918.

The “Old Courthouse” is a striking example of Greek revival architecture. It was the product of local artisans using materials found locally. A two-tiered cupola housing a brass bell tops it. This antebellum courthouse is the current home to not only the County Legislature but also to the County Manager, the Assistant County Manager, and the County Attorney. Since 1973, the “Old Courthouse” has been on the National Register of Historic Landmarks.

In 1996, ground was broken for a new courthouse. This gave rise to the Genesee County Courts Facilities Building, located at 1 West Main Street in Batavia. This complex includes a variety of courts serving different judicial functions. It is located in a fitting place—at the crossroads between a Native American trail and the Big Bend of Tonawanda. This is appropriate because it is the location referred to as the “Great Hearing Place” by Native Americans, who had long inhabited this part of western New York.



This photograph from 1896 is the famous intersection where the Soldiers and Sailors Monument—popularly known as the Upton Monument—now stands.

The 1841 Courthouse is at the center—just to the right of the horse—drawn buggy just prior to the advent of the automobile.

About thirty years later, we can see just how dramatically the area around the Old Courthouse appeared. The photograph shown below illustrates the view facing the rear of the 1841 Courthouse; a building now flanked by the mass-produced automobiles of the 1920.



Now contrast this photograph with that taken sometime in the 1950s. The horse-drawn carriage is by this time found in history textbooks, while the type—and number—of automobiles traveling past the Old Courthouse

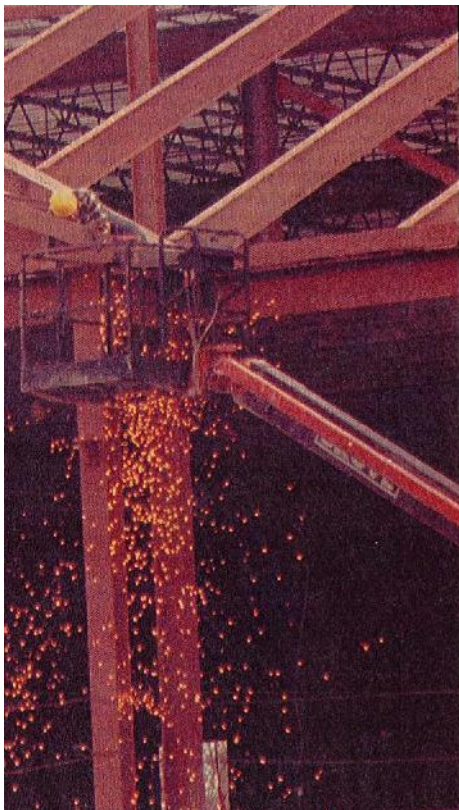
clearly illustrates a Genesee County undergoing dramatic changes. In the photograph shown below, notice the Soldiers and Sailors Monument—and the 1950s—style automobiles around that intersection.

By the time of this next photograph, taken about 2003, the modern Genesee County Courts facility was at the site shown below. This photograph was taken at 1 West Main Street in Batavia.



This new Courts facility embodied a very different age, one in which the expertise of the nineteenth century artisans who had built the 1841 Courthouse were like the horse-drawn

carriage—realities belonging to a very different historical moment. Passersby saw this as the photograph below illustrates. Taken in 1996, they saw the heavy beams of the new Courthouse being put into place in a scene far removed from the earlier images of that same area of downtown Batavia.



But of course the history of the courthouses in Genesee County is also one of drama taking us beyond architecture. Moreover, the profession of law inhabiting those courthouses orchestrated much of that drama.

3. *The Profession of Law in Genesee County—its Bench and its Bar*

A. *The Judiciary*

NOTE: Biographical information is included where available, though some has already been provided earlier in this section.

County Judges and Surrogates

1803	Joseph Ellicott
1803(?) - 1804	Ezra Platt
1812 through 1847	John H. Jones Isaac Wilson John Z. Ross William H. Tisdale William Mitchell Phineas L. Tracy Edgar C. Dibble Jeremiah R. Munson Richard Smith Andrew Willett Ebenezer Mix Harvey Putnam Timothy Fitch Samuel Willett
1848 through 1860	Horace U. Soper Joshua L. Brown
1861 through 1889	Moses Taggart Charles Henshaw Randolph Ballard Thomas P. Heddon Myron H. Peck Walter H. Smith Charles Henshaw

Benjamin F. Hawes
W. Harris Day

1890 through the present

Safford E. North
Edward A. Washburn
Newell K. Cone
Philip J. Weiss
Glen R. Morton
Charles F. Graney
Robert C. Noonan
Charles Zimbitto

Robert Noonan served on both the Genesee County Surrogate's Court and the Genesee County Court. In 1999, he was appointed an Acting Supreme Court Justice. He received his law degree from Fordham University School of Law.

Charles N. Zambito is currently a judge on the Genesee County Surrogate's Court and the Genesee County Court.

B. Attorneys and District Attorneys

Attorneys (1802 to the present)

This is a partial listing of the more prominent attorneys over this period.

Ethan B. Allen	Duane G. Root
Frank W. Ballard	George E. Schaeffer
Charles Bartlow	Walter H. Smith
Raymond F. Cianfrini	Phineas Strong
Barber B. Conable	Moses Taggart
Elizer Hinsdale	Daniel Tisdale
Arthur G. Hough	Phineas L. Tracy
Everest A. Judd	William Tyrrell
Trumball C. Kimberly	Ichabod Walden
David LeSeur	William C. Watson
Robert Mix	William E. Webster
Albert Parker	Augustus N. Weller
Raymond Rodriguez	Brannon Young

Richard F. Yunker

Charles N. Zambito

District Attorneys (1890 to the present)

1818	Daniel D. Brown	1919	James L. Kelly
1821	Harman J. Redfield	1922	Albert J. Waterman
1829	Levi Rumsey	1925	William J. Darch
1834	Daniel H. Chandler	1928	Bradford J. Burroughs
1838	Isaac A. Verplanck	1931	William J. Neville
1842	John H. Martindale	1934	William J. Neville
1843	Moses Taggart	1937	Philip Weiss, Jr.
1846	Isaac A. Verplanck	1937	James L. Kelly
1847	John H. Martindale	1940	James L. Kelly
1850	Seth Wakeman	1943	Wallace J. Stakel
1853	Seth Wakeman	1946	Wallace J. Stakel
1856	George Bowen	1949	Wallace J. Stakel
1859	James M. Willett	1952	Wallace J. Stakel
1862	William Tyrell	1955	Wallace J. Stakel
1865	C. Fitch Bissell	1958	Wallace J. Stakel
1868	William C. Watson	1961	Wallace J. Stakel
1871	William C. Watson	1964	Ernest M. Found
1874	C. Fitch Bissell	1967	Ernest M. Found
1877	Thomas P. Heddon	1970	Ernest M. Found
1880	Safford E. North	1976	Ronald Fancher
1883	Frank S. Wood	1979	Ronald Fancher
1886	Frank S. Wood	1983	Ronald Fancher
1889	Frank S. Wood	1987	Robert C. Noonan
1892	James A. LeSeur	1991	Robert C. Noonan
1895	James A. LeSeur	1995	Robert C. Noonan
1898	Frederick S. Randall	1997	Lawrence Friedman
1901	Bayard J. Stedman	2001	Lawrence Friedman
1904	William H. Coon	2005	Lawrence Friedman
1913	William H. Coon	2009	Lawrence Friedman
1916	James L. Kelly	2013	Lawrence Friedman

C. *The Bar Association of Genesee County*

In 1912, the Genesee County Bar Association was created. Seventeen attorneys formed the group in order to accomplish a number of goals. These objectives included scholarly research and writing on the subject of jurisprudence. The group also worked to enact reforms in the legal system and to encourage a systematic administration of justice and the promotion of integrity in the legal profession. Recent past presidents of the Genesee County Bar Association are shown below.

2001	Dave Gann	2011	Durin B. Rogers
2003	Larry Friedman	2013	Mary Kay Yanik
2005	Steve Wieczorek	2015	Benjamin Bonarigo
2007	Lisa Kroemer	2017	Peter M. Casey
2009	Dave Saleh	2019	Thomas D. Williams

D. *Women in the Legal Profession*

Even a brief survey of the history of female attorneys in New York State reveals the late entry of women into the ranks of lawyers and judges. The first female attorney in New York, Kate Stonemen, was not admitted to the bar until 1886. It took another thirteen years before another woman, Helen Z. M. Rogers, argued a case before the New York State Court of Appeals. It took until 1936 before the first woman in New York became a judge—Justine W. Polier. It should therefore not be surprising that in Genesee County it took until 1986 before Fern Kathleen Acomb-Wilcox became the county’s first female Public Defender.

Acomb-Wilcox graduated from LeRoy High School in 1969. Going on to the State University of New York at Geneseo, she completed her degree in 1979 with honors. She also finished her law degree with honors from the Columbus School of Law at Catholic University in 1982.¹⁹ Her successful career in law, along with her extensive community involvement, was typical of women who had nonetheless entered the legal profession much later than the men who had long dominated it before 1886—and well afterward. Her story, like that of other female lawyers and judges, is very similar to the minorities who entered the legal

¹⁹ *The Batavian*, 19 February 2018, n.p.

profession in Genesee County much later than their counterparts who were neither female nor members of a minority group.

E. Minorities in the Legal Profession

In 1992, the *Fordham Urban Law Journal* published a long article focusing upon the realities faced by minorities practicing law in New York State.²⁰ Minority members of the bar in Genesee County have long faced many of those realities. The case of Native Americans is a particularly striking example of how the profession has historically excluded minorities from membership in the bar. The aforementioned *Fordham Urban Law Journal* article reveals that by 1980 only thirty-five lawyers at work in New York State were Native Americans.²¹ As of that date there were “no known Native Americans serving in the judiciary.”²² As this study emphasizes, the “dearth of Native American lawyers practicing in the state has doubly unfortunate consequences.”²³ The study then adds this:

. . . The unique legal issues that arise in litigation involving member of Indian nations require attorneys who not only understand Native American concerns and have the confidence of Native American litigants, but who are also knowledgeable regarding Native American law and legal institutions.²⁴

Maybe no Native American in Genesee County legal history embodies both the reality of *exclusion* and the need for a Native American lawyer who understood, on a deep intellectual and emotional level, the complexities of Native American life as Ely S. Parker. The aforementioned Parker was born in 1828 into a Seneca family who at his birth resided on the Tonawanda Reservation, in what is now Indian Falls.²⁵ Conversant in the culture of a Seneca people with deep historical and cultural connections to the Six Nations of the Iroquois Confederacy,

²⁰ “Report of the New York State Judicial Commission on Minorities,” Volume 19, Number 2.

²¹ *Ibid.*, p. 248.

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Armstrong, *Warrior in Two Camps: Ely S. Parker, Union General and Seneca Chief*, p. 1.

he was also steeped in the wider world's values as absorbed through a classical education and experience in that broader world. Described by some scholars as an attorney, it should be mentioned that despite his legal education he was denied membership in the New York Bar because of a Native American background that raised questions of citizenship and residency. Hence, his exclusion on a personal level was a microcosm of the exclusion of Native Americans from the legal profession as outlined in the *Fordham Urban Law Journal*.

After applying for admission to Harvard College to no avail, he received an offer to study law privately in the office of William P. Angel, who was working as a federal Indian Agent and as the district attorney in Ellicottville in Cattaraugus County.²⁶ Parker understood “what a knowledge of the law could mean for the Indians,” and therefore threw himself into the study of William Blackstone’s *Commentaries* and in the intricacies of practical, daily law practice. Nonetheless, despite the outstanding record he built as a law student in Angel’s office, he was denied admission to the New York Bar. At that time, in 1848, New York State law required that a candidate for bar admission be either “natural born” or a naturalized citizen of the United States. Despite being “natural born”, he was not a U.S. citizen, as Native Americans were not considered U.S. citizens. This would not change until the *Indian Citizenship Act of 1924*. Nonetheless, that Act has done little to change the reality that Genesee County, like the nation at large, has continued in the tradition of having very few Native Americans working in the legal profession.

F. The Judiciary of 2020 in Genesee County

Supreme Court Justices (8th Judicial District)

Paula L. Feroletto

Ralph A. Boniello III

Tracey A. Bannister

Christopher J. Burns

M. William Boller

Russell B. Buscaglia

²⁶ Ibid., p. 36.

Frank Caruso

Stephen W. Cass

Deborah A. Chimes

Emilio Colaiacovo

John M. Curran

Diane Y. Devlin

James H. Dillon

Sara Sheldon Farkas

Daniel J. Furlong

Joseph R. Glowonia

Michael F. Griffith

Deborah A. Haendiges

Lynn Wessel Keane

Richard C. Kloch, Sr.

Frederick J. Marshall

John L. Michalski

Jeremiah J. Moriarty

Patrick H. NeMoyer

Henry J. Nowak

Mark A. Montour

John F. O'Donnell

Jeannette Ogden

Catherine Nugent Panepinto

James P. Punch

Frank Sedita III

Donna M. Siwek

Mary Slisz

Sharon S. Townsend

Shirley Troutman

Timothy J. Walker

Dennis E. Ward

Gerald J. Shalen

Paul B. Wojtaszek

County Court

Charles Zambito

Surrogate's Court

Charles Zambito

Family Court

Eric R. Adams

Town and Village Justices

Durin Rogers, Batavia City Court

4. Famous Cases and Trials in Genesee County

The Howland Case

One of the more intriguing cases to emerge in Genesee County legal history is that of Ira P. Howland. Between 1892 and 1894 the town of Alabama, as the county as a whole, heard of the twists and turns that characterized this case. In September of 1892, Ira P. Howland, a resident of Alabama and a retired farmer, died. He reportedly died of a stroke at the age of sixty-five.²⁷ His wife subsequently applied to the Chautauqua Life Association in order to receive benefits from her husband's life insurance policy totaling \$4,000. Some time passed and Mrs. Howland had still not received a response from the life insurance company. When she finally heard from the Chautauqua Life Insurance Company in the spring of 1893, she was informed that she would not be paid.

The company contended that Ira P. Howland did not die from natural causes but, instead, had committed suicide when he ingested morphine. Mrs. Howland then filed suit in Buffalo Supreme Court. The insurance company responded to the lawsuit by taking the position that if Mrs. Howland did not withdraw her action then the company would move to have Ira P. Howland's remains disinterred so as to examine the deceased's abdomen.

In late May of 1893 two attempts were undertaken to have the body exhumed.²⁸ The Coroner of the Village of Byron led both attempts but were confronted by friends of Mrs. Howland's who opposed what they saw as a desecration of her husband's grave. Unable to exhume the body, the Byron

²⁷ Joseph Cassidy, *The Travels of Ira Howland* (n.p., n.d.), p. 1.

²⁸ *Ibid.*, p. 2.

Coroner submitted three affidavits to the Buffalo Supreme Court offering grounds for an inquest into the death of Ira P. Howland. The Court ruled in the Coroner's favor. The Coroner then set out to have the body exhumed so that a chemical analysis could be performed.

However, as local newspapers told its readers, the attempt to exhume failed—as the body was missing. The District Attorney in Genesee County was then told that the deceased husband's grave had been meddled with. An investigation was launched, and the conclusion was that the coffin was indeed empty.

In the midst of this mystery, the trial of *Howland v. The Chautauqua Life Association* began in November of 1893. In the wake of testimony of physicians such as Dr. Zuhurst who attended to Ira P. Howland on the night of Howland's death, along with the undertaker who had prepared the body for burial, the defendant's motion for a mistrial was granted. The stage was then set for a second trial. The defendant in this second trial then filed a motion for dismissal, claiming that a breach of contract had occurred. The Chautauqua Life Insurance Company now argued that the deceased had misrepresented his age on the insurance application.

The Court denied the motion. The Court also denied the defendant's motion for a mistrial. The Court subsequently instructed the jury to find for the plaintiff. She was to receive the \$4,000 under the insurance policy, and another \$220 in interest. Nonetheless, the insurance company notified the Court that it would seek a new trial.

A farmer plowing his field eventually found the body of the deceased. Upon hearing this, the defendant expressed a desire to have the corpse examined. However, before further action could take place, the National Life Insurance Company acquired the Chautauqua Life Association. This second company then quickly dropped the action, and the matter receded into the collective memory of local residents, who continued to harbor feelings of ill will towards the Chautauqua Life Association.

The Polly Frisch Case

Polly Frisch was caring for her husband Henry Hoag as he battled an illness in the summer of 1856. It was thought that he contracted cholera, as he suffered from stomach cramps and nausea. Polly called in physicians from the village of Alabama, and they were unable to find a cure. By July of that year, her husband died. Three weeks later their six-year-old daughter, Frances, also died. In her final weeks, the child had displayed symptoms identical to those of her father, Henry.

Not long after Henry's death—in the fall of 1856—Polly remarried. Her new husband, Otto Frisch, who was now the stepfather of children born to Polly and Henry—Albert, aged eleven, Rosalie, aged seven, and Eliza Jane, just over one-year old.²⁹ Otto deserted Polly after a short marriage. In the fall of 1857, Eliza Jane died, displaying the same symptoms exhibited by Henry and Frances.

As a consequence of the suspicions becoming evident among many in Genesee County regarding the deaths of people subsequent to a display of identical symptoms, a coroner's inquest was scheduled for October 22, 1857. Removing the abdomen of Eliza, tests revealed that the cause of death was arsenic. Building upon this and other evidence, the Genesee County District Attorney's Office ordered the arrest of Polly. She was charged with the murders of Eliza Jane, Frances, and her first husband. She was convicted of murder in September of 1859 and sentenced to be executed by hanging on November 2, 1859.³⁰

The public reaction to Polly's conviction says much about mid-nineteenth century assumptions regarding women. This is especially so regarding the roles of wife and mother in the domestic sphere. Women in this area of American life actually occupied a superior position when compared to that of men. Not only was she a domestic manager who ran the internal affairs of the home, she also stood as a moral leader, whose primary concern was the health and morality of her husband and children, a role seen as incapable of being fulfilled by men. In this period, men were sometimes described in American culture as being "morally depraved" and potentially violent. For Polly to have poisoned family members

²⁹ Cindy Amrhein and Ellen Bachorski, *Bread and Butter: The Murders of Polly Frisch* (Kearney, Nebraska: Morris Publishing, 2000), p. 65.

³⁰ *Ibid.*, p. 194.

was to see a woman capable of a heinous act that, it was generally thought, women by definition were incapable of undertaking. Organized medicine played a central role here, so it should not surprise us that a physician was called in to conduct what would today be termed a psychiatric evaluation.

Accordingly, Dr. Edward Hall, “physician of the State Lunatic Asylum” in Auburn, New York, wrote a letter to New York Governor Edward D. Morgan. Examining her medical records, speaking with other physicians, and interviewing Polly, he concluded that she suffered from epilepsy. In mid-nineteenth century America epilepsy was understood to be a mental—not a physiological disorder. In part, Dr. Hall’s letter to Governor Morgan regarding Polly stated that

. . . I am convinced that the prisoner, Polly Frisch, is now, and has for several years, been subject to that form of insanity which is frequently the result of epileptic disease . . . I think if attention had been called to this form of mental disease as a solution of her unnatural actions, she would have been as much an object of sympathy and pity as of horror and aversion.³¹

Governor Morgan accepted this finding and commuted Polly’s sentence to life imprisonment, to be served at Sing Sing State Prison. In 1877 she was transferred to King’s County Penitentiary. Imprisoned for thirty-three years, she was eventually declared sane and pardoned by Governor Rosewell P. Flower in early December of 1892. She was sixty-eight years old. Her new residence was not disclosed, and she never returned to Genesee County, New York.

The Case of E. Newton Rowell

On December 21, 1929, the *Daily News* in Batavia offered a lengthy obituary entitled “E. N. Rowell Dead, Ill For Long Time.” This was a reference to E. Newton Rowell, a successful paper box manufacturer whose factory was well known both in Genesee County and, indeed, throughout western New York. He was described as eighty-two years old, and was survived by his wife and two

³¹ Ibid., pp. 193-194.

daughters. However, nowhere is there any mention of Rowell's part in one of the most famous homicide trials in Genesee County history.

Edward Newton Rowell and the homicide victim, Johnson L. Lynch, had once been neighbors in Utica, New York. Lynch, an attorney in Utica, was the great-grandson of President John Adams. Rowell was a partner in the box-manufacturing firm of Palmer and Rowell. When the firm decided to move their offices to Batavia, Rowell, along with his wife and two children, also relocated there.

Many people described her as flirtatious and beautiful. She was also eight years younger than her husband was. There were rumors in Utica that Mrs. Rowell had boyfriends—including Lynch. Her affair with Lynch did not end with relocation to Batavia. Becoming increasingly suspicious, Rowell devised a plan to discover whether the rumors about his wife were true.

In the fall of 1883, Rowell told his wife that he was leaving on a business trip for several days. As a result, Mrs. Rowell wrote to Lynch in Utica and invited him to her home in Batavia while her husband was gone. She was seen walking Lynch towards her home in Batavia after she met him at the train station. Rowell cut short his trip and arrived unexpectedly in their home where he saw his wife and Lynch in bed together. Rowell then produced a revolver and shot Lynch to death.

The start of the trial following the indictment of Rowell for manslaughter in the first degree produced an uproar among the public in Genesee County. After spending ten days in jail, the trial commenced. It ended on January 31, 1884. Rowell was acquitted after the jury's deliberation of five minutes. The jury concluded that Rowell had reacted to a violation of his wife and home, which was tantamount to self-defense. Four years later, he was granted a divorce and custody of his two daughters. When the acquittal was announced in the Batavia courtroom thunderous cheers erupted. Throughout that night, the public in Batavia celebrated the verdict with fireworks and bonfires.

We see in this case the playing out of what some legal historians have referred to as the nineteenth century's "unwritten law."³² Adultery and seduction were viewed as inherently evil. Therefore, society must always defend itself against an act so provocative of social disruption. In other words, the "unwritten law" held that a man enjoyed the right to avenge the sexual dishonor of a daughter, mother, sister—or wife. Rowell's case is part of a nineteenth century story that features many men who were acquitted of homicide as a result of a legal defense deploying such strategies as temporary insanity or, as in the case of Rowell, self-defense. All male juries—such as those in Batavia—applied this "unwritten law" to male defendants. Needless to say, it was a rationale that by definition excluded female defendants enraged by their husband's relationship with, say, a mistress. The standards of sexual virtue in Victorian America were clearly delineated between men and women.

5. *The Resources of Genesee County*

A. *Selected Bibliography*

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³² "The Unwritten Law," in Lawrence M. Friedman's *Crime and Punishment in American History* (New York: Basic Books, 1993), p. 221.

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French, J.H. *Gezetter of the State of New York: Embracing a Comprehensive View Of the Geography, Geology, and General History of the State, and a Complete History and Description of Every County, City, Town, Village, and Locality* (Syracuse, New York: R. P. Smith, 1860).

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McCulley, Mary, ed. *History of Genesee County, New York, 1890-1982* (Interlaken, New York: Heart of the Lakes Publishing, 1985).

McEvoy, Ruth M. *History of the City of Batavia* (Batavia, New York: Hodgins Printing Company, 1993).

North, Safford E. *Our County and its People: A Descriptive and Biographical Record of Genesee County, New York* (Boston: The Boston History Company, 1899).

Starowitz, Anne Marie. *Back in the Day* (n.p., n.p., n.d.).

Turner, O. *Pioneer History of the Holland Land Purchase of Western New York* (Buffalo: George H. Derby and Company, 1850).

B. The Locations of Genesee County Legal Records

The earliest court records held in the archives of Genesee County date from 1803. They can be found in the holdings maintained in the Genesee County History Department, located in the Department's Research Library, Archives, and Records Management section of County Building Two, 3837 West Main Street Road, Batavia, New York, 14020. These archives are maintained under the supervision of the Genesee County Historian, Michael J. Eula, LL.M., Ph.D.

A complete and current list of Genesee County city, town, and village historians is shown in the following section.

6. Genesee County History Contacts

A. County, City, Town, and Village Historians

County Historian
Michael J. Eula, LL.M., Ph.D.
3837 West Main Street Road
Batavia, New York 14020
(585) 815-7904
Michael.Eula@co.genesee.ny.us

City of Batavia
Larry D. Barnes
55 River Street
Batavia, New York 14020
(585) 343-1481
JLBARNES@verizon.net

Town of Alabama
Joseph Cassidy
1976 Lewiston Road
Basom, New York 14013
(585) 813-2812

Town of Batavia
Berneda Scoins
Batavia Town Hall
3833 W. Main Street Road
Batavia, New York 14020

Town and Village of Alexander
Katie Goodman
10290 Goodman Road
Alexander, New York 14005
(585) 591-1204

Town of Bergen
Thomas M. Tiefel
Bergen Town Hall
P.O. Box 249
10 Hunter Street
Bergen, New York 14416
(585) 494-0080
historian@Bergenny.org

Town of Bethany
Scott Wakefield
4959 Smith Road
East Bethany, New York 14054
(585) 356-8335

Town of Bryon
Bob and Beth Wilson
6451 Mill Pond Road
Byron, New York 14422
(585) 409-5990 or (585) 409-5991

Village of Corfu
Allan Starkweather
66 West Main Street, Lot 38
Corfu, New York 14036
(585) 599-4195
starky38@netzero.com

Town of Darien
Nicole Kelly
(716) 512-5170

Town and Village of Elba
Earl C. Roth
4695 Barrville Road
Elba, New York 14058
(585) 757-3027
EROTH@Rochester.rr.com

Town and Village of LeRoy
Lynne Belluscio
LeRoy House
P.O. Box 176
23 E. Main Street
LeRoy, New York 14482
(585) 768-7433
historicalleeroy@gmail.com

Town of Oakfield
Darlene K. Warner
37 Coe Avenue
Oakfield, New York 14125
(585) 948-5926
darwarner@yahoo.com

Village of Oakfield
Laurie Nanni
7151 Fox Road
Oakfield, New York 14125
(585) 259-4145
lnannie@rochester.rr.com

Town of Pembroke
Allan Starkweather, co-historian
66 West Main Street, Lot 38
Corfu, New York 14036
(585) 599-4195
astarky38@gmail.com

Lois M. Brockway, co-historian
7905 Allegheny Road
Corfu, New York 14036
(585) 762-3568
indianfalls@gmail.com

JoAnn Cummings, co-historian
906 Akron Road
Corfu, New York 14036
(716) 912-0011
jtcummings@hotmail.com

Town of Stafford
Garth Swanson
P.O. Box 25
Stafford, New York 14143
Gpswanson29@gmail.com

Tonawanda Reservation Historical
Society
c/o Terry Adams
P.O. Box 516
Basom, New York 14013
(716) 542-4360
terryabrams@earthlink.net

B. Locations of Records

Along with the information enumerated in Section Five, Subsection B, researchers can also contact any of the historians in specific municipalities listed in Section Six, Subsection A.

C. County Clerk Records Index

The Genesee County Clerk, Michael T. Cianfrini, is the custodian of Genesee County filings. He can be reached at 15 Main Street, P.O. Box 379, Batavia, New York 14021-0379. His telephone number is (585) 344-2550, extension 2316. His email address is Michael.cinafrini@co.genesee.ny.us

7. Additional Commentary on the Use of Executive Orders during the COVID-19 Crisis

Governor Andrew Cuomo’s issuance of Executive Order 202.16, entitled “Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency,” along with mandates requiring face coverings, business closures, and required space between people will most certainly be seen by future legal historians as key events in New York’s—and Genesee County’s—legal history. This will most likely be viewed as both a continuation of an abuse of

power by early royal governors in New York Colony *and* as an unconstitutional usurpation of basic constitutional protections that mainstream Americans assumed to be an integral part of American life.

One of the currents of thought leading to the American Revolution was the fear of ruling authority. This applied to the functions of a governor. Many eighteenth century Americans felt strongly that governors should be prohibited from exercising any capacity to make laws, a capacity only safely kept in the hands of the people acting through their duly elected legislators. As Professor Gordon S. Wood put it in his Bancroft Award-winning *The Creation of the American Republic, 1776-1787*,

Rulers, the constitution makers of 1776 realized, must be conceived as the creatures of the people, made for their use, accountable to them, and subject to removal as soon as they act inconsistent with the purposes for which they were formed.³³

Professor Wood therefore observes that early Americans were apprehensive about “magisterial authority.”³⁴ “Somehow,” Wood writes, “the governors had to be made to know that they were but men, who without the least difficulty . . . may be removed and blended in the common mass.”³⁵ This “emasculatation” of the governors “lay at the heart of (the) constitutional reforms of 1776,” Wood reminds us.³⁶ The sentiments of colonial Americans regarding the unchecked power of governors remains one that has provided the basis of contemporary lawsuits challenging the executive orders of such governors as Cuomo on the basis of an usurpation of constitutionally guaranteed freedoms assumed to exist by mainstream Americans.

Be it eighteenth century American colonists or those filing actions against the executive orders of Governor Cuomo in our own day, the concern then—and now—is whether the implementation of emergency measures can be reconciled with constitutional guarantees of individual liberty. While the controversy

³³ “Restructuring of Power,” in *The Creation of the American Republic* (New York: W.W. Norton and Company, 1972), pp. 148-149.

³⁴ *Ibid.*, p. 148.

³⁵ *Ibid.*

³⁶ *Ibid.*

produced by this issue will undoubtedly continue far in the future, it also remains certain that many scholars will look back and conclude that Cuomo’s executive orders were a discernible invasion of basic constitutional protections of individual liberty.

There will most likely be three reasons serving as the basis of objection to Cuomo’s exercise of “magisterial authority.” The first of these reasons is that the suspension of basic constitutional guarantees of individual freedom was founded upon the premise of the coronavirus crisis—but this crisis was never defined as one of finite duration. Instead, it was portrayed as one of an infinite nature. The public was expected to accept—under the threat of state coercion—an indeterminate suspension of civil liberties for the duration of an ill-defined crisis.

The legal basis for this is at best questionable. Article One, Section Nine, of the United States Constitution, suspends such a basic protection as habeas corpus only in the event of a crisis not by its nature of indefinable duration—such as an invasion or a rebellion. A natural disaster would also qualify here as an emergency of finite duration. But the coronavirus is by definition an event of indefinable duration. Its length remains uncertain. Accordingly, so too does the amount of time civil liberties will be suspended. The crisis can therefore produce an extended period of civil liberties suspension. Those suspensions, then, function not to “flatten the curve,” but instead, to advance the intrusiveness and heavy-handed quality of state intrusion and coercion.

The second likely reason for objection to the use of executive orders by Governor Cuomo that will be written about by future commentators is that the crisis is of such immediate importance that the courts and the legislature should be removed as sources of authority. There have been some in our own day asserting that the immediate need for governmental action is weakened by judicial scrutiny. Part of the concern here—serving to justify the erosion of constitutional guarantees via expanding executive actions—is that the courts could invalidate “necessary” governmental action designed to thwart the epidemic. The intervention by the courts whose task it is to scrutinize executive orders that weaken constitutional protections could, however, compel the state to provide reasons persuasive enough to justify a suppression of constitutional freedoms. A state policy that is proportionate to the crisis *would* survive judicial

scrutiny. But if not, then constitutional freedoms must be reinstated, because the reason for their removal would be absent.

Finally, active judicial and legislative involvement in decisions being made by governors provide the obvious safeguard in a necessary pushback against the “magisterial authority” so feared in the eighteenth century. Regular judicial and legislative involvement in the enforceability or enactment of measures curtailing constitutional liberties serves the necessary function of reducing the risk that the crisis is being used as a basis for weakening constraints on governmental power or eroding constitutional rights. If this is not done, future commentators may remember this moment in New York’s legal history in a way we remember *Korematsu v. United States* (323 U.S. 214)—as a moment when we turned a blind eye to vulgar violations of civil rights because of the claim of an alleged emergency.