

Court-day crowds in colonial Virginia

Turk McCleskey^a and James C. Squire^b

^aDepartment of History, Virginia Military Institute; ^bDepartment of Electrical and Computer Engineering, Virginia Military Institute

ABSTRACT

For a generation, legal historians investigating colonial Virginia have emphasized the dramaturgy of court day. According to the dramaturgical school of interpretation, administrative and judicial activities of county court officials amounted to theatrical performances that simultaneously enforced economic order and stabilized traditional social relationships. Such interpretations assume a large audience routinely attended county courts to observe legal dramas. Often, however, only a small number of persons can be documented as present during court day. The independence theorem from probability theory suggests that the number of documentable attendees is a useful and easily calculated estimate for actual total crowd size. If so, some Virginia court sessions were attended by hundreds of people, while others drew only a few participants. A variety of factors apparently inhibited court attendance in older Virginia counties. By contrast, in newer frontier counties, mid-eighteenth-century revisions of court calendars produced heavy attendance at court day. Regardless of the number of people in attendance, any Virginia county court could still effectively enforce credit contracts.

KEYWORDS

colonial Virginia; frontier history; legal history; quantitative history; social history

On a sultry July night in 1768, close by the Sussex County courthouse, colonial American historiography's most influential thunderbolt dramatically slew two horses and three hogs. In the smoldering aftermath of the lightning strike, Virginia gentlemen attending court compensated the horses' owner for his loss, an incident that for Pulitzer Prize-winning historian Rhys Isaac exemplified paternalistic liberality. Such generosity demonstrated to numerous onlookers the gentlemen's natural fitness for leadership. Isaac emphasized how many people witnessed their act: "Court day had drawn so large a multitude that more than one hundred persons remained at the ordinary [i.e., tavern] after dark," a mere 30 yards from the hecatomb (Isaac 1982, 90).¹

Isaac's depiction of court days attracting multitudes agreed with long-standing impressions of an "assembled crowd" attending "important occasions in the economy and society as well as in the government of the rural Virginia counties" (Roeber 1981, 77; Sydnor 1952, 85). It has been an enduring image: As recently as 2005, the introduction to Carl Lounsbury's deeply researched treatise, *The Courthouses of Early Virginia*, repeatedly mentioned that courthouses and their yards were "bustling rural forums" occupied by "scores if

not several hundred men along with a few women and children." Photographs of well-populated Richmond and Rockingham County courtyards visually reinforce Lounsbury's description, and he too presents the Sussex County lightning strike as evidence of extensive attendance (Lounsbury 2005, 3–5, 269).

A skeptic might note, however, that Lounsbury's Richmond County photo was taken in 1909 and the Rockingham photo in 1897. Moreover, upwards of 100 people at an ordinary by night is not quite the same thing as a tally of courthouse attendance by day. In contrast, contemporary eighteenth-century accounts rarely mentioned attendance at colonial court days. If anything, observers sounded surprised by crowds, as when merchant James Gordon noted that in Richmond County on May 7, 1759, he found "many people at court." During the five years covered by his diary, Gordon reported visiting four county seats on 14 court days but never otherwise remarked on numerous people present (Gordon 1902–03, 290).

The same juxtaposition of singular comment against background of silence appears also in the diary of Gordon's fellow Virginian, Rev. Robert Rose. In 1751, Rose reported a noteworthy crowd in Virginia's westernmost county, Augusta. From his home in

Albemarle County, the minister “rode to Augusta Courthouse” at the site of modern Staunton and “found here a great number of people” (Rose 1977, 104). The comment can be taken as an expression of Rose’s surprise over something unusual. During the five and a half years covered by his diary, he attended ten court days in three other counties (Albemarle, Essex, and Stafford) as well as the General Court in Williamsburg. Rose only exclaimed over a large number of court attendees during his one frontier court visit.²

Perhaps Rose remarked on the Augusta County crowd because it was bigger than he normally saw anywhere in Virginia, or perhaps the crowd included more people than he expected in a frontier county. Either way, his and Gordon’s comments suggest that attendance during colonial Virginia court days is another legal issue about which historians assume much and know little. Despite repeated scholarly calls for close quantitative examination of legal procedures generally, many court functions remain mysterious (Henretta and Rice 1993; Konig 1993; Snyder 1993).

The question of crowd size seems especially relevant given scholarly emphasis on the dramaturgy of court day. According to A. G. Roeber, court day was “a kind of dramatic play, whose setting we can reconstruct from contemporary records.” Roeber explicitly characterized court activities as theater and drama, courtrooms as stages, and court attendees as spectators. He also asserted that the theater of debt suits was so engrossing it “kept planters and farmers coming to court every month” (Roeber 1980, 31, 42). If Roeber was correct, then the Suffolk County lightning strike and its aftermath would have been dramaturgically significant regardless of whether the audience included 10, 100, or 1,000 people. It seems likely, however, that the drama would have played differently before audiences of various sizes. Quantitative analysis of courtyard crowds thus may yield qualitative insights regarding Virginia’s county courts.

Rev. Rose’s remarkably large crowd in Augusta County offers a useful case study for estimating court-day attendance. Any estimate amounts to a calculation of the probability that an actual value fell between upper and lower limits. Limits and their probabilities are related, as an extreme example demonstrates. Intuitively, it is overwhelmingly likely that the number of people attending court was not larger than the county’s total population; this estimate is not very

useful, however, despite the high probability of its accuracy.

Nevertheless, an estimate must begin with the total population. A few days after Rose’s visit, county tithable takers enumerated 2,278 tithables, the taxable persons including males aged 16 years and older regardless of race and female slaves of that age or older.³ Approximately 98.3% of all tithables in Augusta County were white; given that contemporaries reckoned one white tithable represented four whites of either sex and all ages, and one black tithable equaled two blacks of all ages, the county’s whole population was a little over 9,000 people. This was an exceptional total, both bigger and whiter than elsewhere in Virginia. Four years later, when Virginia’s inhabitants were tallied by race on a county basis, Augusta County held 2,273 white tithables, more than any other county in the colony, and only 40 black tithables, fewer than all but the newest frontier county. The mean of Virginia counties’ white tithables in June 1755 was 856, the median was 761 in Richmond County, and the minimum was Warwick County, with 181 (Dinwiddie 1883–84, 2:352–53).

Court orders indicate numerous Augusta County inhabitants participated in the session when Rose attended. On May 28, 1751, the day Rose arrived, at least 100 men and 14 women can be documented as present in or around court, not counting magistrates, lawyers, or the sheriff and clerk of court plus their deputies. Over the course of the following day, when Rose declared before the court that he accepted guardianship of a minor, 74 men and nine women also appeared. For the two days combined, 175 adults (156 men and 19 women) verifiably attended court or loitered in its vicinity. By comparison, only 38 men and 12 women can be confirmed as conducting business in person at the two-day Sussex County session when nighttime lightning struck next to “upwards of an hundred people in and about the ordinary.”⁴ During just the first two days of Augusta County’s May 1751 court session, three and a half times as many people demonstrably attended as in the two days of Sussex County’s July 1768 court. Over the entire five days of the May 1751 session, 215 men and 24 women can be documented as attending, almost five times as many people as can be confirmed from Sussex County court orders for the July 1768 session.

For a few minutes on the morning of one of those five days, May 31, it is possible to estimate reliably the

size of a large portion of the total Augusta County crowd, the jury-eligible men loitering in the courtyard. The estimation hinges on how many grand jurors and petit jurors were on hand. The two types of jurors arrived in court via distinct selection processes: Sheriffs throughout Virginia summoned grand jurors from among the county's freeholders well before court convened, assembling grand juries of 15 to 24 members on the first day of court, typically in May and November. On May 28, 1751, the day Robert Rose arrived, Augusta County's sheriff delivered a 19-man grand jury.⁵

Sheriffs also summoned petit jurors, a term denoting jurors used mostly for trials of civil suits and infrequently for purposes beyond the scope of this paper: criminal cases, coroners' investigations of suspicious deaths, disputes over real estate, or other incidental duties (Webb 1736). Whereas sheriffs selected grand jurors deliberately and summoned them well before court convened, on court day, sheriffs expediently chose petit jurors for trials of civil suits. Virginia statute required sheriffs "every morning the court sits, [to] summon a sufficient number of the by-standers ... to attend the court, for that day; that out of them may be impanelled a sufficient jury, for the trial of any cause ... which shall be depending in such court." All free white adult males owning personal property worth at least £50 could be a petit juror; no landownership was required. As landowners, any grand juror thus qualified for petit jury duty (Hening 3:369–70).⁶ No legal bar prevented service on both at the same session.

The supply of qualified Augusta County men willing to serve as petit jurors seems always to have been adequate, despite the fact that their duty was uncompensated. County courts could fine truants, but magistrates did so only three times in Augusta County's first decade, 1745 to 1755.⁷ If early Augusta County sheriffs had problems assembling sufficient jurors, such difficulties went unrecorded. On a single occasion, magistrates noted that "the business of this Court is Much behind hand ... [and] ordered that the Sheriff Summon four juries, to be ready when called."⁸ Otherwise, the court left sheriffs to create petit juries without official comment. Before Rev. Rose's arrival in May 1751, a record for the largest number of individual jurors employed at one Augusta County court session was set during the May 1750 session when 84 different men served as petit jurors in civil suits.⁹

Petit jurors most commonly participated in trials of the issue, civil suits in which plaintiffs and defendants each presented evidence and arguments to juries. In such suits, the parties or their attorneys winnowed potentially biased jurors through the process of *voir dire*, so selecting juries was not random (Webb 1736). Less frequently, however, petit jurors were employed in juries on a writ of inquiry to determine damages; in such cases, plaintiffs already had won judgment by reason of defendant default, so no *voir dire* process was employed. Petit jurors for writs of inquiry were picked solely by sheriffs, a process which in Augusta County during this period was independent of selection for grand jurors. Statistical proof of that independence appears in a separate essay (McCleskey and Squire 2014).

In the course of picking petit jurors from among the bystanders on court day, sheriffs throughout Virginia sometimes selected men who had been summoned to court for service on the grand jury. In Augusta County's first decade, the selection of grand jurors for service on petit juries was functionally random (*ibid.*). Consequently, when Augusta County grand jurors were selected for petit jury duty in the same court session, the independence theorem from probability theory facilitates calculating the size of the overall crowd from which petit jurors were picked.

An estimate for how many potential jurors stood outside the Augusta County courthouse on the morning of May 31, 1751 begins by establishing upper and lower limits for their number. If the estimate of crowd size falls outside these limits, then it is not a reasonable estimate. For an upper limit, 2,278 county tithables were enumerated 11 days later, of whom at least 38 can be identified as ineligible slaves, indentured servants, or convict servants. An estimated 542 white tithables were minors. The upper limit of valid results for the calculation thus is 2,278 total tithables – 38 known unfree laborers – 542 estimated minor white males = an estimated 1,698 adult white tithable males. Given the small number of identifiably poor men in Augusta County at this time, the estimate assumes the remaining 1,698 men met the low property qualification for petit jury duty.¹⁰ This assumption is bolstered by the fact that Augusta County sheriffs sometimes ignored real estate qualifications for grand jurors; if they were unconcerned to enforce a more stringent rule for a position of greater

authority, then presumably sheriffs also sometimes ignored a less stringent rule for a position of lesser authority.¹¹ As to the lower limit, most conservatively, 60 jury-eligible men were documented as present in court on this date (Table 1).¹² A reasonable estimate of potential jurors thus must fall between 60 and 1,698 men.

This broad range can be narrowed considerably using the independence theorem from probability theory. The independence theorem states that if two events are independent, then the probability of them occurring together equals the product of the probability of each occurring individually. The probability (P) of rolling consecutive ones on a six-sided die is 1/36, for example, the same as the product of rolling a one (1/6) times itself.

The two events employed in this calculation are the selection of grand jurors for the May 1751 court session and the selection of petit jurors on a writ of inquiry on May 31. In a formula,

$$P(A \text{ and } B) = P(A) \times P(B), \text{ if } A, B \text{ are independent}$$

let event A be that an eligible bystander had been summoned as a grand juror and event B represent that a bystander was selected as a petit juror. Assuming these events were not dependent upon each other, the independence theorem indicates the probability of being a grand juror who the sheriff selected as a petit juror equals the probability of being a grand juror (GJ) in the courtyard on a given day times the probability of selection as a petit juror (PJ) on that day. Since the probability of being selected equals the number of people selected divided by the total number of qualified people available, the previous sentence can be expressed as an equality of

ratios:

$$\begin{aligned} & \frac{\# \text{ of today's GJ selected as PJ}}{\# \text{ of eligible bystanders}} \\ &= \frac{\# \text{ of today's GJ}}{\# \text{ of eligible bystanders}} \times \frac{\# \text{ of today's PJ}}{\# \text{ of eligible bystanders}} \end{aligned}$$

On a given day, the number of people selected as both grand jurors and petit jurors divided by the number of bystanders equaled the number of grand jurors divided by the number of bystanders times the number of petit jurors divided by the number of bystanders. Multiplying through by the number of eligible bystanders simplifies the relation:

$$\begin{aligned} & \# \text{ of today's GJ selected as PJ} \\ &= \frac{(\# \text{ of today's GJ}) \times (\# \text{ of today's PJ})}{\# \text{ of eligible bystanders}} \end{aligned}$$

Solving for the number of eligible bystanders,

$$\begin{aligned} & \# \text{ of today's GJ selected as PJ} \\ &= \frac{(\# \text{ of today's GJ}) \times (\# \text{ of today's PJ})}{\# \text{ of eligible bystanders}} \end{aligned}$$

On the morning of May 31, at least four men from the May 28 grand jury had not yet gone home: John Black, who served on a petit jury on May 31 and personally appeared in court on June 1 as a defendant; Daniel Harrison, who served as a petit juror on May 31; Samuel Lockhart, a petit juror on May 31 and June 1; and John Mills, a petit juror on May 31.¹³ Of those four grand jurors, only Lockhart was picked for a jury on a writ of inquiry, the first jury trial of the

Table 1. Business activities at Augusta County court by jury-eligible men, spring session, 1751.

Purpose	May 28	May 29	May 30	May 31	June 1
Garnished money or goods	0	0	1	0	1
Grand jury duty	19	0	0	0	0
Litigant (in person)	1	0	6	0	1
Motion made	6	17	3	0	0
Petit jury duty	0	0	18	43*	15
Probate (administrator, executor, will witness)	14	7	0	2	0
Real estate transaction (grantor, grantee, or witness)	36	14	1	2	0
Served as security	12	21	1	2	1
Witness for litigation (awaiting trial per oath)	12	15	11	2	0
Witness for litigation (attending trial)	0	0	5	9	8
Total jury-eligible men this date	100	74	46	60	26

* Does not include 6 additional petit jurors who on this date also served as witnesses, appeared as estate executors, registered a land deed, or acknowledged security.

day. In addition to Lockhart, 48 petit jurors were employed on May 31, so on that day,

of eligible bystanders

$$= \frac{(4 \text{ GJ present today}) \times (49 \text{ PJ present today})}{1 \text{ GJ selected as a PJ}} = 196$$

The data thus indicate that three days after Rev. Rose reported finding “a great number of people” at the Augusta County courthouse, the county sheriff impaneled petit jurors from a morning crowd containing at least 196 jury-eligible bystanders. It is a reasonable estimate because it falls between the limits of 60 to 1,698 jury-eligible adult male white tithables, and it is a conservatively low estimate because it assumes that the only remaining grand jurors from May 28 were the four men verifiably attending on May 31. For each additional grand juror still present but not named in court orders, the number of eligible bystanders would have increased by 49. If all 19 grand jurors were on hand, then the eligible bystanders would have numbered 931 men. The range of the crowd estimate thus narrows to between 196 and 931 potential jurors.

In colonial Virginia, 931 people of any sort would have constituted a remarkably large but not unheard-of crowd. James Gordon, the merchant who found “many people” attending Richmond County’s court one time in May 1759, also reported seeing “about 8 or 900 people present” 7 weeks earlier at a Presbyterian worship service, but these included men and women, adults and children, whites and blacks (Gordon, 11:102, 12:4). An assembly of 931 men eligible for petit jury duty would have been more than the entire white tithable population of 31 out of 49 Virginia counties in 1755 (63.3%). Even the lower estimate of 196 men qualified to serve as jurors in Augusta County was larger than all the white tithables of Warwick County, which contained the smallest white population in Virginia (Dinwiddie 1883–1884, 2:352–53). Augusta County’s court-day crowd surprised Rev. Rose because by comparison to whole eastern Virginia counties it was indeed a multitude.

By coincidence, Robert Rose commented on the large size of Augusta County’s court-day crowd during a grand jury session when the court also heard a case involving a petit jury on a writ of inquiry. Comparable conjunctions of grand and petit juries occurred on

single days in Surry County on November 17, 1747 and Brunswick County on March 27, 1751. In the former case, three of the 11 Surry County grand jurors subsequently were impaneled on an 11-man jury for a writ of inquiry.¹⁴ The eligible bystanders in Surry County on the morning of that day thus equaled 22 grand jurors times 11 petit jurors divided by three grand jurors selected as petit jurors = 81 eligible bystanders. Twenty-two jury-eligible men can be verified as attending on that day, so the conditional probability estimate for Surry County lies above the lower limit for numbers of men who could have served as jurors.¹⁵ The conditional probability estimate of 81 eligible bystanders also lies far below the upper limit of potential jurors; as of the previous June, Surry County contained a total of 3,367 tithables, of whom an estimated 939 were adult white males.¹⁶ In Brunswick County, two out of 22 grand jurors participated in a 12-man jury for a writ of inquiry on March 27, 1751, yielding a conditional probability result of 132 eligible bystanders.¹⁷ This estimate also reassuringly lies between a lower limit of 39 observable jury-eligible men and an estimated county population of 857 adult white males.¹⁸

In other mid-century Virginia venues, the information needed to estimate crowd size on the day of a grand jury was not recorded. This dearth of information is partly due to the rarity of juries for writs of inquiry at any court. For example, only 33 were impaneled during York County’s 84 routine court sessions from January 20, 1745/6 through November 28, 1754, and a mere four of these were conducted on just two grand jury days.¹⁹ We examined microfilm copies of all surviving court order books for January 1745/6 through May 1755 at the Library of Virginia and found that even on dates with both types of jurors, sheriffs often selected juries for writs of inquiry that included no grand jurors. Alternatively, sheriffs also often retained jurors for service on a writ of inquiry who previously had been selected by *voir dire* for trials of issues.²⁰ The conditions required for estimating crowd size thus were rare.

Given that rarity, how useful to historians are three mathematically valid calculations of crowd size in mid-eighteenth-century Virginia? On the one hand, a paucity of data makes it inappropriate to evaluate the new crowd estimates with statistical large-dataset tools such as hypothesis testing, but results for the three counties are so close to each other as to be powerfully

evocative. Despite their derivation from locales with disparate social and economic contexts, the crowd-to-eligible-tithable estimates for Brunswick (15.4%), Surry (8.6%), and Augusta Counties (11.5%) cluster closely at $11.8\% \pm 3.4\%$ (mean \pm standard deviation), so the ratio of standard deviation to mean is 3.4/11.8 or about 0.29. This tight grouping stands in contrast to a much wider spread for an underlying factor in the estimates' calculation: the number of white tithables in each county. As of 1755, Virginia's 49 counties contained a mean of 856 white tithables with a standard deviation of 424 (Dinwiddie 1883–1884, 2:352–53). This yields a standard deviation to mean ratio of 0.50, a 72% wider distribution than the crowd-to-eligible-tithable estimates. The fact that the crowd-to-eligible-tithable estimates are significantly more clustered than underlying descriptive statistics for the counties suggests these crowd estimates accurately reflect a real social phenomenon.

The estimates' tight grouping feels even more compelling in light of the fact that incentives to attend or avoid court were more substantial than historians have previously recognized. For example, unlike Surry and all but four other counties in Virginia, Brunswick and Augusta County courts in 1751 met quarterly, not monthly. Their distinctive legal calendar was part of a mid-century experiment permitting six backcountry county courts to convene every third month (McCleskey 2012). Shifting to quarterly sessions dramatically altered motives for attendance, diminishing some while increasing others.

One diminished incentive involved called courts, the proceedings in which criminals were examined and tried. As elsewhere in Virginia, called courts possessed real crowd appeal; when Augusta County magistrates found the accused guilty of lesser charges, the sheriff immediately placed them in the stocks or whipped them.²¹ Magistrates at called courts also examined persons suspected of capital crimes and either discharged them or sent them to Williamsburg or trial in the General Court.²² Similarly, slaves accused of capital offenses were tried in special proceedings authorized by a commission of oyer and terminer sent from the governor to the court. If found guilty, slaves could be executed locally; from the county's origins in late 1745 through 1755, however, the sole Augusta County slave tried under such a commission was acquitted; no criminals were hanged (Hening 6:105–06).²³

In practice, a quarterly calendar decreased the likelihood that persons attending a regularly scheduled court would observe criminal trials and punishments. From Augusta County's initial session in December 1745 through the May 1748 session, court convened on a nominally monthly schedule. During that period, three out of 21 sessions (14.3%) included at least one called court for a criminal trial. Two more called courts were held on days other than regularly scheduled court days. Thus, before the calendar revision in Augusta County, accused criminals in two out of five called court sessions (40%) were tried outside the statutory schedule.²⁴ After the switch to a quarterly schedule, from August 1748 through May 1755, five out of 42 quarterly sessions (11.9%) included at least one called court. Another 16 called courts plus an oyer and terminer proceeding for the accused slave were conducted on days other than those of scheduled quarterly sessions. After the shift to quarterly courts, 17 out of 22 criminal sessions (77.3%) were conducted on days other than those routinely scheduled.²⁵

If opportunities to witness punishment diminished with the new quarterly calendar, opportunities for business increased. Compressing three months of activity into a single court session created a bigger market for non-resident peddlers, merchants, and lawyers. Robert Rose exclaimed over a crowd at Augusta County that was about nine times the 25 men who can be confirmed as attending a monthly Essex County court Rose visited seven months before. Other comments from eastern Virginia likewise imply routinely low attendance at monthly courts. Merchant James Gordon complained about "no business done" at the Lancaster County session of January 19–20, 1759 and remarked that "Court sat but a short time" on May 18, 1759. No more than 28 men attended the former session, and no more than 26 can be verified at the latter; possibly Lancaster's totals were as low as 16 and 15, respectively. These low numbers bracket Gordon's comment about the Richmond County session of May 7–8, 1759, where Gordon found "many people at court;" court orders for Richmond's session verify the presence of 57 men, less than one-third of what Rose saw at Augusta County.

Beyond the fact that a larger number of people in quarterly attendance represented a bigger market for non-resident peddlers, merchants, and lawyers, quarterly courts occurred more reliably. For a variety of reasons, monthly courts unpredictably failed to meet

several times a year. According to Gordon's neighbor Landon Carter, menacing weather either forced the cancellation of court day or inhibited participation at three Richmond County monthly sessions in 1772. Carter also highlighted at least three occasions when the court clerk's recurring sickness forced a session's cancellation (Greene 1965, 648, 668, 736, 766, 792). In quarterly courts, however, when "sickness, or other inability, badness of weather, or other accident" prevented sufficient justices of the peace from assembling on the designated day, a single justice could adjourn from day to day for up to three days while awaiting the arrival of enough magistrates to convene (Hening, 6:202). From the inception of quarterly courts in 1749 through Augusta County's initial subdivision in 1770, court failed to meet at least quarterly on only a single occasion.²⁶ Monthly courts in eastern Virginia convened much less reliably (Lounsbury 2005).

Relatively low documentable attendance at some court days had many causes. Beyond routine reliance on attorneys and occasional inhibitions of bad weather or illness, a previously overlooked legal factor provided strong incentives for some Virginians to avoid court day anywhere. With the exceptions of court officers, litigants, and witnesses, any debtors against whom judgment had been obtained were at risk to be arrested and jailed in debtors prison or to have their personal property seized during court day (Blackstone 1979).

Roerber erroneously brushed aside the threats of arrest or distraintment for debt, claiming creditors must wait a year to enforce judgment via a writ of *scire facias* (Roerber 1980, 42; Roerber 1981, 85). In reality, the *scire facias* writ revived unsatisfied judgments after one year. During that year, however, creditors who failed to receive prompt payment readily resorted to two other writs facilitating the execution of judgment, sometimes within mere days of the court's verdict. York County petitions to recover small debts from January 1746 through October 1754 produced 216 judgments for plaintiffs, for example, of which 55 (25.5%) were followed in less than a year by either a writ of *capias ad satisfaciendum* or a writ of *feri facias*.²⁷ The former was an order to the county sheriff to imprison the defendant, the latter an order to seize defendant property equal in value to the amount of the judgment (Hening, 4:151–62; Blackstone 3:414–17). Judgments for York plaintiffs in suits on a writ of debt for larger sums even more frequently involved coercive executions. Plaintiffs received

266 judgments on writs of debt in the same period and obtained writs of *capias ad satisfaciendum* or *feri facias* in 102 executions (38.3%).²⁸ York County was not uniquely rigorous with regard to judgments for plaintiffs. Numerous court order books for eighteenth-century Virginia counties include dated marginal annotations "Ca: Sa:" and "Fi: Fa:" by records of judgment, indicating issuance of writs of *capias ad satisfaciendum* or *feri facias*.²⁹

None of the many inhibitions to court attendance figured in Isaac's discussion of court day. Instead, on the page before describing the Sussex thunderbolt, Isaac presented a photograph of Hanover County's eighteenth-century courthouse captioned "A courthouse, its green under snow" (Isaac 1982, 89). For Isaac, snow in the courtyard was picturesque, not a travel-stifling cold slop that crept numbingly through seams of pedestrian shoes or made horses skid and flounder. Isaac's account of the Sussex County mid-summer lightning strike thus vividly reinforced an enduring but erroneous impression of bustling court day traffic and large audiences for tediously routine court proceedings. Diverse circumstantial and documentary evidence supports the rare but important statistical estimates for low attendance. Some court days bustled, but many did not.

Crowded or not, however, court days were economically vital. Thanks especially to attorneys, the amount of commercial business completed at court was independent of crowd size. As Isaac explicitly stated, Virginia's county courts "commanded real and impressive powers," so while court sessions may have included only a few significant dramas, their essential function, the securing of property, could proceed with minimal attendance (Isaac 1982, 93–94). Other venues provided much better opportunities for ritually reinforcing social hierarchy, as incentives for attendance at various public occasions clearly indicate.

Virginia lawmakers long insured that court-day crowds enjoyed less protection than religious, martial, electoral, or commercial assemblies. Persons worshipping in church, drilling at militia musters, voting for burgesses, and trading at fairs were shielded from the service of "any writ or precept" (Hening 3:248 [quote], 5:83, 192, 6:269).³⁰ Exemptions from arrest for debtors did not extend to county court bystanders, however, and for good reason. Courts protected private property by justly administering English common law, and

sometimes justice demanded the arrest of debtors. Such power could be appreciated by every county audience, large or small.

Acknowledgments

Thanks to our colleagues who vociferously participated in a colloquium to sharpen the essay's focus: Atin Basuchoudhary, Alison Bell, Bradley Coleman, Timothy Dowling, Wayne Graham, Geoffrey Jensen, Houston Johnson, Luman Wang, and Mark Wilkinson. Two anonymous reviewers further refined our argument. Tom and Suzanne Wren's hospitality greatly enlivened research at the Library of Virginia.

Funding

Research on the York County petitions was sponsored by a Gilder Lehrman Short-Term Residential Fellowship at the John D. Rockefeller, Jr., Library, Colonial Williamsburg Foundation. We are grateful to both the Gilder Lehrman Institute of American History and to the Colonial Williamsburg Foundation for this generous and essential support.

Notes

1. Sussex County records include no mention of the lightning strike. Entries dated July 21 and 22, 1768, Sussex County Order Book, 1766–1770, 289, 296 (microfilm, Library of Virginia). Whether the hogs' owner received restitution is unknown. Sultry night: Jackson and Twohig, 79.
2. Essex County: Rose, 10, 31, 90. Albemarle County: *ibid.*, 28, 63, 68, 86, 92. Stafford County: *ibid.*, 62, 73; General Court in Williamsburg: *ibid.*, 101.
3. Augusta County, Virginia, Order Book No. 3, 205 (microfilm, Library of Virginia; hereafter Augusta OB). Per colonial statute, tithable counts in Virginia had an effective date of 10 June. Hening, *Statutes at Large*, 6:41.
4. Augusta OB 2:561–84. Sussex County OB, 1766–70, 289–302. *Virginia Gazette* (Rind), 4 August 1768, as quoted in Isaac, 90.
5. Grand juries in May and November: Hening 6:523; grand juries in other months in Brunswick, Fairfax, and Lunenburg Counties from 1749 to 1752: Hening 6:201, 210, 231–32. Augusta OB 2:561.
6. A revised October 1748 statute substituted “every day” for “every morning” and broadened juror eligibility by dropping the “sterling” monetary qualifier; the monetary change effectively reduced by 25% the property qualification. (Thanks to John J. McCusker for this insight.) *Ibid.*, 5:525–26.
7. Entries dated February 28, 1750, May 22, 1750, and June 1, 1751, Augusta OB 2:320, 361, and 602.
8. Entry dated May 19, 1748, *ibid.*, 2:10.
9. Entries dated May 23–26, and 28, 1750, *ibid.*, 2:370, 376, 383, 385–86, 398, 401–02, 404, 406–07, 411.
10. The tithable count as of 10 June was reported on November 27, 1751 at the laying of the county levy. Augusta OB 3:205. As of May 1751, only one out of 33 petitions to be exempt from the levy cited poverty as a justification. *Ibid.*, 1:151, 358, 346, 356, 2:3, 8, 17, 47, 49, 56, 73, 105, 109, 150, 265, 273, 317, 372, 414, 429, 430, 455, 486, 572, 581. For proportion of minors, see McCleskey and Squire, 129.
11. For example, November 1750 grand juror George Rankins never owned land in Augusta County as late as 1772. Augusta OB 2:485.
12. Augusta OB 2:594–98, 600.
13. Black: *David Logan v. James McCarrel*, Augusta OB 2:598; *James Scott v. Andrew Erwin and John Black*, *ibid.*, 613. Harrison: *James Porteus v. Martin Hughs*, *ibid.*, 596. Lockhart: *Jane Jones v. William Burk*, *ibid.*, 594; *Cornelius Murrely v. Thomas West*, *ibid.*, 602. Mills: *Logan v. McCarrel*, *ibid.*, 598.
14. Surry County Order Book, 1744–49, 391–92 (microfilm, Library of Virginia, Richmond; hereafter cited Surry OB).
15. *Ibid.*, 389–98.
16. Total tithables: *ibid.*, 400. Estimated white tithables in 1747: 3,367 total tithables \times 36.8% (known proportion of white tithables in June 1755) \times 75.8% (estimated ratio of adult white tithables) = 939 (Brock, 2:353; McCleskey and Squire, 129).
17. Brunswick County Order Book 4:8, 16.
18. *Ibid.*, 4:155. Estimated white tithables in 1751: 1,980 total tithables \times 57.1% (known proportion of white tithables in June 1755) \times 75.8% (estimated ratio of adult white tithables) = 857 (Brock, 2:352; McCleskey and Squire, 129).
19. York OB 2:213, 421–22. The York County order book that would have contained the records for rest of November 1754 and all of 1755 does not survive.
20. Frederick County Order Book 2:80, 86; Goochland County Order Book 6:162; Henrico County Minute Book, 1752–55, 69–70; Norfolk County Order Book, 1750–53, 2–3; Southampton County Order Book, 1749–54, 181–82, 473, 481 (microfilm, Library of Virginia, Richmond).
21. For examples, see Augusta OB 1:46 (stocks), 2:44 (25 lashes).
22. Earliest examination and discharge of a murder suspect, August 20, 1746: *ibid.*, 1:75. Earliest white suspect “sent to Williamsburg court of Oyer & Terminer for murder,” May 20, 1747: *ibid.*, 1:192 (second page of this number). Both examinations were conducted on the first day of regularly scheduled court sessions.
23. Augusta OB 2:352–54.
24. Augusta OB 1:1–2:45. Called courts: *ibid.*, 1:75, 192 (both pages of this number), 286, 289, 2:1.
25. *Ibid.*, 2:46–4:463. Called courts: *ibid.*, 2:44–45, 128, 130, 286, 414, 484, 3:197–98, 240, 258–59, 308, 411–12, 500, 4:8, 63, 77, 185–86, 317, 375.
26. *Ibid.*, 2:103–14:61. The single exception was the winter quarter of 1752.
27. Suits by petition sought to recover amounts between 25 shillings and 5 pounds (100 shillings). York County Orders, Wills, and Inventories, 19:414–47; Judgments and Orders, 1746–52, 22–487, and 1752–54, 33–503 (transcripts, Colonial Williamsburg Foundation).

28. York County Orders, Wills, and Inventories, 19:465, 497; Judgments and Orders, 1746–52, 68–517, and 1752–54, 20–486.
29. C.f. Cumberland County, VA, Order Book, 1749–51; Essex County, VA, Order Books 14–15; Richmond County, VA, Order Book 12 (after a new deputy clerk was sworn in 1748, 126); and Surry County, VA., Orders 1751–53 (microfilm, Library of Virginia). The library's online finding aids for microfilmed Virginia county court records include numerous references to eighteenth-century records of executions; in addition to counties cited above, see entries for Goochland, Lancaster, Prince George, Prince William, Richmond, Southampton, and Spotsylvania counties. http://www.lva.virginia.gov/what-wehave/local/county_formation/index.htm (accessed August 1, 2014).
30. For an example of a summons to answer a petition for debt that was dismissed due to service on muster day, see entry dated March 23, 1759, Augusta OB 6:247.

References

- Beeman, R. R. 1984. *The evolution of the southern backcountry: A case study of Lunenburg County, Virginia, 1746–1832*. Philadelphia: University of Pennsylvania Press.
- Blackstone, W. 1979. *Commentaries on the laws of England, vol. 3 of private wrongs*. Facsimile of the first edition, with an introduction by ed. J. H. Langbein. Chicago: University of Chicago Press. Originally published 1768.
- Dinwiddie, R. 1883–84. *The official records of Robert Dinwiddie, Lieutenant-Governor of the colony of Virginia, 1751–1758*, ed. R. A. Brock. Richmond: Wm. Ellis Jones.
- Gordon, J. 1902–03. Journal of Col. James Gordon, of Lancaster County, Va. *William and Mary Quarterly* 11:98–112, 195–205, 217–36, and 12:1–12.
- Greene, J. P., ed. 1965. *The diary of Colonel Landon Carter of Sabine Hall, 1752–1778*. Richmond: Virginia Historical Society.
- Hening, W. W., ed. 1969. *The statutes at large: Being a collection of all the laws of Virginia*. 13 vols. Charlottesville: University Press of Virginia. Originally published 1819–23.
- Henretta, J. A., and J. D. Rice. 1993. Law as litigation: An agenda for research. *William and Mary Quarterly* 3d ser., 50:176–80.
- Isaac, R. 1982. *The transformation of Virginia, 1740–1790*. Chapel Hill: University of North Carolina Press.
- Jackson, D., and D. Twohig, assoc. ed. 1976. *The diaries of George Washington. Vol. 2, 1766–70*. Charlottesville: University of Virginia Press.
- Konig, D. T. 1993. A summary view of the law of British America. *William and Mary Quarterly* 3d ser., 50:42–50.
- Lounsbury, C. R. 2005. *The courthouses of early Virginia: An architectural history*. Charlottesville: University Press of Virginia.
- McCleskey, T. 2012. Quarterly courts in backcountry counties of colonial Virginia. *Journal of Backcountry Studies* 7:47–57. <http://libjournal.uncg.edu/ojs/index.php/jbc/article/view/570/330>.
- McCleskey, T., and J. C. Squire. 2014. Random selection of petit jurors on the colonial Virginia frontier, 1746–1755. *Historical Methods* 47:128–37.
- Roeber, A. G. 1980. Authority, law and custom: The rituals of court day in Tidewater Virginia, 1720 to 1750. *William and Mary Quarterly* 3d ser., 37:29–52.
- Roeber, A. G. 1981. *Faithful magistrates and republican lawyers: Creators of Virginia legal culture, 1680–1810*. Chapel Hill: University of North Carolina Press.
- Rose, R. 1977. *The diary of Robert Rose: A view of Virginia by a Scottish colonial parson, 1746–1751*, ed. Ralph Emmett Fall. Verona, VA: McClure Press.
- Snyder, T. L. 1993. Legal history of the colonial south: Assessment and suggestions. *William and Mary Quarterly* 3d ser., 50:18–27.
- Sydnor, C. S. 1952. *Gentlemen freeholders: Political practices in Washington's Virginia*. Chapel Hill: University of North Carolina Press.
- Webb, G. 1736. *The office and authority of a justice of peace*. Williamsburg, VA: William Parks, 1969. Facsimile ed. Holmes Beach, FL: William W. Gaunt and Sons.