

**REPORT ON**  
**THE 2016 ARCHITECTURAL SURVEY**  
**AT**  
**THE OLDE COLONIAL COURTHOUSE**  
**BARNSTABLE, MASSACHUSETTS**

Prepared for

Tales of Cape Cod

By

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Plymouth Archaeological Rediscovery Project

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## Preface

It is generally agreed that the building on the northeast corner of the intersection of Rendezvous Lane and Main Street in Barnstable Village is one of the most significant buildings on the Cape Cod peninsula. This building was originally constructed as a courthouse for the British Crown. On September 27, 1774, it was the scene of one of the first overt acts of treason that preceded the Revolutionary War. Following the Revolution, it became the Courthouse of the Superior Court of Barnstable County. When its function as a courthouse ceased in 1842, it was used as a Town House for public and private meetings until 1837, and then sold into private hands. Five years later, it became the home of the newly organized Third Baptist Church of Barnstable. It remained a church until 1972 when it was sold to Tales of Cape Cod, a not-for-profit organization dedicated to preserving and communicating the history of Cape Cod.

Between 1842 and 1844, the building was altered to meet the needs of the church, yet no records have been found that describe the specific changes made at that time. In subsequent years, further changes were made to the building: the gallery was altered (1859), windows were removed on the east end of the building (1899), and a chapel, kitchen, and belfry were added (1905). But the list of documented changes is sketchy and incomplete.

Throughout its long history, this building has been an integral part of the community of Cape Cod and Barnstable Village. As the needs of the people have changed, so has the building, and therein lies a special feature of this building—the changing functions and changing appearances of the building reflect the evolving history of its community.

Although the current structure is thought to rest the foundation of the original courthouse and contain most of its original framing materials, changes made to the building after 1842 obscure its original appearance and function as a government building. A sketch of the building's appearance when it served as a courthouse, made from memory by a local resident around 1885, shows a Georgian-style building with the entrance facing the south, a hipped roof, and a cupola in the center of the roof line. The first photograph of the building, taken sometime after it was converted into a church and before 1905, shows a Greek-revival building with an entrance on the west end of the building, a gabled roof, and a belfry and spire located above the entrance at the west end of the roof line.

This survey seeks to reconcile available information regarding the construction and use of the building, to place the Olde Courthouse within a larger context of courthouses and court proceeding in 18<sup>th</sup> century New England, to determine how much of the original 18<sup>th</sup> century courthouse remains in the present structure, and to provide an accurate description of the architectural evolution of the building.

The long-run significance of this survey will be determined by its contribution to increasing public appreciation for the building and its role in facilitating the preservation of the building. It is expected that a better understanding of the building's appearance when it served as a colonial and early American courthouse will increase public understanding of the building and the

historic events that occurred both in and around it. Also, a comprehensive understanding of the architectural evolution of the building is expected to resolve many of the conflicting and spurious accounts relating to the history of the building. Finally, identifying original structural elements of the building will guide future preservation work in determining what is important to preserve and why.

As is true of all historical studies, the conclusions presented in this study reflect the information that is currently available and the interpretations of this information by the authors. The authors alone are responsible for the conclusions of this survey.

Future repairs and maintenance work on the old building are likely to reveal additional information and support further investigations into the history and use of this Cape Cod landmark.

Gene D. Guill  
Member – Board of Directors  
Tales of Cape Cod  
April 25, 2016

## **Introduction**

The Plymouth Archaeological Rediscovery Project (PARP) was invited by Tales of Cape Cod to conduct an architectural survey within the Olde Colonial Courthouse in Barnstable, Massachusetts. The goals of this survey were to determine how much of the original 18<sup>th</sup> century courthouse remained in the present structure, to determine the nature of the relationship between the Captain Adolph Bell and the Shelburne Museum's Statue of Justice and the Olde Colonial Courthouse, to research the historical documentation relating to the construction and use of the Olde Colonial Courthouse building, to place the Olde Colonial Courthouse within a larger context of courthouses and court proceeding in 18<sup>th</sup> century New England, and to make recommendations for future research.

## **Courthouses in the Colonial Era**

The fundamental rights of Englishmen rested in English Common Law and from the earliest days, those governing Plymouth Colony recognized the need of imposing a legal framework for governing in a remote and wild land, as can be seen by the signing of the Mayflower Compact before anyone had even set foot off the ship. The ideal was to maintain a balance between God, the Sovereign, and ones' fellow citizens, but in reality, local government was more interested in maintaining harmony between individuals in face-to-face interactions and daily affairs (Lounsbury 2005: 18). In 1685, the governor determined that Massachusetts was to be legally organized into counties, each of which would contain a shire town with a courthouse to be built specifically to deal with offenses and charges on a county level. Thus, Barnstable became the shire town of Barnstable County. Justices of the Peace were appointed by the Governor for each town and even after 1692 when Massachusetts was reorganized into a royal province, the earlier tripartite system of Superior Courts, County Courts, and individual magistrates continued. Governor appointed justices tended to either be young up and coming elites on their way to higher offices, or older yeoman to whom Justice of the Peace would represent the height of their career (McNamara 2004: 13). Either way, in the 17<sup>th</sup> and early 18<sup>th</sup> century, few had legal training.

The Superior Courts tried all capital crimes and heard any appeal from county courts. The judges in the Superior Court traveled on circuits to all counties, bringing with them pomp and pageantry (McNamara 2004: 12). County Courts consisted of the Court of Common Pleas and the Court of General Sessions of the Peace. These courts were composed of Justices who sat quarterly in shire towns of their own counties. The Governor appointed four quorum justices from each county to sit on the Court of Common Pleas while all the justices of the county sat on the Court of General Sessions. The former court had jurisdiction over civil cases involving amounts over 40 shillings and civil appeals from the Justice's own town courts. The latter court had a broad mandate to conserve the peace and was tied to more serious crimes, heard criminal appeals, and oversaw county administration (including the construction of courthouses) (McNamara 2004: 13). The justices themselves heard minor criminal actions and civil cases under 40 shillings, generally holding court in meetinghouses and taverns (McNamara 2004: 13).

Local and county courts heard cases involving misdemeanors and minor infractions (drunkenness, petty theft, etc.), granted licenses for taverns, protected private property, kept standards for weights and measures, enforced market regulations, maintained highways and building bridges, compiled tax lists, approved probates and wills, and looked after the poor.

Early courthouses first appeared in the late seventeenth century in both Virginia and New England, before which time, courts were held in meetinghouses and taverns. When courthouses were built,

they were constructed, as Sandwich Town Records were fond of saying, in the cheapest and best way possible. Early courthouses were never intended to house a large audience and as a result they had no private or specialized rooms and their construction techniques and dimensions mimicked that which was used to build barns and larger service buildings. This has been found to have also been done in the case of early meetinghouses. For example, in Duxbury, Massachusetts, the Second Meetinghouse, built in 1703, was built using earthfast, or “post-in-ground” techniques where the structural posts were buried in the ground and then the building was framed around it (Chartier 2008). It was a quick and cheap way to build a building that was more suited to the earliest days of the colony but that persisted at least into the eighteenth century. Barnstable's first courthouse is likely to have been built in this same fashion.

The interiors of the earlier, seventeenth century, courthouses would have also exhibited the same frugality in appearance with accouterments consisting of little more than tables, chairs or benches, and a raised bar before which plaintiffs and defendants and their representatives, if they had any, would stand (**Figure 1**). Most courts by the middle of the 17<sup>th</sup> century had a tribunal or place of judgment that was made aloft on the highest bench where the highest ranking judge sat with other judges arranged below according to their rank and status. A table where the clerk, under sheriff and keeper of the writs would sit was situated before the judges. A raised bar of wood would be set at the end of the table where men would come when called, and behind which would be another bar where the prisoner(s) would stand (Lounsbury 2005: 72). The judges generally sat between 2 and 4' above the court on a dais or stage reached by a short flight of stairs. The judges were generally set up at the east end of the building meaning that if you had a rectangular building laid out with its long axis running east to west, the judge would be at the east end, short end, even if the building was entered from the south, long, side.

Court officers had specific tasks to be carried out. Clerks kept track of the paperwork and recorded the minutes of the cases, often keeping the court papers at home as specialized buildings for clerk offices did not appear until the early nineteenth century. Sheriffs were the court's chief executive officer, seated close to the magistrates and the clerk so that he could inform them, follow court proceedings, and pass paperwork between the officials, and keep track of prisoners. Under sheriffs, constables, and criers probably stood on the edges of the courtroom and the jury and the remainder of the people in the courtroom would have been standing (Lounsbury 2005: 80). Juries would stand close to the magistrates to be able to hear the arguments (which usually lasted only a few minutes) and then retire either to a separate area in the court room or even to a tavern to render a verdict.

With economic growth and increased social stability in the early 18<sup>th</sup> century, the wealth and power of the gentry who were officiating at the courts resulted in changing attitudes towards public buildings and courtroom activities (Lounsbury 2005: 83).

The courthouse in the 18<sup>th</sup> century, with its brick foundation (at least partially), large sash windows, raised interior platforms for the magistrates, paneling and painted woodwork epitomized the predominance of the oligarchy of genteel families in the affairs of church, state, and society (Lounsbury 2005: 11). The symbols presented in the appearance of the interior and exterior of the courthouse showed that the "ideal order and existing order (in society) were one" as magistrates used the architectural symbols of the court to assert their place in the British imperium (Lounsbury 2005: 11). The presence of bell turrets, presentable foundations and seats of honor all reflected the desires of the gentlemen justices to reach beyond their local architectural standards to appropriate metropolitan forms as part of an effort to be seen as part of a genteel society that spanned the trans

Atlantic world (Lounsbury 2005: 12). In rural New England at least, either as a result of economic concessions or societal pressure left over from New England's Puritan heritage to be noble on the inside but common on the exterior, this desire often manifested itself more on the inside of the rural courthouse and meetinghouse than the exterior. The eighteenth century rural courthouse would have appeared little different from its First Period predecessor, looking more like a place where animals were quartered than a place where justice was served.

By the second quarter of the eighteenth century, the courtroom had been transformed into a space that could have barely functioned without its specialized fittings required to accommodate the number of court officials and participants due to the growing bureaucracy of the law (Lounsbury 2005: 13). Arched ceilings, compass-headed windows, hierarchical ornamentation and divisions of fittings and finishes according to status set a pattern in urban areas that were seen, digested, and reinterpreted by rural courts. Courthouses in the 18<sup>th</sup> century still really only needed a large courtroom and maybe two smaller meeting rooms, but the ornamentation on both the interior and exterior served to set the 18<sup>th</sup> century courthouse apart from its predecessor.

Eighteenth century courthouses were commonly 20-24' wide and 30-48' long. They often possessed arched and compassed windows, which had originally appeared in wealthy English homes but whose use was transferred to governmental buildings in England's American colonies by the early 18<sup>th</sup> century (most famously by Williamsburg, Virginia's courthouse building ca. 1770 [**Figure 2**]) and soon thereafter to public buildings in general. Flatter hipped roofs also became fashionable, causing the jury and clerk rooms what were sometime located in garrets to be moved onto ground floors or even outside into small buildings close by the courthouse (Lounsbury 2005: 130) (**Figure 3**). Doorways were often covered with porches as well. When courthouses were rectangular in shape, they invariably had side entrances near the middle of the long walls with a magistrates platform located at the east end and a pair of jury rooms partitioned off at the other end (Lounsbury 2005: 40). Most commonly, if not universally from the last two thirds of the eighteenth century, magistrates sat on a curved platform with the chief magistrate resting in a large high backed chair and the lesser judges seated to the left and right of him on benches (Lounsbury 2005: 144) (**Figure 4**). The width of the platforms were wide enough to be comfortable yet narrow enough so that the judges could, without standing or moving too much, retrieve paper placed by the clerk onto the railing that separated the justices from the court. The king's royal arms were commonly hung above the chief magistrate (**Figure 5**).

Court days were festive occasions that could transform a small shire town like Barnstable into a bustling riot of noise, music, politics, and peddling. For the one to three days that each session would last, hundreds of inhabitants would set out from across the town or county and converge on the little courthouse set on a hill across from Loring Tavern. Markets would be set up and it was an occasion for all levels of society to mingle and conduct business, haggle over prices for imported goods, renew acquaintances, advertise their trades and services, and acquire new business. Lawyers, plaintiffs and defendants would have met and planned their strategies in the tavern or in the courthouse while others stepped up to the building's doors to read the public and legal notices nailed up there, and while courts were generally scheduled to start at 10 AM, if a session began at 1PM, it was considered an early start (Lounsbury 2005: 6).

Sessions would begin with the ringing of the courthouse bell and the announcement by the deputy sheriff calling the crowd to attention alerting those with business to enter the building. Many surely entered to witness the pure spectacle of the courtroom,

while others remained outside to shop, haggle, discuss private business, visit the tavern, or even game and gamble.

As the court began to reflect the hierarchical nature of the local, county, and royal power, the ceremonial chair of the presiding justice, over which the King's arms were hung, retained its central position, often raised about two feet above the court, as a distinctive feature of the courtroom (**Figure 6**). It also now shared the place of honor with flanking built in benches for the associated magistrates (Lounsbury 2005: 139). Stairs up to the stage on which the magistrates were seated were generally located against the walls. Often, directly before the magistrates was the table at which the jury would be seated, but they could also be seated in a jury box located along one wall of the courtroom close to the magistrates. The clerk was seated in front of the jury and before him was the bar at which the lawyers would stand to address the court. The bar often now consisted of two rows of benches at which the lawyers, plaintiffs, and defendants would sit until called. A bar was sometimes located behind this bar, further separating the lawyers, court officers, and justices from the common people who would be standing in the rear of the courtroom. In the 1740s the sheriff and under sheriff/ crier boxes were introduced. These boxes would be located on opposing sides of the magistrates bench paralleling the clerk table. They generally measured 3-4' square and were raised above the court by a couple of treads.

### **Barnstable's First Courthouse (1685/86-1763)**

Barnstable's first courthouse was probably built soon after the town was selected as the shire of the newly created Barnstable County in 1685. It was used until the new courthouse, the second courthouse, was built in 1763. The first courthouse is believed to have stood at the southwest corner of the intersection of Pine Lane and Route 6A on private land (**Figure 7**). While no description of the building exists, it was probably a relatively simple affair similar in general style to its replacement. It is presumed to have been smaller than the second courthouse and was probably of a rectangular shape with gable ends. The entrance would have been on one of the long sides, just as it was in the later courthouse. Again, while no records exist, by the middle of the eighteenth century, as the population of the county grew and the building aged, the county probably began discussions of replacing it with a new, larger building. Its presumably decrepit condition led to it being sold in 1763 for 6 shillings (see below).

### **Barnstable's Second Courthouse (1763-1830)**

#### **Construction**

The second courthouse appears to have been built in 1763, as evidenced by a receipt for payment issued by Barnstable County Clerk Edward Bacon (**Figure 8**). This receipt was discovered due to a tip from Martha J. McNamara at Wellesley College. The receipt states that Bacon should pay 2 pounds for time spent in the building of the courthouse between April 1 and August 10, 1763. This bill covered the expenses at various times for workmen, the cost spent selling the old courthouse, money paid to Ebenezer Hinckley for carting sand (for fill or mortar?) and for the selling of surplus lathe nails. Edward Bacon, son of Deacon Samuel Bacon, was born on January 23, 1715, died March 16, 1783, married Patience Marston in 1740, and served as the Barnstable County clerk in the 1760s. He also served at various times as a deacon, selectman, a representative to the General Court in 1773, 1774, and from 1778-1780, a delegate to the Constitutional Convention in Cambridge in 1779, a Judge of Common Pleas and General Sessions from 1764 until the Revolution. Bacon was said to have been referred to as Squire Bacon and at one time housed Mrs. James Perkins (widow of the known New Hampshire patriot killed in 1776) and her eight children in his 20 room home, after they left Boston (Perkins 1890). The date of 1774 has been traditionally

associated with the construction of the second courthouse, but this is actually the first well-known historical reference to the building, which occurred during the Body of the People March, and does not appear to represent the construction date.

### **1774 Body of the People March**

The British Parliament, in response to the Boston Tea party in December 1773, enacted the Intolerable Acts, a series of laws designed to take away Massachusetts' right to self-government and its historic rights, the following year. In response, a group of soon-to-be Patriots met on September 26, 1774 in Rochester, Massachusetts. The group was composed of individuals from Plymouth and Bristol counties who thought it necessary to support the Common Cause by making an excursion to the Barnstable County courthouse where the annual court would be meeting on the 27<sup>th</sup>. They proposed to present to the justices who would be assembled there, some matters of great importance regarding Parliament's laws pertaining to the court system in the state. The group was no mob, but was a body of like-minded citizens on what they viewed as a quest to prevent the establishment of slavery, tyranny, Popish ways, and villainy in the colonies. They all agreed to avoid all kinds of intemperance (strong liquor and frequenting of taverns for any reason other than basic needs), swearing and abusing superiors, inferiors or equals, taking goods or estates without consent, and violence, and threatening words (except as necessary for the errand at hand) (Freeman 1860: 431). In order to ensure compliance with the agreed upon rules, they formed their own committee to hear any grievances regarding morality, decency, good manners that any complained about during the venture.

Having established their guidelines, the group arrived in Sandwich the same day, electing Mr. Nathaniel Freeman as the leader, speaker and moderator, and adopting the moniker "Body of the People" (after the 1773 meeting at the Old South meetinghouse) for their group. They set out for Barnstable, double file to the beat of a drum, the next morning (September 27) at 6 AM, arriving at the courthouse at 10. Along the way, they agreed to show respect to the Honorable Colonel Otis as they passed his house. This was done by raising their hats and greeting him as one (Freeman 1860: 434). Upon reaching the courthouse, they met with others who had presumably arrived from other towns on Cape Cod, bringing the total number to approximately 1500. Everyone present agreed to the previously voted regulations, they reelected Freeman as leader, and assembled before the courthouse door. A committee was chosen and retired to a nearby location to draft an address to the Justices of the Court desiring them not to sit under the present unconstitutional circumstances and to satisfy the people that they would not accept a commission under the new governing establishment. The committee retired and soon heard that the justices were about to sit. Another committee was formed to ask the justices to wait to sit until the address had been completed. This committee was informed that the justices were just about to eat so that they would not be sitting anytime soon. The committee drafting the address to the justices returned to their work and were soon informed that deputy sheriff Job Howland was ringing the bell calling the court to session and that the justices were arriving at the court. The chairman of the committee returned to the courthouse and told those assembled to "draw up" (block) the door and stop the deputy sheriff from ringing the bell (Freeman 1860: 435). The justices were asked to wait until the address was completed and the whole body of the people were told to continue blocking the door.

The address was soon finished and a committee presented it to the judges. It outlined what the Body of the People considered the unconstitutional acts of the British Parliament and asked the justices to desist from sitting until the mind of the Continental or provincial Congress could be obtained. It also requested that the justices assure the body that they will not ever assist in carrying the

unconstitutional acts into execution. The Justices read the draft and assured the committee that this court had been set in the constitutional way and that not sitting this day would cause more hardship, at least until they had heard what the General or provincial Congress had to say (Freeman 1860: 440). The assembled people were not satisfied with this answer and wanted definitive assurance that the judges would not sit and that they would not take any commission under the new acts of Parliament. The judges and the people's committee went back and forth on whether what the justices had originally said was sufficient. A new draft was written up to be presented the following day to each judge individually for his signature. This new declaration specifically said that the individual would not accept any commission in consequence of or in conformity to the said acts of parliament and that the signer would refuse to do so, even if it meant that they would loose their commission completely (Freeman 1860: 440). Satisfied with their accomplishment, the Body of the People also resolved that justices and deputy sheriffs as well as officers having commissions under the then captain-general of the British forces in the colonies (Thomas Gage), sign similar declarations. They also said that the individual, presumably a Tory, who had threatened to cut down Barnstable's Liberty Pole (just as had been done in Sandwich) be found by the committee in charge of that action, and be made to sign a declaration stating that he wouldn't do so or be considered an enemy of the country. As far as is known this individual, who initially claimed he was just joking when he said he would chop down the pole, could not be relocated. The Body of the People voted to request that the Honorable James Otis be asked as one of the Constitutional Council of the Province, to attend the October 5<sup>th</sup> General Court in Salem where the election of a new House of Representatives was scheduled to occur.

On September 28, several of the justices and the sheriff signed their declarations and the whole Body of the People marched with drums from the courthouse to the home of Daniel Davis Esquire to hand deliver the request to Judge Otis. Otis said that he would attend and all those present removed their hats and gave three cheers (Freeman 1860: 447). The Body then returned to the courthouse in order to conclude their proceedings, resolving:

1. That it is the resolution of this Body and of every individual composing it, never to submit to the late oppressive acts of Parliament; but that we will oppose them, and defend the town of Boston and the country at the risk of our lives and fortunes.
2. That it be the resolution of every individual of this Body to provide himself with arms and ammunition for our defence[sic].
3. That we will not import, or purchase imported, goods after this date.
4. That we will encourage donations for the town of Boston.
5. That this Body abhors, and will endeavor to suppress, mobs and riots.
6. That we will use our endeavors to suppress common peddlers.
7. That we will use our endeavors to promote committees of every town for a County Congress.
8. That if any person shall pull down or destroy the liberty pole in Barnstable, we will use our endeavors to bring such offender to justice (Freeman 1860: 447).

The group then left the courthouse and returned to Sandwich to prosecute the men who cut down the Liberty Pole and to disband. The courthouse today sits at the corner of Main Street and Rendezvous Lane and the meeting of the Body of the People at the courthouse may have provided the inspiration for naming Rendezvous Lane.

Trayser in *Barnstable: Three Centuries of a Cape Cod Town* wrote of another patriotic gesture by the people of Barnstable. He states that in 1775 when the first judges named by the "Government of the People of Massachusetts Bay Colony" took office at the courthouse the first thing that they did

was remove His Majesty's Court of Arms and have it burned by the "chief executioner or high sherriff." (Trayser 1939: 362-363) No other source reports this action and while Freeman reported that "In 1665, the commissioners in behalf of the Crown proposed that "the King's arms be set up in every court of justice", he fails to report the destruction of the arms at Barnstable (Freeman 1862: 270). The arms may have been carved out of wood or painted on canvas.

### Known Court Cases

The records of only four court cases have been found thus far. The first was in 1792 when Isaac Bacon Jr. and his father Isaac Bacon brought suite against Captain Jonathan Cable. The Bacons reported that on the day before Isaac Jr. went on board Cable's ship, the captain went into his trunk [sic] and took some goods mentioned on an earlier page that was not visible online. This record is preserved in the Small Manuscript Collection, Harvard Law School Library and one page is visible online in their *Colonial North American Project at Harvard*. The booklet in which it is contained reportedly is 50 pages long and is called "Notes on cases in Barnstable County, 1791." (<http://colonialnorthamerican.library.harvard.edu/items/show/9258>)

It would be worthwhile examine this booklet to see what else it contains.

A second case is mentioned in the description of the same book. This case involved someone concealing a pregnancy, but no further details are known. A second book is noted as being at the same location "Notes on cases in Plymouth, Barnstable and Duke Counties, 1785", this being only 6 pages long. Again, it would be worthwhile examining this book and coping these records.

The third case occurred in Barnstable in 1807. This case involved John Dillingham versus Jonathan Snow, Kenalm Winslow, and Anthony Gray. In this case, the plaintiff claimed that the defendants carried away two cows worth \$50.00. It was recorded in a book called *Reports of Cases Argued and Determined in the Supreme Judicial Court of the Commonwealth of Massachusetts, Volume II* (1808).

The fourth case identifies two of the judges who visited Barnstable: John Adams and William Cushing. Adams reported in his journal that he was at Barnstable May 16, 1767 and found the Case of Cotton and Nye at Sandwich to be remarkable. He reported that:

"Cotton has been driving his Interest. This driving of an Interest, seldom succeeds. Jones of Weston, by driving his, drove it all away. [illegible] Where two Persons in a Town get into such a Quarrell, [illegible] both must be very unhappy - Reproaching each other to their faces, relating facts concerning each other, to their Neighbours. These Relations are denied, repeated, misrepresented, additional and fictitious Circumstances put to them, Passions inflamed. Malice, Hatred, Envy, Pride fear, Rage, Despair, all take their Turns.

Father and son, Uncle and Nephew, Neighbour and Neighbour, Friend and Friend are all set together by the Ears. My Clients have been the Sufferers in both these Representative Causes. The Court was fixed in the Sandwich Case. Cotton is not only a Tory but a Relation of some of the Judges, Cushing particularly. Cushing married a Cotton, Sister of Jno. Cotton, the Register of Deeds at Plymouth. Cushing was very bitter, he was not for my arguing to the jury the Question whether the Words were Actionable or not. He interrupted me - stopped me short, snapd me up. -- "Keep to the Evidence -- keep to the Point -- dont ramble all over the World to ecclesiastical Councils - dont misrepresent the Evidence." This was his impartial Language. Oliver began his Speech to the jury with -- "A Disposition to slander and Defamation, is the most cursed Temper that ever the World

was plagued with and I believe it is the Cause of the greatest Part of the Calamities that Mankind labour under." This was the fair, candid, impartial Judge. They adjudged solemnly, that I should not dispute to the Jury, whether the Words were actionable or not."

(<http://www.masshist.org/digitaladams/archive/doc?id=D14>)

### David Lewis Shop

There appears to have been a shop owned by David P. Lewis located immediately to the east of the courthouse along Main St. An advertisement in the November 1, 1837 issue of the *Barnstable Patriot* states that Henry Crocker is selling the stock of goods in the store that had been improved by Lewis, in front of the Courthouse. The goods listed included dry goods, groceries, crockery, and hardware. The building itself was also for sale or rent as it is "an excellent stand for a trader".

### Use as Town House (1830-1837)

The courthouse was determined to no longer suitable for the needs of the County by 1830, as an appeal for a town house appeared in the *Barnstable Patriot* that year containing the suggestion that, as the old courthouse was to be taken down, the town should use it as the town house since it would answer the need at a low price (*Barnstable Patriot* November 3, 1830), and plans were made to build a new courthouse to the east, closer to what had become the center of town. A letter to the editor in the *Barnstable Patriot* on July 31, 1830 (signed Mordeci), provides a more than adequate description of the state of the building at that time:

**MR. EDITOR.—**Any person viewing the exterior or interior of our Court House would at once decide that something ought to be done for the accommodation, of the people of this county; the spirit of improvement which is discovered in different parts of the commonwealth in regard to Public buildings, ought to be an incentive to us to begin to improve a little in this respect, were there no other motive; but sir, necessity requires that a new Court-house should be built; the present one is small, and much out of repair, and I have understood, it has been pronounced by carpenters as unworthy of thorough repairs; whenever any business of interest is before the Court, the house is much crowded, and not one half of the people can get in, and of those that do, but a small proportion can be accommodated with seats, besides, who, upon consideration would not protest against a Jury having to leave a Court House and pass through a crowd (who are discussing the merits of the cause which they are to decide,) to a public house to find a room wherein to make up their verdict. Rumour says one

Mordeci refers to the fact that there was little room in the building when an important case was going on, few seats were present, the building was declared unworthy of repair by carpenters, and, most importantly for understanding the workings of the Colonial court, the jury had to leave the building and retire to a room in the nearby public house (probably the Loring Tavern) to deliberate. This last point was noted by Lounsbury as occurring in southern courthouses as well (Lounsbury 2005: 130).

It appears that the building did continue to be used for town meetings, Temperance Society meetings, at least one lecture (by Mr. Henry Bacon [author of *A Plea for Charity*]), and meetings of the Democratic Republicans, after the court proceedings had been moved to the new courthouse in 1834 (*Barnstable Patriot* February 26, 1834, March 29, 1837; May 7, 1834; August 26, 1834; October 29, 1834, April 22, 1835, April 29, 1835, May 6, 1835, May 13, 1835). In 1834, the town placed an article on annual spring meeting warrant to decide whether the old courthouse should be purchased by the town for use as a town house or if a new town house should be built (*Barnstable Patriot* February 26, 1834; March 1, 1837). The *Barnstable Patriot* reported on March 8, 1837 that the vote was that a new town house should be built.

#### **Isaac Scudder and Warren Manchant Ownership (1837-1840?)**

On May 24, 1837, a noticed appeared in the *Barnstable Patriot* stating that as a result of the County Commissioner's decision of May 9, the old courthouse with all the rights the county has in the land under and around it was to be auctioned off on Tuesday May 30 at 3 PM. Isaac Scudder and Warren Manchant purchased the building through the county's agent Henry Crocker for \$95.00 (Barnstable County Deeds).

Captain Isaac Scudder was born on September 22, 1798, married Susan Lewis in 1838 in Centerville, and died on his birthday in Osterville at age 49 in 1847 after a few hours illness. He was described in his obituary as "one of the most enterprising, honest, and respectable men of our village" (*Barnstable Patriot* September 29, 1847). He was serving as overseer of the poor in the town at the March 8, 1837 town meeting when vote was cast to build a new town house versus purchasing the old courthouse to use as such. He was also on the building committee for the new town house, and the committee in 1847 to settle town accounts with the town treasurer (*Barnstable Patriot* March 29, 1837; February 10, 1847).

It is not known when Warren Manchant was born, but he appears in Barnstable in 1834 with the title of esquire, giving an anti-slavery address. He became the vice-president of the Anti-Slavery Society in 1838 (*Barnstable Patriot* July 2, 1834; February 21, 1838). He served as an agent for the Centerville Trading Company in 1837 and 1838 and owned a store in Sandwich (Warren Manchant and Co.) in 1851, to which a market was added in 1859, and in 1869 bought a building from the Catholic church to replace a confectionery and meat market (probably the 1850s market and store) destroyed by a great fire (*Barnstable Patriot* March 22, 1837, November 1838; May 22, 1851, October 4, 1859; March 16, 1869). He was elected to the school committee in Barnstable in 1838, married Virginia Baxter in Osterville the same year, and was a nominee for the District Republican Convention in 1871 (*Barnstable Patriot* August 22, 1838; October 3, 1838; October 17, 1871). It is not known how he was connected to Isaac Scudder or why they jointly purchased the old courthouse, but it is known from the 1840 census records that the two lived near each other in Osterville. It seems most probably that it was seen as a joint financial investment, possibly with the intention of acquiring it cheap and selling it at a profit.

### **Sidney Ainsworth Ownership (1840?-1840)**

It is not known if Scudder and Manchant sold the building to the next confirmed owner, Sidney Ainsworth, but it is known (thanks to the deed from the subsequent owner Samuel Whitman's heirs to the Baptist Society) that Ainsworth acquired the property sometime before he sold it to Whitman on March 16, 1840. Ainsworth was born in 1807 and died in 1854. He married Mary Stetson in Barnstable in 1831 and between then and 1843 had four children. Ainsworth was a Chaise maker with a shop located across from the Barnstable post office. His shop, which often advertised in the *Barnstable Patriot*, also repaired and painted chaises and wagons (an example of his advertisement was printed in the *Barnstable Patriot* October 15, 1834) and he advertised for an apprentice of 15 or 16 years old who wanted to learn the wheelwright trade in 1835 (*Barnstable Patriot* November 25, 1835). On February 8, 1837 Ainsworth and two other men (David Bursley and Joseph Holmes) ran an advertisement in the *Barnstable Patriot* looking for "young men" wishing to emigrate to the western country. Ainsworth himself appears to have remained in Barnstable, soon becoming involved in politics by being on a committee to report a list of delegates to the state convention in Worcester in 1848, and was also a delegate to the Democratic County and District Convention and being elected deputy sheriff in Barnstable the same year (*Barnstable Patriot* August 30, 1848, October 18, 1848, November 8, 1848). Ainsworth boarded the ship *York* out of Boston in 1849 with 38 other passengers to seek his fortune gold mining in California (*Barnstable Patriot* April 4, 1849). He apparently returned to Barnstable and appears on the 1850 federal census as a 42 year old gentleman living with his wife and three children, ages 6 to 16, the oldest of whom was listed as a seaman. Upon his death Ainsworth was buried beneath a simple white marble headstone in Cobb's Hill Cemetery, Barnstable. His daughter married Captain John Dunbar and moved to California, possibly taking her mother with her. Mary Stetson Ainsworth died in 1895 at age 90 and is buried in San Diego.

### **Samuel Whitman Ownership (1840-1842)**

Sidney Ainsworth sold the old courthouse to Samuel Whitman on March 16, 1840, but unfortunately, the deed is missing from the Barnstable County records of deeds. The sale was referenced when Whitman's heirs sold it in 1842. Little is known about Samuel Whitman. He was born in 1798 and married Rachel Jenkins in 1825. He is recorded in Deyo's History of Barnstable County as having sold Isaac Bacon 1600 board feet of lumber for a salt works (Deyo 1890: 395) possibly indicating that he either operated a sawmill or was a merchant. After the death of his father Cyrus he posted notice in the *Barnstable Patriot* of his father's probate and after the death of his mother, eventually ended up in the Massachusetts Supreme Court trying to obtain his portion of her estate (although he had died by the time the case was heard). He died in 1842 of consumption (tuberculosis) and is buried in West Barnstable Cemetery. Samuel and Rachel had one child, John, born in 1825, to whom Nathan Jenkins was appointed guardianship. In 1846, Jenkins was attempting to obtain John's share of Cyrus and Mercy's estate with no mention of Samuel's estate, possibly indicating that he did not have much.

### **Baptist Society Ownership (1842-1972)**

Samuel Whitman's heirs, through lawyer Henry Crocker, sold the old courthouse to the Baptist Society in 1842 for \$77.00. The Society turned the courthouse into the Third Baptist Church. While the church never seems to have been financially well off, starting with 70 members and losing/dismissing 46 by 1877, significant alterations were made to the building. The entrance was changed from the south side to the west by 1884 when the Poole lithograph shows a steeple and west facing entrance. Sprague reported that the spire was erected in 1842 by local carpenter Samuel Sturgis Crocker (Sprague 1963). It was recorded by Crocker in 1927 that alterations to the gallery and

repairs were made in 1859 and that in 1899 extensive repairs were made including the removal of two windows at the rear (east end) of the building, new stained glass windows to replace old ones, wallpaper, and woodwork grained in cherry (Crocker 1927: 12). A new pulpit was added, the exterior was repaired and repainted and new steps added. All the 1899 repairs added up to \$685.00 (approximately \$18,000.00 in today's dollars). An extensive chapel addition, lady's parlor, and belfry with bell were added in 1905 and electric lights were added to the church and chapel in 1919 and a Hamilton Estate Heatrola was added to the church in 1925 (Crocker 1927: 13).

The building was deeded to Tales of Cape Cod in 1972.

### **Photograph and Drawing Evidence**

The earliest record of the buildings appearance when it served as a courthouse was produced by Gustavus Hinckley in the 19<sup>th</sup> century from his memory. They show the building with either rectangular or fan-topped windows, a brick foundation, hipped roof, a cupola with a bell and a weather vane, shutters, and an entry porch (**Figure 9**). All of these elements are very common on 18<sup>th</sup> century civic buildings and are consistent with what could be expected. The porch is a bit enigmatic for a civic building in New England, but as long as it was large enough to accommodate the traffic into the building, there is no reason why it could not have been present.

The earliest photograph of the building, taken after it had become a church, is undated, but it must have been taken before 1905 when the chapel, kitchen, and belfry were added (**Figure 10**). It shows the west-end entrance by means of two sets of doors and the belfry on the same end. This photograph matches the image shown on the 1884 lithograph of the church.

From a review of the documentary record, the following facts about the courthouse were discovered or confirmed:

- the building was built at or closely around 1763
- the entrance was originally on the south side facing Main Street
- the jury had to deliberate outside of the building in a private room of a public house (tavern)
- there were few seats present in the courthouse
- a bell was hung, presumably in a belfry, on the building when the courthouse was built
- the bell calling the court to session was rung by the deputy sheriff
- based on the Hinckley Sketch, the building had a hipped roof, fan-topped windows, a belfry with a weather vane, a brick foundation, and a porch
- a set of the King's Arms may have hung inside the courthouse behind the Magistrates seat
- the building was determined to be too small and in too poor of shape to continue to be used as a courthouse or as Barnstable's Town House
- the building was used for some meetings after it ceased being a courthouse and was eventually auctioned off
- the building passed through three sets of hands before being sold to the Baptist Society
- during the period when the Baptist Society owned the building, extensive alterations, repairs, and modifications were made to its roof and interior.

### **Architectural Survey**

Architectural surveys were carried out in 2014 and 2016 with the main goals being to determine what remained of the original 18<sup>th</sup> century courthouse. A glossary of timber framing architectural terms is presented in Appendix C of this report.

## 2014 Architectural Survey

The Plymouth Archaeological Rediscovery Project's work at the Sturgis Library in 2014, led to PARP being invited by Tales of Cape Cod to conduct a one-day pro bono architectural survey at the Olde Courthouse in Barnstable, Massachusetts. On October 13, 2014, archaeologists David Wheelock and Craig Chartier of PARP inspected the building. The foci of our investigations were the attic and the crawlspace beneath the main portion of the building. The purpose of our investigation was to provide an initial assessment as to how much of the original 18th century fabric survives in the accessible portions of the building and what the potential was of discerning details regarding the building's original appearance.

### Attic

We gained access to the attic through a small hatch in the choir at the west end of the building and the survey started at the northwest corner. It became immediately apparent that the majority of what was visible in the attic dated to the 19th century and was related to the replacement of the original roof and the installation of an elaborate support structure for a vaulted plastered ceiling. This ceiling was originally believed to have been installed when the Baptist church acquired the building in the middle 19th century, but is now thought to date to the late nineteenth century.

Clues to the original roof shape were present at the corners where the footings for corner rafters, consistent with those used for a hipped roof, were found (**Figure 11**). The installation of the original roof apparently began at the northwest corner where a drawing was found that represented the original carpenter's calculations of the angles needed for these corner rafters was found (**Figure 12**). Once the carpenter had calculated at this corner the correct angle needed, he then transferred that angle to the other corners. As a result, we did not find similar evidence of calculations at the other corners. Along the south and north sides of the top plate, what may be the footings for the original common rafters were found to have been reused in the 19th century as the footings for the present rafter system.

Evidence of what looks like a classic 18th century soffit, the projecting cornice of the original building, were found on the north and south sides and it is hypothesized that it once encircled the roof. The original water sawn external sheathing of the building was visible along the north and south walls. The original plate appears to be white oak and is hewn while all of the 19th century rafters are water sawn. Some of the most interesting findings were pieces of what are interpreted as original interior paneling that had been reused as scantling to help support the 19th century vaulted ceiling and as patches along the south wall. The paneling appears to be 18th century in date and was put together with mortise and tendon construction. It bears traces of what may be the original paint, a light gray green, and originally was probably affixed around the interior of the courthouse to chair rail height, although it could have extended right up the walls (**Figure 13**). Some pieces may have been used for the court bench and docket.

Close to the center of the building, between the two large 19th century trusses associated with the vaulted ceiling, is what appears to be a covered hole in the roof (**Figure 14**). A platform had been built beneath the hole using what appear to be reused stair risers (**Figure 15**). The roof hole and platform are conjectured to have been related either to a flagpole located at this point or simply to gain access to the roof for some other purpose.

Large mortises for an east to west running girt were found at the center of the east and west tie beams (**Figure 16**). The presence of this beam may indicate that the original ceiling was flat and probably plastered.

### **Crawlspace**

The crawlspace beneath the main portion of the building is accessed through a hole in the floor of the closet at the northwest corner of the main floor. The total depth of the crawl space was over two feet, making it very comfortable to crawl around in. The first thing noticed upon entering it was a collection of mid-19th century case bottles and pottery that is assumed to have been deposited here during the building's conversion from a courthouse to a Baptist church. These artifacts were just below and to the south of the access hole. The foundation for a 20th century chimney were visible south of the entry hole along the west wall (**Figure 17**). The base of the prick post in the center of the west wall was also visible. No evidence of an 18th century chimney was found.

The nineteenth century floor appears to have been supported by half round white oak joists that originally ran north to south, as joist pockets are present along the north and south sills (**Figure 18**). The orientation of the joists was flipped in the 19th century so that it ran east to west with the joists resting on top of the east and west sills and added white pine sleepers that ran north to south. The joists rested on top of the original sill. What was originally thought to possibly have been original east to west running sleepers were positioned near the 19th century joists. The sleepers had “ship knee” reinforcements in 12 locations joining the sills to the walls, but the entire floor system appears to date to the 1840s (**Figure 19**). These ship knees were white oak and were secured with iron pins to the sill and the sleepers. At various points the sleepers and joists were supported by stones and vertical timbers. Ship knees were present along the south wall.

Various pieces of architectural debris were found beneath the building. These included a pile of wall plaster, probably 18th century, along the south wall, a piece of 19th century window molding found along the east wall, a riven shingle with red paint, and reused light green gray painted boards.

The south wall foundation was found to be stepped out where the bell tower was positioned and evidence of large iron pins was present, indicating that the sill of the bell tower was pinned to the original courthouse sill. The floor boards of the original courthouse appear to have been flipped in the 19th century and evidence of shadow lines from a docket or cupboard were present on some.

The foundation was found to be fieldstone on the north and west sides and brick on the south and east. This probably means that those were the sides that people most commonly saw on the courthouse and that the brick was meant to serve as a means of conveying the prestige of the building. Possibly to save money, the brick was only used on 2 sides though.

Another interesting finding was the presence of what looks like, but probably isn't, a poured cement “crypt” beneath the western half of the main building. The construction measures approximately 6' east to west by 2' north to south and is about 1.5-2' deep. There are no pipes leading into it so it is not a cistern. It may be a sump as there is evidence that water collected (collects?) in it.

### **Dendrochronology**

Dendrochronological samples were collected from the north top plate in the attic and were sent to Cornell University's Tree-Ring Laboratory. The lab reported that the trees hewn for the timbers were under 50 years old, representing second or third growth trees, and did not have enough rings present for dating purposes (50-70 rings are needed at least).

### Summary

- the original roof has been removed and the only traces of it that are still present are the pockets for the rafters and the girt that ran along the ceiling of the courthouse
- a soffit originally ran all around the building
- the present roof and roofing system was installed in the 19th century, after the Baptist church purchased the building, and the elaborate truss system present in the attic was installed to support a plastered vaulted ceiling
- pieces of what are probably the original courthouse wall paneling survive in the attic, having been reused as scantling associated with the vaulted ceiling and as a patch along the south wall
- the floor of the courthouse had been renovated in the 19th century with the new, 1840s joists being reoriented from north to south to east to west and the being raised up by placing the ends of the joists on top of the sill as opposed to being flush with the top of it, and by flipping the floor boards
- the original building appears to have had a brick foundation on only two sides, possibly indicating a desire by the town to have a fine, “modern” looking courthouse but not having the financial means to be able to pay for everything they would have wanted
- at one point the building may have been painted red, as a single 18<sup>th</sup> century shingle was found with red paint on it
- no evidence of an original 18th century chimney was found

## 2016 Architectural Survey

### Attic

Two pine stair treads were found in the attic being used as braces for a platform beneath the former belfry or flagpole access hole (**Figure 20**). They measured 163 cm (5.3') and 210 cm (6.9') in length and 30 cm (12") in width and one of them bore a 30 cm (12") wide by 16 cm (6") deep notch at one end. Both treads showed evidence of wear in the center and neither bore traces of paint or finish. The backsides of both were roughly planed using a hatchet. It is believed that both probably date to the 18<sup>th</sup> century and were used at the 18<sup>th</sup> century courthouse. They appear to represent the two lowest sets of treads from a possible short flight of stairs. They would have butted up to a wall on their right sides and were open on the left. The notched piece was probably the second step and the notch may have gone around a newel post. They either led to the magistrate's platform or a sheriff or deputy sheriff box.

A total of 30 rafter pockets measuring 11 cm (4.5") wide for the original roof system were identified on all four top plates in the attic (12 on the north and south and three on the east and west plates) (**Figure 21**). The pockets on the long (north and south) sides were spaced 90 cm (3') apart while those on the short (east and west) ends were 130 cm (51") apart. Four corner rafter pockets, identified in 2014, are also present. It is believed that the corner rafters would have been birdmouthed over the interior corner of the frame while the other rafters were fastened in much the same way as they were on the intact 19<sup>th</sup> century roof— i.e., birdmouthed and pinned on joists or girts that extended away from the walls to create a soffit running around the building (**Figure 22**). The girts ran east to west from what is now one gable to the other while the joists would have been let into the girts on the south and north sides.

Pieces of water-sawn board were affixed to the courtroom side of the girts in order to hang a plastered ceiling approximately 3½" below the girt, bringing it approximately the height of the lower edge of the present vaulted ceiling (**Figure 23**). Evidence for this ceiling was present in the attic in the form of the original boards, bearing many lathe nails on one edge, having been reused as

scantlings. A series of king posts were probably used to distribute the weight of the plaster ceiling in way similar to that which is currently present. The spacing of the rafters and the shape of the building indicate that it most probably had a hipped roof (**Figure 21**). Two rafters in the center of the north and south walls had reinforcing present on the outside (**Figures 21 and 24**). These are taken as evidence of a support system for a cupola or belfry on the original courthouse (**Figure 25**). The reinforcements are spaced six feet apart and consist of sawn and hatcheted braces attached to the top plate with hand wrought spikes.

It is known that, what appears to be, a belfry was located at the west end of the roof by 1884. No evidence of this belfry is evident in the current roof, where some evidence of extra support or even nail holes should be present in the roof. It is therefore conjectured that the present roof and its associated truss (king post) system, were all added in the late nineteenth century when the vaulted plaster ceiling was probably installed (during the major renovation of the building). The bell that is now present in the existing belfry may have originally resided in this belfry.

The following history of the bell has been provided by Gene Guill. The bell that currently hangs in the Olde Colonial Courthouse building was cast in 1850 at Meneely's Foundry in West Troy New York. The Meneely Foundry was one of the most significant bell foundries in the New World. It was established in 1826 and went out of business 1952. During their history, it made around 75,000 bells. Over 8,000 of these bells survive to the present.

Although no record was found to indicate when the Third Baptist Church purchased this bell, it is reasonable to assume that the bell was purchased in the middle of the 19<sup>th</sup> century. We know that the Olde Courthouse building was altered between 1842 and 1844 to meet the needs of the church. We also know that a belfry and steeple were added above the entrance on the west end of the building—most likely at the time these alterations were made but certainly by 1884. The fact that the bell was cast on 1850 suggests that the church may have been the first owner of the bell, and the bell may have been purchased as early as 1850. If this hypothesis is correct, it would have been mounted first in the belfry at the west side of the building and moved to its current location in 1905 when the existing belfry was constructed.

Other interesting findings in the attic were:

- a piece of reused 18<sup>th</sup> century molding from the courthouse that was being reused as scantling (but which did not appear to be connected to anything but a porcelain electrical connector) (**Figure 26**)
- a sawyer's mark on one of the pieces of board that indicates that the board was 20 board feet of wood
- the number 16 (in Roman numerals) written on a top plate at the southwest corner of the building (indicating that this was 16' from the corner)
- a builder's mark on the north top plate consisting of three lines coming together at a point (like an arrow with three equally long lines) located at the mid point of the north top plate (**Figure 27**).
- the whole eastern and western gables date to the 19<sup>th</sup> century, adding support to the Hinckley sketch showing a hipped roof
- an 18<sup>th</sup> century scarf joint was identified on the north top plate indicating it is made from two smaller timbers, each measuring 7 ½ x 61/2”.

### First Floor Closets

Evidence of the original 18<sup>th</sup> century framing is also visible beneath the gallery stairs in the southwest and northwest corners of the building. The southwest closet was apparently used to store

coal when the Heatrola was installed at the west end of the building in 1925. A board from the box that the Heatrola was shipped in was reused to block the space under the stairs so that the coal could be contained in the closet is still present today. Within the closets, the pit sawn 18<sup>th</sup> century corner posts are visible, as are two opposing falling braces (measuring 13 cm [5.5"] high by 7 cm [2.5"] thick for the one on the west wall and 16 cm [6.2"] by 8 cm [3.1"] for the one on the south wall) as well as the wide pine boards used for sheathing the building (**Figures 28, 29, and 30**). The building appears to have been double sheathed- once in the 18<sup>th</sup> and then again in the 19<sup>th</sup> century. Scattered nail holes on the corner post and falling braces indicate that an interior wall was present at one time- either plastered or paneled, with an air space between the sheathing and the interior wall. A small piece of hand-hewn timber held in place with hand wrought nails was present between the corner post and the falling brace on the east wall. It is not known why this piece is present.

In the northwest closet evidence was found that this, like the southwest one, originally housed a stairway to the gallery and that it was covered over in the 20<sup>th</sup> century. An 18<sup>th</sup> century story clamp at 118 cm (46.5") above the floor and running north to south is visible on the west wall (**Figure 28**). This piece may be evidence of an 18<sup>th</sup> century gallery or it may have just served as additional support for the west wall. No other evidence of an 18<sup>th</sup> century gallery was found. The present gallery appears to have been constructed in the 19<sup>th</sup> century and then enlarged during the 1859 renovations. The stairway to the gallery appears to have been removed in the 20<sup>th</sup> century and covered over on top with pieces of woodwork grained in cherry that had been added to the Baptist Church in 1899 (**Figure 31**). A piece of what appears to be light green painted paneling is present on the west wall of the closet, above which the plastered wall may well be the original plastered wall in the building. Likewise the boxed-in corner and side posts may be original 18<sup>th</sup> century boxing.

### Crawlspace

In the crawlspace beneath the main floor, it was found that the present floor is raised approximately 6" higher than the original floor and that a 20<sup>th</sup> century chimney base is present 10' south of the north wall along the west end of the building. This appears to be the base for the 1925 Heatrola. Joist pockets (measuring 10.8 cm [4.25"] by 6.4 cm [2.5"]) for the original floor were found in the north and south sills (which are 16.5 cm [6.5"] thick), indicating that the floorboards originally ran east to west versus north to south, offering support to the presence of a door on the south side of the building (**Figure 32**). A deposit of ceramics, glass, and a tortoise shell hair comb were found directly beneath the entry hole into the crawlspace (**Figure 32**). These pieces appear to date from the 1840s to 1890s. (The artifact catalog is presented in Appendix C). Two of the posts at the east end of the building are visible still pinned into the sill, one being adjacent to the 20<sup>th</sup> century chimney (**Figure 33**)

Another deposit of ceramics (pearlware plates, a possible gin bottle, a possible ink bottle, cattle, sheep, chicken, and fish bones) were found in the northeastern corner of the crawlspace (**Figure 32**). These artifacts date to the original 1840s work that was done to the building when the Baptist Church acquired the property. It appears that one of the first things done to the building was the replacement of the floor, which coincides with flipping of the entrance of the building from the south to the west sides.

A large pile of what is probably 18<sup>th</sup> century wall plaster was found in the middle of the south wall, approximately where the original door would have been into the courthouse (**Figure 34**). Due to the concentrated nature of the deposit, it appears that the wall and a window were removed, probably in

the late 19<sup>th</sup> century, when the bell tower was installed. It is probable that the plaster was shoveled into the crawlspace through the hole made in the foundation when the bell tower was erected in 1905. The artifacts present in the northwest and northeast corners likely represent the waste from lunch meals eaten by the crews working on the building in 1842, including the gin bottles, which may have held a less potent liquid more suitable to the work day. Mixed in with the plaster deposit were several pieces of probably early 19<sup>th</sup> century window glass from double hung sash windows, possibly a window installed in 1842 to replace the doorway on the south side.

The poured concrete “crypt” identified in 2014 appear to have been installed as a sump in the 20<sup>th</sup> century in an effort to try and keep the crawlspace dry and eliminate some of the water that appears to have a tendency to drain from north to south under the building (**Figure 35**). A piece of what may be an 18<sup>th</sup> century bench or some piece of courtroom furniture, most probably the chief magistrate seat or justices' bench was found being used as a support for the floor on the north side of the sump (**Figure 36**).

### **Brick Foundation**

The brick foundation, present on the south and west sides of the building, appears to date to the 18<sup>th</sup> century and was part of the original courthouse foundation. The bricks are laid up in an English bond pattern (a row of bricks laid with their length facing out followed by a row laid with their ends facing out followed by a repeat of the first row etc.). The average brick size present (9 cm wide, 18.3 cm long, 4 cm tall) matches bricks for the 18<sup>th</sup> century as well.

### **Captain Adolph Bell**

The traditional, somewhat convoluted, history associated with the Captain Adolph Bell is that it was given as a gift to the Federated Church of Sandwich from the widow of a captain whose ship wrecked off of Sandwich during a storm in 1697 or 1702/3. The bell hung at the church until 1763 when a new spire was installed on the church and a new larger bell was acquired. The old bell was given or sold to Barnstable County and hung either in the Second Courthouse or the County House. When one or the other of these buildings ceased to be used, the bell was hung in the Third Courthouse (the present Courthouse) built in 1834. It was damaged by youths with a blacksmith hammer in 1872 and then hung in the clerk's office before being given back to Sandwich in 1963.

The bell itself measures 14” in diameter at the base, is 11' high and 8” in diameter at the crown (**Figure 37**). It bears six small and four larger cherub faces and flower and foliage around the crown. This casting lies above the Latin motto that should read “SI DEUS PRO NOBIS QUIS CONTRA NOS” (If God be with us who can be against us), but which, due to a poor laying out of the letters (possibly by someone not fluent in Latin) reads SI DEUS **PRON BUS** QUIS CONTRA NOS. This motto is a from the Epistle of Saint Paul to the Romans viii 31, 33:

#### **More Than Conquerors**

<sup>31</sup> What, then, shall we say in response to these things? If God is for us, who can be against us? <sup>32</sup> He who did not spare his own Son, but gave him up for us all—how will he not also, along with him, graciously give us all things? <sup>33</sup> Who will bring any charge against those whom God has chosen? It is God who justifies.

The bell bears a series of chips along the front and rear edges with those on the front being deeper and more severe than those on the rear (**Figure 37**). The shape, location, and nature of the chips look like they were caused by ringing, possibly excessive ringing, of the bell, basically, wear

through use. An iron clapper whose striking ball matches the size of the chips, is also stored with the bell at the First Church of Sandwich.

The earliest published history of the Captain Adolph Bell was reported on July 22, 1873 in the *Barnstable Patriot*. The article states that a new bell would be installed in the courthouse with the old one having lost the "power of vibration" due to small fractures around the margin from long use. It also stated that the history of the old bell, which bore a Latin motto and a date of 1675, was not known. The earliest, more complete, history of the bell was published in 1883 in the *New England Historical and Genealogical Register* (Volume 37) in an article about early bells of Massachusetts. The author states that it was cast in 1673 probably in Munich and bears 140 "grotesque heads" around it along with the Latin inscription. He goes on to describe the history of the bell, stating that on March 12, 1702, captain Peter Adolph of New York was cast away at Sandwich. His body was recovered and buried in town and his widow, out of gratitude, presented the bell to the town ca. 1705. The bell hung in the tower of the old Sandwich church until 1756 when the people voted to sell it and get another. On May 12, 1763 Benjamin Fessenden sold it to the justices of the sessions for the courthouse in Barnstable (Sandwich Town Records vol.1: 203).

In the early 20<sup>th</sup> century, the Cape Cod Library of Local History and Genealogy published (and republished in 1992) an anonymous article titled "The Romance of a Barnstable Bell" that stated, as Alfred Crocker the Barnstable clerk reported it, that the bell had hung in the county Courthouse "next to the library" (presumably the Sturgis Library) and that on July 4, 1872 boys struck it with a hammer and broke it, prompting the need for a new bell, which was purchased in 1874.

A 1915 article in *Cape Cod Magazine* stated that the storm that sank Adolph's ship happened on March 12, 1697, that the bell hung in the County House until it was destroyed by fire, and that the boys in 1872 struck it with a heavy hammer and cracked it.

A 1922 article in *Cape Cod Magazine* by Alfred Crocker repeated the basic facts stated in the earlier article, with the exception that it now stated that the bell hung in the County House on the north side of main street near the house owned by Major David Crocker.

By going back to the original sources, a great deal of confusion about the bell can be eliminated. The storm that sank the ship occurred on March 16, 1703. Judge Samuel Sewall reported in his diary for that day:

"March, 16. 1702/3 Though all things look horribly winterly by reason of a great storm of Snow, hardly yet over, and much on the Ground : yet the Robbins cheerfully utter their Notes this morn. So should we patiently and cheerfully sing the Praises of God, and hope in his Mercys, though Storm'd by the last efforts of Antichrist." (Collections of the Massachusetts Historical Society Vol 6 1879: 75).

The captain of the ship was Peter Adolph De Groot who was, according to R.A. Lovell:

"...born in Amsterdam in 1655, baptized in New Amsterdam in 1657, son of Pieters and his wife Aechtje (Dirks). His wife was Janeke van Borsum, born 1653 in New Amsterdam, daughter of Egbert and his wife Annetje (Hendriks). They were married in 1678 and had eight children". (Sandwich, A Cape Cod Town: 138).

He was interred in the Old Burying Ground, Sandwich with a slate stone bearing the inscription:

HERE LYETH Ye BODY OF CAPt  
PETER ADOLPH OF NEW YORKE  
AGED 48 YEARS WHO DYED  
BY SHIPWRACK IN THIS BAY  
Ye 16 OF MARCH 1702/3 &  
WAS WASHED ON SHOARE  
3 MILES BELOW THIS TOWNE

His stone rests near the center of the Old Burial Ground in Sandwich next to the stone of Deacon Thomas Bassett who died in the early 19<sup>th</sup> century (**Figure 38**).

Adolph had made out a will in 1696 naming his wife as his heir (who received one half of his estate) and leaving one half of his estate to his four children.

The minister at the time was Roland Cotton, having been ordained in 1694, and he saw to it that all the sailors that washed ashore in the storm received a proper burial. It is believed that papers were recovered from the body of the captain identifying him as Captain Peter Adolph De Groot also had some contact information for his wife. Word was sent of his death and burial and his widow sent the bell, originally cast in 1675, as a token of appreciation to the Town of Sandwich. Sandwich had just built its second meetinghouse in 1703, measuring 36 x 45' with a tower on the west end, and if the bell did in fact come from the widow, it may have been as a gift for this new meetinghouse. The meetinghouse was enlarged by 15' in 1756 with the tower being raised and enlarged. The bell was replaced with a larger one and the old bell was probably sold to Barnstable County for their new Courthouse built in 1763. The purchase of a second hand bell fits well with other elements of frugality that were noted during the architectural surveys, most noticeably the use of brick on only two sides of the foundations and field stone on the remaining sides.

Looking at the primary documents (the Records of the Town of Sandwich at the Sandwich Town Hall), the following facts related to the bell were discovered. The earliest reference to a bell in the meetinghouse was in 1708 when it was agreed in town meeting that the person who was charged with sweeping the meetinghouse would also be the bell ringer. In 1756 it was voted that a new steeple was to be built for the meetinghouse “in the best and cheapest method” with a new bell not to exceed 400 pounds and also to “dispose of the old one to the best advantage” (Sandwich Town Records Book 1: 164). On May 17, 1759, Benjamin Fressenden, who was charged with the enlarging and repair of the meetinghouse, reported that “I would further report that I have in my custody belonging to the town the old bell, two jars, two small tubs, a pail, which things they may think it prudent to dispose of. All which is humbly submitted.” (Sandwich Town Records Book 1: 187). It was voted at that same meeting that he be allowed to get rid of the materials he had, and that he could hang the new bell (Sandwich Town Records Book 1: 188). Freeman, in his History of Barnstable County, reported that there was a 1763 entry in the Sandwich Town records that stated that “the meeting house committee reported that they had sold the bell for the use of the court house at Barnstable” (Freeman 1862: 108). The original record stated the following:

“When I made my report last to the town as their trustee, I had in my hands to the amount of 33 8-11-3, since which I have rec'd twenty-one and six pence which was for interest as likewise six shillings and eight pence which was due for glass, which makes the whole 34 17-1-3. I have

likewise sold the old bell to the Justices of the Sessions for the courthouse. By the vote of the town on May 15, 1760 Mr. Solomon Foster with myself were appointed to get such repairs done to the meetinghouse as from time to time should be judged necessary. I append that to get the outside of the meetinghouse painted anew will be available, but, as it will be a considerable cost, should be glad of the town opinion about it. Are which humbly submitted. Benjamin Fressenden” (Modern punctuation added) (Sandwich Town Records Vol. 1: 203).

That the bell was used in the Courthouse versus the County House is beyond a doubt. The earliest reference for the bell, the 1873 article in the *Barnstable Patriot* identified it as having been used in the Courthouse and it is not until the early 20<sup>th</sup> century that the buildings become confused. There is also no reason for the County House to have had a bell, it was a place of offices and record storage, not assembly. That there was a bell at the Courthouse is attested to by Nathaniel Freeman's presentation of the documentation relating to the Body of the People March in 1774. He specifically states that the deputy sheriff was inside the Courthouse ringing the bell to call the justices to court. The Hinckley sketches of the Courthouse clearly show a cupola and bell on top of the roof and the 2016 architectural survey found evidence of reinforcing at the apex of the roof, exactly where the cupola for the bell would be located.

When the new courthouse was completed in 1834, it appears that the old bell from the second courthouse was brought to the new one and used until 1873 when it was removed and a new one installed. There appears to be no record of any damage caused by youths until Crocker's version of the history of the bell and the damage to the edge is most likely just as the 1873 newspaper article said it was- wear and tear from long use. There also is no primary documentation that suggests that the bell was given to the town by the widow of Captain Adolph. This may have been oral town history. It seems more probable that the bell hung in the original Sandwich meetinghouse, possibly being acquired when Reverend John Smith became the pastor in 1676 and was probably hung in the cupola that was added for a bell in 1702/3, and then was replaced by a much larger bell when the building was enlarged and the new steeple added in 1756. Smith appears to have reorganized the Sandwich church and it is known that he had a house built for him (Hoxie House) and may have required a bell to be purchased to properly call the flock to worship. Wherever the bell came from, it ultimately ended up at the Olde Colonial Courthouse, and, as an 1883 article on the bell that ran in the *Barnstable Patriot* said, “There it hung for many years, calling those who had trampled upon the rights of their fellow-men to judgment.”

### **Statue of Justice**

Statues of Justice are common decorations in, on, and around court and state houses across the United States. The statues represent the Greek Titan goddess Themis whose name translates to 'order' and whose stories and ideals contributed to today's laws and legal system. She was the goddess of the order of the natural world and the first councilor at the oracle at Delphi. She is traditionally depicted as bare or barely draped (a sign of virtue/ good/ justice), usually bearing Roman symbols of justice- blindfold, scales, sword, sphere, and ribbon. The scales represent the balance of justice, the sword the enforcement of justice's measures, the blindfold its objectivity, the globe represents her mother, and the ribbon her father. While small statues of justice were often found in courtrooms dating back to at least the seventeenth century, large carved wooden (and later cast or copper) figures of Justice were very popular in the second quarter of the nineteenth century.

The Statue of Justice owned by the Shelburne Museum in Shelburne, Vermont is reported to have been acquired by the museum's founder Electra Havemeyer Webb. Webb amassed a large collection

of simple New England furniture and craftwork and in 1947 created the museum. A popular interpretation is that it stood on top of the Second Courthouse and was present when the Body of the People marched on the building in 1774. In 1964 the Shelburne Museum contacted the Clerk of Courts in Barnstable to enquire about the supposed history of the statue and was told that the town had none. In 1971, the Historical Society of the Town of Barnstable stated in a letter to a Mr. Smith, that the statue probably was not on top of the Second Courthouse because the building was too small. They also said that they could find no documentation that it was ever there. This letter also stated that the local story was that when the Baptist Church purchased the property, a carpenter working on the building acquired the statue and it eventually ended up at the Shelburne. The story apparently gained more notoriety in the 1980s thanks to a series of articles in the *Barnstable Patriot* and *Cape Cod Times*. The only real connection of this statue to Barnstable is the catalog record for the piece and presumably some documentation by Electra Havemeyer Webb as to where she purchased it.

A search of the nineteenth century Cape Cod and Barnstable County histories as well as a search of the *Barnstable Patriot* newspaper failed to return any mention of what would have been a very significant artifact in the town. It seems most probable that this statue did originally reside on some public building, possibly in New England, but that it dates to the first half of the nineteenth century and was never on a building in Barnstable. Other examples of wooden statues of justice that once stood on top of buildings were found during an online search (such as the Ontario County, Canandaigua, New York Courthouse [1858], the Kings County, Brooklyn Borough Hall [1848], the Exeter, New Hampshire Town Hall [1855], and the Hartford, Connecticut State House [1827]) but nothing from the 18<sup>th</sup> century. The Shelburne Museum was again contacted regarding the statue but curator Carolyn Bauer reported that “We do not have an acquisitions number for Justice and therefore, at this time, we do not have accessible documents on its acquisition to the museum’s

permanent collection.” (Bauer personal communication March 23, 2016). As it stands, there is nothing to connect the statue to Barnstable except for the Shelburne Museum entry.

## Summary

The present survey found that the Olde Colonial Courthouse had been subjected to many changes, primarily after it ceased being used as a courthouse. We found that the original building most probably looked very similar to the sketches made by Hinckley in the 19<sup>th</sup> century (hipped roof, belfry, brick foundation, fan-topped windows, with an entrance on the south side), and that after it ceased to be a courthouse it appears that the roof was removed, the ends of the building were changed to gable ends and the roof to a peaked roof, a bell tower was added on the west side, and the building entrance was “flipped” or “turned” so that, while the physical building was not moved, the way to get into it shifted from the south side to the west side. The building was never turned on its foundation CONTRARY to what is written in the Massachusetts Historical Society’s and Town of Barnstable’s inventories. We found abundant evidence in the attic of the original roof, including evidence of what appears to be additional supports added to four rafters for the erection of a belfry on the original building. We also found that the courthouse had a flat plastered ceiling that was supported by a moderately elaborate girt and joist system that probably employed king posts just as the present system does. Surprisingly, evidence of the original paneling from the courtroom, probably paneling that was located near the justices seats, was found to have been reused as patches and braces in the attic. The present roof appears to be the third roof added to the building, replacing the one put on circa 1842 when the courthouse became a church. The present roof probably dates to the late 19<sup>th</sup> century, most likely around 1899 when major renovations were carried out, and shows

evidence of having either a belfry or more likely a flagpole located at the center of the roofline. The elaborate scantling, truss, and king post system present in the attic today was installed in 1899 when the plaster-vaulted ceiling was put in.

On the main floor, beautifully preserved falling braces, sheathing, and corner posts are visible in the closets beneath the 19<sup>th</sup> century stairs. Based on the wood cuts, the machine cut nails and lack of hand wrought nails, the entire gallery is believed to date to the 19<sup>th</sup> century, probably having been installed ca. 1842 and then enlarged ca. 1852. While one set of stairs leads up to the gallery today, a second set was found on the north side, having been removed and the hole covered over with boards bearing painted cherry grain, at some point in the 20<sup>th</sup> century. Based on comparison with other courthouses, it is believed that the justices sat at the east end of the building on a curved, raised platform behind which the walls were paneled and painted light green. Paneling may have also existed along the other walls, but not enough survives in the attic to confirm this. The fact that the building seems to have been built by the best, but cheapest, means possible (especially with the half foundation of brick [only the sides readily visible were brick!]) seems to say that they wanted something that looked nice but couldn't afford to go all the way. This may have held true for the interior paneling as well—put it behind the magistrates, so at least they'll look nice and regal and powerful. The lack of plaster anywhere in the crawlspace except for the one pile, indicates that either the walls weren't plastered, the walls were plastered and the plaster was removed and disposed of outside the building, or that the plaster remains on the walls to this day. The walls of the courtroom were most likely plastered, and the plaster walls and boxes posts present today may be original. Paneling may have been located on top of the plaster, or may have been restricted to the justices platform, or may have been present in lieu of plaster along the lower portions of the walls, commonly up to a height of six feet, was later removed, and the bare spaces plastered over.

The main floor of the courtroom was probably open with no benches being present. Anyone coming in to watch the proceedings would have had to stand. A clerk table was probably located in front of the magistrates, a jury box or benches may have been present, and sheriff and/ or deputy sheriff boxes may have been located on either side of the magistrate platform. The bar, up to which the plaintiffs, defendants, and lawyers would stand before, was probably located to the east of the doorway into the courthouse.

In the crawlspace beneath the building we found that the floor had been raised up when the building became a church, a portion of the sill had been replaced, and the floor joists were replaced with oak logs in a reorientated fashion by the Baptist Society. No trace of an 18<sup>th</sup> century chimney was found, so cold winter sessions and meetings must have been the norm until as late as the early twentieth century when the Heatrola heaters were installed. We found the remains of the plastered south wall of the building, piled in a great heap in front of the hole in the foundation made when the bell tower was erected in 1905. Piles of refuse, worker's lunch waste from the early nineteenth century, were found in the northeast and northwest corners of the crawlspace. This seems like a good indication that at least these portions of the floor were open at that time- possibly relating to the crawlspace hole in the northern closet used to enter the crawlspace and possibly repairs done to the northeast sill that may date to the 1840s as well. Finally, one piece of what may be the magistrate's bench or chief justice's chair was found being used to hold up part of the floor.

Research on the Captain Adolph Bell found primary document records from the Town of Sandwich town records detailing the removal of the old bell, its transference to the hands of Benjamin Fessenden to be sold for whatever he could get for it, and its eventual sale after three years in

Fessenden's hands to Barnstable. No reference was ever made in the Sandwich Town records of any special significance of the bell, it was simply referred to as the old bell. The sale of the bell in 1763 coincides with the receipt for the moneys paid to Edward Bacon of Barnstable for work that he did for the new courthouse in that same year, adds to the fairly incontrovertible conclusion that the Olde Colonial Courthouse, which was the second courthouse in Barnstable, was built in 1763. The next mention of the bell was in 1774 when it was rung to call people to the court session at which the Body of the People confronted the justices regarding what they saw as unconstitutional actions by Massachusetts' Governor. In 1873 the *Barnstable Patriot* noted that the old bell, whose history they said was not known, was being replaced because of cracks along the edge caused by long use. No mention of the connection of the bell with Captain Adolph was found in any source until 1883 and no reference to boys hitting it with a hammer and causing the damage that can be observed today was found until the early 20<sup>th</sup> century. It has to be concluded that at least those parts of the bell's history—a connection to Captain Adolph and damage caused by boys with a hammer, have to be considered to be highly suspect, and probably never happened.

Much the same can be said about the Statue of Justice that is now in the possession of the Shelburne Museum. Research indicated that statues like this were used on courthouses and public buildings in New England, but not until the 19<sup>th</sup> century, and most probably not until after the first quarter. No information was found linking the Statue to Barnstable except for the plaque on the base of the statue today. It has to be concluded that it never resided on any courthouse in Barnstable.

## Conclusions

In conclusion the following can be said about the Olde Colonial Courthouse:

- it was built in 1763
- a bell was added that same year
- that bell came from Sandwich
- the building is a classic 18<sup>th</sup> century New England public building form
- the brick foundation was only present on the most visible sides of the building
- the Hinckley sketch appears to be an accurate representation of the building as it appeared when it was a courthouse
- the main timbers framing the building are at least second or third growth white oak
- a flat, plastered ceiling was originally present in the courtroom
- jury or clerk rooms were not present at the west end of the courtroom
- the walls probably retain the original plaster
- the Magistrate's platform was originally located at the east end of the courtroom
- at least the area around the Magistrates was paneled and painted light green
- paneling may have been present in the remainder of the courtroom as well
- pieces of the original paneling remain in the attic
- the floor was originally 6" lower than it is today
- the original floor joists were not reused when the floor was raised
- the original floorboards were reused, being flipped in some cases
- a piece of the original benching, possibly the justice's bench or magistrate's chair is present in the crawlspace
- artifacts dating from the 1840s renovations are present in the crawlspace
- the Statue of Justice was never present on the roof of the building
- the exterior may have been painted red at one point prior to it becoming a church

- after the building ceased to be used for a court house, it was used for a period of time for town meetings
- extensive remodeling occurred in the 19<sup>th</sup> century when the Baptist Society acquired the property
- no evidence was found to indicate that the building was moved from its original foundation
- the 2016 survey determined that the truss system in the attic and the plaster ceiling were added in the late nineteenth century

### **Recommendations**

We recommend that any further alterations to the building be fully documented, at least with extensive photographs, at any time that previously covered surfaces are exposed. We recommend that the pieces of paneling that are easily accessible and the bench piece from the attic and cellar should be removed, documented, labeled, and curated. We further recommend that further research be conducted at Harvard Law School to record the court cases that are known to have taken place at the courthouse. Finally, we recommend that archaeological investigations be kept in mind at any time in the future when work is planned that may impact the soil under or around the building.

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