

## ***Factions, Contraband, and Civil War: the Historical Context of Holmes v. Walton***

***Michael S. Adelberg, February 2010***

In May 1779, a militia detachment from Freehold Township led by Maj. Elisha Walton seized a wagon full of rare textiles and luxury items in the possession of John Holmes and Solomon Ketchum on a road between Freehold and Raritan Bay, an area well known for illegal trading between Americans and British. Understanding the strong likelihood that the goods had been acquired illegally from British-held New York, Walton's men seized the wagon. Two days later, John Anderson, a Freehold Magistrate friendly with Walton, upheld the seizure on the verdict of a six-person jury.

Holmes and Ketchum were both members of sprawling families that included members living along the exposed shore, and members in safer inland locations. Holmes, a member of a large and prominent family that included both a militia Colonel and a member of the New Jersey Assembly, was aggrieved by the loss of the wagon to Walton, a rival of his family's patriarchs. He retained a good attorney, William Wilcocks of Freehold (a rival of Walton and Anderson) and challenged the legitimacy of the seizure.<sup>1</sup>

The case went to the New Jersey Supreme Court, headed by Chief Justice David Brearley, a friend of Wilcocks from neighboring Upper Freehold Township. After a series of delays, on September 7, 1780, the Court reversed the seizure of goods by Walton because the legal proceeding under which the seizure was upheld was contrary to the trial-by-jury protection assured by the New Jersey Constitution. The court never declared that Holmes and Ketchum

were innocent, only that their rights to a fair trial were denied. The case is often cited as groundbreaking in American jurisprudence for establishing the principle of judicial review.<sup>2</sup>

For more than a century, legal historians and scholars have examined *Holmes v. Walton* for the important role it played in American constitutional history, but it was also an event within a chaotic local war. The purpose of this essay is to place *Holmes v. Walton* in its historical context within Monmouth County, New Jersey, as an event influenced by:

1. Irregular warfare in Monmouth County,
2. Pervasive contraband trade between Monmouth and New York, and
3. Raucous local politics.

### **1. Irregular Warfare in Monmouth County**

The character of the American Revolution changed profoundly for the people of coastal New Jersey toward the end of 1778. The Franco-American alliance and subsequent Monmouth Campaign (climaxing at the Battle of Monmouth on June 28, 1778, in which the Continental Army fought on even footing against the British) changed British strategy. The British military posture shifted from offensive to defensive: They sent an expeditionary force to the South to rally Loyalists, and consolidated their remaining forces in New York City and a few points in New York Harbor, where they contented themselves with raids of neighboring areas as their default offensive tactic.<sup>3</sup>

For coastal New Jersey, raids from British-held New York City, Staten Island, and Sandy Hook, destabilized the region. In 1778, while a handful of raids were launched against strategic targets—including the large salt-works at Manasquan in April and the privateers' port of Egg Harbor in October--plunder of civilians was limited. In 1779, the British continued to execute a handful of large raids into New Jersey (such as the April 1779 razing of the magazine at Tinton Falls), but new types of raiders emerged alongside the soldiers.<sup>4</sup> These were irregular raiders outside of British command, an unruly lot comprised of:

- Loyalist soldiers furloughed or detached from their unit for temporary irregular duty,
- Loyalist soldiers at the end of their three-year enlistment and army deserters,
- Opportunistic bandits for whom raiding was a livelihood, and
- People driven to violent disaffection by grievances against the new American government—including:
  - Runaway African American slaves (deprived a basic freedoms under the American flag but offered freedom by the British),
  - Quakers (fined and harassed for not serving in the American militia),
  - Kin of Loyalists harassed by vigilante Patriots,
  - Individuals with individualistic grievances against the new government.<sup>5</sup>

The raid warfare practiced by the irregulars was vicious and opportunistic. The plunder of private property—particularly livestock and family valuables—was the primary goal, with the kidnapping and ransoming of prominent citizens an important secondary goal. The July 11, 1779, raid of Shrewsbury serves as an excellent example of this new kind of raid warfare. The

Loyalists were led by Colonel Tye, a runaway slave affiliated with an association of Loyalist runaway slaves at Sandy Hook called "the Black Brigade." The *New Jersey Gazette* reported:

About fifty Negroes and refugees landed at Shrewsbury, and plundered the inhabitants of nearly eighty head of cattle, about 20 horses and a quantity of wearing apparel and household furniture. They also took William Brindley and Elihu Cook, two of the inhabitants.<sup>6</sup>

The changing nature of the war horrified New Jersey's leaders. With only a little hyperbole, Governor William Livingston referred to coastal New Jersey as "the theatre of spoil and destruction" in a December 1778 appeal to Gen. George Washington for troops to defend his state. Both Washington and Livingston made efforts to combat Loyalist raiders. Regiments of Continental troops took up winter quarters in Middletown and Shrewsbury (starting with Col. Caleb North's Pennsylvania Continentals deployed on January 8) with the mission of protecting the coast from raiders (and curbing illegal trade with the British). By spring 1779, other units Continental units were also performing tours along the exposed Raritan Bay shore, including: companies of Gen. William Maxwell's New Jersey Brigade, Col. Benjamin Ford's Virginia Regiment, Colonel Mordecai Gist's Maryland Regiment, and Major Henry "Light Horse Harry" Lee's Virginia Dragoons.<sup>7</sup>

Governor Livingston was similarly active in attempting to provide security for the New Jersey shoreline: several times, Livingston called out militia companies from safer New Jersey counties to protect Monmouth and Middlesex, the two counties most exposed to Loyalist raids from Sandy Hook and Staten Island. He also championed the passage of laws to raise regiments of State Troops (volunteers paid by the State equivalent to Continental soldiers but raised for the defense of the New Jersey shoreline). Finally, the Governor and Legislature collaborated on the

passage of a series of laws to crack down on contraband trade (seen as a complementary problem), including the October 8, 1778 law that enabled the condemnation of seized goods without a full jury trial.<sup>8</sup>

The irregular warfare exacerbated tensions within Monmouth County. Shore residents suffered greatly from irregular warfare and raids. It appears that large numbers of shore residents, perhaps out of self-preservation, chose to maintain friendly relations with the irregulars and contraband traders in their midst. The men in Walton's militia detachment, shielded by an inland location, were safer than the shore residents, and many of them probably looked on the vacillating shore residents with contempt.<sup>9</sup> When Walton's men seized the goods of Holmes and Ketchum, it was an act by a party of true believers against failing congregants. The Freehold men were enforcing the law in a nearly lawless area; men such as Holmes and Ketchum were succumbing to temptation and cooperating with kin who needed to participate in the contraband trade in order to survive on the lawless shore.

## **2. Contraband Trade between Monmouth County and New York**

In the months leading up to the Declaration of Independence, American colonists enforced a boycott of trade with the British. But New Jerseyans in search of profit and of ambiguous loyalty never completely stopped their commerce. British warships in New York Harbor and at Sandy Hook (at the head of New York Harbor, and the northeast tip of Monmouth County) happily received provisions from New Jerseyans. The New Jersey Provincial Congress, acting as the nascent government of New Jersey in the months leading up to the Declaration of

Independence, noted the unfortunate conduct of trade with the British and moved against it on February 21, 1776, declaring:

The owners and masters of vessels of any kind are prohibited from sending any provisions or produce from any part of this province to New York or other parts [under control of the British]. All the county and township committees of the Eastern Division of this Province are hereby directed to be active and vigilant in carrying this resolve into effect.<sup>10</sup>

Despite this and the actions of local Whigs Committees, Monmouth Countians were in frequent contact with the British upon Lord Howe's fleet landing at Sandy Hook, on June 29, 1776.

Within a month, the fleet was magnet for locals—Loyalists joined the British Army, slaves sought protection and freedom, and many more sought to trade their goods to a British military in constant need of food and provisions. In the months that followed, trade between the farmers of Monmouth County and the British commissary at Sandy Hook became so common that locals nicknamed it "the London trade." Much of Monmouth County was only barely under the control of the new government, so the trade flourished without any effective check.<sup>11</sup>

As irregular warfare in the region increased toward the end of 1778, so did the New Jersey and Continental Governments' concern with the contraband trade. That October, a regiment of Continental soldiers under Kasimir Pulaski was sent to southern Monmouth County to check the British raid against Egg Harbor, but the Continentals were viciously ambushed at night by the British, with the help of disaffected locals. An officer serving under Pulaski wrote the Congress bitterly complaining of the locals, "We are betrayed on all sides, we cannot take a step but an hour later the enemy is informed". Meanwhile, pine robber gangs committed a string of robberies and murders along the shore in Shrewsbury and Dover townships. The contraband trade with the British was depicted as the economic lifeblood that sustained and armed these covert Loyalists. The New Jersey Government responded by placing large bounties on the heads

of Pine Robber leaders and passing laws to make it easier to seize contraband goods, including the law that facilitated the seizure of contraband goods without full trial.<sup>12</sup>

General Washington also responded. First, he sent in individual Continental Officers with small detachments to observe and interrupt the contraband trade. These men, Maj. Richard Howell and Capt. John Burrowes, were unable to stem the contraband trade, but they were successful in raising awareness of the problem to General Washington and the New Jersey Government in Trenton. By December, Governor Livingston was well aware of the situation in Monmouth County, writing:

Considering the number of disaffected in the County of Monmouth, it will be difficult for the loyal citizens of that county to oppose an enemy aided by the open junction or at least secret cooperation of the Tories.<sup>13</sup>

The efforts of the State and Continental officials to curb the contraband trade were unsuccessful. There are many reasons for this, but probably the most significant was that contraband trading was tolerated by the majority of New Jersey shore residents. Over the course of the war, residents from the four shore townships—Middletown, Shrewsbury, Dover, Stafford—elected several local officials who were complicit with contraband trading. John Bowne, for example, was elected as Coroner in Middletown Township in 1778 after being implicated in contraband trading in 1777; Richard Crammer was serving as Overseer of the Highways for Stafford Township in 1780 when he was arrested for Contraband Trading on December 4; he was further indicted for crossing into British lines shortly thereafter. In total, 15 local officials from the four shore townships can be linked to actions that reveal disaffection,

and, with better documentation, the number would certainly be higher. The pervasiveness of the contraband trading cannot be precisely assessed, but when a coordinated militia campaign swept down the shore from Toms River to Egg Harbor in December 1780, it netted 36 arrests (including several members of the prominent Ridgeway and Crammer families). Even with these efforts, a large pine robber association of fifty-seventy men in Stafford Township, sustained by the contraband trade, remained active into 1782.<sup>14</sup>

By the later years of the war it even appears that American leaders came to accept the contraband trade as a necessary evil, and sought to co-opt it (even as they remained officially opposed). The Continental Congress's Secret Committee and George Washington sent Captain Nathaniel Bowman to the contraband trading hot-bed of Manasquan to procure blankets from the British in exchange for counterfeit money. Different privateers, loaded with lumber and foodstuffs on the Jersey shore and bound for the West Indies, diverted to New York to sell those goods. The Yankee privateer, Nathan Jackson, was perhaps the most audacious. He faked the capture of his vessels by British ships and then brought them into New York. Eventually, he was exposed; he was fined £500 in February 1782 and his ships were impounded. Even Col. David Forman, Monmouth County's most stridently anti-Loyalist leader, proposed schemes to the Governor and General Washington to send Loyalists to New York with goods and counterfeit money to trade for British specie. The contraband trade was not completely shut down until the British evacuated New York at the end of 1783. Holmes and Ketchum likely participated in this trade on some level, but—like people underpaying their income taxes today—probably did not view themselves as criminals or Loyalists because of these dalliances.<sup>15</sup>



### 3. Raucous Local Politics

The politics surrounding *Holmes v. Walton* has been well explored at the state level. Philip Hamburger examined the Supreme Court's consideration of the case in context of the New Jersey Government's need to have an enforceable law against contraband trading. He concluded that the court fulfilled its "judicial duty" in *Holmes v. Walton* in two important ways: by appropriately striking down the contraband trading law of 1778 for insufficient legal due process, but also by delaying the final decision until the New Jersey Legislature had a chance to replace the offending law with a new one.<sup>16</sup>

Consideration to State governance aside, the seizure of Holmes and Ketchum's wagon by Walton's militia detachment was a small event in the raucous drama of Monmouth County politics, in which rival factions of Machiavellian and Due Process Patriots (both factions calling themselves "Whigs") antagonized each other as often as they antagonized Loyalists. The split in Whig unity was caused by different factors, but both groups had a long list of grievances against the other. The "softer" Due Process Whigs deplored the radical excesses of the Machiavellians, which included:

- The hanging of an alleged Loyalist, Stephen Edwards, in 1777 without civil trial, and murder of a second, James Pew, while in a jail cell in Freehold
- The exile of the wives of prominent Loyalists to New York or Pennsylvania without evidence that the women had committed any crimes
- Collusive dealings regarding the confiscation and sale of Loyalist estates, and use of Continental troops as laborers at a large saltworks owned by leading Machiavellian Whigs

- The creation of an active vigilante society, the Retaliators, that was ultimately responsible for dozens of acts of extra-legal violence and confiscation of property

The more radical "Machiavellian" Whigs accused the Due Process Whigs of being "Tories" and "disaffected" and harbored grievances against many of their leaders, including:

- Assemblyman James Mott for attempting to have the Machiavellian's main association, the Retaliators, declared illegal by the New Jersey Legislature
- Colonel Asher Holmes for conducting prisoner of war exchanges directly with the Loyalists, outside of the formal cartel negotiations between Continental and British authorities at Elizabethtown.
- Magistrate Peter Schenck for protecting the rights of individual citizens who refused to sell provisions to soldiers assigned to the shore (due to unfavorable payment rates)

The Machiavellians accused the Due Process leaders of using legal protections as a screen to protect criminal behavior; the Due Process Whigs characterized the Machiavellians as ungoverned by the rule of law. The leaders of the two factions literally came to blows at the annual county elections in October 1780 when David Forman, leader of the Retaliators, beat the Due Process Whig Legislator, James Mott, when Mott protested the early closure of the polls.<sup>17</sup>

The Due Process Whig leaders, generally residing closer to the shore than the Machiavellians leaders, suffered greatly as the war dragged into 1780. Their leaders—Col. Asher Holmes, Lt. John Smock, Assemblyman James Mott, Assemblyman Hendrick Smock, Captian Hendrick Smock, and Magistrate Peter Schenck—all suffered. Holmes and Schenck were robbed, and the others were all captured by Loyalist irregulars in separate "man-stealing" incidents.<sup>18</sup> With so many kin captured, and other kin behind British lines as Loyalists, Due

Process Whigs favored conciliatory tactics toward the British/Loyalists. These included prisoner exchanges and mercy missions behind British lines to bring supplies to prisoners. Several of these Whigs succumbed to the temptation of trading with the British and Loyalists while doing so.

The Machiavellian Whigs favored an absolute ban on contact with the British and the Loyalists. The leaders of this faction made their disappointment with the actions of the softer Whigs well known. David Forman, for example, blasted the conciliatory prisoner exchanges pursued by Asher Holmes as “replete with evil” in a letter to George Washington. The Machiavellians continued to request the New Jersey Legislature to legalize the seizure of private property of disaffected citizens (including contraband traders) to compensate for losses sustained during Loyalist raids.<sup>19</sup>

Interestingly, it was two Monmouth County Due Process Whigs who ultimately played the most significant roles in the case of *Holmes v. Walton*. William Wilcocks was an attorney before the war who spent three years in the Continental Army as a Judge Advocate. In 1779, Wilcocks came home and, along with John Covenhoven (one of the writers of the New Jersey Constitution of 1776), established the Monmouth County Whig Society as a rival association to the Retaliators. Wilcocks served as the lead attorney for Holmes. David Brearley of Upper Freehold served as Lt. Col. of the First Regiment of New Jersey Brigade in the Continental Army. He left service in 1779 and was immediately appointed Chief Justice of the New Jersey Supreme Court, which ultimately decided the case.<sup>20</sup>

The seizure of the wagon of goods from John Holmes and Solomon Ketchum by Maj. Elisha Walton was another in a string of petty incidents in the feud between rival political factions within Monmouth County. It was likely not an accident that Magistrate John Anderson, who condemned the goods, convened the hearing only two days after the seizure and allowed Walton to “treat” the six man jury to “strong liquor” during the hearing.<sup>21</sup> However, the goods seized by Walton probably were illicit; it is hard to imagine how Holmes and Ketchum, younger men without great amounts of cash, could have procured the rare and expensive fabrics legally.

While *Holmes v. Walton* was an extraordinary case because of the New Jersey Supreme Court’s ruling, the circumstances around the case were unremarkable. Cases involving contraband trading and crossing into enemy lines were common in Monmouth County’s lower courts. *Holmes v. Walton* was one of four contraband-trading cases heard by the New Jersey Supreme Court from Monmouth County during the war years. The others are:

- *Anderson & Walton v. Laird*, May 1783: Elisha Walton and Kenneth Anderson (son of John) charged William Laird with not paying his fine after being convicted of contraband trading
- *Brewer v. Shephard*, June 1782: Hendrick Brewer appealed the fine and confiscation of his property for contraband trading, after seizure from a militia detachment under Capt. Moses Shephard
- *Laird v. Corlies*, September 1782: Laird sued to recover fine owed to him after seizing two wagons loaded with contraband goods from Corlies

It appears that all three of these case involved contraband trading incidents along the Raritan Bayshore, the likely entry point for the goods in the possession of Holmes and Ketchum.<sup>22</sup>

## Conclusion

John Holmes and Solomon Ketchum probably were guilty of either active contraband trading or, at the very least, coming into possession of contraband goods and not asking any questions about their origin. However, Anderson's and Walton's conduct suggests that the condemnation of the goods was not impartial. As the case moved to the Supreme Court, William Wilcocks probably received a friendly hearing by Chief Justice David Brearley (they served for three years together as officers in the Continental Line and both disliked the Freehold Machiavellians). On some level, this probably helped Wilcocks and a second attorney, Elias Boudinot (a leading New Jersey Whig whose work on behalf of New Jersey's prisoners of war made him an admired figure), argue the case.

With limited surviving documents from the case, it is impossible to know what drove the seizure of the goods or the subsequent legal maneuverings. What is clear is this:

- Many Monmouth County families with members residing on or near the shore, including prominent Whig families, were complicit with some amount of contraband trading,
- Many other Whigs were driven to take forceful, even collusive, actions in the interest of prosecuting the war against Loyalist irregulars and their Whigs rivals,
- Local politics within Monmouth County were bitter and the case of *Holmes v. Walton* played into the split between Machiavellian Whigs and Due Process Whigs

In the historical context of irregular warfare, contraband trading, and the raucous local politics in which it occurred, the seizure of illicit goods by Machiavellian Whigs against Due Process Whigs was not a unique event. It was only when this event was elevated to the New Jersey

Supreme Court (in a case argued by and presided over by men with strong ties to the principals), that the case took on precedent-setting importance.

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<sup>1</sup> The following sketches of the principals in the case of *Holmes v. Walton* are offered: **Elisha Walton** was a strong supporter of the Revolution, who was elected Captain of his militia company in May 1777, and promoted to Major a year later. Walton profited during the war – his 150 acre estate in 1776 grew to 257 acres and a mill by war's end, and he was implicated in profiting in a collusive auction of a confiscated Loyalist estate. In addition to seizing the goods of Holmes and Walton, he was involved in two other prosecutions of contraband traders. He was elected to the New Jersey Legislature in 1784, only to have his election voided by the New Jersey Assembly for irregularities. **John Anderson** was an early supporter of the Revolution, serving on different Whig Committees prior to independence and as a delegate to the New Jersey Provincial Congress. As the Magistrate for Freehold Township in 1777, he played a key role in prosecuting Loyalists by taking numerous depositions. He served as a Justice of the Courts throughout the latter war years. Both **Walton** and **Anderson** were members of the vigilante group, the Retaliators. Since Monmouth County had at least five adults named **John Holmes**, it is hard to know precisely which of them was the principal in the case. But the family's elder-statesmen included Joseph Holmes, an Assemblyman in the New Jersey Legislature through much of the war, and a strong opponent of the Retaliators, and Colonel Asher Holmes, who led the First Regiment of the county militia and the State Troops in Monmouth County, and also an opponent of the Retaliators. **Solomon Ketchum** was a man of modest social standing prominent in the historical record only because of his role in the case of *Holmes v. Walton*, and for twice signing petitions supporting the perennially-embattled Middletown Magistrate, Peter Schenck. At war's end, he was only a householder (meaning his acreage was too small to warrant listing in the tax rolls) with two head of livestock, indicating that the war years were hard on him. **William Wilcocks** was an attorney who served a Judge Advocate in the Continental Army until 1779. His willingness to defend a disaffected former judge, John Wardell, charged with treason, suggests that he viewed himself as a man of learning with the responsibility to check the wild passions of others. He co-founded the Monmouth County Whig Society with John Covenhoven in 1781 as a check against the Retaliators. Information on the people above is found in the author's *Biographical File* at the Monmouth County Historical Association, Freehold, New Jersey.

<sup>2</sup> There are numerous antiquarian treatments of *Holmes v. Walton* of differing quality. The first good historical treatment of *Holmes v. Walton* is Austin Scott's "Holmes v. Walton: The New Jersey Precedent," *American Historical Review*, v4, 1899, pp. 456-469. There are two excellent recent treatments of the case: Philip Hamburger's chapter on the case in *Law and Judicial Duty* (Cambridge: Harvard Univ. Press, 2008), pp. 407-422, and the compilation of materials on the case developed by Paul Axel Lute of the Rutgers University Law Library for the New Jersey Digital Legal Library, available at: <http://njlegallib.rutgers.edu/hw>.

<sup>3</sup> There are many good text books on the American Revolution that discuss British stresses and strategy; as good any is Robert Middlekauff's *The Glorious Cause* (New York: Oxford University Press, 1985). Esmond Wright's *the Fabric of Freedom* (New York: Hill and Wang, 1978) is one of the many to note the British shift in strategy in 1778.

<sup>4</sup> Information on the Manasquan raid of April 1778 is in *Pennsylvania Ledger*, April 25, 1778; information on the October 1778 raid of Egg Harbor is in a number of places, but best summarized in the *New York Gazette*, October 21, 1778; information on the April 1779 of Tinton Falls is in the *New York Gazette* April 28, 1779.

<sup>5</sup> There is too little documentation and analysis of the people who became Loyalist raiders. Harry Ward's *Between the Lines*, (Preagar: Westport, CT, 2002) gives a good overview of the activities of these people. David Fowler's "'Loyalty is now bleeding in New Jersey': Motivations and Mentalities of the Disaffected," in Eugene Fingerhut's and Joseph Teidemann's *The Other Loyalists: Ordinary People, Royalism, and the Revolution in the Middle Colonies*,

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1763-1787 (Albany: SUNY Press, 2009) is the best discussion of the topic to date. The author's own, 'An Evenly Balanced County: The Scope and Severity of Civil Warfare in Revolutionary Monmouth County, New Jersey' (*Journal of Military History*, January 2009, v73, pp 9-48) is the only attempt to quantify the actual number of Loyalist irregulars.

<sup>6</sup> Documentation of this raid is provided in: William Hornor, *This Old Monmouth of Ours*, (Freehold, New Jersey: Moreau Brothers, 1932) p 406, David Munn, *Battles and Skirmishes*, (Trenton: Department of the Environment of the State of New Jersey, 1976) pp. 95-7, and *New Jersey Archives: Documents Relating to the Revolutionary History of New Jersey, Extracts from New Jersey Newspapers, Second Series*, (Trenton: State Gazette Publishing, 1917) v3, p 504.

<sup>7</sup> Livingston's quote is contained in a December 14, 1778 letter from Governor Livingston to George Washington in which the Governor is appealing for Continental Soldiers to be stationed along the New Jersey Coast to provide greater defense and curb the contraband trade. See *the William Livingston Papers*, Carl Prince, ed. (Trenton: New Jersey Historical Commission, 1979) v 2, p510. The author's "They Do Rather More Harm than Good!: Continental Soldiers in Revolutionary Monmouth County," in: *Impact: Papers Presented at a Symposium on the Impact of the War of Independence on the Civilian Population*, (The Washington Association: Morristown, NJ, 1995) pp. 1-41, offers information on each of the Continental detachments sent into Monmouth County during the Revolution and their relative success.

<sup>8</sup> A full list of the New Jersey Laws to ban and punish contraband trade with the British is beyond the scope of this essay, but there were several such laws passed throughout the war. The relevant sections of the October 8, 1778 law are available, via Rutgers University Law Library, at [http://njlegallib.rutgers.edu/hw/statutes.html#oct\\_8\\_1778](http://njlegallib.rutgers.edu/hw/statutes.html#oct_8_1778)

<sup>9</sup> For a discussion of the suffering experienced by the people of Monmouth County during the war, see Adelberg, 'An Evenly Balanced County' (cited above in note 5).

<sup>10</sup> The resolve of the new New Jersey Provincial Congress is printed in Edward Bell Clark's *Naval Documents of the American Revolution* (Washington, DC: Naval History Division, 1964), v 4, p30-1.

<sup>11</sup> For information on early contacts between the British fleet and Monmouth Countians, see Adelberg's 'They do Rather More Harm than Good' (cited above in note 7). The London or Contraband Trade has not been sufficiently studied, but is best explored in David Fowler's *Egregious Villains, Wood Rangers, London Traders: the Pine Robber Phenomenon in New Jersey During the Revolutionary War*, (Ph.D. Dissertation: Rutgers University, 1987).

<sup>12</sup> The letter was written by Gerard St. Elme, an officer in Pulaski's Legion of the Continental Army, October 19, 1778, collected in Leszak Syzmanski's *Kazimierz Pulaski in America* (San Bernadino, CA: Borgo, 1987) p218-9. The best study of the Pine Robbers and their fellow travelers is Fowler's Ph.D. dissertation, cited above in note 11.

<sup>13</sup> Burrowes was returned to Monmouth County in December 1778, and soon launched "a little excursion" against Sandy Hook to harass the Loyalists. See John Burrowes to Lord Stirling, December 18, 1778, John Burrowes, MSS, New York Historical Society, New York City. Howell was stationed in Shrewsbury and reported attempting to infiltrate a Pine Robber gang on August 26, 1778, "I sent out two men who pass for deserters to join the wood Tories, but could not join them, from their caution". See, Howell to Washington, *George Washington Papers*, series 4, reel 5, Library of Congress, Washington DC. Livingston's letter to Washington is in *the Papers of William Livingston*, v2, p510.

<sup>14</sup> See deposition of William Sands for information on Bowne's involvement in contraband trade, as contained in the Records of New Jersey Council of Safety, Bureau of Archives and History, New Jersey State Archives, Trenton. Richard Crammer's arrest for contraband trading and indictment for crossing into British lines shortly thereafter suggests he might have gone to New York to escape capture, but that cannot be confirmed. Information on Crammer is in the author's *Biographical File*, on file at the Monmouth County Historical Association, Freehold, New

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Jersey. Information on the fifteen disaffected is in the author's paper, 'Necessity Knows No Law', an unpublished manuscript in the collection of the Monmouth County Historical Association. The thirty six indictments for contraband trading is in a document titled, "A List of Persons Taken for Trading" in the records of the Monmouth County Court of the Quarterly Sessions, Monmouth County Archives, Manalapan, New Jersey. The activities of the last and largest pine robber gang, led by the mysterious 'Davenport' and the prolific John Bacon is chronicled in various sources, but the most complete narrative is Fowler's *Egregious Villains* (cited above, note 11).

<sup>15</sup> For an excellent summary of Captain Nathaniel Bowman's mission, see John Rees, 'Supply Shortages, Suffering Soldiers and a Secret Mission During the Hard Winter of 1780', *Military Collector & Historian*, v52, n3, Fall 2000, p100-7. Jackson's conviction for contraband trading is in the folder: Loose Common Pleas – 1782, Monmouth County Archives, Manalapan, New Jersey. Documentation of Forman's plans is contained in: *The Livingston Papers*, v4, p440-1, John Fitzpatrick's, *The Writings of George Washington*, (Washington: United States Government Printing Office, 1932) v24, p46-7, and *the George Washington Papers*, Library of Congress, series 4, reel 83, Feb-March 1782.

<sup>16</sup> Philip Hamburger, *Law and Judicial Duty* (Cambridge: Harvard UP, 2008) p418-20.

<sup>17</sup> The most complete discussion of factional rivalries between Whig blocs in Monmouth County during the Revolution is the author's 'A Combination to Trample All Law Underfoot' The Association for Retaliation and the American Revolution in Monmouth County,' *New Jersey History*, Fall/Winter 1997, v115 pp.2-35.

<sup>18</sup> Documentation on these individuals is in the author's Biographical File; a broad discussion on the disparate levels of suffering across Monmouth's townships is in the author's 'An Evenly Balanced County' (cited above in note 5).

<sup>19</sup> For a discussion of the Retaliators and their politics, see 'A Combination to Trample All Law Underfoot' (cited above, note 17).

<sup>20</sup> See note 1 of this paper, and the author's *Biographical File*.

<sup>21</sup> See the Reasons filed Nov.1779, posted in the New Jersey Digital Legal Library, at [http://njlegallib.rutgers.edu/hw/Reasons\\_Nov\\_1779.html](http://njlegallib.rutgers.edu/hw/Reasons_Nov_1779.html).

<sup>22</sup> The court cases are all in the collections of the New Jersey Supreme Court, New Jersey State Archives, Trenton, case numbers 863, 4818, and 7595. Information on the litigants in the author's *Biographical File*.