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Author(s): Hugh P. Williamson

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As a consequence of the Boston Massacre, Captain John Preston and eight other British soldiers were tried for murder in the first degree. Judge Williamson points out the significance of that trial for American democracy and legal processes and stresses the moral courage of John Adams, who was willing to face public ire and risk his legal practice by becoming chief attorney for the defense.

by Hugh P. Williamson • *Probate and Magistrate Judge of Callaway County (Missouri)*

THE WINTER OF 1769-70 was one of profound disquiet and unrest in Boston. A garrison of English soldiers was present in the city, and their bright red uniforms and gleaming accoutrements were a symbol of the servitude to the British of the proud and independent-in-spirit people of New England. Bostonians had persuaded themselves, and not without considerable reason, that their overlords from across the sea were tyrannical, despotic and wholly disregarding of the inalienable rights of their American subjects. There had been for several years much name-calling, some blows

had been struck, some shots fired, and a vast amount of anger and animosity engendered. The economic life of this burgeoning city, fairly bursting with enterprise and vitality, had been restrained and blunted by regulations and restrictions promulgated by a shortsighted British government which took no cognizance of reality. Furthermore professional agitators, among whom Sam Adams was perhaps the foremost, had seized upon every incident, had magnified it and often perverted its meaning, in order to fan the flames of hatred.

On the evening of March 5, 1770, this situation reached its climax when some two hundred boys and young men, the vast majority of whom were definitely of the lower order, congregated at the Custom House in front of which stood a lone British sentinel. Pieces of wood and heavy, sharp-edged chunks of ice were thrown at him, accompanied by language obscene and profane. The sentinel, dodging for his life, shouted for help. Captain John Preston of the main guard heard him from Murray's Barracks, sent a file of seven men, headed by a very young

and much flustered officer, across the square. The eight men crossed the icy cobbles on the trot, made their way through the crowd and formed a half circle around the sentry box. The crowd continued to jeer and to hurl ice, sticks and stones. Captain Preston then appeared and ordered his men to prime and load their muskets. The throwing of snowballs, clubs, oyster shells—anything that came to hand—increased. One of the soldiers, struck by a missile, lost his footing and fell, his musket flying out of his hand. Whether or not Captain Preston gave the order to fire was debatable but the eight soldiers did fire into the crowd, one after another, and when the smoke lifted five men lay sprawled on the snow, three dead, the others mortally wounded. Captain Preston ordered his men to withdraw across the street; the people surged forward, dragged their dead to cover and carried the wounded away. At this moment soldiers from the 29th Regiment marched into the square, formed two platoons around the main guard while a third company took up position by the northeast corner of the State House, and at command dropped to one knee,

AUTHOR'S NOTE: John Adams was one of the truly important figures in American history. Certainly long before, and for a period of time after his term as President, he did much to mold public opinion and to shape national policies. Strangely, he has not, until recently, attracted competent and thorough biographers. However, within the past few years there have appeared three careful studies and analyses of his life and work. In 1950, Catherine Drinker Bowen published her book, *JOHN ADAMS AND THE AMERICAN REVOLUTION*, (Boston: Little, Brown and Company). In 1961, there appeared the *DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS*, in three volumes, edited by L. H. Butterfield (Cambridge, Massachusetts: The Belknap Press of Harvard University). In 1962 *JOHN ADAMS*, by Page Smith, was published in two volumes, (Garden City, New York: Doubleday and Company). All references in this article are to one or another of these publications. Thus: SMITH, BOWEN or ADAMS.

into position for street firing. After much milling about and uproar, after many curses, threats, the mob withdrew, the soldiers returned to their barracks, and by three o'clock in the morning the streets were clear. But the Boston Massacre, as it came to be known, was history, history that would shake and shape many future events.

Subsequently, Preston and the eight soldiers were indicted for murder in the first degree. To some extent this temporarily appeased the Bostonians who were clamoring for blood.¹

The question which now arose was what lawyer would dare to become the object of the hatred which would be the inevitable heritage of anyone who defended the despised British? The three crown lawyers had emphatically stated that they would not defend the case.² Josiah Quincy said that he would serve if John Adams would serve with him. Robert Auchmuty, son of that Robert Auchmuty who had been judge of the Admiralty Court, also agreed to serve on the condition that Adams serve. It was clear that no one else was available, and that, therefore, all depended upon the decision of John Adams.³

This was indeed a moment of decision. Adams had an excellent law practice which was daily increasing; his political prospects were extremely good, and he had a family to support. All that he needed to do to continue on his present course was to refuse to have anything to do with the case of the British soldiers. If, on the contrary, he took the case, then he would certainly bring down upon his head the venom and hatred of the people who were now his friends and ardent supporters. This could mean the loss of a large portion of his lucrative law practice and the complete end to his political career. It could certainly mean hardship for his family. Perhaps it was at this time that the thoughts of Adams went back to a volume published in 1764 in London, entitled *Crimes and Punishments*, by the Italian Marquess di Beccaria. Specifically there may have come to his mind the statement:

If, by supporting the rights of mankind and of invincible truth, I shall contribute to save from the agonies of death one unfortunate victim of tyranny, or of ignorance equally

fatal, his blessing and tears of transport will be sufficient consolation to me for the contempt of all mankind.⁴

Apparently Adams did not hesitate for a moment in making his decision. He accepted a token retainer fee and entered his name as attorney for the defendants. The fact immediately became widely known, and the result was what he had anticipated: mud thrown at him in the street; whistles; cat calls; the taunting words, "Who buys lobsters? John Adams!"—words that probably made Adams sick with anger and hurt, but which in nowise deterred him from the course to which he had set his hand.

It was for the trial of the eight soldiers, and not that of Preston, that the people of Boston reserved their most vengeful passion. More than they hated Preston, they hated the soldiers, all of whom were known by name and face to that part of the population living near the barracks. It was the guns of those soldiers that had done the actual killing; Preston himself had not borne any weapon. The Preston trial, however, would have great bearing upon the trial of the eight soldiers. If it could be shown that a sentry on duty had the right to defend himself, even to the point of killing, then Preston would have been justified in giving the order to shoot, and the issue of whether or not he gave such an order, which was disputed, would lose its significance.

Of the trial Catherine Drinker Bowen writes:

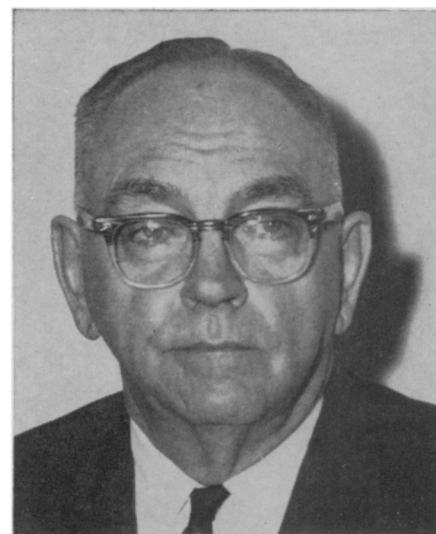
[On the day of the trial] [t]he courtroom filled quickly with spectators; the four judges swept in, awful in the red robes that signified a trial

1. Smith and Bowen agree in substance with the foregoing statements, as have all other writers upon this subject who have come to my attention, and events themselves established these facts.

2. BOWEN 355.

3. BOWEN 355.

Smith, (volume 1 at 123) states that the attorneys for Captain Preston were John Adams, Josiah Quincy, and Sampson Salter Blowers. He makes no mention of Auchmuty. BOWEN 386, discussing the trial of the soldiers, states that John Adams and Josiah Quincy "had an assistant in the person of Sampson Blowers, a young man in his twenties engaged by Preston's friends to help with the enormous work of digging up witnesses and taking affidavits". 1 SMITH 102-106, speaks of Adams's appearance before Robert Auchmuty, judge of the Admiralty Court, in defense of the owner of the ship *Liberty*, on a charge of smuggling. Adams also appeared before Auchmuty in the case of the ship *Rose*. Smith does not, however, con-



Hugh P. Williamson has been City Attorney of Fulton, Missouri, Prosecuting Attorney of Callaway County, Missouri, and Assistant Attorney General of the State of Missouri. He is currently Probate and Magistrate Judge of Callaway County. He attended the University of Missouri, and he is the author of four books and numerous newspaper and magazine stories and articles.

on capital charges. Captain Preston, looking pale under his dark hair—he wore no wig—was led to the bar under guard. The indictment was read, the prisoner pronounced his plea: NOT GUILTY. The jurors were called, challenged peremptorily or for cause; twelve were finally chosen and sworn. Justice Peter Oliver leaned forward, rapped for order and addressed the courtroom. His voice was angry, his handsome face indignant. For presiding at this trial, his life had been threatened; anonymous letters were left at his

nect Auchmuty with the defense of Preston. Bowen, page 335, writes: "Mr. Auchmuty, the admiralty judge, was the only one who would listen. Auchmuty said he would act for Preston on one condition: if John Adams . . . would serve." Butterfield, in 1 ADAMS 160 states that the Robert Auchmuty who was judge of the Admiralty Court died in 1750 or '51, that the Robert Auchmuty who served with John Adams in the Preston case was his son. These variances are not important because this article is about John Adams, and there is no question that he was the chief attorney for the defendants.

4. BOWEN 371-372. Adams did not take down the volume by the Marquess di Beccaria and read the passage quoted above, because by his own statement (3 ADAMS 293) he accepted immediately. As Catherine Drinker Bowen states, at 371-372, he may have done so later. At least he was familiar with this passage and may have been influenced by it to take the Preston case. This passage is quoted in 1 ADAMS 352.

door. It was an outrage, a disgrace to a civilized community. No threat on earth could force him to relinquish his duty. . . . Oliver leaned back in his chair, nodded to old Chief Justice Lynde. Samuel Quincy rose for the prosecution and the trial began.⁵

Concerning this trial Page Smith writes very briefly. He states that only fragmentary notes of the trial have been preserved; that the defense established the fact that in the excitement and confusion existing it was impossible to determine whether Preston had given the order to fire. There was evidence that one of the soldiers had fired without being ordered to do so and that the other soldiers had fired immediately thereafter. He states that all together the great weight of the evidence exonerated Preston, and that after "deliberating briefly" the jury returned a verdict of not guilty.⁶

In his *Diary and Autobiography*, John Adams himself writes, concerning the trial, that he was asked to serve as counsel for Preston and the eight soldiers. He states that his reply was that no accused person should be unable to get counsel in a free country, that he immediately accepted and received a single guinea as a retainer fee. He also states that for both trials he received a total of eighteen guineas, which in modern currency would be about fifty dollars, for fifteen days' trial work, leaving completely out of account the many days which were doubtless spent in preparation for trial.

Adams says further that he warned Mr. Forrest, who had solicited his services, that Captain Preston must expect from him:

No art or Address, no Sophistry
or Prevarication in such a Cause;
nor anything more than Fact, Evidence,
and Law would justify.

He then goes on at very great length to bemoan his feeble state of health and his many burdens, and to dwell upon his belief that serving in such unpopular cases would be his ruin as a lawyer and a politician, that all kinds of lies were circulated about him, chiefly that he received an enormous fee. However, he ends this long lament on a happy note, writing that "it has been a great consolation to me

through Life that I acted in this Business with steady impartiality and conducted it to so happy an issue".⁷

To the verdict of not guilty Boston reacted with resentment and anger. Preston had to keep strictly to his quarters in order to avoid bodily harm.

Preston was acquitted on the last day of October, and the trial of the eight soldiers was set for November 27. His acquittal had increased the feeling against the soldiers. On the Monday before the trial the *Boston Gazette*, which had said but little about the trial of Preston, came out with a nicely timed editorial in which it stated:

Is it then a dream, murder on the fifth of March, with the dogs greedily licking human blood in King-street. Some say that righteous heaven will avenge it and what says the law of God, whoso sheddeth man's blood by man shall his blood be shed.

On Sunday the Rev. Dr. Charles Chauncey, minister of the First Church, oldest and most revered of Boston's divines, had preached a strong sermon against the soldiers.⁸

The trial was long, tedious and strongly contested. Catherine Drinker Bowen writes of it at length, stating that Adams particularly stressed the right of self-defense, the justification of killing in self-defense and the threat to the lives of the eight British soldiers. In conclusion he quoted from Algernon Sidney the words:

The law no passion can disturb.
'Tis void of desire and fear, lust and anger. 'Tis written reason, retaining some measure of the divine perfection. It commands that which is good and punishes evil in all, whether rich or poor, high or low. 'Tis deaf, inexorable, inflexible.⁹

Smith quotes numerous portions of the language of Adams in the same words that are given by Mrs. Bowen, a fact which certainly indicates that the proceedings of the trial were taken down by a shorthand reporter.¹⁰ He adds the following:

Having painted for the jurors a vivid picture of the attack upon the soldiers and stripped away the protective covering of the tormentors by assigning them that bestial name, a mob, Adams ended by reminding the jury of their responsibility to the

facts. "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. . . . To your candor and justice I submit the prisoners and their causes."

And then an eloquent peroration:

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. . . . It does not enjoin that which pleases a weak, frail man, but without any regard to person, 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 clamors of the populace.¹¹

The jury was out for two and one-half hours before it returned. Joseph Mayo of Roxbury gave the verdict:

William Wemms, James Hartegan, William M'Cauley, Hugh White, William Warren and John Carrol: NOT GUILTY! . . . Matthew Killroy and Hugh Montgomery, NOT GUILTY of murder, but GUILTY of manslaughter.¹²

The moment the voice of the foreman ceased, John Adams arose and asked benefit of clergy for Killroy and Montgomery. The request was granted.¹³ An iron was brought and heated at the open fire, Killroy and Montgomery stood up, and the courtroom rose with them, stretching eagerly to see. The two men reached out their hands and received the hot iron on their thumbs. The judges rose; the trial was over. It may be noted here that this law was one of our legal heritages from England, one which survived in this country for a very long time. It

5. BOWEN 381.

6. 1 SMITH 122-123.

7. 3 ADAMS 292-296.

8. BOWEN 384-385.

9. BOWEN 401.

10. 3 ADAMS 295. Butterfield, editor of Adams's diary states that "The trial of the soldiers was, however, recorded and printed, the 'recording' being by John Hodgson." Testimony was summarized by the lawyers involved, and agreed upon by them as being correct. This doubtless gave rise to a vast amount of contention.

11. 1 SMITH 125.

12. BOWEN 403.

13. BOWEN 403.

had originally been enacted for the benefit and protection of the clergy in England, almost the only literate group in that country. It applied, however, to any person who was convicted of crime and who could read. Upon his demonstrating this ability in court he was branded with a hot iron, originally in the palm of the hand, and was released. This law was successfully invoked as late as 1850 in a case in Barren County, Kentucky, in which a Negro man was convicted of raping a white woman. The judge, convinced of the innocence of the defendant, suggested to his counsel this one avenue of escape. The defendant was branded and released.

The repercussions of this trial would linger long, but happily the defense of

Captain Preston and the British soldiers did not have the lasting damaging effect upon the career of John Adams that might have been expected. He went on to be acknowledged as one of the foremost lawyers of his time and to be elected the second President of the United States. Probably nowhere in the annals of history has there been a more splendid example of moral courage than that provided by Adams and his associates, who literally risked everything in the cause of justice.

Nor should we fail to pay tribute to the juries in the Preston case and in the case of the eight soldiers. The members of those juries, likewise dedicated to justice and to the law, risked the venom and retaliation of their fellow

citizens because of the verdict of acquittal which they returned. The men who composed these juries were unknown beyond their neighborhoods until by chance they came into momentary prominence and then again disappeared from public view, but not until they too had helped to write a glowing chapter in the story of freedom. Such men as they, and Robert Auchmuty, Josiah Quincy, Sampson Blowers and John Adams, laid the foundations of American democracy and ennobled the legal process in America. They added a large measure of glory and honor to the legal profession in America and the world, and established a precedent and a challenge for the lawyers of today and of the years to come.

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