

In the snowy winter of 1770, many residents of Boston harbored deep resentment against the presence of British military in their city. Two regiments of regulars had been quartered in Boston since September of 1768, when they had landed in response to a call by the Governor to restore order and respect for British law. Trouble had arisen earlier that summer when Boston importers refused to pay required custom duties. Some Bostonians disliked soldiers because they competed for jobs, often willing to take part-time work during their off-duty hours for lower wages. Seamen saw the soldiers as enforcers of the detested impressment laws, which authorized persons to be seized and forced to serve in the British navy.

Clashes between soldiers and civilians were on the rise in early March. On March 2, a fist fight broke out between soldiers and employees of John Gray's Ropewalk after one of the employees insulted a soldier. A cable-making employee reportedly asked a passing soldier, "Do you want work?" When the soldier replied that he did, the employee told the soldier, "Wee then, go and clean my shithouse." The angry soldier returned later with about a dozen fellow soldiers, and the fight ensued.

The tragedy of March 5 began with a simple dispute over whether a British officer had paid a bill to a local wig-maker. The officer was walking down King Street when Edward Garrick, the wig-maker's apprentice, called out, "There goes the fellow who hath not paid my master for dressing his hair." The officer with the new hair, Captain John Goldfinch, passed on without acknowledging Garrick. But Garrick persisted, telling three passers-by that Goldfinch owed him money. A lone sentry named Hugh White overheard Garrick's remarks. White told the apprentice, "He is a gentleman, and if he owes you anything he will pay for it." Garrick's answer—that there were no gentlemen left in the regiment—caused White to leave his post and confront Garrick. After a brief, heated exchange of words, the sentry struck Garrick with his musket, knocking him down.

Soon a small crowd, attracted by the ruckus between White and Garrick, gathered around the lone guard and began taunting him. "Bloody lobster back! Lousy rascal! Lobster son of a bitch!" they yelled. The crowd grew to about fifty. Some in the mob of mostly young men threw pieces of ice at White, and he grew fearful. As the crowd continued to increase in size and hostility, White retreated from his sentry box to the Custom House steps, loaded his gun, and began to wave it about. White knocked on the door and banged the butt of his gun against the steps. Desperate, White yelled, "Turn out, Main Guard!"

Meanwhile, a few blocks north, another confrontation between civilians and Redcoats broke out. Under a barrage of snowballs, a group of soldiers was hustled into its barracks. A third mob, this one about two hundred strong and carrying clubs, gathered in Dock Square. A tall man with a white wig and a red coat did his best to rile up the crowd. Trouble seemed to be erupting all over the city. "Let's away to the Main Guard!" someone shouted, and the crowd began streaming down an alley toward King Street. Someone pulled the fire bell rope at the Brick Meeting House, bringing dozens of more residents out into the restless streets.

In front of the Main Guard, officer for the day, Captain Thomas Preston, paced back in front for nearly thirty minutes, worrying about what to do. If he did nothing, he thought, White might be killed by the mob. But trying to rescue White carried its own risks, as the soldiers would be vastly outnumbered by the frightening mob. Moreover, Preston knew well that Province law forbid the military from firing on civilians without the order of a magistrate. Finally, Preston made his decision. "Turn out, damn your bloods, turn out!" he barked at his men.

Preston and seven other men, lined up in columns of twos, began moving briskly across King Street with empty muskets and fixed bayonets. They pushed on through the thick crowd near the Custom House. Managing to make it to the beleaguered Private White, Preston ordered the sentry to fall in. Preston tried to march the men back to the Main Guard, but the mob began pressing in. Hemmed in, the soldiers lined up—about a body length apart—in a sort of semi-circle facing the crowd that had grown to over three hundred. Many in the crowd threw missiles of various sorts—chunks of coal, snowballs, oyster shells, sticks—at the soldiers. Preston shouted for them to disperse. A large club-wielding man named Crispus Attucks—a forty-seven-year-old mullato—moved forward, grabbed one of the soldier's (Hugh Montgomery's) bayonets, and knocked him to the ground. Montgomery rose, shouting "Damn you, fire!" and unloading his musket in the direction of the crowd. Soon after—estimates varied from six seconds to two minutes—Montgomery shouted "Fire!", the other soldiers also began firing. A blast from the gun of Matthew Killroy hit Samuel Gray as he stood with his hands in his pockets, blowing a hole in his head "as big as a hand." From another gun, two bullets hit Crispus Attucks in the chest. As the mob moved toward the soldiers, more guns fired. Five civilians lay dying in the streets; another half dozen lay injured. The soldiers loaded their weapons and prepared to fire again when Captain Preston (according to his own statement) yelled, "Stop firing! Do not fire!"

Arrests and Imprisonment

Word of the shootings reached Acting Governor Thomas Hutchinson in this North Square home. Hutchinson rushed to King Street where he found an angry crowd and a shaken Captain Preston. Hutchinson confronted Preston: "Do you know, Sir, you have no power to fire on any body of the public collected together except you have a civil magistrate with you give orders?" After talking with Preston, Hutchinson proceeded upstairs in the Town House, where several members of the Council had already gathered. He assured Council members that he would do his best to see justice done, then he stepped out onto a balcony overlooking the scene of the massacre and asked the crowd for calm: "Let the law have its course. I will live and die by the law."

After midnight, Justices Richard Dania and John Tudor gave the sheriff a warrant for the arrest of Captain Preston. Preston was arrested and brought to the Town House, where he was interrogated for an hour by the two justices about the shooting. At three o'clock in the morning, the justices concluding they had "evidence sufficient to commit him," sent Preston to the jail where he would remain for the next seven months.

Later that morning a thirty-four-year-old Boston attorney, John Adams, was visited in his office near the stairs of the Town Office by a Boston merchant. "With tears streaming from his eyes" (according to the recollection of Adams), the merchant, James Forest, asked Adams to defend the soldiers and their captain, Thomas Preston. Adams understood that taking the case would not only subject him to criticism, but might jeopardize his legal practice or even risk the safety of himself and his family. But Adams believed deeply that every person deserved a defense, and he took on the case without hesitation. For his efforts, he would receive the modest sum of eighteen guineas.

A week after the massacre, at the request of Attorney General Jonathan Sewall, a grand jury handed down indictments against Captain Preston and eight soldiers. About the same time, Preston offered his version of the events of March 5 in a deposition:

About 9 some of the guard came to and informed me the town inhabitants were assembling to attack the troops, and that the bells were ringing as the signal for that purpose and not for fire, and the beacon intended to be fired to bring in the distant people of the country. This, as I was captain of the day, occasioned my repairing immediately to the main guard. In my way there I saw the people in great commotion, and heard them use the most cruel and horrid threats against the troops. In a few minutes after I reached the guard, about 100 people passed it and went towards the custom house where the king's money is lodged. They immediately surrounded the sentry posted there, and with clubs and other weapons threatened to execute their vengeance on him. I was soon informed by a townsman their intention was to carry off the soldier from his post and probably murder him. On which I desired him to return for further intelligence, and he soon came back and assured me he heard the mob declare they would murder him. This I feared might be a prelude to their plundering the king's chest. I immediately sent a non-commissioned officer and 12 (sic) men to protect both the sentry and the king's money, and very soon followed myself to prevent, if possible, all disorder, fearing lest the officer and soldiers, by the insults and provocations of the rioters, should be thrown off their guard and commit some rash act.

Jail-cell writings of Preston appeared in the *Boston Gazette*. In an early letter to the paper, Preston extended his "thanks...to the inhabitants of this town—who throwing aside all party and prejudice, have with the utmost humanity and freedom stepped forth advocates for truth, in defense of my injured innocence." On June 25, however, a letter Preston sent to London found its way into Boston papers and undermined whatever goodwill he might have built up earlier. In his London letter, Preston complained about Bostonians who "have ever used all means in their power to weaken the regiments and to bring them into contempt, by promoting and aiding desertions, and by grossly and falsely promulgating untruths concerning them." He wrote that bitter "malcontents" were maliciously "using every method to fish out evidence to prove [the March 5 shooting] was a concerted scheme to murder the inhabitants."

As Preston and the eight indicted soldiers languished in jail, Boston residents (including such notable figures as Samuel Adams and John Hancock) pressed demands on

Hutchinson and Colonel Dalrymple for the "instant removal" of all troops from the city of Boston. The two men initially balked at the demand, but finally gave into overwhelming public pressure. The two regiments evacuated the city and moved to Castle William.

Samuel Adams also busied himself—in today's jargon—with "spin control." He participated in writing *A Short Narrative of the Horrid Massacre in Boston*, a decidedly slanted, anti-British account of the events of March 5. The goal of the publication was to refute charges that Bostonians were the aggressors in the incident and to build up public pressure against the British military. In letters to the Boston Gazette, Samuel Adams became the principal defender of Crispus Attucks, denying accounts that Attucks had attacked a soldier with a club. Wrote Adams, Attucks "had as good a right to carry a stick, even a bludgeon, as the soldier who shot him had to be armed with musket and ball."

The period after the massacre was tough for Acting Governor Hutchinson. Two weeks after the Massacre, Hutchinson wrote: "In matters of dispute between the King and the colonies government is at an end and in the hands of the people. Still, Hutchinson resisted demands for quick trials—"so that," he said, "people may have time to cool."

The Trials

Authorities determined that Captain Preston should be tried separately from the eight soldiers. On October 21, the soldiers objected in a letter to the Court: "We poor distressed prisoners beg that ye would be so good as to let us have our trial at the same time with our Captain, for we did our Captain's orders, and if we do not obey his command should have been confined and shot for not doing it." The soldiers feared—not without reason—that Preston's best defense lay in denying that he gave any orders to fire, and that their own best defense lay in claiming that they only followed their Captain's orders. If Preston were to proceed to trial first, their defense might well be compromised. The conflict between the interests of Preston and the soldiers must have presented a dilemma for John Adams, who had agreed to defend then both. Under the ethical standards of today, Adams should have made a choice between representing either Preston or the soldiers, but such conflicts were viewed differently in the 1700s. The soldiers' request for a joint trial was denied without explanation.

Captain Preston's trial for murder came first. The trial ran from October 24 to 30 at the Queen Street Courthouse. The prosecution was led by Samuel Quincy, the colony's solicitor general, and prominent Boston lawyer, Robert Paine. Josiah Quincy assisted John Adams in his defense of Preston.

The central issue concerned whether or not Preston gave the order to fire on the civilians. Preston's steadfast denial that he gave an order to fire was supported by three defense witnesses, while four witnesses for the prosecution swore that did give the fatal order. The most convincing of the prosecution eyewitnesses was Daniel Calef:

I was present at the firing. I heard one of the Guns rattle. I turned about and lookd and heard the officer who stood on the right in a line with the Soldiers give the word fire twice. I lookd the Officer in the face when he gave the word and saw his mouth. He had on a red Coat, yellow Jacket and Silver laced hat, no trimming on his Coat. I saw his face plain, the moon shone on it.

Although the trial was transcribed in shorthand, no copy survives, and Preston's testimony must be surmised from the deposition he gave in advance of trial. In Preston's deposition, he offered the following account of the actual shooting:

Some well behaved persons asked me if the guns were charged. I replied yes. They then asked me if I intended to order the men to fire. I answered no, by no means, observing to them that I was advanced before the muzzles of the men's pieces, and must fall a sacrifice if they fired; that the soldiers were upon the half cock and charged bayonets, and my giving the word fire under those circumstances would prove me to be no officer. While I was thus speaking, one of the soldiers having received a severe blow with a stick, stepped a little on one side and instantly fired, on which turning to and asking him why he fired without orders, I was struck with a club on my arm, which for some time deprived me of the use of it, which blow had it been placed on my head, most probably would have destroyed me. On this a general attack was made on the men by a great number of heavy clubs and snowballs being thrown at them, by which all our lives were in imminent danger, some persons at the same time from behind calling out, damn your bloods-why don't you fire. Instantly three or four of the soldiers fired, one after another, and directly after three more in the same confusion and hurry.

John Adams evidently succeeding in creating doubts in the minds of jurors as to whether Preston ever gave an order to fire. The sequestered twelve-man jury (which had survived the trial on a diet of "biscett and cheese and syder" along with "sperites licker") deliberated only a few hours before acquitting Preston on all charges.

Eight weeks later, the eight soldiers faced trial. A transcript of the trial, formally called *Rex v Weems et al*, survives, giving us a much more complete picture of the proceeding. Witnesses testified as to military-civilian clashes such as the one at Gray's Ropewalk three days before the massacre, as well as to the events on the night of March 5 near King Street.

The prosecution's most damning testimony came from Samuel Hemmingway, who swore that Private Matthew Killroy—identified by another prosecution witness as the man who shot citizen John Gray—"would never miss an opportunity, when he had one, to fire on the inhabitants, and that he had wanted to have an opportunity ever since he landed."

The defense presented testimony to support its theory that the soldiers fired in self-defense. Defense witnesses such as James Bailey presented the picture of an out-of-control gang of hooligans. Bailey described the soldiers being pelted by large chunks of ice and other objects. Bailey also testified that he saw Crispus Attucks knock down

Private Montgomery with "a large cord-wood stick." Adams asked the jury to consider whether "it have been a prudent resolution in them, or in any body in their situation, to have stood still, to see if the [the mob] would knock their brains out, or not?"

Of particular interest in the defense case was testimony concerning the dying statement of Patrick Carr, one of the victims in the massacre. It is the first recorded use of the "dying declaration" exception to the rule that excludes hearsay evidence:

Q. Was you Patrick Carr's surgeon? A. I was... Q. Was he [Carr] apprehensive of his danger? A. He told me...he was a native of Ireland, that he had frequently seen mobs, and soldiers called upon to quell them...he had seen soldiers often fire on the people in Ireland, but had never seen them bear half so much before they fired in his life... Q. When had you the last conversation with him? A. About four o'clock in the afternoon, preceding the night on which he died, and he then particularly said, he forgave the man whoever he was that shot him, he was satisfied he had no malice, but fired to defend himself.

After presenting over forty witnesses, John Adams summed up for the defense. His eloquent speech blended law and politics. He finished by telling the jury that this was a case of self-defense:

I will enlarge no more on the evidence, but submit it to you. Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence: nor is the law less stable than the fact; if an assault was made to endanger their lives, the law is clear, they had a right to kill in their own defence; if it was not so severe as to endanger their lives, yet if they were assaulted at all, struck and abused by blows of any sort, by snow-balls, oyster-shells, cinders, clubs, or sticks of any kind; this was a provocation, for which the law reduces the offence of killing, down to manslaughter, in consideration of those passions in our nature, which cannot be eradicated. To your candour and justice I submit the prisoners and their cause.

Justices Trowbridge and Oliver instructed the jury. Justice Trowbridge told the twelve men of Boston that "malice is the grand criterion that distinguishes murder from all other homicides." Justice Oliver discussed Patrick Carr's dying statement to his physician: "This Carr was not upon oath, it is true, but you will determine whether a man just stepping into eternity is not to be believed, especially in favor of a set of men by whom he had lost his life."

After less than three hours deliberation, the jury acquitted six of the soldiers on all charges. Hugh Montgomery and Matthew Killroy—the only two soldiers clearly proven to have fired—were found guilty of manslaughter.

On December 14, Montgomery and Killroy came into court. Asked if there was any reason why the sentence of death should not be passed, the two men invoked "the benefit

of clergy," a plea that shifted their punishment from imprisonment to the branding of their thumbs. As John Adams looked on, the men held out their right thumbs for Sheriff Stephen Greenleaf to brand.

Not surprisingly, reactions to the verdicts varied. Samuel Adams expressed his displeasure in a letter signed "Vindex":

They not only fired without the order of the civil magistrate but they never called for one, which they might easily have done. They went down...armed with muskets and bayonets fixed, presuming they were clothed with as much authority by the law of the land as the posse comitatus of the country with the high sheriff at their head.

On the other hand, Samuel's second cousin, John Adams, found the verdicts deeply satisfying. Looking back at the trials after an illustrious career that had taken him to the White House, Adams said:

The Part I took in Defence of Cptn. Preston and the Soldiers, procured me Anxiety, and Obloquy enough. It was, however, one of the most gallant, generous, manly and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country. Judgment of Death against those Soldiers would have been as foul a Stain upon this Country as the Executions of the Quakers or Witches, anciently. As the Evidence was, the Verdict of the Jury was exactly right.

Summation of John Adams in Rex v Wemms (The Soldiers Trial) is from The Legal Papers of John Adams, No. 64, Rex v Wemms.

May it please your Honours, and you Gentlemen of the Jury,

I yesterday afternoon produced from the best authorities, those rules of law which must govern all cases of homicide, particularly that which is now before you; it now remains to consider the evidence, and see whether any thing has occurred, that may be compared to the rules read to you; and I will not trouble myself nor you with laboured endeavours to be methodical, I shall endeavour to make some few observations, on the testimonies of the witnesses, such as will place the facts in a true point of light, with as much brevity as possible; but I suppose it would take me four hours to read to you, (if I did nothing else but read) the minutes of evidence that I have taken in this trial. In the first place the Gentleman who opened this cause, has stated to you, with candour and precision, the evidence of the identity of the persons.

The witnesses are confident that they know the prisoners at the barr, and that they were present that night, and of the party; however, it is apparent, that witnesses are liable to make mistakes, by a single example before you. Mr. *Bass*, who is a very honest man, and of good character, swears positively that the tall man, *Warren*, stood on the right that night, and was the first that fired; and I am sure you are satisfied by this time, by many circumstances, that he is totally mistaken in this matter; this you will consider at your leisure. The witnesses in general did not know the faces of these persons before; very few of them knew the names of them before, they only took notice of their faces that night. How much certainty there is in this evidence, I leave you to determine.

There does not seem to me to be any thing very material in the testimony of Mr. *Aston* except to the identity of *McCauley*, and he is the only witness to that. If you can be satisfied in your own minds, without a doubt, that he knew *McCauley* so well as to be sure, you will believe he was there.

The next witness is *Bridgham*, he says he saw the tall man *Warren*, but saw another man belonging to the same regiment soon after, so like him, as to make him doubt whether it was *Warren* or not; he thinks he saw the *Corporal*, but is not certain, he says he was at the corner of the *Custom house*, this you will take notice of, other witnesses swear, he was the remotest man of all from him who fired first, and there are other evidences who swear the left man did not fire at all; if *Wemms* did not discharge his gun at all, he could not kill any of the persons, therefore he must be acquitted on the fact of killing; for an intention to kill, is not murder nor manslaughter, if not carried into execution: The witness saw numbers of things thrown, and he saw plainly sticks strike the guns, about a dozen persons with sticks, gave three cheers, and surrounded the party, and struck the guns with their sticks several blows: This is a witness for the crown, and his testimony is of great weight for the prisoners; he gives his testimony very sensibly and impartially. He swears positively, that he not only saw ice or snow thrown, but saw the guns struck

several times; if you believe this witness, of whose credibility you are wholly the judges, as you are of every other; if you do not believe him, there are many others who swear to circumstances in favour of the prisoners; it should seem impossible you should disbelieve so great a number, and of crown witnesses too, who swear to such variety of circumstances that fall in with one another so naturally to form our defence; this witness swears positively, there were a dozen of persons with clubs, surrounded the party; twelve sailors with clubs, were by much an overmatch to eight soldiers, chained there by the order and command of their officer, to stand in defence of the Sentry, not only so, but under an oath to stand there, *i.e.* to obey the lawful command of their officer, as much, Gentlemen of the jury, as you are under oath to determine this cause by law and evidence; clubs they had not, and they could not defend themselves with their bayonets against so many people; it was in the power of the sailors to kill one half or the whole of the party, if they had been so disposed; what had the soldiers to expect, when twelve persons armed with clubs, (sailors too, between whom and soldiers, there is such an antipathy, that they fight as naturally when they meet, as the elephant and Rhinoceros) were daring enough, even at the time when they were loading their guns, to come up with their clubs, and smite on their guns; what had eight soldiers to expect from such a set of people? Would it have been a prudent resolution in them, or in any body in their situation, to have stood still, to see if the sailors would knock their brains out, or not? Had they not all the reason in the world to think, that as they had done so much, they would proceed farther? Their clubs were as capable of killing as a ball, an hedge stake is known in the law books as a weapon of death, as much as a sword, bayonet, or musket. He says, the soldiers were loading their guns, when the twelve surrounded them, the people went up to them within the length of their guns, and before the firing; besides all this he swears, they were called cowardly rascals, and dared to fire; he says these people were all dressed *like* sailors; and I believe, that by and bye you will find evidence enough to satisfy you, these were some of the persons that came out of *Dock-square*, after making the attack on *Murray's barracks*, and who had been arming themselves with sticks from the butchers stalls and cord wood piles, and marched up round *Corn-hill* under the command of Attucks. All the bells in town were ringing, the rattling of the blows upon the guns he heard, and swears it was violent; this corroborates the testimony of *James Bailey*, which will be considered presently. Some witnesses swear a club struck a soldier's gun, *Bailey* swears a man struck a soldier and knocked him down, before he fired, "the last man that fired, levelled at a lad, and moved his gun as the lad ran."

You will consider, that an intention to kill is not murder; if a man lays poison in the way of another, and with an express intention that he should take it up and die of it, it is not murder: Suppose that soldier had malice in his heart, and was determined to murder that boy if he could, yet the evidence clears him of killing the boy, I say admit he had malice in his heart, yet it is plain he did not kill him or any body else, and if you believe one part of the evidence, you must believe the other, and if he had malice, that malice was ineffectual; I do not recollect any evidence that ascertains who it was that stood the last man but one upon the left, admitting he discovered a temper ever so wicked, cruel and malicious, you are to consider his ill temper is not imputable to another, no other had any intention of this deliberate kind, the whole transaction was sudden, there was but a very short space of time between the first gun and the last, when the first gun was fired the

people fell in upon the soldiers and laid on with their weapons with more violence, and this served to encrease the provocation, and raised such a violent spirit of revenge in the soldiers, as the law takes notice of, and makes some allowance for, and in that fit of fury and madness, I suppose he aimed at the boy.

The next witness is *Dodge*, he says, there were fifty people near the soldiers pushing at them; now the witness before says, there were twelve sailors with clubs, but now here are fifty more aiding and abetting of them, ready to relieve them in case of need; now what could the people expect? It was their business to have taken themselves out of the way; some prudent people by the *Town-house*, told them not to meddle with the guard, but you bear nothing of this from these fifty people; no, instead of that, they were huzzaing and whistling, crying damn you, fire! why don't you fire? So that they were actually assisting these twelve sailors that made the attack; he says the soldiers were pushing at the people to keep them off, ice and snow-balls were thrown, and I heard ice rattle on their guns, there were some clubs thrown from a considerable distance across the street. This witness swears he saw snow-balls thrown close before the party, and he took them to be thrown on purpose, he saw oyster-shells likewise thrown. Mr. *Langford* the watchman, is more particular in his testimony, and deserves a very particular consideration, because it is intended by the council for the crown, that his testimony shall distinguish *Killroy* from the rest of the prisoners, and exempt him from those pleas of justification, excuse or extenuation, which we rely upon for the whole party, because he had previous malice, and they would from hence conclude, he aimed at a particular person; you will consider all the evidence with regard to that, by itself.

Hemmingway, the sheriff's coachman, swears he knew *Killroy*, and that he heard him say, he would never miss an opportunity of firing upon the inhabitants: this is to prove that *Killroy* had preconceived malice in his heart, not indeed against the unhappy persons who were killed, but against the inhabitants in general, that he had the spirit not only of a Turk or an *Arab*, but of the devil; but admitting that this testimony is literally true, and that he had all the malice they would wish to prove, yet, if he was assaulted that night, and his life in danger, he had a right to defend himself as well as another man; if he had malice before, it does not take away from him the right of defending himself against any unjust aggressor. But it is not at all improbable, that there was some misunderstanding about these loose expressions; perhaps the man had no thoughts of what his words might import; many a man in his cups, or in anger, which is a short fit of madness, hath uttered the rashest expressions, who had no such savage disposition in general: so that there is but little weight in expressions uttered at a kitching fire, before a maid and a coachman, where he might think himself at liberty to talk as much like a bully, a fool, and a madman as he pleased, and that no evil would come of it. Strictly speaking, he might mean no more than this, that he would not miss an opportunity of firing on the inhabitants, if he was attacked by them in such a manner as to justify it: soldiers have sometimes avoided opportunities of firing, when they would have been justified, if they had fired. I would recommend to them, to be tender by all means, nay, let them be cautious at their peril; but still what he said, amounts in strictness, to no more than this, "If the inhabitants make an attack on me, I will not bear from them what I have done already;" or I will bear no more, than what I am obliged by law to bear. No doubt it was under the fret of his spirits, the

indignation, mortification, grief and shame, that he had suffered a defeat at the Rope-walks; it was just after an account of an affray was published here, betwixt the soldiers and inhabitants at *New York*. There was a little before the 5th of *March*, much noise in this town, and a pompous account in the news-papers, of a victory obtained by the inhabitants there over the soldiers; which doubtless excited the resentment of the soldiers here, as well as exultations among some sorts of the inhabitants: and the ringing of the bells here, was probably copied from *New York*, a wretched example in this, and in two other instances at least: the defeat of the soldiers at the Rope-walks, was about that time too, and if he did, after that, use such expressions, it ought not to weigh too much in this case. It can scarcely amount to proof that he harboured any settled malice against the people in general. Other witnesses are introduced to show that *Killroy* had besides his general ill will against every body, particular malice against Mr. *Gray*, whom he killed, as *Langford* swears.

Some of the witnesses, have sworn that *Gray* was active in the battle at the Rope walks, and that *Killroy* was once there, from whence the Council for the Crown would infer, that *Killroy*, in *King-street*, on the 5th of *March* in the night, knew *Gray* whom he had seen at the Ropewalks before, and took that opportunity to gratify his preconceived malice; but if this is all true, it will not take away from him his justification, excuse, or extenuation, if he had any. The rule of the law is, if there has been malice between two, and at a distant time afterwards they met, and one of them assaults the other's life, or only assaults him, and he kills in consequence of it, the law presumes the killing was in self defence, or upon the provocation, not on account of the antecedent malice. If therefore the assault upon *Killroy* was so violent as to endanger his life, he had as good a right to defend himself, as much as if he never had before conceived any malice against the people in general, or Mr. *Gray* in particular. If the assault upon him, was such as to amount only to a provocation, not to a justification, his crime will be manslaughter only. However, it does not appear, that he knew Mr. *Gray*; none of the witnesses pretend to say he knew him, or that he ever saw him. It is true they were both in the Rope-walks at one time, but there were so many combatants on each side, that it is not even probable that *Killroy* should know them all, and no witnesses says there was any encounter there between them two. Indeed, to return to Mr. *Langford's* testimony, he says, he did not perceive *Killroy* to aim at *Gray*, more than at him, but he says expressly, he did not aim at *Gray*. *Langford* says, "*Gray* had no stick, was standing with his arms folded up." This witness, is however most probably mistaken in this matter, and confounds one time with another, a mistake which has been made by many witnesses, in this case, and considering the confusion and terror of the scene, is not to be wondered at.

Witnesses have sworn to the condition of *Killroy's* bayonet, that it was bloody the morning after the 5th of *March*. The blood they saw, if any, might be occasioned by a wound given by some of the bayonets in the affray, possibly in Mr. *Fosdick's* arm, or it might happen, in the manner mentioned by my brother before. One bayonet at least was struck off and it might fall, where the blood of some person slain afterwards flowed. It would be doing violence to every rule of law and evidence, as well as to common sense and the feelings of humanity, to infer from the blood on the bayonet, that it had been stabbed into the brains of Mr. *Gray* after he was dead, and that by *Killroy* himself who

had killed him.

Young Mr. *Davis* swears, that he saw *Gray* that evening, a little before the firing, that he had a stick under his arm, and said he would go to the riot, "I am glad of it, (that is that there was a rumpus) I will go and have a slap at them, if I lose my life." And when he was upon the spot, some witnesses swear, he did not act that peaceable inoffensive part, which *Langford* thinks he did. They swear, they thought him in liquor-that he run about clapping several people on the shoulders saying, "Dont run away"- "they dare not fire." *Langford* goes on "I saw twenty or five and twenty boys about the Sentinal-and I spoke to him, and bid him not be afraid." How came the Watchman *Langford* to tell him not to be afraid. Does not this circumstance prove, that he thought there was danger, or at least that the Sentinel in fact, was terrified and did think himself in danger. *Langford* goes on "I saw about twenty or five and twenty boys that is young shavers."-We have been entertained with a great variety of phrases, to avoid calling this sort of people a mob.-Some call them shavers, some call them genius's. -The plain English is gentlemen, most probably a motley rabble of saucy boys, negroes and molattoes, Irish teagues and outlandish jack tarrs.-And why we should scruple to call such a set of people a mob, I can't conceive, unless the name is too respectable for them: The sun is not about to stand still or go out, nor the rivers to dry up because there was a mob in *Boston* on the 5th of *March* that attacked a party of soldiers.-Such things are not new in the world, nor in the British dominions, though they are comparatively, rareties and novelties in this town. *Carr* a native of *Ireland* had often been concerned in such attacks, and indeed, from the nature of things, soldiers quartered in a populous town, will always occasion two mobs, where they prevent one.-They are wretched conservators of the peace!

Langford "heard the rattling against the guns, but saw nothing thrown."-This rattling must have been very remarkable, as so many witnesses heard it, who were not in a situation to see what caused it. These things which hit the guns made a noise, those which hit the soldiers persons, did not-But when so many things were thrown and so many hit their guns, to suppose that none struck their persons is incredible. *Langford* goes on "*Gray* struck me on the shoulder and asked me what is to pay? I answered, I don't know but I believe something will come of it, by and bye."-Whence could this apprehension of mischief arise, if *Langford* did not think the assault, the squabble, the affray was such as would provoke the soldiers to fire?"- "a bayonet went through my great coat and jacket," yet the soldier did not step out of his place. This looks as if *Langford* was nearer to the party than became a watchman. Forty or fifty people round the soldiers, and more coming from *Quaker-lane*, as well as the other lanes. The soldiers heard all the bells ringing and saw people coming from every point of the compass to the assistance of those who were insulting, assaulting, beating and abusing of them-what had they to expect but destruction, if they had not thus early taken measures to defend themselves?

Brewer saw *Killroy*, &c. saw *Dr. Young*, &c. "he said the people had better go home." It was an excellent advice, happy for some of them had they followed it, but it seems all advice was lost on these persons, they would harken to none that was given them in *Docksquare*, *Royal exchange-lane* or *King-street*, they were bent on making this assault, and on their own destruction.

The next witness that knows any thing, was, *James Bailey*, he saw *Carrol*, *Montgomery* and *White*, he saw some round the Sentry, heaving pieces of ice, large and hard enough to hurt any man, as big as your fist: one question is whether the Sentinel was attacked or not.- If you want evidence of an attack upon him there is enough of it, here is a witness an inhabitant of the town, surely no friend to the soldiers, for he was engaged against them at the Rope-walks; he says he saw twenty or thirty round the Sentry, pelting with cakes of ice, as big as one's fist; certainly cakes of ice of this size may kill a man, if they happen to hit some part of the head. So that, here was an attack on the Sentinel, the consequence of which he had reason to dread, and it was prudent in him to call for the *Main-Guard*: he retreated as far as he could, he attempted to get into the *Custom-house*, but could not; then he called to the *Guard*, and he had a good right to call for their assistance; "he did not know, he told the witness, what was the matter," "but he was afraid there would be mischief by and bye;" and well he might, with so many shavers and genius's round him-capable of throwing such dangerous things. *Bailey* swears, *Montgomery* fired the first gun, and that he stood at the right, "the next man to me, I stood behind him, &c." This witness certainly is not prejudiced in favour of the soldiers, he swears, he saw a man come up to *Montgomery* with a club, and knock him down before he fired, and that he not only fell himself, but his gun flew out of his hand, and as soon as he rose he took it up and fired. If he was knocked down on his station, had he not reason to think his life in danger, or did it not raise his passions and put him off his guard; so that it cannot be more than manslaughter.

When the multitude was shouting and huzzaing, and threatening life, the bells all ringing, the mob whistle screaming and rending like an Indian yell, the people from all quarters throwing every species of rubbish they could pick up in the street, and some who were quite on the other side of the street throwing clubs at the whole party, *Montgomery* in particular, smote with a club and knocked down, and as soon as he could rise and take up his firelock, another club from a far struck his breast or shoulder, what could he do? Do you expect he should behave like a Stoick Philosopher lost in Apathy? Patient as *Epictatus* while his master was breaking his leggs with a cudgel? It is impossible you should find him guilty of murder. You must suppose him divested of all human passions, if you don't think him at the least provoked, thrown off his guard, and into the *furor brevis*, by such treatment as this.

Bailey "Saw the Molatto seven or eight minutes before the firing, at the head of twenty or thirty sailors in *Corn-hill*, and he had a large cordwood stick." So that this *Attucks*, by this testimony of *Bailey* compared with that of *Andrew*, and some others, appears to have undertaken to be the hero of the night; and to lead this army with banners, to form them in the first place in *Dock square*, and march them up to *King-street*, with their clubs; they passed through the mainstreet up to the *Main-guard*, in order to make the attack. If this was not an unlawful assembly, there never was one in the world. *Attucks* with his myrmidons comes round *Jockson's* [Jackson's] corner, and down to the party by the Sentry-box; when the soldiers pushed the people off, this man with his party cried, do not be afraid of them, they dare not fire, kill them! kill them! knock them over! And he tried to knock their brains out. It is plain the soldiers did not leave their station, but cried to the people, stand off: now to have this reinforcement coming down under the command of a

stout Molatto fellow, whose very looks, was enough to terrify any person, what had not the soldiers then to fear? He had hardiness enough to fall in upon them, and with one hand took hold of a bayonet, and with the other knocked the man down: This was the behaviour of Attucks;-to whose mad behaviour, in all probability, the dreadful carnage of that night, is chiefly to be ascribed. And it is in this manner, this town has been often treated; a Carr from *Ireland*, and an Attucks from *Framingham*, happening to be here, shall sally out upon their thoughtless enterprizes, at the head of such a rabble of Negroes, &c. as they can collect together, and then there are not wanting, persons to ascribe all their doings to the good people of the town.

Mr. Adams proceeded to a minute consideration of every witness produced on the crown side; and endeavoured to shew, from the evidence on that side, which could not be contested by the council for the crown, that the assault upon the party, was sufficiently dangerous to justify the prisoners; at least, that it was sufficiently provoking, to reduce to manslaughter the crime, even of the two who were supposed to be proved to have killed. But it would swell this publication too much, to insert his observations at large, and there is the less necessity for it, as they will probably occur to every man who reads the evidence with attention. He then proceeded to consider the testimonies of the witnesses for the prisoners, which must also be omitted: And conc[^l]uded,

I will enlarge no more on the evidence, but submit it to you.-Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence: nor is the law less stable than the fact; if an assault was made to endanger their lives, the law is clear, they had a right to kill in their own defence; if it was not so severe as to endanger their lives, yet if they were assaulted at all, struck and abused by blows of any sort, by snow-balls, oyster-shells, cinders, clubs, or sticks of any kind; this was a provocation, for which the law reduces the offence of killing, down to manslaughter, in consideration of those passions in our nature, which cannot be eradicated. To your candour and justice I submit the prisoners and their cause.

The law, in all vicissitudes of government, fluctuations of the passions, or flights of enthusiasm, will preserve a steady undeviating course; it will not bend to the uncertain wishes, imaginations, and wanton tempers of men. To use the words of a great and worthy man, a patriot, and an hero, and enlightned friend of mankind, and a martyr to liberty; I mean ALGERNON SIDNEY, who from his earliest infancy sought a tranquil retirement under the shadow of the tree of liberty, with his tongue, his pen, and his sword, "The law, (says he,) no passion can disturb. 'Tis void of desire and fear, lust and anger. 'Tis *mens sine affectu*; written reason; retaining some measure of the divine perfection. It does not enjoin that which pleases a weak, frail man, but without any regard to persons, commands that which is good, and punishes evil in all, whether rich, or poor, high or low, 'Tis deaf, inexorable, inflexible. On the one hand it is inexorable to the cries and lamentations of the prisoners; on the other it is deaf, deaf as an adder to the clamours of the populace.

<http://law2.umkc.edu/faculty/projects/ftrials/bostonmassacre/bostonaccount.html>