

The Law School Papers of Benjamin F. Butler

**NEW YORK UNIVERSITY SCHOOL OF LAW
IN THE 1830s**

COMPILED AND EDITED BY
RONALD L. BROWN

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OF BENJAMIN F. BUTLER**

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The late Charles T. Butler also kindly granted permission to use papers of Benjamin F. Butler.

For Jane

Preface

This book is based on several years of searching for letters and other papers of Benjamin F. Butler still existent, approximately 2,500 documents located in more than 75 repositories throughout the United States and in Great Britain. While working on this project, I received considerable assistance from many people; however, two individuals deserve my special thanks, for without them the results of this project could never have been realized. The idea to collect copies of the papers of the founder of New York University's School of Law came from the distinguished legal historian and professor John Phillip Reid. A collection of Butler material became a reality when Gerald C. Crane, former assistant dean for alumni relations and development at New York University School of Law, lent his support to the project, both directly and indirectly through the efficiency and good humor of his assistant, Bobbi Glover.

I have been fortunate to work as research and reference librarian at the New York University School of Law, an institution with a serious commitment to research in legal history, and with two of the outstanding scholars in the field, Reid and William E. Nelson, professor of law. The tone of the institution is set by Norman Redlich, dean of the School of Law. The encouragement and constant support of two of the premier law librarians in the United States, Julius J. Marke and Diana Vincent-Daviss, professors of law, were indispensable to writing this book, as was the help I received from various colleagues in the Law Library.

The process of ferreting out Butler documents, obtaining copies, organizing them, and transcribing what were at times almost illegible

handwritings would have been impossible without the diligence and persistence of Howard Ostrowsky, David Baron, and Patricia Brown.

Of the many archivists and librarians who responded to my call for Butler documents, two stand out from the rest. Bayrd Still, New York University professor of history emeritus and director of the archives of New York University, and Thomas Frusciano, university archivist, undertook the search for material on Butler and on the early history of the law school with zeal, uncovering a rich body of documents beyond my expectations.

The editing and annotating of historical material is an art that is usually learned slowly by trial and error in the early stages, but I learned the technique quickly with the assistance of Brenda Parnes, coeditor of volume three of *The Papers of William Livingston*.

Part I of this volume went through several drafts, each of which was improved by the insight of scholars who gave liberally and generously of their time and effort. I twice presented Butler material to the Legal History Colloquium of the New York University School of Law and received critical commentary from Nelson, Reid, and Norman F. Cantor, professor of history, as well as from the other students of legal history who assemble regularly in that forum. The focus of my research and writing was significantly affected by extensive comments and recommendations on two drafts read by Paul H. Mattingly, New York University professor of history and former editor of the *History of Education Quarterly*. I also received valuable criticism from Harold M. Hyman, William P. Hobby professor of history at Rice University, and from Conrad K. Harper of Simpson, Thacher, and Bartlett, New York City, and the New York Bar Foundation. Two drafts were also critiqued by Lawrence Fleischer and Richard B. Bernstein.

James Paul, professor at Rutgers Law School (Newark) and a Butler relation, is probably the only person with as much interest in Benjamin F. Butler as I have. I have profited from our long conversations and from his critique of two drafts.

So that this volume would not be as difficult to read as a Butler manuscript, it was typed by Elizabeth Roe and Carole Percaccia.

So that it could be typeset, I received a generous grant from the Charles Evans Hughes Press of the New York Bar Foundation and the Foundation's Board of Directors to whom I am deeply grateful.

Finally, my wife, Jane, and my two children, Alex and Sam, always helped me to know that there were other things in life as important as this book.

Abbreviations

DOCUMENTS

AD	Autograph Document
ADS	Autograph Document Signed
ALS	Autograph Letter Signed
ADf	Autograph Draft
LS	Letter Signed
PD	Printed Document
TypC	Typed copy

REPOSITORIES

CtY	Yale University, Sterling Memorial Library
DLC	Library of Congress
MiU-C	University of Michigan, Clements Library
MH-L	Harvard Law School
N	New York State Library, Albany
NCH	Hamilton College
NHi	The New-York Historical Society
NjP	Princeton University
NUU	New York University (Archives)
NUU-L	New York University School of Law

MISCELLANEOUS

BFB	Benjamin F. Butler
Council	Council of the University of the City of New York
<i>Council Minutes</i>	Minutes of the Council of the University of the City of New York
Plan	<i>Plan for the Organization of a Law Faculty in the City of New York</i>

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I

THE UNFULFILLED
ASPIRATIONS OF AN
URBAN LAW SCHOOL
IN JACKSONIAN
AMERICA

The connection between Benjamin F. Butler and the teaching of law dates from the earliest history of New York University in the 1830s. Butler's name first appears in that institution's records during its preliminary stage of organization when at a January 3, 1831, meeting of the university's governing council he was recommended by the Committee on Provisional Appointments as someone suitable to lecture and arouse public attention on behalf of the university. Later that month, a memorial to the New York State legislature requesting an act of incorporation for the university included a department of law. These are the formal origins of New York University's School of Law and the beginning of the ten-year first stage of the school's history, a history rich in its description of the aspirations and problems of forming a law school in the antebellum period, yet one that is virtually unknown.

The documents reproduced in full in this volume tell the story of the law school formed at New York University in the 1830s. They were selected from more than 2,500 surviving Butler letters and papers. These primary sources provided the basis for a deeper understanding of legal education and the legal profession in Jacksonian America. The text that follows offers an interpretation of the early history of the New York University School of Law, fitting these events into two related historical themes. Chapter 1 narrates the main events of the early history of the law school. Chapter 2 then focuses on the planning and promotion of the school, discussing the conditions in New York City and its legal community out of which the idea for a university-based law school emerged and the uniqueness of Butler's Plan for the Organization of a