

Although certain practitioners' offices were more popular than others, and were filled with hopeful students, the proprietor assumed no obligation toward his unique body of clients. Whatever they might derive from the relationship concerned him little, if at all. Concerning this matter see Charles Carroll's letter to his father, January 7, 1763, quoted in part on p. 27, n. 9, herein.

³⁷Letter from Philip Livingston, Jr., to William Alexander addressed, "My Lord" in *William Alexander Papers*. For the cost of attending Inns of Court around 1500, see Fortescue, *op. cit.*, 187-192. For a view of admission charges to the different Inns during the sixteenth, seventeenth, and early eighteenth centuries, see Dugdale, *op. cit.*, 141-335. "And in 5 Eliz. (19 Nov.) it was also ordered that none should, thenceforth be admitted to this Fellowship and Company [Inner Temple], but he that should pay for his Admittance, to the use of the House and Company, XL^s, except he were the son of one of the Bench or Utter-Barr; or except he had been by the space of one whole year of the Company of one of the Innes of Chancery belonging to this House." (*Ibid.*, 147). For rules affecting the other Inns of Court, see *Ibid.*, 141-335.

³⁸See pp. 27, n. 12; 33, n. 35; 34, nn. 40, 41, and p. 21, herein.

³⁹Letter Book of John Watts, 13.

⁴⁰To a few parents the cost of maintaining their sons in London was not a major consideration. In a letter written in 1760, the father of Charles Carroll said: "I think a student in ye Temple cannot apply himself properly to his Studies and Spend above £300 a year; whether you spend £250 or 300 a year, is to me immaterial, but to you it cannot be so, if by spending your money you misspend your time, which to you is more precious than money." (T. M. Field, *op. cit.*, 44.)

Roger North tells of the expense of his brother, Francis, around 1660. He stated: "The exhibition allowed his Lordship by his father, was, at first, sixty pounds per annum: But the family being hard pinched for supplies towards educating and disposing many younger children, and his parents observing him to pick up some pence by court-keeping, besides an allowance of twenty pounds per annum from his grandfather, and a little by practice, they thought fit to reduce him to fifty pounds." (*The Life of the Right Honourable Francis North*, I, 51-2.)

⁴¹In England attorneys and solicitors secured their training in offices by paying a fee. This same system was open to New Yorkers, but appears seldom to have been utilized. Peter Jay, however, thought of having his son John study under an attorney in Bristol, and "requested his cousin, David Peloquin, and Sir James [Jay] to investigate the possibility. In July [1763] Peloquin reported that the amount demanded in Bristol 'by an attorney of character & in tiptop business' was between two hundred and three hundred pounds," and that "the Young Gentleman must engage himself for five years. . . . In September Peloquin reported that the demands of the London attorneys were much the same as those of Bristol." (Frank Monaghan, *John Jay . . .*, 29.)

CHAPTER III

CLERKSHIPS AND THEIR REGULATION

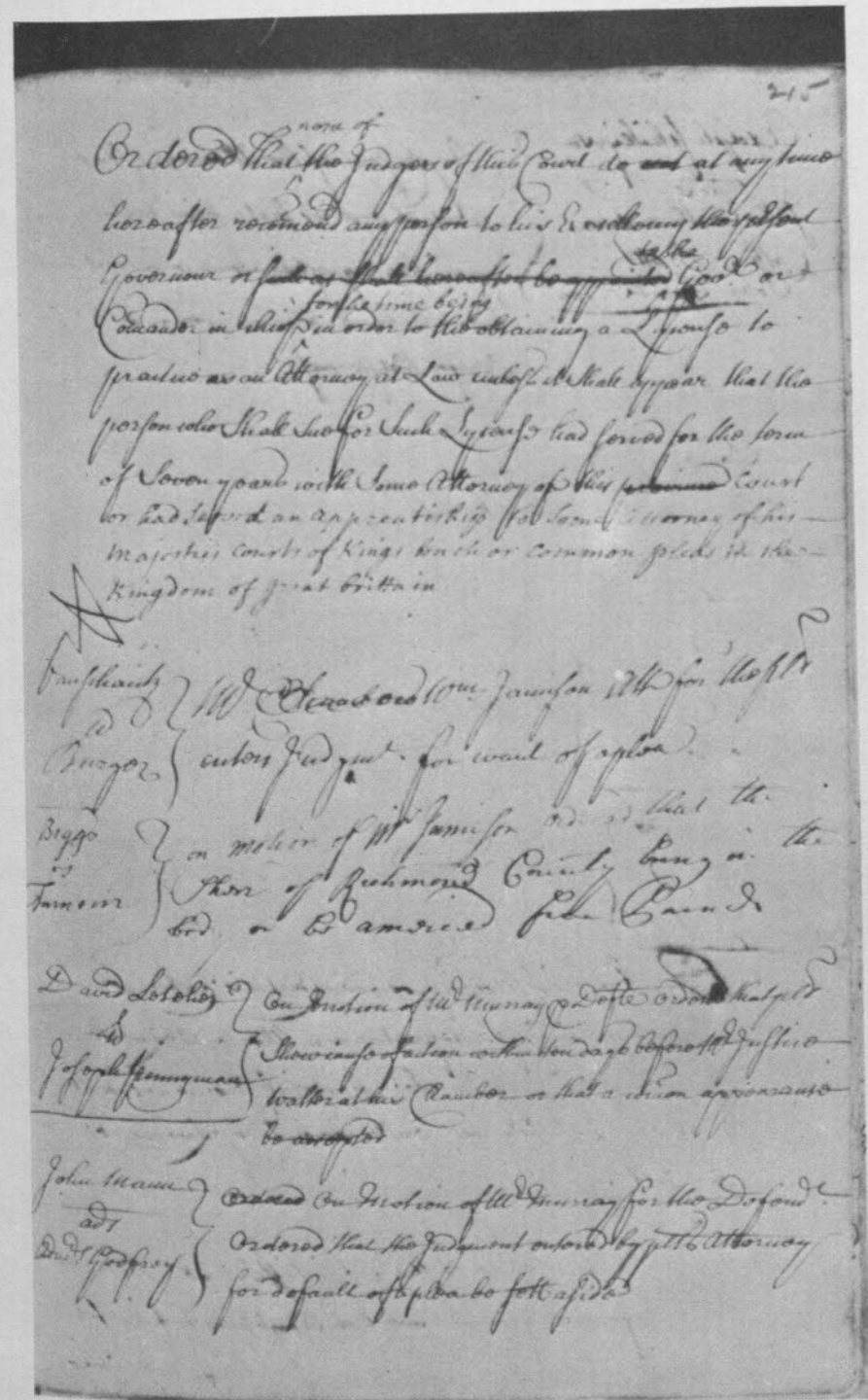
For many years prior to 1700 no one in England¹ had been granted a license to transact legal business without some practical experience gained at an Inn of Court or in a law office.² When, therefore, the New York authorities considered the training of prospective lawyers—as they did nearly every other activity in which the profession engaged—a matter subject to regulation, they were only imitating a practice long established in the mother country. And, yet, during the first half-century of English control no occasion seems to have arisen calling for a definite ruling that this was to be an accepted custom in the colony. The majority of the lawyers appearing in the courts had already practiced in England, while the few native sons who asked for admission petitioned only after having satisfied the rules of the province. And if it happened that a petitioner with little experience applied, he invariably made a point of stating that he had clerked in an office abroad "for the Space of three years,"³ or that he had studied under a lawyer "for about the Space of Two or three years."⁴ In truth, it was only in the late 1720's that the leaders of the colonial bar, having become disturbed over the number of licenses being granted, began seriously to plan ways to regulate clerkships.⁵ In considering what was best to do six prominent New York City lawyers thought they would be able to discourage admissions to the bar by agreeing among themselves to transact no business, unless positively necessary, with any attorney licensed after June of 1725.⁶ But, of course, such a scheme was unenforceable and, this having soon become apparent, the idea was abandoned. Recourse for relief was then had to the judges of the provincial supreme court, who at once prepared

an order, June 9, 1730, which regulated not only the training of clerks but also the conditions under which they were to be admitted to practice.⁷ This order—the first of its kind in the province—provided specifically that no candidate should be recommended to the governor for a license “unless it shall appear that the person who Shall Sue for Such Lysense had served for the term of Seven years with Some Attorney of this Court.”⁸ Not again until 1767—in fact, not until a generation of practitioners had come and gone—did the court find it necessary to consider anew problems arising out of the lawyer-clerk relationship.⁹

Meantime, however, times and conditions were changing. By the middle of the century the bar had again become aware of the necessity of trying to regulate the circumstances under which practitioners received their training. A group of young lawyers, several of whom had but recently graduated from college and whose abilities were rapidly bringing them forward as future leaders, were united in their determination to make the legal profession dominant in councils affecting the province. Lieutenant-Governor Colden was disturbed about this attitude of the lawyers, and concerning it he wrote in 1765 to the Earl of Halifax. He asserted:

“The dangerous influence which the Profession of the Law has obtained in this Province more than in any other part of his Majesty’s Dominions is a principal Cause of disputing appeals to the King, but as that influence likewise extends to every part of the Administration I humbly conceive that it is become a matter of State which may deserve Your Lordship’s particular attention.

“After Mr DeLancey had by cajoling Mr Clinton received the Commission of Chief Justice during good behaviour, the Profession of the Law entered into an Association the effects of which I believe Your Lordship had for-



EARLIEST ORDER IN NEW YORK REGULATING THE TRAINING OF STUDENTS OF THE LAW

This order of June 9, 1730, was the earliest occasion upon which the Supreme Court of Judicature of the Province of New York regulated the training of law students in New York. An apprenticeship seven years in length was required. Reproduced from the original Minutes of the Supreme Court of Judicature of the Province of New York, 1727-1732, page 208. Hall of Records, Borough of Manhattan, New York City. Courtesy of the Clerk of New York County, New York.

merly opportunity of observing some striking instances. They proposed nothing less to themselves than to obtain the direction of all the measures of Government, by making themselves absolutely necessary to every Governor in assisting him while he complied with their measures & by distressing him when he did otherwise. For this purpose every method was taken to aggrandize the power of the Assembly, where the profession of the law must allwise have great influence over the members, & to lessen the Authority & influence of the Governor. In a Country like this, where few men, except in the profession of the Law, have any kind of literature, where the most opulent families, in our own memory, have arisen from the lowest rank of the people, such an association must have more influence than can be easily imagined. By means of their profession they become generally acquainted with mens private affairs & necessities, every man who knows their influence in the Courts of Justice is desirous of their favor & affrayd of their resentment."¹⁰

Holding such ideals and agreeing on what seemed the surest way of affecting its ambitions, the bar of New York City adopted in 1756 an agreement in which were embodied some of the most stringent conditions for the regulation of clerkships ever entered into or attempted to be enforced by any colonial organization, court, or legislature.¹¹ It especially required that a student-law-clerk must be a graduate of "some University or Colledge, having resided there four years and attained a Batchelors Degree" and that he must "bind himself by indenture to serve . . . faithfully a Clerkship of at least five years."¹² At the same time the right to substitute an education equivalent to one gained at college was denied. More significant still were the provisions concerning examinations. For the first time in the history of New York the principle was established that every

38 LEGAL EDUCATION IN COLONIAL NEW YORK

candidate before being admitted to the bar must undergo a "Previous Examination, by such Practisers as shall attend the same . . .," and must present a "Certificate in Writing of at least Six Attorneys, that he is well qualified for the Practice." Finally it was stated that "no such examination shall be deemed sufficient unless Ten Days Notice of the Time & Place of holding the same in writing be first left at the Houses or usual Residence of all the Attorneys of the Supreme Court dwelling in the City of New York."¹³

As laudable as may have been the intent of those who conceived it, the severity of the terms of this agreement soon became apparent. Another understanding, dated January 5, 1764,¹⁴ took its place. This provided that a youth must have spent two years in college prior to commencing the study of law, and that thereafter—before petitioning for a qualifying examination for the bar—he must serve a clerkship of five years.¹⁵

These two agreements also dealt decisively with the matter of the fee attorneys were to charge clerks to whom they granted permission to study in their offices. Apparently considerable variation had existed in the sums demanded for such a privilege as well as concerning the times when payments should be made.¹⁶ It appears that frequently not all of the sum stipulated for was advanced at the time a clerkship began. Therefore, in order that this question might be settled once for all, it was agreed that the subscribing attorneys should insist that £200 be paid down by each prospective clerk when he began his service.¹⁷ Thereby no member would have an advantage over any other, and competition for the services of promising youths would be controlled if not entirely eliminated. Incidentally, also, the requirement of so large a sum would tend to restrict not only the social class from which the future bar might

N.B. The Chief Justice was not on the bench, but this rule was agreed to at a Court where of the four Judges present it was agreed.

The Court taking into Consideration the Necessity of a Rule relating to the Admission of Attorneys to the Practice of the Law, Doth hereby declare, that no person shall be recommended or admitted by this Court, unless by the unanimous Opinion of all the Judges for several Reasons, without a Certificate of his having faithfully served a Clerkship with a sworn Attorney of this Court for five Years, and that the Attorney giving such Certificate conceives him sufficiently qualified for the Practice: unless such Candidates be admitted to the Degree of Bachelor of Arts by some University or College, in which case a Clerkship of three Years shall suffice with such Certificate as aforesaid. And it is further Ordered that no Attorney of this Court do presume to recommend any Clerk contrary to the true meaning of this Order. And it is further hereby declared that no Person shall be qualified for an Admission to the Practice under the full age of twenty one Years.

James Johnson Clerk }
 Francis Cunningham }
 John Trenchard }
 John Jay }
 John M. Ham }
 John M. Ham }
 John M. Ham }

Ordered for Law & Arguments in the County of Ulster.

In Motion of M^r Scott Attorney for his Client J^r Stewart is a writ obtained in West Term 1764 return a Bannet of the King for the Seal of this Cause in or before the 20th Day of May Instant, and that the said writ be void & returned to the Court in the usual Manner of the Law and place being given to his Defendants Attorney and that six or any greater Number of the Jurors who are to try the above Cause have a View of the premises in Question.

procurator

ORDER REGULATING LAW STUDENTS

On May 1, 1767, the Supreme Court of Judicature of the Province of New York issued the second order it had made regulating the education and training of students of the law. Reproduced from the original Minutes of the Supreme Court of Judicature of the Province of New York, 1766-1769, page 180. Hall of Records, Borough of Manhattan, New York City. Courtesy of the Clerk of New York County, New York.

be recruited but also its size—prospects which those who signed the agreement doubtless did not overlook.¹⁸ Whatever the motive, the restriction probably met with sympathetic approval and support throughout the remaining portion of the colonial period.¹⁹

It is possible that experience convinced the leaders of the New York City bar that their attempts to control the education of prospective lawyers must necessarily be ineffectual and that the highest judicial tribunal in the province alone possessed sufficient authority to regulate this matter. At all events, whatever rule-making authority the leaders may have possessed they relinquished and, making no further formal efforts, appealed to the Supreme Court for a statement of policy.²⁰ This tribunal, accepting the responsibility thus referred back to it after an interval of thirty-seven years, again formally took notice of the training received by those appearing before it, and on May 1, 1767, ordered the following *Minute* entered of record:²¹

“The Court taking into Consideration the Necessity of a Rule relating to the Admission of Attornies to the Practice of the Law, Doth hereby declare, that no person shall be recommended or admitted by this Court, unless by the unanimous Opinion of all the Judges for speciall Reasons, without a Certificate of his having faithfully served a Clerkship with a Sworn Attorney of this Court for five Years; and that the Attorney giving such Certificate conceives him sufficiently qualified for the Practice;²² unless such Candidate be admitted to the Degree of Batchelor of Arts by some University or Colledge, in which case a Clerkship of three Years shall suffice with such Certificate as aforesaid; And it is further Ordered that no Attorney of this Court do presume to recommend any Clerk contrary to the true meaning of this Rule, And it is further hereby declared that no Person

shall be Qualified for an Admission to the Practise under the full age of Twenty one Years."

Although through this order the court expressed the opinion that a formal college education was desirable, and accordingly reduced from five to three years the period that a holder of an A.B. degree must serve as a clerk before being admitted to the bar, it also announced its belief in the practical value of the training secured in the office of an attorney at law. This conviction,—namely, that a term of five years spent as a clerk is the equivalent of five years divided between university and office,—has been defended until quite recently, for only within the past few years have candidates seeking admission to the bar been required to spend one or two years in college. With this second and last rule concerning clerkships, formal attempts at regulation during the colonial period ceased.²³ Thereafter, when the colony became a state, all such matters were subject to court orders and the direction of the representatives of the people meeting in their legislative capacity.

Mention has already been made of the apprenticeship agreements which clerks studying in attorneys' offices were required to sign. Although from time to time and from office to office the contents of such contracts probably varied as to detail,²⁴ in general they appear to have been modeled after the articles of apprenticeship then so common. An apprentice, for a small annual consideration, agreed to serve an attorney for a term of years, and in return he was to be instructed in the principles, practices, and procedures of the law. He agreed to work faithfully, to obey all lawful commands, to avoid all company and places which might tend to bring his master's name and professional reputation into disrepute, to abjure matrimony and fornication, to inform his master of any and all matters which might do him

July 1742

This Indenture Witnesseth that William Livingston
By and with the advice and consent of his father Philip
Livingston of Albany signified by his being a party
hereto hath put himself and by these presents does voluntarily
and of his own free will and accord put himself an apprentice
to James Alexander Esquire Attorney at Law in the County of
Livingston with intent and after the manner of an apprentice
to serve him the Days
until the full term of four years from the said day he shall be
bound during which term he shall apprentice the said master
faithfully shall serve his secret law his lawful contracts and
every where else he shall do no Damage to his said master nor
to be done by other persons leaving or giving notice to
his said master, nor shall he make the said master any
debt, nor shall he be bound to any, but shall not commit any
fraud, nor contract matrimony without the said master's consent
or any other unlawful thing he shall not play, nor shall he
make any base bargain with his own goods nor with the
goods of other persons, nor shall he serve without license from his said
master neither within any city, town nor place, nor shall he
buy or drink from his said master's wine without his leave
nor drink in houses, taverns or play houses, but in all things he
shall behave himself as a true and honest apprentice to his said
master and shall during the said term attend the said master
in his study of the law, and shall be taught the rules of the law, and
shall be taught the motions of an attorney and
shall be taught the best of his ability, and William
Livingston and Philip Livingston Esquires on the one part
and James Alexander on the other part for the true performance
of all and every the said covenants and agreements bind themselves

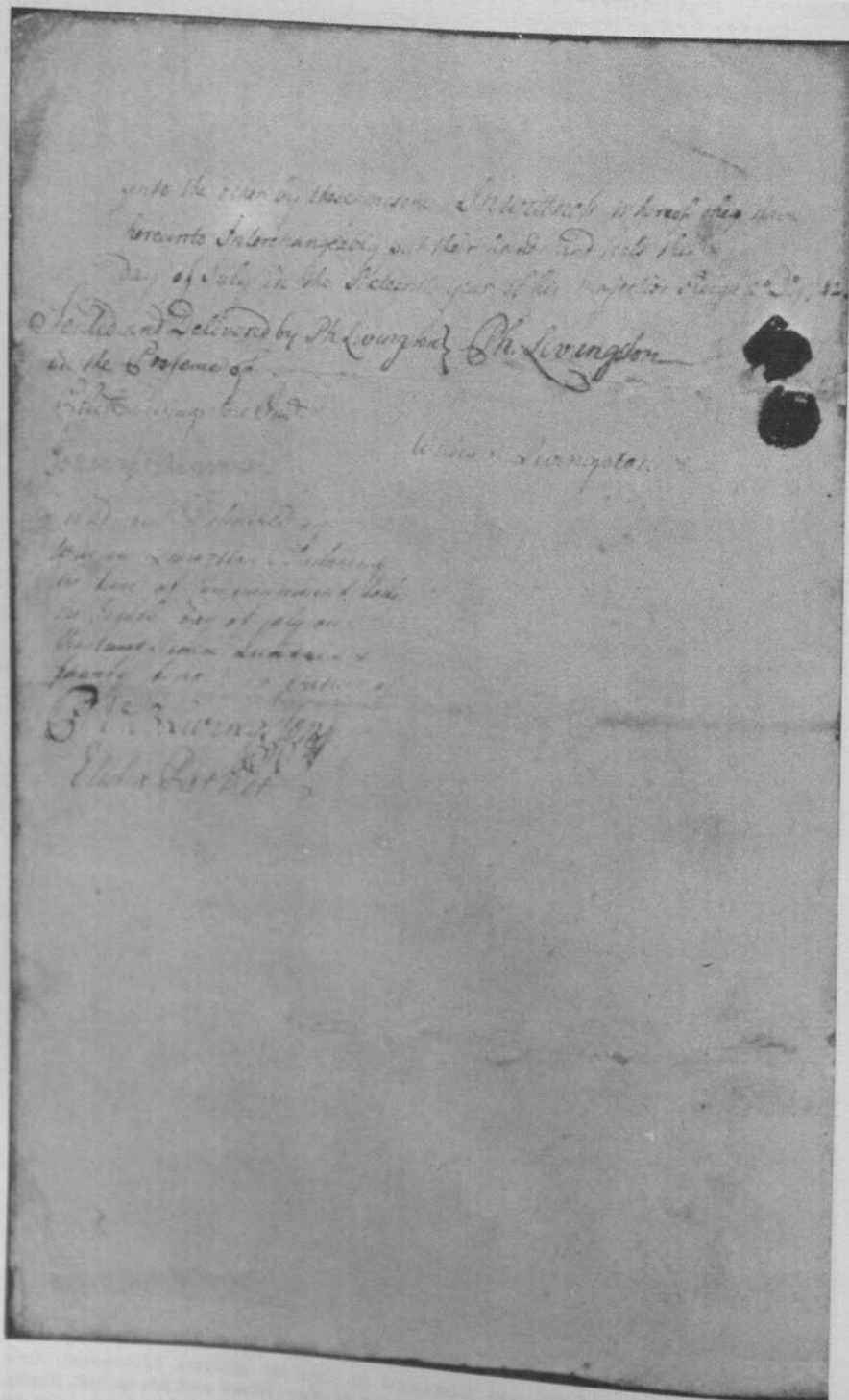
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JAMES ALEXANDER—WILLIAM LIVINGSTON APPRENTICESHIP AGREEMENT

The agreement here shown was subscribed in 1742 by William Livingston, Yale College, 1741, future Revolutionary War governor of New Jersey and his father, Philip Livingston, Second Lord of the Manor. It stipulated that a clerkship four years in length be served in the office of James Alexander, leader of the New York bar. Courtesy of the New Jersey Historical Society, Newark, N. J.

damage, and under no circumstances to disclose his master's secrets. He usually lodged at his master's house, ate at his table, and served him in a variety of ways unrelated to the practice of law particularly during the early years of his apprenticeship. Despite the belief that all law clerks in New York signed such articles, few copies have come to light. An interesting example, however, is the one signed in 1742 by William Livingston and his father, Philip Livingston, Second Lord of the Manor. It stipulated as follows:

"THIS INDENTURE WITNESSETH that William Livingston by and with the advice and Consent of his father Philip Livingston of Albany Signified by his being a party hereto, hath put himself and by these presents Doth voluntary, and of his own free will and accord put himself an apprentice to James Alexander——[of the] City of New York Attorney and Councill at Law Esq^r. with him to live and after the manner of an apprentice to Serve from the [Eighth] day of [July, 1742] untill the full term of four years from the Said day be Compleat and Ended.²⁵ Dureing all which Term the Said apprentice his said Master faithfully Shall Serve, his Secrets keep, his Lawfull Commands gladly Every where obey, he shall do no Damage to his Said Master, nor see to be done by others without letting or giveing notice to his Said Master, he Shall not waste his Said Masters goods nor lend them unlawfully to any, he Shall not Comitt fornication, nor Contract matrimony within the Said term. att Cards dice or any other unlawfull game he Shall not play, whereby his Said Master may have damage, with his own goods nor with the goods of others within the Said term without Licence from his Said Master he shall neither buy nor Sell, he Shall not absent himself day nor night from his Said Masters Service without his leave, nor haunt ale houses taverns or play houses, but in all things as a faithfull

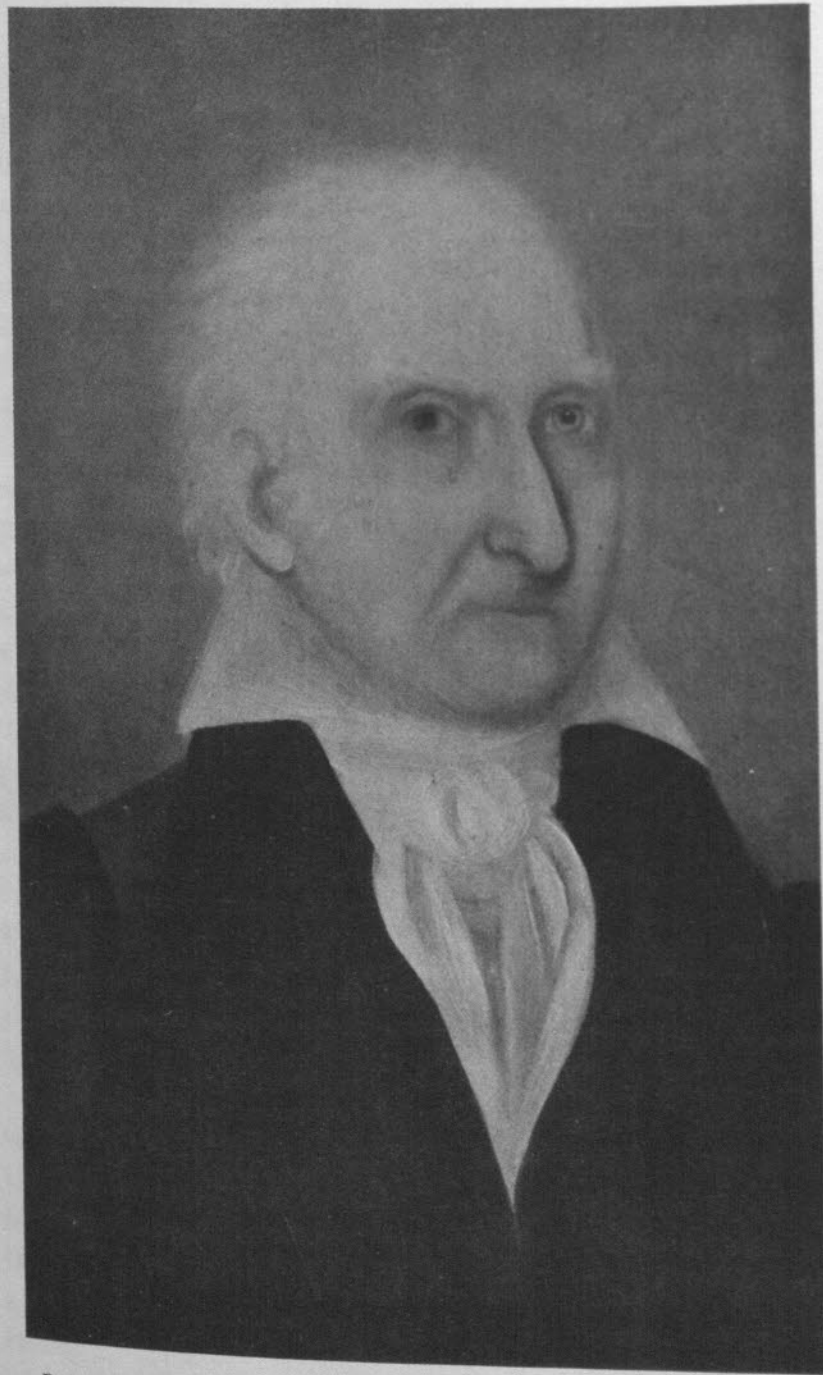


42 LEGAL EDUCATION IN COLONIAL NEW YORK

apprentice he Shall behave himself towards his Said Master, and all his dureing the Said term. AND the Said Master [illegible] ye best [illegible] or Method that he Can Teach or Cause the Said apprentice to be taught the professions of an attorney and Councill at Law to the best of his ability, AND the Said William Livingston and Philip Livingston Severally on the one part and the Said James Alexander on the other part for the true performance of all and every the Said Covenants and agreements bind themselves unto the other by these presents, INWITNESS Whereof they have hereunto Interchangeably put their hands and Seals this day of July in the Sixteenth year of his Majesties Reign a^o D^o. 1742."

In this way one of the most opulent merchants of the time apprenticed his son to New York's outstanding lawyer.²⁶ As has been said, the duties exacted were probably typical of those demanded throughout the entire colonial period from all youths desiring such training.

Whether he served an attorney in England or in New York, a young law clerk usually found that he had undertaken a difficult task. Strange to him were legal phrases and terminology, and more often than not his mind was confused by the mysterious, obscure verbiage which filled the law books then in use. Ordinarily he was expected to "dig out" the law for himself, and for the most part received little help with the legal difficulties which were his lot day after day. It is not at all strange, then, that a boy of sixteen or eighteen years of age felt baffled in his attempt to understand what he read or to see reason in what he was doing. Then, too, when the onerous, monotonous, and exacting duties which daily had to be performed are considered, the reason that a clerkship was distasteful to so many students and that it deterred some prospective attorneys from com-



Peter Van Schaack, 1747-1833; King's College 1767; LL.D., Columbia 1826. Counsellor at law; reviser of the laws of New York, 1771-1772; legal and classical scholar; founder of New York's first law school—The Van Schaack Law School—1786-1830 at Kinderhook, New York. Courtesy of the New York Historical Society, New York City.

pleting their apprenticeships can readily be appreciated.²⁷ Inasmuch as printed forms were not generally available before 1750, every document, together with copies, had to be set forth in longhand. This in some cases—for instance for the decrees of the court of chancery—necessitated the employment of special “writing” or “copying” clerks.²⁸ Under the circumstances, only the hardy and determined survived the forbidding atmosphere which pervaded a number of offices.

That young apprentices complained bitterly of the demands made upon them may be surmised. One well-known denunciation was voiced by William Livingston while he was serving his clerkship. He rebelled against the treatment accorded him and, having written a diatribe upon the attorney-law-clerk situation, he published it in James Parker's *The New-York Weekly Post-Boy* under the title “Sic vos, non vobis, Mellificatis opis.”²⁹ Although Livingston probably exaggerated his situation, he did present a picture that demanded remedial consideration.

A quarter of a century later another criticism of the same attorney-law-student relationship was made by Peter Van Schaack, King's College, 1767. His experiences were freshly in mind for he had just come from the New York City office of William Smith, Jr., and from that of his brother-in-law, Peter Sylvester, of Albany. He wrote:

“Believe me, I know not above one or two lawyers in town that do tolerable justice to their clerks. For my part, how many hours have I hunted, how many books turned up for what three minutes of explanation from any tolerable lawyer would have made evident to me! It is in vain to put a law book into the hands of a lad without explaining difficulties to him as he goes along.”³⁰

And yet in some cases neither instruction, nor a spirit

of comradeship, was lacking in the relationship existing between attorneys and their clerks. Such a situation appears to have prevailed in Benjamin Kissam's office when Lindley Murray and John Jay were serving their apprenticeships. Indeed, while the future chief justice was awaiting admission to the bar, he wrote familiarly to his preceptor and in reply received, together with instructions regarding Kissam's practice, assurances that his services were appreciated. Upon one such occasion concerning his calendar at the Westchester County Court sitting at White Plains Kissam wrote:

"All I can tell you about the causes is little more than to give you a list of their titles; but this is quite enough for you. One is about a horse-race, in which I suppose there is some cheat; another is about an eloped wife; another of them also appertains unto horseflesh. These are short hints, they may serve for briefs. If you admire conciseness, here you have it. There is one writ of inquiry.

"As to the cause about Captain's island, this, tell Mr. Morris, must go off. . . . There will probably be some of my old friends, who may inquire after me, and perhaps some new ones who will want to employ me. . . . I wish you good success with my consignments, and hope they'll come to a good market. If they don't, I am sure it will not be the *factor's* fault; and if my clients' *wares* are bad, let them bear the loss.

"You will see my docket, with memoranda to direct what is to be done."³¹

In conclusion, John Quincy Adams's experience in 1787 in the office of Theophilus Parsons, Sr., in Boston, Massachusetts, may be cited. Although it may not exemplify the situation as it existed in New York, it shows, nevertheless, an ideal attorney-clerk relationship.

"It is of great advantage to us," young Adams wrote,

"to have Mr. Parsons in the office. He is in himself a law library, and a proficient in every useful branch of science; but his chief excellency is, that no student can be more fond of proposing questions than he is of solving them. He is never at a loss, and always gives a full and ample account, not only of the subject proposed, but of all matters which have any intimate connection with it. I am persuaded that the advantage of having such an instructor is very great, and I hope I shall not misimprove it as some of his pupils have done."³²

Apparently, then, with some exceptions, the experiences which the average law clerk underwent in the offices of New York attorneys during the colonial period were monotonous, arduous, and generally uninspiring. Nevertheless, these experiences not only developed character but also trained clerks for leadership in the legal profession as well as in the civic affairs of the colony.

In accordance with her colonial status, the rules affecting the education, training and admission of lawyers in New York were based upon regulations which had been established by Parliament over a period of years. These, also, were followed after 1776, for the acts of the state legislature and the orders of the several state courts,—not excepting the provisions of the 27th Article of the Constitution of 1777,—were modeled after the English statutes with which the leaders of the day were familiar.³³ Among such statutes was a law passed in 1605. Its second section stated:

"And to avoid the infinite Numbers of Solicitors and Attornies, be it enacted by the Authority of this present Parliament, that none shall from henceforth be admitted attornies in any of the King's Courts of Record aforesaid, but such as have been brought up in the same Courts, or otherwise well practised in soliciting of Causes, and have

been found by their Dealings, to be skilful and of honest Disposition; (2) And that none to be suffered to solicit any Cause or Causes in any the Courts aforesaid, but only such as are known to be Men of sufficient and honest Disposition."

Another statute, which had been passed in the second year of King George's Reign, and which went into effect on December 1, 1730, provided that thereafter no person was to be admitted as an attorney or as a solicitor unless he had been examined by the judges of the court in which he desired to practice "as to his fitness and qualifications in such manner" as the judges should decide. In order to qualify for such an examination, clerks must have served a clerkship five years in length with a sworn attorney or solicitor of the respective court in which the applicant wished to practice. Moreover, the judges of the courts were by this act required not to swear into office a number of attorneys or solicitors greater than formerly; and when they did admit an applicant, his name was to be enrolled in a book specially kept in the court for that purpose. A solicitor as well as an attorney, however, might upon examination, without the payment of fees, transfer his activities from one court to another, while those admitted to practice before the courts at Westminster could practice in the inferior courts of the realm if not against the policy of the lower courts, provided that "such Person be in all other Respects capable and qualified to be admitted an Attorney according to the Usage and Custom of such inferior Court." Finally, a law of 1753 required that a prospective lawyer must file with the clerk of the court—into which eventually he expected to be admitted—an affidavit certifying that he had begun the study of law. This affidavit had to be made within three months from the time a clerkship was commenced. It must contain the clerk's name and

address; the name and office address of the master; the places of abode of both servant and master, and the date when the articles of apprenticeship were subscribed. It must, finally, be produced in court on the day when the examination for admission to practice was held. For filing it a fee of £0.2.6 was charged. Thereafter during the next five years the young clerk must serve his master well, but "only in the proper business of an Attorney or of a Solicitor."⁸⁴

These regulations of Parliament applied to the colonies as well as to England, and to their requirements—in so far as the undeveloped political situation in the province and the frontier condition of sections of the colony permitted—the authorities, practitioners, and law students in New York willingly conformed.

⁸⁴In England at this time the governing authorities of the Inns regulated their members; the courts controlled other members of the profession; while above both stood Parliament. All candidates had to be admitted by a court before they could practice. Only those who had studied at one of the Inns of Court could call themselves Barristers at Law, and could plead at the bars of the various courts.

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

⁸⁵For rules and regulations concerning this matter see Dugdale, *Origines Juridicales*, *passim*, especially pp. 141-335.

⁸⁶See William Huddleston's petition (1695), Appendix III, p. 156.

⁸⁷See William Kelly's petition (1727), Appendix III, p. 157. Also see New York: *Minutes of the Supreme Court of Judicature, 1727-1732*, pp. 6, 17; O'Callaghan, *Calendar of Historical Manuscripts*, Pt. II, 62:58; 68:26. Joseph Murray, who began to practice around 1716, is said to have "served his time to the law." (Thomas Jones, *History of New York . . .*, I, 136 n.) The fact that from the first decade of the English rule all candidates seeking admission had to secure a license justifies the conclusion that clerkships were subject to some regulation. "1694—Application for admission to practise was by petition to the Governor, who referred the person to the Judges, and on their Certificate, a license was granted." (O'Callaghan *Papers*: "Attornies and Counsellors." See also New York: *Calendar of Council Minutes*, V, 41, January 19, 1683/4; O'Callaghan, *Cal. Hist. MSS.*, II, 39:194.

⁸⁸Certain governors, particularly Burnet, Clinton, Moore, Colden, and Tryon, appear to have issued licenses to applicants whether they were qualified or not. For every license granted a fee was collected. Each of the

bar agreements entered into after 1725 bound its subscribers to combat indiscriminate licensing. Around 1760 it could be written: "Into the county courts attornies are introduced with still less ceremony. For our governors have formerly licensed all persons, how indifferently soever recommended; and the profession has been shamefully disgraced by the admission of men not only of the meanest abilities, but of lowest employments." (William Smith, Jr., *History of the Late Province of New York*, II, 382-3.) Perhaps Smith's ideas on the training which members of the bar should receive were more exacting than the conditions of the colony warranted. See also *The Independent Reflector*, No. XXXV, (1753). PP. 139-142. "Columbiana," Columbia University, New York City.

⁹See "Bar Agreement of 1729," Appendix IV, pp. 158-9. See also *Iconography*, IV, 28, July, 1729.

From this rule it may be seen that the courts exercised ultimate control over clerkships. At no time does it appear that either the General Assembly or the Governor regulated the attorney-clerk relationship. Although the Assembly considered the matter several times, no bill was passed. For instance, see New York: *Journal of the Votes and Proceedings . . .*, I, 600-601, 606 (1699). This appears to have been the first time (1730) the Assembly considered this problem. The Act of 1695 simply regulated the number of lawyers a litigant might employ. Clerkships, so it would appear, were solely within the jurisdiction of the courts. After 1777, nevertheless, the State Legislature upon several occasions passed acts authorizing the courts—supreme and inferior—to assume charge of admissions, which by implication included the power to establish standards for those applying to be licensed. Incidentally it should be pointed out that for a hundred years following the Order in Council of January 19, 1683/4 (New York: *Calendar of Council Minutes*, V, 41), no restrictions were placed upon attorneys from outside New York, or upon clerks trained outside either colony or state, who applied either for admission or for permission to practice. Only with the Order of the Supreme Court of April Term, 1783, which required all clerks thereafter to serve apprenticeships within New York, was any distinction recognized. No instance occurs where a candidate whose education had been acquired abroad was denied admission. It is probable that knowledge of this policy persuaded Peter Jay seriously to consider placing his son John in a law office in either Bristol or London, England. See Frank Monaghan, *John Jay . . .*, 29.

¹⁰New York: *Min. Sup. Ct. of Jud.*, 1727-1732, p. 208. In New Jersey, in 1733, "during the administration of Governor Cosby, it was provided by an act of Assembly, that no person should be permitted to practise as an attorney at law, but such as had served an apprenticeship of at least seven years with some able attorney licensed to practise or had pursued the study of law for at least four years after coming to full age. Before this, no previous term of study had been required as a qualification for admission to the bar." (R. F. Field, *Provincial Court of New Jersey*, 132.) This whole act, of which the above is a part, was disallowed by the Crown two years after its passage.

E. J. Fisher, *New Jersey as a Royal Province*, 251. This act of the New Jersey Assembly may have been passed as a result of agitation on the part of members of the New Jersey Council who on April 21, 1732, had considered the matter of the education of members of the bar. An entry in the Council Minutes under that date reads:

"The President acquainted this Board that some time since he had received from M^r. Chief Justice a recommendation of one Patrick McEvers to have the Presidents License for being a Practitioner of the Law, since which he had received a letter from Some of the Members of this Board Complaining of the too great number of Practitioners many of whom was supposed not Suitably Quallified for that Employ and Desiring the President not to grant the said Lycence till the matter had been Considered in Council upon which he had delayed the Granting any such Lycence, he also informed the Board that since that time he had received another, a very particular Recommendation from the Chief Justice of one David Ogden for to receive the like Lycence, and told him he had reason to believe that like application would be made to him on Behalfe of Coll^o Nathaniel Gilbert known to himself & as he believed to Others of this Board to be a person of Fortune and Suitable learning in the Law for that purpose and Desired the Advice of this Board what to do.

"It is the Opinion of this Board that the President Grant them Lycenses as Usual, But that it be Recommended to the Chief Justice to recommend no person to the Governor or President for the time being But such of whose Honesty Ability and Learning in the Law he is well assured after having publicly Examined in Open Court the person, applying for such recommendation." (*New Jersey Archives*, XIV, 468.) This is the first time in the records of New Jersey or New York that a public examination in open court is mentioned as being required of candidates seeking admission. (Until 1738 New York and New Jersey were under the same governor.)

¹¹That attorneys did not in all cases abide by the court's order is seen in the case of the apprenticeship agreement entered into in 1742 between William Livingston and James Alexander, which called for a four-year term. An exception was probably made in this instance because Livingston had a baccalaureate degree from Yale College. A law-clerk, of course, need not serve his whole apprenticeship with one attorney. If expedient, he could divide his term of service between two or more law offices.

¹²*Docs. Rel. Col. Hist. N. Y.*, VII, 705. February 22, 1765. Also see *Iconography*, 6 December, 1765.

¹³See Appendix IV, pp. 160-1, for a copy of this agreement. An attorney having one writing clerk was prohibited from employing another for a period of fourteen years. This seems to have been inserted because under the guise of writing-clerks attorneys for one reason or another apparently were taking into their offices young men, on a basis different from that affecting regular clerks, with the idea that they would eventually qualify for a license to practice. Both this agreement and that of 1764, as well as the court order of 1767, definitely prohibited such a practice. (See pp. 160-1; 163; 39-40, herein.) How-

ever, an attorney was permitted to take into his office a son in addition to the one student-clerk he already employed. Neither New Jersey, Connecticut, nor Massachusetts ever had a regulation so strict as this one in New York. The rules of the Essex County Bar of Massachusetts were quite restrictive, but they did not require an A.B. degree followed by a five-year clerkship. See *Massachusetts Colony Record Book . . .*, XIX, 149-79.

¹²One of the younger leaders of the bar at about this same time wrote: "The door of admission into the practice is too open. The usual preparatories are a college or university education, and three years apprenticeship; or, without the former, seven years service under an attorney." (William Smith, Jr., *op. cit.*, II, 382-3.)

¹³That an examination in open court was required from an early date may be surmised from the endorsements upon William Huddleston's petition for a license in 1694/5. See Appendix III, p. 156. However, neither court, governor, nor legislature is known to have put such a requirement into writing. On October 24, 1771, the supreme court ordered: "That Mr. Attorney General, Mr. Hicks, Mr. Duane and Mr. Samuel Jones do attend this afternoon at six o'clock at the house of Richard Bolton in the Broad Way in order to examine the Gentlemen who have made applications for Lycenses to practice in this Court and that said Examination be held in the presence of such of the Judges of this Court as shall attend." (*Min. Sup. Ct. Jud. N. Y.*, 1769-1772, p. 443.)

¹⁴That this regulation was enforced is shown by contemporary evidence. Warren may have confused this agreement with that of 1756, when he says that the rule of 1764 regarding the taking in of clerks was rescinded for John Jay when it was found that he and other young men would leave the colony to study if the rule was enforced. John Jay, he says, was about to go to England to study when the bar revoked its rule, and he was placed in the office of Benjamin Kissam. Charles Warren, *History of the American Bar*, 201-2. It is true that Jay entered Kissam's office in 1764, but it was the Rule of 1756 which was changed. The rule of 1764 required a five-year clerkship after only two years of college work. Jay graduated from King's College in June, 1764, and was admitted to the bar in October, 1768, after serving a four-year clerkship.

¹⁵In both these agreements the sum of £200 must be paid prior to the commencement of an apprenticeship.

¹⁶In 1723 James Alexander charged Robert Gilchrist, father of apprentice James Gilchrist, but £6 annually. At this time Alexander had just moved to New York City and doubtless was glad to secure a clerk at any price. How much he charged Philip Livingston, father of William, in 1742, is not known, but it probably was considerable for by then Alexander was at the top of his profession; it was large, if William Livingston's statement is to be relied on. See Appendix VI, pp. 167-170. The sums charged by attorneys in practice outside New York City undoubtedly varied from office to office and between person and person.

¹⁷See Appendix IV, pp. 158-164, for these agreements. In the 1756 agree-

ment this situation was considered of such importance that the whole fourth clause was devoted to it with specific provision being made for determining whether or not the £200 had been paid. In the 1764 agreement this was one of the matters incorporated in the first clause, but the inquisitorial feature found in the earlier agreement was not included.

¹⁸Since each subscriber was permitted to take without charge into his office one son in addition to a clerk, these agreements doubtless were not looked upon with ill favor.

¹⁹That these agreements were enforced may be seen from the following statement, dated September 4, 1758, made by Samuel Jones to his father: "You mention something of taking Gilbert home to work upon the farm. . . . The law for which you designed him, is, at present opprest with Pretenders. The Late Regulation, among the Attornies, will render his admission into the Practice very difficult. This study of law must be attended with great expense. He will meet with many obstructions." (*Samuel Jones Papers*, "Correspondence.")

Peter Jay probably paid £200 when in 1764 he placed his son in the office of Benjamin Kissam. Frank Monaghan, *op. cit.*, 32. On this subject the following letter is interesting:

"New York Novm^r: 24, 1797

"In pursuance of Your request, I have ascertained the terms upon which M^r. Munro will take my friend V^a Wyck [P. C. Van Wyck].

"Two Clerks who are now with him, pay him one hundred and fifty pounds each. But upon my assuring him that M^r. Van Wyck would be a more valuable Clerk to him, than either of those two, he has consented to take him upon the same terms I lived with him.

"I am persuaded that it will not be arrogant for me to say that the services I rendered M^r Munro during my continuance with him, would have made it as proper for him to have abated my fee, as that of any Clerk he could have taken. But I assure you, that I paid him the whole sum agreed upon with my own hand, being one hundred pounds. I am not ignorant that it is belived by most of my friends that I ought not to have paid any fee, and they therefore conclude that none was accepted; But this is a mistake and the reason, why I have kept the thing private, is the same which will render it proper not to divulge your Nephew's terms, because his other Clerks pay him more.

"I yesterday received a letter from M^r. V^a Wyck, expressing great anxiety to hear from me on the above subject, which I shall delay answering until I have the pleasure to hear from you.

"I am, Dear Sir

"with respect

"Your Most Ob Serv^t

"Daniel D. Tompkins"

"To

"The Honb^l. Philip V^a. Cortlandt Esq^r. Philadelphia." (*Van Cortlandt-Van Wyck Papers 1794-1798*, Letters, etc.)

²⁰That the bar leaders continued to be disturbed by the clerkship situation may be surmised from an entry in the *Minutes of the Moot* under date of February 5, 1773, when it was ordered that "Notice be given to the Members of the Moot, that they attend at the next Meeting, as some Regulations are then to be considered of with Respect to the taking of Clerks for the future." (*James Alexander Papers: "Moot Debating Club."*)

²¹New York: *Min. Sup. Ct. Jud., 1766-1769*, p. 180. On the margin alongside this rule appears the following: "N. B. the Chief Justice [Daniel Horsmanden] was not on the Bench, but this Rule was agreed to at a Conference of the four Judges before it was entered." The judges present were William Smith, David Jones, and Robert R. Livingston.

²²The license to practice invariably contained the phrase: ". . . being well assured of the Ability and Learning of . . .," or a similar statement.

²³In New Jersey, whose government for a number of years was joined to that of New York, and several of whose governors, chief justices, and attorney generals served also for New York or came from that province, the first order made by its supreme court respecting the education of law clerks seems to have been entered in 1756. Eleven years later, 1767, another rule which provided for an examination in open court and established a clear distinction between counsellors and attorneys stated:

"Whereas the Mode & Rule for the Recommendation of Attorneys to practice in the Several Courts of this Province has upon Experience been found improper and Inadequate to the valuable Ends designed thereby: It is therefore ordered that for the future upon Application of any Person to be Recommended as an Attorney at Law of this Province he shall produce a Certificate from the Gentleman whom he has served, purporting that he has served him faithfully and Constantly as a Clerk for the space of five Years & that he is properly qualified both as to Integrity and Ability in his Profession And that his Ability & Capacity to be approved upon a Publick Examination in Open Court without which no Person shall be Entitled to a Recommendation from the Justices of this Court to the Governor for a Licence, And Whereas the Court also Considering that the undistinguished Admission to Practice both as Attorney & Councillor at Law has been found inconvenient and the Introduction of a Contrary Practice may be of great Utility and put the Profession of the Law in this Province upon a more Respectable footing. It is therefore Ordered that for the future the Recommendation to practice as Attorney & Councillor be distinct and that no Person be Admitted as Attorney and Councillor at Law until he shall have practiced as an Attorney for the Space of three Years at least and upon such Application to Submit to such an Examination in open Court touching his Abilities & Knowledge in the Law as the Court shall think proper." (*New Jersey: Min. Sup. Ct. Jud., 1767-1768*, pp. 14-15.) This rule, dated April 17, 1767, antedated a similar one in New York by some twenty years. It embodies the general principles underlying admission to the bar in New Jersey today.

The Essex County Bar of Massachusetts in 1768 stipulated:

"It is agreed that we will not take any young gentlemen to study with us, without previously having the consent of the Bar of this County; that we will not recommend any persons to be admitted to the Inferior Court as Attorneys, who have not studied with some barrister three years at least nor as attorneys to the Superior Court, who have not studied as aforesaid, and been admitted at the Inferior Court, two years at least; nor recommend them as barristers till they have been through the preceding degrees, and been attorneys at the Superior Court two years at the least—except those gentlemen who are already admitted in this County as attorneys at the Superior and Inferior Courts, and that these must be subject to this rule so far as is yet to come." (*Charles Warren, op. cit., 197.*)

In 1771 the Suffolk County Bar of Massachusetts required that the "consent of the Bar shall not be given to any young gentleman who has not had an education at college, or a liberal education equivalent in the judgment of the Bar." In 1783 this same bar provided that thereafter an examination by a committee must be taken previous to beginning a clerkship. See *Massachusetts Colony Record Book . . .*, Vol. XIX, 149-79.

²⁴For instance, when in 1764 John Jay was contemplating entering into articles of apprenticeship to Benjamin Kissam, his father urged him to stipulate for certain conditions in the indenture. This shows that variations might be found in such articles. See Frank Monaghan, *op. cit., 29.*

²⁵Livingston's college training probably caused the reduction from the six-year period common at the time.

²⁶Although the James Gilchrist apprenticeship agreement and this one are the only two law-clerk indentures discovered for colonial New York, others are probably extant among family papers—for instance, among the *John Jay Papers* at Bedford, N. Y. The Alexander-Gilchrist agreement may be read in Appendix V, pp. 165-6.

²⁷As an example of the drudgery connected with the life in law offices before printing became common, see *William Smith Papers: "Common Place Book,"* in the New York Public Library. A summary of this book shows: (1) twenty-one pages devoted to "A Scheme for Drawing out Bills of Costs in the Supream Court of New York—Digested into Tables" with an "Index"; (2) thirteen pages of costs in the "Inferiour Court" with "Abbreviations" and an "Index"; (3) "A Bill Concerning Assignments of Specialtys" from what is stated to be a true copy of the original in the Secretary's Office, Bundle of Acts passed in 1684-1685, preceded by one page headed "Promptuary"; (4) 173 pages of "A Treatise on Evidence" copied from a book lent Smith by John McEvers who had borrowed it from Francis Costigan; (5) nine pages covering the ordinance of Governor Jonathan Belcher, decreed November 23, 1753, covering the fees of officers of the Court of Chancery of the Province of New Jersey; (6) "A Regulation for the Taxation of Costs in the Supream Court Between Client and Client" with a set of "General Rules" covering a variety of situations arising in the daily work of a lawyer and one page of "Additions" agreed to February 27, 1760. These regulations "Agreed to by This Society on the 30th March, 1757," where subscribed to on August 1, 1757, by twelve

lawyers; namely, "B. Nicoll, W^m. Smith Jun., John McEvers, Rich^d. Morris, Jⁿ Morin Scott, Whitehead Hicks, Benj. Kissam, Jⁿ Alsop, Ja^s Duane, W^m Livingston, John Burnet, Ebenezer Bryant"; (7) twenty-six pages of various legal forms, orders and instructions; (8) five pages devoted to "Some Directions Relating to the Study of the Law"; (9) twelve pages of rules of the Supreme Court following 1699, the last of which is one regarding "Struck Juries."

²⁸The skillful penmanship of these clerks in a number of cases was highly artistic. Extant file papers show that printed forms covered generally such matters as mortgages, recognizances, notes of issues, and certain kinds of contracts. Law students even in the eighteenth century found it necessary to burn the midnight oil. In answer to a curt note from his father wherein complaint was made that he was wasting his time in riotous living in New York City, William Livingston made a detailed reply explaining how the hours of the day were spent, saying among other things that he had frequently studied until 2 A.M. Theodore Sedgwick, Jr., *Life of William Livingston*, 56-7.

²⁹See issue of August 19, 1745, first page. For copy, see Appendix VI, pp. 167-170. Elisha Parker, nephew of James Parker, editor-owner of *The New-York Weekly Post-Boy*, had been a clerk in Alexander's office when Livingston entered upon his duties there, and he subsequently married Catherine, one of Alexander's daughters. For another article by William Livingston on this same subject, see *Ibid.*, issue of 3 March, 1746.

³⁰H. C. Van Schaack, *Life of Peter Van Schaack*, 9. For a brief account of the experiences in 1781-1782 of James Kent, clerk to Egbert Benson, attorney general of the new state, in his office in Poughkeepsie, see William Kent, *Memoirs and Letters of James Kent*, 32-7.

³¹William Jay, *Life of John Jay*, I, 16-23. See especially Jay's letter, written in a somewhat facetious spirit, to Kissam, and the reply to it of which the above quotation forms a part. See also Frank Monaghan, *op. cit.*, 44.

³²*Diary of John Quincy Adams* (November 27, 1787), in Proceedings of the Massachusetts Historical Society, 2d ser., Vol. XVI, 351.

The writer of the following letter shows that the life of a clerk in England was just as disappointing as that of one in New York. He writes:

"The Articled clerks of attornies were still worse off. [Worse than students in the Inns of Court.] A friend has lent me a most interesting little book: 'A Letter from a Grandfather to his Grandson, an Articled Clerk, pointing out the right course of his studies and conduct during his clerkship, in order to his successful establishment in his profession. By Jacob Phillips, of the Inner Temple, Esq., formerly an articled clerk. London: Printed for George Wilson, successor to R. Bickerstaff, corner of Essex Street, Strand, 1818.' On pages 37-40 of this book is found the following extract from the letter.

"The difficulty that now meets you is, how to obtain satisfactory information in answer to this question, and here there is considerable difficulty; your tutor is probably always engaged in the hurry of practice, your brother clerk may not be competent to answer you, there is no applicable junior law-book to assist you, and you must make the best use you can of the books that

are procurable. This is the general unaided state of a youth entering an attorney's office. No wonder that so many exclaim, *Fateor, animus meus amisit me*. It is impossible to conceive a more lamentable case, than a youth, just taken from school, glowing with admiration of the beauties of Grecian and Roman literature, set down to an attorney's desk to copy declarations and pleas, of all things the most contrary to his former pursuits. What then is he to do? Why, he must unlearn what he has learnt, he must lower his feelings and taste, and submit to grope on his way in darkness and ignorance, till nearly at the end of his clerkship he begins to catch some glimmering view of legal principles and science. But how much time is lost this while! How many, too, are left their whole lives in this career of ignorance, and though at first they entered their new pursuit full of ardour and eagerness to succeed, yet the constant drudgery of doing what they did not understand, turned the edge of their pursuit, and lost them to their profession. This has been the fate of many who will possibly read this work. What then is the remedy?

"The remedy is happily clear and certain, if it could but be adopted.

"Let there be a professional law school to take boys, from twelve to sixteen, eighteen, or twenty years old, and let them be taught the rudiments of law; and, indeed, let the older scholars go deeper into the subject. Let there be two courses of study—one for those intended to be attornies, and which would stop at sixteen; and the other for those intended for conveyancers, and which should go on to eighteen or twenty.'" (W. B. Odgers in *A Century of Law Reform*, I, 34-6.)

³³The popular treatise dealing with such matters at the time of the Revolutionary War was a volume by J. Coote entitled: *The Law of Attornies and Solicitors; Containing all the Statutes, Adjudged Cases, Resolutions, and Judgments concerning them Under the following Headss . . .* (London, 1764). John Jay's copy of this book which he purchased in 1772 is in the Law Library of Columbia University.

The Acts of Parliament regulating attornies and solicitors as listed by Coote were: 3 James I Ch. 7; 2 George II, Ch. 23; 6 George II, Ch. 27; 12 George II, Chs. 13 & 46; 23 George II, Ch. 26; and 26 George II, Ch. 46.

³⁴For the Statutes of Parliament regulating the education of attornies and solicitors see J. Coote, *op. cit.*, *passim*, but especially pp. 1-60.