

INSIDE: CAMERAS IN THE COURTROOM? THE PROS & CONS

DELAWARE LAWYER

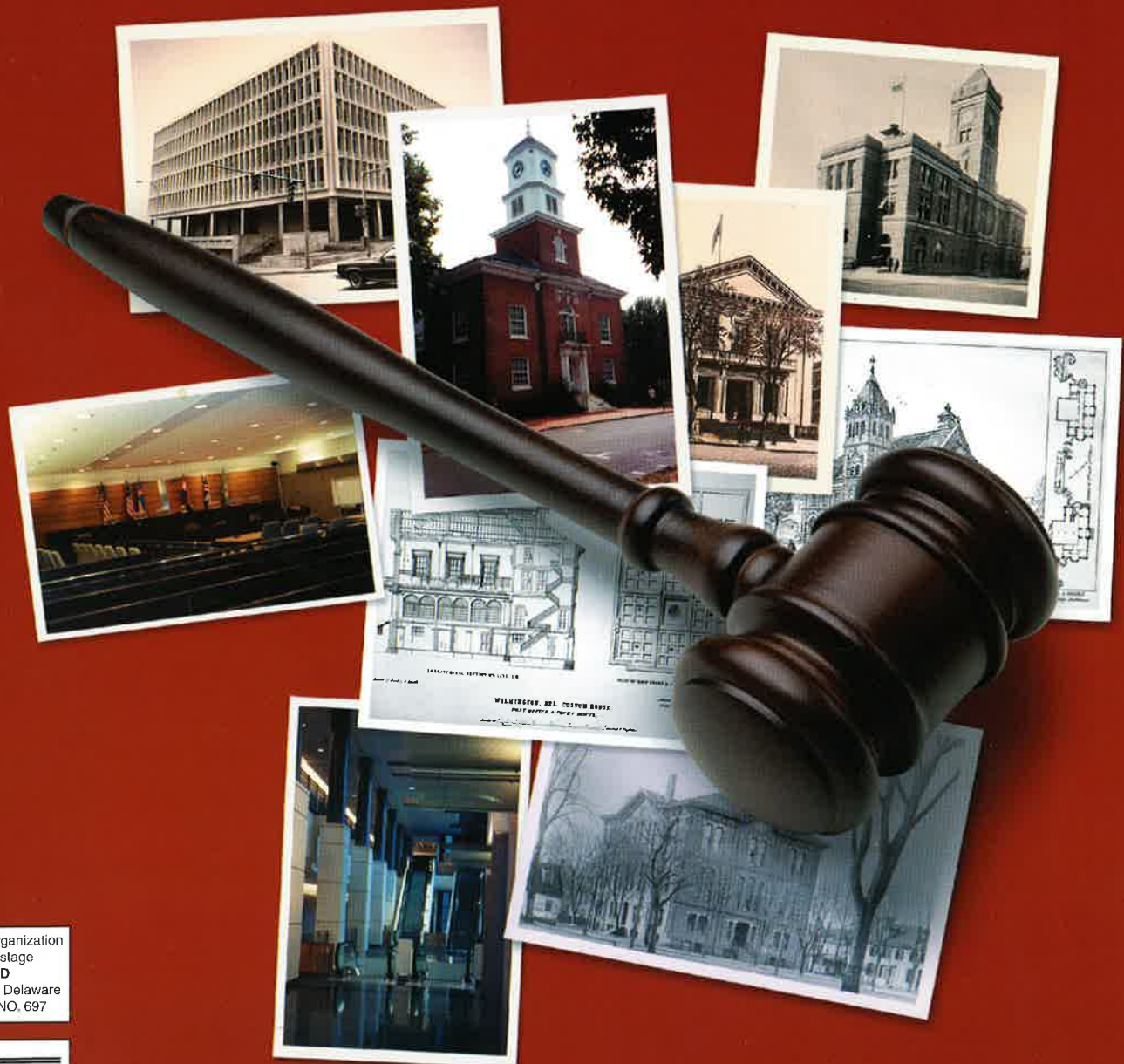
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IS DELAWARE READY FOR CAMERAS IN THE COURTROOM?

NO CAMERAS IN CAMERA

Rita Katz Farrell

MAKE ROOM FOR THE MEDIA

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It is said that "form follows function." In the Delaware history of courthouses, "function follows form" is a more accurate description of many of the mixed-use structures of the seventeenth, eighteenth and nineteenth centuries. Only in more recent times were edifices designed and built specifically for the courts, and even then, unlike the new New Castle County Courthouse, they included services tangentially related, if at all, to the administration of justice.

It was the norm for seventeenth-century courts to be housed in forts or to share space with jails. That was true in the Lewes area, as described by Richard B. Carter in "Sussex County and its Courts." That also was true at the other end of the state, with Fort Christina being the site for the conduct of judicial business, as discussed by Barbara E. Benson in "Courthouses of New Castle County."

If the word "bar" more than coincidentally connotes both merriment and dispute resolution, Justice Hartnett in "The Courthouses of Kent County" provides historical proof of the merger of the two in a tavern in Dover, as does Dick

Carter farther south. Barbara Benson indicates that in the middle of the eighteenth century another combination — of legislative and judicial functions — in the still-standing building in the city of New Castle, architecturally supported the separation of powers by failing to have an interior staircase between the judiciary on the first floor and the colonial assembly on the second. All three articles provide fascinating details of post-Revolutionary War developments in each of the three Counties concerning the challenges of providing appropriate and adequate facilities essential to the conduct of the business of the courts.

The federal judiciary for the first 75 years borrowed space in State courthouses, according to Peter T. Dalleo in "The building bids fair to be a valuable ornament to the city: Federal Courthouses in Delaware." The quotation in the title refers to the first permanent federal building, the Old Customs House (now Wilmington College) completed in 1856, which included a post office and customs offices on the first floor, a U.S. Marshals' jail in the basement, and

the courtroom on the second floor. "Separate delivery for females" was an added feature.

Delaware now boasts one of the oldest and one of the newest courthouses in the United States. The former became a private home and was restored by the State in the 1970s, just off The Circle in Georgetown. The latter of course was completed recently following extensive discussions as to its location, size and occupants, as recounted by Justice Walsh in "The New Castle County Courthouse."

Throughout Delaware's history, at least after having been moved outside fortifications, courthouses have been physically open to the public. During the past 40 years, a debate has begun and intensified whether the lack of live radio and television coverage of criminal and civil proceedings precludes really "open" access to the public as the judicial branch performs its vital role in state government. At the end of this magazine, two representatives of the fourth estate address the controversial topic of "cameras in the courtroom." Both Rita Katz Farrell, who writes "No Cameras in Camera," and John H. Taylor, Jr., seeking to "Make Room for the Media," work primarily for newspapers, although both also appear on television, usually WHYY. Rita Farrell cites the opposition to the electronic media from some defense lawyers and witnesses and she advocates "PIC" (defined in her column). John Taylor argues that the new New Castle Courthouse is equipped so that radio and television can be easily "plugged in." From both sides of the bench, we, the co-editors of this issue of *Delaware Lawyer*, suspect that virtually all readers share our lament that the apparent public interest in the workings of the courts throughout most of our history has faded into widespread apathy today. No longer, literally or figuratively, as Justice Hartnett recounts, do "the residents of The Green [or elsewhere] sit on their porches and hear portions of the trials that were underway."

Richard R. Cooch
Richard R. Cooch

Richard E. Poole
Richard E. Poole

BARBARA E. BENSON

is Executive Director of the Historical Society of Delaware, a private, non-profit organization that has been preserving the records and artifacts of Delawareans since 1864. Dr. Benson is an Adjunct Associate Professor of History at the University of Delaware, teaching courses in American history, Delaware history, and public history. She is active in many professional and community activities and is currently chairperson of New Castle County's Rockwood Advisory Committee and a member of the Governor's Tourism Advisory Board. Dr. Benson received her Ph.D. in American history from Indiana University in 1977.

RICHARD B. CARTER

is a lifelong Sussex Countian. He began his career working as a newspaper reporter, photographer and editor in Sussex County, and from 1977 to 1987 was the Sussex County Historical Preservation Planner. In 1987, he joined the staff of the Delaware State Senate, where he now serves as the Chief Administrative Assistant to the Senate Democratic Caucus. Mr. Carter is the author of "A History of Sussex County," published in 1976. He also wrote "Clearing New Ground — The Life of John G. Townsend, Jr.," a biography of the Delaware Governor, U.S. Senator and business leader from Selbyville. Originally published in 1984, a new and substantially revised edition of the book was published by the Delaware Heritage Press in January 2002.

PETER T. DALLEO

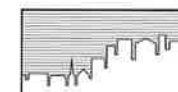
earned a Ph.D. in African history at Syracuse University in 1975. After teaching at the College of the Bahamas, he joined the faculty at The Tatnall School in Wilmington, Delaware, before moving to

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Richard B. Carter

SUSSEX COUNTY AND ITS COURTS

Photo courtesy of the Historical Society of Delaware

The Sussex County Courthouse, built in 1840 and extensively remodeled in 1914.

The Sussex County bench and bar remain comparatively small and intimate by Wilmington standards, though both have grown dramatically over the last quarter century. Today the entire "new courthouse" (that is, the 1840 building with its 1914 and 1968 additions) is now given over entirely to courts and court offices. The county government offices that formerly shared the building with the courts have moved into an imposing new building elsewhere on the venerable Georgetown Circle. A large and impressive Family Court building now occupies another corner of the Circle, and a new Court of Chancery building, which will also house Sussex County's resident Supreme Court justice, is under construction. It will occupy the former parking lot where spitted oxen have long been roasted on the night before Return Day.

All this is a far cry from the manner and style in which Sussex County's courts formerly operated. While some might call the recent expansion of the courts progress, such a view would not be unanimous. One who might well have taken the opposite position is the late Wilmington attorney and author, Dudley Cammett Lunt, who wrote the wonderful 1963 book *Tales of the Delaware Bench and Bar*. He included in the book this account of a nineteenth-century Sussex County Superior Court proceeding:

It so happens upon one particular occasion that the prothonotary is the father of one of the judges of the Superior Court, and it also just happens that, instead of being out on his farm, as was his wont, leaving all manner of technical detail to his deputy, this paternal prothonotary is in court. A paper is missing from the record in the cause. Whereupon the judge in question calls, in no uncertain terms, for its production by the prothonotary. And thereupon the response, paternal but indecorous, is this: "David Thomas. You will not speak to me in that tone of voice. I'll find that paper when I can."

This begins to suggest the unique flavor of the Sussex County courts of old. Another of Mr. Lunt's tales, dating from the early years of the twentieth century and involving a bankruptcy proceeding, sheds further light. He notes that at the time there were only two Referees in Bankruptcy in Delaware, one of whom was in Wilmington and the other in Georgetown. Mr. Lunt continues:

On the particular occasion in question, which was well into the fall of the year, my informant led a coterie of Wall Street lawyers down to a creditors' meeting in the office of the old Sussex County lawyer with the ancient legal name in those parts of Cullen. He was then the Referee and when the meeting was over he arose from his desk, turned, and in a gesture of true Sussex hospitality opened up a closet door.

There on the hooks in the semidarkness hung brace after brace of black duck. Red-legs they were, too, of the finest and the fattest. And suddenly over the bare wooden floor of the office, there came out of the same closet, tumbling and scrambling and crawling, a whole fleet of diamond-back terrapin.

"Gentlemen," said their host, tossing out some gunny sacks, "help yourselves."

A lot of wild duck went back to Manhattan that night from the Whorekill, as you might say, but as to whether or not thereafter there trundled across the wall-to-wall carpet of some New York law office any diamondback terrapin, my informant saith not.

* * *

The long tradition of which the foregoing anecdotes represent a late flowering had its origins in the days when Sussex County was still in Dutch hands. As most Delaware fourth graders learn, the Dutch made a first, unsuccessful, attempt at settlement in 1631 in the form of the ill-fated whaling station known as Swaanendael. It lasted only a short time before being eradicated by local Native Americans. The location of the settlement at the mouth of the bay was of too much strategic importance to abandon entirely and so the Dutch began a second, ultimately permanent, settlement in 1658. Over the course of the next fifteen years what began as a simple log fort grew into a village with settlers establishing farms in outlying areas. The community, now known as Lewes, functioned as a de facto county seat from its earliest days up to the year 1791, when the Sussex County seat was moved to the newly established town of Georgetown.

The name "Swaanendael" appears to have died with the 1631 colony. The second settlement was known variously as "the Hoerenkil," "Horekil" or the Anglicized "Whorekill," with "kil" being Dutch for "river." This designation seems to have been based on the name "Hoorn," a town in Holland from which a number of those who organized the settlement had come, but the Anglicized spelling lent itself to considerably more lurid explanations.

From 1658 until 1674, attempts at permanent settlement were hampered by frequent conflict both between the Dutch and the English and between competing interests within the English camp. In the earliest days of the reestablished settlement under the Dutch any court activity at the Hoerenkil appears to have been military in nature and to have dealt with civil matters only incidentally. Most substantive issues of civil law were sent for adjudication to the court at the Dutch administrative center, New Amstel (now New Castle). What court sessions there were at the Hoerenkil took place inside the fort erected by the West India Company. After the English under James, Duke of York (the future King James II) took control of Dutch settlements on the Delaware in 1664, they appointed a number of magistrates but their judicial authority appears to have been limited. This state of affairs proved insufficient to deal with the increasing legal business of the settlement. Lunt writes that

the earliest common law court at Ye Whorekill was commissioned early in the year 1670 by Governor Francis Lovelace "to keep good order there for his Royal Highness [the Duke], to try all matters of difference under ten pounds amongst themselves; for what shall be above they are to apply themselves to New York and so for all criminals." So it is recorded in *The Breviate*, which is to say the brief for the Penns in their celebrated litigation, *Penn v. Lord Baltimore*.

When the Dutch briefly regained control of the Delaware in 1673, holding it only about a year, they continued the civil

court at the Hoerenkil, which was then responsible for a region extending from the present-day Bombay Hook to Fenwick Island, a distance of some 50 miles, and ranging 10 or 15 miles into the interior.

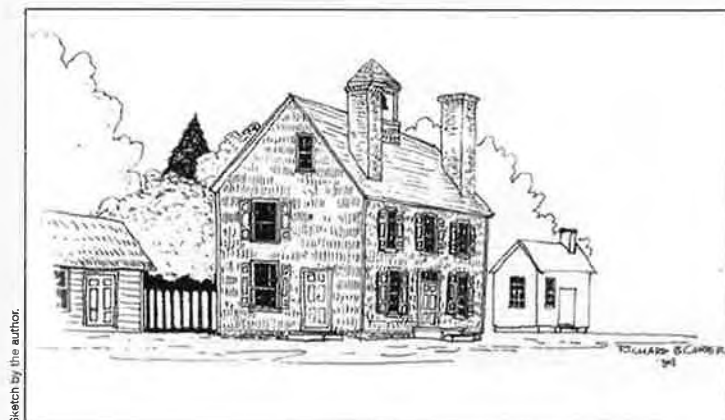
During much of this early period all of what is now western Kent County and western and southern Sussex County below the Indian River, was still considered a part of the Maryland Colony. The Marylanders regularly cast covetous glances at the Hoerenkil as well. In 1666, partly in response to the Duke of York laying claim to the area, Lord Baltimore established the original Somerset County on Maryland's lower Eastern Shore. He declared that this new county encompassed the Hoerenkil, among other areas. In an effort to strengthen his claim, he sent two armed expeditions to the tiny settlement at the mouth of the Delaware Bay to harass the residents and coerce them into swearing loyalty oaths to Maryland. The first of these occurred in 1672, when the area was still nominally controlled by the Duke of York. The second and more

serious incursion took place at Christmas, 1673, during the period when Hoerenkil was once more under Dutch authority. The raid resulted in the burning — on Christmas Eve — of every standing structure in the tiny settlement except for one barn, the only refuge left to shelter the residents during the remainder of the winter.

When the Duke's naval forces succeeded in ousting the Dutch for the second and final time in 1674, a period of relative calm enabled the English to establish a more organized government over its domains on the western shore of the Delaware. Among the changes most sought by the inhabitants was the division of the Hoerenkil into two counties. Those inhabiting the northern reaches of Hoerenkil complained that the trip to the county seat to conduct business was both long and dangerous. The authorities complied, establishing a northern county extending from Duck Creek in the north to the Mispillion River in the south as "St. Jones" or "Jones" County. The southern county and its county seat were renamed "Deal."

This state of affairs was short-lived —

in 1681, William Penn obtained title to what became Pennsylvania from King Charles II in repayment of a royal debt owed to his father, Admiral William Penn. The following year Penn prevailed upon the king's brother, the Duke of York, to grant him "ye Counties of New Castle, Jones's & Whorekils als Deals" to ensure easy access to his new Province of Pennsylvania. Penn arrived at New Castle on October 27, 1682, to begin organizing his new domains. Among his earliest acts as proprietor was the renaming of the southern two counties Sussex and Kent for the region of southeastern England in which he had spent much of his childhood. The county seat of the



The Old (1792) Sussex County Courthouse as it appeared about 1825.

southernmost county, formerly Hoerenkil, then Deal, was renamed "Lewes" or "Lewestown" after the principal town of Sussex, England.

Sussex now had an official county seat and an official court but, despite repeated efforts by the authorities, it was to be many years before it would get a courthouse in which its judges could preside. Construction of a "Court house prison stocks and whipping post for the publique service" at "the Whoorckill in Delaware" had been approved by Governor Edmund Andross and his council in 1680. It was ordered that the prison should have a second story added, "the upper story to jutt over and to be made a Court House, the charge of both not to exceed six thousand pounds of tobacco . . ."

Detailed plans were immediately drawn up by county officials and a builder commissioned to perform the work, but nothing was ever done — either by the first builder or by several who were subsequently delegated to carry out the work. The job was apparently unprofitable and there was more lucrative work to be had in the growing

community.

It is known that Sussex County was still without a courthouse or a prison as late as 1709, although they appear to have been erected at last at some point between that year and 1717, when the Rev. George Ross noted in his journal that when he visited Lewestown with Governor William Keith, he held religious services at the courthouse.

During the long years in which the courthouse remained unbuilt, court was first held, according to Lunt, in the homes of the justices and later in a room of the local tavern. The court clerk and recorder, one Norton Claypoole, maintained his office in his own home. On April 30, 1688, Claypoole reported to the grand jury that someone had attempted to burn his office, which caused the members of the jury to conclude that the perpetrators had been attempting to destroy the county records.

It is believed that the first courthouse at Lewes stood somewhere in the vicinity of Market and Front streets. It was a simple, wood frame structure of unknown description.

This building was replaced between 1740 and 1750 by a more commodious structure, also wood frame and probably very similar in appearance to the first Georgetown courthouse of 1792, a two-story structure with cypress-shingled walls and roof. This second courthouse was located, according to J. Thomas Scharf's *History of Delaware, 1609-1888*, "on the northeast corner of the Episcopal church-yard." This would have been approximately across Second Street from the county prison, which stood in the middle of Market Street. For anyone familiar with present-day Lewes, the jail was situated approximately where King's Ice Cream Parlor is now located.

Lewes's advantages as a county seat were considerable in Sussex County's earliest years, when most of the county's settlers lived relatively close to the Delaware Bay, the inland bays or the ocean and had access to the town by boat. With the passing years, people moved farther into the interior and those advantages began to wane. The nature of life in inland Sussex in the 1720s may be seen in the following excerpt from "Observations by Richard Castelman

Concerning New Castle and Lewes Early in the Eighteenth Century" which was reprinted in the October 1962 issue of *Delaware History*. The author describes a journey he and his companion made overland across the peninsula from Lewes, hoping to intercept a ship on the Chesapeake Bay in order to save themselves several days of sailing time:

We set out from Lewis the Horses to carry what little Baggage we had, but we chose to walk it on Foot our selves. We dined at a pleasant Plantation about the mid-way of our Journey, but found it a difficult matter to prevail upon a Couple of young Girls to come near us at first, for they took us for Privateers; but at last we prevailed upon 'em and they called their Father &c. who made very much of us. One of the Girls perceiving I had a Watch in my Hand to see what time of Day it was, begged to look upon it; but it was very pleasant to see her Fear, when she touched it, and would not be persuaded but it was alive, from its going and the Noise it made. I asked her if she had never seen or heard of a Watch before. She told me she had never seen one, but her Sister had read of 'em. I only mention this to shew the Simplicity and Innocence of those Inhabitants of America, that live retired in the Country; for they told me that neither of 'em had been four Mile from their own House in their Lives.

In such an atmosphere it is hardly surprising that local inhabitants grasped any opportunity for a break from the humdrum routine of their lives. Lunt speaks of the pageantry which was a part of court sessions in Delaware in the early eighteenth century and noted that this was particularly true in Sussex where:

even more ceremonials attended the assembling of the courts. Upon the days appointed there would be seen pounding through the town of Lewes the quaint figure of Luke Shields in his "Station of a Drummer . . . beating of the Drum to Call People to Give Their Attendance" at the court. In 1706, this, it would seem, was a relic of the long-lost days of the military courts of the Dutch.

In the years just before the outbreak of the American Revolution the long-standing boundary dispute between the

Lords Baltimore, proprietors of Maryland, and the Penn family, of Pennsylvania and the Three Lower Counties of Delaware, was finally settled in the British courts. The present boundaries of the State of Delaware, based on the Transpeninsular Survey of 1751 and the Mason-Dixon Survey of 1763-1764, were agreed upon and Sussex County more than doubled in size. Suddenly Lewes ceased being centrally located in the county it served and became all but inaccessible to a majority of the new county's population.

This state of affairs, although a great inconvenience to many Sussex Countians, was allowed to continue through the long years of war. While no major battles were fought on Sussex County soil, the war years were a time of great unrest and upheaval. Sussex experienced frequent strife between supporters of the patriotic cause and the county's many loyalists. At a time when simply maintaining law and order was a challenge, moving the seat of county government to a more central location was not a high priority.

With the end of the war, however, all that changed quickly. Through the 1780s a sense of anger and unrest gradually arose among many Sussex Countians, particularly those in the former Maryland areas now known as "New Sussex." The location of the county seat figured prominently among the factors causing these resentments, one reason being that at the time anyone wishing to vote had to travel to the county seat to do so. This controversy was in large part an outward and visible manifestation of much more deep-seated antagonisms. The battle over a new county seat was bound up with the earliest beginnings of political factionalism in the new Delaware State between the "court party," those in power, and the "country party," those out of power. Feelings were further exacerbated by a sense among some former patriots in "New Sussex" that influential landowners in "Old Sussex" and Lewes businessmen who had at least to some extent favored the British during the war where now in positions of power in the new government.

In the early autumn of 1787, the county experienced considerable unrest. Violence erupted on several occasions, leading to what were termed "election riots." The general election had to be postponed and the venue changed from Lewes to Vaughn's Furnace, a site between present-day Seaford and

Georgetown. The only thing the warring factions *could* agree upon was that it was in Delaware's best interests to quickly ratify the new federal Constitution, which had been adopted at Philadelphia and was now being sent out to the various states for their consideration. A delegation representing the country faction was elected by Sussex County to attend the ratification convention held at Dover in December of that year. They joined with delegates from Kent and New Castle in unanimously ratifying the Constitution on December 7, 1787.

By January 1791, the Delaware General Assembly had enacted legislation authorizing the establishment of a new county seat at a central location. A commission was established to locate a suitable site, purchase land and lay out a new town. The site chosen was a tract of land in what was then western Broadkill Hundred, now Georgetown Hundred, known as "James Pettyjohn's Old Field." The General Assembly authorized the raising of funds by public subscription to finance the cost of building a new courthouse and jail. The subscribers were to be repaid by a public lottery. The new town was named "Georgetown," apparently after a prominent local politician named George Mitchell, a nephew and heir of the late General John Dagworthy, the county's wealthiest man, and brother of Colonel Nathaniel Mitchell, a Revolutionary War hero and future Delaware governor.

The first Georgetown courthouse was in operation on the public square by 1792. Its appearance was said to be similar to the Lewes courthouse which had preceded it — a two-story, wood frame structure sheathed with cypress shingles, then one of Sussex County's leading export products. The building closely resembled a large Sussex County home except for the cupola on top. Even in the early 1800s this courthouse wasn't large enough to house both the courts and the county row offices, some of which were housed in small frame buildings nearby. Other row office holders worked out of their homes, a practice which wasn't as strange as it now seems in a day and age when the warden of the county jail and his family occupied living quarters in the prison, the warden's wife often doing the cooking for the inmates. Even the cashier of the Farmer's Bank of the State of Delaware, after its establishment in 1807, lived with his family in the bank building, also located on the Georgetown Circle.

By 1835, it was generally accepted

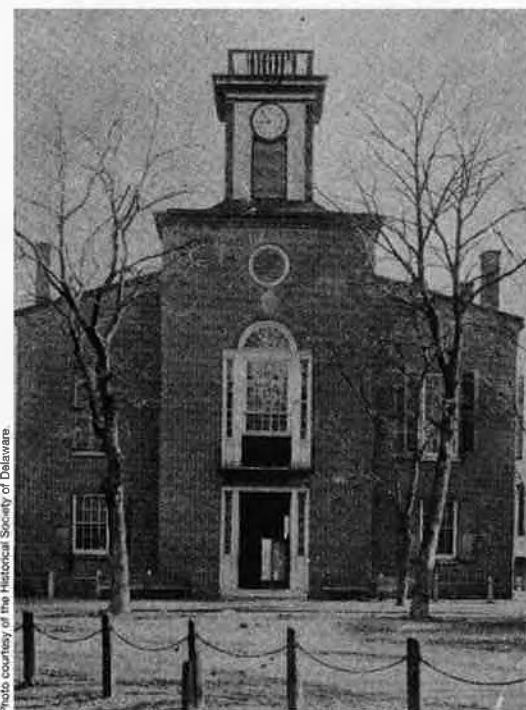
that a larger courthouse was needed. In 1837, the Sussex County Levy Court had the old building moved to a site on South Bedford Street, just off the Circle, where it was turned into a private home — and where it remains today, having been restored by the state of Delaware in the 1970s, one of the few surviving wooden eighteenth-century courthouses in America. In 1835, the federal government was in the process of building the first breakwater in Lewes harbor, one of the earliest public works projects in Delaware. The chief engineer, a Philadelphian named William Strickland, had some reputation as an architect (later rising to great prominence in that field) and he was prevailed upon to design a courthouse for Sussex County. The resulting building was exceedingly plain and boxy with a somewhat squat clock tower but no portico, pillars or other architectural trimming. In a letter to the commissioners Strickland lamented that the building's lack of decoration was due to the meager amount of money appropriated for the project — but it was serviceable and by 1840 it was functioning. During the several years the new building was under construction court was held in the Brick Hotel which had been erected in the early 1830s across the Circle from the courthouse lot (and is still standing).

For many years after the new courthouse was built it was an annual Easter time tradition among members of the Sussex County bar to place a large bowl of eggnog on the courthouse steps, where all and sundry were invited to partake. Whether this had also been a tradition with the first Georgetown courthouse is unknown.

The average Sussex Countian of that day, and for a long time to come, lived far from any major town. There were few diversions from the daily routine and the populace appears to have been ever on the lookout for a good excuse for a party. Among the more popular events in this regard were the openings of the two terms of court each year — one in April and the other in October. During the nineteenth century the judges and other officials, including the attorney general and his lone deputy, would travel from county seat to county seat in a circuit during these terms, each of which lasted

some two or three weeks. When they were in Georgetown they would put up either at the Eagle Hotel, which occupied the spot where the Georgetown Post Office (now the Sussex County Council chamber) is now located, or at the Brick Hotel.

Dudley Lunt includes in his book extensive quotations from the recollections of Alexander B. Cooper, Esq., who became the deputy to Attorney General George Gray in 1879 and served throughout the 1880s. Cooper recalled that “there was no place to which I was



The Courthouse circa 1912, just before its 1914 renovation.

called that gave me more pleasure than Georgetown.” It isn’t hard to understand why when one reads Cooper’s account of the opening of a court session:

The usual announcement was made throughout the county during the previous week that “the judges were coming” and that court would be opened on the following Monday. Great preparations were made in cleaning up and providing food and other things for the comfort and entertainment of all who might attend — particularly for the judges and the lawyers. Everybody was at his best and wore his best when the day came. From the early hours in the morning until nearly the hour of noon, people from all parts of the country came into town in large and imposing numbers. White and black, old and young, male and female —

some walking, some on horseback, and others driving in all kinds of vehicles — carts, wagons, and carriages drawn by horses, mules, or oxen. The large public square in front of the courthouse was crowded. Booths, stalls, counters, and tables were set up at various places on the square and streets at which oysters, sandwiches, ginger cakes, coffee, tea, and soft drinks were furnished to all who wanted them, at reasonable prices. Many came who had business before the court and many out of idle curiosity to see the judges and the lawyers. The people of Sussex seemed to have a real respect for the judges and lawyers. Throughout the crowd it was frequently announced after their arrival that “the judges have come — the judges have come.”

Then within a few minutes the judges would come out of the old Brick Hotel where they “put up” and in company with the lawyers and laymen would slowly walk over to the courthouse, take their seats upon the bench, and open the court for business. The bar of the county usually turned out en masse on the first day of the term in cordial welcome and in courtesy to the judges. They were always neatly dressed for the occasion and assumed a little more than their usual dignity.

During this period in the late nineteenth century, the Sussex County bar consisted of some 24 or 25 members of whom 10 or 15 were in active practice. “There were but few cases of larceny . . . Assaults and batteries seemed to predominate,” Cooper recalled. “Sussex had a reputation in this respect.”

Cooper usually stayed at the Brick Hotel, sharing a room with Attorney General Gray. Upon being awakened early in the morning when a hotel servant came in to stoke the fire in the large fireplace, they would go down to breakfast. Cooper recalled that they would eat with the judges — “Comegys (the Chief Justice), Houston and Wales” — and with any visiting attorney from Kent or New Castle. When the visitors returned to the hotel in the evenings, local people would come in to greet them and pay their respects. Nowhere in Delaware, Cooper wrote, were the people “more

polite, attentive and whole-souled than in Sussex County.”

As the nineteenth century gave way to the twentieth and train travel to modern highways, these old customs and traditions began to wane. The courthouse was enlarged in 1914 and all the decorative trim that William Strickland could have desired was added. An ornamental portico was erected and the truncated clock tower was raised with additional courses of brick and capped with a very nice colonial revival cupola. The building was more than doubled in size in the late 1960s when all the buildings between Cherry Alley, which ran along the back of the courthouse, and Race Street, one block behind the Circle, were demolished and a new, two-story rear wing was added, containing offices for the growing county government.

By the late 1980s, both the courts and the county government were growing so rapidly that further changes were needed. The Sussex County Council sold the courthouse and its one-story annex to the state of Delaware for the exclusive use of the courts and built an entirely new multi-story office building along South Bedford Street between the Circle and East Pine Street. They retained the former Georgetown Post Office on the Circle for use as a county council chamber, designing the large building behind it in a style compatible with the early 1930s beaux arts post office. In the meantime, the state also erected a three-story brick Family Court building on the Circle and is now constructing a Court of Chancery building, thus leaving the 1840 courthouse for the sole use of the Superior Court and Court of Common Pleas.

Yet vestiges of the special quality that Alexander Cooper so greatly admired have lingered. As a high school student in the mid-1960s, this writer worked as an intern during several summers in the Georgetown office of Tunnell and Raysor, attempting to decide whether or not to pursue a career in the law. I decided not to, but still came to have a great appreciation for the Sussex County Courthouse and its ways. In those days, nearly forty years ago, the courthouse remained as it had become after the 1914 expansion. The Sussex County bar still possessed only 25 or so active members, many of whom were seen often in the courthouse doing their own title searches and other work. I got to know many attorneys of that day like General Ralph Baker, Robert W. Tunnell and Jackson

Raysor, Jack Messick and Frederick “Stick” Whitney. I vividly recall being sent over by Mr. Tunnell to observe a trial in which the opposing attorneys were Houston Wilson and Everett Warrington. Both of these gentlemen were courtly and elegant figures given to great bursts of oratorical splendor the likes of which this young Millsboro boy had never encountered before — or since, for that matter. Mr. Tunnell knew that they were a dying breed and wanted me to experience them while they were still active.

A high point of those summers was lunch time at Marker’s Grocery Store on East Market Street, where a large part of the Georgetown legal community and many others would sit in the back room atop cardboard boxes of canned goods and packing crates eating the wonderful sandwiches and homemade pies produced by the store’s owners Minnie and Wendell Travis. An office boy from Tunnell and Raysor would find himself seated next to then Superior Court Judge (later Supreme Court Justice) James Carey, Judge Lawrence Elliott of the Court of Common Pleas, some prominent attorney, or a truck driver or delivery man, listening to them all telling stories.

One tale told to me by older hands at Tunnell and Raysor concerned Robert Tunnell’s elder brother, James M. Tunnell, Jr. He had been a member of the firm during the 1940s and early 1950s before leaving to become one of Delaware’s first Supreme Court justices, and then moving to Wilmington to join what came to be known as Morris, Nichols, Arsht & Tunnell. Though born and raised in Sussex County, and a member of an old-time Baltimore Hundred clan, James Tunnell was an extraordinarily accomplished man, a graduate of Princeton University and a Rhodes Scholar, who earned a law degree from Oxford in the 1930s. Yet, being first and foremost a Sussex Countian, he had a highly refined ability to utilize his country roots to maximum advantage in the courtroom.

In one memorable case being tried before a Sussex County jury, he was up against a phalanx of impressive out-of-town lawyers who filed into court in their well-tailored suits, each carrying an elegant brief case. Mr. Tunnell came ambling in carrying a cardboard beer case full of documents under each arm, setting them down on the table in front of him. As he began his presentation, he

prepared to introduce a document into evidence. Suddenly he paused and, looking pensive, said as if to himself, “Now, let me see — was that in the Pabst box or the Budweiser box?” Needless to say, Mr. Tunnell won his case.

The surviving remnants of Sussex County’s essence are perhaps displayed in greatest abundance during the biennial celebrations of that quintessential Sussex County event, Return Day, held the Thursday after every Election Day since the 1790s. Thousands from all over Delaware and beyond come to Georgetown to gather on the Circle and adjoining streets where they applaud winning and losing political candidates who ride together through the streets in horse-drawn carriages. As one takes in the sights at a modern Return Day something of the spirit of olden times is alive in the air. For a moment the Sussex County so loved by Alexander Cooper, the rich cultural heritage that now seems to be in retreat on every front, lives on in the crackling air and glistening light of an autumn afternoon. ♦

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