INSIDE: CAMERAS IN THE COURTROOM? THE PROS & CONS

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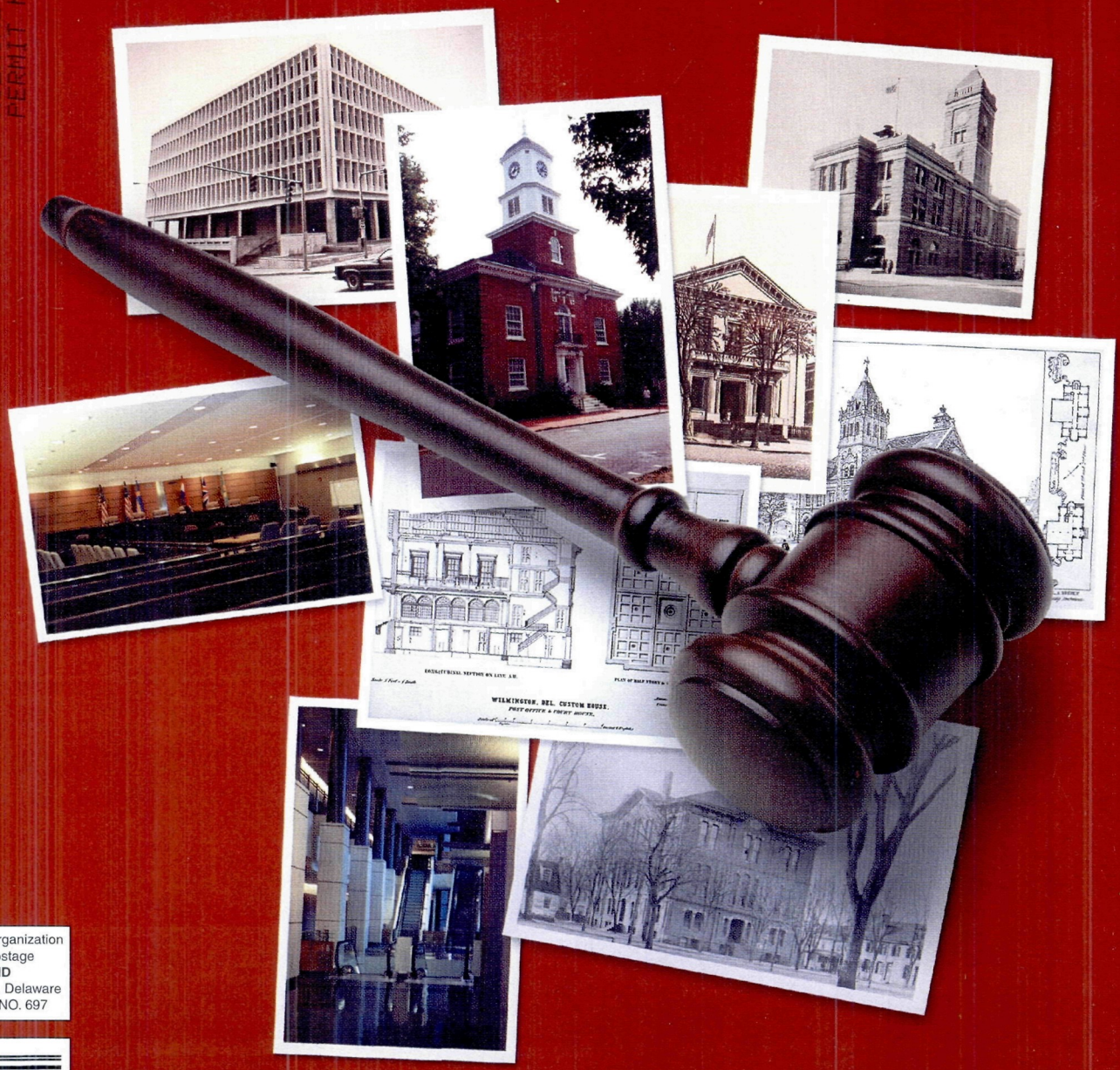

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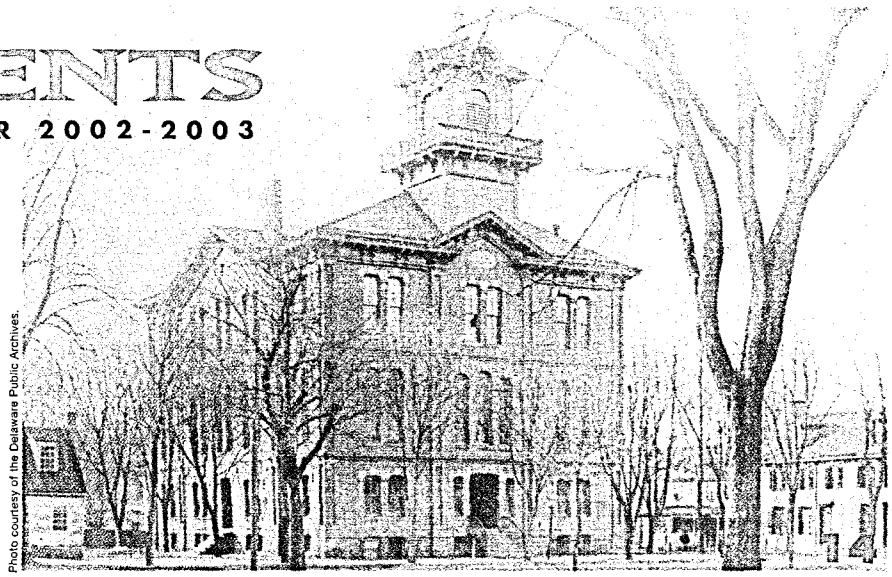

Photo courtesy of the Delaware Public Archives.

The Kent County Courthouse, built in the 1870s.

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IS DELAWARE READY FOR CAMERAS IN THE COURTROOM?

NO CAMERAS *IN CAMERA*

Rita Katz Farrell

MAKE ROOM FOR THE MEDIA

John H. Taylor, Jr.

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."

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CONTRIBUTORS

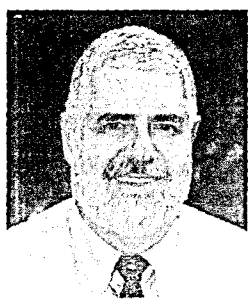
BARBARA E. BENSON

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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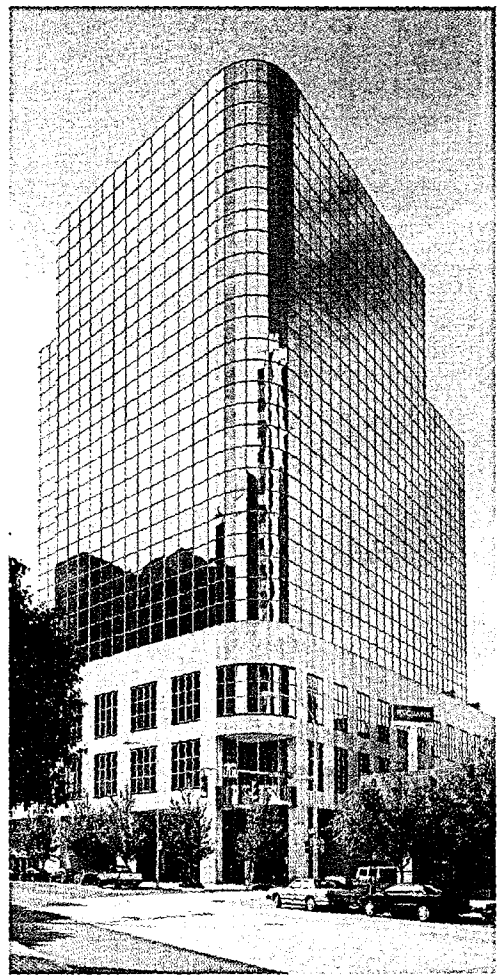

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the federal courts in 1995. He is currently Clerk of Court for the U.S. District Court for the District of Delaware. Dr. Dalleo also continues to research and write about court history, Bahamian history and Delaware history.

RITA K. FARRELL

is a former DuPont chemist and Assistant Professor at the University of Delaware. She was an Associated Press business writer for ten years, opened the Bloomberg Business News bureau in Delaware, and was a Reuters' correspondent and then bureau chief from 1987 until the bureau closed in January 2002. She is an Adjunct Professor at Wilmington College, strings for Agence France Presse and others, and is a guest panelist on WHYY's "Delaware Tonight" news program. Ms. Farrell is a member of the Bar Bench Media Conference of Delaware.

The Honorable MAURICE A. HARTNETT, III

was appointed to the Delaware Supreme Court in 1994 after serving for 18 years as a Vice Chancellor. He retired in 2000, but continues to occasionally serve as a Retired Justice. While practicing law, he was Executive Director of the Legislative Reference Bureau for eight years. Since 1962 he has been a Uniform Law Commissioner and has served as an officer and as a chair of several drafting committees.

JOHN H. TAYLOR, JR.

is the Editorial Page Editor of the Wilmington *News Journal*. A former news reporter, Mr. Taylor is a member and former chair of the Bar Bench Media Conference of Delaware. He is a past recipient of the Helen D. Wise Award, given by the Delaware State Education Association to a citizen of Delaware who has made a significant contribution to public education in the State.

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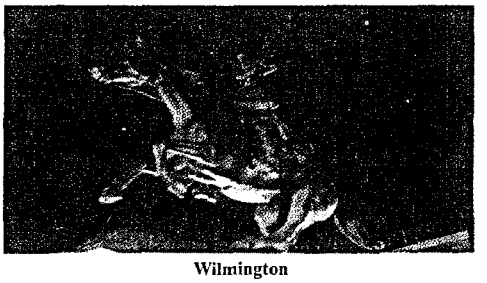

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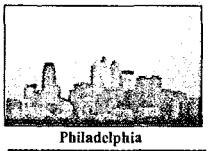

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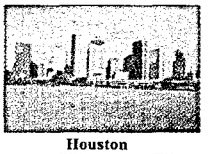

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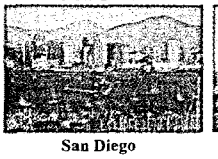

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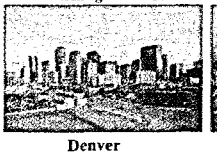

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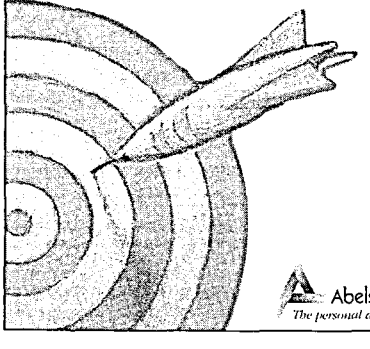

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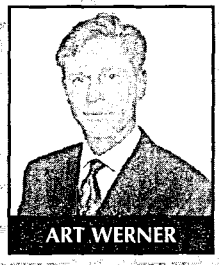

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The Honorable
JOSEPH T. WALSH

became a Justice of the Supreme Court of Delaware on September 30, 1985, and was reappointed for a second term in 1997. Justice Walsh received his B.A. with honors from LaSalle College in Philadelphia in 1952 and his L.L.B. degree from Georgetown University Law School in 1954. In 1956, he graduated from the Judge Advocate General's School, University of Virginia. He was admitted to the District of Columbia Bar in October 1954, and to the Delaware Bar in March 1955. From 1958 to 1972, he engaged in the general practice of law in Wilmington. In 1972, he was appointed Associate Judge of the Superior Court of Delaware and remained in Superior Court until his appointment in 1984 as Vice Chancellor in Delaware's Court of Chancery. Justice Walsh is an Adjunct Professor at Widener University School of Law. ◆

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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 diamondback 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.*

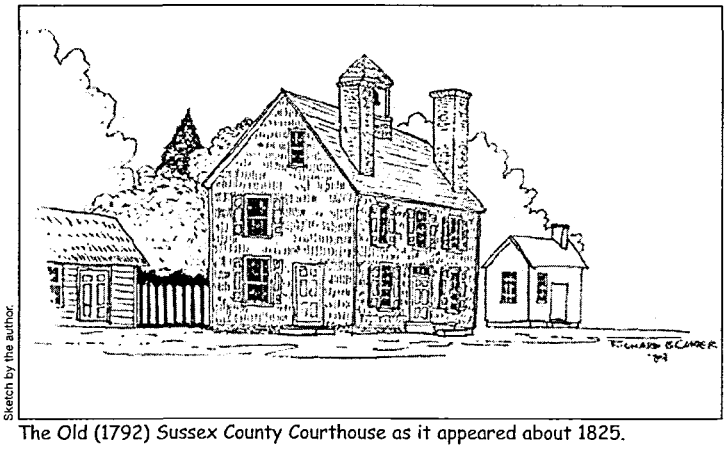
When the Dutch briefly regained control of the Delaware in 1673, holding it only about a year, they continued the civil

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



Sketch by the author.

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

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 Whoorekill 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 midway 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).

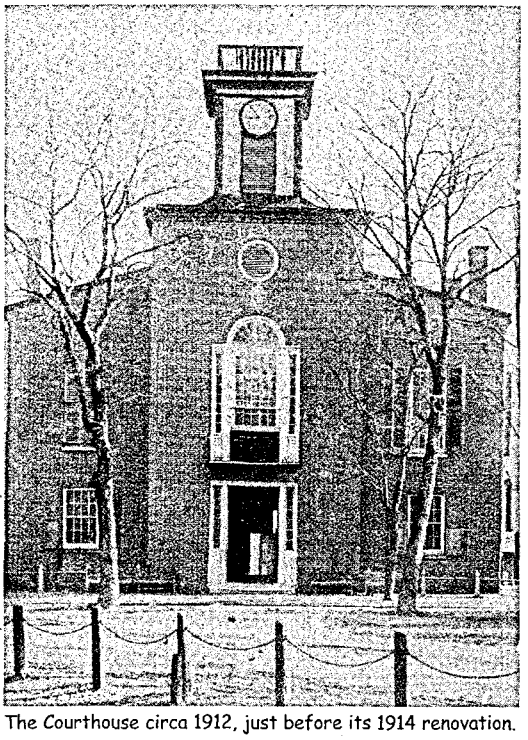


Photo courtesy of the Historical Society of Delaware.

The Courthouse circa 1912, just before its 1914 renovation.

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 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 wakened 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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FEATURE

Maurice A. Hartnett, III

THE COURTHOUSES OF KENT COUNTY 1680 — 2002

Photo courtesy of the Delaware Public Archives.

The Kent County Courthouse, as it looked when built in 1871 until its 1918 renovation.

In the seventeenth century, the courts were often the dominant influence as to where a town would develop, and Dover came into being because it was chosen by William Penn upon his arrival in America in 1682 to be the site for the courts of Kent County. Until recent times, the courts were the most significant influence on the social and economic activities of the town. Even today, the Dover Green, which has been the location of the county courts since 1699, serves its original purpose and is the ceremonial center for Dover and the State.

Court was first held in Kent (then called St. Jones) County in 1680. It was probably held at the home of Chief Justice Witwell or at the home of Justice Edward Pack — both lived on the St. Jones River near its mouth at the Delaware Bay. The home of Justice Pack was not, however, "Town Point," as some have believed. Town Point was a nearby plantation. Sometime after 1680, a building (probably of logs) was erected and used as the courthouse. Its location is unknown, but it probably was also near the mouth of the St. Jones River.

Commencing in 1690, court was held in the tavern of James Maxwell near the present intersection of Division Street, Park Drive and Kings Highway in Dover. There were objections, however, to the holding of court at that place because of its "boisterous tavern atmosphere," and, on March 10-14, 1690/1691,[1] at a meeting of the Court of General Sessions, it was decided to hold a meeting of the

freemen and inhabitants to discuss the problem. At this meeting, held on May 28, 1690/1691, a decision was made to purchase 50 acres of land from William Morton as the location of the Town of Dover and a new courthouse. It was further agreed at that meeting that the "Old Courthouse" would be burned to get its nails.

Little came of the proposal to build on the lands of Morton and in 1694, William Penn's Provincial Council decided to build a courthouse on lands of William Southersby near a landing at the west side of the head of the Dover (St. Jones) River. This landing is at a bend in the river near the foot of Water Street in Dover. Oceangoing vessels could, in 1694, reach the bend, and it was still being used as a boat landing during World War II. This was the third site selected to become the location of Dover, as earlier there had been proposals to erect a courthouse adjacent to Tidbury Branch.

On February 4, 1694/1695, the Provincial Council authorized the purchase of 200 acres, being the northernmost portion of a grant of land called "Brothers Portion." The 200-acre tract had as its northern boundary what is now North Street in Dover, extended southward to what is now South Street, and ran from the St. Jones to west of what is now the railroad and Eden Hill Farm. The remainder of "Brothers Portion" continued south to Puncheon Run, which is near the present intersection of U.S. 13 and South State Street in Dover. The land on which Eden Hill Farm is located was the western residue of the 200 acres not used when the Town of Dover was formally plotted in 1741.

Construction of a courthouse on the "Brothers Portion" began in 1697 at the site of the present Kent County Courthouse at the corner of South State Street and The Green. It was the first building erected in Dover. The site selected was consistent with the wishes of William Penn, who, on August 11, 1693, had directed that the Town of Dover be laid out and that a courthouse be built at the proposed cross streets of the Town. The courthouse was built at the intersection of Kings Street (now State Street) and the Long Road (now the south side of The Green). At that time, the Long Road continued eastwardly in front of the present location of the Sykes House at 45 The Green to the St. Jones River. To the west it continued through The Green on toward what is now Governors Avenue (formerly High Street). This courthouse was built on a rise in the land which is the highest elevation as one proceeds west from the St. Jones Landing.

For several years prior to the completion of the courthouse, court was again held at the houses of various Justices. On September 12, 1699, court was first held in the new courthouse, but the size and appearance of the structure are unknown. In December of 1699, this courthouse was leased for nine years to Phillip Hunings, contingent upon his maintaining a pasture, building a 25-foot by 15-foot stable, a 12-foot-square cellar, and keeping the courthouse in good repair for the use of the courts. He was also to keep an ordinary (tavern) or house of entertainment in the courthouse and to provide sufficient necessaries such as meat, drink, lodging, etc., and hay and corn for horses.

The 1699 courthouse was sold on February 22, 1722, to John Lindsey, but continued in use as a tavern until after the Civil War, when it burned. The tavern was called "The King George Tavern" until its name was changed during the Revolution to "The George Tavern."

The Dover Green at various times has been called "Court House Square" (plot of Thomas Rodney, June 8, 1768); "Public Square" (Beers Atlas 1868); and "Market Square." As early as 1724, however, it was called the "New Court House Green," but that name fell into disuse until the mid-1800s, when the Town of Dover officially named it "The Green." The existence of a public square is typical of old English towns, and The Green was used for markets and fairs until the middle of the nineteenth century. It has always been the center of political activities.

Photo courtesy of Maurice A. Hartnett, III.

The present Kent County Courthouse after its 1918 renovation.

At Battel's Tavern, on The Green, on December 7, 1787, Delaware became the first state to ratify the U.S. Constitution. Troops have left from The Green for all our wars, commencing with the Revolution, and it has been the scene of numerous political rallies and torchlight parades. Presidents Wilson, Coolidge, Harding, Johnson and Bush (the first), among others, have spoken here, and it has often been the site for the inauguration of governors. It was, until the 1920s, the scene for Return Day election ceremonies like those that still take place in Georgetown. Initially, the only poling place in Kent County was the courthouse on the Dover Green. Later, when polling took place in the Hundreds, it was customary for almost the entire adult population of the County to convene on the Dover Green in front of the courthouse on the Thursday following the election to hear the returns as they were canvassed by the courts.

Although William Penn ordered the laying out of Dover on August 11, 1683, the actual plotting of the town was not commenced until 1717—long after the 1699 courthouse had been built and was in use. The formal laying out was not completed until 1740-1741, when it was formally plotted by Thomas Noxon. This plot has been

lost, but a true copy was prepared by Thomas Rodney on June 8, 1768 that is still of record in the Kent County Courthouse. It is likely that buildings were erected near the 1699 courthouse soon after it was completed, and the irregular shape of the lots on the Noxon plot seem to indicate that houses existed at the time of the formal layout. There are also various references in deeds and in letters to indicate that Dover was inhabited well before 1717, and in 1716, a writer claimed that Dover had 300 residents. In 1708, John Oldmixon wrote: "Kent County, very fruitful, but not well planted as the others. Dover is its capital. 'Twas formerly called St. Jones. 'Tis thin of houses and does not consist even now of about 30 or 40 Families." A Presbyterian minister preached in Dover in 1708 and an Anglican priest arrived in 1705.

In 1722 a new courthouse was erected on the site of the present Old State House on the east side of the Dover Green. The 1722 courthouse was a brick building about 25 feet square. Its site is now occupied by the south half of the Old State House, and part of the old cellar was probably incorporated into its cellar. On its front porch, the Declaration of Independence was first read to the inhabitants of Dover in July 1776, and a public celebration occurred, which antedated the celebration at Philadelphia. At that gathering a picture of King George III was burned.

The 1722 courthouse also became inadequate, and in 1775 the Kent County Levy Court, which was constituted in 1736, decided to have a new courthouse constructed. On March 29, 1775, the General Assembly authorized the vesting of title to lands for a new courthouse for the Supreme Court and Court of Common Pleas and Quarter Sessions. No steps were taken immediately to construct the new structure, however, and the 1722 building continued to be used.

On May 12, 1777, the capital of the new Delaware State was moved to Dover and the 1722 Kent County Court House was pressed into use as the State Capitol. This building was demolished to make way for the new courthouse about 1787.

On January 21, 1786, the General Assembly enacted a bill to grant 2,800 British pounds sterling to Kent County to enlarge the courthouse the County was contemplating building so as to accommodate the State offices. On December 19, 1787, the Levy Court Commissioners agreed to change the size of the proposed courthouse from 60 feet by 40 feet to 70 feet by 40 feet. In 1791, the General Assembly authorized a lottery to raise 1,000 pounds for finishing the courthouse, and in 1792 an additional 500 pounds were appropriated toward the cost of the new building. By 1791 the new courthouse (which is now the Old State House building) was in use by the courts. In 1792, the General Assembly met there.

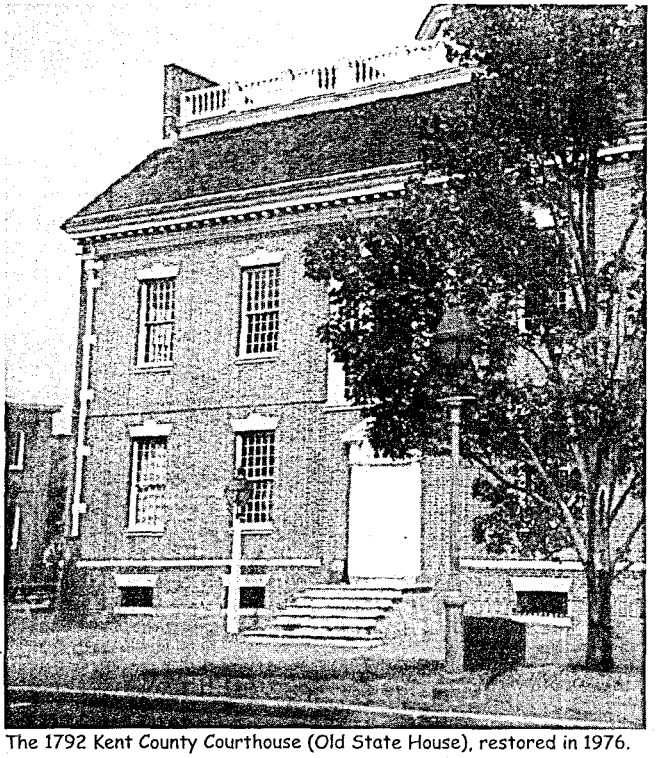
Photo courtesy of Maurice A. Hartnett, III.

The 1792 Kent County Courthouse (Old State House), restored in 1976.

In 1792, the Sheriff of Kent County, John Clayton — with drawn sword — demanded that the General Assembly vacate the building to enable workmen to finish it. The General Assembly, in a huff at the insult, adjourned to Duck Creek. Partly as a result of this controversy, the Constitution of 1792 provided that the first session of the General Assembly held under the new Constitution would be held in Dover and the General Assembly has met in Dover ever since.

In 1794 the members of the Kent County Levy Court were still complaining that the State had not paid its fair share of the cost of the courthouse. They requested 450 pounds from a prior lottery that they never received and an additional 550 pounds as an appropriation to complete the building. In 1795 the General Assembly finally appropriated 1,066.64 United States dollars to complete the building.[2]

From 1791 until 1874, the building that is now the Old State House served as the courthouse for Kent County and as the State Capitol, but it had only one courtroom. For part of this time it also served as the Kent County Office Building. In 1830, major renovations were made to this building, and in 1835 the State erected an addition at the rear for State use. It was removed in 1976, at the time the Old State House was restored to its original appearance.

By 1870 it became obvious that the building serving as the Kent County Courthouse and as the State Capitol was overcrowded, and steps were taken by the Kent County Levy Court to have a new courthouse erected. In 1874 the old 1791 courthouse was sold to the State for exclusive use as the State Capitol, and the present courthouse was erected on the site of the 1699 courthouse, which was then a vacant lot. At the time of its erection, it was Victorian in appearance and four stories high. When originally built, and up to a 1918 remodeling, the first (street) floor was occupied by small one-room offices leased to attorneys.

In 1918 a major renovation of the courthouse took place. The fourth floor, used as a town meeting room, ballroom and convention hall, was removed. The exterior appearance was also changed from Victorian to Georgian. An entire new brick facade was substituted for the narrow mortar bricks. The building was also expanded at this time, and the fireplaces were removed or covered over. During a major renovation in 1983, several of these fireplaces were rediscovered.

Various additions were added to the courthouse in the 1930s, in 1957 and in 1983. In 1983 the entire building was completely refurbished exclusively for court use. The project was a joint endeavor of the Kent County Levy Court and the State of Delaware Department of Administrative Services. Unlike in Delaware's other two counties, Kent County continues to own the courthouse, but the State leases the space used by the courts.

The county offices — Sheriff, Register in Chancery, Prothonotary, Recorder of Deeds, Clerk of the Peace, Register of Wills, etc. — were housed in the 1722 courthouse when it was first built. Sometime later they were moved to a County building that was built during the 1740s on Lot No. 33, as shown on the Town Plot of 1740. This lot was just to the north of the 1722 courthouse and was set aside for County use by the 1740 Plot. A separate jail was sold and replaced prior to 1753.

In 1858 a new County Building was erected on the site of the Old County Building. It was first occupied on January 11, 1859. A two-story addition was added to the County Building in 1903-04 to accommodate the expanding needs of the Recorder of Deeds. In 1909 this building housed the Register of Wills, Recorder of Deeds, Clerk of Orphans Court and Register in Chancery, Prothonotary, Sheriff, Clerk of the Peace, County Treasurer and Levy Court. This building was sold to the State in 1918, and the county offices were moved into the courthouse at the same time the courthouse was expanded and remodeled. At this time, the offices in the courthouse formerly leased to lawyers, which had fallen into disuse, were allotted to the County offices. The old County Office Building was turned around and moved to its present location at the northeast corner of The Green on July 16, 1932, to make more room for Court Street (now closed).

In 1979 Kent County erected a new County Office Building and all County offices — except the offices of the Sheriff, Prothonotary and Register in Chancery — were moved into it. The courthouse was then set aside for the exclusive use of the courts and court-related activities.

All of the courts (except Justice of the Peace Courts) shared a single courtroom until after World War II,

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when additional courtrooms were provided within the courthouse. In the 1950s, separate quarters outside the courthouse were provided for the Family Court, and in 1950 the new separate Supreme Court was given space in the Annex to the Old State House.

From earliest times, it was customary for the courts to treat the children of Dover to lemonade and cakes on the Dover Green on May Day. A bell cast in 1763 was first hung in the 1722 courthouse, and later in the cupola of the Old State House. It has now been removed and is located on the second floor of the Old State House. During the Civil War, much of the populace of Dover gathered daily on The Green to hear local lawyers read the latest dispatches from the war front. Both Southern sympathizers and Unionists attended, and there were often scuffles between the two sides. The Dover Green, like the rest of Dover, was first illuminated by gas on October 25, 1859, and by electricity on December 30, 1899.

Many famous trials have taken place in the Kent County courthouses. In 1872 a dentist attempted to defraud his life insurance carrier by murdering a black servant and skinning the body. He then set fire to a building and the body — hoping to pass off the body as his.

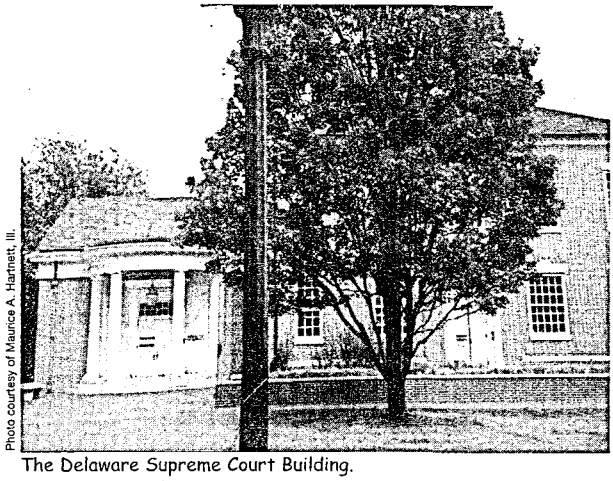

Photo courtesy of Maurice A. Hartnett, III.

The Delaware Supreme Court Building.

The doctor was apprehended on the midnight train to Harrington. He was represented at trial by Willard Saulsbury — later a U.S. Senator and Chancellor. At the trial he accomplished the near impossible — he got his client off by asserting self defense! The doctor was convicted of a much lesser offense and received a short prison term. It is said that Willard Saulsbury prevailed because of his personal acquaintance with each juror.

In 1949, the courthouse was the scene of "the Lonely Hearts Murder" trial, which received daily national publicity. In 1948, Mrs. Inez Brennan lured several elderly men to her farm on Horsepond Road east of Dover by advertising the availability of her companionship in lonely hearts magazines. She then prevailed upon her 15-year-old son to murder the men for their money. Both were convicted of first degree murder and sentenced to life imprisonment. They were later released and left Delaware.

In 1953 a trial established the first national precedent that evidence obtained by radar was admissible in a court to prove the excessive speed of a motor vehicle.

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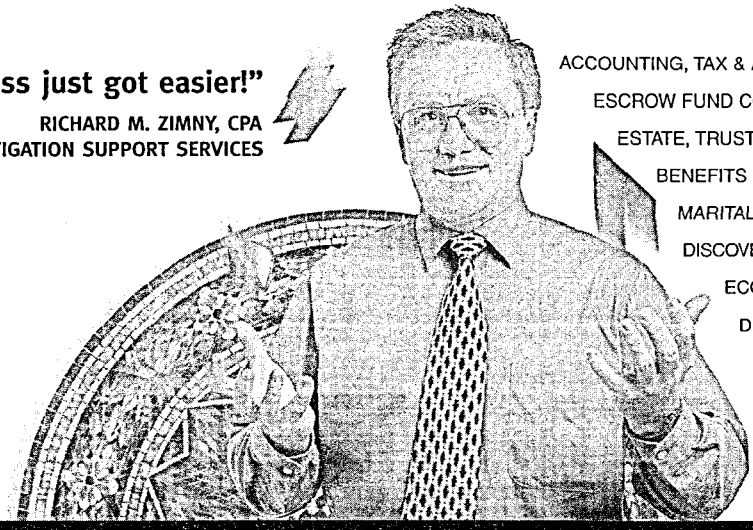

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ing, it was not unusual in the summer for the residents of The Green to sit on their porches and hear portions of the trials that were underway. It is said that the family of Col. Thomas C. Frame, one of the last of the true lawyer-orators, could always tell when he would be home for lunch by just listening to him address the jury.

At the present time, planning is underway for the State to purchase the Kent County Courthouse and the adjacent O'Brien County Office Building for court use. The County will erect a new County Building for the County offices on U.S. 113 in Dover.

Today, not everything of importance that occurs in Dover takes place on The Green, and the economic and social influences of the courts have lessened. The Green, however, remains the ceremonial heart of the State and continues, as it has for over 300 years, to fulfill its unique role as the site of residences and offices for lawyers and judges, the scene of business transactions, and the seat of justice for the people of Delaware. Perhaps nowhere else in the country is there such a prime example of architectural styles from the earliest period to recent times.

Even now, some natives say, late on a summer night, when all is still and the courthouse clock strikes, a visitor to The Green may still encounter the ghost of Chief Justice Chew, who was only purportedly laid to rest in 1745; or hear the sounds of ancient fairs and rallies; or even witness the colloquies of long-forgotten members of the Bench and Bar. ◆

FOOTNOTES

1. For an explanation of this multi-year dating notation, see *Court Records of Kent County, Delaware, 1680-1705*, Leon De Valinger, Jr., ed. (Washington, D.C.: American Historical Association, 1959):

It is well to remember that the Gregorian Calendar was not adopted in Delaware and the other English Colonies in America until 1752. Under the old Augustine Calendar the year began on March 25 and December was the tenth, rather than the twelfth, month. Thus, a date appearing in the text as "1691/92" would indicate that the year 1691 is nearly terminated and that 1692 is approaching.

2. The planning and building of the courthouse occurred over a period of time during which the United States Constitution was ratified and a single-currency monetary union was established.

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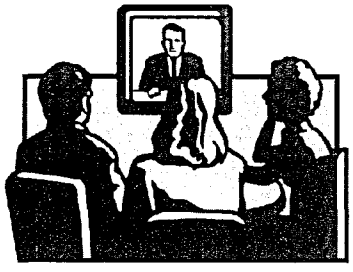

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FEATURE

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COURTHOUSES OF NEW CASTLE COUNTY

Photo courtesy of the Historical Society of Delaware.

Earliest known view of Town Hall, Wilmington. The original was presented to the City Council, July 26, 1860.

In these early years of the twenty-first century, three courthouses remain as historic artifacts of the administration of justice in New Castle County reaching back to the 1730s: the courthouse in New Castle; Town Hall in Wilmington; and the Daniel L. Herrmann Courthouse in Wilmington. Other buildings that served as courthouses no longer exist, lost through arson, planned demolition, or ravages of time. Each of those buildings, whether standing or lost, tells a portion of New Castle County's judicial history since the transfer of European legal systems to the Delaware River Valley began in the seventeenth century.

The New Sweden Company established the first courtroom in Delaware in 1638. The courtroom and jail were part of Fort Christina, which stood near the confluence of the Brandywine and Christina rivers. For the first few years the small colony's struggle for survival took precedence over legal niceties, but even in those difficult times space in the blockhouse within Fort Christina served as a center of crude justice. The arrival in 1643 of the colony's third governor, Johan Printz, signaled the true beginnings of a judicial system in New Sweden. His orders from the New Sweden Company included two paragraphs of instruction that vested the governor with full power over crimes and disobedience according to Swedish law and custom "so far as is possible."[1] In his application of justice, the governor was instructed to rely upon the "most prudent" men for "assistance and counsel."[2]

Printz handled his first cases in the Fort Christina blockhouse, including one involving disputed land purchases that brought him into conflict with Massachusetts Bay's Puritan governor, John Winthrop. Printz clearly found the court facilities, and indeed the entire fort at Christina, inadequate to provide the prestige he thought due his office, for as soon

as he polished off the judicial backlog that awaited him in 1643, he moved his center of administration north to Tinicum Island, just south of the current Philadelphia International Airport. Only after Printz left New Sweden in 1653 did the courts return to Fort Christina.[3]

In 1651 the Dutch West India Company moved to challenge Swedish control of the Delaware, building Fort Casimir at what is present-day New Castle and bringing a second system of European law and justice to Delaware. The struggle between the two powers lasted less than five years. When the Dutch emerged victorious in 1655, the Dutch West India Company expanded its presence and named Jean Paul Jacquet as vice-director of the South (Delaware) River. His instructions included the administration of military and civil justice through his council, which for civil cases had to include two "suitable" freemen.[4] The council met in Fort Casimir, probably in an upstairs room. Most of the civil cases it heard focused on land and debts, but domestic issues, particularly relating to marriage, are also included in the records.[5]

Although Dutch domination of the Delaware lasted until 1664, administration lasted only two years by the Dutch West India Company of New Castle. In 1657 the City of Amsterdam assumed control of the fort at New Castle and the surrounding territory and revised police and judicial powers to follow "the practice and custom" of the city.[6] Under this system, one person served as head of the colony and the judicial system, assisted by three "Burgomasters" and five to seven magistrates, a position that combined elements of an English sheriff and a public prosecutor.[7] In 1658, law books from the Netherlands arrived for the court, which was located in an upstairs room in the stockaded fort.

The division of control of the area along the Delaware between the Dutch West India Company and the City of Amsterdam added confusion to weakness for the Dutch. In 1664 England and the Netherlands went to war and the English seized New Netherland. Delaware passed to the control of the Duke of York, though the tiny colony remained a satellite of a headquarters centered in New York, as New Amsterdam was renamed. The English moved slowly in introducing their own legal system, but by 1676 it was fully in place. The Dutch *schout* fully evolved from the master of the court to a sheriff or servant of the court. The court at New Castle was ordered to meet monthly, with subsidiary courts at Upland and Whorekill (Lewes) to meet less often. Three justices of the peace were to meet as a body and to have the power of an English Court of Sessions. The court without a jury could decide cases under £5, while judge and jury could decide cases up to £20 without recourse of appeal to the Court of Assizes in New York. The first English courts met in the same place as had the Dutch courts: a room in the blockhouse in the original fort.[8]

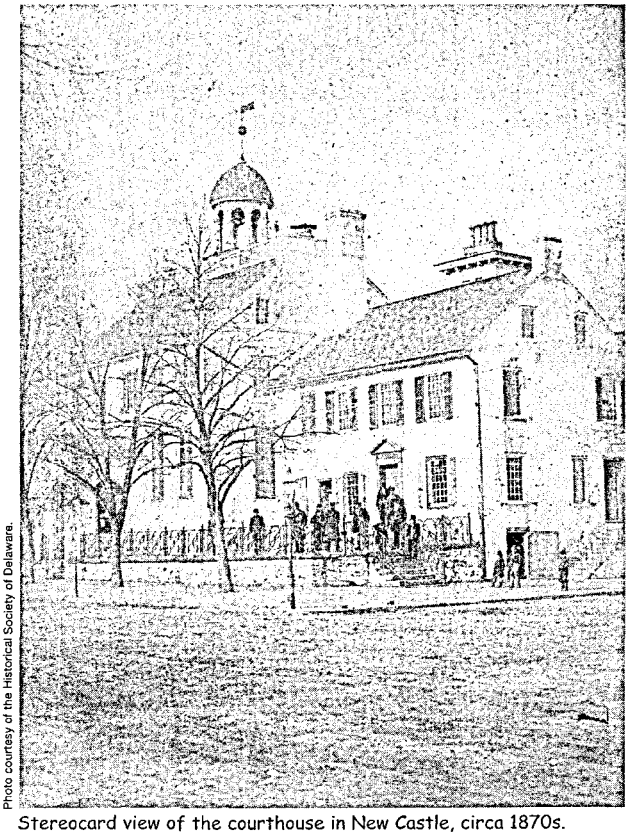


Photo courtesy of the Historical Society of Delaware.

Stereocard view of the courthouse in New Castle, circa 1870s.

According to Dudley C. Lunt, the first jury trial in Delaware took place at the court in New Castle late in 1669, when a panel of "twelve good Men" were empanelled to hear the case of Marcus Jacobson, the "Long Finn," on the charge of treason.[9] The instructions from Governor Francis Lovelance in New York to the court in New Castle echo through the years, according to Lunt, in form and language still used in Superior Court felony trials. Despite the trial by jury in the small courtroom in the blockhouse in New Castle, the sentence for the accused had been determined secretly by the Council in New York several months earlier and conveyed to the court in New Castle for application.

For nearly forty years change, change, and yet again change had marked control of the territory that would become the State of Delaware. Each colonizing European nation brought its own cultural traditions and legal system, yet certain similarities characterize this era of Delaware frontier justice. Only when a colony became stable did courts become organized, use law books, and keep court records. But even then no colony on the Delaware had the luxury of having courts with the trappings of justice that existed in the home country. Courtrooms were always part of the colony's headquarters, located in a log block-house within a fortified stockade.

Indeed in 1677-78 a power struggle erupted between Captain Christopher Billop, military commander and customs collector for the Delaware, and the justices at New Castle over control of space within the fort. Billop asserted that the fort fell under his control and that he could keep horses in the blockhouse and hay in the courtroom if he wished. After a protracted period of dispute, Billop agreed to clean the blockhouse and return the courtroom to the justices, but the incensed court at New Castle sent their complaint forward to New York. The Executive Committee summoned Billop to appear before them and then removed him from office.[10] This struggle marked the transfer of power from military to civil on the Delaware and marked the end of Delaware's frontier period of military rule.

Delaware's first centers of justice,

the wooden blockhouses of the Swedes, the Dutch, and the English, all fell to ruin, but decay was not the cause of the loss of the courthouse built in New Castle circa 1687 by the last "owner" of Delaware, William Penn. Penn had acquired the colony from the Duke of York, later James II, in 1682 to add to the territory he already held as the Province of Pennsylvania. Penn's justice system reflected English law, Quaker idealism, and the frame of government he created to bind his two colonies into one. That effort of joining his colonies proved impossible; the creation of a court system merely difficult. The final shape of a court system in the Three Lower Counties did not come into being until about 1727, although the locations of the courts in Delaware were established early on: at New Castle, Dover, and Whorekill (Lewes).[11]

Little is known about the appearance of the first purpose-built judicial and legislative building in Delaware, erected in 1687 in New Castle by Penn to replace the earlier blockhouse. In 1697, Dr. Benjamin Bullivant described the building as a "pretty [sic] town house."[12] In the context of the times, townhouse must have meant a two-story building with one or two rooms on each floor. Archaeological research in the 1980s suggests a structure about thirty feet square, probably frame, topped by a cupola on the roof. Evidence suggests that the courts and the assembly shared the second floor, with a jail on the ground floor.[13]

About forty years later, in 1730, Delaware's first real courthouse burned, a victim of arson. William Kelsey, a prisoner in the courthouse jail, set the building on fire, a crime for which he paid with his life. An Englishman, Kelsey had chosen transportation to the colonies rather than whipping for his conviction of theft in England. Kelsey continued his light-fingered habits in Maryland and Delaware, where he landed in the New Castle jail for stealing a pot of honey and two loaves of bread. In his farewell before his execution he blamed his life of crime on disobeying his mother and breaking the Sabbath "in many ways."[14]

The structure that rose to replace the burned-out shell reflected the affluence and stability of early eighteenth-century New Castle. Built in the new classical style of early Georgian architecture, it was larger and more substantial than its predecessor. Constructed of brick rather than wood, perhaps forty-feet square, and two-and-a-half stories tall with a gambrel roof and cupola, the new courthouse of 1730-31 is the central portion of the building that still stands on the southeast corner of the Green facing Delaware Street.[15]

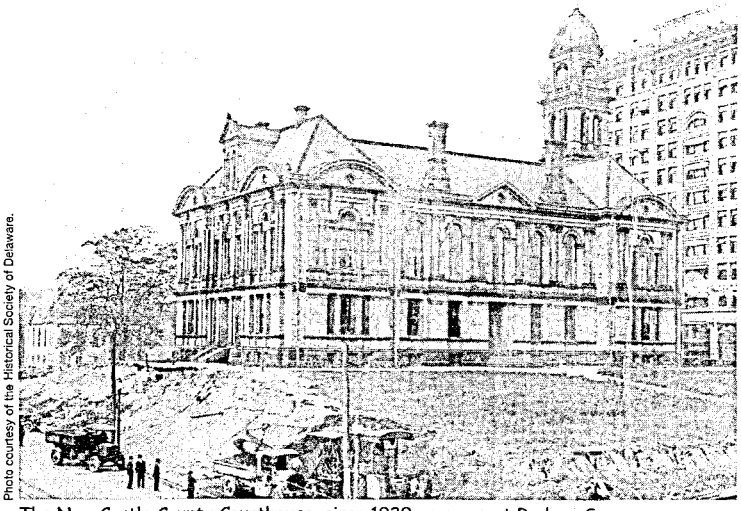


Photo courtesy of the Historical Society of Delaware.

The New Castle County Courthouse, circa 1920, on present Rodney Square. Workers prepare the site for demolition of the building, which proved so sturdy that dynamite was required to bring it down.

For over forty years the courts met on the ground floor and Delaware's colonial assembly met on the second floor. The separation of judicial and legislative functions was ensured by the absence of an interior staircase. Legislators and justices could not meet without walking outside to use exterior stairs. Perhaps having learned a lesson from arsonist William Kelsey, the new building did not house prisoners. A separate jail was built nearby for them.

The representatives of the Penn and Calvert families met in New Castle to settle the boundaries of Delaware, using the courthouse's cupola to confirm the twelve-mile arc that creates Delaware's northern boundary. The building also served as the site of the debates that brought Delaware to vote for independence on July 15, 1776, and to adopt the state's first constitution later that same year. In 1777, as British warships sailed up the Delaware and trained their guns on the town of New Castle, the legislators fled to safer ground, eventually ending up in Dover. When the legislature moved out, the courts could expand, and in 1793 an internal staircase was built that allowed the building to function more efficiently.[16]

For nearly a century the courthouse in New Castle handled the judicial business of Delaware's northernmost county. As the nineteenth century progressed, it became evident that fissure lines existed within the new nation, and none more volatile than the question of slavery. As a border state that buffered north from south, tensions ran high in Delaware, and some of that drama saw its way into the courthouse in New Castle. Thomas Garrett, a merchant in Wilmington and one of the great leaders in the Underground Railroad, and John Hunn, a farmer in the Middletown area who was a conductor on the Underground Railroad, faced multiple counts of violating the Fugitive Slave Act of 1793 for helping Samuel Hawkins, a free African-American from Queen Anne's County, Maryland, lead his enslaved wife and six children to freedom.

The cases came to trial in May 1848 before the United States Circuit Court at New Castle, with District Judge Willard Hall and Roger B. Taney, Chief Justice of the United States Supreme Court, presiding. Garrett and Hunn had every reason to worry when they faced a jury composed of men from Sussex County, the most pro-slavery part of the state. In the end the verdicts justified their pessimism. The jury found in a favor of the plaintiffs Charles W. Glanding and Elizabeth N. Turner and against Garrett and Hunn in all six cases brought against them. As Justice Taney, himself a Maryland slaveowner, interpreted the Fugitive Slave Act, those convicted of violating the law were liable for fines of $500 for each slave in an escaping party rather than $500 per conviction. For both Garrett and Hunn that interpretation spelled financial ruin, but the stiff fines

failed to deter either man from continuing his work within the Underground Railroad.[17]

During the trials of Garrett and Hunn, the courtroom would have looked much as it does today: small and historic. To many the courthouse of the 1840s was inadequate and even decrepit. But then complaints about the courthouse in New Castle had been heard for many years. In the early nineteenth century some wanted the courts to be more centrally located in the county in Christiana Bridge. In the 1830s the battle shifted to a power struggle between New Castle and Wilmington for the county seat. On the one hand, New Castle had always been a center of state and county government, but it remained small in population and was struggling economically. On the other hand, its neighbor just north on the Delaware continued to grow into the state's economic and population center. Round one in the battle for judicial prominence went to New Castle in 1839, as did a second and, at the time, the supposed final round in the status sweepstakes.[18]

Then in the late 1860s the issue rose again. Grand juries particularly began to complain loudly about the inadequacy of the old building, including its poor ventilation and lack of accommodations. Perhaps New Castle County really did need a new courthouse, but if so in which town? Lobbying by both New Castle and Wilmington was intense, but the latter's use of elected officials, lawyers, businessmen, and "heavy taxpayers" proved effective.[19] The courts would move to Wilmington.

One of the most debated, politically charged, and important cases in nineteenth-century Delaware, and one that has been cited in more than seventy-five opinions of the United States Supreme Court, brackets the move of the New Castle County Courthouse from New Castle to Wilmington. William Neal, an African-American who lived near Blackbird in rural New Castle County, was charged with raping a white woman. His appointed lawyers, Charles Devans and Anthony Higgins, argued unsuccessfully that the indictment against Neal should be quashed or that his trial should be moved to the federal court. They believed that their client could not receive a fair trial by his peers in state court because "all persons of color and African race" were excluded from the jury pool on the basis of the state constitution and status. The court rejected the petition, and in May 1880 Neal was tried in the old courthouse in New Castle, found guilty, and sentenced to death for his crime.[20]

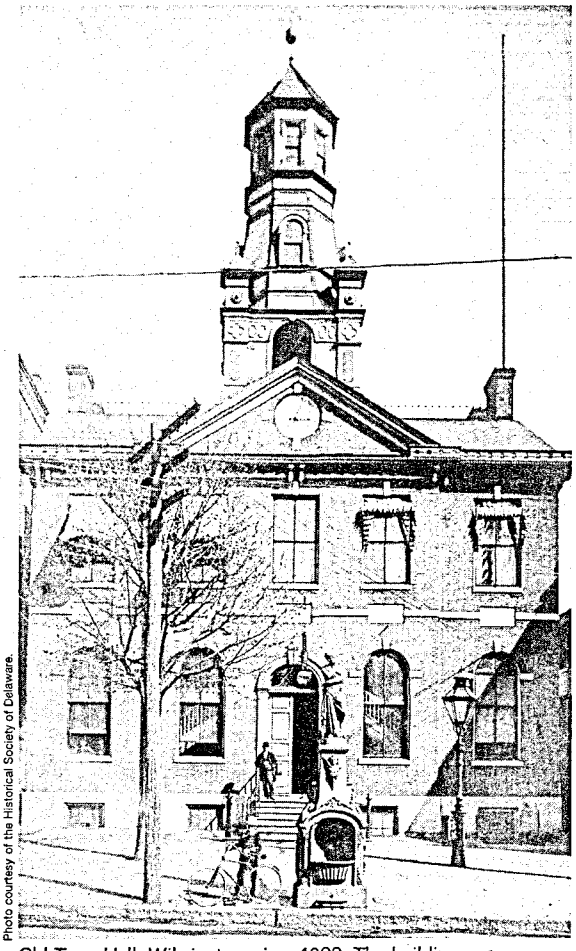


Photo courtesy of the Historical Society of Delaware.

Old Town Hall, Wilmington, circa 1890. The building was "modernized" in 1875 to include a massive Victorian-style cupola.

Despite strong negative public opinion, Higgins and Devans carried Neal's appeal to the United States Supreme Court. In a decision handed down in October 1880, Justice John Marshall Harlan, writing on behalf of the majority, found that Neal had been denied his rights by the State of Delaware's systematic exclusion of African-Americans from jury pools and set aside the judgment and verdict of the Court of Oyer and Terminer. The case would be tried again, but this time in the new county courthouse in Wilmington. Almost before the paint on the new walls had dried, the second Neal trial began in February 1881. This time the jury pool included African-American males, although none was selected for the trial. This time the jury, a carefully selected group of Republicans, according to some disgruntled Democrats, acquitted Neal. The trial ended and the defendant was spirited away from the new courthouse by carriage, but the repercussions in Delaware politics lasted for several decades.[21]

It had taken less than eighteen months to build the new county courthouse in Wilmington once the negotiations on location and price were settled. The courthouse would stand in the center of a property bounded by Market and King streets between Tenth and Eleventh streets, the site we now know as Rodney Square, which was then a water reservoir recently drained and abandoned by the city. New Castle County bought the site and borrowed $70,000, the limit set by the General Assembly for construction of the facility.[22]

The building committee selected noted Philadelphia architect Theophilus Chandler to design the building. Chandler's plan reflected the aesthetic of the late Victorian period, just as the courthouse in New Castle had been a manifestation of the early eighteenth century. The two buildings could not have been more different. The new courthouse, built of Chester County serpentine, Brandywine granite, and Ohio limestone, had all of the grandeur and design elements of the Renaissance Revival style. Towering above the building was a massive tower toppedby a clock that struck on the quarter hour.[23]

Chandler's original design proved to be too costly when the first round of bids was opened, but modest modifications such as substituting iron for marble staircases brought the project just within the $70,000 budget constraint. New Castle County received the completed building from the contractor on December 15, 1880. Under the terms of the agreement that brought the courthouse to Wilmington, title to the building was to be held by a board of trustees composed of some of New Castle County's most distinguished cit-

izens: Thomas F. Bayard, Jr., Daniel M. Bates, J. Wilkins Cooch, Nathaniel Williams, and George Z. Tybout.[24] Final cost of the building, including decorating and furniture, exceeded $110,000.

The new courthouse formally opened on January 20, 1881. Its first floor contained county offices and the second floor was reserved for the courts. There was one large courtroom, a grand-jury room, and a library. The Court of Chancery, Orphans Court, Superior Court, and the Court of General Sessions of the Peace and Jail Delivery all met in the one courtroom.[25]

The New Castle County Courthouse of 1881 was not the first courthouse in Wilmington, for Delaware's largest town had had its own court since 1739 when it received a royal charter. In 1798, a permanent center of government and justice for Wilmington was built on Market Street between Fifth and Sixth streets to replace the facility that had been part of the Second Street Market. This new Town Hall was designed to demonstrate the importance of Delaware's largest urban center. No architect was hired to design the building; rather six council members became a committee for design and construction. Some of the committee's original plan was rejected as being too ornate, so the final design called for a restrained and formal exterior with imposing interior spaces that relied on volume of space rather than decoration to make an impression, a style suitable for a town with strong Quaker leadership. The two-story structure was built of brick with large windows and topped by a cupola. A terraced formal garden was laid out behind the building as the land sloped down to King Street.[26]

In addition to borough, and later municipal, business, in the early part of the nineteenth century Wilmington's Town Hall provided space for sessions of the federal district court as well as space for community events. But as the years went by governmental needs increased and outgrew the building's space. Two-story additions off the back toward King Street replaced the original garden. These new additions included space for jail cells, police and fire departments, and a large new courtroom. Architectural tastes also changed. A building once perceived as austerely handsome now seemed merely austere, and the building was "Victorianized" with features that included a tall, wedding-cake type cupola that only introduced stylistic disharmony to the facade. By the 1890s municipal court met three evenings a week, including Saturday, as well as during the day to accommodate citizens' schedules and the growing caseload. This court had jurisdiction over cases of violations of laws, ordinances, and regulations of Wilmington as well as criminal matters listed in the state constitution.[27]

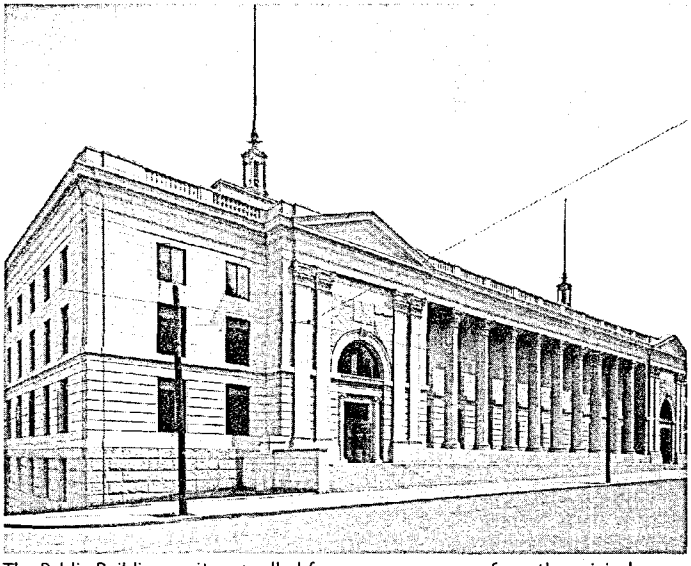


Photo courtesy of the Historical Society of Delaware.

The Public Building, as it was called for many years, seen from the original county end of the building, May 31, 1916.

By the early twentieth century, the odor of inadequacy hung over both courthouses in Wilmington. Town Hall now just seemed "old"— it could no longer house all municipal offices, many of which had to move into rented spaces in buildings up and down Market Street. The county courthouse, which had seemed large and impressive in 1880, was by 1910 viewed as unattractive and confining. Fears also began to grow that the building was not fireproof. Even the clock in the tower of the county courthouse, its most architecturally significant feature, had to be silenced when guests at the new Hotel DuPont complained that the strikings on the quarter hour ruined their sleep. New Castle Levy Court hired a local architect, E.L. Rice, Jr., to design an addition to the courthouse.[28]

While Rice developed a proposal for expanding the courthouse of 1880, a group of Wilmington's leading citizens, led by John J. Raskob, secretary to Pierre S. du Pont, were setting in motion a plan that would transform the area of Market to King and Tenth to Eleventh into a new urban center appropriate to the new corporate age. Taking the lead from the new DuPont building and with visions of the architectural urban renaissance being led by the City Beautiful movement, Raskob and his committee bought up the properties along King Street between Tenth and Eleventh and convinced city and county political leaders that they should join together to build an imposing new city-county building on that site. The old county courthouse could then be torn down and that square block be turned into a public park. Eventually other monumental public or private buildings would be built on the north and south sides of the square to create a new "heart" for progressive Wilmington.[29]

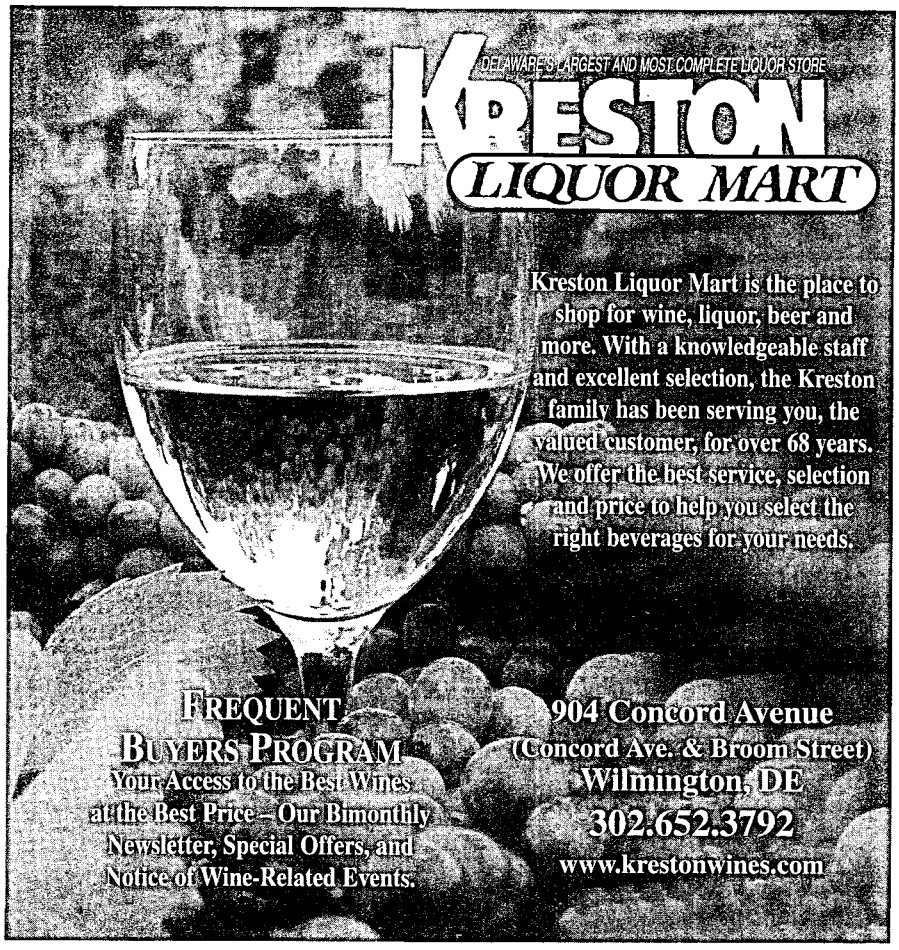
Thanks to Raskob's shrewd maneuvering, city, county, and state legislators adopted the proposal for a new city-county building and authorized the borrowing of funds by the city and the county with a minimum of debate. Both the city and the county had building committees, but those two groups worked as one as they developed guidelines for a design competition. The members of the committees had no fixed architectural ideas beyond the desire for a distinguished building that would present a unified facade for what would be in essence two different buildings operated by two different entities. Warren P. Laird, a distinguished professor of architecture at the University of Pennsylvania, agreed to help the committees select the winner of the competition. The New York firm of Palmer, Hornbostel & Jones won the competition with a design in the Greco-Roman or Beaux Arts style popularized by the Chicago World's Fair.[30]

Work took about three years, with the end result being, virtually everyone agreed, a stunning success — tastefully proportioned, monumentally dignified, and aesthetically pleasing both inside and out. Governor Charles P. Miller called it a "magnificent building" at its dedication in May 1916.[31] Built of Webb pink granite, the interior was finished with Indiana limestone, imported marble trim, and Kentucky granite in the grand corridor or arcade. Tiffany Studios supplied art bronze balustrades for the elliptical staircases. The City Council chamber and the New Castle County courtroom on the third floor were paneled in black walnut, while other rooms on that floor had oak paneling.[32]

In the years that followed, the work of government and justice went on inside the City-County Building while its exterior served as a backdrop for parades, speeches, and public events. The precedent-setting legal decisions made in the building have been many, and some cases have drawn national attention, including *Paramount v. Time Warner,* with its nationally televised arguments, and the murder trial of Thomas Capano.

But of all the cases, perhaps those of *Belton v. Gebhart* and *Bulah v. Gebhart* echoed farthest beyond the courtroom on Rodney Square, the borders of the state of Delaware, or even the United States Supreme Court. Those cases have also echoed over time. Collins J. Seitz, a young, new member of the Delaware Court of Chancery, heard the two cases that went to the heart of the segregation of Delaware's secondary and elementary schools. Seitz found in favor of the plaintiffs and ordered that the two African-American girls, and others in similar circumstances, be admitted to the schools closest to their homes.[33] These cases went forward on appeal to the United States Supreme Court as part of the landmark *Brown v. Board of Education of Topeka, Kansas.* When the Supreme Court handed down its decision in 1954, the Delaware cases were the only ones affirmed. Chief Justice Earl Warren, writing the unanimous decision, quoted extensively from Chancellor Seitz's opinions.[34]

Despite the great affection that people in the community, particularly those who worked there, felt for the City-County Building, it, like all its predecessors, began to be too small to



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meet all of the needs of city and county government. By the late 1950s plans were afoot for an addition. One of the possibilities was a proposal for a twenty-story addition topped by an all-glass observation floor complete with food service and "supervised" nighttime activity for young people, but the plan finally adopted was less grandiose: merely a three-story wing added at Eleventh and French streets, as well as renovations to existing space within the original building. Sleek, up-to-date paneling, lighting, drapery patterns, and furniture of the early 1960s came to be juxtaposed with original Beaux Arts finishes.[35] In the 1970s, Family Court and city and country government offices moved into other buildings, and the old arcade gave way to new courtrooms as every space was maximized to serve the county's judicial needs.[36]

The building received a new name in 1992, the Daniel L. Herrmann Courthouse, but no name or yet another reconfiguration of space could make the building more usable.[37] The judiciary, and state government, faced the same dilemma as their predecessors had in 1910-13: expand the existing building or build a new courthouse. After considerable study, debate, and negotiations, the decision was made to build a new courthouse. On August 9, 2002, the legal community bade farewell to the Daniel F. Herrmann Courthouse and moved to a new building centered between King and Walnut at Fourth Street. In his speech in 1916, Governor Miller foreshadowed this decision. The day might well come, the governor said, when "in the march of progress a future generation shall decree that it has served its usefulness and replace it by another."[38] So that day came, and the City-County Building, the pride of Wilmington and New Castle County in 1916, joined the honor roll of buildings that had served as centers of justice in northern Delaware for over 350 years. ◆

FOOTNOTES

1. Amandus Johnson, ed. & trans., *The Instruction for Johan Printz, Governor of New Sweden* (Philadelphia: The Swedish Colonial Society, 1930), para. 24, pp. 93-94.

2. *Id.*, para. 25, p. 94.

3. *Id.*, pp. 227-43; Amandus Johnson, *The Swedish Settlements on the Delaware, 1638-1664,* 2 vols. (Philadelphia: University of Pennsylvania, 1911), I:454-66.

4. Berthold Fernow, ed. & trans., *Documents Relating to the History of the Dutch and Swedish Settlements on the Delaware River*, 12 vols. (Albany: 1856-77), XII:114. *See also* H. Clay Reed, "The Early New Castle Court," *Delaware History* 4 (1950-51): 227-32.

5. For the minutes of the Council, including all civil cases, see *Documents Relating to the History of the Dutch and Swedish Settlements, supra* note 4, at XII:133-62.

6. E. B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State New York*, 12 vols. (Albany: Weed, Parsons and Company, 1856-77), I:620.

7. *Id.*, I:621. *See also* Reed, *supra* note 4, at 233-36.

8. *Records of the Court of New Castle on Delaware*, 1676-1681 (Lancaster, PA.: Wickersham Printing Co., 1904), 3-8; Reed, *supra* note 4, at 236-44.

9. Victor H. Paltsits, ed., *Minutes of the Executive Council of the Province of New York*, 2 vols. (Albany: State of New York, 1910), I:38, 309-22. Dudley Cammett Lunt, *Tales of the Delaware Bench and Bar* (Newark, DE.: University of Delaware Press, 1963), 5-19.

10. *Records of the Court of New Castle, supra* note 8, at 194-95.

11. Lunt, *supra* note 9, at 33-52.

12. *Quoted in* William Richard Cario, "Anglicanization in a 'Frenchified, Scotchified, Dutchified Place': New Castle, Delaware, 1690-1750," Ph.D. diss., New York University, 1994, pp. 7, 57.

13. Alice H. Guerrant, "Old New Castle Courthouse: Test Excavations in the Sheriff's Yard and Alley," unpublished report, State of Delaware, Bureau of Archaeology and Historic Preservation, Aug. 29, 1984, p. 2. Submitted to Delaware Division of Historical and Cultural Affairs, Dover, Delaware.

14. *Pennsylvania Gazette,* Mar. 13, 1730.

15. Guerrant, *supra* note 13, at 2; "National Historic Landmark Nomination for New Castle County Courthouse," Washington, D.C.: U.S. Department of the Interior, National Park Service, 2001, p. 4; Daniel F. Wolcott, "The Restoration of the Courthouse in New Castle," *Delaware History* 7 (1956-57): 197-99. Additions of wings to both sides of the original courthouse began in 1765 and continued into the 1840s to create the shape of the building standing today.

16. "National Historic Landmark Nomination," *supra* note 15, at 9.

17. Opinions in Hunn and Garrett cases (*Glading v. Hunn, Turner v. Hunn, Glanding v. Garrett, Turner v. Garrett*) Box 1, File 8, 1848, National Archives, Mid-Atlantic Region, Philadelphia, summarized in "National Landmark Nomination," *supra* note 15, at 171; James A. McGowan, *Station Master on the Underground Railroad: The Life and Letters of Thomas Garrett* (Moylan, PA: Whimsie Press, 1977), 48-69; Carol E. Hoffecker, *Federal Justice in the First State: A History of the United States District Court for the District of Delaware* (Wilmington, DE, 1992), 46-48.

18. "National Historic Landmark Nomination," *supra* note 15, at 6; Constance Jean Cooper, "A Town Around Cities: New Castle, Delaware, 1780-1840," Ph.D. diss., University of Delaware, 1983, pp. 165-68; *Every Evening*, Mar. 21, 1879. After 1846, some argued for dividing New Castle County into two, making both Wilmington and New Castle county seats.

19. *Every Evening*, Mar. 21, 1879; *Morning News*, Sept. 9, 1967. The old courthouse in New Castle underwent extensive renovations beginning in 1955 and became part of Delaware's State Museum System in 1963. *See* Wolcott, *supra* note 15, at 193-206; "National Historic Landmark Nomination," *supra* note 15, at 18.

20. *Neal v. State of Delaware*, 103 U.S. 370 (1880); *Wilmington Sunday Star*, June 27, 1920.

21. *Neal v. State of Delaware*, 103 U.S. 370 (1880); *Wilmington Sunday Star*, June 27, 1920; *Journal Every Evening*, May 1935.

22. Some sources incorrectly suggest that the City of Wilmington donated the land and that the State of Delaware provided capital costs outright. *See Journal Every Evening*, July 2, 1935; *Morning News*, Sept. 9, 1967.

23. *Morning News*, Sept. 9, 1967. Theophilus Chandler also designed Trinity Church in Wilmington and several mansions off the Kennett Pike.

24. *Journal Every Evening*, July 2, 1935; *Wilmington Sunday Star*, June 27, 1920; *Morning News*, Sept. 9, 1967. When Daniel M. Bates died before the project was completed, he was replaced by George Gray. When the building was abandoned, title had to be returned to the City of Wilmington. All of the trustees were then dead, so Francis A. Cooch, eldest male heir of J.W. Cooch, signed on behalf of the trustees. *Journal Every Evening*, July 2, 1935.

25. *Morning News*, Sept. 9, 1967; *History of Wilmington: The Commercial, Social and Religious Growth of the City During the Past Century* (Wilmington, DE: Every Evening News Co., 1894), 100.

26. Annette Woolard, "Heart of Wilmington: The Life and Times of 'Old' Town Hall," *Delaware History* 24 (1990-91): 4-8.

27. Woolard, *supra* note 26, at 29-30; *Every Evening*, Nov. 2, 1875; Article 6, section 15 of the Delaware Constitution of 1897.

28. Woolard, *supra* note 26, at 4, 8, 9; A.O.H. Grier, *This Was Wilmington* (Wilmington, DE:News-Journal Company, 1945), 38; *Morning News*, Sept. 9,1967.

29. *Morning News*, Jan. 24, 1913; *Journal Every Evening*, Dec. 21, 1936; Carol E. Hoffecker, *Corporate Capital: Wilmington in the Twentieth Century* (Philadelphia: Temple University Press, 1983), 41-44; Marjorie G. McNinch, "The Changing Face of Rodney Square," *Delaware History* 21 (1984-85): 145.

30. McNinch, *supra* note 29, at 145-47. The city borrowed about $900,000, including money to demolish the old courthouse and create the public park, while the county borrowed $600,000. Grier, *supra* note 28, at 386.

31. *Every Evening*, May 27, 1916.

32. *Id.*

33. *Belton v. Gebhart (Bulah v. Gebhart)*, 87 A.2d 862 (Del. Ch. 1952).

34. *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954).

35. *Journal Every Evening,* Feb. 19. 1958; *Morning News*, Nov. 29, 1961, May 18, 1962, Jul. 18, 1962.

36 *Morning News*, Mar. 9, 1973.

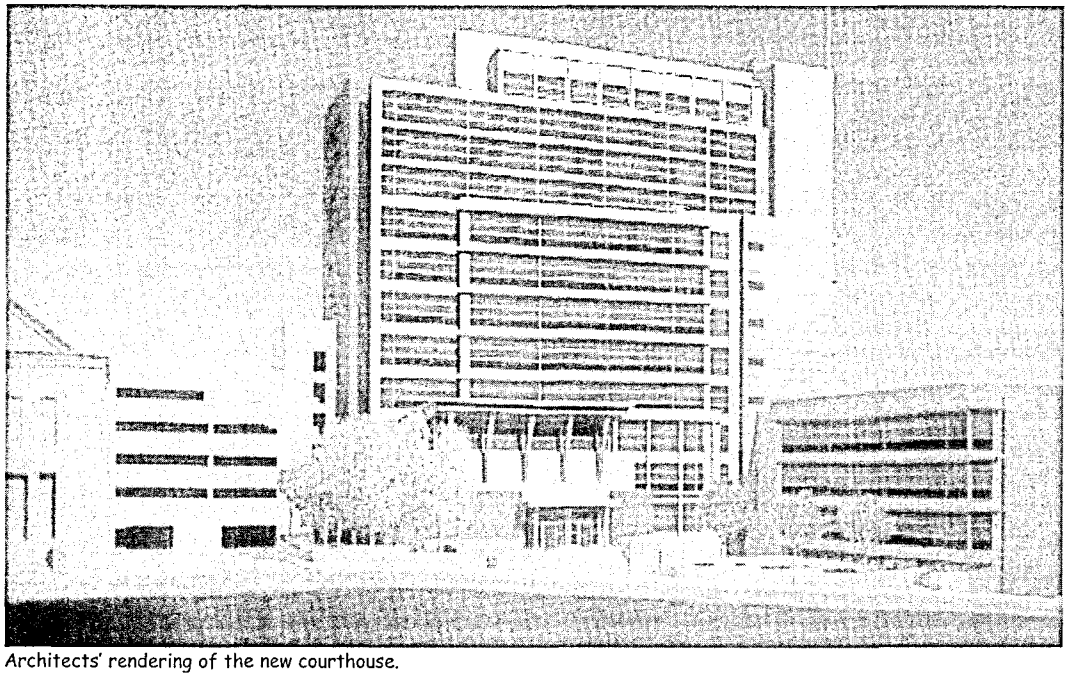
37 The name — or lack thereof — had often troubled people. Unnamed by legislators in 1912, the building itself had "City Hall" carved above one entrance and "Courthouse" at the other. Most people called it .the "Public Building." *Morning News*, Apr. 7, 1964.

38. *Every Evening*, May 27, 1916.

FEATURE

Joseph T. Walsh

THE NEW CASTLE COUNTY COURTHOUSE



Architects' rendering of the new courthouse.

The American courthouse has undergone a remarkable transformation in the past century. At the turn of the century, courthouses were the centers of government — not just for the administration of justice but for all aspects of government, particularly local government. Courthouses were located in the center of the town or city, usually a county seat, and were monumental in form. Many of these courthouses reflected classical design and were intended to serve many generations.

If one looks at the location of the courthouses in Delaware, the central presence of the seat of justice becomes obvious. The Kent County Courthouse in Dover is located on The Green, the historic center of government dating back to colonial days. In Georgetown, the Sussex County Courthouse is located on the Circle in Georgetown, the county seat and the center of local government. The Courthouse for New Castle County has, since 1916, also occupied a spot in the cultural and commercial center of Wilmington — Rodney Square. From the time of its construction it was much more than a courthouse. Indeed, many of us remember that it was a multi-use building, truly a seat of government, with the City Hall at the Tenth Street end and the old New Castle County Levy Court on the first floor of the Eleventh Street end. County row offices were located in the center arcade and various courts occupied the balance of the building.

Expansion of the Courts

During the early 1970s, New Castle County government offices were moved from the courthouse and shortly thereafter most of the City of Wilmington departments, with the exception of the Municipal Court and the Wilmington Police Department, departed for new quarters in the City-County Building on French Street. All the vacated space was converted for use as courtrooms or offices for support personnel. When the first court expansion was undertaken in 1962, the building had seven courtrooms serving four different trial courts — the Superior Court, the Court of Chancery, the Court of Common Pleas, and the Municipal Court. For a brief period, the Family

Court also occupied space in the Eleventh Street wing of the building. By 1992, when the building was renamed the Daniel L. Herrmann Courthouse in honor of the late Chief Justice, the building housed 15 courtrooms and was bursting at the seams. Not only was the building crowded, it was unsafe. The building had at least eleven entrances at various locations around its perimeter. Today, security experts are in agreement that governmental buildings, particularly courthouses, should have a single entrance staffed by security personnel and equipped with weapons detection equipment. When a single secure entrance was eventually adopted for the Herrmann Courthouse, it resulted in all other entrances being blocked or barred. While security was enhanced, the single access arrangement resulted in long lines of people entering the building, particularly in the morning.

Another security concern was the lack of separation between the public, litigants, some of whom were in a highly emotional state, and court personnel. Prisoners, under guard, used the same hallways as jurors, judges and court employees. It had been acknowledged for many years that the present courthouse was unsafe, overcrowded and outmoded. It was designed for a different era and a less violent society and was ill-suited for service as a modern, efficient structure for dispensing justice.

Gov. Minner and Gloria Wenicki Homer, Secretary of Administrative Services, present the "key to the courthouse" to Chief Justice Veasey at the Grand Opening Ceremony, October 11, 2002.

Space Studies and Early Planning

Planning for a new facility began in 1989 when the State authorized certain space studies. Those studies canvassed all court functions in New Castle County, including the Supreme Court, Court of Chancery, Superior Court, Court of Common Pleas, Family Court, Municipal Court (now part of the Court of Common Pleas), and the Justice of the Peace Courts. Those courts combined then occupied approximately 300,000 square feet. Under nationally recognized court standards, and taking into account the rising trend in both criminal and civil filings, it was concluded that, at a minimum, 450,000 net square feet of space was required for those courts to discharge their mission for the foreseeable future.

In 1995, the Governor authorized the Department of Administrative Services to solicit proposals for the construction of a new courthouse to include, as an option, the enlargement of the existing courthouse on Rodney Square. Five development teams made presentations involving four sites — two on Delaware Avenue near Jefferson Street, another directed to the Fourth and Walnut/Fifth and King Street site and one for erecting a tower behind the existing facade of the Herrmann Courthouse. Each of these proposals envisioned a financing arrangement that would not require support by State General Obligations Bonds. Eventually, a committee of judges, legislators and administrative officials recommended a proposal calling for a tower behind the Herrmann Courthouse. A number of funding options were considered, including direct obligation bonds, debt issued by a separate building authority or the payment of rent to a private developer. Despite efforts to avoid direct State financing, all options impacted significantly on the State's capital budget or debt rating at a time when the State was committed to extensive school and highway expansions. Though seriously considered, the tower proposal was eventually rejected, primarily because of the State's reluctance to fund the project at that time.

Two years later, however, in 1997, the Executive branch authorized a new space and program study with the expectation that funding would, over a span of years, become available. The willingness to consider funding the courthouse project, which at the time carried an estimated price tag of $90 million, was directly related to a significant improvement in State revenues, both current and projected.

Site Selection

In June of 1997, the Governor signed into law, as part of the Annual Bond Bill, funding for site acquisition, planning, programming and preliminary design for a new courthouse with the preferred site at Fourth and Walnut/Fifth and King Street. An Executive Committee comprised of legislators, judges, and officials of the Department of Administrative Services was authorized to acquire a site, engage consultants to advise the committee and eventually to contract for the design and construction of a new courthouse.

In December of 1997, after interviewing several nationally recognized firms, the Executive committee selected a joint team of Gruzen Samton and Justice Planning Associates to do the preliminary programming and site planning. After negotiation, the site at Fifth and King was acquired from the City of Wilmington for $4.5 million. The site is 5.5 acres bounded roughly by Sixth, King, Fourth and Walnut Streets and includes the old bed of Fifth Street between King and Walnut. The site selection was not without controversy. There is an almost nostalgic attachment to the Herrmann Courthouse and particularly to its location on Rodney Square. Many members of the Bar and some judges believe it was a mistake to leave this historic setting for a remote and presently undeveloped part of Wilmington.

While the primary emphasis in the site selection was to provide adequate facilities for courts using the Herrmann Courthouse, the space needs of the Family Court were equally compelling. That busy court had outgrown its facility at Ninth and King Streets and was blocked from any significant on-site expansion. It was not deemed feasible from an engineering standpoint to add floors to the Family Court Building and it, too, has its share of security deficiencies. Thus, the needs of the Family

Court in New Castle County, with over 300 employees and an ever-expanding caseload, required the Executive Committee to plan for a building large enough to accommodate all judicial operations in New Castle County.

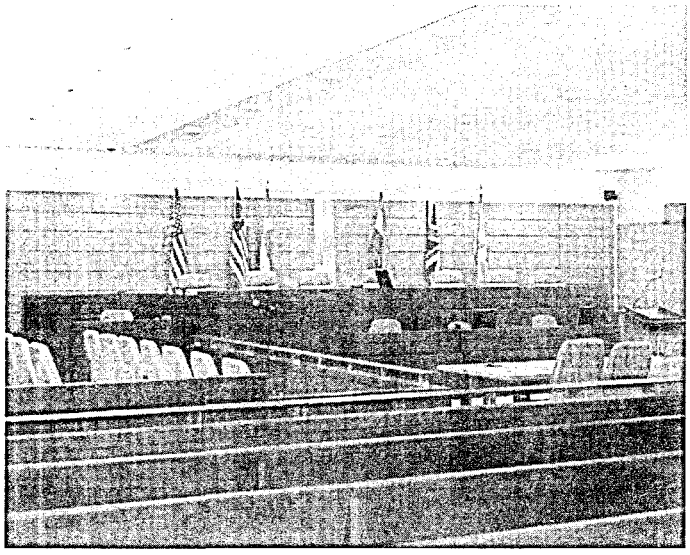
As someone who spent a good part of my judicial service in the Herrmann Courthouse, I understand and appreciate the concerns of those who bemoan the move from Rodney Square. But there are compelling considerations which dictate the new location.

- Any expansion of the Herrmann Courthouse on a scale needed to at least triple the size of the building could not be undertaken without relocating, for several years, on a rotating basis, all courts presently occupying that building.
- The Rodney Square site offered no prospect for on-site parking or expansion and the cost of acquiring additional land in the vicinity, even if available, would be prohibitive.
- The Fifth and King location offers a site not only adequate for the proposed courthouse but for a 1,000-car parking garage as well, and provides land for future expansion.
- The new courthouse will house over 800 employees and attract several hundred more people each day. This influx of people promises to rejuvenate the entire area for several blocks around the site. Thus, the establishment of the courthouse at this site will serve the overall community interests of improving downtown Wilmington.

Design Principles

The new site was developed with the following design principles in mind:

- Design a highly visible courthouse that marks the southern entry to Wilmington. To avoid a monolithic approach, the building line should be staggered with a low rise component of 4 stories on the side and an adjacent tower of 12 stories.
- Create a prominent public space or plaza related to the courthouse entrance on King Street.
- Locate the primary, and sole public, entrance to the courthouse on King Street.
- Minimize the height of the courthouse podium along Walnut Street.
- Provide several security lanes at the public entry to avoid congestion.
- Design a courthouse entry that is convenient to pedestrians.
- Separate pedestrian and vehicular circulation.
- Locate the prisoner sallyport, judges' parking, and building service components in an unobtrusive location off Walnut Street.
- Relocate to the building all court functions presently housed in the Herrmann Courthouse, the Family Court Building, and certain support services in other buildings.
- Provide for future horizontal expansion for the courthouse.
- Locate a public parking garage for 1,000-to-1,300 cars on the northern portion of the site, to include 200 parking spaces for jurors. Public parking cannot be located under the courthouse beecause of security concerns. An enclosed passageway from the new garage to the courthouse will provide protection during inclement weather.



Superior Court Courtroom 8B — the "ceremonial courtroom" of the new courthouse.

After interviewing several highly qualified architectural teams, the Executive Committee selected HLM Design of Orlando, Florida, in association with Buck Simpers and Beyer Associates, both local firms, as the principal architects. The Executive Committee also selected EDIS of Wilmington, in collaboration with CRSS Construction of Philadelphia, to act as construction managers. The HLM Design Group has built modern multi-use courthouses in Orlando and West Palm Beach. Members of the Executive Committee who visited those courthouses were impressed with the combination of imaginative design and governmental image which these courthouses presented.

Size v. Cost

From the outset, the Executive Committee struggled to balance the needs of an expanding judicial presence within the limits of State funding. Since the building was to be funded entirely by State money, and represented the largest non-highway project ever undertaken by the State, its funding presented a challenge. There were, however, two favorable factors. Since the building was to be constructed over 36 months, funding could be spread over a number of budget years, thus lessening the impact on annual bonding requirements. Secondly, the favorable upturn in State revenues during the fiscal years 1999 and 2000 permitted the State to make substantial payments for construction out of current revenues through the Budget Act, rather than through the Bond Bill.

The space studies conducted in 1998-99 attempted to determine the present and future needs for all State courts located in New Castle County, as well as for support agencies such as the Arms of Court and The Public Guardian. Several scenarios were presented to the Executive Committee reflecting the full or partial accommodation of the needs of all these components. A full scenario meeting the needs of all courts and agencies would require construction of a building in excess of 600,000 square feet. With construction costs continuing to escalate, the total projected budget, including land costs, was far in excess of what the Executive and Legislative branches were willing to commit to the project. As a result, the Executive Committee reluctantly agreed to a "minimal sce-

nario of 551,000 net square feet." Later adjustments raised the size to approximately 570,000 square feet. In order to achieve this goal, it was necessary to eliminate completely space for the Justice of the Peace Courts, various support and ancillary agencies and to downsize other departments. Even with the minimal scenario, however, the original space projections for courtrooms, judges, and court staff were taxing the construction budget.

A further adjustment was made early in construction which resulted in the Supreme Court deciding not to occupy the building. Although the total square footage of projected design was achieved, the configuration of the floors resulted in slightly more space on the courtroom floors than on the floors designated for judicial chambers. This led to smaller office allocation to all courts and, more importantly, placed judges on the same court on different floors – contrary to one of the tenets of design that all the judges of each court have chambers on the same floor. To remedy this problem, the Supreme Court, which rarely has the need to use trial courtrooms, decided that it would remain in its present quarters in the Carvel State Office Building. This change has permitted greater space allocation to judicial chambers in the new courthouse and eliminated the anomaly of splitting chambers between floors.

The new courthouse is designed and wired to accommodate the latest in technology, including video conferencing, as well as electronic access and filing for transmitting and viewing pleadings. High traffic areas, such as the Prothonotary, Register in Chancery, and Clerk of the Court of Common Pleas, are located on the entrance and lower levels, as is the jury assembly room. Judges and their support staff, secretaries, bailiffs, and court reporters, will be clustered near their courtrooms on the upper floors of the building. Family Court services and courtrooms occupy the Fourth Street wing. The areas which will be subject to high traffic use will be served by escalators.

An important feature of the new building is the inclusion of a *Pro Se* Center. Court systems throughout the nation have experienced a tremendous increase in activity by *pro se* litigants and Delaware has been no exception. *Pro se* representation is particularly prevalent in domestic relations matters and the Family Court has experienced a marked increase in *pro se* participation. Space for a *Pro Se* Center has been allocated on the Second Floor of the new courthouse, adjacent to the Law Library. The center will be staffed by court personnel and volunteer lawyers who will provide assistance and forms to members of the public. Limited computer access will also be available.

Escalators transport a high volume of visitors to and from the three lowest floors in the courthouse.

The building is designed for 53 courtrooms for 60 judges and a staff of over 800. The total size of the building is approximately 575,000 square feet, and it has been designed to accommodate growth over the next 20 years. Two floors for courtrooms will be shelled for future use when they are needed. The building has also been structured to provide footings for building a later low-rise wing, if necessary beyond the year 2020.

Litigants in Delaware's courts will no longer be required to guess where their hearing is. Information kiosks and video services will be arranged at the entrance to provide complete calendar information. Courts will be able to share functions and reduce operational costs. The new facility will provide greater collegiality for judges as they work in closer proximity to one another. Jury service will be less of a burden to citizens. Administration of the judiciary will be simpler and more efficient.

Construction – On Schedule and Within Budget

Once the design had been approved by the Executive Committee in the summer of 1999, the Committee concluded that the most expeditious and efficient approach to construction of the building should involve the use of a Construction Manager rather than a single bid from a General Contractor. The use of a Construction Manager permitted the early phases of the construction to be undertaken immediately while bidding continued on later stages of the project. This approach proved beneficial and the selection of EDIS, an experienced local construction manager, permitted the project to be completed within the 36 months designated for the period of construction. Adherence to the construction schedule was critical, not only to guard against inflation in construction costs, but also to ensure that the transfer of the Herrmann Courthouse would take place as contractually required on September 3, 2002. The State was also the beneficiary of favorable weather conditions during the winter of 1999 - 2000, when excavation for foundations was able to proceed without interruption.

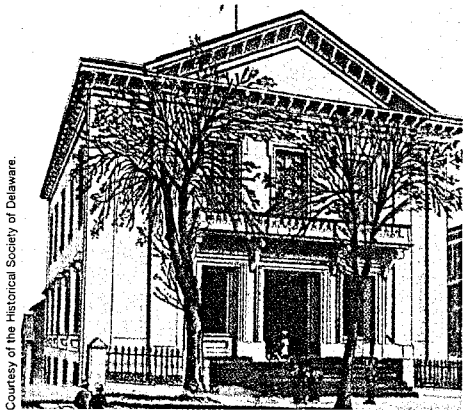
Even though the $134 million price tag may seem high, it is an investment that will pay dividends for many decades. When compared with leasing new buildings, renovating older space, or delaying construction of a courthouse, it is the least expensive long-term alternative. Leaders of all three branches of government should be congratulated for their foresight. The New Castle County Courthouse truly will be a symbol of justice in Delaware. The new facility is both beautiful and practical, blending the dignity of a public institution with the latest in technology and security, and designed to be a model of efficient and effective public service. ◆

FEATURE

Peter T. Dalleo

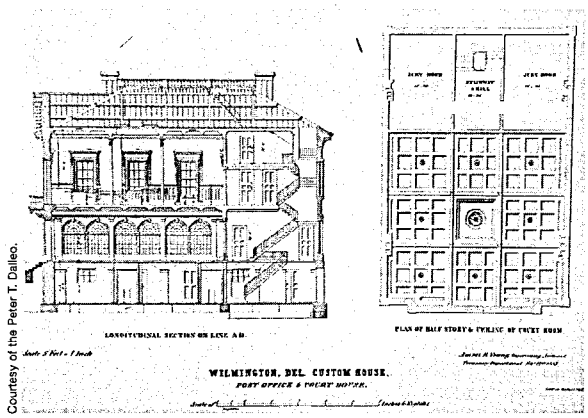
"THE BUILDING BIDS FAIR TO BE A VALUABLE ORNAMENT TO OUR CITY"

FEDERAL COURTHOUSES IN DELAWARE



Courtesy of the Historical Society of Delaware.

The 1855 Custom House at Sixth and King streets.



Courtesy of the Peter T. Dalleo.

Architects' drawing of the Custom House.

Courthouses are special and important community landmarks. Although courthouses make architectural statements through innovative designs that utilize special materials and mechanical and technological improvements, they also represent justice, fairness and equality before the law. Today, because they address societal ills and house the processes that deter them, designs must take into consideration security and the efficient administration of justice and the operations that support it while still providing public areas that welcome the community.[1] Since 1789, twenty-one men and two women have served the nation as district judges in these courthouses in the United States District Court for the District of Delaware. Although Delaware's District Court docket consists of both criminal and civil filings, the latter predominate. Admiralty cases dominated the civil caseload until after the Civil War when it became more diversified. Since then cases have increasingly reflected business litigation involving firms incorporated in the state, especially related to patent law and, more recently, bankruptcy.[2] This article, however, deals less with the judges, the broadening of federal jurisdiction and interpretation of the law than, as the title indicates, with the aesthetic and physical character of the buildings and the complexities of constructing them.

In the District of Delaware, the federal judiciary did not hear cases in stand-alone courthouses, but rather in places that met multi-departmental needs. From 1789 until the middle of the nineteenth century, the U.S. Marshals Service arranged for judges to use county and municipal facilities in Delaware, such as the courthouses in Dover, Kent County and in New Castle and Wilmington, as well as the latter's Town Hall, in New Castle County. The first permanent federal building for the District of Delaware was not available until the 1850s with the placement of the Custom House, Post Office and Court House in Wilmington. The government constructed and replaced its three successors in Wilmington at approximately forty-year intervals. Until the 1950s there was only one permanent authorized judgeship for the District. That, in effect, meant that the courthouse portion of these buildings consisted of one courtroom and supporting offices for the judge and the clerk's staff and eventually offices for appellate judges.[3] Not until late in the twentieth century did the Court become the lead agency in these buildings. Underlying the construction history of Delaware's federal courthouses was what the April 10, 1897 *Wilmington Daily Republican* put so succinctly: "The Government moves slowly."

The Custom House (1855-1897)

In the mid-1850s, the District of Delaware moved into the new Custom House at Sixth and King streets in Wilmington, that also included the Post Office. Completed in 1856 at a cost of $39,569, the facility remained the District of Delaware's base until 1897. In 1974, spurred on by the Victorian Society, the Old Custom House became eligible for inclusion on the National Register of Historic Places. Thus the courthouse belonged to a building that was "of national significance not

only because of its design, the recognized talents of the architect, but also for its role in the development of fireproof construction and cast and wrought Iron technology."[4]

As early as 1852, advertisements for bids to build a "Custom-House, Post Office &c . . . at Wilmington, Delaware" appeared in local newspapers. Congressman George Read Riddle oversaw the appropriations process in the House of Representatives, and in 1853 arranged for $3,500 to buy out the Thomas Moore Carriage Works that operated on the King Street site. Meanwhile, Ammi B. Young, who had already established a national reputation, had drawn up the architectural plans for the Wilmington Court House. It was one of his earliest projects after being appointed the first Supervising Architect for the U.S. Department of the Treasury, and in it he implemented themes which he later played out in buildings in other parts of the nation including Maine, South Carolina, Texas and New Mexico. For Wilmington he produced a Greek Revival style design that incorporated the nationally identified need for fireproofing that consisted of thick masonry walls and cast iron beams and posts. He also integrated a cast iron stairway between the first and second floors. McCullough and Company, a Wilmington firm that had offices in Pennsylvania and Maryland, installed the iron work. Their fabricating plant in Elkton, Maryland, used patented equipment invented at McCullough's to produce a cleaner and more uniform rolling of galvanized iron that helped Wilmington become known for finely engineered, prefabricated architectural iron work. The carpentry work was done by William Graves.

The *Delaware Gazette* of June 26, 1855 described the progress on the project and suggested an October completion date:

> The *Customs House*- . . . The plastering is now on the sides of it and . . . McCullough and Co., are now urging forward the roof with all possible speed, but as it is a very difficult and costly one, they are compelled to proceed slowly. It will be formed of galvanized corrogated iron, supported by iron rafters, and will be completely fire proof . . . [and] is the most appropriate article of roofing now manufactured. The plastering is white, and the building bids fair to be a valuable ornament to our city. The Post Office will face 6th street, and the delivery of mail and boxes will be on the north side of the hall which divides the post office from the customs house, the entrance being on King street. We understand that there will be separate delivery for females. The U.S. District Court room will be in the second story.

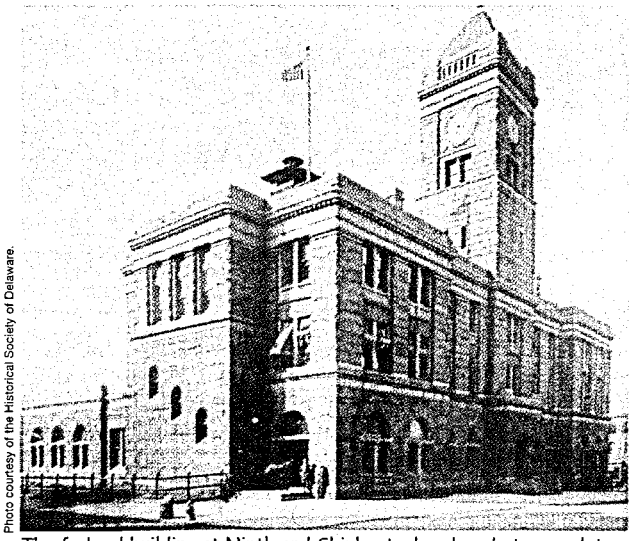


Photo courtesy of the Historical Society of Delaware.

The federal building at Ninth and Shipley took a decade to complete.

The district judge did not occupy the building until late 1856, however, because neither the interior nor Congressional argument about the placement of the court in Wilmington was finished. In the second-floor courtroom adjacent to two jury rooms and an office for the clerk, the judge heard the first case during the September session of the circuit court. It involved the robbery of the downstairs postal rooms. For Admiralty cases, following tradition, the District Court displayed a model ship to the rear of the courtroom and above the judges' bench. Outside of the room, an iron and granite balcony extended over the entrance on King Street. The U.S. Marshals Service used a basement holding cell for prisoners.

After the 1897 removal of government employees to Ninth Street, federal agencies continued to move in and out of the Old Custom House until it was acquired by Wilmington College in 1983. The WPA used it as an employment bureau, the U.S. Army and Navy used it as a recruiting center, and at one point the spaciousness of the second floor courtroom attracted the U.S. Army Engineers.

Ninth & Shipley Streets (1897-1937)

The next federal building, at Ninth and Shipley, was not as architecturally significant as the Custom House on King Street, but anyone who saw it recognized its imposing "fortress-like style."[5] It housed the same agencies as its predecessor, but now the postal service was identified as the primary tenant. Indeed, the driving force behind its completion was Postmaster Enoch Moore, who also owned a local shipbuilding plant in Wilmington. The contractor used mainly Brandywine granite and placed iron trusses in the roof. The tower offered extensive unobstructed views of the western and southern portions of the city and boasted a clock. A passenger and a small freight elevator facilitated internal movement. Despite Moore's perseverance the project took a decade to complete, with site costs of just under $30,000 and construction costs of nearly $270,000.

Local observers commented favorably in the *Daily Republican* about how Moore and his chief deputy coordinated the simultaneous closing of the Old Custom House and the opening of the new facility on Ninth street on Saturday, April 10, 1897. They also noted that: "The Government moves slowly as this building has been in the course of construction for nearly ten years."

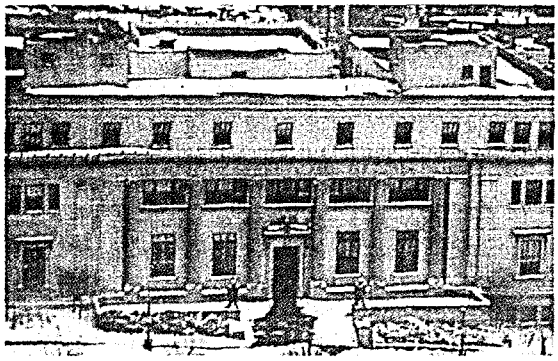
The courtroom was distinctive for its mahogany-paneled walls and high ceiling. Although ready for the U.S. District Court's April session, no business could be undertaken. Judge Leonard E. Wales had died in February and the President and the U.S. Senate had not yet settled on the appointment of his successor. Nonetheless, without spectators, the District Court Crier opened court with the clerk of court, the district attorney and the U.S. Marshal and his deputy in attendance.

Although it served its purpose until the completion of a new building in 1937, the Ninth Street Post Office

failed to live up to the optimism expressed by the *Daily Republican* reporter when it was first erected: "It is a handsome and substantial structure and will stand as long as Wilmington stands, if not destroyed by earthquake or fire." In fact, after federal offices were removed to Rodney Square, the Ninth Street edifice was demolished. The site currently supports downtown shops and a municipal parking lot.

Rodney Square (1937-1973)

In the 1930s, when the new Post Office, Court House and Custom House became the fourth side of Rodney Square at Eleventh and Market Streets, the federal judiciary settled into the heart of Wilmington's business and social center. The structure joined the Wilmington Institute Free Library, the DuPont Building, and the City-County Building already there. Its placement also "marked the completion of Rodney Square as the commercial and civic center of Wilmington."[6] Ready for partial occupancy in 1935, the building officially opened in 1937, with ground costs of $500,000 and construction costs of nearly another $880,000.



The Rodney Square Post Office, which included the U.S. District Court.

Newspaper accounts offer a wealth of detail about how firms, under the umbrella of a new corporation, Architectural Federal Associates, combined their expertise to produce a design that matched the pre-existing facades on the square, especially that of the Beaux Arts library. During the summer of 1935, the government received bids and awarded the project to Irwin & Leighton of Philadelphia, which began construction in September of that year. Plans called for a first floor postoffice, a second floor courtroom and chambers, and third floor space that accommodated the Customs Service, the Internal Revenue Service, and a Federal Alcohol Tax Unit. The result was an edifice in the classical Roman style: "The massive limestone structure, symmetrical in plan, rises two full stories above a raised basement . . . of rusticated granite. Set behind the main cornice is a third or attic story. The facade is adorned with large Ionic columns."[7] Innovations included the use of steel rather than masonry as the primary supporting material and a centralized system for telephones and electric clocks. The Post Office opened for business in January 1937. That March, the city celebrated its opening with a parade and decorations for Rodney Square paid for by City Council. Postmaster General James A. Farley headed the list of speakers.

Located on the second floor, the U.S. District Court held trials in one courtroom distinguished by the mural behind the bench. The artist, Albert Pels, chose immigration as his theme and painted the 1638 landing of the Swedes. In the 1950s, when Congress approved two more permanent judgeships to meet a growing workload that had become increasingly oriented toward corporate legal issues, more courtrooms were added. The new facilities, however, did not have murals in them, nor did the new chambers have fireplaces.

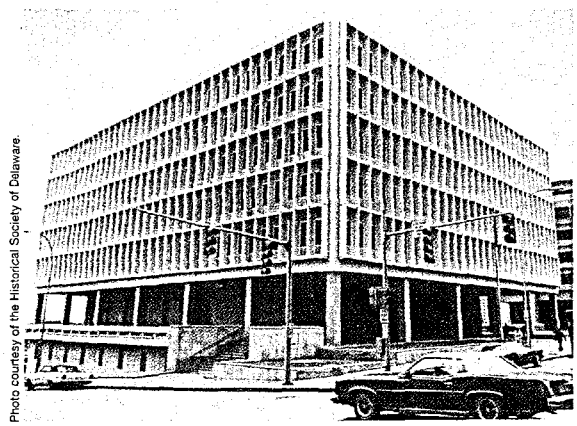


Photo courtesy of the Historical Society of Delaware.

In 1973, the federal courts returned to King Street in the Caleb Boggs Courthouse.

After the federal courts vacated Rodney Square, Wilmington Trust moved its headquarters there. A new post office branch opened in a smaller portion of the building with an entrance on King Street. The mural behind the bench now hangs in that office's main service area.

J. Caleb Boggs Courthouse (1973 to present)

In 1973 the District of Delaware's judges moved into the J. Caleb Boggs Courthouse located on the southeastern corner of Ninth and King Streets. According to the *Morning News* of November 7, 1973, Congress had authorized the building in 1957. Due to delays it eventually became "the oldest unfinanced public works project awaiting money from Congress."[8] Not until 1969 did Congress appropriate ground funds of $550,000. In 1971, the government followed through with the remaining construction costs of approximately $8,000,000. The government chose Wilmington's Pope, Kruse, and McCune as the architect and Philadelphia's Irwin & Leighton, who had erected the courthouse on Rodney Square, as the general contractor. Planners viewed the federal building as an anchor for a new downtown civic center for Wilmington that would spur city, state and commercial redevelopment and urban renewal.

The 1971 groundbreaking ceremony program offers a description: "Mounted on free-standing concrete columns, the building is to face King Street, where the recessed entrance opens on a colonnade extending around three sides. Along East 9th and French Streets, the sloping site will accommodate a street floor beneath a balcony that will overlook a pedestrian mall to the south. The exterior will be predominantly textured architectural stone."[9] It also claimed that there would be eight floors. Two years later the *Morning News* encouraged the public "to walk by and enjoy the gleaming white edifice with its terraced front lawns along King Street," but by then the Boggs had been reduced to six stories. On May 24, 1974, a sunny and breezy day, the judiciary, the Congressional delegation, including Senator Boggs, other dignitaries and the public gathered to dedicate the building. A dedication flier gave the "Courthouse"

top billing, and for the first time most of the tenants belonged to agencies more directly related to its mission — a bankruptcy referee, probation office, and agencies from the Department of Justice and Treasury such as the U.S. Attorney, the U.S. Marshals Service, the F.B.I, the D.E.A. and the Secret Service. Nonjudicial tenants included U.S. Senators, the Customs Service, the Internal Revenue Service, and the General Services Administration.

The courtrooms, of course, are the primary interior physical feature of the building. The groundbreaking ceremony program explained that there would be "four new spacious, paneled, carpeted, acoustically designed courtrooms," a small courtroom for the magistrate judge and another for the bankruptcy referee. The four active judges, one magistrate and visiting bankruptcy judges now sit in seven courtrooms.

One point of artistic continuity with its predecessors characterizes the courthouse. When it returned to King Street, Delaware's District Court brought the ten portraits of former district judges that had graced the walls at the Rodney Square courtrooms. Among them is the first judge, the Honorable Gunning Bedford, Jr. (1789-1812), painted by the famed inventor, patent holder and portrait artist, Charles Willson Peale.[10] ◆

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FOOTNOTES

1. District of Delaware Long-Range Facility Plan, Final Report 2002. Available from Administrative Office of the United States Courts, Washington, D.C..

2. For more about individual district judges, see Carol E. Hoffecker, *Federal Justice in the First State: A History of the United States District Court for the District of Delaware*, Wilmington, Delaware, 1992 (hereinafter Hoffecker, *Federal Justice*).

3. After its initial years in the Middle Circuit, Delaware spent nearly forty-four years in the Fourth Circuit, and in 1866 the District joined the Third Circuit. Until 1890 circuit courts were federal trial courts that operated alongside the district courts. Circuit courts had original jurisdiction over suits between citizens of different states, major criminal acts and land disputes; they also exercised appellate jurisdiction over district courts that heard Admiralty and maritime cases. In 1891 Congress created United States courts of appeals that assumed appellate jurisdiction over both circuit and district courts. In 1912 circuit courts were abolished. See J. Scott Messinger, *Order in the Courts: A History of the Federal Court Clerk's Office*, Federal Judicial Center, Washington, D.C., 2002, pp. 5-6; Hoffecker, *Federal Justice*, pp. 13-14, 83-84.

4. "Old Customs House," National Register of Historic Places Inventory Nomination, microfiche N-579, Historical Society of Delaware, Wilmington, Delaware. See also Hoffecker, *Federal Justice*, pp. 52-53.

5. Hoffecker, *Federal Justice*, p. 76.

6. Marjorie G. McNinch, "The Changing Face of Rodney Square," *Delaware History* 21 (1985), pp. 139-163. For newspaper coverage, *see Every Evening*, Mar. 10 and 27, Apr. 8 and June 8, 1937.

7. *Delaware: A Guide to the First State*, compiled and written by the Federal Writers' Project of the Works Progress Administration for the State of Delaware (New York: Viking Press, 1938), pp. 289.

8. *Morning News*, Nov. 17, 1973 and Jan. 10, 1969, and *Evening Journal*, May 25, 1974.

9. Groundbreaking Ceremony, May 17, 1971, Federal Courthouse file, Clerk's Office, U.S. District Court, District of Delaware, Wilmington, Delaware. See also Dedication flier, May 24, 1974 and *Morning News*, Oct. 18, 1972, Nov. 17, 1973 and May 24, 1974.

10. For information about the earlier-mentioned mural by Albert Pels and the portraits of the district judges, please see the court's website: www.ded.uscourts.gov.

OPINION *(Continued from page 36)*

NO CAMERAS IN CAMERA

courtrooms: no public, no press — just judges, juries, and court reporters. Let's fill those courtrooms. Under PIC, every high school student, as a condition of graduation, would attend one actual civil and criminal trial: a laboratory, if you will, for civics and government classes. Lawyers, judges and teachers could lead classroom discussion. Reporters and television anchors, relieved of their employers' self-imposed burden of educating the public, would again be free to go forth, nail the story, meet the deadline.

The drafters of the Constitution prescribed open trials to protect the rights of the accused and to give the public confidence in the justice system. In 1980, the U.S. Supreme Court said, in *Richmond Newspapers v. Virginia*, that openness "discouraged perjury, the misconduct of participants, and decisions based on secret bias or partiality." In Colonial times, court information was disseminated by word-of-mouth. Today the primary disseminators are the print and electronic media who "report what people in attendance have seen and heard," the Supreme Court said. That primacy can mean "special seating and priority of entry." Should it also mean that the televised record of a public event can be privately controlled?

Remote recording equipment can now technically eliminate the physical intrusion of cameras that in 1965 led the U.S. Supreme Court to reverse Billie Sol Estes' conviction on swindling charges. The Court found that the jostling and shouting of television cameramen had denied Estes his 14th Amendment right to due process.

But invisible cameras notwithstanding, "camera coverage can do irreparable harm to a citizen's right to a fair and impartial trial," Judge Becker said. "We believe that the intimidating effect of cameras on litigants, witnesses and jurors has a profoundly negative impact on the trial process . . . (and) civil defendants . . . might prefer to settle rather than risk damaging accusations in a televised trial."

A powerful industry would like to see cameras become as common a fixture in courtrooms as notebooks and pencils. Fine. But either own up to the real reason, or prove that commercial equipment has a constitutional right of access; that it will educate not just inform the public; and that public confidence in the justice system is directly proportional to the number of people who see footage of trials. In the alternative, try PIC. ◆

MAKE ROOM FOR THE MEDIA

regained it. I have confidence that Delaware's judges would make sure that a dignified atmosphere prevails in court no matter what goes on outside on the streets.

The recent Peterson-Grossberg case offers an excellent example of this point. Judge Ridgely did not let the media frenzy on Rodney Square leak into the Daniel L. Herrmann Courthouse. And, when lawyers violated his orders, he properly punished them. I am at a loss to understand why the Supreme Court lacks the same confidence in our trial court judges.

Cost is another issue. The media, both print and electronic, have always been willing to pay their fair share for the opportunity to cover the courts they way they should be covered. Will there be some cost to the state? Probably, but it would be minimal and, since electronic coverage would further citizen knowledge and understanding of the courts, justifiable.

Other questions frequently raised are: "Who would watch?" "Would coverage be for the entire trial?" These issues should not concern the Supreme Court. Newspapers and broadcast news operations are not in the habit of covering stories that readers, viewers and listeners care little about. Whether coverage should be "gavel to gavel" is not relevant either. Those who sit in the courtrooms each day are free to leave at any time. To argue that those watching or listening via radio or television are any different is disingenuous.

As the Delaware Supreme Court knows full well, experiments with electronic coverage of courts in other states have evolved into a permanent place for cameras and recording equipment in court rooms with no damage to fair trials. I urge the Supreme Court to afford Delawareans the same access to their courts. ◆

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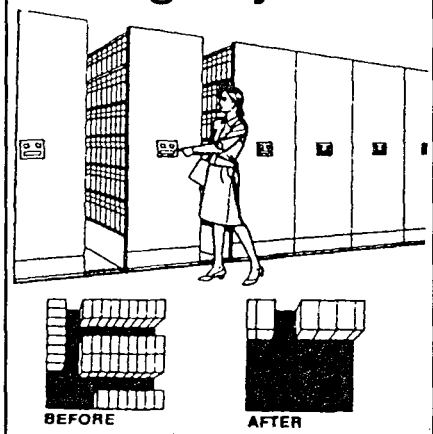

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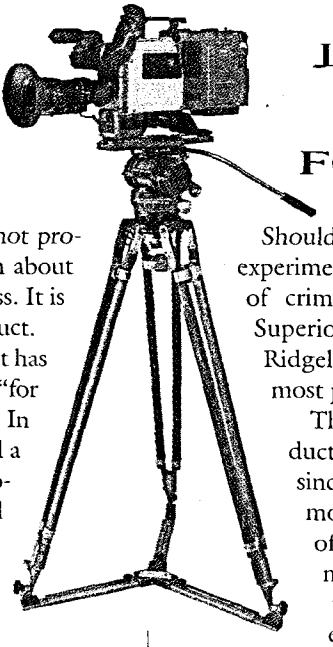
IS DELAWARE READY FOR CAMERAS IN THE COURTROOM?



Rita Katz Farrell

NO CAMERAS *IN CAMERA*

The cameras-in-the-courtroom juggernaut is not propelled by public outcry or news industry concern about closed courts, star chambers, or lack of due process. It is driven instead by the belief that pictures sell product.

Chief Judge Edward Becker of the Third Circuit has said television news coverage uses the courtroom "for a backdrop or a visual image for the news story." In testimony before Congress two years ago, he cited a Federal Judicial Center study of 90 television stories in which the average courtroom footage used was 56 seconds, the sound was mostly drowned out by a reporter's narration, and 77 percent of the stories failed to identify the proceedings.

First Amendment specialists like David Finger argue that access is not contingent on the quality of the reporting, and that print stories are as subject to editing, error and bias as are television packages. I agree.

But the news industry, which properly demands that government be open and accessible, should itself be honest enough to frame the cameras-in-the-courtroom debate for what it really is: commercial self-interest rather than pious public interest. Those interests are not mutually exclusive. But the premise, that the time has come for cameras, ought to be grounded in truth, especially when the industry espousing it controls the bully pulpit for preaching the camera gospel.

The news industry has yet to persuade the federal judiciary that cameras have a constitutional right of access. So we claim instead that having cameras in the courtroom will help to educate the public about the justice system and guarantee the fairness of trials. But where is the proof to back those claims? There has been ample opportunity to find some if it exists.

For nearly two decades, 47 states have experimented with cameras in their trial or appellate courts, and many have made the experiment permanent. But the basis for approval has been largely anecdotal ("I didn't see any problem in my courtroom"), with judges the most in favor of televised trials and defense lawyers and witnesses the least.

In Delaware, cameras have been allowed in the Supreme Court since 1981. Hearings, which typically take less than an hour, have no juries, witnesses, defendants or plaintiffs. They are educational, but rarely dramatic. That may explain why, in the last 21 years, news agencies have made fewer than 15 requests to televise Delaware appeals; and most of those, understandably from the perspective of newsworthiness, were for death penalty cases and high-profile corporate mergers.

So instead of cameras in the courtroom, let's put People In the Courtroom (PIC).

Every year, thousands of trials are held in virtually empty

(Continued on page 35)

John H. Taylor, Jr.

MAKE ROOM FOR THE MEDIA

Should the Delaware Supreme Court approve an experiment with electronic media and camera coverage of criminal trials in Superior Court? Absolutely. Superior Court President Judge Henry duPont Ridgely fully supports such an experiment and so do most judges on that court.

The Supreme Court has had a petition to conduct electronic media coverage of trial courts since 1994, but nothing has happened. A few months ago, the Bar Bench Media Conference of Delaware renewed its request for an experiment and included the up-to-date information that Chief Justice E. Norman Veasey requested. The public awaits the court's response.

It is a mystery to me why the Supreme Court is reluctant to let the people of Delaware witness one of their most efficient and effective government services. The other two branches of state government are open to electronic and camera coverage. Is their role any less important than the trial courts? The Supreme Court's decade-long reluctance to permit cameras in the state's trial courts insults the intelligence of trial court judges, members of the bar and, of most importance, Delaware citizens.

In private, many judges wonder why people lack respect and understanding of what they do. One reason is that only a handful of people can see or hear what goes on in the courts each day. Were they able to see the skill with which Delaware judges handle cases, people would develop not only an understanding of the courts' operations, but a genuine respect for our judges.

One concern is the intrusiveness of cameras and recording devices. Modern technology makes such electronic equipment almost invisible. The new New Castle County Courthouse has been designed with the possibility of electronic coverage, so "plugging in" should not present a major problem.

Another concern is how lawyers and others would behave in front cameras. Two trials that gained nationwide attention in the last few years demonstrate the best and the worst of what can take place in front of cameras. The Florida trial of William Kennedy Smith demonstrated for anyone willing to be fair that a "celebrity" trial could be conducted with all the decorum and fairness that a defendant deserves. This came despite the media circus outside the courthouse.

The O.J. Simpson trial in California was the polar opposite. The same circus atmosphere prevailed outside the court, but, unfortunately, the courtroom exhibited a carnival aspect as well. The difference between the two trials? The judge. In Florida, the judge kept tight control of the proceedings. In California, the judge lost control and never

(Continued on page 35)

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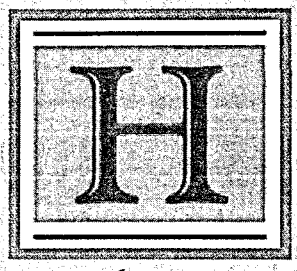

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