



NUNC PRO TUNC

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- An inside look at the first District Judge's contribution to our new nation

by David L. Cook

REVOLUTIONARY ISSUES:

- Legal Issues stemming from the Revolution and their lasting legacy

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AMERICA250

It's the United States Semiquincentennial! But, let's be honest, "Semiquincentennial" is difficult to pronounce and even harder to spell, so we're going analog: "America 250." As the nation marks the momentous occasion, New Jersey's central role in the American Revolution invites renewed attention to our State—not only for its military significance—but for the historical figures who were founding fathers of both the United States of America and our United States District Court for the District of New Jersey.

The men connected to our early Court were part of a generation shaped by, and integrally involved in, the American Revolution. Before they argued cases, interpreted laws, or administered justice in the federal courts, many of DNJ's judges, attorneys, litigants, and public officials served in the Continental Army, participated in Revolutionary-era politics, or otherwise paved the way for independence. Their service to our new nation began not in the courtroom, but on the battlefields, in the legislative halls, and in the meeting places for patriots. They transformed the ideals of the Revolution into the rule of law under the United States Constitution and grappled with post-war legal issues that helped define the contours of American justice. This America 250 issue of the Nunc Pro Tunc celebrates the individuals who fought for our nation's freedom and helped define what that freedom would mean under law in the District of New Jersey.



On behalf of the Historical Society: **Rebecca A. Earl, Esq., Editor**

<https://www.historynjdc.org/>

David Brearley: Founding Father and New Jersey's First Federal Judge

By: David L. Cook

As the United States prepares to commemorate its 250th anniversary, it is an appropriate time to remember and acknowledge the individuals who helped establish the nation's constitutional government. Among the most significant, yet often overlooked, figures is David Brearley, a New Jersey jurist whose career connected the creation of the Constitution to the birth and implementation of the federal judiciary.

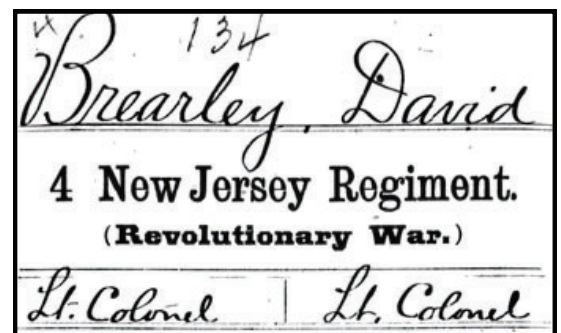


David Brearley

Judge Brearley occupies a unique place in American history. He was one of the delegates to the Constitutional Convention and became one of only thirty-nine signers of the United States Constitution. Just two years later, he was appointed by George Washington as the first judge of the United States District Court for the District of New Jersey, making him one of the earliest federal judges in the nation's history.

Born in Lawrence Township, New Jersey on June 11, 1745, Brearley built a reputation as a lawyer, military officer, and public servant. He attended the College of New Jersey, which later would become Princeton University. He subsequently practiced law in Allentown, New Jersey until the start of the American Revolution. During the war, he served as a captain in the Monmouth County militia and later as a colonel in the Continental Army.

Following the Revolution, Brearley served as the Chief Justice of the New Jersey Supreme Court from 1779 to 1789. Early in his tenure, Justice Brearley decided the landmark case of *Holmes v. Walton* in 1780, which established judicial review of legislative actions three years before *Marbury v. Madison*. Justice Brearley's decision in *Holmes* is widely regarded as the earliest example of judicial review in American history.

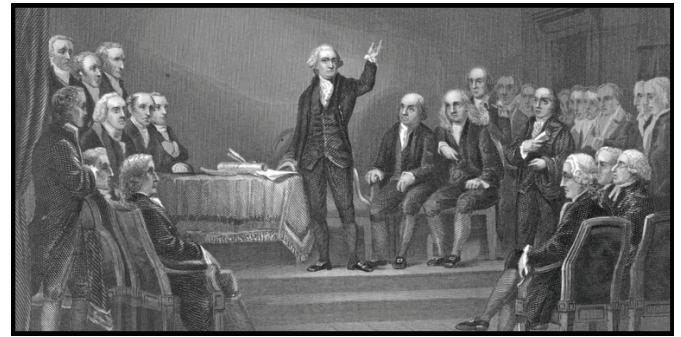


U.S. Revolutionary War Roll - August 5, 1776

Brearley's contributions to New Jersey were recognized by naming him a New Jersey delegate to the Constitutional Convention in 1787. Brearley was a persuasive advocate of the New Jersey Plan designed to protect the interests of smaller states that feared being dominated by larger states under a new national government. Although the New Jersey Plan was first introduced by William Paterson and was ultimately rejected, Brearley's advocacy helped ensure that the central idea of equal representation for small states remained central to the convention's debates and, ultimately, in the Constitution's final structure for the United States Senate.

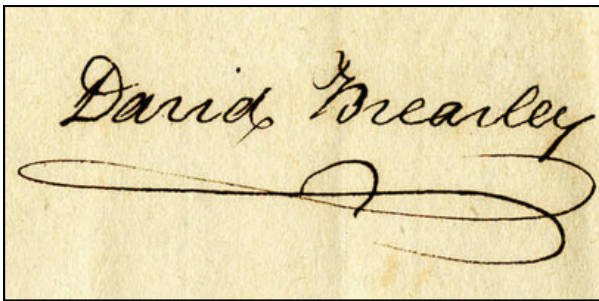
While David Brearley is often remembered as a strong advocate for the New Jersey Plan, perhaps his most important contribution to the Constitutional Convention was serving as chair of the Committee on Postponed Parts. This committee helped resolve some of the most critical and contentious issues threatening completion of the Constitution’s final draft. Brearley’s appointment as chair reflects his respected reputation as a skilled consensus builder and mediator. His practical approach helped move negotiations forward when they might otherwise have stalled. For example, the committee brokered some of the most controversial elements of the Executive Branch, including developing the framework for the Electoral College, creating the vice-presidency, shifting appointment power for judges, cabinet officers and ambassadors, and defining presidential terms of office. Historians credit Brearley’s committee with helping forge compromises among delegates from different regions and political perspectives to pave the way for ratification and to help ensure the lasting success of the Constitution’s new governmental framework. Brearley’s deft leadership of the Committee on Postponed Parts makes him one of the convention’s most consequential yet understated figures.

As a lawyer and former Chief Justice of New Jersey, Brearley strongly supported the creation of an independent federal judiciary. While he did not dominate debates on the subject, his legal background made him an important voice in discussions about the structure of the courts and the rule of law under the new Constitution.



Constitutional Convention 1787

Brearley’s most enduring legacy, however, was signing the Constitution on September 17, 1787. Although the final version did not entirely reflect his views, Brearley recognized the value of compromise to achieve the greater goal of the Republic. Despite being a strong advocate, he also could work quietly behind the scenes to reconcile differences and build consensus. Brearley continued to apply those skills as president of the New Jersey Ratifying Convention, where he was instrumental in unifying various factions to enable New Jersey to quickly become the third state to ratify the Constitution on December 18, 1787.



David Brearley’s Signature on the Constitution

When Congress established the federal judiciary through the Judiciary Act of 1789, President George Washington nominated Brearley to serve as the first judge for the United States District Court for the District of New Jersey pursuant to 1 Stat. 73. The appointment reflected Washington’s confidence in Brearley’s legal judgment and his commitment to the new constitutional order. As judge of one of the nation’s

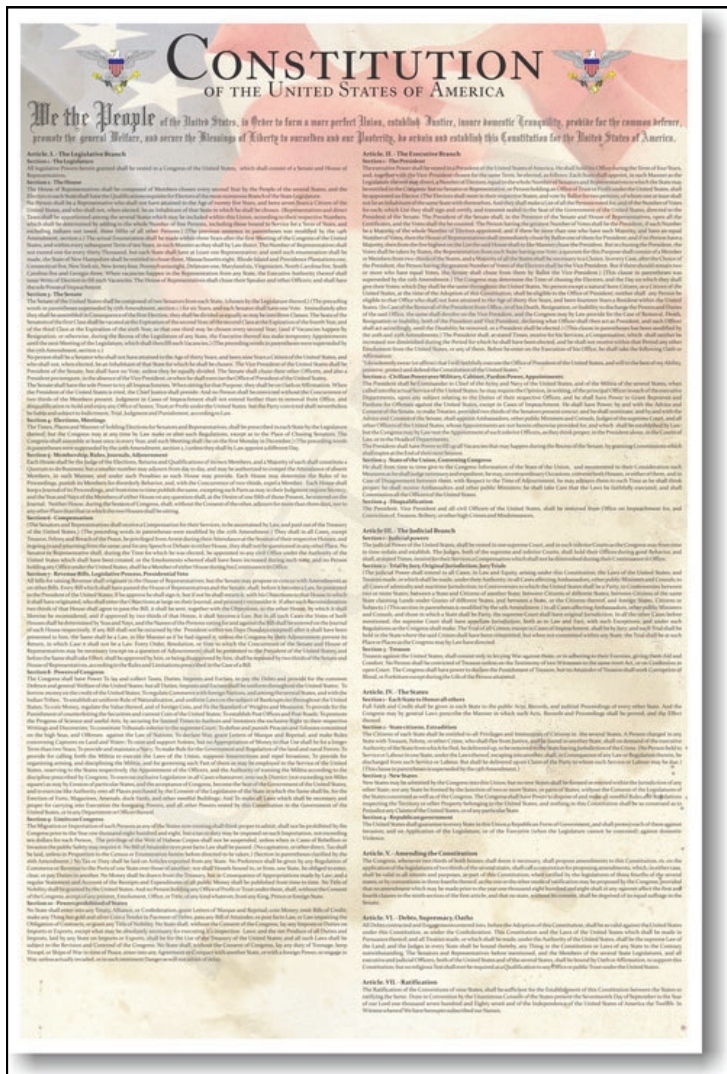
UNITED STATES, September 25th, 1789.
Gentlemen of the Senate:
I nominate—James Duane, Judge,
William S. Smith, Marshal, } For the District of New
Richard Harrison, Attorney, } York.
David Brearley, Judge, } For the District of New
Thomas Lowry, Marshal, } Jersey.
Richard Stockton, Attorney, }
And I likewise nominate Thomas Jefferson, for Secretary of State;
Edmund Randolph, for Attorney General;
Samuel Osgood, for Postmaster General.
Co. WASHINGTON.

original federal courts, Brearley helped implement and interpret the very Constitution he helped create. Back then, the District of New Jersey typically sat in session only a few days a year - very different from the much more rigorous caseload our current Federal Bench carries today.

Judge Brearley passed away in Trenton the year following his appointment. Although brief, Judge Brearley's tenure on the District Court came at a critical moment in American history. The Constitution established a federal judiciary as a co-equal branch of government, but its success depended on respected jurists willing to implement its principles. As demonstrated by his Holmes decision, Brearley was one of those pioneering figures, helping transform constitutional theory into functioning government. This makes Brearley a particularly remarkable figure in that he helped write the

Constitution and then became responsible for interpreting and applying federal law under that new constitutional system. This 250th anniversary of the United States offers a perfect opportunity to pause and reflect upon some of the influential leaders beyond simply the more famous names such as Washington, Jefferson, and Madison whose contributions created the nation we know today. David Brearley embodied the founding generation's commitment to building enduring institutions. As both a signer of the Constitution and New Jersey's first federal judge, he stood at the intersection of two defining achievements of the early Republic: the creation of the Constitution and the establishment of the federal courts.

The United States District Court for the District of New Jersey continues its work under the constitutional framework that Brearley helped design. His legacy serves as a reminder that the nation's institutions were shaped not only by visionary ideas but also by dedicated public servants who turned those ideas into reality. As America marks its semiquincentennial, Judge Brearley's role helping create and then interpret the United States Constitution offers a powerful example of New Jersey's contribution and leadership in launching America's experiment in representative self-government.



United States Constitution



Revolutionary Issues

New Jersey's geographic position between New York and Philadelphia made it a strategic and frequently contested ground during the Revolution.¹ As armies marched across its towns, New Jersey's citizens and system of law were tested under the crucible of war. Trade routes were disrupted, property was seized, and allegiances divided communities and families. Common societal and legal issues arose, and when the District of New Jersey officially convened on December 22, 1789, our courts faced novel and recurring issues triggered by revolution: loyalty and treason, property rights, land and jurisdictional issues, military authority, and the balance between civil liberties and national security. The resulting decisions would help shape federal jurisprudence over the next 250 years.

One of the most pressing legal challenges involved the status of Loyalists—colonists who remained faithful to the British Crown. In the wake of independence, New Jersey enacted laws effectively punishing them for choosing the wrong side: their property was condemned, contracts were cancelled, and their fundamental rights were restricted or limited at the very time those rights were being defined under the Constitution. These measures raised fundamental questions: What constituted treason? Could property be seized without traditional due process? And how should the new nation reconcile retribution with legal stability? These questions foreshadowed later federal cases concerning due process and property rights under the United States Constitution.

With respect to property, in Monmouth County alone, at least 110 Loyalist estates were condemned in court and confiscated by the State of New Jersey—later to be sold at public auctions riddled with scandals and irregularities.² Most challenges to condemnation were resolved at the state-level, but early federal courts examined the legality of a government's ability to impede the property rights of its citizens. *See, e.g., McIlvaine v. Coxe, Lessee*, 8 U.S. 209, 211–12, 2 L. Ed. 598 (1808) (ruling that a New Jersey man, Daniel Coxe, could inherit property post-war although he had joined the armies of the king of Great Britain when war broke out).



"Tory Refugees on the Way to Canada" Howard Pyle (1901)

The wartime disruption of commerce further complicated the legal landscape. As a corridor for trade and supply lines, New Jersey saw frequent disputes over contracts, debts, and the seizure of goods. Wartime conditions strained the enforceability of private agreements and both individual patriots and states (through legislation) used the war as an excuse to avoid performance on contracts and payment of debts to British Loyalists. The federal government finally stepped in and sought to reconcile contract enforcement and commercial stability with national necessity through provisions of the Constitution: the contract and commerce clauses.

1. N.J. Admin. Code § EX. ORD. No. 48(2005) - Declaration of New Jersey as the "Crossroads of the American Revolution" and Designation of a Crossroads of the American Revolution State Heritage Area.

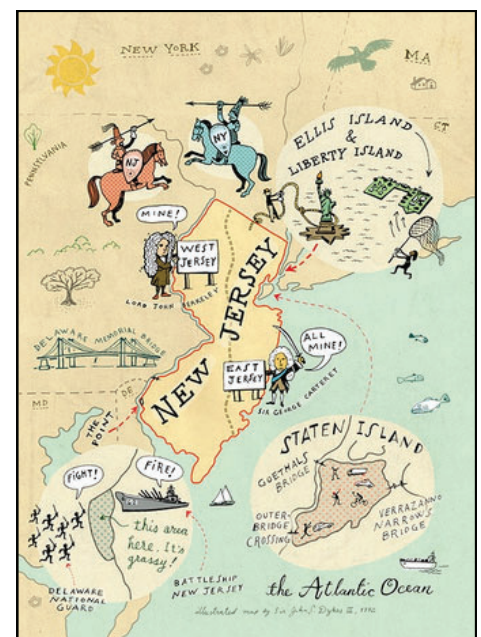
2. *Loyalist Estate Confiscations Resume in Monmouth County* by Michael Adelberg, Monmouth County Historical Association, <https://www.monmouthhistory.org/250/loyalist-estate-confiscations-resume-in-monmouth> (visited June 16, 2026).

Both early and modern cases addressing contracts and commerce harken back to their Revolutionary origins in their analyses. *See Troy Ltd. v. Renna*, 727 F.2d 287, 294 (3d Cir. 1984) (on appeal from a DNJ case involving rental housing, the Third Circuit recognized the history of the Contracts clause in the Constitution—noting that it was enacted to address “post-Revolutionary War state legislation purporting to repudiate obligations owed by local debtors to British and loyalist creditors”); *Stockton v. Baltimore & N.Y.R. Co.*, 32 F. 9 (C.C.D.N.J. 1887) (addressing the government’s eminent domain powers over the shore and lands under water of navigable streams in context of commerce).

Issues regarding treason and military authority arose at the time of the Revolution and are still debated in the modern context. A 2006 University of Pennsylvania law review article examines the Treason Clause of the Constitution and casts doubt on military authority—pointing out that General Washington once questioned a court-martial sentence of a New Jersey man for “taking arms to the enemy.” *Carlton F.W. Larson, The Forgotten Constitutional Law of Treason and the Enemy Combatant Problem*, 154 U. PA. L. REV. 863, 879 (2006) (internal citations omitted).

Revolutionary era rationales still form the basis for DNJ opinions dealing with deprivations of fundamental rights, such as gun ownership and the ability to vote. In *Ass’n of New Jersey Rifle & Pistol Clubs, Inc. v. Platkin*, 742 F. Supp. 3d 421 (D.N.J. 2024), the district court examined the restrictions on guns and ammunition at the time of the American Revolution to resolve a gun rights advocacy group’s allegation that certain provisions of New Jersey’s Assault Firearms Law violated Second Amendment. And when addressing a convicted criminal’s right to own a gun in 2024, the Third Circuit examined this history of the government’s ability to disarm certain groups of people, explaining that the power stemmed from “[t]he colonies reasonabl[e] fear[] that Loyalists might take up arms again.” *Range v. Att’y Gen. United States*, 124 F.4th 218, 230 (3d Cir. 2024). Similarly, in a voting rights case, a New Jersey district court in 1970 explained that “[d]isenfranchisement of felons in New Jersey has had a curious history. The Constitution of 1776 provided for no such disqualification.” *Stephens v. Yeomans*, 327 F. Supp. 1182, 1187 (D.N.J. 1970).

The legacy of Revolutionary-era litigation can also be seen in the early federal docket, where disputes over property, maritime activity, and federal authority reflected the unresolved tensions of the preceding decade. In *Hall v. Devoe Mfg Co*, 14 F. 183 (D.N.J. 1882), the district court provided a detailed account of the boundary line dispute between New York and New Jersey before determining that New Jersey district courts had exclusive jurisdiction over a suit involving a collision between a canal-boat and a tugboat in the Hudson River. Other recent cases involving admiralty or maritime jurisdiction echo the early post-war cases and explain the Revolutionary roots. *See, e.g. Hotung v. A Cargo of a Crate Containing Nine Boxes of Documents Shipped Aboard the M/V HANJIN NAGOYA*, 452 F. Supp. 2d 564, 567 (D.N.J. 2006) (citing *New England Mut. Marine Ins. Co. v. Dunham*, 78 U.S. 1, 12–13, 20 L. Ed. 90 (1870) (discussing pre-Revolution jurisdiction and the Framers’ intent with respect to maritime contacts and cases in the Constitution)). And—just as they did after the



Revolution—New Jersey district court currently wrestle with land disputes between states and private parties—particularly Native Americans. *See, e.g., New Jersey Sand Hill Band of Lenape & Cherokee Indians v. Corzine*, No. CIV.A.09-683 (KSH), 2010 WL 2674565, at *1 (D.N.J. June 30, 2010) (involving a Native American tribal families’ claim to rights on land that passed to the United States at the conclusion of the American Revolution).

As we commemorate 250 years of American independence, revisiting these early legal struggles—and observing how they influence modern caselaw—underscores a central truth: the rule of law in the United States was not simply declared in 1776 or codified in 1789. It was forged incrementally, in places like the District of New Jersey, where courts confronted the immediate realities of revolution and, in doing so, helped shape the enduring principles of American justice.

Revolutionary Ties

William Sanford Pennington

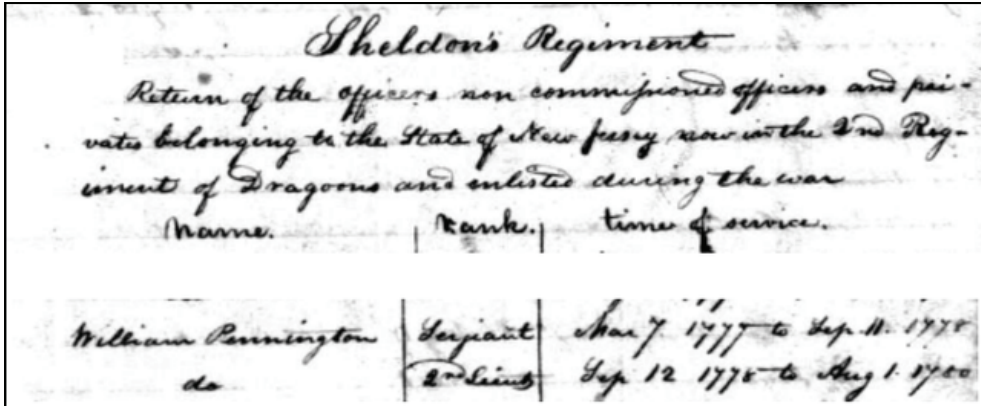
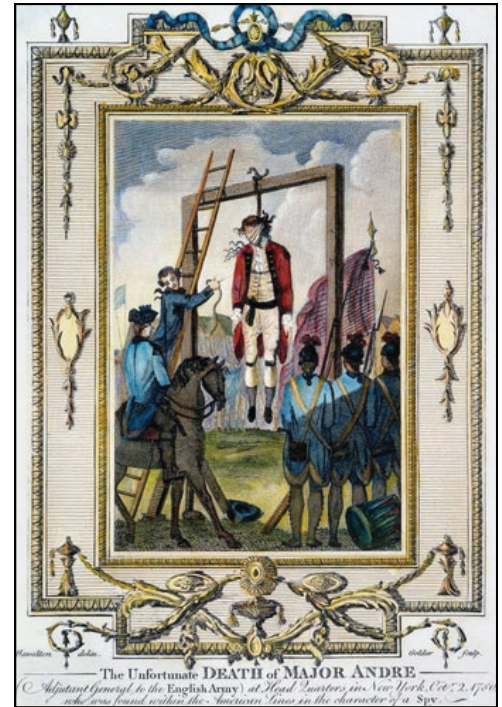
Prior to his service as a New Jersey district court judge from 1816 to 1826, William Sanford Pennington was “a soldier of the Revolution.” He was born in Newark, NJ in 1757, and was apprenticed as a boy to his maternal uncle, after whom he was named. However, the Revolution disrupted his life path. Described as an “ardent revolutionist,”¹ a young Pennington joined the Continental Army at the outbreak of the Revolution, causing his uncle—who was “a firm Royalist”—to cancel his indentures. In the army, Pennington first served as a non-commissioned officer in New Jersey’s Second Regiment of Artillery under Major General Henry Knox. But, after General Knox noticed “his industrious work in loading and firing a fieldpiece, while entirely unsupported,” he commissioned Pennington to Lieutenant in 1778.



A handwritten signature in cursive script, which reads "W. S. Pennington".

¹ *Cyclopedia of New Jersey, Memorial and Biographical* page 31, The American Historical Society, Inc. New York, NY, 1923.

Pennington witnessed the Revolution and some of its most historic moments firsthand. On October 2, 1780, he was present at the execution of Major John André, the head of the British Army's intelligence operations. Among other things, André had engaged in secret negotiations with infamous Revolutionary traitor, Benedict Arnold. André was captured as a spy, convicted of espionage, and sentenced to death by way of hanging by George Washington—an act that heightened anti-American animosities and further escalated the war.



U.S. Revolutionary War Roll - "William Pennington, 2nd Lieutenant"

In 1781, Pennington assisted in putting down a mutiny in Morristown, NJ when a group of Continental Soldiers (the "Pennsylvania Line") reached their breaking point after months of unpaid wages, poor conditions (lack of provisions, tattered clothing, and terrible food), and perceived violations of their service contracts.² This mutiny—and others like it—highlight the unspeakable hardship that Revolutionary soldiers, like Pennington, endured during the war—often without pay and without the terms of their contracts being honored. Ultimately, the Continental Army reached an agreement with the mutineers wherein those eligible for discharge were permitted to leave, and those remaining had their basic necessities met. Indeed, the mutineers had not asked for much and likely could have bargained for a better deal. But most Revolutionary soldiers fought for more than simply wages: like Pennington, they fought



for an ideology and a perceived nation that did not yet exist. Although the Pennsylvania Line's ranks were diminished by approximately half, those who stayed on continued to fight for independence and many contributed to the crucial victory at Yorktown, Virginia only a few months later. Pennington was there too.

2. *The Pennsylvania Line Mutiny, its Origins and Patriotism*, Charles S. Yordy, III, <https://libraries.psu.edu/about/collections/unearting-past-student-research-pennsylvania-history/pennsylvania-line-mutiny-0> (visited June 28, 2026); The infamous Revolutionary War mutiny that nearly destroyed Washington's army from the inside by John Ghost, August 7, 2025 ("When in your state: New Jersey") (<https://wheninyourstate.com/new-jersey/pennsylvania-line-mutiny-at-morristown-1781/>) visited June 2, 2026.



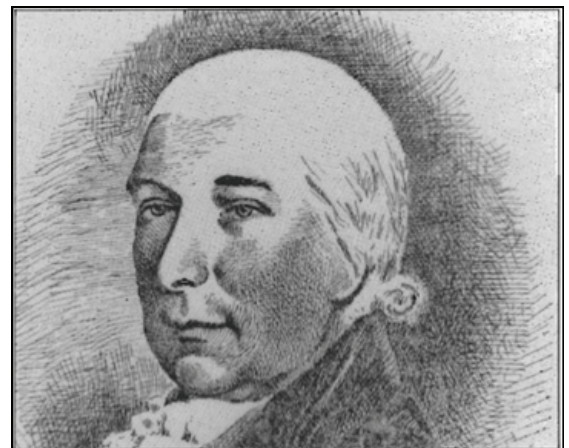
The Seige at Yorktown

The Siege of Yorktown was a clash between the British Army and the combined forces of the French and Continental Armies. The patriots decisively won the engagement, forcing British General Charles Cornwallis to surrender (although he claimed to be ill at the official surrender ceremony and sent General Charles O’Hara in his place to deliver his sword). This battle was the final major land engagement of the Revolutionary War, effectively—but unofficially—ending the war and marking the revolutionaries’ victory in the conflict for the United States. Pennington was wounded in the Siege and, “in recognition of his soldierly conduct” he was commissioned a captain: the status he held when he left the army at the close of the war.

Upon his return to civilian life, he briefly engaged in business as a hatter before entering public service. He was initially elected to New Jersey’s General Assembly, and then in 1801 to the Council. All the while, he studied law and was admitted to the bar in 1802. For the next two years he served as the clerk of Essex County until, in 1804, he was elected as an associate justice of the New Jersey Supreme Court. He served in that position until 1813, when he was elected governor of New Jersey. Finally, in 1815, he was nominated by President James Madison as Judge for the United States District Court for the District of New Jersey—succeeding Robert Morris—and held that position until his death on September 17, 1826. “He was esteemed as a good citizen, a faithful friend, and a just and unswerving jurist.”³

Thomas Lowry

Thomas Lowry was the first United States Marshal of the District of New Jersey, appointed by President George Washington in 1789. His life and accomplishments, including his contributions to the fight for independence, are chronicled in an outstanding and well-researched article written by our own New Jersey District Court Judge, the Honorable Peter G. Sheridan (ret.). I highly encourage you to read this in-depth article—published in two parts—in the *Nunc Pro Tunc* Newsletters, Volume IX, Issues 1 & 2 (2007). For a preview of his Revolutionary ties, I offer the below description from the United States Marshals Service:

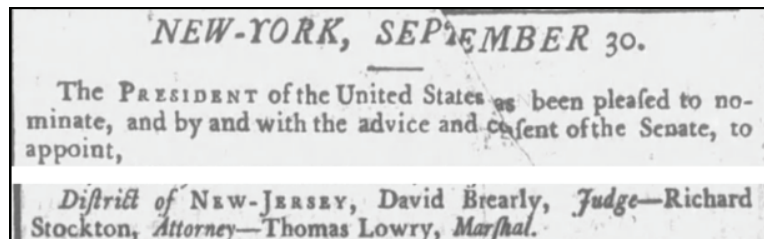


3. *Cyclopedia of New Jersey, Memorial and Biographical* page 31, The American Historical Society, Inc. New York, NY, 1923.

Born in Ireland on September 3, 1737 Thomas Lowry came to this country a[t] the age of 10 with his family. They settled in New Jersey, where Lowry spent the rest of his life. He became a successful shopkeeper and landowner, which allowed him to purchase several mills and other businesses. These endeavors established

Lowry was a wealthy, prominent citizen of New Jersey. His fellow citizens elected him one of the New Jersey delegates to the First Continental Congress in 1775. At the outbreak of the Revolution, Lowry accepted a commission as Lieutenant Colonel in the Third Regiment of the New Jersey militia. Throughout the war, Lowry served as commissary officer, reaching the rank of Colonel. He never saw action in any of the battles of the war. Instead, his business acumen was put to use keeping the troops supplied and provisioned, a particularly important and extremely difficult responsibility.

Lowry, a personal friend of Washington, entertained the Commander-in Chief at his house several times during the war. When Washington needed someone to serve as the first Marshal of New Jersey, he quickly turned to his old comrade. Lowry received his commission in October 1789 at the age of 52. During 1791-92, he also served in the New Jersey legislature. In 1801, Thomas Jefferson replaced him as Marshal.¹

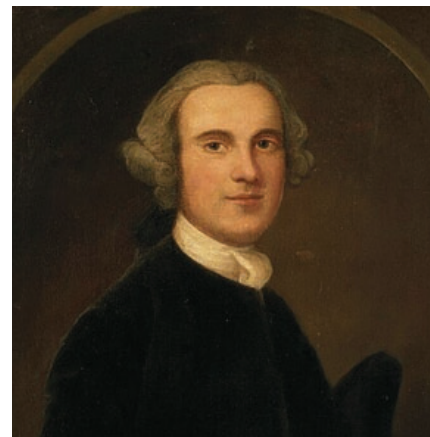


The North American, Wednesday, Sept. 30, 1789 -Page 3



Richard Stockton

Richard Stockton (1730–1781) was a prominent lawyer and legislator from Princeton, New Jersey, known for his eloquence and legal expertise. Stockton initially avoided public office but became deeply involved in the revolutionary cause as tensions with Britain escalated. In 1776, he was elected to the Second Continental Congress and, after careful consideration of the arguments for independence, became the first New Jersey delegate to sign the Declaration of Independence. He was commissioned as the first United States Attorney for the District of New Jersey in 1789.



Portrait of Richard Stockton attributed to John Wollaston



Richard Stockton's signature on the Declaration of Independence

Stockton's commitment to independence came at great personal cost. Following his signing, he was sent on a mission to inspect the northern Continental Army and assess its needs, noting severe shortages of clothing and supplies. On returning to New Jersey, he and his family were captured by Loyalists, imprisoned under harsh conditions, and his property was plundered by British forces. Despite these hardships, Stockton

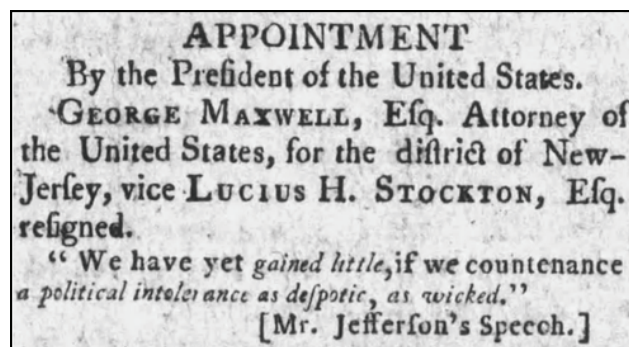
remained loyal to the revolutionary cause, though his health and fortune were irreparably damaged. The conditions of his release from British prison (which included a promise not to meddle further in the war) and his failing health led him to resign from Congress before the war ended.

1. "Thomas Lowry, The First Marshal of New Jersey" <https://www.usmarshals.gov/who-we-are/history/directors-and-organizational-leadership/thomas-lowry>

George C. Maxwell

George Maxwell initially received a recess appointment as a United States Attorney for the District of New Jersey by President John Adams in 1801, and an official appointment by President Thomas Jefferson in 1802, succeeding Lucius H. Stockton's appointment (brother to Richard Stockton, who was the first United States Attorney, *see supra*).¹

This author could not find any evidence of his direct participation in the Revolution (which makes sense: he was born in 1768 and was just shy of 8 years' old at the time the Declaration of Independence was signed). However, his father, John Maxwell, and his uncle, William Maxwell—both Irish-born—were active revolutionaries whose sense of fairness and willingness to fight for their ideals undoubtedly influenced George's own commitment to justice.



Pennsylvania Weekly Telegraph
June 29, 1801, Harrisburg, PA



John Maxwell - At the outbreak of the Revolutionary War, John Maxwell enlisted and quickly rose to Lieutenant of a company in Sussex County, New Jersey. He later was promoted to Captain and raised his own company, "Maxwell's Company," which "tendered their services to Gen. Washington when he was much reduced in force."² He participated in the battles at Trenton, Assunpink, Princeton, Brandywine, Germantown, Monmouth and Springfield.

William Maxwell - George Maxwell's uncle, William Maxwell, (Captain John Maxwell's older brother), served in the pre-revolution British Army in various campaigns. Having spent his formative years in Ireland, William had never lost his accent and the men under his command dubbed him "Scotch Willie." As tensions between England and the colonies increased, Scotch Willie resigned from the British Army and took up the American cause in 1774. He was commissioned as a Colonel in the 2nd New Jersey Regiment and eventually rose to Brigadier General. His command was known as "Maxwell's Brigade"—a unit in which our first District Judge, David Brearley, served as Lieutenant Colonel.³

1. *Rich History of Public Service*, United States Attorney's Office (District of New Jersey) website: <https://www.justice.gov/usao-nj/about/office-history>.

2. *The Maxwell Family (Descendants of John and Ann Maxwell 1701-1894)* page 75, Compiled by Henry D. Maxwell, Easton, PA 1895.

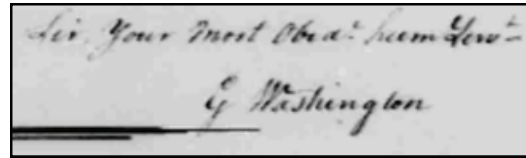
3. *Monmouth Inquirer*, Thursday, December 27, 1887 (account copied from the Biographical Encyclopedia of New Jersey) ("[Judge Brearley's] sympathies led him into warm support of the patriotic cause and into the patriot army, wherein he held a commission as Lieutenant Colonel in Maxwell's brigade of the Jersey line.").

Maxwell's Brigade provided vital assistance to General Washington in December 1776, and he was tasked to "harass and annoy the enemy" while Washington attempted to cross the Delaware under the cover of darkness. Significantly, a December 8, 1776 letter from General Washington to Brigadier General Maxwell reads, in part:

"Sir: As it is a matter of the utmost Importance to prevent the Enemy from crossing the Delaware, and to effect it, that all the Boats and Water Craft should be secured or destroyed."

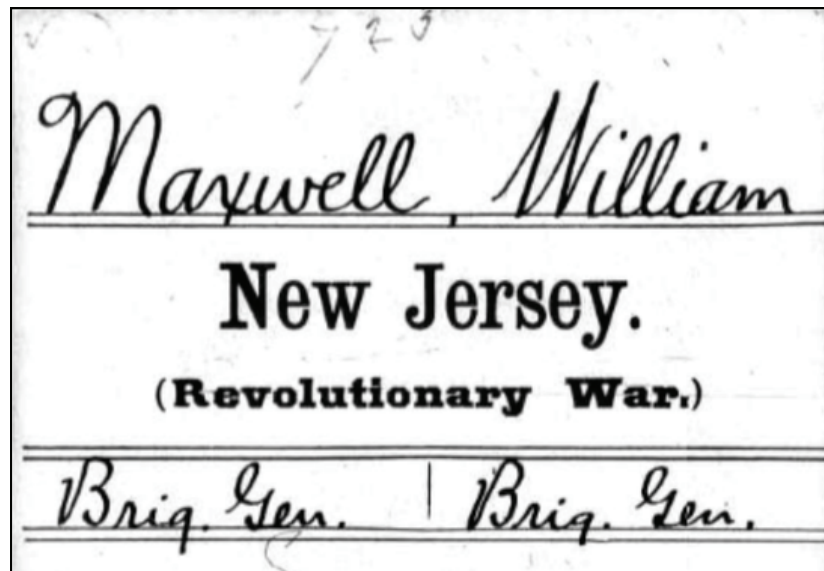
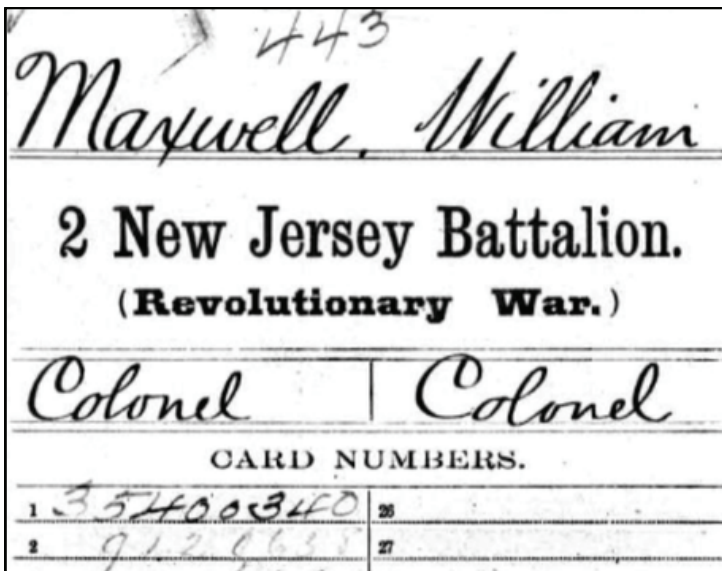
In preparing for this surprise attack, Washington had the forethought to collect cargo boats and ferries to transport his men and/or to destroy boats so that they could not be used by the British to pursue, escape, or continue their campaign to Philadelphia. The letter demonstrates that Washington trusted Maxwell with this secret plan:

*"[B]ut of this as little should be said as possible, least the Enemy avail themselves of some Advantage from the Knowledge of it."*⁴



Signature line from December 8, 1776 Letter from Washington to William Maxwell

Maxwell came through, contributing significantly to the success of the Battle of Trenton, which turned the tide of the war and boosted the morale of American troops. Maxwell's Brigade later opened the battle of Brandywine, and spent the winter of 1777 in Valley Forge. Maxwell resigned suddenly—and somewhat mysteriously—in July of 1780 (three years before the official end of the revolutionary war on September 3, 1783). Whatever the reason, General Washington seemed to have known and understood it, as he promptly forwarded the resignation to Congress with an accompanying letter stating: "The merits of this General are well known . . . I believe him to be an honest man, a warm friend to his country and firmly attached to its interests. . . ."⁵

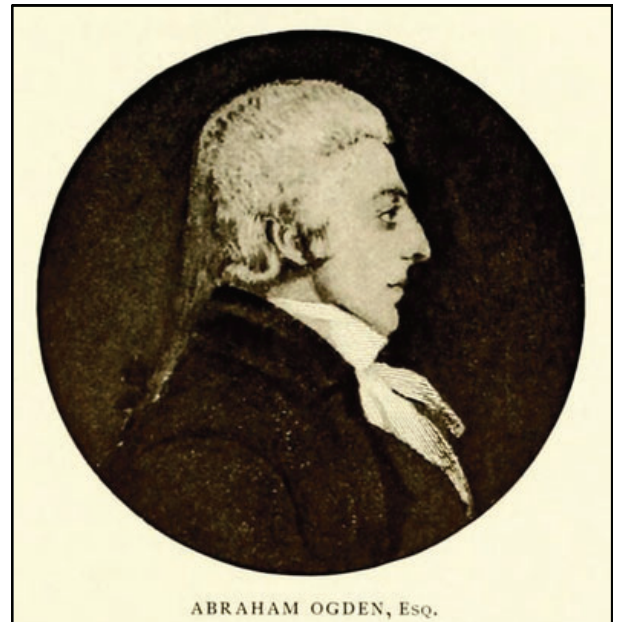


4. Library of Congress – Manuscript/Mixed Material: George Washington to William Maxwell, December 8, 1776; <https://www.loc.gov/resource/mgw3b.002/?sp=137&st=text> (visited June 28, 2026).
5. *The Maxwell Family (Descendants of John and Ann Maxwell 1701-1894)* page 73, Compiled by Henry D. Maxwell, Easton, PA 1895.

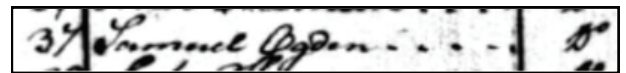
Abraham Ogden

Abraham Ogden served as U.S. Attorney for the District of New Jersey from 1791 to 1798, succeeding the first U.S. Attorney, Richard Stockton. An exploration into his Revolutionary roots illustrates the effect of war on families. Abraham's father, David Ogden, had graduated from Yale in 1728 and was made a member of the royal council for the province of New Jersey. Subsequently, he served as a judge of the supreme court for the province and was known as "the Old Judge." His Royalist sentiments were well-known in the community and, when the war broke out, the Ogdens became a family divided. The Old Judge and two of his sons, Isaac and Nicholas, remained loyal to the crown while two other of his sons, Abraham and brother Samuel, became zealous patriots.¹

Samuel Ogden entered the militia and eventually served as a Colonel. Throughout the war, he used his iron works in Boonton, NJ and his business acumen to support the colonial cause. Following the war, Samuel served as a delegate to political conventions from 1791 to 1809. He also moved to quash the indictment of Aaron Burr for the murder of Alexander Hamilton in 1807.



ABRAHAM OGDEN, ESQ.



"Samuel Ogden"
Roll and Muster of Light Infantry Company

It seems that Abraham never actively joined the military but, like his brother, he lent his negotiation and business skills to the war effort. Abraham was a personal friend of George Washington, who stayed at Ogden's house in Morristown while a portion of the Continental Army was quartered nearby. The American General enjoyed the company of Abraham's young son, Thomas Ludlow, and often "made his rounds among the army with the boy mounted before him on his saddle." In an interesting anecdote of historical significance—verified by two, separate sources—Washington and Thomas Ludlow were engaging in a friendly fencing match when the button (which caps the tip of the blade) flew off the boy's foil and exposed the sharp tip. Washington sustained a wound on his hand/wrist, which is said to have "draw[n] the only blood shed by him during the war."²

Following the war, Abraham served in the New Jersey Legislature until he was appointed by Washington as a United States Attorney in 1792. Washington also appointed him a commissioner of a group tasked with extinguishing claims to title that the Iroquois nation of Indians had to a portion of the northern part of New York—another common land issue that courts grappled with post-Revolution. Abraham negotiated the Treaty of New York in which, in exchange for compensation, the Native Americans ceded land to the state of New York. From the adoption of the Constitution until his death he was district attorney for New Jersey and his talent "as a jury lawyer is said to have been unrivaled."³

1. The Old Judge had at least two other children: Peter, who was reportedly also a Loyalist, but who this author believes was too young at the time of Revolution to make an informed decision on the subject; and daughter Sarah, who, as a woman, didn't have a political opinion anyone was interested in. Sarah's husband was a merchant, and they remained in New York during and after the war; therefore, it stands to reason that he was either a patriot, or stayed out of the fray. She is described as "a noted philanthropist, and one of the founders of the Home for Destitute Women and Children" in New York City.

2. *The Ogden Family in America, Elizabethtown Branch, John Ogden, the Pilgrim and his descendants 1640-1906 Their History, Biography & Genealogy* pages 103-104, Compiled by William Ogden Wheeler, J. B. Lippincott Company, Philadelphia, PA 1907.

3. *Appleton's cyclopaedia of American Biography, Volume IV (1832-1914)*, page 560, James Grant Wilson and John Fiske, D. Appleton and Company, New York (1900).

The Ogden family story also highlights other issues that arose during the Revolution. First—and likely due to their brothers’ and the Old Judge’s allegiance to England—people seemed to be suspicious of Abraham and Samuel. One account describes Abraham of “doubtful politics”⁴ and reports that he was denounced as such to General Washington who, in an effort to dispel any suspicion, stayed at Abraham’s home while in Morristown. With respect to Samuel, rumors spread that his iron works was, at one time before the war, producing contraband iron subject to unfair British taxation. The Governor of New Jersey, William Franklin (son of Benjamin Franklin), came to investigate and after enjoying “an excellent dinner prepared by Mrs. Ogden” and a cursory inspection of the mill, concluded that “there was nothing in the story.” Interestingly, William Franklin was a fervent Loyalist—a position that stood in stark contrast to his patriotic father and caused a tremendous rift in their own relationship: the Founding Father and his son never reconciled. William Franklin may have also had a pecuniary interest in Samuel Ogden’s mill. Therefore, it seems he would have had little incentive to flag Samuel’s mill for producing contraband iron that benefited the Crown. Regardless, most accounts describe Samuel as “an ardent patriot during the Revolutionary War.”⁵

The Loyalist Ogdens appear to have been honest in their convictions and allegiance to the crown. Unfortunately, as was often the case with Loyalists during the Revolution, they were forced to leave their homes. The Old Judge fled to England in 1777, and Isaac went first to New York as a refugee and then to Nova Scotia with his brother Nicholas in 1783. Their land in New Jersey and New York was condemned and sold. Isaac later went to Quebec and, after an esteemed career in law as a judge, died in England. Nicholas eventually returned to Newark. From England, the Old Judge acted as an agent for the New Jersey Loyalists in prosecuting their claims for compensation. He recovered on behalf of his own estates, which were valued at \$100,000. He returned to the United States in 1789 and lived the rest of his days in Whitestone, New York.⁶

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4. *Appleton's Cyclopaedia of American Biography, Volume IV (1832-1914)*, page 560, James Grant Wilson and John Fiske, D. Appleton and Company, New York (1900).

5. *The Ogden Family in America, Elizabethtown Branch, John Ogden, the Pilgrim and his descendants 1640-1906 Their History, Biography & Genealogy* pages 103-104, Compiled by William Ogden Wheeler, J. B. Lippincott Company, Philadelphia, PA 1907.

6. *Appleton's Cyclopaedia of American Biography, Volume IV (1832-1914)*, page 560, James Grant Wilson and John Fiske, D. Appleton and Company, New York (1900).