Many precedents were established as the result of Prohibition litigation in the Northern District. In McGuire v. United States, the Supreme Court held that the illegal destruction of liquor found by agents in the Northern District acting under a search warrant did not void the search or render inadmissible the samples retained as evidence. In Gambino v. United States, the Supreme Court was confronted with the seizure of an automobile containing liquor and the arrest of its occupants in the Northern District by a state police officer. The Court held that the fourth and fifth amendment rights of the defendants were violated and that the evidence seized was inadmissible, even though seized by a state officer, since the officer was acting solely in aid of the enforcement of the laws of the United States. Rules relating to the confiscation of automobiles used to transport illicit whiskey were developed as the result of Northern District litigation as were other rules dealing with the interpretation and application of the Volstead Act.

In spite of Prohibition, roadhouses and speakeasies flourished in upstate New York, and whiskey never seemed to be in short supply. One legendary member of the Northern District Bar who defended those charged with Prohibition violations consumed more than his share. It was said that he would drink a toast to a laundry list. It was also said that, if there were a nip in the air, he would drink it. On one occasion he appeared before a Southern District Judge in an intoxicated condition. When the Judge said: "You are drunk," he replied: "That is the only correct judgment your honor has made in some time." Supplying the alcohol needs of the population in the days of Prohibition obviously was a lucrative business. While Dutch Schultz and Legs Diamond fought over control of the trade in Northern New York, the wets and the drays continued to battle it out on the political field. Into this political battle, Judge Frank Cooper was drawn in a strange situation involving a call for his impeachment.

The call was issued by Congressmen LaGuardia and Celler, who were not too keen on Prohibition in the first place. They charged that Judge Cooper had advised and assisted government agents in the conduct of undercover operations designed to entrap border rumrunners. An extensive investigation was conducted, and the Judiciary Committee was authorized by the House to conduct a formal inquiry. Witnesses were called, and Judge Cooper himself appeared before the Committee. The proceedings were marked by extensive wrangling between Chairman Graham and Congressman LaGuardia. It did develop that Judge Cooper injudiciously had discussed with government agents, both orally and in writing, methods of securing evidence against so-called "higher-ups." However,
it also appeared that the judge had no prior knowledge of any specific undercover operations.

During the investigation, there was a break-in at Judge Cooper’s Chambers in Albany, and a certain file of correspondence was ransacked. Dean Taylor, Judge Cooper’s secretary, who would become a distinguished Congressman and State Republican Party Chairman, advised the press that the ransacked file contained letters that might have a bearing on the hearings. He indicated that some of the letters were stolen and implied that some had been published. The Times reported that this statement had a “disquieting” effect on Mr. LaGuardia, who denied any knowledge and made this further statement: “At any rate, what business has a Judge to have letters in his file that cannot be published?” It seems in any event that all letters pertinent to the investigation finally were produced and that all necessary witnesses were heard. The Judiciary Committee found no basis for impeachment, although the Committee said that its report was not to be taken as an approval of Judge Cooper’s activities “with relation to the manner of procuring evidence in cases which would come before him for trial.”

The Committee report was approved by the House without opposition. Judge Cooper’s troubles were a rallying point for the wets and the drays. For example, Rev. A.D. Batchelor, at a forum sponsored by the Anti-Saloon League in New York City on February 13, 1927, made the following statement: “The efforts of a few garrulous wets in Congress, who have requested impeachment proceedings against Judge Cooper is not without significance. What are the facts? No Judge in New York has been a greater terror to the rumrunners than Judge Cooper. His summary exercise of jurisdiction in the north country has earned for him the enmity of the wets. His removal from office would be a victory for the bootleggers. Instead of seeking to remove him, Congress ought to uphold him and commend him.” I guess it depends on which side you preferred.

Frank Cooper retired in 1941 and died in 1946, having survived by some years the abolition of the laws that occupied him for so long. Toward the end of his service, according to some Albany lawyers, Judge Cooper developed the eccentricity of holding motion days in his bedroom. Not a bad idea!
On May 21, 1927, reportedly at the urging of several members of the United States Supreme Court, President Coolidge appointed to the Second Circuit Court of Appeals a man who had spent his boyhood in Elizabethtown, New York,—Augustus N. Hand. This appointment was to fill the vacancy created by the death of Charles Hough, the hitherto unchallenged historian of the Southern District. Cousin Learned, who practiced law unsuccessfully in Albany and taught at Albany Law School, had been appointed to the Circuit Bench three years earlier. On the same day that he appointed Augustus, Coolidge appointed another north country man to the Federal Bench—Frederick H. Bryant of Malone. That appointment reportedly was urged by the Republican National Committeeman from New York, although it evoked a controversy among the wets, drys and "bone-drys." It seems only fortuitous that Bryant had served for many years as Franklin County Republican Chairman before his nomination. His wife and law partner was appointed vice-chairman to his successor in that position. Later, Mrs. Bryant became law secretary to her husband.

Judge Bryant was a graduate of Middlebury College and studied law in the office of Gordon Main, with whom he became associated in the practice of law at Malone. He joined Judge Cooper on the Northern District Bench as the first appointee to the second judgeship created in the Northern District. He presided at the Binghamton trial of eight of the members of the nation's last organized kidnapping ring. The eight men were convicted for the kidnapping of John J. O'Connell, Jr., who was held by the kidnappers for twenty-three days. The victim was released upon payment of the ransom money by his uncle, Daniel P. O'Connell, the Albany County Democratic Leader. Judge Bryant also presided in several Indian cases and, in 1929, determined the selection of Chief Sachem of the Iroquois Confederacy.

By far the most celebrated cases handled by Judge Bryant during his career on the Bench were the income tax evasion trials of Arthur Flegenheimer, better known as Dutch Schultz, the Prohibition Era gangster. The trials received extensive press coverage, since Schultz was one of the most widely known racketeers of his day. Accused of failing to pay income tax on his ill-gotten gains, Schultz first was tried at Syracuse after indictment by a federal grand jury at Albany. Apparently, the Northern District venue was due to the location of the Internal Revenue district appropriate to the Schultz residence. Although the evidence disclosed that the Schultz operations grossed millions of untaxed dollars each year, the Syracuse trial ended with a hung jury. According to reports, the defense overcame the allegation of willfulness by demonstrating that Schultz emissaries had traveled to Washington to offer payment of $100,000 to revenue officers in settlement of all claims, an offer that was rejected.
The government continued to refuse offers of a civil compromise, and a new trial was ordered at Malone, where Judge Bryant maintained his chambers. Evidently, the “Dutchman” cut a dashing and glamorous figure among the rural residents of Franklin County. According to newspaper dispatches, he spent the week before the start of his trial “ingratiating himself with the local citizenry by lordly spending. He had played the genial host in roadhouses and night clubs, bought wassail for any and all who would partake of it and even, according to common report, sent juvenile books to a child ill in a local hospital.”

An alarmed Judge Bryant revoked bail, and the defendant spent the remainder of his trial in jail. On August 1, 1935, Schultz was acquitted of all charges of income tax evasion in the Northern District. The New York Times banner headline of August 2nd read: “Schultz Is Freed; Judge Excoriates Jury Of Farmers.” The Times seems to consider that farming is the proper occupation of all those who reside north of the Bronx. Obviously, all twelve jurors were not farmers. Judge Bryant’s final words to the jurors were these: “You will go home with the satisfaction, if it is a satisfaction, that you have rendered a blow against law enforcement and given aid and encouragement to the people who would flout the law. In all probability they will commend you. I cannot. The Clerk will give you your vouchers.”

Lloyd McMahon gave a similar tongue lashing to a jury in a similar case at Auburn last year.

Less than three months after his acquittal, Schultz was shot to death at a tavern in Newark, New Jersey. I believe that it was Judge Bryant who said to a Prohibition violator: “You have been brought before me twelve times in twelve months for violations of the Volstead Act. What do you have to say?” The reply was: “Your Honor, I can’t help it if you’re not promoted.”

The service rendered by Stephen W. Brennan on the Northern District Bench will long be remembered. He was a man greatly admired, even revered, both as a lawyer and as a Judge. He practiced law in Utica after his graduation from Albany Law School and served as Democratic County Chairman of Oneida County before his appointment to the Bench by President Franklin Roosevelt in 1942. As an attorney, it was said that “[h]e was of unquestionable integrity, an able advocate in the courtroom, a wise counsellor, a man with a mind that penetrated quickly and instinctively to the real issues involved and a sagacious adviser.” Of his judicial service, Chief Judge Lumbard said: “The Court of Appeals not only thought highly of his experience and judgment during his
twenty-six years of judicial service, but on numerous occasions he was called to sit as a member of this Court and on still other occasions he sat in other district courts when help was needed. He was esteemed by all his colleagues for his wisdom and good judgment and for his attractive and friendly personality.\textsuperscript{213} In the tradition of Northern District Judges he was a prodigious worker and continued his judicial labors as a Senior Judge practically until the date of his death on April 9, 1968 at the age of seventy-six. Among those who attended his memorial service at the United States Courthouse in Utica was New York Supreme Court Justice Richard Cardamone, now a Judge of the Circuit Court with Chambers in Utica. I'm not sure whether it was Judge Brennan who told a young couple on a Friday afternoon that he was unable to perform a marriage ceremony and then was met with the following request: “Your Honor, could you say a few words to tide us over the weekend?”

From 1946-1948, Judge Edward S. Kampf served on the Northern District Bench at Albany. He was appointed to replace Judge Bryant and had served as Albany Police Court Judge for about five years prior to his appointment.\textsuperscript{214} According to those familiar with the situation, Judge Kampf found the work somewhat different from his Police Court duties, decided he didn’t want to get involved and handed in his resignation two years after his appointment. His replacement was James Thomas Foley, a native of Troy, appointed by President Truman in 1949 at the tender age of thirty-eight.\textsuperscript{215} From the date of his appointment until my arrival thirty-two years later, Judge Foley was the only Federal Judge with Chambers in the State Capital. I have never met a person more capable of, or more suited for, the work of judging, and my daily association with him has been a source of great joy for me. I shall always treasure his guidance and friendship. As District Judge, Chief Judge and now Senior Judge, he has been at the cutting edge of significant changes in the law. Judge Foley has made enormous contributions to the law of prisoners’ rights,\textsuperscript{216} and, in 1979, he established hiring goals for minorities and women in the New York State Police.\textsuperscript{217} A concise history of Saratoga Springs, including a description of its racetrack, can be found in his scholarly opinion in the Saratoga Vichy trademark case.\textsuperscript{218} His interest in improving the breed continues, and I know that many here have joined Jim Foley and his lovely wife Eleanor in their box at the Saratoga Track on an August afternoon to join in the cry of “they’re off.”

Our second Senior Judge is Edmund Port of Auburn, that Northern District city of great lawyers and judges. After important service to the Northern District as Assistant United States Attorney and then United States Attorney, Judge
Port was appointed to the Bench by President Johnson in 1964.\textsuperscript{219} He continues to undertake a full load of prisoners' cases and is our resident expert in equity matters and Indian rights litigation. With 10,000 state prisoners and 500 federal prisoners presently residing in the Northern District, we are grateful for Judge Port's continuing interest in habeas corpus and conditions of confinement. His expertise, acquired over long years of service, always is available to the active Judges, and he is acknowledged as one of the finest Judges ever to serve in the Northern District. I make no comment on the judicial service of the present active Judges, Munson, McIver and Miner, leaving that for a future court historian.

From the Northern District of New York came two presidents, Fillmore\textsuperscript{220} of Locke, and VanBuren\textsuperscript{221} of Kinderhook, who served as Surrogate of Columbia County. There also was one would-be president, Samuel J. Tilden\textsuperscript{222} of New Lebanon, Columbia County, who won the popular vote but lost in the electoral college. From Northern New York there also came three associate justices of the United States Supreme Court, all with prior service on the New York State Bench — Nelson\textsuperscript{223} of Cooperstown, Hunt\textsuperscript{224} of Utica, and Peckham\textsuperscript{225} of Albany. Chief Justice Charles Evans Hughes\textsuperscript{226} was born at Glens Falls and taught at Cornell Law School, one of the three law schools\textsuperscript{227} of the Northern District. There have been sixteen Judges of the United States District Court for the Northern District of New York and five currently are in service.\textsuperscript{228}

Our Court started out as one of very limited jurisdiction, serving a small population. Today, there are more than three and one-quarter million inhabitants in the Northern District, and the matters within our jurisdiction are beyond the wildest imagination of Judge Tallmadge. We stagger under a civil caseload of more than 800 cases per active judge and an increase in filings of 140\% in the past five years.\textsuperscript{229} The Subcommittee on Judicial Statistics of the Judicial Conference has recommended two additional judges to meet this burden.\textsuperscript{230} We cannot return to an earlier day, but we must take some lessons from the past. Every silly dispute cannot be allowed to become grist for the federal court mill. Judge Coxe told us, seventy-five years ago, that there are some things that just cannot be remedied by law. The constant enlargement of the federal judiciary to accommodate an ever-expanding jurisdiction can lead to problems and difficulties now unforeseen. I suggest that the time has come for Congress to answer these questions: What is expected of the District Courts? What should be the priorities? How much growth is desirable? What present jurisdiction can be divested? I also suggest some soul-searching on the part of those appellate judges who continue to probe the outer limits of federal judicial power.
I close on a note of optimism with regard to the survival of the Northern District. On March 19, approximately three weeks ago, the Supreme Court granted cert. in the Oneida Indian Nation case.231 I am sure that, whatever the outcome of that controversy, the eldest child of the Mother Court will endure, with pride in its past and with hope for its future.

This project could not have been completed without the research assistance of my wife, Jacqueline A. Miner, B.A., M.A. (History), who introduced me to the arcane science of historiography. Because of her expertise (and availability), no other collaborator was necessary, and I am most grateful for her many contributions and suggestions.

FOOTNOTES


4. There is controversy concerning the origin of the North American Indians, but at present this is the most commonly accepted theory.

5. Degawida, a Huron, and Hiawatha (no relation to Longfellow's fictional character), an Onondaga, were adopted by the Mohawks.


8. Id. at 12; see generally Arthur C. Parker, The Constitution of the Five Nations (1916).

9. The Iroquois and the Algonquins constituted the two linguistic stocks found in New York State. There were numerous tribes within these stocks and not all Iroquois speaking tribes were members of the Confederacy. See generally William Beauchamp, A History of the New York State Iroquois (1905).


11. Id. at 28-29.

