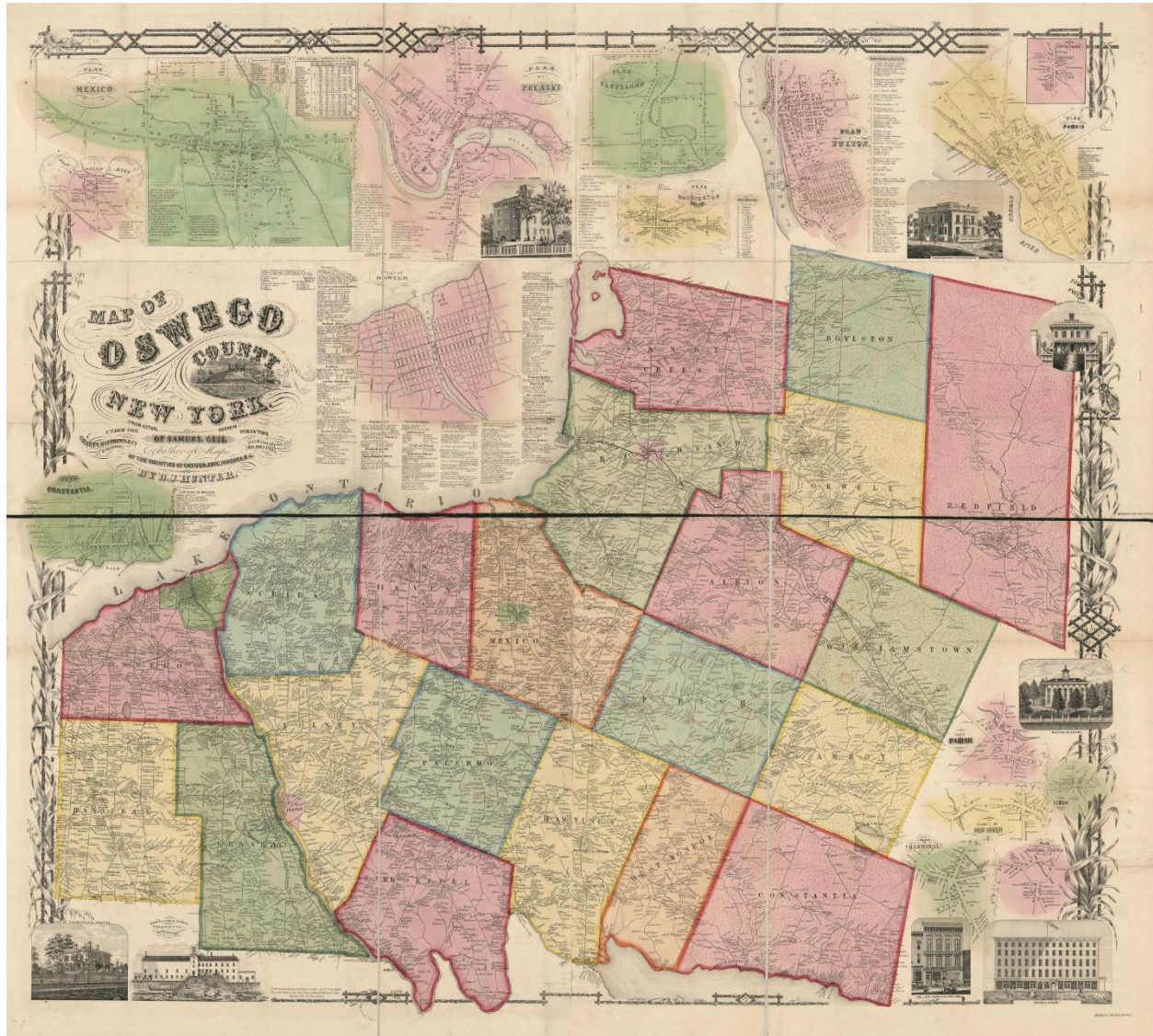


HISTORY OF OSWEGO COUNTY'S BENCH AND BAR



by

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I. County Origins

a. History Before 1816

The land which now constitutes Oswego County was part of the Iroquois Confederacy. The county contained two major Iroquois trails. The “Salmon River” trail cut around Oneida Lake and met up with the Salmon River. A second well-travelled path, known as the “Onondaga War” trail, tracked the water route created by the flow of the Seneca River, which feeds into the Oswego River and ultimately pours out into Lake Ontario. The Iroquois called the place where the Oswego River met Lake Ontario “Osh-We-Geh,” meaning “pouring out place.” The Iroquois called Lake Ontario “Skanyadario,” which means “lake beautiful” or “beautiful water.”

The first recorded European entrance into Oswego County occurred in October 1615. That year, the French explorer Samuel de Champlain landed on or near what is now Sandy Creek with a large group of Huron warriors. The group travelled through Oswego County to Oneida Lake near Brewerton to attack the Onondagas, one of the Iroquois Nations. Despite the French explorers’ firearms, the Onondagas repelled the attackers’ advances, forcing de Champlain and the Hurons to retreat back through Oswego County. Wounded in the fighting, de Champlain spent the winter recuperating with the Hurons before returning to Montreal via the St. Lawrence River in the spring of 1616.

Four decades later, in the summer of 1655, Father Simon LeMoyne, a French missionary, embarked on a trek through Oswego County seeking to reach the Onondagas and convert them to the Catholic Church. LeMoyne traveled along the Salmon River trail,

pushing inland about 40 miles to the Oneida River and on to the shores of Onondaga Lake near present day Syracuse. After friendly encounters with the Iroquois, the Onondagas guided him back to Lake Ontario along the Oswego River, a shorter path. He then travelled along the St. Lawrence River back to Montreal.¹

The fur trade and European hostilities led to continued exploration in and around Oswego County, but also conflict with the Iroquois. By the early 1720s, the French had several forts in Canada, reaching from Frontenac on Lake Ontario to Quebec. In 1720, the French extended their fort network to the Niagara River. In response, English traders built a post at Oswego in 1722. By 1726, about 300 English and Dutch traders were bartering with the Iroquois at Oswego. The Iroquois traded beaver and other furs for blankets, clothing, cotton, pots, weapons, and rum. In 1727, the English Governor of New York Colony, William Burnet, ordered that a stone fort be built on the west bank of the Oswego River where it met Lake Ontario. The fort had stone walls 4 feet thick and, while it was being constructed, 60 soldiers protected it from French attack. Upon its completion, 20 soldiers remained at the fort, and, in 1741, the English expanded the fort.

The simmering conflict between the English and French eventually led to the French and Indian War, which began in 1755. That year, the English built Fort Ontario in Oswego and positioned troops there. In August 1756, the French and the Hurons, under General Louis-Joseph de Montcalm, captured Fort Ontario, Fort Oswego, and Fort George, a third

¹ Syracuse's LeMoyne College was founded in 1946, honoring the exploration of Father LeMoyne and subsequent Jesuit explorers.

fort located near Oswego. The French burned the three forts to the ground, along with all the English vessels located at the forts. In the aftermath of this battle, the English and French divided the loyalties of the Iroquois Nations and built allegiances that carried into the Revolutionary War.

Around 1758, the English rebuilt Fort Ontario on the east side of the Oswego River, near or on the site of the original fort with the same name. The English never rebuilt Fort Oswego or Fort George on the west side of the river. That summer, 3,000 English soldiers left Oswego to take the French Fort Frontenac and, in 1759, English soldiers and Native Americans captured Fort Niagara on a mission that started in Oswego. After the French fort in Quebec fell in 1759, only the French stronghold in Montreal remained. In August 1760, an army of more than 10,000 soldiers left Oswego for Montreal under the direction of the British Army's commander-in-chief, General Jeffery Amherst (later Lord Amherst). This was the largest prong of a three-pronged attack on the French fort. The English captured Montreal in September, finally defeating the French and ending the war.

Though the French were defeated, Chief Pontiac, influential among the tribes around Lake Michigan and Lake Huron, continued to fight the English. In 1766, Chief Pontiac and Sir William Johnson forged a peace agreement between the Native Americans and English on the shores of the Oswego River.

During the Revolutionary War, no real fighting took place in Oswego County. However, Britain's Colonel Barry St. Leger passed through the county from Canada. He planned to unite with another British army in Albany, but American colonists stopped his

progress in a bloody battle at Oriskany. St. Leger's army retreated back through Oswego County to Canada.

The Treaty of Paris ended the Revolutionary War in 1783. The treaty provided that Lake Ontario and the St. Lawrence River would serve as a boundary between the United States and Britain's land. Despite the treaty, the British soldiers at Fort Ontario "received no orders to leave and the English flag continued to fly over its walls for [13] years longer" until 1796.² The British soldiers inspected boats on the Oswego River and interfered with trade. The continued presence of the British discouraged Americans from settling around Oswego until the English finally abandoned Fort Ontario in 1796 following the signing of the Jay Treaty. The American flag was raised over Fort Ontario on July 15, 1796, officially making Oswego part of the United States.

Meanwhile, after the Revolutionary War, the Iroquois ceded their land in what is now Oswego County to New York State. The land in Oswego County was divided into three tracts, known as the Military Tract, Scriba's Patent, and the Boylston Tract. The Military Tract contained land that Congress granted to Revolutionary War veterans. In 1792, New York sold land to John and Nicholas Roosevelt, who sold it to land speculator George Scriba. Scriba's Patent became official in 1794. Similarly, New York sold land to Alexander Macomb in 1792. Macomb in turn sold a portion of that land, the Boylston Tract, to Thomas Boylston in 1793. These tracts were subdivided into smaller lots and made available for purchase to promote settlement in the area.

² Ralph M. Faust, *The Story of Oswego* 18 (1934).

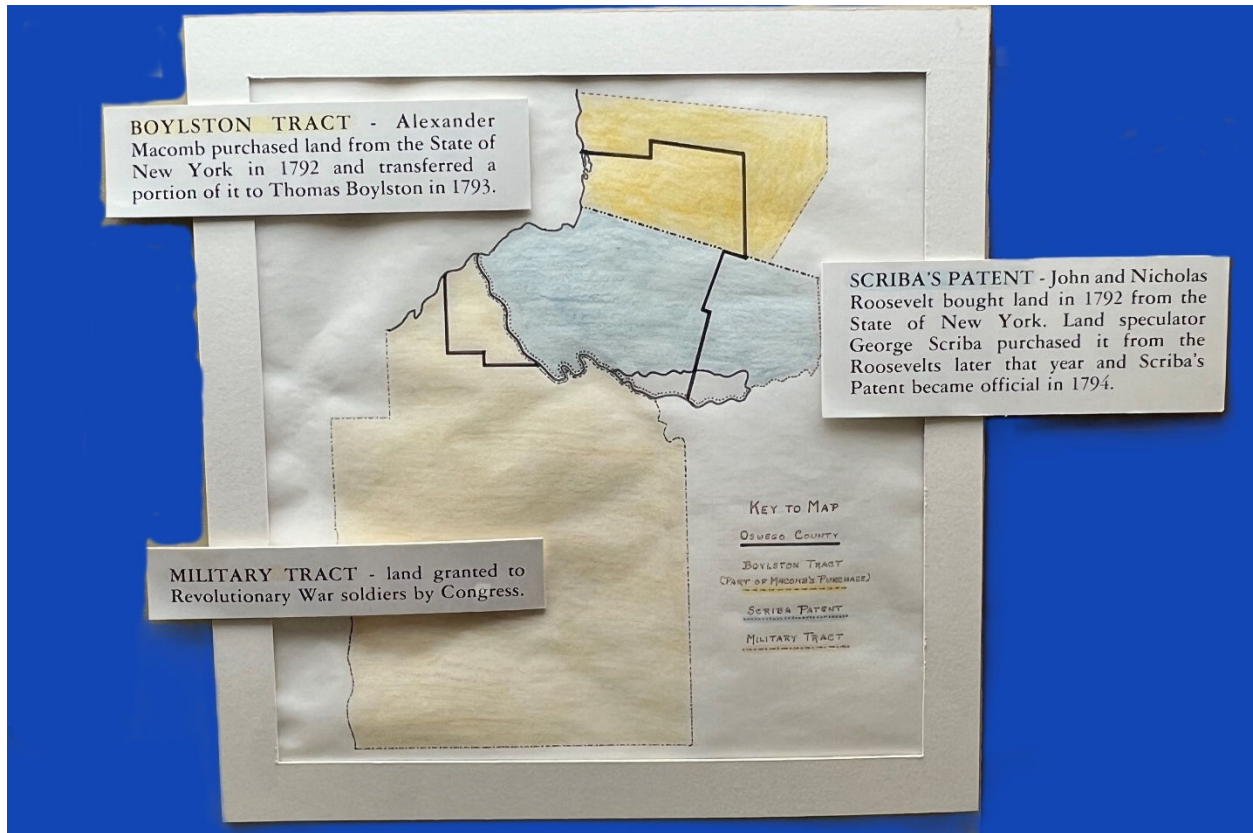


Photo of a portion of the Land Division Exhibit at the Richardson-Bates House Museum, owned by the Oswego County Historical Society.

b. A “Half-Shire” County

On March 1, 1816, the New York State Legislature enacted legislation forming Oswego County out of Oneida and Onondaga Counties.³ The part of Oswego County on the west side of the Oswego River was taken from Onondaga County, while the land east of the Oswego River came from Oneida County. Oswego County became New York’s

³ See L 1816, ch 22.

48th county, encompassing the towns of Hannibal, Scriba, New Haven, Volney, Mexico, Richland, Redfield, Williamstown, and Constantia.

Geography played an important role in Oswego County's formation as a "half-shire" county—a county with two county seats. Around 1800, migration brought an influx of people from Connecticut to Oswego County; they settled in the Town of Redfield on the Salmon River. When the county was formed in 1816, there was rapidly growing settlements in what is now Volney, Granby, Mexico, Richland, and Redfield. However, with its commercial port, Oswego had the largest population, most wealth, and most influential leaders.

To understand the political dynamics, it must be remembered that in 1816 horseback was the fastest means of travel across the dirt roads, paths, and trails cut through the forest. "Oswego was very near the west end of the proposed county and the settlement at Redfield was in like situation at the eastern end. Pulaski enjoyed a more central location."⁴ Oswego residents recognized that most of the approximately 6,000 people in the contemplated county would be opposed to locating a single county seat near its border, instead preferring a more central location. As a result, "Oswego joined forces with Pulaski," crafting "a bill which divided the county into two jury districts with a court house in each distr[i]ct."⁵ The "Eastern District" would contain the towns of Richland, Redfield, Williamstown, and

⁴ Henry C. Mizen, *A Few High Lights of the Courts, Bench and Bar of Oswego County*, Sixth Publication of the Oswego Historical Society, at 131 (1942).

⁵ *Id.* at 132.

Constantia, while the “Western District” would contain Hannibal, Volney, Scriba, and New Haven. The state legislature ultimately adopted this plan,⁶ and, following the county’s formation, Oswego and Pulaski were designated the co-county seats and the sites for the courthouses.

“The rivalry and strife engendered in 1816 by the selection of Oswego and Pulaski as sites for” the courthouses “lingered on for some years.”⁷ In 1855, a committee recommended to the state legislature that Oswego County be divided in two, with a “western jury district to be known as the County of Oswego; the other the eastern jury district to be known as Salmon River County.”⁸ That, of course, never happened. Oswego County remained a half-shire county for nearly a century, until 1902, when the legislature abolished the two jury districts.⁹ Still, even after the 1902 legislation, court operations were to “be held as heretofore in each of the court houses of [the] county,” ensuring the continued operation of the courts in Oswego and Pulaski.¹⁰

⁶ See L 1816, ch 22, § III.

⁷ Mizen, at 136.

⁸ *Id.*

⁹ See L 1902, ch 87. Also in 1902, Fulton was incorporated as a city (see L 1902, ch 63).

¹⁰ L 1902, ch 87, § 3.

II. Timeline

1615	French explorer Samuel de Champlain landed on what is now Sandy Creek.
1720s	The English built a trading post and later a fort at Oswego.
July 15, 1796	The American flag was raised over Fort Ontario, officially making Oswego part of the United States.
1816	The New York State Legislature enacted legislation forming Oswego County and establishing the county's first courts.
1818	Construction began on two courthouses, one in Oswego and one in Pulaski.
1820	James F. Wright became Oswego County's first District Attorney.
1846	William Fitch Allen was elected as the county's first resident Supreme Court Justice. Orla H. Whitney was elected as the first County Judge.
1859	Construction began on a new Oswego courthouse.
1870	William Fitch Allen was elected to the Court of Appeals.
1901	The Oswego County Bar Association was officially formed.
1902	Oswego County's half-shire county status ended.
1924	Ruth Reedy Sullivan, the first woman to practice law in Oswego County, graduated from Albany Law School.
1928	Irving George Hubbs was elected to the Court of Appeals.
1964	H. Douglas Barclay was first elected to the New York State Senate, beginning his 20 years of service in that body.
2017	Noel J. Francisco became the 47th Solicitor General of the United States.

III. County Courts and Courthouses

a. The County Courts Established

The 1816 legislation forming Oswego County provided that “there shall be held, in and for the county of Oswego, a court of common pleas and a court of general sessions of the peace” and directed that “the justices of the supreme court [shall] hold a circuit once in every year in the county of Oswego.”¹¹

“Barnet Mooney of Granby was the first judge of the Court of Common Pleas and Peter D. Hugunin of Oswego, Edmund Hawkes of Oswego Town, Daniel Hawkes, Jr., of Hannibal, Smith Dunlap of Sandy Creek, Henry Williams of Williamstown[,] and David Easton of New Haven were the first Associate Judges.”¹² “Elias Brewster of Mexico was the first Surrogate, John S. Davis of Pulaski the first Sheriff and John Adams of Oswego Town the first County Clerk.”¹³

All of these appointments were made in 1816.

The legislature left it to the locals to determine where to place the county’s courts, stating that “until further legislative provision is made in the premises,” Oswego County courts could “be held at such places in the respective districts, as the judges of said county shall appoint, as near as conveniently may be to the sites determined on for court houses.”¹⁴

¹¹ L 1816, ch 22, §§ V, VII.

¹² Mizen, at 132.

¹³ *Id.*

¹⁴ L 1816, ch 22, § VI.

“The first session of the Court of Common Pleas was convened in the school house at Oswego.”¹⁵ In Judge Mooney’s absence, Associate Judge Hugunin presided, accompanied by Associate Judges Edmund Hawkes and Daniel Hawkes, Jr. Oswego attorneys John Grant, Jr. and Theodore Popple attended the session, along with other attorneys from outside Oswego Village. Law students John Fisher and Henry White were admitted as attorneys at the session, but there were no civil or criminal cases to be heard.¹⁶ The court’s second term was convened at the schoolhouse in Pulaski on February 4, 1817, with Judge Mooney presiding and Judges Hugunin and Dunlap present. Then-law student James F. Wright was admitted at this session. Wright must have been a quick study; he became the county’s first District Attorney three years later in 1820. It is unclear if any civil or criminal matters were heard at this second session. The first Supreme Court circuit term was held in the new county on August 20, 1823, when Hon. Nathan Williams tried four civil and three criminal cases.

Decades later, in 1846, William Fitch Allen of Oswego was elected as the county’s first resident Supreme Court Justice; he took office in 1847. Orla H. Whitney of Mexico was also elected in 1846 as the first County Judge.

These “firsts” in 1846 were no coincidence. New York ratified a new constitution that year, which reorganized the state’s judiciary. The Judiciary Act of 1847 required

¹⁵ Mizen, at 132.

¹⁶ *See id.* at 132-133; *but see* Alden Chester, ed., *Legal and Judicial History of New York*, Vol. III 339 (1911) (stating that Luther Badger, Abraham P. Vosburg, John Grant, Jr., and Thomas Smith were admitted at the first session of the Court of Common Pleas).

counties with a population of 40,000 or more to have at least one general term per year. Meeting the statutory condition, Oswego County was required to have a Supreme Court general term. The county's first general term occurred in May 1848 before Presiding Justice Phil Gridley, Justice Daniel Pratt, and Justice Allen, most likely in the Supreme Court room in Oswego's City Hall. "The court heard and decided numerous appeals and handed down seven written opinions which are published in Volume 3 of Barbour's Reports," beginning at page 50.¹⁷

The General Term's first published decision was *Mathews v Terwilliger*, a specific performance case concerning the sale of a 30-acre farm in Manlius by Conrad Terwilliger to Samuel R. Mathews for \$35 per acre (*see* 3 Barb 50, 51 [Sup Ct, Oswego Gen Term 1848]). The contract's plain terms required Mathews to pay Terwilliger installments of \$200 per year. The contract for the sale of the property was executed "at the inn of one Roberts . . . on the counter of the bar" (*id.* at 52). The contract was read aloud at the establishment and several people present at the time when the contract was made testified in the case, including the inn's hostler (the person employed by the inn to look after the guests' horses). The contract had no express terms for the payment of interest and the question was whether the agreed upon \$200 per year included the interest that Mathews was to pay to Terwilliger or if the contemplated payment was \$200 per year, plus interest. Writing for the court, Justice Gridley concluded that Terwilliger was "entitled to relief, under the peculiar circumstances of [the] case, even if the mistake should be deemed to

¹⁷ Mizen, at 135.

consist solely in an erroneous construction of the agreement” (*id.* at 54). Exercising its “sound discretion” in matters of equity, the court refused to “enforce a contract which gives a long day of payment without making any provision for the payment of interest” because the contract’s written terms, failing to provide for interest, “did not express the intent of the parties” as established by the parol evidence (*id.* at 55-56). Surely, the court subsequently heard and disposed of myriad cases until its last term in 1863.

b. The Courthouses and Clerk’s Office

i. The Pulaski Courthouse



The Pulaski Courthouse.¹⁸

¹⁸ Photo from https://history.nycourts.gov/courthouses-around-the-state-grid-layout-with-all-images/?tx_county=oswego (last accessed Apr. 23, 2025).

Since its formation, Oswego County has always been home to two courthouses, one in Oswego and one in Pulaski. Construction on both buildings began in 1818. The Pulaski courthouse was constructed “under the supervision of the building committee consisting of Simon Leacham, John S. Davis, and Ebenezer Young.”¹⁹ It “was a substantial brick structure . . . with a jail in the basement,” built in the Federal style.²⁰ “An 1859 addition made the building both longer and wider. In 1887, a two-story annex, designed by local Architect Zina D. Stevens, greatly altered the building’s façade. It features a Florentine window above the entrance and tall columns modeled after the Tower of the Winds in Athens.”²¹ In 1985, following a renovation, the courthouse was dedicated in the name of H. Douglas Barclay, an 11-term New York State Senator, who served in that office from 1965-1984, and who is profiled below.

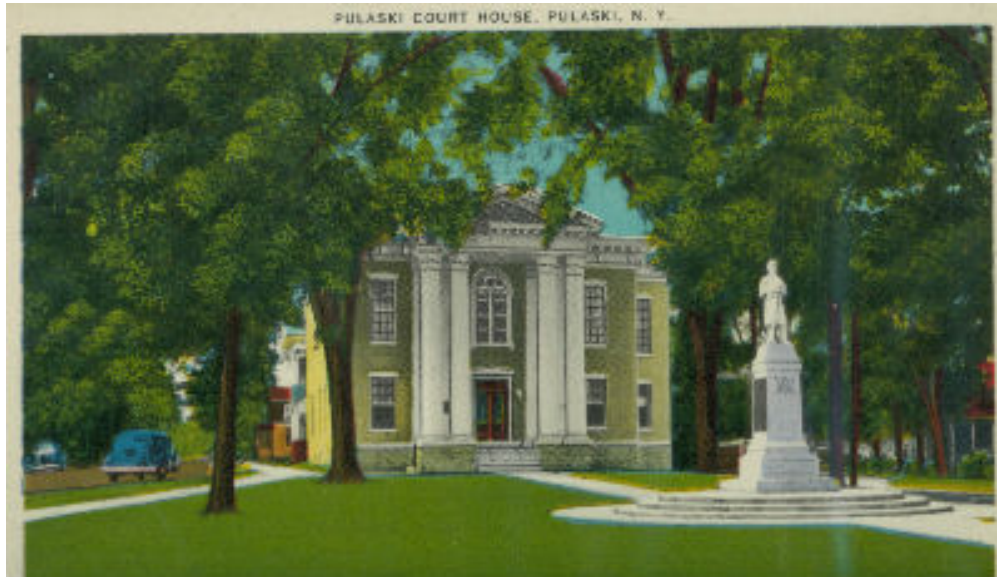
¹⁹ Chester, at 339.

²⁰ Mizen, at 133.

²¹ Julia and Albert Rosenblatt, *Historic Courthouses of the State of New York: A Study in Postcards* 155 (2006).



PULASKI COURT HOUSE, PULASKI, N. Y.





Photos of the Pulaski Courthouse.²²

²² Photos from https://history.nycourts.gov/courthouses-around-the-state-grid-layout-with-all-images/?tx_county=oswego (last accessed Apr. 23, 2025).

ii. The Oswego Courthouse



The Oswego Courthouse.²³

The 1818 Oswego courthouse “was a wooden structure of modest dimensions.”²⁴ Nathan Sage, Levi S. Burr, Richard Goodell, Abner P. Spencer, and Alvin Bronson were the commissioners who oversaw the Oswego courthouse’s construction. By 1848, the original courthouse was inadequate to handle the court’s business. The building was thereafter used as a school until 1857, when its use was discontinued. From 1848 until 1860, “Supreme Court held its sessions in the Supreme Court room in the old City Hall.”²⁵ In July 1857, Supreme Court ordered the Board of Supervisors to take action to provide

²³ Photo from https://history.nycourts.gov/courthouses-around-the-state-grid-layout-with-all-images/?tx_county=oswego (last accessed Apr. 23, 2025).

²⁴ Mizen, at 133.

²⁵ *Id.*

suitable courtrooms. A year later, in July 1858, the Board authorized the leasing of Mead's Hall on East Bridge Street and appropriated \$30,000 to build a new courthouse in Oswego and \$5,000 for the 1859 expansion of the Pulaski courthouse.

Construction on the new Oswego courthouse started in 1859 and was completed in the fall of 1860. The total cost was \$29,390, under the \$30,000 budget. The two-story building, designed by Horatio Nelson White of Syracuse, housed a law library and was made of Onondaga limestone. The new courthouse's interior woodwork was made from pine, but hand grained to give the appearance of oak; the courthouse was also stocked with 60 spittoons.

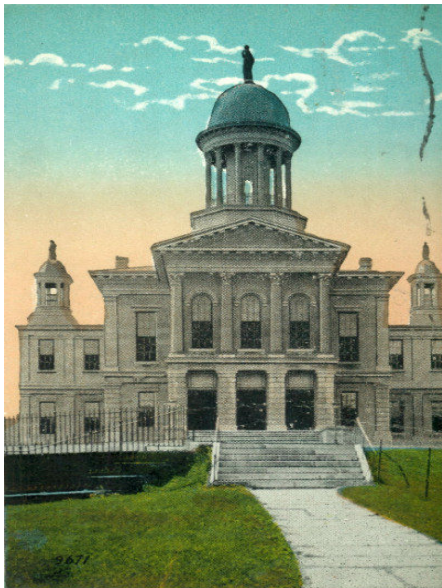
"The building had three cupolas, a large one in the center, and two smaller ones on each side. Originally, each cupola supported a statue."²⁶ However, on October 7, 1931, lightning struck the statue, named "Justice," on the main cupola, shattering it and sending fragments into a nearby park. A subsequent examination revealed that the statues on the smaller cupolas had disintegrated beyond repair. Shortly after the lightning strike, all three statues were removed and the cupolas were refurbished to match the building's design.

By the 1880s, the county's needs had again outgrown the Oswego courthouse, especially with respect to jury accommodations. Once more, the Board failed to act. In 1891, Supreme Court Justice John C. Churchill ordered that the courthouse be enlarged in accord with suggestions from the Oswego County Bar Association. That year, the courthouse was expanded, and repairs were made to the existing structure. In 1895, the

²⁶ Rosenblatts, *Historic Courthouses*, at 155.

county built a county clerk's office next to the courthouse. The county clerk's office was used for some court proceedings, including Family Court matters until the late 1970s.

The Oswego courthouse needed repair again in the 1990s, then failing to comply with State mandates issued in 1987. Renovations to the courthouse began in 1992 after the Oswego County Legislature issued a \$1.1 million bond and, in 1994, budgeted an additional \$100,000 for the project. "James Schug of JCM Architectural Associate[s] of Syracuse designed the renovations. The work brought the building into compliance with state and federal codes and enhanced its appearance in a style appropriate to the Victorian era of the building's origin."²⁷



Postcard mailed in 1923.

²⁷ *Id.* at 156.



Postcard mailed in 1923.



Photos of the Oswego Courthouse.²⁸

²⁸ Photos from https://history.nycourts.gov/courthouses-around-the-state-grid-layout-with-all-images/?tx_county=oswego (last accessed Apr. 23, 2025).

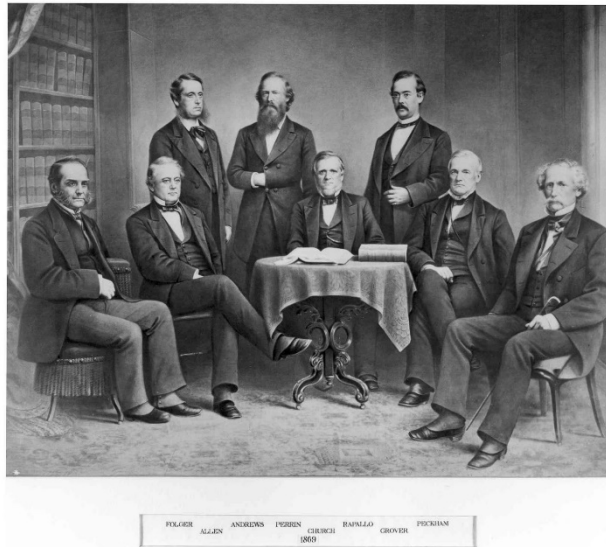
iii. The Clerk's Office

The County Clerk's office had no permanent location for the first 45 years of its existence. During that time, the office was maintained in the Clerk's private house or office. As a result, the office—along with all of its records—would move from place to place every three years upon the election of a new clerk. This seemingly untenable situation was remedied in 1851 when the Oswego City Common Council appropriated \$2,000 to build a clerk's office in that city. When the building was completed in 1852, the city conveyed it to Oswego County. The original office building was replaced in 1895, as noted above.

IV. The Bench and Bar

a. Notable Judges and Justices

i. William Fitch Allen



Left, William Fitch Allen. Right, Allen, seated, second from left.²⁹

Two Court of Appeals Judges hail from Oswego County.³⁰ William Fitch Allen was born in Connecticut in 1808 and moved with his family to Schenectady County in 1814. After graduating from Union College in 1826, Allen pursued his legal studies. Allen

²⁹ Photo on left from <https://history.nycourts.gov/biography/william-fitch-allen/> (last accessed Apr. 23, 2025). Photo on right maintained by the New York State Court of Appeals. Though stating 1869, it is believed that this photo represents the Court of Appeals bench from 1870-1873.

³⁰ Hon. George Franklin Comstock, an Associate Judge from 1856-1860 and Chief Judge from 1860-1861, was born on a farm near Williamstown, Oswego County on August 24, 1811. He received his early education in the local public schools, but spent his professional life in other parts of New York (see Albert M. Rosenblatt, ed., *The Judges of the New York Court of Appeals* 57-58 [2007]; John C. Churchill, LL.D., ed., *Landmarks of Oswego County* 246 [1895]).

was admitted to the bar in 1829 and soon thereafter started his law practice in Oswego County. Allen settled in the county, marrying Cordelia Carrington, an Oswego County native, in 1833.

Allen was elected to the State Assembly from Oswego in 1843 and 1844. By 1845, President James Polk appointed Allen the United States Attorney for the Northern District of New York. He held that position until 1847, when he was appointed to be a Supreme Court Justice in the 5th District. He was reelected to that post in 1855 with a cross endorsement from both political parties. While serving as a Supreme Court Justice, Allen acted as an *ex officio* Court of Appeals Judge in 1854 and 1862. He was defeated in an election to become a Judge of the Court of Appeals in 1863. After being considered as a nominee for New York Governor in 1864, Allen moved to New York City to practice law. He apparently was drawn to public service, however, and was elected State Comptroller in 1867 and reelected to that position in 1869.

Allen resigned as Comptroller in 1870 upon his election to the Court of Appeals. At the Court, Allen was said to “have had great power in the consultation-room,” frequently carrying “his point by sheer intellectual force and skill in argument.”³¹ Judge Churchill, the Oswego County Supreme Court Justice, said that Allen “ ‘was a man of unflagging industry; ever faithful to his clients; possessed great legal learning, in the use of which he was modest and unassuming; and exhibited all of the qualities to be desired in a judge of

³¹ Rosenblatt, *The Judges of the New York Court of Appeals*, at 152 (internal quotation marks omitted).

the highest courts.’ ”³² Allen served on the Court until his death on June 3, 1878. His funeral service took place at his home in Oswego, and he is buried at Riverside Cemetery in Scriba Township.



Allen, third from left seated on the bench.³³

³² Mizen, at 135.

³³ Photo from <https://history.nycourts.gov/court-appeals-bench-portraits/> (last accessed Apr. 23, 2025).

ii. Irving George Hubbs



Left, Irving George Hubbs. Right, Hubbs, standing, second from left.³⁴

Irving George Hubbs is the other Court of Appeals Judge with Oswego County roots. He was born in Sandy Creek, Oswego County, on November 18, 1870. Hubbs graduated from Pulaski Academy in 1888. Around that time, he worked summers in the office of attorney Don A. King of Pulaski. Hubbs completed a course in law at Cornell University in 1891 and was admitted to the bar that year in Syracuse at the age of 21. Hubbs began his law practice in the Village of Parish, working out of the Pulaski National Bank building. Hubbs was elected Special County Judge of Oswego County in 1893 and reelected to that post in 1896. In 1912, at the age of 41, Hubbs won election to Supreme

³⁴ Photo on left from <https://history.nycourts.gov/biography/irving-g-hubbs/> (last accessed Apr. 23, 2025). Photo on right maintained by the New York State Court of Appeals.

Court of Oswego County. In addition to his judicial work, Hubbs served the Oswego County community, acting as head of the Pulaski branch of the American Red Cross.

In 1918, Governor Charles S. Whitman appointed Hubbs to the Appellate Division, Fourth Department. The *Syracuse Herald* praised the appointment, while expressing disappointment that Hubbs would leave the local community:

“ ‘The regret will be inspired by the reflection that the Fifth district must lose an exceptionally well-equipped trial judge. In that capacity Justice Hubbs has won golden opinions since his advent on the bench in January, 1912. He has, in fact, been a model presiding magistrate; quick and keen as well as just in his decisions, courteous and dignified in deportment, and, in short, vindicating in every respect of his judicial record the favorable promise of his candidacy before the people in the memorable campaign of 1911—a candidacy the *Herald* was glad to support. . . . [W]e must selfishly hail his promotion as a deserving reward for a wise, learned and faithful judge.’ ”³⁵

In January 1923, Governor Alfred E. Smith named Hubbs, then 52 years old, the Fourth Department’s presiding justice. Hubbs was the first person from Oswego County to ever hold that position. In his 11 years on the Fourth Department’s bench, Hubbs authored 139 opinions and joined hundreds of others.

In 1928, Hubbs was nominated as the Republican candidate for a Court of Appeals vacancy, vying to replace Judge William S. Andrews who was to retire at the end of that year. Hubbs won a close election and took his seat on the Court of Appeals bench in 1929. Hubbs served on the Court for 10 years, writing 246 majority opinions, including several

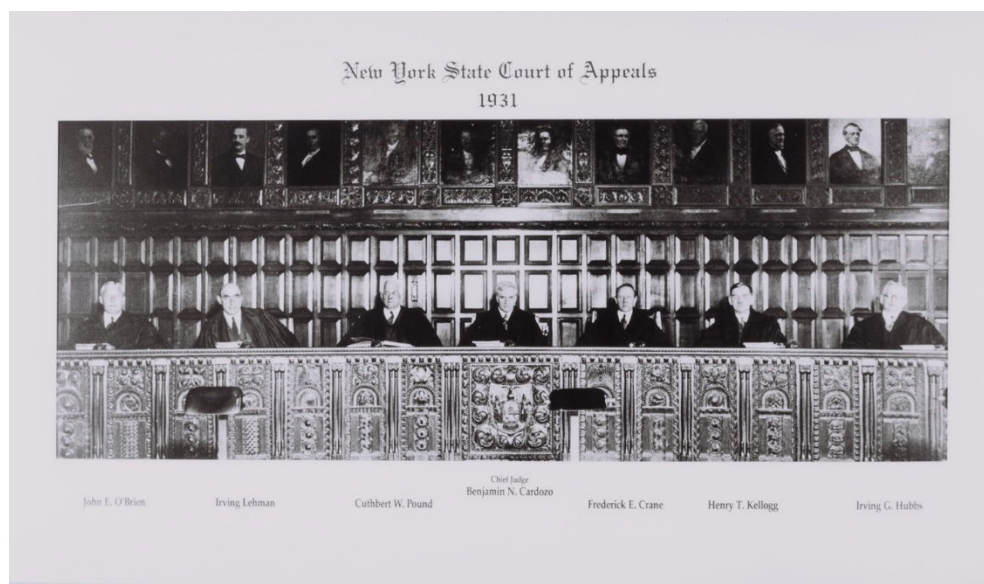
³⁵ Rosenblatt, *The Judges of the New York Court of Appeals*, at 483, quoting *The Syracuse Herald*, May 9, 1918.

significant writings. In 1937, Hubbs “made one of the [C]ourt’s most important pronouncements when upholding the constitutionality of a statute abolishing causes of action for alienation of affections and criminal conversation (adultery).”³⁶ In *Hanfgarn v Mark*, Hubbs wrote: “A wife is no longer the property of her husband in the eyes of the law and by the general acceptance of society” (274 NY 22, 26 [1937]). “Inasmuch as the statute abolished causes of action by both husbands and wives, it is evident that Judge Hubbs went out of his way to couch his language as he did, and it stands out as a hallmark of things to come.”³⁷

Hubbs retired from the Court of Appeals in 1939 at the age of 69, returning to Pulaski where he was associated with attorney Merritt A. Switzer. Hubbs suffered a stroke in April 1952 and died on July 23 of that year at the age of 81.

³⁶ *Id.* at 481.

³⁷ *Id.* For a more detailed summary of Hubbs’s significant Court of Appeals writings, *see id.* at 485-487.



Hubbs, far right.³⁸

³⁸ Photo maintained by the New York State Court of Appeals.

iii. Robert G. Hurlbutt



Robert G. Hurlbutt.³⁹

Robert G. Hurlbutt graduated from Albany Law School in 1964 and was admitted to practice that year. He began his legal career in Oswego, practicing with Leonard H. Amdursky. Hurlbutt became a member of the firm Amdursky and Hurlbutt in 1971 and from 1972-1975 he was the Town of Minetto's Town Attorney. In 1977, Hurlbutt became the Oswego County District Attorney, serving in that role until 1982. He was elected Oswego County Court Judge in 1982 and to Supreme Court, Oswego County, in 1987. In 1999, Governor George E. Pataki designated Hurlbutt to the Appellate Division, Fourth Department. He was reelected to Supreme Court in 2001, retiring from the appellate bench in 2009. Hurlbutt has taken active roles in the Oswego County legal and academic

³⁹ Photo from <https://history.nycourts.gov/biography/robert-g-hurlbutt/> (last accessed Apr. 23, 2025).

community, serving as a member and past President of the Oswego County Bar Association and as an adjunct professor of Criminal Law and Procedure and Business Law at the State University of New York at Oswego.

iv. Scott J. DelConte



Scott J. DelConte.⁴⁰

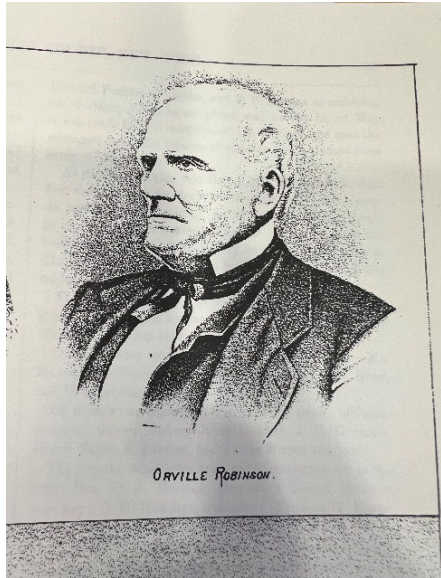
Scott J. DelConte was born in Syracuse, New York. He received his undergraduate degree from Cornell in 1995, graduated from Washington & Lee University School of Law in 1998, and was admitted to the bar in 1999. DelConte began his career at Bond, Schoeneck & King, eventually becoming a member (partner) of the firm and managing its Oswego Office. In 2017, he opened the DelConte Law Firm. Shortly thereafter, in 2018, DelConte was elected to the Supreme Court, Fifth Judicial District, where he presided over

⁴⁰ Photo from <https://ad4.nycourts.gov/publications/directory/672> (last accessed Apr. 23, 2025).

the district's asbestos litigation and other civil cases in Onondaga, Oneida, and Oswego Counties. In 2023, Governor Kathy Hochul appointed DelConte to the Appellate Division, Fourth Department. He maintains his home Chambers at the Oswego County Courthouse in Oswego. DelConte is a former president of the Oswego County Bar Association and past member of the Oswego County judicial screening committee. He has also volunteered his time serving on the boards of the Agricultural Society of Oswego County and Cornell Cooperative Extension of Oswego County. DelConte is active in 4-H programs with his family, including exhibiting livestock at the Oswego County Fair. DelConte and his family live in Volney.

b. Prominent Members of the Bar

i. Orville Robinson



Orville Robinson.⁴¹

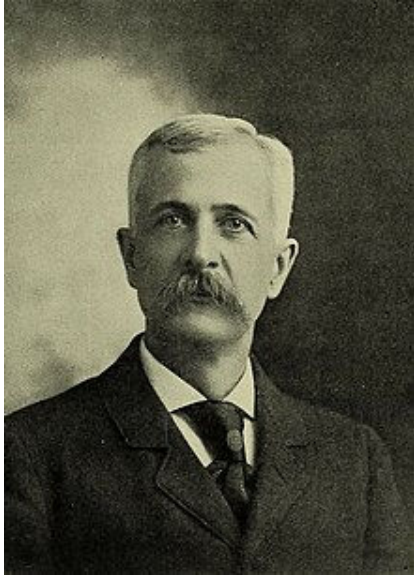
Orville Robinson was born in Richfield, Otsego County, New York on October 28, 1801. After studying law, he was admitted to the bar in New York City in 1827. In July of that year, he married Lucretia Greene of Richfield. In 1828, the couple moved to Mexico in Oswego County, and Robinson opened a law office. That same year, he was elected Justice of the Peace and, in 1829, he was elected Town Clerk. From 1830-1838, he was Oswego County Surrogate, while simultaneously serving in the New York State Assembly in 1834, 1836, and 1837. After being elected District Attorney in 1841 and serving for two years, Robinson was elected to Congress in 1843. In 1855, Robinson was elected to the Assembly for the fourth time and was chosen to be that body's Speaker. In 1858, President

⁴¹ Photo from Crisfield Johnson, *History of Oswego County, New York* 158 (1877).

James Buchanan appointed Robinson Collector of Customs for the Oswego District. As an attorney, Robinson's "addresses to the jury, though quite devoid of rhetorical embellishments, were clear, forcible, and persuasive" and his "numerous and important official positions . . . , both by election and appointment, sufficiently attest the respect and confidence with which he [was] regarded by his fellow-citizens."⁴² Robinson died on December 1, 1882.

⁴² *Id.* at 191.

ii. Theodore E. Hancock



Theodore E. Hancock.⁴³

Theodore E. Hancock was born in Granby, New York, on May 30, 1847. He graduated from Falley Seminary in Fulton in 1867 and from Wesleyan University in 1871. After studying law at Columbia University Law School, he was admitted to the bar in 1873. Eventually, he practiced in Syracuse, starting the firm that ultimately became Hancock Estabrook, LLP. Hancock was Onondaga County's District Attorney from 1889-1892 and he was New York's Attorney General from 1894-1898. Hancock's grandson, Stewart Freeborn Hancock, Jr., was an Associate Judge on the Court of Appeals from 1986-1993. The elder Hancock died on November 19, 1916.

⁴³ Photo from https://en.wikipedia.org/wiki/Theodore_E._Hancock (last accessed Apr. 23, 2025).

iii. Ruth Reedy Sullivan



Ruth Reedy Sullivan, right, with her husband Judge Eugene F. Sullivan, enjoying festivities at Camp Hollis in the summer of 1958.⁴⁴

Ruth Reedy Sullivan was born in Albany, New York in 1903. She attended Albany schools and graduated from Albany Law School in 1924. Sullivan eventually moved to Oswego County and became the first woman to practice law in the county. She served as counsel to State Senators Isaac B. Mitchell and Henry A. Wise and acted as counsel to the New York State Senate Judiciary Committee. These jobs required Sullivan to regularly make the six-hour round trip from Oswego County to Albany. Sullivan also maintained a private practice, partnering with her son and later with her husband, Supreme Court Justice Eugene F. Sullivan, following her husband's retirement from the bench. Sullivan was

⁴⁴ Photo from Jim Farfaglia, *Camp Hollis Celebrates Its Unique History*, <https://www.jimfarfaglia.com/blog/2019/6/15/fultons-founder-of-camp-hollis> (last accessed Apr. 23, 2025).

generous with her time, acting as a member of, among other organizations, the St. Luke's Board, the Lee Memorial Hospital Board, the Oswego County Catholic Charities Board, and the Syracuse Diocese of Catholic Charities Board. She was also a member of the Fulton Historical Society and was active in Girl Scouts for 54 years, including as the first President of the Central New York Girl Scout Council. In 1977, the Oswego County Bar Association honored her for her 30 years of membership in the organization. Sullivan practiced law until her retirement in 1982. She died in 1983 in Fulton, where she is buried.

iv. H. Douglas Barclay



H. Douglas Barclay.⁴⁵

The Barclay family has a long history in Oswego County. H. Douglas Barclay was the seventh generation of his family to live on a farm along the Salmon River. He described that land as the place he loved the most.

Despite these deep roots in the county, Barclay was born on July 5, 1932 in New York City, the only child of Dorothy (Moody) and Hugh Barclay. Barclay's nuclear family returned to Pulaski when he was a child, and he attended school there in his early years.

Barclay ultimately graduated from St. Paul's School in 1951 and Yale University in 1955. After serving in the United States Army from 1955-1957, Barclay graduated from Syracuse University College of Law in 1961. He was later awarded honorary degrees from

⁴⁵ Photo from https://en.wikipedia.org/wiki/H._Douglas_Barclay#/media/File:Doug_Barclay_Photo.jpg (last accessed Apr. 23, 2025).

Syracuse University, Clarkson University, the State University of New York at Oswego, LeMoyne College, and St. Lawrence University.

Barclay and his wife of 61 years, Sara “Dee Dee” Seiter Barclay, had five children, including William A. Barclay, who rose to his own prominence in New York’s legal community and is profiled below. The elder Barclay joined the Syracuse law firm Hiscock, Cowie, Bruce, Lee & Mawhinney, a predecessor of Barclay Damon, LLP. He would go on to practice law at the firm for more than 40 years, eventually as a named partner. He specialized in banking and administrative law.

Barclay also had several business interests in Oswego County. He was chair of the Board of Directors of Douglaston Manor Inc., a company that was involved in litigation concerning fishing rights on the Salmon River that is discussed below in the “Notable Cases” section. Barclay also owned and operated Douglaston Salmon Run fishing reserve, a key player in that notable case.

In 1964, Barclay was elected to the New York State Senate, going on to serve as a State Senator for 20 years over 11 consecutive terms. During his Senatorial career, Barclay rose to chair the Senate Republican (Majority) Conference. He also chaired the Senate’s Judiciary Committee, Codes Committee, and the Select Task Force on Court Reorganization.

Following his retirement from the Senate, Barclay served as the Vice Chair to President George H.W. Bush’s presidential campaign in New York in 1988 and chaired Bush’s New York campaign in 1992. Barclay also served in other roles in President Bush’s

administration. President George W. Bush appointed Barclay to be the United States Ambassador to El Salvador from 2003 through 2006.

Barclay was active in the community throughout his life. Among other things, he was a member of Syracuse University's Board of Trustees from 1979 until 2003. He chaired that entity from 1992 to 1998. He was also an overseer of the Nelson A. Rockefeller Institute of Government and a Fellow of the American Bar Foundation. He was Chair of the Alexis de Tocqueville Society of the United Way of Central New York and former President of the Board of Directors of the Syracuse Metropolitan Development Association. He served on the New York State Economic Development Power Allocation Board, the Board of Directors of Modern Courts, and the New York Racing Association Board. Closer to Oswego County, Barclay led fundraising initiatives for the Pulaski Fire Company, the Northern Oswego County Ambulance Service, and the Pulaski Health Center. He received many awards during his life, including the Private Sector Initiative Commendation from the President of the United States.

Barclay died on March 14, 2021, at the age of 88.

v. William A. Barclay



William A. Barclay.⁴⁶

William A. Barclay was born on January 5, 1969 in Syracuse, New York and is a lifelong Central New York resident. Barclay is one of five children of H. Douglas Barclay. After graduating from St. Lawrence University in 1992 and Syracuse University College of Law in 1995, Barclay clerked for Roger J. Miner, a Judge of the United States Court of Appeals for the Second Circuit. In 2002, Barclay was elected as a member of the New York State Assembly. He still holds that office, representing the 120th Assembly District which encompasses Oswego County. In 2020, Barclay's colleagues unanimously elected him to be the Leader of the Assembly Minority Conference. Barclay also is a partner at Barclay Damon, LLP, a law firm in Syracuse, where he specializes in business law.

⁴⁶ Photo from <https://nyassembly.gov/mem/William-A-Barclay> (last accessed Apr. 23, 2025).

Barclay resides with his wife and two sons on a farm along the Salmon River in Pulaski, Oswego County, a property that his family has owned for eight generations.

vi. Noel J. Francisco



Noel J. Francisco, the 47th Solicitor General of the United States.⁴⁷

Noel J. Francisco was born on August 21, 1969 in Syracuse, New York. Francisco's father was a Filipino immigrant who practiced medicine in Oswego. The family moved to Oswego in 1971, and Francisco's mother still resides in the area. Francisco graduated from Oswego High School in 1987. During his high school years, Francisco was student council president, played on the varsity soccer team, and played trombone in the symphonic band. His teachers and classmates extolled his virtues, describing him as, among other things, a

⁴⁷ Photo taken from Historical Biography, Solicitor General: Noel Francisco, <https://www.justice.gov/osg/bio/solicitor-general-noel-francisco> (last accessed Apr. 23, 2025).

hard worker, smart, funny, well-mannered, and committed to excellence. Francisco worked at the Fort Ontario State Historic Site for two summers as a member of the Fort Ontario Guard, a group of people dressed in post-Civil War uniforms who conduct drills and exercises for the fort's tourists.

Francisco went on to graduate from the University of Chicago in 1991, with a B.A. in economics with honors. In 1996, he graduated from that university's law school with high honors. After law school, Francisco clerked for Judge J. Michael Luttig of the United States Court of Appeals for the Fourth Circuit. During the United States Supreme Court's 1997 term, Francisco clerked for the late Justice Antonin Scalia. In 2000, he was part of a team of lawyers representing George W. Bush during the recount in Florida concerning the presidential election. Francisco later served in the Office of Counsel to the President as an Associate Counsel to President Bush from 2001 to 2003. From 2003 until 2005, he was a Deputy Assistant Attorney General at the Justice Department's Office of Legal Counsel. From there, Francisco went into private practice at the law firm of Jones Day, where he argued several important cases at the Supreme Court.

In 2017, Francisco became the 47th Solicitor General of the United States under President Donald J. Trump. He was the first Asian-American to serve as Solicitor General. Supporting his confirmation, Senator Ted Cruz said that Francisco is “ ‘a brilliant lawyer,’ ” who “ ‘has cemented his reputation as one of the best appellate advocates of our

generation.’ ”⁴⁸ After finishing his tenure as Solicitor General, Francisco returned to private practice at Jones Day as the firm’s Partner-in-Charge Washington.

Despite his prominence in the national legal community, Francisco has maintained his connection with Oswego County. He returned to Oswego for his 10th and 25th high school reunions, delivered Oswego High School’s 2013 commencement address, and was involved in the planning of his class’s 30th reunion—even while preparing for his confirmation as Solicitor General.

⁴⁸ Mark Weiner, *Oswego’s Noel Francisco, likely solicitor general: legal star never forgot his home*, Mar. 10, 2017, https://www.syracuse.com/politics/2017/03/oswegos_noel_francisco_likely_solicitor_general_legal_star_never_forgot_his_home.html (last accessed Apr. 23, 2025).

c. Oswego County's District Attorneys

1820 James F. Wright
1821 Samuel B. Beach
1829 David P. Brewster
1835 Abraham P. Grant
1838 Joel Turrill
1840 Leander Babcock
1841 Orville Robinson
1845 William Duer
1847 Ransom H. Tyler
1850 John B. Higgins
1853 Archibald N. Luddington
1856 John C. Churchill
1859 George G. French
1862 William H. Baker
1865 Sylvanus C. Huntington
1866 William H. Baker
1869 Newton W. Nutting
1872 John J. Lamoree
1878 Benjamin F. Chase
1881 Nathan B. Smith
1884 Sheldon B. Mead
1887 Merrick Stowell
1890 Charles W. Avery
1893 Nevada N. Stranahan
1896 Udelle Bartlett
1902 William B. Baker
1908 Freelon J. Davis
1911 Francis D. Culkin
1921 Don A. Colony
1928 Harry M. Stacy
1940 Floyd S. Spangle
1946 James C. Feeney
1951 Don H. Stacy
1953 Richard Donovan
1957 John R. Murray
1969 Eugene F. Sullivan
1977 Robert G. Hurlbutt
1982 John Elliott
1988 James G. Grose
1995 Dennis N. Hawthorne, Sr.

2003 Donald H. Dodd
2011 Gregory S. Oakes
2023 Anthony J. DiMartino, Jr.

d. The Oswego County Bar Association

Although active for years before, the Oswego County Bar Association was officially formed on October 6, 1901. Upon its formation, the Association's first President was Hon. Maurice Wright and Fred Spencer was the first secretary; it had 122 members at that time.

Today, the Association numbers more than 100 lawyers. Among other things, the Association co-sponsors the Oswego Mock Trial Program, a mock trial tournament for high school students.

V. Notable Cases

a. *Littlejohn v Greeley*

In 1860, Dewitt C. Littlejohn was Speaker of the New York Assembly, elected from Oswego County. Horace Greeley was an editor and publisher of the New York Tribune. During the 1860 legislative session, the legislature “granted numerous franchises to railroads” in New York City. The franchises were controversial; some, including Greeley, believed that the franchises were “injurious to the public” and “designed to advance private interests.”⁴⁹

In September 1860, during Littlejohn’s reelection campaign, Greeley published in the Tribune that Littlejohn and another legislator “ ‘were prominent in the corrupt legislation of last winter. Accordingly, both of them ought now to be defeated. Or, if they must be sent back to pursue their career at Albany, it should not be the work of Republican voters.’ ” (*Littlejohn v Greeley*, 13 Abb Pr 41 [Sup Ct, NY County 1861]). In response, Littlejohn commenced a libel action against Greeley seeking \$25,000 in damages.

Supreme Court, New York County (Bacon, J.), held the three-day trial, on circuit, at the Pulaski courthouse in 1861. Prior to charging the jury, the court held that “the publication involve[d] a charge of personal corruption” that could “only be sustained by proof tending to show that [Littlejohn] . . . was bribed to act and vote as he did” (*id.*). Thus, Greeley could “not sustain” his defense by showing “that the Legislature was reported and

⁴⁹ Mizen, at 138.

believed to be corrupt” (*id.*). The court ruled that the publication was not privileged, explaining that the “press is allowed to comment fully and freely upon public characters” and to charge public officials “with incompetency and imbecility, with ignorance or corruption” (*id.*). “But the press has no right, under its guarantied freedom, to publish what is not true. It has no right to . . . wrongfully assail private character” (*id.*). “[A]ssaults on individuals or upon private character do not become privileged because they are uttered by the editors or proprietors of a newspaper” (*id.*).

Even with these rulings working in Littlejohn’s favor, the jury did not give him a verdict. Nine jurors voted in Greeley’s favor, two voted to give Littlejohn nominal damages, and one voted to give Littlejohn substantial damages. One commenter suggested that Greeley, “[a] stranger from afar[,] . . . was exceedingly fortunate in having the trial take place at Pulaski in the eastern jury district, for he was thus assured that none of Littlejohn’s friends and neighbors in his home city, Oswego, would enter the jury box.”⁵⁰

b. *Greenfield v People*

In 1875, Nathan (Orlando) A. Greenfield murdered his wife, Alice Bloodgood Greenfield, in Orwell, Oswego County. The notorious case drew nationwide attention, concluding with Nathan’s public execution by hanging in 1881.

Nathan and Alice married in the early 1870s when he was 20 years old and she was either 14 or 15 years old. Nathan was the son of a wealthy Oswego County farmer and

⁵⁰ Mizen, at 139.

Alice was “a favorite at a local singing school and in the town’s sewing circles.”⁵¹ The couple had three children and seemed happy for a time. However, it was rumored that Nathan subjected Alice to domestic violence and that Alice possibly was unfaithful. On the night that Alice informed Nathan that she planned to leave him, Nathan murdered her by crushing her skull and cutting her throat from ear to ear. Nathan’s knife was found with wet blood on it. Nathan was arrested and charged with Alice’s murder, but he maintained his innocence and fought the charges.

Nathan was tried three times in connection with Alice’s murder. The first trial ended in a hung jury. The second jury found Nathan guilty, but he was granted a third trial when new evidence came to light after the conviction. Although the first two trials occurred in Oswego County, the third trial was held in Onondaga County before Judge Frank Hiscock in the Court of Oyer and Terminer. Following the third trial, Nathan was found guilty of murder in the first degree.

On Nathan’s appeal, the Court of Appeals affirmed the judgment (*see Greenfield v People*, 85 NY 75, 91 [1881]). The Court rejected Nathan’s arguments that the trial court had committed reversible error in certain evidentiary rulings and charging the jury. This determination cleared the way for Nathan’s execution.

⁵¹ Johnathan Croyle, *1881: Hundreds witness Onondaga County’s final ‘legal’ hanging*, Syracuse.com, May 4, 2020, updated Apr. 26, 2024, <https://www.syracuse.com/living/2020/05/1881-hundreds-witness-onondaga-countys-final-legal-hanging.html> (last accessed July 21, 2025).

Nathan was the last person to be executed by hanging in Onondaga County—later executions occurring in an electric chair. Nathan was hanged on August 5, 1881, at the Onondaga County Penitentiary, with hundreds of people witnessing the execution. Nathan maintained his innocence to the end, saying, “[a]s Christ is good, I am not guilty,” as he was led to the gallows.⁵² Nathan was declared dead at 11:10 a.m.

Nathan’s trial and execution were such a big story that it impacted journalism in Syracuse. On the day of Nathan’s execution, the Syracuse newspaper produced its first ever extra edition. In addition, an image of the execution was the first picture ever printed in the paper.

c. Oswego Laborers’ Local 214 Pension Fund v Marine Midland Bank

Although perhaps not intimately connected with the community, a seminal deceptive business practices case originated in Oswego County. In *Oswego Laborers’ Local 214 Pension Fund v Marine Midland Bank*, the plaintiffs were two not-for-profit union funds that administered “pension benefits and health insurance for union members and their beneficiaries” (85 NY2d 20, 23 [1995]). In 1976, the administrator of both funds met with the defendant bank’s “vice-president and branch manager of the East Side Oswego office” and opened a savings account for the pension fund (*id.*). In 1977, the administrator opened a second savings account for the welfare fund. Both savings accounts were intended for profit-making entities; the plaintiffs should have been issued a different type of savings account. In 1984, the defendant advised the plaintiffs that it “had not been

⁵² Johnathan Croyle, 1881: *Hundreds witness Onondaga County’s final ‘legal’ hanging.*

paying interest on principal in either account exceeding” a cap established by a federal regulation applicable to for-profit entities (*id.* at 24).

The plaintiffs commenced the action against the defendant “for the lost interest, claiming” that the defendant’s “actions were deceptive acts and practices within General Business Law § 349 (a)” (*id.*). Upon the parties’ motions for summary judgment, Supreme Court, Oswego County (Nicholson, J.), granted the defendant’s motion. The Fourth Department affirmed.

The Court of Appeals modified the Appellate Division order and denied the defendant’s summary judgment motion. In construing section 349 (a), the Court explained that the statute “is directed at wrongs against the consuming public” (*id.*). Further, “[c]onsumer-oriented conduct does not require a repetition or pattern of deceptive behavior” (*id.* at 25). Instead, a plaintiff must show that “the acts or practices have a broader impact on consumers at large” (*id.*).

Moreover, “while the statute does not require proof of justifiable reliance, a plaintiff seeking compensatory damages must show that the defendant engaged in a material deceptive act or practice that caused actual, although not necessarily pecuniary, harm” (*id.* at 26). The Court adopted “an objective definition of deceptive acts and practices . . . , limited to those likely to mislead a reasonable consumer acting reasonably under the circumstances” (*id.*).

Applying these principles, the Court held that the defendant’s acts were “within the ‘consumer-oriented’ ambit of General Business Law § 349” because the defendant’s representative in Oswego dealt with the plaintiffs’ agents “as any customer entering the

bank to open a savings account” (*id.*). Further proceedings were necessary because the defendant’s “liability under the statute” depended on whether the “plaintiffs possessed or could reasonably have obtained the relevant information” that they claimed the defendant “failed to provide” (*id.* at 27).

As of May 2025, the Court of Appeals’ decision had been cited more than 7,500 times, including 19 times by the Court of Appeals itself. The case’s interpretation of section 349 still prevails over three decades after it was decided.

d. *Douglaston Manor v Bahrakis*

In 1995, 10 fishing guides were arrested “in Oswego County for fishing from their drift boats along a private stretch of the Salmon River” controlled by Senator Barclay and his family.⁵³ This spawned a court case concerning fishing rights that reached the Court of Appeals.

As of the 1990s, “Douglaston Manor, Inc., own[ed] approximately one-mile-long sections of both shorelines of the Salmon River in Oswego County and the riverbed in between” (*Douglaston Manor v Bahrakis*, 89 NY2d 472, 478 [1997]). The property also encompassed “10 islands within and along the Salmon River” (*id.*). Through the Barclay family, Douglaston “trace[d] its title back to a conveyance from the pristine State of New

⁵³ Stephen C. Sautner, *OUTDOORS: FISHING; Access Rights in Peril On Certain Waterways*, The New York Times, June 14, 1998, available at <https://www.nytimes.com/1998/06/14/sports/outdoors-fishing-access-rights-in-peril-on-certain-waterways.html> [last accessed Apr. 16, 2025]).

York in 1792” (*id.*). Deriving from the “Macomb Patent,” the original conveyance from the State

“encompasse[d] the disputed portion of the Salmon River bank and bed ‘[t]ogether with all and singular Rights, Hereditaments and Appurtenances to the same belonging or in anywise appertaining: Excepting and Reserving to ourselves, all Gold and Silver Mines, and five acres of every Hundred Acres of the said Tract of Land for Highways’ ” (*id.* at 483).

In its section of the river, Douglaston operated “the Douglaston Salmon Run,” a “private sport fishery from which the general public [was] excluded and for which users [paid] Douglaston a fee” (*id.* at 478). The complaint in this action alleged that the defendants, “commercial fishing guides,” “navigated into and within the Salmon Run, and anchored, waded and fished within Douglaston’s protected enclave” (*id.*). Douglaston argued that it had “exclusive fishing rights by virtue of its ownership of the bed and both banks of the river” (*id.*). Douglaston sued in trespass seeking damages and an order enjoining such trespass in the future. The defendants counterclaimed and sought “a permanent injunction barring Douglaston from interfering with their claimed public right to fish anywhere on the river” (*id.* at 479).

Upon the parties’ cross-motions for summary judgment, Supreme Court, Oswego County (Nicholson, J.), “held that [the] defendants knowingly trespassed upon Douglaston’s property” (*id.*). Although Supreme Court concluded that “a public right of navigation” through Douglaston’s property existed “because the Salmon River is a navigable-in-fact river, it held that navigation did not include a public right to fish and anchor” (*id.*). The Fourth Department modified, holding “that the public ha[d] the right to

fish, ferry[,] and transport on the navigable waters of the Salmon River, including Douglaston's Salmon Run section" (*id.*).

The Court of Appeals agreed with Supreme Court and reinstated its ruling. The high court reiterated that "New York continues to recognize the common-law distinction concerning the rights which a private owner may acquire and retain in nontidal, navigable-in-fact rivers and streams" (*id.*). These waters remain navigable by the public pursuant to "an implied, reserved public easement of navigation" (*id.* at 481). However, "owners of the adjacent banks" of these waters retain "their exclusive rights to the fisheries therein" (*id.* at 480 [internal quotation marks omitted]). In other words, "the long-standing public easement of navigation in navigable-in-fact rivers does not sweep away or displace other rights accompanying the private ownership of the bed of a navigable-in-fact river, including that of exclusive fishery" (*id.* at 481).

By contrast, the Court explained that "waters deemed navigable-in-law or tidal navigable-in-fact waters" are subject to different principles (*id.* at 479). The common law considers these rivers "an arm of the sea, and as navigable, and devoted to the public use, *for all purposes, as well for navigation as for fishing*" (*id.* at 480 [internal quotation marks omitted]).

In this case, there was no "dispute that the Salmon River is navigable" and that it was not tidal (*id.*). Regardless, the defendants urged the Court to issue "a definitive landmark ruling . . . abandon[ing] the common-law property distinction between rivers navigable-in-fact and those navigable-in-law" (*id.* at 481-482). The defendants argued that there should be "a public right of fishery in all 'navigable' waters" (*id.* at 482). The Court

of Appeals rejected the defendants' argument, concluding that it was "too simplistic an approach" and "would precipitate serious destabilizing effects on property ownership principles and precedents" (*id.*). Instead, the Court adhered to the common-law rule, preferring "the desirable definiteness attendant upon discrete property rights and principles, along with reliable, predictable expectations built upon centuries of precedent" (*id.* at 483). Ultimately, then, boaters could navigate through Douglaston's section of the river, but they could not anchor or fish there.

e. *People v Gary Thibodeau*

For more than 30 years, Heidi Allen's disappearance has dismayed Oswego County. In the spring of 1994, Allen was an 18-year-old student at Onondaga Community College and an employee at the D&W Convenience store in Oswego County's Town of New Haven. Previously, Allen had attended Mexico High School and played varsity soccer.

Allen was last seen on the morning of April 3, 1994, Easter Sunday, while working at the convenience store. Following her disappearance, a massive search was conducted to locate Allen and the community showed its support for the teenager and her family with numerous vigils. Although Allen is assumed to be dead, neither she nor her remains have ever been located.

In 1995, brothers Richard and Gary Thibodeau were arrested and charged with abducting Allen. Richard admitted that he made the last purchase from Allen at the store before her disappearance. The brothers faced separate jury trials in Oswego County. Richard was acquitted, but Gary was convicted in 1995 of kidnapping in the first degree

and sentenced to 25 years to life in prison (*see People v Thibodeau*, 267 AD2d 952, 952 [4th Dept 1999], *lv denied* 95 NY2d 805 [2000]).

Despite his conviction, Gary maintained his innocence and pursued several legal proceedings to clear his name. On direct appeal, the Fourth Department unanimously affirmed his conviction, concluding that the trial evidence was legally sufficient (*see id.* at 954). On that appeal, the Court, among other things, held that the improper admission of certain evidence at trial was harmless because there was “overwhelming evidence of [Gary’s] guilt” (*id.* at 953). In 2007, the federal courts denied Gary’s habeas corpus petition (*see Thibodeau v Portuondo*, 486 F3d 61 [2d Cir 2007]).

Years later, in 2014, Gary moved to vacate the judgment of conviction, arguing, among other things, that newly discovered evidence cast doubt on his guilt. Oswego County Court (King, A.J.) conducted an evidentiary hearing that involved 52 witnesses, including three men who Gary alleged committed the crime. The County Court ultimately denied the motion and the Fourth Department affirmed.

On further appeal to the Court of Appeals, the Court affirmed, in a 4-3 opinion, holding that the motion was properly denied (*see People v Thibodeau*, 31 NY3d 1155, 1157 [2018]). The Court determined that the “newly discovered evidence was comprised of uncorroborated hearsay that the hearing court was entitled to reject, within its discretion, as untrustworthy in nature and inadmissible at a trial based on its assessment of witness credibility and factual findings” (*id.* at 1162-1163).

The dissent, authored by Judge Rivera, would have granted Gary a new trial. The dissent concluded that Gary “presented admissible evidence at the hearing that is of such

character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to” Gary (*id.* at 1163 [Rivera, J., dissenting] [internal quotation marks omitted]).

Gary died in 2018, shortly after the Court of Appeals rendered its decision in his case. Richard died in 2024. Upon their deaths, both men continued to maintain their innocence.

VI. Oswego County Resources and References

Oswego County has an excellent website, which includes links to the County’s departments and other governmental entities (<https://www.oswegocounty.com/>). The “Government” tab has a link to the County’s “Court System,” which lists information concerning those courts and links to the Oswego County Assigned Counsel Program, County Attorney, District Attorney, and Office of the Public Defender (<https://ww2.nycourts.gov/courts/5jd/oswego/index.shtml>). The “Government” tab also has a link to “Municipalities,” providing additional links to those political subdivisions (<https://www.oswegocounty.com/government/municipalities.php>).

The County Clerk’s webpage is available through the Oswego County website as well (https://www.oswegocountyny.gov/government/county_clerk/index.php). The webpage lists the County Clerk’s hours and location (46 East Bridge St., Oswego, NY 13126). The county’s Records Center page is also accessible on the website (https://www.oswegocountyny.gov/government/county_clerk/records_center_.php). In addition to historical information, the Records Center page contains a description of its

archival holdings, which include cemetery records, census records, marriage license records, and many others (https://www.oswegocountyny.gov/government/county_clerk/records_center_research_materials.php). Similar information is also provided on the Historical Society of the New York Courts' Oswego County Historical Court Records webpage (<https://history.nycourts.gov/county-court-records/oswego/>).

In addition, the Oswego County Historical Society (<https://oswegohistorical.org/>) and the Half-Shire Historical Society (<https://www.halfshire.org/>) are valuable resources for anyone interested in Oswego County history.

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** The map of Oswego County on the cover page is from the Library of Congress, available at <https://www.loc.gov/item/2013593257/> (last accessed Apr. 23, 2025).