LEGAL EDUCATION IN COLONIAL NEW YORK

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LEGAL EDUCATION IN COLONIAL NEW YORK

By Paul M. Hamlin

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Earliest Order of the Supreme Court of Judicature of the Province of New York affecting Law Students

ORDERED That none of the Judges of this Court do at any time hereafter recomend any person to his Excellency the present Governour or to the Govr. or Comander in chief for the time being in order to the obtaining a Lycense to practice as an Attorney at Law unless it Shall appear that the person who Shall Sue for Such Lycense had served for the term of Seven years with Some Attorney of this Court or had Served an Apprentiship to Some Attorney of his Majesties Courts of King's bench or Common pleas in the Kingdom of Great brittain.[1]

[1]*Minutes of the Supreme Court of Judicature of the Province of New York, October 10, 1727-December 5, 1732,* p. 208. Hall of Records, Borough of Manhattan, New York City. The final twenty-five words are in a handwriting different from that of the rest of the order. This is the earliest order, or rule, in New York concerning training and education for the bar. The Honourable Lewis Morris, Chief Justice of the Province of New York, was on the bench when this rule was ordered, June 9, 1730.

GIFT

Lewis Morris, 1671-1746. Founder of the Morris Library at Morrisania, Westchester County, New York; chief justice of New York, 1715-1733; acting judge of the Court of Vice-Admiralty of New York, 1715-1720; governor of New Jersey, 1738-1746; legal and classical scholar; promoter of improved educational facilities for New York; maker of the first rule regulating law clerks in New York, June 9, 1730. Courtesy of the New-York Historical Society, New York City.

LEGAL EDUCATION
IN
COLONIAL NEW YORK

By
PAUL M. HAMLIN
Director of Research in Colonial Laws and Institutions
New York University School of Law

New York University
Law Quarterly Review
Washington Square East, New York
1939

PREFACE

This study in American Colonial Legal History was begun several years ago. Since then research in connection with it has extended to all the public records of the counties in existence at the time that New York was a colony as well as to many of the known public and private collections of materials concerning the history of the State of New York. Not only were records—which have seldom been consulted—utilized, but also other sources of information—not so generally familiar—were investigated and relied on.

Any one who has engaged in work of a similar nature need not be reminded how laborious and tedious research of this sort frequently is. Nor, on the other hand, need he be told how remunerative such investigation at times becomes. After spending weeks going through thousands of pages of old court records, file papers, letters, documents, family charts, and printed source material of a wide variety, it is gratifying indeed to have a surmise, a clue, a rationalization, or a thinly held belief, substantiated by the records. The entire Summer of 1938, for instance, was spent in gathering facts for the chapter on "Lawyers Who Were College Graduates". The educational equipment of over four hundred and fifty New York practitioners of the colonial period had to be investigated and checked. This was a difficult task and, although every name was covered, it is probable that the backgrounds of several lawyers of the province will never be fully known. Another problem was to discover inventories of colonial libraries. Seldom did the New Yorkers of those days bother to enumerate the books they owned, and even when they did, the records of them

have disappeared. A few catalogues, however, were found,—notably lists naming the volumes that had belonged to the eminent counsellor at law, James Alexander, and to Judge William Smith.

Despite all difficulties, the work, nevertheless, has presented a number of interesting and instructive sidelights. Who could fail, for instance, to be amused over the plight of the rampant and haughty English-bred attorney at law, Paroculus Parmyter, within the years 1699-1708. Five times during that short time either his name was stricken from the *Roll of Attornies*, or he was suspended from his profession. But it should not be assumed that all the offenses this headstrong lawyer was charged with having committed were venal or professionally unethical. Indeed, they were not. On one occasion, for example, after he had enjoyed a bottle of wine with his friend, David Hungerford, Collector of the Port of New York, he brought the evening to a close by hurling ink pots, candlesticks, paper weights, and whatever was handy, at his companion. Finally, he chased Collector Hungerford around the room at the point of a drawn sword. For this last act of disrespect, in the "King's House", Parmyter's license was revoked.

On another occasion, Parmyter's conduct—although not nearly so damaging in effect as the one just mentioned—was, nevertheless, deemed quite offensive. He desired to commence legal action against William Lawrence, member of Her Majesty's Council, and in his petition to the governor requesting such a privilege included some impertinent remarks. An immediate answer was not received. Thereupon Parmyter again wrote and, feigning surprise that his request had not instantly been granted, he expressed the quaint belief—held by many a citizen both before his day

and since—that the "way to justice ought to be like the way to hell, smooth and broad and open to all." For such sauciness his privilege to practice law was promptly suspended.

The case of Crean Brush, on the other hand, awakens one's sympathy. About the year 1760 this Scotch-Irishman left his native land and his young, growing family to begin life anew in New York. Success awaited him everywhere. He was taken under the wing of John Morin Scott, one of the most outstanding lawyers of New York City, and was soon granted a license to practice law. Thereafter, he served in the office of the secretary of the province and, while so employed, was appointed Clerk of Cumberland County. To that area he moved, and established himself upon a section of land that he had received from the Crown. Scarcely had settlement been made, however, before civil war broke over Brush's head. Armies camped on his cleared fields; he was driven from one place to another, and, as a loyalist, he was taken to Boston, Massachusetts. After nineteen months' imprisonment he escaped; fled to Long Island, and—somewhere on its northeastern shore—succeeded in 1778 in slashing his own throat. His was a tragic end, but among the pages of old colonial records there lies hidden much comedy, pathos and tragedy.

The value of the institutional and biographical approach to historical problems of a legal nature would seem to be above cavil. Men make history. But what they will become, and what they will accomplish, is dependent in large measure upon their educational and cultural background. Consequently, before an evaluation of the foundations of American Jurisprudence can be had, it is necessary to know something of the training of the personages who were expounding and interpreting the law in the American colonies

as well as of those who presided over their legal institutions. Moreover, it is believed that such a study should precede—at least it ought to accompany—an examination of the "forms of action" through which law is made effective. The present study was written with this belief in mind.

Since, for the most part, the field covered in the following exposition has heretofore been uncharted, an acknowledgment of the help, assistance, and counsel given me may be more extensive than might otherwise have been the case. I am especially indebted to my wife, Madge Sills Hamlin, for criticism and help. Although I have been absent from home many holidays and week-ends engaged in examining documents the value of which to her must often have seemed worthless, she has always encouraged the continuance of my work. For the courtesy and assistance shown in making available the provincial records under their jurisdiction, I am grateful to the clerks of each of the several counties of New York that formerly existed under the Crown. I am also appreciative of the help rendered to me by the following: Mr. John Ludden, Clerk of the Court of Appeals of the State of New York; Mr. Henry Case, Chief Clerk in the Office of the Clerk of the Court of Appeals; Miss Edna L. Jacobsen, Head of the Manuscripts and History Section, New York State Library; Mr. Volens, Chief Clerk in the Office of the Commissioner of Records, Hall of Records, Borough of Manhattan, New York City; Mr. Milton Halsey Thomas, Curator of Columbiana at Columbia University, and the staffs of the New-York Historical Society Library, the New Jersey Historical Society Library, the Columbia University Libraries, the Association of the Bar of the City of New York Library, and the New York Public Library.

For reading the manuscript, and for offering criticisms

and suggestions, I owe much to Professors Evarts B. Greene and Philip C. Jessup of Columbia University; Professor Joseph H. Beale, School of Law, Harvard University; Professor Alison Reppy, School of Law, New York University; George A. Foster, Jr., Esq., Counsellor at Law, New York City, and John J. White, business executive and lover of good books, Paterson, New Jersey.

But in particular I am indebted to Frank H. Sommer, Dean of the School of Law, New York University, and to Professor Alison Reppy, Editor of the *Law Quarterly Review*, New York University. Without their interest and active assistance this volume could not have been published. I am most grateful for their present help as well as for the encouragement they have given me to continue my research in our colonial laws and legal institutions.

Paul M. Hamlin

New York City, September 30, 1939.

REMARKS ON LEGAL EDUCATION IN COLONIAL AMERICA

THE interest that is being taken by the younger scholars in legal history is a most hopeful sign; for it indicates that in the next generation legal history will receive adequate treatment in our schools. Mr. Hamlin has made his own study of the legal education of the seventeenth and eighteenth centuries. This is a true and valuable part of our study of legal history.

The growth of law is determined very largely by the ideas of those who are practicing it, and their ideas are very largely governed by the quality of their education. In studying the legal education of a Bar we are also studying the quality of legal thought in the Bar and its influence on the law.

Where legal education is largely standardized, as it is today, the careful study of the education of individuals is hardly worthwhile, but the education of the seventeenth century was far from standardized. The typical means of legal education was to study with a barrister who had proved himself to be able to teach and to communicate professional enthusiasm to students. Such a teacher most usually was looked for in the country, for a city barrister in good practice could not find time, and one in poor practice was thought incompetent to instruct students. In the country, also, the barristers had time to think out their legal problems and to form general ideas as to the nature and general rules of law.

A few students in a man's office would give him a very good living in those days, since the fees ran from five hundred to one thousand dollars per pupil who remained four or five years under the tutelage of the barrister. Meanwhile the barrister used his competent pupils for his own purposes, which greatly assisted him in his practice. A barrister, therefore, who had gained a reputation as a teacher, would have from five to ten students at a time. They would read his books and would listen to his talks, file his papers

in court, follow up the steps in the litigation, roughly examine his titles, and collect his bills. There were so many students that they could constantly discuss questions among themselves. It would be likely that the little school would be seated near the court house where the students could hear worthwhile trials. In many ways, therefore, the education in law received by the pupils might be as good as that of a present-day law school.

For instance, Shearjashub Bourne was such a barrister in the town of Barnstable, Massachusetts, early in the eighteenth century, and three of his pupils became chief justices in three neighboring states, Maine, New Hampshire and Massachusetts. Think of three such young men, with others, studying law together, in constant discussion of legal problems—perhaps occasionally staging a moot case—as compared with the work of students in the better schools today.

An important element of the study depended upon what books were in available libraries to aid their studies. There were of course no local decisions published in most of the colonies, but there were a number of English reports printed and available in the larger collections of books. There were also several abridgements of the earlier English cases available. A student who cared for that sort of thing, therefore, could obtain material for juristic legal study. Then, there were numerous treatises on various parts of the law, and the careful study of these would well repay the time put into it. So, a really careful teacher, equipped with a sufficient number of students, could afford to meet them for several hours a day to elucidate difficulties arising out of the study of any one of them, and to make general a special knowledge they may have acquired on some point of law.

Such being the ordinary method of admission to the Bar, it is obvious that a study of the education of barristers must go back to the character of the barrister and the office under whom and in which they studied. The work which Mr. Hamlin has done in carrying out this study is of the minute and careful sort that is true historical study and is

adapted to become an example to later historians of what may be accomplished by such a study. These barristers who took pupils had, as a rule, good libraries and they devoted much of their time to the work of instruction. On the whole, the evidence seems to prove that the Bar of New York during the seventeenth and eighteenth centuries was adequately taught. The work of the young barrister after being taught was for many years that of self-teaching, and the proportion of these young men who became learned old men at the Bar was probably as great as one would expect to find in any state today.

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TABLE OF CONTENTS

PAGE

Frontispiece vi

Preface xi

Remarks on Legal Education in Colonial America
Joseph Henry Beale xvii

Chapter I
Introduction 1

Chapter II
A Colonial Barrister's Education 12

Chapter III
Clerkships and Their Regulation 35

Chapter IV
The Law Student's Curriculum 56

Chapter V
Library Facilities 73

Chapter VI
Other Educational Opportunities 95

Chapter VII
Legal Equipment of the Bench 108

Chapter VIII
Lawyers Who Were College Graduates 115

Chapter IX
Progress After the Revolution 120

CONTENTS

		PAGE
APPENDICES		133
I.	Students of King's College, 1758-1784, who became Lawyers, Doctors, Ministers	133
II.	Lawyers of Education in Colonial New York	135
	(a) Lawyers who were college graduates and in the province of New York sometime during the period, 1664-1784—chronologically arranged	135
	(b) Lawyers who were college graduates and in the province of New York sometime during the period, 1664-1784—alphabetically arranged	142
	(c) Lawyers who had attended college and who were in the province of New York sometime during the period, 1664-1784—chronologically arranged	145
	(d) Barristers-at-Law who were in the province of New York sometime during the period, 1664-1784—chronologically arranged	146
	(e) Lawyers who had received liberal educations and who were in the province of New York sometime during the period, 1664-1784—chronologically arranged	149
III.	Petitions to Practice Law	156
	(a) Petition of William Huddleston, 1695	156
	(b) Petition of John Kelly, 1727	157
IV.	Bar Agreements	158
	(a) Agreement of 1729	158
	(b) Agreement of October, 1756	160
	(c) Agreement of November 26, 1756	162
	(d) Agreement of January 5, 1764	163
V.	James Alexander—James Gilchrist Apprenticeship Agreement, 1723	165
VI.	William Livingston's Criticism of the Treatment accorded Apprenticed Law Clerks	167
VII.	Law Libraries	171
	(a) Law Books in James Alexander's Library, 1721	171
	(b) Law Books in Joseph Murray's Library (Portion in the Law Library of Columbia University)	177
	(c) John Chambers' Library (c. 1760); Law and Other Books	180
	(d) Law Books in Judge William Smith's Library, 1770	182
	(e) Law Books purchased from Governor John Montgomerie's Library, 1732	193
VIII.	William Smith's Course of Study for Law Students, 1756	197
IX.	Early Legal and Debating Societies in New York City	201
	(a) *The Moot*—Constitution, Members, Officers, Minutes—1770-1776	201
	(b) *The Debating Society*—Constitution, Members, Subjects debated—1768	204

CONTENTS

		PAGE
X.	Members of the Superior Courts of Colonial New Pork	206
	(a) Supreme Court of Judicature	206
	(b) High Court of Chancery	207
	(c) Court of Oyer and Terminer	207
	(d) Court of Vice-Admiralty	207
XI.	Article XXVII, New York State Constitution, 1777	209
XII.	Examples of Court Orders and Legislative Acts affecting the Education and Training of Law Students, 1778-1797	210
	(a) Rules of the Supreme Court of Judicature of the State of New York, April Terms, 1778 and 1779	210
	(b) Rule of Supreme Court of Judicature of the State of New York, April Term, 1783	211
	(c) Rule of the Supreme Court of Judicature of the State of New York, October Term, 1797	212
	(d) Rule of the Court of Chancery of the State of New York, October 13, 1787	214
	(e) Rule of the Court of Chancery of the State of New York, October 20, 1788	214
	(f) Orders of the Court of Chancery of the State of New York:	
	(1) For the Examination of Edward Livingston to become a Counsellor-at-Law	215
	(2) For the Examination of Josiah Ogden Hoffman to become a Sollicitor-at-Law	215
	(g) Act of the Legislature of the State of New York, February 20, 1787	216
BIBLIOGRAPHY		217
INDEX		233

ILLUSTRATIONS

Portrait of Lewis Morris (1671-1746) — frontispiece

Joseph Murray's Bookplate — 18

Joseph Reed's Certificate of Admission to Middle Temple — 20

Joseph Reed's Entrance Fees and Other Expenses of Admission to Middle Temple — 21

Supreme Court Order of 1730 Regulating Law Clerks — 36

Supreme Court Order of 1767 Regulating Law Clerks — 38

William Livingston's Indenture of Apprenticeship to James Alexander — 40

Portrait of Peter Van Schaack — 42

Portrait of William Smith (1728-1793) — 60

William Smith's: "Some Directions Relating to the Study of the Law" — 62

Title Page from Joseph Murray's Copy of *Lilly's Practical Register*, Volume I, part 2 — 74

Portrait of James Alexander — 76

James Alexander's Law Library — 76

Shelf of Books from Joseph Murray's Library — 80

Page from the Inventory of Judge William Smith's Library — 81

Portrait of William Livingston — 96

Portrait of William Smith (1697-1769) — 110

The Van Schaack Law School Building — 126

CHAPTER I

Introduction

When in 1770 William Smith wrote, "We have many learned Lawyers in this and the Neighbouring Colonies,"[1] he was describing the professional attainment of the leaders of the provincial bar at the height of colonial New York's development. The quality of work these leaders produced and the standards of legal education they had long advocated not only substantiate such an estimate but also support a belief that even at the middle of the eighteenth century there were in New York a number of practitioners whose knowledge of law and equity was extensive, thorough, and sound.[2] While these lawyers were the beneficiaries of a century-old provincial system of jurisprudence, and had been instrumental in adapting the principles of the common law to the conditions of colonial New York, they were, nevertheless, at the threshold of a changing political and social order. The control of the legal world they had known so well was about to pass into other hands, and a State, new in purpose but with its foundations deeply rooted in the old juristic policy and principles, was soon to arise. In order that the education these lawyers had received may be appreciated, and that the place occupied by the legal profession in the life of the province may be understood, this study has been made and it is here offered with the hope that it may contribute to a more precise evaluation of a subject about which so little has heretofore been known.

In making this study, New York's colonial history has, for convenience, been separated into five periods. The earliest of these, which began in 1664 when the English expedition under Governor Richard Nicolls captured New Amsterdam, lasted for about twenty-five years. Although during

this time a majority of the lawyers in practice had received their education and training in England, and although it might, therefore, be thought that the court records of that day would show learning on the part of practitioners, it is only fair to note that then there was little cultural development in the country, and that it offered few opportunities to exhibit learning.[3]

The second period (1689-1702) opened when the news reached New York that King James II had fled England and that Governor Andros, together with several members of his Council, had been imprisoned in Boston.[4] Upon learning these facts, a group of citizens headed by Jacob Leisler, a local merchant, seized control of the province and forcibly compelled the constituted authorities to vacate their offices. Partisanship ran high, and for a time the orderly administration of government was disrupted, disrespect for authority spread among the people,[5] and the prestige of the legal profession declined noticeably. All through the 1690's the tension thus created prevailed, reaching a climax in 1702 when Nicholas Bayard and John Hutchins were tried for treason by a special court of Oyer and Terminer before the new chief justice, William Atwood.[6] Acting in a manner characteristic of certain judges of that day, Atwood prohibited the taking of notes in his court,[7] ordered David Jamison's name to be stricken from the roll of attorneys,[8] and excluded several practitioners from observing the progress of the trial.[9] By such actions as well as by similar provocative conduct in his capacity as a member of the governor's council, William Atwood increased rather than diminished factionalism within the legal profession.[10] Indeed, it was only after Governor Cornbury had suspended him from his offices and he had fled to Virginia in disguise,[11] that the turmoil so long existent throughout the colony somewhat subsided and legal procedures were again fully observed. It must, however, be admitted that during these years a number of practitioners appear to have been as much interested in politics, in grants of land, and in the building up of estates as in the pursuit of law. All in all, professional ethics were then, indeed, in as low a state as at any time between 1664 and 1783.

The restoration of Attorney General Sampson Shelton Broughton to the leadership of the bar, following the Atwood episode, and the arrival from England of two chief justices,—John Bridges, LL.D., and Roger Mompesson,—within the first decade of the eighteenth century, ushered in the third era (1702-1725). During this quarter century were laid the foundations of the jurisprudence subsequently enforced in colony and state, and for the first time in the province adequate training in law was regarded as necessary for professional success.[12] Complaints that the bar was illiterate could no longer be made, since thereafter well-trained lawyers resided not only in New York City but in each of the several counties of the province.

The fourth period began about 1725 when James Alexander, Joseph Murray, William Smith, Sr., John Chambers, Abraham Lodge, Richard Nicholls, and others, whose names are on the records, began to appear regularly in the courts along with the older practitioners. These younger men, because of their training and natural ability, plus hard work, were soon to become eminent in their profession. Equipped with broad and sound education they not only successfully adapted the legal principles and the juridical procedures enforced at Westminster to colonial conditions, but also caused the law of England to become the basis of the province's jurisprudence—a difficult task over which the preceding generation of practitioners had

struggled long with but moderate success. Furthermore, while engaged in this effort and while urging the adoption throughout the colony of uniform legal practices, these men trained a younger bar in the tenets of their political philosophy. Probably New York has never had a more influential body of citizens than this group of lawyers which during the second quarter of the eighteenth century controlled its policies in such masterly fashion.[13]

The fifth and final period began about 1754 when a younger bar, trained at home,[14] took control of the province's judicial system.[15] Thereafter, with educational standards being continually revised upward, few parents sent sons across the Atlantic for their academic training.[16] Significant also was the fact that no longer were half-trained clerks to be recommended for licenses. Indeed, at this time plans were adopted providing that in the future lawyers should constitute the most highly trained class of men in the colony. But because of the times, and through a lack of professional support, these plans soon had to be modified.

Although in any of these periods the legal knowledge possessed by the members of the New York bar probably would not compare favorably with that exhibited at a later day by the rank and file of the profession, care should be exercised to weigh whatever criticism is made in the light of the economic, the social, and the cultural conditions existing during each period under consideration. It is possible that even the slight amount of erudition evidenced in the legal papers which have been preserved, or in the meager summaries of the causes tried, may imply a moderately well-trained bar. Certainly no one who studied the reports of the sittings either of the General Court of Assizes or the Mayor's Court of New York City between 1674 and 1683 would be impressed with any evidence of learning therein, yet several

practitioners—among them Matthias Nicolls, John Rider, John Tudor, George Cooke, John Sharpe, Samuel Winder, Isaac Swinton, Samuel Leete, John West, and William Nicolls, whose names as counsel appear not infrequently on the records—were English trained lawyers. Indubitably, whatever education such men possessed—and in each generation were similar groups—was partially lost in the undeveloped state of the country in which they were called upon to exhibit it. On the other hand, it was at this time (1698) that Governor Bellomont wrote to the Lords of Trade in London denouncing all the practitioners in the colony as well as the general legal condition prevailing.[17] This estimate, however, must have been considerably exaggerated. Certainly Bellomont's indictment would condemn a number of well-educated lawyers then in practice.[18]

Unsatisfactory as may have been the conditions of which the governor complained, they were, nevertheless, soon a matter of history, for with the opening of the eighteenth century, the development[19] of the law went forward at a rapid pace. Thereafter, on the bench, at the bar, and in public office were to be found lawyers possessed of what in any age would be considered a sound knowledge of jurisprudence. As one commentator has stated: "There have been preserved some notes of memoranda of authority in various arguments on demurrer in the provincial courts about the year 1733 which demonstrate that the New York bar was not far behind that of England in profundity of learning and adeptness in dealing with common law precedent. . . . And if one turns to the Zenger Trial [1735], it is apparent that the practice of the law had acquired a high degree of technical perfection."[20] It may be accepted, therefore, that with the opening of the third decade of the eighteenth century, lawyers in New York City as well as in a majority of the

counties of the province were not deficient in learning; rather, they were considered members of the most learned profession in the colony.[21] From an inconsequential status, so rapid, indeed, had been the growth of the influence and power of the bar that by 1765 its members were rated second in the colony's social scale.[22] The educational advantages which qualified these members for their work, and the use they made of their opportunities, will by this study, it is hoped, be understood more clearly, and evaluated more accurately, than has heretofore been possible.

[1]See six-page letter written around 1770 by William Smith, Jr., to a friend named Parker in *William Smith Papers*, "Correspondence," Box numbered 198-206, Manuscripts Room, New York Public Library. In this letter Smith reviews the legal and constitutional questions connected with the Act of Assembly denying judges the right to sit in the General Assembly. He summarizes the practice on this subject both in the colony and in England, and by way of some thirty rhetorical questions attempts to show that the Assembly was not justified in passing such a bill. He concludes with the statement quoted.

See Bibliography herein for books, manuscripts and papers mentioned in this study.

[2]Writing to the Earl of Egremont, September 14, 1763, Cadwallader Colden said: "We have a set of lawyers in this Province as insolent & petulant, & at the same time as well skilled in all the chicanerie of the Law, as perhaps are to be found anywhere else." (*Documents Relative to the Colonial History of the State of New York*, VII, 549.) Colden's critical attitude toward lawyers is well-known. In spite of this fact—or perhaps because of it—he sent three of his own sons into the profession: John, licensed July 20, 1750, O'Callaghan, *Calendar of New York Colonial Commissions 1680-1772;* Alexander, licensed August 20, 1752, *Ibid.*, and Cadwallader, Jr., admitted to the bar of Orange County in 1753, Chester and Williams, *Courts and Lawyers of New York*, I, 1315; S. W. Eager, *Outline History of Orange County*, 646.

[3]As evidence of the kind of briefs prepared at this time and the learning shown therein, reference may be had to the papers filed by Isaac Swinton in the Supreme Court on Circuit sitting at Kingston, Ulster County, in June, 1684, Judge Matthias Nicolls presiding. See contents of "wooden box" in Ulster County Clerk's Office, Kingston, N. Y. Also see "Bills," "Answers," and "Pleas" of one sort or another, presented to the Court of Chancery after 1684/5 in Chancery Room, Court of Appeals Hall, Albany, N. Y., and in

Hall of Records, Borough of Manhattan, New York City. Also see "Old Law Papers," nos. 7, 8, 9, in *John Jay Papers*, New York Historical Society Library.

[4]Imprisoned with Andros were the New York lawyers John Palmer, John West, and James Graham. The last named subsequently again became Attorney-General and Recorder of New York.

[5]For accounts of these troubled times see Index in *Docs. Rel. Col. Hist. N. Y.*

[6]For one account of this trial see "The Case of William Atwood, Esq., ..." (London, 1703). *Collections* of the New York Historical Society for the year 1880, pp. 237-319.

[7]See O'Callaghan, *Calendar of Historical Manuscripts*, Part II, 46: 150-8; *Docs. Rel. Col. Hist. N. Y.*, IV, 1010-12; Stokes, *Iconography*, 27 September, 1702.

[8]See New York: *Minutes and Orders of the High Court of Chancery*, 1701-2, p. 22.

[9]See O'Callaghan, *Cal. Hist. MSS.* Pt. II, 46: 150-8; see also trial of Nicholas Bayard in *Docs. Rel. Col. Hist. N. Y.*, Index, and accounts of the trial separately printed.

[10]See *Docs. Rel. Col. Hist. N. Y.*, and its Index under name, William Atwood. Also see New York: *Minutes of the Supreme Court of Judicature*, under date of March 7, 1701, and *passim* for the years 1701-02.

[11]*Iconography*, 30 March, 1702.

[12]It was at this time that the first of the native-born sons of New York to study abroad, Robert Livingston, Jr. (born July 24, 1688), sailed for England. On November 7, 1706, he joined Middle Temple. In practice at this period were a number of liberally educated, trained lawyers. Among these were James Emott, William Nicolls, Abraham Gouverneur, William Huddleston, Samuel Clowes, Barne Cosens, David Jamison, John Harris, May Bickley, Thomas George, Jacob Regnier, Henry Vernon, John Collins, and Henry Wileman.

[13]The assumption of the legal business of the colony in 1725 by the younger members of the bar was a noteworthy event. Indeed, from the point of view of the orderly development of jurisprudence, it was almost as important as the rise of the new bar following 1781. After 1725 the demand for legal and political autonomy steadily increased in New York.

[14]Although an education acquired in London or Bristol was still considered superior to any which might be secured elsewhere, it is significant that from this time on practically all prospective New York practitioners prepared themselves in law offices at home.

[15]While this period began about 1754, it terminated only with the passing of the provincial government. The year 1754 is chosen because it was at this time that the older members of the bar surrendered control of the legal world to their clerks. A new consciousness in education, typified by the establishment of New York's own institution of higher learning, King's College, then prevailed.

[16]In his study of the training of lawyers in New York, Charles Warren

says three paths were open to a young man who wished to practice law. He could travel to England and there join one of the Inns of Court; or, having subscribed articles of apprenticeship, he could enter the office of a practicing attorney either in England or at home and there study; or, lacking money or friends or both, he could secure a position as a deputy clerk in one of the courts or government offices and there pick up a knowledge of law, hoping in time to be given a license to practice. Charles Warren, *History of the American Bar*, 164 *et seq*. All three methods were followed, but of the last, no specific instance for New York can be cited. It may have been, however, that sufficient knowledge to practice law was acquired in this way by such men as, for example: Henry Peirson, Clerk of Suffolk County after 1669; William Sharpas, Clerk in Chancery for many years after 1711; Alexander Stuart, Clerk of Richmond County following 1711; and Henry Vandenburgh, Clerk of Dutchess County within the years after 1729. Undoubtedly, also, some few practitioners in the counties gained a fair knowledge of law by studying at home. Since a strict control over those admitted in the inferior courts was not always enforced, individuals with little legal knowledge were occasionally licensed. The need for attorneys at law at times was considerable, and it was better that those representing clients should be regularized than to have no control at all over them. In a number of cases licenses signed by the governors authorized the recipients to practice in one or two courts only.

[17]To the Lords of Trade in 1698, Governor Bellomont wrote: "My Lords, I have given your Lordships the trouble of many letters since my being in this government, but I have yet a business of greater consequence to apply to your Lordships about than anything I have hitherto writ to you of; which is, the administration of justice. That which is the very soul of government, goes upon crutches in this Province, and deserves your Lordships immediate care and redresse above all things whatsoever.

"Colonel Smith one of the Council is Chief Justice of the Province, but is no sort of Lawer [sic] having been bred a soldier. He is a man of sense and a more gentleman like man than any I have seen in this Province, but that does not make him a lawyer. Then he lives four score mile off, and comes but twice a year to this town at the times of the Supream Court's Sitting, just to earn his sallary, which is a hundred pounds p^r ann: sterling; and so is of very little use or service to the government. Whereas a man in that station ought to be a lawyer and a man of great integrity and resident in this town to be always ready to assist the government. As to the men that call themselves lawyers here and practise at the Bar, they are almost under such a scandalous character, that it would grieve a man to see our noble English laws so miserably mangled and prophaned. I do not find that a man of 'em ever arrived at being an Attorney in England. So far from being Barristers, one of them was a Dancing Master, another a Glover by trade, a third which is Mr Jamison was condemned to be hanged in Scotland for burning the Bible and blasphemy, a fourth which is Mr Nicolls, your Lordships have had his character formerly from me, and there are two or

three more as bad as the rest; besides their ignorance in the law, they are all, except one or two, violent enemies to the government, and they do a world of mischeif in the country by infecting the people with ill principles toward the government.

"Now that there is a prospect of doubling the revenue I am humbly of opinion we ought to have good Judges sent from England and King's Councel to mind the interest of the Crown. The Lawyers here do so prey on the people that it is a melancholy thing to heare how unequally justice is and has been distributed in this Province; . . . . New Yorke December the 15th 1698." (*Docs. Rel. Col. Hist. of N. Y.*, IV, 441-2.)

On May 13, 1699, Bellomont again complained to the Lords of Trade, writing: 'There is not a day that I do not find the want of an honest able lawyer." (*Iconography*, 13 May, 1699. See also *Ibid.*, 8 September, 1699.) That the profession was in need of trained members in Bellomont's day was undoubtedly true. At the same time that the Governor was thus pleading for an adequate bar, the House of Representatives (General Assembly) was asking: "That for ye better Administration of Justice five able Judges be sent from England, and two or three able Council who have acquired to that noble profession by study, and not by usurpation." (*Ibid.*, 15 May, 1699.)

[18]In active practice in the province between 1691-1701 were such lawyers as: Barrister-at-Law John Guest, William Nicolls, K. C., Richard Harris, James Emott, K. C., John Tudor, K. C., Edward Antill, Nicholas Bayard, Barne Cosens, K. C., Abraham Gouverneur, William Huddleston, and David Jamison. All these had been liberally educated in England, and each, except the last named, had received his legal training there. That all attorneys at law were from the first decade of English control required by the courts of the colony to be admitted, justifies the conclusion that the regular practitioners were possessed of formal legal training. For instance, see admission of John Matthews, 1667, in "Records of the Court of New Castle," as set forth by Chester and Williams, *op. cit.*, 328 n., and by F. M. Eastman, *Courts and Lawyers of Pennsylvania*, I, 48. The concluding sentence of the oath of admission taken by Matthews provided: "That you will not take any apparent unjust Case in hand, but in all Respects behave yor selve as all attorneys are obliged to by the Lawes of this Government."

[19]One commentator has written: "Indeed one need only examine the account of the Bayard trial [1702], one of the most fully reported cases of the early eighteenth century, to realize how the professionalization of the law was advancing." (Julius Goebel in *History of the State of New York*, III, 35.)

Active in this process of professionalization were the following: (1) John Guest, whom William Penn had sent out to become Chief Justice of Pennsylvania. Not being permitted immediately to serve, he settled on Long Island. Later he served on the New York Supreme Court of Judicature, and was responsible for the judicial system of the colony as established in 1699. (2) Roger Mompesson, member of the Supreme Court of New York in 1704 and its chief justice from 1704-15. It is claimed that he did more than any other lawyer to conform the practice of the New York courts to that pre-

vailing at Westminster. (3) John Bridges, LL.D., chief justice during 1703-4. Bridges' death, at a relatively early age, was a blow to the juridical development of the province. (4) Sampson Shelton Broughton, formerly Librarian of Middle Temple, Attorney-General of New York, 1701-5. These were aided by a number of English-trained lawyers.

[20]Julius Goebel, *op. cit.*, 35. This same commentator goes on to state: "The thoroughgoing metamorphosis of practice which ensued after 1700, and particularly after 1714, we can attribute only to the new lawyers who came during this period. We have biographical details of only a few of these men; two or three of them we know were trained, as were their English contemporaries, in the Inns of Court. Others, about whose lives we know little, exhibit such learning as to justify an assumption that they too were trained in the Inns. It was not long before their store of learning was a part of the provincial law. The lawyers drew up the pleadings and forms necessary to an orderly practice, adapting the English models to colonial conditions. These 'precedents' they carefully preserved, and when they died, these manuscripts were almost invariably passed on to brother barristers." (*Ibid.*, 35-36.)

[21]This is certified to by such persons as Cadwallader Colden, a scholar of no mean attainment himself, in his *Letters and Papers* (*passim*); by Thomas Jones, *History of New York During the Revolutionary War, passim;* and by William Smith, Jr., *History of the Late Province of New-York,* I and II, *passim.* Further evidence of this is demonstrated by the fact that one-quarter of the graduates of King's College entered the legal profession. Thirty of its 119 A.B. graduates and 8 of its 78 non-graduates between 1756 and 1776 became lawyers. During the same period 13 of its A.B. graduates entered the ministry and 14 A.B. graduates earned medical degrees. Between 1786 and 1790, of the 34 students who graduated with A.B. degrees from Columbia College, 17 went into law, 8 into the ministry, and 1 into medicine; while of its 11 non-graduates during the same period, 2 became lawyers, 1 entered the ministry, and 2 became doctors of medicine. During the years 1773-77, of the 34 students who entered King's College seeking A.B. degrees, 7 dropped out, 2 subsequently became lawyers, 2 entered the ministry, and 1 became a doctor of medicine. (See Appendix I, p. 133, for tables covering King's College graduates.) The legal forms, documents, law books, and court records likewise testify to the standing of the New York bar.

As an illustration of the career of a member of the legal profession—a case study, as it were—William Smith, Jr., may be cited. Born in New York City in 1728, he was the eldest of fourteen children, four of whom became lawyers. His father sent him to Yale, where, at the age of seventeen, he was awarded a B.A. degree. A Greek and Latin scholar, he read Hebrew for divinity was one of his chief pursuits. He was also proficient in mathematics and was rated high in medicine. Studying law in his father's office, he was considered a model lawyer, and, like his father, he became an eloquent speaker. He had a wide acquaintance both in America and in England, and corresponded with some of the foremost characters of

his day. His "Diary," in the *William Smith Papers,* in several large volumes, and a few of his law books, are in the New York Public Library. He was the author of *A History of the Late Province of New-York* (cited above) in two volumes. In 1769—when forty-one years of age—he was appointed a member of His Majesty's Council for New York. His interest in solving the relationship between the colonies and the mother country was profound and continuous. He associated himself with the loyalist side in the War for Independence. In 1786 he was appointed Chief Justice of Canada, and he died in office in 1793. See "Memoir of the Honourable William Smith," by his son, William Smith, of Canada. Preface to Vol. I of William Smith, *History of the Late Province of New-York.*

[22]Letter from Cadwallader Colden to the Board of Trade, December 6, 1765. "The gentlemen of the Law make the second Class in which properly are included both the Bench and the Bar. Both of them act on the same principles and are of the most distinguished Rank in the Policy of the Province." (*Iconography,* 6 December, 1765.) For further comments on the place of the legal profession in the colony and its influence in it, see *Ibid.*, 22 June, 1747; 14 September, 1763; 20 December, 1765; 14 January, 1766; see also *Docs. Rel. Col. Hist. N. Y.*, Vol. VII, 342, 549, 677, 695, 700, 702, 705, 796-8, 803, 804; VIII, 61. Concerning the members of the profession of this period, the well-known jurist James Kent wrote: "The New-York bar contained a constellation of learned and accomplished men during the latter and closing scenes of the colonial administration. Some of them had acquired solid reputation. . . . These persons were all learned and accomplished lawyers." ("An Address Delivered Before the Law Association of the City of New-York, October 21st., 1826, by the Hon. James Kent," 15-17.)