

JOHN ADAMS AND THE BOSTON MASSACRE TRIALS

by

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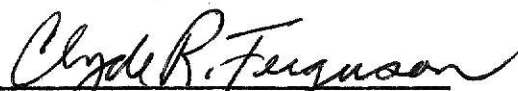
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INTRODUCTION

Let Fame to the world sound America's voice;
No intrigues can her sons from their government sever;
Her pride is her Adams; her laws are his choice,
And shall flourish, till Liberty slumbers forever.¹

Such was the mythology of John Adams among his post-presidential admirers. The mythical Adams established his credentials as a protector of liberty through the laws by serving as a defense counsel in the Boston Massacre Trials of 1770. Had Adams sunk into historical oblivion after 1770, as did Josiah Quincy, Jr., Robert Auchmuty, and Samson Salter Blowers, his trial partners, there would be little urgency to examine his trial participation more closely. But the real Adams became a founding father of the United States and was its second President. His very importance has consecrated as fact a series of fallacies about the Massacre and its aftermath. A close examination of the events surrounding the Massacre and the trials serves to dispell some of these misinterpretations.

The actual importance of the Massacre and the trials was in their contemporary propaganda effect. The Massacre was seized upon by some of the more radical Bostonians as a fulfillment of their prophecies of the inevitable consequences of the tyrannical practices of the government of Great Britain, which allowed, or indeed caused, alien troops to be used as a suppressive measure against the law-abiding citizens of the colonies. The accused soldiers became political pawns in the power struggle between the crown representatives in Boston and the leaders of the radical faction. This struggle becomes the focus of this work. It is the contention of the author that the trials of the soldiers

were more political than judicial in nature, and the verdicts were reached outside, not inside, the courtroom. In order to substantiate this thesis, it is first necessary to look at the general political background of the American colonies during the period 1763 to 1770. A glimpse of the growing disputes between the colonies and the mother country furnishes a foundation for examining the specific and political use of the Massacre trials.

Great Britain, perhaps, lost her American colonies when she won the Seven Years War. The extermination of the French as a viable military threat to the colonies erased one of the main props of British authority in America. Even the British were aware of this possibility when negotiating for the cession of Canada. Two members of the British Cabinet, the Duke of Newcastle and the Duke of Bedford, had warned the government of the possible consequences of such a course of action. "The removal of the French from Canada," they said, "would tend to encourage the continental colonies in their growing mood of 'independ-ency.'"² The American settlers confirmed this fear, for they now felt confident that they could manage the Indian threat by themselves, and felt they no longer needed the support of British troops in the colonies to balance the threat of French troops to the North and West.

Such colonial disaffection with Great Britain was becoming evident in many quarters by 1770. Colonial obligations to the home government, and colonial rights and privileges were topics of much political discussion both in the Americas and in London. A small body of men in most colonies could be discerned by this time, who were arguing that colonists had every right before parliament as did British citizens, and that

parliament in turn was just as limited in its powers in America as in Great Britain. The most unified and most vociferous group of such men was located in Boston. Led by such personages as Samuel Adams, James Otis, and Joseph Warren, these radical colonists took the lead in identifying and publicizing what they felt to be cases of parliamentary oppression. Specifically, in 1770 these radicals no longer felt they had to treat the mother country with the same degree of subservience and respect as before, since they were no longer dependent upon British troops for protection. Most especially, the radicals no longer felt any justification to furnish support for the British troops then stationed in Boston.

Unfortunately, the British administration after 1763 held entirely the opposite point of view. Not only should British troops remain in the Americas, but the colonists, they felt, would begin to take up some of the financial burdens of supporting those troops. Now that the British colonies were reaching a state of economic stability, the over-burdened British taxpayers should be given a measure of relief from the oppressive rates which they had been paying throughout the four great wars for empire. The colonists, in turn, protested vehemently against the new methods of taxation proposed by the British. They had only recently reached a new level of economic prosperity. Nothing, they felt, should justify the imposition of higher taxes which would threaten this new wealth, least of all the payment of a share of Great Britain's war debts or the support of British troops in the colonies.

The colonists had also been observing the politics of Great Britain during the previous decades. This observation, apparently, had led to

several conclusions. The opposition party, the colonists learned, habitually seized any issue to embarrass the administration. The periodical colonial lists of grievances compiled by the radicals were thus eagerly offered to the British opposition parties throughout this period. The second observation made by the colonists was that British citizens did not always obey their government either. In fact, the English taxpayers gave the Americans an example of how to nullify an unpopular law in 1764. When the Cider Tax of that year was passed, the people resisted, the tax was protested in the country and city, and the excise collectors were labeled by the press as "boisterous ruffians, swelling with the insolence of office," able to "invade and ransack, at pleasure, the asylum of domestic peace and security; nay, even to rifle the private retreats or Penetralia of female modesty."³ Excise officers soon learned to fear for their lives and parliament was obliged to repeal the tax in 1765. Thus the English gave the colonists an example of how to avoid the payment of a tax; by terrorizing the King's officers, and covering up the rebellious actions with pious language protesting the invasion of personal or traditional rights. The example was not lost on the colonists, who soon became quite proficient in this art.

The pattern of behavior soon became predictable. The British administration would pass a taxation bill to redress the public debt, viz. the Townshend Acts. The colonists would protest, either by direct violation, or by the more usual and time-honored system of smuggling. The British would then send more crown officials to the colonies to supervise the collection of the taxes. The radicals would continue to advocate resistance. The British would send troops to the center of disturbance

in order to enforce the acts, and the colonists would be faced with visible proof of the tyrannical nature of the government of Great Britain. In 1770, the most conspicuous example of civil resistance to British taxation was the non-importation movement then in effect throughout many of the colonies. Many colonial merchants, however, felt the economic pinch resulting from non-importation, and were not wholeheartedly observing the agreements. This, and the lack of political conviction on the part of some merchants, resulted in several cases of importers being forced by the radicals to adhere to the agreement against their wills.

Complicating this picture of struggle within the colonies was the very vagueness of British administrative control. Three branches of royal government were present in the colonies, each of which claimed superiority over the others. The governors of the colonies, of course, claimed superior rights within their colonies, and felt that the army and the Customs Commissioners were present as instruments of their control. The army, under the supreme command of General Thomas Gage in New York, claimed independence of movement and tactics within all the colonies, and felt no obligation to subordinate its duties to the wishes of individual governors. The Customs Commissioners felt that theirs was the most important task--the collection of the King's duties--and that the royal governors and the troops were present merely to enforce their collections.

The final political elements in the governmental structure of the colonies were the internal town meetings and the colonial assemblies. Composed of directly elected representatives, many of these bodies came

under the control of the radicals, and took the lead in the opposition to Great Britain. The colonists soon sensed that the various arms of royal government, both at home and in Great Britain, were unable to reach agreement on their respective duties and powers, and they quickly became adept at playing off one group against the others. The officials most exposed to the pressures of the Assemblies were the governors. Their salaries were usually voted upon and paid, a year at a time, by the General Assemblies. The colonists used this power of the purse strings to great effect, much as the early Parliaments of England had done to usurp gradually the powers of the kings.

This then, is the background of the Boston Massacre and the trials. The events in Boston from March to December 1770 were used by the radical colonists, the Customs Commissioners, General Gage, Lieutenant-Governor Hutchinson, the parliamentary opposition, and the British cabinet, in an attempt to reach a more clear definition of the rights, powers, and privileges of each. It was the misfortune of Captain Thomas Preston and his men, and the fortune of John Adams, that they were swept up by the forces of history and became deeply involved in the struggle.

CHAPTER I

THE MASSACRE

Such was the scene in the Boston of March 1770. Although some troop reductions had been ordered by General Gage the previous year, two regiments of British soldiers were still stationed in the town. Reactions to the troops varied from citizen to citizen, but a general feeling of resentment smoldered beneath the surface of everyday events. Protests against the presence of the troops had waxed and waned since they had first landed in 1768, and ranged in scope from vituperative political speeches to the shenanigans of Samuel Adams, who reportedly trained his pet dog "Queue" to attack anyone wearing a red coat.¹

All the ingredients for civil disturbance were present. On February 22nd, the first blood was shed. Ebenezer Richardson, long an employee of various functions in the Customs office, and long an object of odium to Bostonians, had been trapped in his home by an outraged mob. Richardson, apparently an excitable and violent person, had fired into the crowd, killing an eleven year old boy. The incident fueled the radicals' fires, and the boy was subsequently buried with all honors, including an enormous parade throughout the town. Unfortunately, the actions of Richardson were tied in the radicals' minds to those of the official crown representatives in Boston. Several skirmishes between off-duty soldiers and townsfolk had also taken place in the first days of March, most specifically a fisticuff battle at John Gray's ropewalk. Some soldiers, many of whom took up moonlight jobs to supplement their meager salaries, were engaged in walking rope for Gray when a townsman asked one of them if he would

like a job. The reply being in the affirmative, the citizen suggested that the soldier would be the obvious person to clean his outhouse.² A small battle immediately ensued, reinforcements for both sides were brought in, and the soldiers were eventually beaten off and forced to retreat, murmuring threats of revenge on another day. Participants in this foray included private Mathew Kilroy of the 29th Regiment, and Crispus Attucks and Samuel Gray, all of whom were destined to meet again three days later.

The scene was set for the night of March 5th, 1770.³ The patience of both the citizens and the soldiers was growing thin. Private Hugh White was standing guard at his post in front of the Customs House on King Street. Several young boys began taunting White as to the character of his commanding officer. White, exasperated at the continual insults, finally stepped down into the street and clubbed one boy over the head with the butt of his musket. The lad's screams of fear and anger quickly drew a crowd to the spot and the news spread around Boston. Church bells began ringing and townsfolk poured out into the streets, expecting a fire. White, thoroughly alarmed, had meanwhile called for the main guard, and was reinforced by Captain Thomas Preston, along with eight soldiers of the 29th Regiment. By this time the crowd had grown, and included among others Samuel Gray and Crispus Attucks. Espying Kilroy in the detachment of soldiers, Gray and Attucks increased their shouts and threats, and inspired the crowd to continue their rock and ice barrage.

Captain Preston, vainly trying to instill some measure of order, stepped in front of his men to prevent their firing, but was struck on the arm by someone's club. Montgomery, one of the other soldiers, was also knocked to the pavement at this time; someone shouted "fire!" and

Montgomery regained his balance and discharged his weapon into the crowd. Several other soldiers, including Kilroy, also opened fire, killing three townsmen, and wounding eight others, two of them mortally.

War had now been declared. The crowd and the soldiers, both groups appalled at what had taken place, stepped back and glared uneasily at each other, wondering what would happen next. Their part in the battle, however, was over, and the struggle was elevated to the governing circles of Boston. Lieutenant-Governor Hutchinson managed to quiet the townsmen, ordered the troops back to the barracks, and, upon advice of his Governor's Council, ordered the arrest of Preston and his men. The town then settled down to observe the political struggle.

This was the moment for which the radicals had been waiting. Led by Samuel Adams, James Otis, John Hancock, Josiah Quincy, Jr., Joseph Pemberton, James Warren, Thomas Cushing, and others, they quickly organized their plan of action and called a Boston town meeting the following day. The time now seemed propitious for uniting the town of Boston and the province itself in opposition to the troops' presence, and this became the first order of business. Accordingly, the meeting set up a committee, headed by Samuel Adams, to "wait on his Honor the Lieut. Governor; and acquaint him; that it is the unanimous Opinion of the Meeting, that the Inhabitants and Soldiery can no longer dwell together in safety; that nothing can...prevent blood and Carnage, but the immediate removal of the Troops."⁴

The committee confronted Hutchinson, interrupting a meeting of his Council, and delivered their message. Hutchinson listened, nodded, and waved them away. The Lieutenant-Governor was faced with a legal dilemma.

He had no clear idea of how much control he had over General Gage's troops, and was not sure if he had the legal power to remove the troops from Boston, without first conferring with General Gage. Gage was in New York, and although such a method of conference had been used in the past, there was clearly not enough time to send a letter to Gage requesting advice.

As a result, Hutchinson turned to his Council for advice, but with little better luck. Although theoretically intended to be a body of the propertied elite, serving as a check upon the more radical tendencies of a less-propertied General Assembly, the Council in Massachusetts had always been more closely aligned with the Assembly than was the case in most other colonies. Furthermore, although the Council members, who were elected by the General Assembly, were subject to the veto of the Governor, clever political expedients had been used in the past by the Assembly to pack the Council with friends of the more radical elements.⁵ As a result, Hutchinson soon discovered that he could count on the Council for little support when faced with an angry ultimatum from the town radicals.

Hutchinson's troubles, however, went even deeper. He was only the Lieutenant-Governor of Massachusetts, even though Governor Francis Bernard had been in London for almost a year and showed no signs of returning. Bernard, who had been virtually driven out of the colony by the radicals, still held veto power over any of Hutchinson's decisions. Thus Hutchinson had to worry about the reception of his decision concerning the troops in the town, in New York, and in London. It is a small wonder that he wavered.

After several more visits from Samuel Adams' committee, and despairing

of getting any legitimate advice or support from his Council, Hutchinson took a qualified step. He agreed to remove the troops from Boston "upon the unanimous opinion and advice of the council," thus forcing the Council to support publicly his position. In the same breath, however, that Hutchinson ordered the removal of the troops, he disclaimed "all authority to order their removal."⁶ This attempt to pass the buck on to General Gage was successful in that Gage, upon learning of the situation, seized the opportunity to assure Hutchinson that he did not, indeed, have authority to move the King's troops about at will. Hutchinson had thus lost the opportunity for directly controlling the British regiments, and had demonstrated to the radicals his weakness. By March 11th, both regiments had been removed from Boston to the barracks on Castle Island in the Boston harbor, there to remain camped outside the walls of Castle William for the next several months. The Castle itself was manned by units of the Massachusetts colonial militia. In order to keep the peace of the town during the weeks immediately succeeding the removal of the troops, the Boston town meeting voted a military watch composed of members of the meeting, to patrol the streets at night to keep the order and "for the protection of the Inhabitants."⁷ The radicals now controlled the town.

Their immediate objective realized, the radicals set out in pursuit of their long-range goals. The Massacre would be used to demonstrate to all, near and far, that Boston was faced with a life-and-death struggle with a tyrannical power. The indictment and trial of the soldiers, obviously, would be the best proof of this contention. Judicial processes, though, were slow, and the radicals were determined to present their case

to the world as soon as possible. To this end, several committees were appointed by the Boston town meeting.

On March 12th, the meeting appointed Thomas Cushing, John Adams, and Josiah Quincy, Jr., as a committee "to write immediately to the Honble. Issac Barree Esq. Thomas Pownall Esq. Dennis Deberdt Esq. Dr. Benjamin Franklyn Esq. William Bollan Esq. Barlow Trecothick Esq. acknowledging our obligation for past favors, acquainting them with the Circumstances & Facts relative to the late horred Massacre, and asking the continuance of their good services in behalf of this Town and Province."⁸ It is extremely curious to find John Adams and Josiah Quincy, Jr., on this committee, as they had both agreed the previous week to defend Captain Preston and his men on the very charges which the town was now accusing them. Clearly this would be no ordinary trial.

The recipients of the committee's letter were carefully picked by the meeting. Deberdt and Bollan were the official agents of the colony in Great Britain, whose task it was to present to parliament, the cabinet and the King the official interpretations of colonial feelings, as instructed by the town meetings and the General Assembly of Massachusetts. Other addressees ranged from the versatile Dr. Franklin, whose diplomatic talents were already recognized, to several Members of Parliament known for their friendliness to the colonies and/or their unfriendliness to the administration, and to Thomas Pownall, the former governor of the colony.

Once the town meeting had assured itself that its friends in London would be informed of the situation in Boston, it set out to provide the world at large with its view of all the evils that had led to the Massacre, and the political implications of the Massacre itself. To this end, the

town meeting established on March 13th a committee composed of James Bowdoin, Joseph Warren and Samuel Pemberton, three members of Samuel Adams' radical group, to bring to light all the facts pertinent to the Massacre, and to lay a report of the same before the town. This draft was presented to the meeting on March 19th, was accepted and sent back for revision. The report, which became known as "A Short Narrative of the Horrid Massacre in Boston," was accepted in its final form on March 26th.⁹

Meanwhile, the town meeting of March 13th had hurriedly passed several other measures. Knowing full well that the King's Attorney might be less than enthusiastic about prosecuting the King's soldiers, the meeting voted to ask the Selectmen of Boston "to employ one or more Council to offer to the King's Attorney as Assistance to him in the tryal of the Murtherers." In case the King's Attorney should refuse such assistance, the meeting voted a provision whereby the services of such an attorney would be supplied at the town's expense for the families of the slain, should they wish to prosecute. Finally, the meeting considered "whether the Town will take any measures, that a public Monument may be Erected on the Spot where the late Tragical Scene was acted, as a Memento to Posterity of that horred Massacre, and the destructive Consequences of Military Troops being quartered in a well regulated City."¹⁰ The meeting decided to ask the General Assembly, at its next session, to act upon the matter, as the erection of such a monument was something which would come under the jurisdiction of that body. No further business being presented, the town meeting then adjourned from two full days work.

General Gage had by the 12th of March received in New York letters

from Hutchinson and Lieutenant Colonel William Dalrymple, commander of the 14th Regiment, informing him of the events of the previous week. Gage quickly returned long letters of paternal advice to Hutchinson and Dalrymple, a habit in which he indulged himself throughout the rest of the year, cautioning that Massachusetts radicals were "people possessed with such remarkable talents for misrepresentation" that impartial accounts of the late events should immediately be collected and sent to England. Undoubtedly, the General thought, the townsmen themselves would be doing the same, and whichever side presented their story first would win an advantage in London.¹¹

Hutchinson, however, knew Bostonians better than Gage, and had already taken steps to inform London of the state of affairs in the colony. On March 16th, he dispatched John Robinson, a Customs Commissioner, to London. Robinson carried with him a letter from Hutchinson to the Earl of Hillsborough, Secretary of State for the Colonies, giving Hutchinson's interpretation of the events. A more damaging message, from the point of view of the radicals, was sent by Andrew Oliver, the provincial Secretary. Oliver had clandestinely taken shorthand minutes of the meetings of the Governor's Council between March 6th and 16th, and included these minutes in a missive to Hillsborough. The minutes, taken without the knowledge of the other Council members, made it painfully clear to Hillsborough that Hutchinson had completely lost the support of his Council, and was left alone to face the wrath of the Boston radicals.

Not content with this observation, Oliver included in his letter to the Secretary of State his own interpretations of past events, one of which was that the town radicals were involved in a premeditated plot to

drive the soldiers and Customs Commissioners completely out of the province.¹² Although Oliver was unable to substantiate this charge, later events proved his suspicions to be justified in part. His official colonial position, and similar reports received from Gage and some of the Commissioners, undoubtedly helped to convince the administration of the presence of conspiracy in Boston.

The Boston town meeting was continuing its propaganda work. Once the "Short Narrative" had been approved, the meeting attempted to persuade Hutchinson to affix the provincial seal of the colony upon a certificate declaring the truth and accuracy of the "Short Narrative." Hutchinson quite naturally refused to do so once he had seen the pamphlet and realized what an unbalanced view it gave of the situation. The radicals, however, were not to be thwarted. A certificate was drawn up in official and impressive style, and affixed to the "Narrative." The fine print of the certificate stated merely that "the persons before whom the deponents [contained in the 'Narrative'] were sworn had authority to administer oaths." Since this was entirely true, Hutchinson had little grounds for refusing the use of the provincial seal upon the certificate, and it was duly stamped. According to Hutchinson, this clever move was quite successful, for the provincial seal was made much of in England, and was used by the friends of the colony as actually "establishing the truth of the facts" in the "Narrative."¹³

The town meeting, meanwhile, had voted to hire one Captain Gardner, owner of a fishing schooner, to take the "Narrative" and supporting letters to London. Armed with 120 pounds of the town's money to meet his expenses, Captain Gardner set sail on April 1st. His list of addressees for the letters

and the "Short Narrative" was quite extensive, and included the colonial agents, seventeen peers of the House of Lords, and twenty-five Members of the House of Commons. Most of the parliamentary addressees were members of the opposition at the time.¹⁴ Undoubtedly, the fact that Gardner sailed two weeks behind Robinson benefited Hutchinson, for his version of the Massacre reached London first.

After accepting the final draft of the "Short Narrative," the Boston town meeting repealed their resolution of March 19th to distribute the "Narrative" throughout the colony. Instead, citing the fact that "publishing said Narrative with the Depositions accompanying it in this County, may be supposed by the unhappy Persons now in Custody for tryal as tending to give an undue Byass to the minds of the Many who are to try the same," the meeting voted to suspend distribution of all copies of the "Narrative" until some later date.¹⁵ This resolve tends to suggest that Samuel Adams and the radicals were occasionally unable to completely control the town meeting. Although the records fail to state who supported this measure, apparently there were some citizens present who were more sympathetic to the plight of the soldiers. Unfortunately, several copies somehow slipped into private hands, and were soon widely distributed throughout the colony.

In mid-March another factor entered into the struggles between the radicals and Lieutenant-Governor Hutchinson. Sometime between the 5th and 12th of March, Hutchinson received a fortunately-timed letter from Lord Hillsborough. The letter ordered Hutchinson to move the next meeting of the Massachusetts General Assembly from Boston to Cambridge, "unless the lieutenant-governor had more weighty reasons for holding it at Boston." The obvious and stated purpose of the move was to get the legislators

away from the influence of the Boston mob, who habitually packed the galleries during Assembly meetings and gleefully hooted down anyone who dared to speak in a way they deemed unfriendly. By removing to Cambridge, the Assembly would be freed from this rabble influence, and those friendly to the government would hopefully feel much freer to speak their piece. Hutchinson was obviously unable to "offer such reasons" for retaining the Assembly at Boston, and complied with Hillsborough's order.¹⁶ Such timely advice from England would be conspicuous only by its absence in the following months, as Hutchinson was forced to play off Samuel Adams and his cohorts while vainly waiting for further instructions from London.

The General Assembly, meeting at Cambridge as ordered in the last week of March, immediately and vociferously protested its removal to that location. Inconvenience, undue expense, and the violation of traditional colonial rights were all espoused as reasons for returning to Boston, although the full intent of Samuel Adams, John Hancock, James Bowdoin, and Thomas Cushing (the Boston representatives) must have been to return the Assembly to their own home turf. Letters and speeches of protest and recriminations, accusations and counter-accusations, flew back and forth between the Assembly and Hutchinson. The battle was destined to last throughout the summer, but Hutchinson remained firm. The Assembly was quick to react by refusing to transact any business until it was returned to Boston. Among the items of business on the agenda was the appropriation of Hutchinson's yearly salary, but even this threat failed to move the Lieutenant-Governor.¹⁷ The struggle was carried to the colonial newspapers, where the representatives printed their various resolves and petitions for the return of the Assembly to Boston. Hutchinson's replies

were also published, but he continually refused to allow the printing of the actual message he had received from Hillsborough ordering him to remove the Assembly to Cambridge. Although he had no choice, this refusal hurt him, for some Bostonians began to whisper that Hutchinson had no such orders from England, but was merely safeguarding his own interests by getting out of Boston. Hutchinson's hands, however, were tied. "The King has been pleased to order," he finally informed the Assembly, "that no letters or instructions to his Governor shall be made publick without his Majesty's special leave."¹⁸

While the plight of the Assembly was attracting most of the attention of the colony during the latter half of March, the Boston radicals were still pursuing their foremost goal---trial of the soldiers. On March 13th, the Superior Court of Massachusetts began its term. Attorney General Jonathan Sewall drew up indictments against Preston and his men, and then, probably due to his loyalist leanings and disinclination to prosecute the soldiers, divested himself of the case through the simple expedient of disappearing from view. The grand jury passed the indictments and called for trial.¹⁹ Unfortunately, two of the four available judges, John Cushing and Edmund Trowbridge, were ill and unable to attend the proceedings. Hutchinson, the fifth, and Chief Justice, was still vainly attempting to resign his judgeship, pleading his extensive duties as acting Governor, and refused to participate in the trial. Benjamin Lynde, Jr., acting Chief Justice in Hutchinson's absence, suggested that the trials be postponed until the April term of the court.

Samuel Adams and his radical supporters were unwilling to let the trials be delayed. They obviously wanted the trials held as soon as

possible, before tempers in the town had a chance to cool. To this end, they pushed through the town meeting of March 19th a petition calling upon Hutchinson to appoint "as early as possible," special Justices "for the Superior Court now sitting in the room of those who may be necessarily prevented by sickness from attending their duty; that so the Tryals of the many Criminals now committed may not be postponed." The best of the arguments for pressing the trials was that several witnesses to the Massacre, being sailors, were "detained to their very great Disadvantage" since their ships were due to sail shortly, and therefore might be under "Temptation to absent themselves" were the trials postponed.²⁰ Hutchinson, of course, ignored the petition, for he in turn desired the postponement of the trials as long as possible, both to let tempers cool in the town, and in hopes of receiving further instructions from England. The trials were thus put off until the April session of the Superior Court of the province of Massachusetts Bay.

CHAPTER II

SETTING THE SCENE

The Boston radicals and the forces of the royal government in America now settled down to seven months of debate and recriminations over the questions of rights, prerogatives and privileges in the colony. General Gage was the first to act, although he kept himself aloof from any contact with the radicals, and penned his thoughts mostly to Lord Hillsborough. By April 10th, Gage felt he had adequately grasped the intricacies of the situation in Boston, and sent off a series of reports to London. The first of these was the official army version of the Massacre, compiled from the depositions he had requested from Lieutenant Colonel Dalrymple on March 12th. Along with the official report, Gage included his own comments regarding the situation, emphasizing his belief in the impossibility of Preston ever receiving a fair trial in Boston. In addition, Gage asked permission of Hillsborough to remove one of the regiments from Boston to another colony, as they were doing no one any good at the time, and were too crowded in the small barracks outside Castle William.¹ Due more to this military situation than to the public pressure from Boston, Gage ordered the hated 29th Regiment to New Jersey two weeks later, without waiting for a response from Hillsborough. The departure of the troops from the Boston area, however, seemed to confirm the victory of the radicals.

Hutchinson was continuing to have his problems with a balky General Assembly. Refusing to do business, and refusing to pay Hutchinson, the Assembly devoted much of its time to the drafting of various resolves and

petitions as to why it should be allowed to reconvene at Boston. To make matters worse, the Assembly began to draw up resolutions based upon new and different theories of constitutional rights and freedoms. The most extraordinary of these was sent to Hutchinson on April 23rd. Citing as a legal base for their new doctrine the English Bill of Rights signed by William III in 1689, the representatives quoted from that venerable document as specifically pointing out that "the keeping of a standing army within the kingdom, in a time of peace, without the consent of parliament, is against law." Since the General Assembly considered itself the legal government of Massachusetts, the resolution argued, and claimed all rights within the colony as did parliament in England, "The keeping of a standing army, within this province, in a time of peace, without the consent of the general assembly, is equally against law." Therefore the presence of the British troops in Massachusetts constituted an "UNLAWFUL ASSEMBLY;" was "most dangerous and alarming;" and was "a crime, which infinitely exceeds what the law intends by a riot"² Carrying this theory to its logical end, the troops in Boston who fired upon the populace were there unlawfully, had no official capacity, and were thus clearly guilty of murder. The theory clearly stated the growing colonial belief that their respective assemblies were equal in all respects to parliament. The distinctions between internal and external control of government were growing dim, as the radicals were solidifying their belief in representation, not in parliament, but in their own provincial legislatures.

The town of Boston was not long in following the lead of the Assembly in promoting revolutionary measures. After the annual election of representatives to the General Assembly in the first week of May, the town

meeting appointed a committee to draw up its instructions to the new representatives. The instructions, approved and printed on May 15th, were sent to the English friends of the radicals, as well as to the representatives and the colonial newspapers. Although the instructions were mostly an ambiguous list of colonial grievances, such as protests against the trade duties and the Quartering Act (which the town held directly responsible for the Massacre), the rhetoric was decidedly radical in nature. "No period since the perilous times of our memorable Fathers has worn a more gloomy and melancholy aspect," stated the preamble. "Unwarrantable and arbitrary exactions [are] made upon the people... grievances, murders, discontents [are] convulsing every part of the British Empire....nothing but strict virtue and inflexible fortitude can save us, from a rapacious and miserable destruction." The meeting's solutions to these problems were closer intercolonial connections, and a united front of all the colonies against the tyrannical government of Great Britain. Thus they published one of the first official calls for unification of the colonies against the tyranny of Great Britain.³

Hutchinson was outraged when he read the instructions. His anger was directed at the town meeting and specifically at Josiah Quincy, Jr., who had drawn up the document. "Nothing can be more infamous than the Boston instructions," Hutchinson raged. "Is it possible they should pass without notice? Young Quincy who goes by the name of Wilkes Quincy, penned them. He bides fair to be a successor to Otis, and it is much if he does not run mad also."⁴ Despite Hutchinson's anger, the instructions were duly sent to Cambridge, where they were much read and admired by other representatives. Several other Massachusetts towns sent letters of

congratulations to Boston for its decisive stand against Great Britain, and praised the idea of intercolonial union of some sort.

Once the excitement over the Boston instructions had died down, the new Assembly considered the selection of the Governor's Council. Among those elected was James Bowdoin, a representative from Boston. When Hutchinson gingerly accepted his nomination, Bowdoin was forced to resign his seat in the General Assembly. Boston, in a special election on June 6th, chose John Adams as Bowdoin's replacement. Adams' candidacy was advanced by his kinsman Samuel Adams, who held tight control of the political caucus in Boston,⁵ and John won easily, collecting 418 of the 530 votes cast.⁶ Once elected, John Adams lost little time in entering the inner circle of radicals at Cambridge, and was selected on June 7th as one of a committee of four to present to the Lieutenant-Governor the latest petition for removal of the Assembly to Boston.⁷ Adams' career in the General Assembly was thwarted, however, by that body's continued refusal to do business. Hutchinson, as a result, recessed the Assembly on June 25th, and prorogued it until the 25th of July. The Assembly's mood had not changed by July, however, and Hutchinson dismissed it again on the 3rd of August, not to meet again until the 26th of September.

General Gage, meanwhile, was keeping Lord Hillsborough informed of troop movements during the summer, along with any other bits of news which he thought might interest the Secretary. The 29th Regiment had sailed from Castle Island to New Jersey without undue trouble, although the Bostonians had refused to allow the troops to transport their baggage through Boston on the usual overland route. The General complained that such resistance had never before arisen in New England, and was another

sign of the colony's rebellious mood. The General also took the time to observe to Hillsborough that the problems of the colony could easily be solved. "When the troops first arrived indeed at Boston," wrote Gage, "the People were kept in some awe by them; but they soon discovered, that Troops were bound by Constitutional Laws, and could only Act under the Authority, and by the Orders of the Civil Magistrates; who were all of their side." Thus Gage deduced that the Governor's Council was favorable to the radical cause in Boston, an observation which paralleled that of Andrew Oliver's. Gage continued by noting that due to this unwillingness of the civil authorities in Massachusetts to act strongly, the Bostonians "recommenced their Riots...with the Same unbridled Licentiousness as before." In order to alleviate the situation, Gage reported, he had "reminded Mr Hutchinson of this Circumstance, and told him, I knew Nothing could resist Force, but Force; and I should be prepared, to give him every Aid and Assistance he would require from me, as well as to obey every command the asking shall Judge it expedient to send me, in the present Posture of Affairs. I have also hinted to him, should not Measures more efficacious be adopted, the putting the [Massacre] Prisoners on Board one of His Majesty's Ships of War, or the confining them at Castle William,"⁸

Thus Gage offered as a solution to the Boston problems a policy of more consistent governmental force, a view which he deemed reasonable, based upon his experiences of the last several years. The General echoed these sentiments in a letter of July 6th to Lord Barrington, Secretary of War (and, incidently, a cousin of Governor Bernard).

What Measures will, or ought to be pursued with these People, I don't pretend to judge; but I am to hope if our Councils breathe Spirit and Vigour, that nothing

will be done by halves. No common Means will reduce them now to a legal Obedience and Subordination; you have tried the temper of the Council, and of the Magistrates, and you have found upon trial, that every Part of the civil Government is of the same Leaven with the People. You have found also that lenient Measures, and the cautious and legal Exertion of the coercive Powers of Government, have served only to render them more daring and licentious. No laws can be put in Force; for those who shou'd execute the Laws, excite the People to break them, and defend them in it. Nothing will avail in so total an Anarchy, but a very considerable Force, and that Force empower'd to act. If that is done at once, with a determined Resolution to reduce them, Matters may still end without Bloodshed. But if you pursue another Conduct, and make a Show only of Resistance, it is the Opinion of many you will draw them into Arms. Better therefore to do Nothing. Every Body must have observed how they have gone Step by Step, to their present Degree of Licentiousness, and the same Conduct toward them continued, will carry them still higher.

Perhaps part of the reason why General Gage was convinced that Hutchinson was "of the same Leaven with the People," was that the Boston radicals had apparently taken Hutchinson's side in the issue of control of the royal troops in Massachusetts. Politics made for strange bed-fellows in 1770, and Hutchinson must have been amazed and dismayed to realize that the radicals were supporting the claim, which he had abandoned, that the royal governor had control over royal troops within the boundaries of his colony. Realizing that they had much less hope of influencing the decisions of General Gage in New York than they did of influencing Lieutenant-Governor Hutchinson in Boston, the radicals had been perturbed when Hutchinson announced on March 6th that he was "disclaiming all authority" to order troop movements in Massachusetts. The radicals, therefore, had seized upon this issue, both for their immediate purposes, and perhaps in an attempt to divide and conquer the elements

of royal government in the colony. The radical arguments, of course, had been published in the newspapers of the province. More importantly, they had been sent to Governor Pownall in London, and he had made much use of them in the parliamentary debates on colonial affairs during the spring and summer.¹⁰

Gage had learned of Pownall's attacks on his authority, and hastened to reply in his letter of July 6th to Lord Barrington. The General quickly got to the meat of the argument, and showed the undesirable consequences of having his authority become secondary to that of the governors. "According to Governor Pownall's Interpretation of Law, no Army in America can be under the Command of one Chief, unless brought together in one Province; and a Day's March carries them under a second Commander! so that an Army in less than a Month, might be under the Direction of three or four different Commanders."¹¹ Clearly a policy such as this would lead to havoc.

By June General Gage had received orders from Hillsborough to assist Hutchinson as much as possible in keeping the peace in the province of Massachusetts. This Gage promised to do. Hillsborough also instructed Hutchinson to reprieve Preston and the soldiers, should they be found guilty by a Massachusetts jury. Hutchinson informed Gage of this order on June 22nd. "I ever supposed it would be necessary for me, at all events if Capt. Preston & the Soldiers should be found Guilty and Sentence be passed to grant a Reprieve until His Majesty's pleasure should be known. I am now under stronger Obligation to do it than before having received His Majesty's express commands so to do." Gage agreed with the decision and informed Hutchinson that since such a verdict of guilt was

only "too likely to happen," he would stand by in all readiness to evacuate the prisoners if necessary.¹² Such instructions of reprieve were not surprising, and not unique in the case of Preston and his men, for any colonial court ruling of guilt in a capital offense concerning a British subject was not final until reviewed and approved by a judge or court of Great Britain.

Captain Preston, languishing in a Boston jail, began to complain to Gage of the treatment he was receiving. Continual harrassment had been his lot, he wrote, from the people of Boston. He would have contacted Gage earlier, Preston apologized, but the Bostonians had "proposed at a town meeting to deny me the use of Pen Ink & Paper. They sent home a most false account of the affair of 5th March [the 'Short Narrative'], & have since made additions to it. They have sent off some of my principle Evidences, & are daily spiriting away more, & have so threaten'd others that they are afraid to appear at the tryal. They have publish'd reports & pretended letters of his Majesty having sent me a pardon, that so they may quiet the Conscience of the Jury, who therefore may the sooner finde me guilty as they are told nothing bad will happen."¹³ The radicals, although correct in their supposition that Preston would eventually be pardoned, were mistaken in their assumption that the pardon had already been received. Preston had been reprieved, which meant his sentence (if he was found guilty) could not be executed before it was reconsidered by a British court. He had not, however, been pardoned, which would mean that any such sentence would be annulled outright.

General Gage, however, immediately reassured Preston that he was being taken care of. "You may tell him [Preston] privately that he is

respited by the King in Case of Condemnation," wrote Gage to Dalrymple on August 13th, "and the Soldiers should be told the same, that they may not thro' Fear, and Hopes of Protections be cajoled by the People to perjure themselves, or make Declarations contrary to Truth and Fact.... The King has respited the Captain and the Soldiers in Case of Condemnation, but you will not make it known only in Confidence where I have mentioned." Gage also informed Preston directly that "if there is any sufficient Reason to suspect any Designs of Violence on the Part of the People, that the Lieut. Governor will certainly order the 14th Regiment into the Town."¹⁴ General Gage was probably attempting to alleviate Preston's fears, and was not giving a reasonable estimate of Hutchinson's possible actions. One regiment would be insufficient to quell any major disturbance in Boston, and would only serve to heighten the opposition of the radicals. Hutchinson's lack of aggressiveness in the past did not indicate that he would take the drastic step of bringing the 14th Regiment back into the town. Such a move would alienate the wavering support of those citizens who were still attempting to support Hutchinson.

Dalrymple, nevertheless, prepared the groundwork for the return of the troops. As he informed Gage on August 26th, Dalrymple sent "an officer in whom I can place every degree of confidence" to the Boston sheriff to coordinate plans for the return of the regiment to Boston, should events dictate such a necessity. Dalrymple was careful to assure his commander that, were the troops returned to Boston, he would guarantee "that they will behave as they ought to do."¹⁵

Lord Hillsborough, although he could not have received Gage's analysis of the causes of the troubles in Massachusetts, reached the same conclusions

as had his General. In a letter to Gage, written on June 12th, Hillsborough observed much the same tendencies as had become apparent to Gage. It is ironical that these two principle figures of British government should come to the same conclusions within a few weeks time. In light of the inability of the British ministries to follow a consistent course of action, and the twelve years between 1763 and 1775 during which these colonial problems were extensively discussed, it is ironical that these dual conclusions were reached simultaneously, and that the letters crossed paths on the ocean. Thus Hillsborough's letter reads essentially the same as had Gage's.

Had the Magistrates of Boston, & the principal Persons of interest and Credit in that Place shown that Zeal and good disposition to prevent and appease Quarrels between the Soldiers and Inhabitants, and to discountenance Riot and Tumult...the unfortunate Event of the 5th of March might have been prevented; But what has happened serves to expose the Timidity of, and total Neglect of Duty (not to say worse) in the Magistracy, and plainly points out that all Measures for the support of the Constitutional Authority in this Kingdom in Massachusetts Bay will be ineffectual and delusive, untill the Government of that Province, upon just Principles of dependency on the Mother Country, can be restored to this proper Vigour & activity.¹⁶

Hutchinson, in his attempts to compromise between feelings at home and abroad, had only succeeded in losing face on both fronts.

The effects of the late disturbance in Boston, continued Hillsborough, were being placed before the King in Council. In the meantime, as the first step towards restoring order in the colony, Gage was instructed to take measures to remodel Castle William and make it a suitable position of defense and refuge for the officers of the King, "in case the security of their Persons should be in danger from a Repetition of those violent

and tumultuous Proceedings of the Town of Boston, which have so much disgraced its Government."¹⁷

The fortification of Castle William, however, presented a whole new problem to Gage and Hutchinson, and typified the inability of an absentee administration in London to appreciate the delicate local situation in Boston. Castle William had been built, maintained and manned by the province of Massachusetts Bay, and apparently was entirely under the colony's control. The 14th Regiment was still camped in the barracks outside the walls of the fort, and the provincial militia was still manning the guns on the inside. It was unclear as to whether General Gage, Governor Hutchinson, or the Massachusetts General Assembly had the right to order the provincial militia out, or order the 14th Regiment in.

As a result of this confusion, nothing was done, until Gage received further and more definitive orders from Hillsborough. On September 2nd, he received such orders, and swiftly passed them on to Hutchinson and Dalrymple. The orders read that it was the "King's command to Mr. Hutchinson that the Provincial Company, now doing Duty there [at Castle William] should be withdrawm, & the Possession of the Fort delivered to such Officer as you [Gage] shall direct to take the Command of it."¹⁸ Gage, Hutchinson, and Dalrymple all realized that they were treading upon dangerous ground, and would have to justify the change at Castle William to the citizens of Massachusetts, in order to prevent any further disturbances. The question was still the control of royal troops in a province, and although both Gage and Dalrymple fully believed that Hutchinson had no such control, they apparently were willing to sacrifice constitutional principles in an attempt to keep the peace.

Hutchinson suggested to Gage that Dalrymple be given a provincial militia commission, which would ease his assumption of control over Castle William. Gage, however, waxed indignant. He "could by no means consent to the Colonel's accepting a provincial commission to command the King's Troops." Gage was convinced that the King's command was sufficient to override any constitutional scruples, and, even if not, the provincial charter was not endangered. "The Province Company delivering the Fort to the Charge of the King's Troops, by the Lieutenant Governor's Order, was acting conformably to the Words of the Charter, for thereby, the Governor committed the Custody of the Fort, to Such Person as to him seemed Meet."¹⁹ Hutchinson agreed to try this method. He would take responsibility for ordering the troops in, and would retain control of the provincial supplies and equipment within the fort. Hutchinson also decided that protest after the movement would be less dangerous than protest before, and ordered the change of the garrison in all secrecy.

The morning of September 11th was a dark one for the radicals of Boston. The movement of the 14th Regiment into Castle William apparently took them completely by surprise, and most of the citizens were unaware of the change until the Boston newspapers were printed. Hardly had the town recovered from this intelligence, than the newspapers also reported two others bits of dismaying news. "It is said," the papers reported, "that Boston is to be the rendezvous for the ships of war in the northern station." Coming fast upon this item was a report published the same morning "that his Honour has liberty to meet the General Assembly in any town of the Province, Boston EXCEPTED!"²⁰ Asked by the Assembly to verify these reports, Hutchinson confirmed that all were true, by instruction from

Lord Hillsborough. Thus in one blow the Bostonians were deprived of their fort, and learned of the high degree of suspicion which the British administration had for the town. The stationing of the northern British fleet at Boston could only be interpreted as a coercive reminder for the citizens of Boston to watch their step in the future. These three blows to Boston's independence were more than enough to stir up the embers of resentment towards British policy which had died down somewhat during the summer months.

Hutchinson attempted to soften the effects of the evacuation of Castle William by making concessions to the provincial troops involved. Addressing the General Assembly on the 27th of September, he proposed that the troops be paid through the end of November, for "they have behaved well" and were withdrawn through no fault of their own.²¹ The concession did little good. Hutchinson also attempted to turn over the fort without stirring up the question of provincial versus parliamentary rights. The Lieutenant-Governor was justified in this attempt, for apparently parliament itself had not yet been able to decide whether Gage or Hutchinson had control of the troops, and he had no legal basis for the turn-over other than the arbitrary order from Hillsborough. When presenting the keys of the fort to Dalrymple, Hillsborough's order was not mentioned, and Hutchinson stressed that his authority to change the garrison was "derived from His Majesty's Commission to govern this Province according to the Royal Charter." Lieutenant Colonel Dalrymple, unfortunately, was also jealous of his and General Gage's rights, and replied in receiving the keys that he did so "By virtue of order...from General Gage."²² Once again intragovernmental squabbings gave impetus to the radicals' cause.

Word of Dalrymple's reply soon spread throughout Massachusetts, and served to add fuel to the old debate of jurisdiction over regular troops within the province.

The ensuing debates caused Hutchinson to spill some of his bitterness in a letter to Hillsborough on October 9th. The town meetings of Massachusetts, he wrote, were getting out of hand. Originally established for the "management of the immediate concerns of each town, such as the choosing their officers, raising money for their necessary charges and the like," the meetings now considered themselves "fit to assemble" whenever they liked, with "no interior power" able to "disperse them or punish them for any thing they do when assembled." Hutchinson denounced the typical town meeting of Massachusetts as an "unlawful assembly" and asked that Hillsborough and parliament pass a measure controlling them in the future.²³

General Gage, meanwhile, had received a letter from Lord Barrington which apparently could have laid to rest the debate over jurisdiction of the royal troops. The letter, received in early October, gave Gage "The Opinion of His Majesty's Attorney and Sollicitor General upon the Validity of the Commander in Chief's Commission, to command the Troops in the several Provinces independent of the Governors thereof." Gage, naturally, concurred with this judgement, and replied to Barrington on October 6th: "It gives me great Satisfaction that the learned in Law have given Opinions so favorable to the Service, otherwise a train of Evils must have ensued, that nothing but the enacting of new laws could have removed."²⁴

Gage, however, apparently never imparted this news to Hutchinson. Considering the turmoil in September over the Castle William affair, the General should logically have made public this decision, thus settling the

question in the public mind. Several theories may be advanced for Gage's silence. Perhaps he feared that the news that royal troops were not under the control of the Governor would further infuriate the radicals. This would have probably been the case, as the radicals had been supporting the right of the Governor to control the troops. Perhaps, also, Hutchinson had not been informed of the decision. Lord Barrington, as Secretary of War, was one of Gage's immediate superiors. Barrington, however, had no control over Hutchinson. Lord Hillsborough, as Secretary of State for Colonial Affairs, was the superior of both Hutchinson and Gage. Hillsborough, however, made no comment upon the problem to either individual. For Hutchinson to have formally acknowledged Gage's control--and all indications are that he would have readily done so--he would have had to be informed of the decision by Hillsborough. Thus Gage probably did not deem it proper to inform Hutchinson himself. For whatever cause, apparently Hutchinson never received such information.

Nor were the Lieutenant-Governor's troubles yet over. On the 13th of October, the General Assembly, aware that someone was feeding quite accurate reports of the activities of that body to England, questioned Hutchinson concerning the origins of such reports. The Lieutenant-Governor did not hesitate to reply that he was the responsible party. "It is my duty to acquaint his Majesty's principle Secretary of State for America, with all public transactions as are worthy of his Majesty's notice." In addition Hutchinson warned the Assembly that he had "sufficient reason to believe" that copies of the transactions which he had sent to London "were the immediate occasion of his Majesty's order to me, to withdraw from the Castle the garrison in the pay of the province, and to place there a

garrison of his Majesty's regular forces."²⁵ Further opposition from the Assembly, Hutchinson implied, would result in further restrictive measures being taken by the home government.

The Assembly soon found out that Hutchinson was not the only one sending papers to England. Copies of Secretary Oliver's deposition (see *supra*, pp. 14-15) had reached Boston through the medium of the English newspapers, and the Assembly soon busied itself with refuting the charges presented by Oliver. The Secretary's most damaging accusations had been that the Governor's Council was actively opposing Hutchinson, and that the town had plotted before the Massacre to drive out the British troops and the Customs Commissioners. Such accusations, said the Assembly, were just not true. In a published pamphlet, distributed in the colony and sent to London, the Assembly gathered some nine pages of depositions refuting Oliver's claims and concluding that there was never a "plan to remove the troops, before their firing on the inhabitants; or at any time whatever, to remove the commissioners." In addition, the Assembly passed four resolutions, branding Oliver with a "breach of trust...a breach of a most essential privilege of this Board," meaning the Governor's Council, and heaping the Secretary with several varieties of "dishonour."²⁶ Andrew Oliver now joined Hutchinson on the black list of the Massachusetts radicals.

Captain Preston and his men, meanwhile, had been transferred from the Boston city jail to Castle William, at the same time that the 14th Regiment had taken over the Castle. Although this transfer ameliorated the fears of lynching or other mob action, Hutchinson and Gage were still pressing Hillsborough for an outright pardon of Preston before his trial

began. Hutchinson wrote to Gage to this effect on September 12th. In a letter marked "SECRET SECRET" Hutchinson informed the General that he had "transmitted a state of the Evidence to My Lord Hillsborough" and had asked the Secretary to obtain a pardon for Preston and his men, to be sent to Gage as swiftly as possible "in the most secret manner." Hutchinson, meanwhile, would postpone the trial as long as he could, in order to receive such a pardon, and "plead it upon his Preston's appearance in Court," whereby Preston could be "immediately discharged," and all their problems would be solved.²⁷

Gage had not received any reply from Hillsborough to Hutchinson's plea, but he had, sometime in October, received orders from Hillsborough to "supply Captain Preston with such sums of money as you shall judge necessary to defray the Expenses of his Defence," not to "exceed a few Hundreds." The date of this letter is unknown, for Hillsborough later ordered Gage to destroy the letter, which the General very effectively did. Hillsborough also requested Gage to draw upon the miscellaneous account for the money for Preston's defense, so that such a transaction would not appear on the public account and be open to question.²⁸ This arrangement was kept so secret by Gage, that even Preston's lawyers did not know of the source of their fees. John Adams was appraised of the fund in April of 1771, when Isaac Smith, an acquaintance in London, wrote him of the details. Adams was greatly surprised, and replied that "If C. Preston is to be reimbursed his Expences, I wish his Expences, at least to his Council, had been greater."²⁹

Captain Preston, by this time, must have felt like a political football. Had he known the consequences of the events of March 5th, he would

undoubtedly have stayed in bed all day. All through the summer the radicals had been pressing for an immediate trial, while Hutchinson and his supporters had been just as dogmatically using any means to delay the same. The Superior Court of Massachusetts, scheduled to reconvene in April and take up Preston's trial, was again postponed. The preoccupation with the trial of Ebenezer Richardson and the difficulties in obtaining a defense attorney for Richardson had resulted in the Superior Court's postponement of Preston's trial until May. General Gage duly reported the situation to Hillsborough. "I have just heard from Boston that the Court meant to continue the Tryal of Captain Preston and the Soldiers of the 29th Regiment to the last week in May; but great Pains was taken to intimidate the Judges, and compell them to bring it on Sooner."³⁰ Gage was entirely correct in his estimate of the radicals' intentions.

Upon returning from his circuit court duties in May, however, Peter Oliver, one of the Judges, fell from his horse and was incapacitated. In addition, Judge Trowbridge was still under the influence of a chronic nervous ailment, perhaps caused by the fear of facing a Boston jury. When the Court met in session on May 29th, only Judges Lynde and Cushing were present, and the trials were again postponed. Since it was time for the annual Eastern circuit in Maine, which lasted from June to July, Acting Chief Justice Lynde was able to postpone the trials until the next scheduled sitting of the court in Boston on August 28th.³¹ The radicals were helpless to prevent this postponement, and were temporarily foiled.

The delay of the trial could only act to Preston's advantage. The longer he waited to face a Boston jury, the cooler its passions were likely

to be. A rumor was spread that two of the judges were threatening to resign, stating that "they will never sit as Judges under the circumstances of intimidation from the mob, the which they experienced last March." The resignations, it was hoped by Lieutenant Colonel Dalrymple, "may afford a special reason for postponing the trials to a longer day."³² The rumors of resignation stemmed from the attempts of Chief Justice Lynde to resign his post. Hutchinson, however much he might have wanted to postpone the trials by any means, persuaded Lynde to stay on, as he despaired of ever obtaining another justice as loyal to the royal cause.³³

The Superior Court, meeting again on August 28th, resolved all other possible business before facing the knotty problem of Captain Preston. Even Preston, however, had grown tired of waiting by this time, and petitioned the Court to hear his case. Dalrymple informed Gage that Preston had come to this decision due to the belief that the "alterations in mens minds towards him is extremely visible, a degree of coolness has succeeded to the late warmth, and there are many reasons to hope an impartiality on trial of which lately there was not a ray of expectation."³⁴ Preston was probably correct in his estimation, for the passions of Boston had been turned to other things in the past six months, such as the struggle between Hutchinson and the General Assembly. The royal troops' occupation of Castle William also diminished the importance which the radicals had been placing upon the trial.

On September 7th, Preston and his men were formally arraigned. Each pleaded "Not Guilty," each plea was accepted, and the trials were scheduled to begin in the latter half of October. Preston's friends were becoming optimistic. Gage informed Barrington on October 6th of the situation, and

added that "it is said they are become more moderate, even in his Prosecution. I sincerely hope we may find it so on the Day of Trial, but I can't help having Doubts about it."³⁵

In a letter to Hillsborough the same day, Gage attributed the new moderateness of the radicals to several causes. Among them, he pointed out the temporizing effect of George Whitefield, who had been preaching throughout Massachusetts, and turning men's minds from the passion of politics to the passion of religion, as only New England minds could be turned. In addition, Gage correctly observed that the continued attempts at non-importation and non-consumption were falling apart, as the merchants were growing tired of being dictated to by the radicals. Somewhat gleefully, Gage reported his optimistic views to Hillsborough. "At present, I can only have the Pleasure to acquaint you, that the Spirit of the Bostonians is greatly sunk, some attribute it to the Measures takeing by Administration, others to Whitefield's Sermons, who has been preaching up Obedience to Government and Laws, amongst them. Other Reasons might also be given, for Patriotism gave up to Interest after a short Contest; the Merchants would import, and I'm told have got the better of the Mob, and that they are quarrelling amongst themselves. And thus ends, the truly patriotick Resolutions of the virtuous Americans against the Importation of British Goods."³⁶ Whatever the reasons, Preston had probably picked an opportune moment to petition the court for the beginning of his trial. His chances for acquittal, or at least for a fair trial, had not been as great since the evening of March 5th.

CHAPTER III

DRAMATIS PERSONAE: THE ADMINISTRATION AND THE PROSECUTION

Before entering the lists of the trials, it is necessary to pause and survey the political scene in Boston of 1770 in some depth. Political alignments and connections, as much as actual evidence, had a direct bearing on the trials of Preston and his men, and to understand the tactics used by the prosecution and the defense, it is first necessary to understand the political factions of the day. The two previous chapters have outlined the broader political issues in Massachusetts during 1770. Now we must look at the individuals who were direct participants in the trials.

Louis B. Wright, when studying the history of colonial Virginia, came to the conclusion that by the close of the seventeenth century, a small aristocratic ruling class held tight control of the government of that colony. Not only was this class small, Wright concluded, but it was very wealthy, very powerful, and very much inter-related. If such can be said for Virginia in 1770, even more can be said for Massachusetts in 1770. Here too we see a small ruling class, very powerful, very wealthy, and very much inter-related.¹ The intermarriages among those in power in Massachusetts were so confused, in fact, that it is almost impossible to describe the web in prose (see Appendix A).

The importance of this close communion between the leaders of royal government in Massachusetts can not be emphasized too much. Each member had a definite political, economic, and social stake in the status quo, and none could afford to let their positions be threatened. The fall of royal government meant the failure of their personal livelihood, fortune,

and, it was felt, even threatened their very lives. The Boston Massacre trials, and all the events connected with them dating back to March 5th and even before, were seen by these people as another attempt on the part of the radicals to threaten their positions in the royal government of the colony. The friends of government were well aware of all the tactics that were being used by the radicals. They knew, for example, that the General Assembly of Massachusetts had claimed that the soldiers in Boston constituted an unlawful assembly. The trial could not be allowed to be used as a judicial review of such a theory, or any others like it.

The peculiar aspect of the events leading to the trial was evident in that the defense was composed primarily of radicals, while the prosecution was composed of the King's servants, who must prosecute this and any other criminal case in line with their appointed duty. Thus we have the paradox of loyalists prosecuting British soldiers for firing on an unruly Boston mob. The soldiers, in turn, were to be defended by friends of the mob. The situation was enough to cause one judge, at least, to fall ill of a nervous disorder, and to cause the King's Attorney General to cast up his hands in despair and disappear from view. Let us look, then, at these participants.

Thomas Hutchinson was still the official Chief Justice of the Superior Court of Massachusetts Bay. He had obtained this appointment from Governor Bernard in 1761, as a natural step up the ladder of success for an ambitious young politician. Bernard's departure for London in 1769, however, had left Hutchinson with two positions to fill, either of which was more than a full time task. As Lieutenant-Governor, Hutchinson was forced to act as Governor after Bernard's departure. This clearly left him little

time to act as Chief Justice, even had he desired to do so. By October of 1770 it was abundantly clear that he had no such desire. Hutchinson, however, could not accept his own resignation as Chief Justice, and was forced to retain the position. He had sent his resignation to London for approval, hoping to get it back before the trial, along with the appointment of a new Chief Justice, but he was doomed to disappointment.

Hutchinson's right hand man was Secretary Andrew Oliver, who would later be appointed Lieutenant-Governor when Hutchinson was elevated to the Governor's chair in 1771. Andrew Oliver had already done as much as Hutchinson to earn the hatred of the Boston radicals, and showed no inclination to change his course of behavior. Indeed, it would have been odd if he had, for his wife Mary (nee Sanford) was the sister of Hutchinson's late and beloved wife Margaret.² The two ranking men in colonial Massachusetts government, then, were brothers-in-law. In addition, Hutchinson's son Thomas married Andrew Oliver's daughter Sarah on September 19th, 1770. It is small wonder that there was no division of purpose in the executive office of Massachusetts Bay.

Lieutenant-Governor Hutchinson also had a brother, Foster, who does not enter into the narrative of the Massacre trials. However, to present a full picture of the connections between those in power in Massachusetts, it should be mentioned that Foster Hutchinson was a judge of the Probate Court in 1770, and would take his brother Thomas' place on the Superior Court bench in 1771.

The Superior Court Justices were no less intertwined into the governing circle. Peter Oliver, Judge of the Superior Court, was the brother of Secretary Andrew Oliver. As such, he was also a brother-in-law to

Hutchinson, and habitually addressed him as "my dear brother." Peter, obviously, had no great divergence of opinion with either Andrew or Hutchinson. To further solidify the family ties, it should be noted that Peter's son, Peter Oliver, Jr., had married in 1769 Sarah Hutchinson, the daughter of the Lieutenant-Governor.

Though these family ties might seem confusing to the reader, he should rest easy in the knowledge that he is in good company. No less a personage than King George III was equally confused by the sprawling Oliver family; so much so that he appointed one Thomas Oliver--no relation whatsoever with our Olivers--as Lieutenant-Governor of Massachusetts in 1774. The King at the time thought he was promoting Judge Peter Oliver to the executive position.

One other Judge of the Superior Court was tied by family lines to the Hutchinson-Oliver faction. This was old Judge Benjamin Lynde, Jr., acting Chief Justice of the Superior Court. Benjamin Lynde's daughter Mary had wed in 1752 Peter Oliver's son Andrew. Andrew Oliver the younger was supporting his family in 1770 as a Judge of the Circuit Court of Appeals of Massachusetts Bay.

Thus the executive branch of Massachusetts government, and three fifths of the judicial, were all controlled by one family group. One can imagine the incessant political discussions which must have taken place over dinner and brandy in Hutchinson's mansion, or in the judges' chambers behind the Boston Court House. Political implications of judicial decisions must have been made known by Hutchinson and Andrew Oliver to Lynde and Peter Oliver.

By the 1770's, the legal profession in Massachusetts was just beginning

to emerge as a highly professional and highly organized group. Prior to those years general intellectual qualities, as well as social standing, were equally important as legal training for one who wished to become a judge of the courts of Massachusetts. Hutchinson, for example, had no legal training whatsoever before his appointment as Chief Justice of the Superior Court. As a result he acted more as a chairman, and deferred to the legal knowledge of the other judges during his tenure of office. Nor was Hutchinson an extraordinary example. Neither Peter Oliver, nor John Cushing, the fourth justice, had legal training of any type.

In fact, of the five judges, apparently only one was appointed because of his legal abilities. This would be Edmund (Goffe) Trowbridge, who had been appointed in 1767 to the Superior Court. Trowbridge was widely acclaimed for his legal training, and was used as a model during the eighteenth century for aspiring colonial lawyers to follow. Although Trowbridge tended to lean towards the side of prerogative in politics, he managed to keep himself detached from any political party, and this, along with his deserved reputation, enabled him to peacefully end his days in America, whereas all of his colleagues were forced to flee the colonies with the advent of the revolution. Trowbridge was also a close friend of John Adams, who was one of his legal pupils.

John Cushing, although he was not related to the Oliver-Hutchinson connection, was identified with the friends of royal government in the colony, and apparently held his post as a direct inheritance of his father, John Cushing, Senior. Cushing had been appointed in his father's stead in 1748, and had done little worthy of mention since that time. He had, as mentioned, no legal training whatsoever, and contributed little

to the legal profession during his twenty-three years on the bench. Cushing, however, was not the only judge who owed his seat to inheritance. Benjamin Lynde, Jr., had also stepped into the chair of his father. Lynde had at least prepared himself for the position, and although he was not trained to the degree of Trowbridge, he had studied law and had a working knowledge of its complexities.³

In retrospect, then, there were five judges (counting Hutchinson, although he refused to participate in the Massacre trials for very obvious reasons). Three of these five were directly related by marriage. Three of the five had no legal training for their positions. Two of the five obtained their seats through the claim of ancestral privilege. One of the five was a qualified, highly trained lawyer, and another was less qualified. The trial would prove to be interesting.

Let us look now at the prosecuting Counsel. The prosecution had originally been under the direction of the Attorney General, Jonathan Sewall. Sewall, it is remembered, felt unable, due to his loyalist feelings, to prosecute the British soldiers, and had relieved himself of the burden by vanishing into the backwoods of Massachusetts. He had conflicting emotions, indeed. He was of a loyalist mind, but was under pressure from his in-laws, the Quincys, to overcome this persuasion. Jonathan had married in 1764 Esther Quincy, cousin of the loyalist Samuel Quincy and the fiery radical Josiah Quincy, Jr. (see Appendix A). Esther's sister Dorothy was to marry John Hancock in 1775, although that has no bearing on the present situation. John Adams referred to Jonathan Sewall in his diary as one of his closest friends.

When Sewall disappeared, the burden of the prosecution was placed in

the hands of the King's Solicitor General, Samuel Quincy. Son of Josiah Quincy the elder, an old fire-eating radical, Samuel scarcely knew how to attend to the case. For one, he would be directly opposing his brother, Josiah Quincy, Jr., for whom he had a great fondness, although he did not share his political views. Samuel Quincy was also a close friend and distant relation of John Adams, with whom he had studied and practiced law extensively. To make matters worse, Samuel's wife was an avowed radical, and was using domestic pressure to sway Samuel's political loyalties. This situation degenerated so much in the following years that she left Quincy in 1776, rather than oppose the revolution. At least Quincy was a trained lawyer, and was able to give his professional skills to the somewhat undesirable task of prosecuting the soldiers.⁴

The Boston town meeting, however, did not trust the professional abilities of Samuel Quincy or Jonathan Sewall. They would, the meeting feared, fail to prosecute the soldiers harshly enough. To this end, the town meeting voted on March 12th to "employ one or more Council to offer to the King's Attorney as Assistance to him in the tryal of the Murtherers." (see supra, p. 13) Upon the departure of Sewall, Samuel Quincy was saddled with the unsolicited assistance of this attorney, Robert Treat Paine. Paine was an obvious choice of the town meeting to watch over Quincy. A lawyer of indifferent qualities, his chief recommendation was that he was definitely among the center group of Samuel Adams' radicals. Paine was also a perennial legal opponent of John Adams, and was an untactfull man at best. To him was given the ticklish task of guiding Samuel Quincy down the narrow path between aggressiveness and conspicuous meekness. The town meeting, when appointing Paine, made sure he understood

his task, by sending him a copy of the "Short Narrative" in order to put him "into the Spirit of things." In addition, Paine was called upon "to Espouse your Country's Cause, or that of Individuals, Who have Suffered by the hands of Execrable Villians and Professed Murderers."⁵

The crown officials, and their prosecutors, were now set. The judges of the Superior Court, whose instructions to the jury at the end of a trial were always vastly important, were closely tied to the royal government of the colony. The crown's prosecutors were of polar political opinions. One was interested in protecting the crown's interests in Massachusetts, the other determined to turn the trial into a showcase of political propaganda. Compared to the defense counsel, however, the motives and views of the prosecutors were transparent.

CHAPTER IV

DRAMATIS PERSONAE: THE DEFENSE

The counsel for the defense of Captain Preston and his soldiers consisted of John Adams, Josiah Quincy, Jr., Samson Salter Blowers, and Robert Auchmuty. The entanglements of these counselors were even more muddled than those of the prosecutors, and in order to understand the conduct of the trial, it is necessary to examine them at some depth. John Adams must be dealt with first, as the selection of the other three was related, directly or indirectly, to Adams' decision to defend the soldiers.

The importance of Adams' participation is twofold. He was the leading figure among the counselors at the time of the trials, and was the most able lawyer upon the team. His defense of the British soldiers has always been regarded by the American bar as an example of the professional ethics in the legal community of the United States, and is cited as an example of a lawyer's ability to divorce political viewpoints from legal business.¹ Adams' part in the trials has also been colored by his later political successes, and historians have tended to regard the Massacre trials as his first step into the public limelight. Whether or not this interpretation is justified is a moot point. This backward look at Adams, however, has thrown the perspective of the trials out of the historical context of 1770.

John Adams was in 1770, an ambitious, egotistical, and somewhat self-centered young man. He was a struggling, although marginally successful, young lawyer of acknowledged legal abilities. Adams' chief worries seemed

to be his career, his health, and his family, in that order. Adams was not devoid of family connections in Massachusetts. His wife, Abigail, was a descendant of the prestigious Quincy family, and Adams was exceedingly proud of her and her family. He was also a distant relative to the more renowned and elder Adams, Samuel. John would long chafe at the thought of being identified by his contemporaries as the junior Adams, both in age and prestige, and he watched the actions of Samuel with an admiring, but wary eye. Samuel, in turn, was equally proud of his young cousin, and when John appeared upon the Boston scene, Samuel attempted--with varying success--to take him into the radical fold and guide his beginning footsteps. John, however, realized the shortcomings of Samuel, which were mostly intellectual, and realized that he should not burden himself overmuch with the shadow of his elder kinsman.

What then caused John Adams to accept the explosive case of the British soldiers? Unfortunately, Adams never recorded his contemporary thoughts of the trial, and his first reference to it comes in his diary on March 5th, 1773, on the occasion of the third commemoration of the Boston Massacre. Adams had been offered the distinction of presenting the oration, but had turned it down as being incompatible with "the Part I took in the Tryal of the Soldiers....Besides that," he stated, with his usual humility, "I was too old to make Declamations."² Dr. Benjamin Church was therefore given the honor of presenting the oration, which he turned into an eulogy of the Massacre victims, and a condemnation of the royal government. After listening to Church's speech, Adams decided that his service in the case had been "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. Judgement of Death against those Soldiers would have been as foul a stain upon this Country as the Executions of the Quakers or Witches, anciently."³ Interestingly enough, Adams made no comment upon the legal aspects of the case, but seemed to imply that he defended his country from a judgement of guilt, rather than the soldiers.

Adams' second reference to the case is in his autobiography, written some forty to fifty years after the trials. It is suspect on many points, as it was composed late in life by a man who felt he had given his entire life to the service of his country, only to be condemned by his contemporaries and cast aside unappreciated. Adams, however, was still quite proud of his part in the trial: "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."⁴ Adams went on to state that he undertook the task of defending the soldiers because they were obviously legally innocent (a fact he seemed not quite sure of in March 1770), and they deserved competent defense. His life-long belief in the impartial rule of law, and the necessity of protecting Preston from the political passions of the day were advanced as his primary reasons for accepting the case. Adams' motives, as must be evident, can not be determined by looking at his own highly suspect writings. Thus we must take a look at the historians' interpretations.

The appropriate historians to begin with would be Adams' biographers. Of these, the first, Charles Francis Adams, can be shortly dismissed. Charles Francis, a direct descendant, highly praised Adams' motives for participating in the trial.⁵ "Timid or crafty men," he wrote, "would have devised excuses to avoid the duty." John Adams, of course, was "not

of either class." He accepted the case "solely upon professional grounds," for "a riot had no necessary connection, in his mind, with the maintenance of his political principles." Adams, according to his descendant, thus elected to defend the soldiers on pure judicial principles.

Gilbert Chinard, a twentieth-century biographer of John Adams, advanced the dual motives of judicial principles and legal and political aspirations as being foremost in his decision. Adams, wrote Chinard, was undoubtedly hostile to the presence of British troops in Boston, and was equally hostile to the faction of royal government led by Thomas Hutchinson. At the same time, Adams suspected that the events leading to the Massacre "had been intentionally wrought up by designing men" and, if the participants were harshly prosecuted, "some of Adams' friends might be implicated."⁶ Adams would agree to defend Preston, but only if he was assured that Preston had grounds for an adequate defense. After studying the case, Adams decided that such grounds existed, and he agreed to defend Preston, both because he feared a defense hostile to the town might uncover too much dirt, and because of his judicial principles which dictated a fair trial for Preston. In addition, Adams had a desire to show the radicals the error of their ways, and that there was a better and more effective method to oppose the crown than through open rioting. "His friends had more zeal than knowledge, and Adams felt it his duty 'To lay open before our people the laws against riots, routs, and unlawful assemblies.'"⁷ Adams' participation in the trials came as no surprise to the Boston radicals, and was even advocated by that group.

Chinard's evidence that John Adams took the defense with the blessing of the radicals was his subsequent election to the General Assembly on

June 6th. This election would have been impossible had Adams not been supported by his cousin Samuel. Nor did the friendship between "that brace of Adamses," as George III labeled the cousins, diminish throughout the year. "During the long session of the General Court [Assembly], they sat on the same committees, worked together hand in glove, swapped stories, had good dinners and took pleasant trips around Boston."⁸ This continuing friendship would not have been possible, Chinard argued, had not Samuel Adams at least accepted the position of John Adams as Preston's chief counsel.

Page Smith, the latest of John Adams' biographers, gives a more balanced view of Adams. Smith seems to understand Adams better than does Chinard, and presents a picture of Adams' thoughts about the case. He gives three reasons--judicial, political, and egotistical--for the decision to aid in the captain's defense. Smith wrote that Adams felt the legal defense of the captain to be necessary because "every accused man, however heinous the crime he was charged with, had a right to counsel of his choice and a fair trial....it was the duty of a lawyer to hold himself responsible not only to his country but to God, the ultimate source of all justice."⁹ Before committing himself, however, Adams was determined to assure himself of Preston's moral innocence. James Forrest, the alleged emissary from Preston to Adams, convinced Adams of the lack of malicious aforethought on the part of Preston, and Adams accepted the case, with a retaining fee of a "single guinea."

Smith delved even deeper into Adams' political mind. Adams discussed the case thoroughly with his wife Abigail the night before Forrest's arrival. The Massacre, they felt, had been provoked by "a rabid and

insolent mob, influenced by its leaders." Such mob action tended to "soil" the patriot cause in the minds of many Americans, especially the richer merchants and men of property, the "natural aristocracy" which Adams always felt was necessary to lead the country. An able defense, hopefully resulting in an acquittal, would prove "that Boston placed the law above prejudice and partisanship. The mob must then bear the guilt and the city stand exonerated before honest men."¹⁰ If such were Adams' motives, he was at least partially successful in ingratiating himself with the "natural aristocracy" of Boston--excepting, of course, the Hutchinson-Oliver connection--for, as Gilbert Chinard has pointed out, "Adams' courageous reaffirmation of the principles of law and order had placed him in good stead with the rich merchants of the town. He was a much invited-out young lawyer, had the best practice in Boston, and, on the whole, life and men treated him fairly."¹¹ If Adams was attacking the principle of mob rule in Boston, however, he would be at the same time attacking his cousin Samuel. The continuing relationship between the two men would seem to rule out this possibility, a point which Smith failed to consider.

Smith felt that Adams had yet a third motive. Adams anticipated the publicity which would result from his connections with the trial. Although his popularity with the Boston radicals might be damaged by his participation, "in compensation, his name would be known and his words read wherever English law is venerated."¹² If this was a motive, the results of the trial were satisfactory, for the trial did proclaim his name far and wide. His participation propelled him upon the Boston stage of 1770, and perhaps had something to do with his election to the General Assembly, and the increase in his private practice. Taking in all considerations, Smith

decided that Adams' motives were not "pure"--but then what human's motives ever are? Smith felt that Adams was deeply convinced of the necessity for the rule of law as opposed to the rule of man, and was determined not to be a puppet of the radical party, and so he accepted the case. It was, Smith wrote, "as admirable a decision as imperfect men are apt to make."¹³

William V. Wells, the descendant and biographer of Samuel Adams, gives a much simpler view of the situation. John Adams accepted the case, he wrote, because of his sense of patriotic duty, his dedication to the radical cause, and mostly because the radicals wished him to do so. Wells stated that "at the urgent solicitation of Samuel Adams and his associates, John Adams and Josiah Quincy consented to become the counsel for the prisoners. The task, which was a severe ordeal for such men in such times, required great self-sacrifice and a degree of magnanimity on the part of these patriotic lawyers which cannot be appreciated at this distant day." Wells continued by whitewashing the motives of the radicals. "Samuel Adams was particularly desirous that the town should be absolved from any charge of unfairness, and that every opportunity of defence should be furnished to the accused." By obtaining Adams and Quincy as lawyers, the radicals were thus assured that "the world should bear witness to the general desire for strict justice and the integrity of American juries, which had been questioned."¹⁴ Questioned they had been, and would continue to be.

George Bancroft, writing his extensive history at the same time as Wells, supported the latter in his contentions, both as to why John Adams became the counsel and as to why the radicals desired his services. "The Town was resolved on bringing the party who had fired to trial, that the supremacy of the civil authority might be vindicated; at the same time, it

wished that every opportunity of defence be furnished the prisoners; and with the very general approbation of the people, and at the urgent solicitations of Samuel Adams and his associates, John Adams and the younger Quincy consented to be retained as their Counsel."¹⁵

John C. Miller, a recent biographer of Samuel Adams, gives a much more balanced view of Samuel Adams' motives than does Wells. Miller does not hesitate to state that John Adams was procured for the defense by the radicals. The reasons given for their behavior, however, are more complex than a simple desire to demonstrate the "integrity of American juries." The radicals, said Miller, wanted a man they knew and thought they could control to defend Preston, rather than a loyalist who might be apt to kick up too much dust. Miller also stated that John Adams was influenced in his decision by a similar fear that too energetic a sifting of the evidence by a hostile lawyer might uncover and implicate some rich and respectable members of the town. The radicals, therefore, asked John Adams to undertake the defense of the soldiers in order to prevent the airing of Boston's dirty laundry before the eyes of friends and foes, both at home and abroad.¹⁶

There is a great deal of evidence to support Miller's interpretation, although some of it is circumstantial. If John was playing the role of defending Preston, when he was actually defending the leaders and supporters of the radical movement, it would go a long way towards explaining his overwhelming victory in the elections of June 6th, his subsequent and sudden success as a lawyer, and his equally sudden acceptance into the upper circles of Boston society.

Most historians have tended to support Miller's theory. John Cary, biographer of Joseph Warren, a man who was always involved with the events

of those tumultuous years, indicated that his research supported Miller's. John Adams and Josiah Quincy, he wrote, "had entered the case because their close friend Warren and several other radicals, possibly hoping to ward off a vigorous cross-examination of the town's witnesses, had persuaded them to do so."¹⁷

The most definitive contemporary account of the Boston Massacre trials is given by Hiller B. Zobel in a series of monographs and books,¹⁸ which delve deeper into the trials than any earlier published works. Zobel basically accepts the theories of John C. Miller, although with some reservations and changes. If one of the goals of the radicals was the protection of the town from hostile eyes, Zobel wrote, "it was not wholly unjustified. The available documents suggest strongly that the loyalists, and particularly the military, hoped to use the trials as showcases demonstrating the hostility of the townspeople since their arrival in 1768. The radicals, of course, were eager to show that the soldiery had been persistently and deliberately provocative. Thus each side hoped to use the trials for propaganda purposes."¹⁹

Zobel accepts the view that Samuel Adams and the radicals conferred with John Adams and agreed upon his accepting Preston's retainer. The question revolves, Zobel wrote, around the problem of why the radicals were "willing to throw such 'men of parts,' as Hutchinson correctly appraised them, against the very side which Sam Adams clearly wished to prevail. Did he intend that counsel should betray their clients? No evidence suggests it; what we know of John Adams' character flatly refutes it."²⁰ The radicals did want to keep the trial solely oriented upon the case of the soldiers, and did not want it turned into a trial of the town of Boston.

This, said Zobel, was a part of their consideration in importuning John Adams to join the defense. The radicals, however, either underestimated the abilities and dedication of Adams, or overestimated the radical fever of the town. They, of course, had no way of predicting in March that the trials would not ensue until the following October and November, nor could they have forecast all the events which took place between times, and caused the townsmen's mood to be tempered. This, claims Zobel, is where the radicals made their mistake. "I believe that in the flush of triumph at having finally seen the self-fulfilling prophecies of town-troop bloodshed enacted, the radicals failed to consider the possibility of an acquittal. Supremely confident that neither public opinion nor local jurors would return any verdict but condemnation, they were expansively willing to let the military have the best lawyers available; that way, no one could later taint the proceedings with unfairness."²¹

"Expansively willing," however, is quite a different phrase from that of "urgently solicitating," which has been used by other historians. Also, if the radicals had failed to take into consideration the possibility of Preston being acquitted, it would stand to reason that a great furor would have been raised in Boston at the outcome of the trials. Except for Samuel Adams, who wrote a series of "Vindex" letters to the Boston newspapers, which attempted to show that the soldiers were indeed guilty, no move was made by the radicals. Even Samuel Adams, who as a professional politician needed to keep the town in a nervous state, privately admitted in a letter to a friend in London that Preston was probably innocent, for his "Centinel was in Danger & we must presume that the People were the Aggressors."²²

Where is one left then? We have seen advanced the theoretical motives of John Adams and the pressures he was faced with. A consensus of agreement, however, is obviously lacking. The questions which need to be resolved are threefold: (1) Was John Adams subjected to outside pressure from the radicals to take the case; (2) If so, what purpose did the radicals hold for obtaining Adams; and, (3) What personal motivations of Adams induced him to accept the case? Although the reader might think that we are dodging the questions, it is informative now to take a look at Josiah Quincy, Jr., and his reasons for accepting the case, for Josiah's motives were closely tied to those of John Adams.

Josiah Quincy, Jr., the younger brother of Samuel Quincy, the Solicitor General, and the son of Josiah Quincy, Sr., the radical supporter, was of so fiery a disposition, that his brother affectionately (and Lieutenant-Governor Hutchinson, not quite so affectionately) dubbed him "Wilkes" after the famous English rabble-rouser. Josiah was also the cousin of the departed Attorney General, Jonathan Sewall, and thus had family connections on both sides of the political fence. There was no doubt, however, where Josiah's loyalties lay. He was a rabid radical, and had been identified with that faction for several years. As such, his defense of the soldiers seems even more puzzling than does John Adams.'

Much to the joy of historians, Quincy left little doubt as to his motives. In a famous exchange of letters with his father, Josiah stated the cause of his participation. Josiah Quincy, Sr., had hastily written his son on March 22nd, when he heard that Josiah, Jr., had accepted the case of Captain Preston. The elder Quincy's letter can perhaps be called typical of the astonishment and shock which prevailed among the radical

supporters, as well as among the loyalists, when the colony learned of the unusual trial arrangements.

My Dear Son,
I'm under great affliction at hearing the bitterest reproaches uttered against you, for having become an advocate for those criminals who are charged with the murder of their fellow-citizens. Good God! Is it possible? I will not believe it.

Just before I returned home from Boston, I knew, indeed, that on the day those criminals were committed to prison, a sergeant had inquired for you at your brother's house; but I had no apprehension that it was possible an application would be made to you to undertake their defence. Since then I have been told that you have actually engaged for Captain Preston; and I have heard the severest reflections made upon the occasion, from men who had just before manifested the highest esteem for you, as one destined to be a saviour of your country.

I must own to you, it has filled the bosom of your aged and infirm parent with anxiety and distress, lest it should not only prove true, but destructive of your reputation and interest; and I repeat, I will not believe it, unless it be confirmed by your own mouth, or under your own hand.²³

Josiah, Jr., hastened to reply to his distressed, "aged and infirm" parent--who was destined to outlive his son by nine years. The letter is filled with the usual rhetoric, cautioning his father "that these criminals, charged with murder, are not yet legally proved guilty, and therefore, however criminal, are entitled, by the laws of God and man, to all legal counsel and aid; that my duty as a man obliged me to undertake; that my duty as a lawyer strengthened the obligation." Quincy, it seemed, was convinced of his clients' guilt, else he would not have twice called them criminals, and implied that even obvious criminals were due a lawyer's efforts. The intent of the letter, however, comes in the next paragraph. Quincy makes it very plain that these judicial principles, which bound him to act as Preston's counsel, became obvious to him only after

conversations with various radicals. "I at first declined being engaged; that after the best advice, and most mature deliberation had determined my judgement, I waited on Captain Preston, and told him I would afford him my assistance...I refused all engagement, until advised and urged to undertake it, by an Adams, a Hancock, a Molineux, a Cushing, a Henshaw, a Pemberton, a Warren, a Cooper, and a Phillips."²⁴ These nine names would inevitably appear on any list of the radical leaders of Boston between 1763 and 1775. It is quite apparent, then, that Josiah Quincy, Jr., accepted the case because his political friends urged him to do so.

The first half of Quincy's letter, wherein he quotes duty, obligation, and manhood as reasons, can be summarily dismissed as rhetoric. Especially in Quincy's case, his past actions indicates no pattern of behavior based on these principles. The trial of Ebenezer Richardson, who had killed the eleven-year-old boy in February, 1770, supplies the evidence for this contention. Richardson's trial, set for March 23rd, opened on that morning. Richardson "observed to the Court that he had made application to almost every Lawyer in town to undertake his cause, which no one would do,...that without Counsel,...he was now to be tried for his life." The court accepted Richardson's pleas, and "made application to the several lawyers present to appear as his Counsel but this one and all of them declined."²⁵ Finding their requisition to no effect, the court appointed one Samuel Fitch to try the case. Fitch was an Advocate General of the Vice Admiralty Court, and a member of the loyalist establishment, but even he had no desire to accept the case. Under pain of disbarment, however, he was forced to oblige, and the trial was set for April 6th.

On the 6th, however, Fitch pleaded illness and the trial was reset for

the 17th. Fitch again reported ill, and the exasperated court appointed Josiah Quincy, Jr. Quincy remonstrated, but the court forced him to accept the case. Quincy's assistant in this case was Samson Salter Blowers, and the prosecuting attorneys were his brother Samuel Quincy and Robert Treat Paine. The difficulty in obtaining a defense counsel in Richardson's case, which was much less politically explosive than the Massacre trials, led Hiller Zobel to make the astute observation that "the Boston bar's willingness to represent unpopular clients had a high degree of selectivity."²⁶

If Quincy, then, was induced by the radical leaders of Boston to undertake the case, was John Adams subjected to the same pressure? The answer seems to be in the affirmative. Quincy, even while under pressure from the radicals, refused to accept the case until Adams did also.²⁷ This was only a natural hesistation, for Quincy regarded John Adams as his elder mentor, and was afraid to shoulder the odious burden entirely by himself. Quincy and Adams were very close friends, and had acted as counsels together numerous times in the past. It would only be natural for the radicals to turn to Adams, for he was as committed in his less exuberant way to the radical cause in Massachusetts as was Quincy. As Zobel summarizes, "It is hardly conceivable that some kind of similar consultation did not precede John Adams' retainer."²⁸

The apparent weakness of this theory is that it was Preston, and not the radicals, who first appealed to Quincy and Adams to take the case. Why would Preston want two radicals to defend him? Several answers can be offered. Preston had initially appealed to Robert Auchmuty to act as his defense counsel. Auchmuty, however, had realized what a position he would be in if he, a loyalist, was the lone man standing between Preston and the

radicals, and he wisely refused to commit himself. Preston then realized that no loyalists would touch his case, and apparently due to someone's advice, asked Quincy. Quincy also hesitated, and Adams' name was suggested. The advice seemed sound, as Adams' integrity and ability as a lawyer were already well-known in Boston, and Preston approached him. Quincy and Auchmuty, meanwhile, informed Preston that they would accept the case if Adams did likewise. Charles Francis Adams presents an interesting possibility as to the identity of the person who suggested the names of Quincy and Adams to Preston. He asserts that the advice was given by no less a personality than Thomas Hutchinson. "Presaging the contingency in which he [Hutchinson] might be summoned, in the last resort, to breast the popular storm, by giving a pardon after conviction, it was not unlike him to contrive a plan to thrust in leading professional men of the patriot side between himself and the danger he apprehended."²⁹ Hutchinson, in other words, knew that he was to pardon Preston, and instead of accepting the duty himself, he attempted to place Adams between the Boston radicals and his own position. Thus, if Adams did his duty, the burden of acquitting the soldiers would rest upon him during the trial, rather than upon Hutchinson after the trial, and Adams would face the Boston radicals rather than Hutchinson. Although Charles Francis Adams is unable to substantiate this theory, it is interesting.

It is even possible that the radicals suggested Quincy and Adams to Preston, for they were daily visiting him in his cell, with various tidbits of advice, questionings, and threats. It may well be that Quincy and Adams were two of the least anti-British lawyers in town, for the Boston bar already had a reputation for being one of the principal hotbeds of sedition

in the colonies. Regardless of the precise individuals who prompted Preston to ask Quincy and Adams, the radicals were pleased with the arrangement, and did their utmost to persuade the two to accept.

It was already apparent that the trials would be political in nature, and there was a definite fear that the town of Boston might be put in a bad light. The obvious defense for the soldiers would be that the crowd on the night of March 5th was unruly, obnoxious, and riotous, and the soldiers were forced to fire in self-defense. That being the case, there were too many citizens of Boston--especially some of the richer merchants and traders who were vexed by the continual attempts of the radicals to force their submission to non-importation agreements--who would be only too happy to take the stand and witness to the town's misbehavior. The only way to justify the removal of the troops would be to prevent such statements, and to show that the troops were the ones provoking the citizens to extremes.

Page Smith and Gilbert Chinard support this theory indirectly, when they point out that even Adams felt that the town had unduly provoked the soldiers, and that the town needed to be defended as much as did the soldiers. John Adams later admitted that the town had gone overboard, as evidenced by such publications as the "Short Narrative." That document, Adams wrote, was the "testimony of heated individuals....Much of the testimony in the 'Narrative' now looked extravagant and some was positively perjured."³⁰ Despite the denials of the Boston town meeting and the Massachusetts General Assembly, it appears that Andrew Oliver was at least partially justified in his claim that the radicals had concocted, before the Massacre, a premeditated plot to drive the soldiers and Customs officials

out of Boston. Such an accusation is not surprising, for this had been the avowed aim of the radicals since at least 1768. The realization of their vulnerability to attack by a hostile attorney undoubtedly spurred the radicals to pressure Adams and Quincy into accepting the case. Rarely throughout this period had the radicals, especially Samuel Adams, felt "expansively willing," as described by Hiller Zobel, to let the loyalist forces gain any concessions or strengths whatsoever. The evidence would not indicate such a degree of willingness at this moment.

Last, but not least, let us examine the personal motivations of John Adams. Regardless of pressures exerted upon him by outside forces, the final decision was his and his alone. Anyone who has studied Adams to any extent will readily agree that he was not a man who could be easily forced into a role to his distaste. Once he made a decision, however, he rationalized it at agonizing lengths to himself, if not to others. This, of course, is reason for his highly moralistic review in his diary and autobiography of his actions in 1770, for he had been criticized by some for abandoning his ethical code in the defense of the soldiers.

Adams' motives, as are any man's, were complex and mixed. He obviously had a personal interest in the radical cause in Boston, and was willing to defend the integrity of the town to all outsiders. Adams was always suspicious of the motives of others, and was convinced of the immorality of other men as compared to his own morality. His suspicions were especially intense regarding the activities of Hutchinson, whom Adams suspected of attempting to thwart the rights of the colony.³¹ Adams had long been tied by practice and principle to the radicals of Boston, and there is no reason to assume that in 1770 he suddenly departed from their fold. His later

actions during the trial, to suppress Quincy's exuberance in the cross-examination of witnesses, supplements the theory that Adams was partially, at least, committed to defending the town.

Economic grounds is one motive which we can dismiss. The trial lawyers split a total fee of some 140 pounds, which would hardly have been inducement enough to cause the lawyers to endure the headaches of conducting the defense.³² Adams himself makes no mention of money in the affair, other than his reference to the acceptance of the famous "single guinea" retaining fee. Adams was evidently preparing himself to play a double role in the trials. He had a political stake in the defense of the radical cause in Massachusetts, and a moral commitment to defend the soldiers. Which of these goals had precedence over the other only Adams knew.

The absence of any real storm when Preston and the soldiers were acquitted seems to indicate that the citizens of Boston expected, if not desired, such a verdict. Despite Hutchinson's and Gage's efforts at secrecy, it was obvious by October to the radicals that Preston would be pardoned, if convicted. This being the case, their only alternatives would have been to lynch the soldiers, or meekly accept the pardon. To lynch would have obviously resulted in General Gage occupying Boston, which would have squashed the embryonic revolutionary movement in Massachusetts. To meekly accept a pardon overturning the decision of a local jury would indicate to the colonists the weakness of the radical party and its inability to resist aggressive actions of the royal government. The obvious solution would be to acquit the soldiers, thereby begging the issue. The prosecution, headed by a loyalist, would obviously not prosecute

vigorously. The judges, loyalists every one, would undoubtedly instruct the jurists in a most partial fashion, after which they could overturn the jury's decision if the charges were ignored. The defense counsel, then, was the only position where the radicals had room to maneuver. The actions of March, through which the radicals had obtained Quincy and Adams as defense attorneys now stood them in good stead. Not only did the radicals desire the protection for the town during the trials, but by October they actually desired that the soldiers would not be found guilty of murder. With the help of friendly counsels, the radicals could be sure that Preston would be acquitted, and that the town would not be exposed to any extensive investigations. In addition, an acquittal would perhaps cause the British to lower their guard, as it might be read in London as an indication that the rebellious fever in Boston had abated. Adams apparently agreed with these tactics, for this was the path he was to follow in the trials.

A final consideration probably influenced Adams. He was always a very ambitious man, and his diary is full of economic worries and sputterings of personal ambition. He was a struggling lawyer with a young and growing family, and he felt even in 1770 that he was growing old too fast and was not getting a good start towards a career of any type. Legal business was slow in Massachusetts, and he felt that the Boston bar was packed with more experienced and more successful lawyers. Adams needed to do something which would make his name a household word, and would cause people to remember John Adams when they needed a lawyer.

The call of politics was always strong in his ear, even though he always took great pains to deny his political ambitions. This trait was

prevalent already in 1770, and would last up to and beyond 1796, when he denied to himself that he really wanted to be President of the United States. Despite this inward self-denial, Adams was almost pushy in his efforts to advance his political career, a practice which was to cause him great trouble in the future. Despite his frequent references to a longing for the simple agrarian life, which reminds one of Washington and Jefferson, he, like they, was always unable to deny the siren's call toward politics.

The Boston Massacre trials were Adams' first chance to jump into the legal and political limelight of the day. Beyond a doubt, the opportunity to participate on this most controversial stage was too much for him to deny. Here, at last, was the opportunity for John Adams to become famous. By defending the unpopular soldiers, in a case which far surpassed in public excitement any the colonies had ever seen, Adams could insure that "his name would be known and his words read wherever English law was venerated."³³

Once John Adams had accepted the case, the rest of the counsel fell into line. Quincy, as he had indicated, also accepted, as did Robert Auchmuty. Thus the pairings of the defense counsels became as paradoxical as those for the prosecution. Auchmuty had attended Harvard, but never graduated, and had practiced law since 1752. He had been appointed as a Judge of the Vice Admiralty Court in 1767, and a Justice of the Peace in 1769. Auchmuty has been described as a "zealous Loyalist,"³⁴ and he left Massachusetts in 1776, upon the outbreak of the revolution. As mentioned above, Auchmuty was Preston's first choice as an attorney, and neither Preston nor Auchmuty saw any fit reason for him not to serve as counsel along with Quincy and Adams.

The fourth counsel, Samson Salter Blowers, was associated in the defense

of Preston, but made no appearance in court. Blowers had graduated from Harvard in 1763, and had studied law under Chief Justice Thomas Hutchinson, which says more for his political sagacity than his legal knowledge. Another loyalist, Blowers left the colonies in 1774, but returned to Boston in 1778, where he was briefly imprisoned by the revolutionaries. He quickly moved downstate to the protection of royal troops in New York, and fled to Canada when the colonies obtained their freedom. Blowers had worked with both Quincy and Adams before, most recently with Quincy in the Richardson case, and with Adams as prosecutor for James Otis in his libel suit against John Robinson, which stemmed from their famous altercation in 1769.

Blowers did not become associated with the defense until early autumn, and then only when asked by Hutchinson, who wished to balance the defense between loyalists and radicals. Hutchinson also had a secondary motive, which he revealed to General Gage in November of 1770. "My great concern," he wrote, "is to obtain an unbiased Jury and for that purpose, principally, I advised Captain Preston to engage one of the Bar, over and above the Council to conduct the Cause in Court, in the character of an Attorney who should make a very diligent inquiry into the characters and principles of all who are returned [for jury duty] which he has done and it may be to good Purpose, but after all it will be extremely difficult to keep a Jury to the Rules of Law."³⁵ Hutchinson's purpose here, and he was very successful in it, was to have Blowers examine the political connections and background of all the people "returned" on the list for possible jury duty. Blowers performed his task rather well, and the defense succeeded in screening out all prospective jurors who had radical tendencies.

The defense, now, was set. It contained two radicals and two loyalists,

each with their own purposes in mind. The loyalists kept mostly to the background during the trials, but kept an eye on the activities of their radical partners. Those partners, in turn, handled most of the public business, insuring that no undesirable material would be presented to the jury, or the world.

CHAPTER V

THE TRIALS

Even if Hutchinson, Preston, and the radicals were satisfied with the trial arrangements, General Gage was still somewhat wary. On August 5th, Gage expressed his anxieties in a letter to Dalrymple. "It is hoped that Captain Preston and the Soldiers will have the best Advice to be procured," he wrote. "If there is any doubt either of the abilities or good Intentions of their Council; Lawyers should be procured from some of the other Provinces."¹ Dalrymple immediately realized that his commander was more worried about the "good Intentions" than the "abilities" of the counsel, and did his best to explain the limits of choice with which Preston was faced. "The best lawyers to be obtained here are engaged for Captain Preston, and I hope they will do their duty." The qualification on the lawyers being the best "to be obtained," and Dalrymple's "hope" rather than belief that they "will do their duty" amply indicated his doubts as to Preston's chances. He made this abundantly clear: "when I consider the spirit prevalent here, as well as the unfavourable ideas universally held to the prejudice of the kings servants, I cannot hope that their [Preston's lawyers] exertion will be proportionate to the goodness of the cause. Lawyers from other provinces would probably do much better for their Client, not being residents here they might exert their abilities without apprehension of future injuries; but where are any to be had?"²

Dalrymple had put Preston's predicament in a nutshell. Only radical-approved lawyers would dare defend him, and they could not be trusted as to their good intentions. Oddly enough, the only lawyer who Dalrymple

specifically named as lacking in "good Intentions" was the loyalist judge Robert Auchmuty. He communicated this opinion to Gage, who answered on August 19th: "I am sorry you doubt Mr. Auchmuty's zeal or good Intentions towards his Client, and should hope he would exert himself in the Cause of Truth with uncommon Zeal, and without Fears or Apprehensions. If you find it Necessary you should encourage him, for very particular Reports are expected to be made of every Circumstance of the Tryal."³ In other words, Dalrymple was to blackmail Auchmuty into more vigorous actions with the threat of reports on his behavior being sent to London, to be used, no doubt, in consideration of future appointments. This strange concentration of fire upon Auchmuty, the loyalist judge, is perhaps explained by the fact that more was expected of him than of Quincy and Adams, since he was a member of the governmental connection. Auchmuty was also the only defense counsel who was vulnerable to General Gage's particular methods of persuasion.

Preston's future, however, was not quite as dismal as Gage and Dalrymple believed. Public opinion towards the soldiers had ameliorated to a great extent since March, when a typical citizen's reaction to the Massacre was one of passion and revenge. Dr. Chauncy, a Boston citizen, had declared to a close friend shortly after the shootings, that "if I was to be one of the Jury of his [Preston's] Trial, I would bring him in guilty: evidence or no evidence."⁴ By October, this mood had changed, due to many shifts in political winds and fortunes during the spring and summer months. John Cary best summarized this change in public opinion. "After the initial indignation in March, the political conservatism of Bostonians deepened.... Those who did not go so far as to blame the Warren-Adams factions for the

tragedy at least saw clearly that the members of the small British guard had little responsibility for it. Here was no deliberate oppression by a tyrannical King, but a regrettable incident growing out of the increasingly bitter political wrangling of Massachusetts parties. By October, 1770, the troops had long been removed, and Bostonians were tired of political turmoils."⁵ Hutchinson's strategy of postponing the trials as long as possible was apparently paying off.

The radicals, meanwhile, were receiving advice from the parliamentary opposition in London. Alderman Barlow Trecothick, a member of parliament, suggested in a letter to James Bowdoin a most surprising measure. Trecothick, who claimed he was writing on behalf of the Duke of Richmond, suggested that after satisfying their revenge by condemning the soldiers, the radicals should then "petition the Governor to respite them from Execution, and the king to pardon them." Such a course of action, Trecothick continued, would be "a conciliating Measure with the Mother Country, by shewing they did not thirst after the Blood of the Troops."⁶ This plan, if the radicals ever contemplated using it, was made impossible by the prevalent rumor that Hutchinson already had orders to respite, if not pardon, the soldiers. If the pardon was not initiated by the radicals, the opportunity for the political advantage to be gained by the maneuver would be lost. This being the case, no response was made to Trecothick's suggestion.

The defense, meanwhile, was preparing for the trial. The first action they took was to split the case into two separate trials. The reasons behind this action become obvious upon examination. The defense planned to rest its case upon two lines of argument. The first would be that the killings were justifiable, and taken as a measure of self-defense. Should

this tactic fail, however, the next step would be to show that no order was ever given to fire. A conflict of interests, however, arose. It would obviously be to Preston's advantage to show that he had not given an order to fire, while it would be to the soldiers' advantage to argue the contrary. "Were the officer to be tried in the same proceedings with the men, the resultant mutual finger-pointing might well convince the jury to find all the defendants guilty."⁷ Thus the decision was made to split the trials, and try Captain Preston first.

Several of the soldiers naturally felt that their interests were being sacrificed for those of their captain. They were probably correct, for throughout all the correspondence prior to the trials, the fate of the captain is extensively examined and discussed, and little consideration is given the lot of the soldiers. Preston, after all, was an officer and a gentleman, and a figure of the established government, which must be preserved at all costs. The soldiers, however, were just soldiers. Several of the men did petition the court to be tried along with Preston, stating that he had indeed given them the order to fire. Their pleas, however, were ignored.⁸

When the Superior Court opened on October 23rd, Captain Preston stood alone in the dock. His trial was destined to last six days. The importance placed upon the trial by the participants can easily be seen in that it was the first in the province's history to last more than one day.⁹ The only really relevant period of the trials, however, was the first days, during which a jury was selected. By use of a legal stratagem, which allowed only the defense to challenge potential jurors, Adams managed to decide the outcome of the trial "before a single witness had been sworn."¹⁰

The jury, which can fairly be called "packed" with loyalists, included among other, Philip Dumaresq, "an intimate acquaintance" of Preston's; William Hill, the baker who supplied the 14th Regiment with its daily bread; Joseph Barrick, an avowed loyalist; and Gilbert Deblois, who had been actively assisting Samson Blowers in his background investigations of prospective jurors.¹¹ Since Massachusetts practice required unanimous consent to obtain a conviction, the outcome of the trial was hardly in doubt, for such men as these would not be likely to bow to radical pressure, "nor would even the strongest evidence operate to drive them to convict Preston."¹² General Gage, who of course was not aware of these tactics, expressed his amazement at the jury selection. As he reported to Barrington, "I am at a Loss to Know how so good a Jury came to be impanelled, for on the Jurors names being transmitted here at the beginning of the Tryal; Some Gentlemen of this place who know most of them, declared they were the most honest and best People in the City of Boston."¹³

Considering the status of the jury, and the delicate political balancings of both the prosecution and the defense teams, it is no small wonder that political questions by mutual agreement were banned from the trial. The question of Preston's guilt or innocence revolved merely around the question of whether or not he had given the order to fire. If it was proved that he had, then the defense would raise the question of just provocation, but they were never forced to resort to this secondary technique. For most of the week, the weary jurors listened to conflicting testimonies as to whether or not Preston had given the order to fire. Even had the jury not been so packed, the very lack of consistency among the witnesses would have been enough to acquit the Captain.

Even the judges seemed to have no doubt as to the verdict. Peter Oliver, midway through the trial, sent a note out to Lieutenant-Governor Hutchinson, informing him of the progress. "I have reviewed" the evidence, he wrote, "& it turns out to the Dishonour of the Inhabitants, & appears quite plain to me that he must be acquitted; that the Person who gave Orders to fire was not the Capt."¹⁴ Thus a supposedly impartial judge had decided several days before the end of the trial that Preston was definitely not guilty.

The only flurry of excitement occurred towards the last days of the trial, during the defense's examination of witnesses. Josiah Quincy, in his young zeal, began to bring forth evidence "to show that the expulsion of the troops from the town of Boston was a plan concerted among the inhabitants." Adams quickly put a stop to such questioning, and "declared that he would leave the case, if such witnesses must be produced as served only to set the town in a bad light."¹⁵ Quincy naturally checked his ardor, and the trials proceeded as before. Adams could have had two motives for this behavior. First, he could have thought that enough evidence had already been produced to convince the jury of Preston's evident innocence, and saw no need to bring up previous tumults in an effort to establish justification for the soldiers firing at all. Second, Adams could have been following a dual purpose throughout the trial by protecting the radicals as well as Preston.

The trial closed on October 29th, and the jury went out to deliberate. After eight hours, the jury reported back with a verdict of Not Guilty.¹⁶ The judges accepted the verdict, and Captain Preston became a free man. The decision was rendered and received quietly; most observers seemed to

agree with it, and Boston did not riot.

The acquittal of Captain Preston seemed to mark a new spirit of public conservatism in Boston. The prevailing mood had changed a great deal since March, and was evident to many. Hutchinson wrote to Gage that the "favorable appearance" of the trial "is owing to the delay, for had the trial come on, any time before, the prejudice would have been stronger than it is at present." Dalrymple was no less pleased with the new indications of peace in Boston, and wrote General Gage that "indeed I must do the people the justice to say that the trial has been conducted...with the greatest decency & decorum." Preston himself, undoubtedly relieved at his acquittal, told Gage that "The Counsel for the Crown or rather the town were but poor and managed badly, my Counsel on the contrary were men of parts, & exerted themselves with great spirit & cleverness, particularly Judge Auchmuty: The Judges also were determined & showed much firmness, but none more than Judge Oliver, he informed the Court that he had been abused in some prints, & his life threatened, but that nothing should daunt him, or prevent his doing his duty."¹⁷

General Gage, in turn, relayed these reports on to Hillsborough and Barrington. Gage agreed with Hutchinson that "The Postponing the trial so long, has had the effect expected, of giving time to Rage and Fury to Subside." The General, however, had his own notion as to what caused the radical fever in Boston to subside. "I declare to your Lordship," he wrote to Barrington, "my private Opinion, that America is a Bully, from one End to the Other, and the Bostonians by far the greatest Bullies, and I think you will find them so upon Trial." Gage also recommended the case of Captain Preston to Hillsborough, and asked that some sort of recompense

be given the unfortunate man for his late hardships. "Captain Preston has been prosecuted with great Malice, and has suffered much during a long confinement in a loathsome Dungeon, as well as in his Finances, which are greatly exhausted by the Cost of his Tryal." Gage apparently had forgotten that the King was paying Preston's expences. "And as he had not rashly or wantonly brought these misfortunes upon himself, but fallen into them unavoidably, in the actual Execution of his Duty, your Lordship will pardon me in the Liberty I take, to recommend his Case to His Majesty's Royal Consideration."¹⁸

Gage's recommendation was acted upon, which resulted in a grant of 200 pounds per annum being awarded to Preston in 1772.¹⁹ Preston, meanwhile, retreated to Castle William to avoid further civil prosecutions by the families of the slain. Despite Gage's admonition to get out of the colony, Preston loyally stayed in Massachusetts until the trial of the soldiers was completed, and gave them what assistance he could.

Perhaps the best indication of the changing mood in Massachusetts is that the General Assembly, in the second week of November, finally resolved to come to business. The ameliorating public spirit, prodded by Hutchinson's continued threats that further resistance could result in "great alterations made in our valuable charter," caused the General Assembly to settle down to undertake the legislation of colonial affairs for the first time since March the 5th.²⁰

The trial of the soldiers began on November 27th, and lasted until December 5th. The same basic tactics were used by the prosecution and defense in the soldiers' trial, as had been used in Preston's. The defense used their legal and tactical advantages to insure once again

that "the jury as ultimately chosen contained not a single Bostonian."²¹ Having adequately packed the jury with non-radicals, the court settled down to try the prisoners. The question in the soldiers' case, since it had already been proven that Preston did not give the order to fire, was twofold. First, it had to be determined which of the soldiers had fired and killed the five victims. Second, it had to be determined whether such shooting was unjustified, which would result in murder; or justified, which would result in self-defense, justifiable homicide, or manslaughter. If the firing was found to be unjustified, the problem of premeditation would enter the case. Each soldier was prosecuted individually in a sense, to determine if he had fired, and, if so, under what provocation.

In order to determine the matter of provocation, the actions of the soldiers and townsmen were brought into the case. The prosecution, in order to show that the soldiers had been menacing the citizens before the Massacre, asked the court's permission to enter such evidence. The counsel for the defense raised no objections, "provided they might have the like liberty with respect to the inhabitants."²² With this in mind, the crown lawyers presented various witnesses showing that the troops had been the source of provocation. When the turn came, however, for the defense to show like provocation on part of the inhabitants of Boston, John Adams again cut short the examinations of the witnesses. This time Adams' peculiar behavior caused even greater consternation than before, for the fate of the soldiers who had fired rested solely upon the question of provocation. Hutchinson had no doubt as to the motive of Adams. "The employing counsel," he wrote, "who were warmly engaged in popular measures caused some of the evidence to be kept which would otherwise have been produced

for the prisoners." Adams again threatened that if "such witnesses must be produced as served only to set the town in a bad light" he would resign the case. "A stop therefore," wrote Hutchinson, "was put to any further examinations of such witnesses, by which means many facts were not brought to light which the friends to government thought would have been of service in the case."²³

This second example of blocking of the evidence is even harder to explain than the first. In the case of the soldiers, since it had already been established that Preston had not given the order to fire, the defense was resting its case on justification of the fire. Those soldiers who were positively identified as having fired could be convicted of either murder or manslaughter, depending upon the presence of premeditation, if such justification could not be found. However, they would be found merely guilty of justifiable homicide or self-defense if justification was established. Yet here we have Adams, the primary counsel for the soldiers, blocking the offering of the very evidence which was to show that the soldiers had been unduly provoked. Such behavior on the part of a lawyer would seem inexcusable, at the least. The only explanation that can be found here is that Adams was also protecting the radicals of Boston, and as a result of this double allegiance, "came shockingly close to sacrificing his clients for the good of his constituency."²⁴

Hutchinson and Dalrymple lost no time in reporting the actions of Adams to General Gage. Hutchinson wrote "that one of the Council is not so faithful as he ought to be...he being a Representative of the Town and a great Partisan wished to blacken the people as little as may be consistent with his Duty to his Clients." Dalrymple was even less tactful in

his report, and wrote Gage that "The Lawyers have held back much on occasion, and tho they are goaded on daily they do their parts but ill."²⁵ Hutchinson was so upset by Adams' behavior that he considered replacing Adams with another counselor in mid-trial, and urged Robert Auchmuty to take over the case from his fellow lawyer. Auchmuty persuaded Hutchinson, however, that it was much too late in the day to change lawyers since he had not been keeping up with the daily arguments in court. Undoubtedly realizing how well the jury was packed, Auchmuty expressed much less worry than did Hutchinson as to the jury's final verdict.

The trial, meanwhile, was proceeding along the narrow lines dictated by the defense counsel, and the jury departed for deliberation on December 5th. After only two hours, the jury returned verdicts of "Not Guilty" for six of the soldiers, and found Kilroy and Montgomery "Guilty of Manslaughter." Lieutenant-Governor Hutchinson summarized the jury's argument in a letter to Governor Bernard the next day. "If there had been evidence of all having fired, they would have convicted all of manslaughter; but it was agreed on all hands, that no more than seven guns were fired, consequently one was innocent. Two, as several swore, fired and killed three men. Of the other six, there was no certainty which fired. If they had all been convicted, the jury would certainly have found one guilty who was innocent, and they chose five guilty should escape rather than one innocent be convicted. These are pretty good distinctions for an American jury."²⁶ Had Adams allowed sufficient evidence to be produced to show the provocation of the townsmen, those two guilty of manslaughter would possibly have been found guilty of justifiable homicide only.

Kilroy and Montgomery, however, had two cards left to play. The trump,

which they were never forced to use, was the respite which Hutchinson held in his hand. The soldiers, however, pleaded the ancient right of benefit of clergy. This plea, an outgrowth of the ancient conflict between royal and ecclesiastical jurisdiction in medieval England, provided that no clergyman could be punished by a secular court, but could upon proving his ecclesiastical status, be turned over to a church court for consideration. As the ancient proof of clergy was the ability to read, by the eighteenth century anyone who could read could plead this right. The soldiers' pleas were accepted by the judges, and they were branded on the hand and set free. The burning of the hand was included to insure that the soldiers would be unable to plead the benefit again in any future trials. Hutchinson briefly considered respiting the burning as well but concluded that such a measure would unduly provoke Boston out of its temper of unusual calm. The Lieutenant-Governor was stepping warily, for although the soldiers had been acquitted by a Massachusetts jury, John Adams had closed his case in an extraordinary manner, in which it was difficult to tell whether he was arguing for or against the soldiers. Adams showed that "his bias to the general conduct of the Town appeared very strong," wrote Hutchinson, and he had dropped "some great indecencies ...respecting the conduct of Administration in sending troops here &c."²⁷

With no great issue to press upon the people, the province settled down somewhat to a more orderly and peaceful life. Samuel Adams, sensing the new mood, tried desperately to flag the dying embers of resistance through his "Vindex" letters, but without avail. General Gage, writing to Hillsborough on December 7th, commented upon the new state of the province. "The People of Boston have been cavilling and quibbling which

shows they still retain a sour Disposition; but I have not heard of any Noise or Tumults amongst them." As usual, Gage accredited the peace of the town to military pressure. "The King's Troops taking Possession of the Castle, has Mortified them a good deal."²⁸

Hutchinson, also writing to Hillsborough, summed up the events of the year. He concluded that the late "disorders in the colonies do not seem to have been caused by the defects in the form or constitutions of government," but rather by "a loose, false, and absurd notion of the nature of government, spread by designing, artful men." Late actions of the British administration, such as the garrisoning of Castle William with regular troops and the presence of the British fleet in Boston waters, seemed to Hutchinson to have brought the people to their senses. "Every act of Parliament carried into execution in the colonies tends to strengthen the Government there." If parliament would only continue to exert its authority, the Lieutenant-Governor felt sure that the present calm could be continued. "If acts were passed more or less to control them every session, they would soon be familiarized to them; their erroneous opinions would die away, and peace and order would revive."²⁹ Although Hutchinson was probably right, such a consistent course of action would not be parliament's blessing in the following years, and fresh turmoils would soon break out again in the province of Massachusetts Bay.

Both the loyalists and the radicals, however, had learned some valuable lessons during 1770. The loyalists, especially, had increased their efforts towards more reasonable cooperation between the various arms of colonial administration. General Gage had received a confirmation of his supreme command in the colonies, and the soldiers had become aware that

their uniforms did not necessarily protect them from the citizens of Massachusetts. Thomas Hutchinson and Andrew Oliver had demonstrated their loyalty to Great Britain and their ability to stay afloat during a major political storm. George III had already rewarded them for their efforts. On October 16th he had "been pleased to appoint Thos Hutchinson, Esq., to be Captn General and Governor-in-Chief of His Majesty's Province of the Massachusetts Bay in New England." Andrew Oliver was appointed as Lieutenant-Governor on the same day, and the two received their commissions and instructions in January 1771.³⁰ In addition to being a reward for their services, the promotions eased the administrative functions of Massachusetts, as Hutchinson no longer had to look to Bernard in England for confirmation of his decisions.

The radicals of Massachusetts had been both strengthened and weakened during the year. Anti-British sentiment in the colony had been higher in March, 1770, than at any time since the Stamp Act crisis. These sentiments, however, had changed considerably by December. At least one lady attributed this fluctuation to the trial proceedings, which "exposed the Conduct of the [radical] Faction, and opened the Eyes of the People in general, convinced them that they have been deceived by false opinions, & false representations of Facts."³¹ While this may be a minority opinion, Boston's support for the anti-British cause had definitely lessened by December.

Although the radicals had been successful in their major goal--the withdrawal of the British troops from Boston--they had also learned that many Massachusetts citizens still had reservations about supporting extreme measures in the struggle against Great Britain. Thus the radicals reverted

to the power of legal and constitutional arguments for several more years. The single greatest victory for the radicals in 1770, however, was the acquisition of John Adams. Adams' loyalties and moral scruples had been grievously strained throughout the year, but his summation at the end of the soldiers' trial left no doubt as to his future course. He was now identified by both radicals and loyalists as being a leader of the revolutionary cause in Massachusetts. In 1770 John Adams took the first great step on the path which was to lead him eventually to the Presidency of the new United States of America.

FOOTNOTES

INTRODUCTION

1. Robert Treat Paine, The Works in Verse and Prose of the Late Robert Treat Paine, Jun., (Boston: J. Belcher, 1812), p. 247.

2. Max Savelle, The Origins of American Diplomacy: 1492-1763, (New York: Macmillan, 1967), p. 469.

3. John C. Miller, Origins of the American Revolution, (Boston: Little & Brown, 1943), p. 87.

CHAPTER I

1. William V. Wells, The Life and Public Services of Samuel Adams, (3 vols.; Boston: Little & Brown, 1865), II, 21.

2. Hiller B. Zobel, The Boston Massacre, (New York: W. W. Norton, 1970), p. 182.

3. The best and most detailed account of the events of March 5th are to be found in Zobel, The Boston Massacre.

4. City of Boston, Record Commissioners, Reports, (Boston: 1876-1906); XVIII, Boston Town Records: 1770-1772, p. 2.

5. Such tactics as submitting the names of one radical after another in hopes of breaking down the governor's resistance, or of tying the nomination of a radical to the appropriation of the governor's salary were commonly used.

6. Thomas Hutchinson, History of the Colony and Province of Massachusetts Bay, ed. Lawrence S. Mayo, (3 vols.; Cambridge: Harvard U. Press, 1936), III, 198.

7. City of Boston, Reports, XVIII, 4.

8. Ibid., p. 10.

9. Ibid., pp. 13, 15, 26. For a reprint of the "Short Narrative..." in full, see Frederic Kidder, History of the Boston Massacre, (Albany: J. Munsell, 1870), pp. 25-44; or Merrill Jensen, ed., Tracts of the American Revolution: 1763-1776, (New York: Bobbs-Merrill, 1967), pp. 209-32.

10. City of Boston, Reports, XVIII, 14.

11. John R. Alden, General Gage in America, (Baton Rouge: LSU Press, 1948), p. 177.

12. James K. Hosmer, Life of Thomas Hutchinson, Royal Governor of the Province of Massachusetts Bay, (Boston: Houghton, 1896), pp. 159-61. Alden Bradford, ed., Speeches of the Governors of Massachusetts: 1765-1775, (Boston: Russel & Gardner, 1818), p. 263.

13. Thomas Hutchinson, History of Massachusetts, III, 200.

14. Kidder, Boston Massacre, pp. 110-11, 21-23. Boston Newsletter, April 6, 1770. City of Boston, Reports, XVIII, 17.

15. City of Boston, Reports, XVIII, 20.

16. Thomas Hutchinson, History of Massachusetts, III, 202.
17. Bradford, Speeches of the Governors, is filled with the correspondence arising from this struggle. Boston Chronicle, April 12-16, 1770.
18. Boston Chronicle, March 26-29, 1770.
19. Zobel, The Boston Massacre, pp. 217-18.
20. City of Boston, Reports, XVIII, 15. Harry A. Cushing, ed., The Writings of Samuel Adams, (4 vols.; New York: G. P. Putnam's Sons, 1904-1908), II, 8.

CHAPTER II

1. Clarence E. Carter, ed., The Correspondence of General Thomas Gage: 1763-1775, (2 vols.; New Haven: Yale U. Press, 1931-1933), I, 251, 255. Boston Chronicle, May 7-10, 1770.
2. Bradford, Speeches of the Governors, pp. 203-05. Alden Bradford, History of Massachusetts: 1764-1775, (Boston: Richardson & Lord, 1822), p. 399. Caps and italics in original.
3. City of Boston, Reports, XVIII, 26.
4. Richard Frothingham, Life & Times of Joseph Warren, (Boston: Little & Brown, 1865), pp. 156-57. It is undetermined as to whom Hutchinson was speaking.
5. John C. Miller, Sam Adams: Pioneer in Propaganda, (Boston: Little & Brown, 1936), gives a strong argument for Sam Adams' control of the political caucus in Boston.
6. City of Boston, Reports, XVIII, 33.
7. Boston Chronicle, June 7-11, 1770.
8. Carter, Correspondence of General Gage, I, 259, 263.
9. Ibid., II, 544.
10. Parliamentary History of England, (London: T. C. Hansard, 1813), XVI (1765-1771), 982-1006.
11. Carter, Correspondence of General Gage, II, 545. Catherine Mayo, ed., "Additions to Thomas Hutchinson's History of Massachusetts Bay," American Antiquarian Society Proceedings, LIX (1949), 31.
12. Randolph G. Adams, ed., "New Light on the Boston Massacre," American Antiquarian Society Proceedings, XLVII (Oct, 1937), 312. Carter, Correspondence of General Gage, I, 251, 263-64.
13. Randolph G. Adams, "New Light," p. 321.
14. Ibid., pp. 325-26.
15. Ibid., p. 327.
16. Carter, Correspondence of General Gage, II, 103.
17. Ibid., pp. 103-04.

18. Randolph G. Adams, "New Light," p. 329. Carter, Correspondence of General Gage, II, 107.

19. Carter, Correspondence of General Gage, I, 271.

20. Massachusetts Spy, Sept 8-11, 1770. For discussions in the Privy Council, which led to this decision, see Great Britain Privy Council, Acts of the Privy Council of England, Colonial Series, (6 vols.; London: HMSO, 1908-1912); reprint (Washington: Microcard Editions, 1963), V, card 4, 265.

21. Bradford, Speeches of the Governors, p. 256.

22. Peter Orlando Hutchinson, ed., Diary & Letters of His Excellency Thomas Hutchinson, (2 vols.; London: Low, Marston, Searle & Rivington, 1883-1886), I, 29-30.

23. Hosmer, Life of Thomas Hutchinson, pp. 167-68. Parliament would follow Hutchinson's advice, although not until 1774, following the Boston Tea Party.

24. Carter, Correspondence of General Gage, II, 561.

25. Bradford, Speeches of the Governors, p. 260.

26. Ibid., pp. 266, 272-73. Italics in original.

27. Randolph G. Adams, "New Light," p. 331.

28. Carter, Correspondence of General Gage, II, 118. The existence of letter #35, which carried the original instructions to fund Preston is determined from the following letters which referred to #35, especially the letter of 3 October, 1770, which essentially reiterated the order to supply Preston with the necessary money.

29. Lyman H. Butterfield, ed., The Adams Papers: Adams Family Correspondence, (2 vols.; Cambridge: Harvard U. Press, 1963), I, 75.

30. Carter, Correspondence of General Gage, I, 255.

31. Zobel, The Boston Massacre, pp. 226, 231. Peter Oliver, Origin & Progress of the American Rebellion, ed., Douglas Adair, (San Marino, Cal.: Huntington Library, 1961), p. 88.

32. Randolph G. Adams, "New Light," p. 323. Carter, Correspondence of General Gage, II, 544.

33. Zobel, The Boston Massacre, pp. 238-39.

34. Randolph G. Adams, "New Light," p. 330.

35. Carter, Correspondence of General Gage, II, 562.
36. Ibid., I, 274.

CHAPTER III

1. Louis B. Wright, The First Gentlemen of Virginia: Intellectual Qualities of the Early Colonial Ruling Class, (San Marino, Cal.: Huntington Library, 1940), pp. 38-62. For the opposite point of view, see Robert E. Brown, Middle-Class Democracy and the Revolution in Massachusetts: 1691-1780, (Ithaca: Cornell U. Press, 1955).

2. For these and other marriage alignments, see James H. Stark, The Loyalists of Massachusetts, (Boston: James H. Stark, 1910); City of Boston, Record Commissioners, Reports, XXI, Dorchester Births, Marriages and Deaths to 1825, XXVIII, Boston Marriages: 1700-1751, XXX, Boston Marriages: 1752-1809; Benjamin Lynde, The Diaries of Benjamin Lynde & of Benjamin Lynde, Jr., (Cambridge: Riverside Press, 1880); George N. MacKenzie, Colonial Families of the United States of America: 1607-1775, (6 vols.; Baltimore: Genealogical Pub. Co., 1966), IV; Alfred E. Jones, The Loyalists of Massachusetts: Their Memorials, Petitions, and Claims, (London: St. Catherine Press, 1930).

3. I am indebted in part for brief character sketches of the judges and lawyers, to L. Kinvin Wroth and Hillier B. Zobel, eds., The Adams Papers: Legal Papers of John Adams, (3 vols.; Cambridge: Harvard U. Press, 1965), I, xcv-cxiv.

4. There is a vague possibility that Samuel Quincy was paid by both the town and the crown for his participation. See Wroth and Zobel, Legal Papers, III, 8-9.

5. Zobel, The Boston Massacre, p. 219.

CHAPTER IV

1. L. Kinvin Wroth and Hiller B. Zobel, "The Boston Massacre Trials," American Bar Association Journal, LV (1969), 329-33.
2. Lyman H. Butterfield, ed., The Adams Papers: Diary & Autobiography of John Adams, (4 vols.; New York: Antheneum, 1964), II, 74.
3. Ibid., p. 79.
4. Ibid., III, 295.
5. For these and other observations, see Charles Francis Adams, ed., The Life and Works of John Adams, (10 vols.; Boston: Little & Brown, 1850-1856), I, 104-15.
6. Gilbert Chinard, Honest John Adams, (Boston: Little & Brown, 1933), p. 59.
7. Ibid., p. 61.
8. Ibid., p. 62.
9. Page Smith, John Adams, (2 vols.; New York: Doubleday, 1962), I, 121.
10. Ibid., pp. 120-21.
11. Chinard, Honest John Adams, p. 62.
12. Smith, John Adams, p. 121.
13. Ibid.
14. Wells, The Life of Samuel Adams, I, 328-29.
15. George Bancroft, History of the United States from the Discovery of the American Continent, (10 vols.; Boston: Little & Brown, 1864), VI, 350.
16. Miller, Sam Adams, pp. 185ff.
17. John Cary, Joseph Warren: Physician, Politician, Patriot, (Urbana: U. of Illinois Press, 1961), p. 96.
18. Wroth and Zobel, Legal Papers. Hiller B. Zobel, "Law Under Pressure: Boston 1769-1771," Law and Authority in Colonial America, ed., George A. Billias, (Barre, Mass.: Barre Pub., 1965). Hiller B. Zobel, "Newer Light on the Boston Massacre," American Antiquarian Society Proceedings, LXXVIII (1968), 119-28. Wroth and Zobel, "The Boston Massacre Trials." Zobel, The Boston Massacre.

19. Zobel, "Law Under Pressure," p. 202.
20. Zobel, The Boston Massacre, p. 221.
21. Ibid.
22. Cushing, Writings of Samuel Adams, II, 59-60. Written to Stephen Sayre in London. For "index" letters, see Boston Gazette, December 10, 1770 to January 8, 1771.
23. Josiah Quincy, Memoirs of the Life of Josiah Quincy, Jr., (Boston: Cummings, 1825), pp. 26-27.
24. Ibid., pp. 27-28. Italics in original. Charles Francis Adams, in The Life and Works of John Adams, thinks that the "Adams" mentioned was John, instead of Samuel. The evidence overwhelmingly refutes this assertion.
25. Zobel, "Law Under Pressure," p. 199. Quoted from the papers of Governor Bernard.
26. I am partially indebted for this information to Zobel, The Boston Massacre, pp. 292-93.
27. Butterfield, Adams Family Correspondence, I, 122; Diary & Autobiography of John Adams, III, 292-92.
28. Zobel, The Boston Massacre, p. 221.
29. Charles Francis Adams, The Life and Works of John Adams, I, 104.
30. Ibid., 110-11.
31. See, for example, Butterfield, Diary & Autobiography of John Adams, I, 306; II, 39, III, 430; or Charles Francis Adams, The Life and Works of John Adams, IV, 62-63, 67-71, 87; X, 285-86, 298.
32. Randolph G. Adams, "New Light," p. 354.
33. Smith, John Adams, I, 121.
34. Stark, The Loyalists of Massachusetts, p. 302.
35. Wroth and Zobel, Legal Papers, III, 24.

CHAPTER V

1. Randolph G. Adams, "New Light," pp. 319-20.
2. Ibid., p. 323.
3. Ibid., p. 327.
4. Peter Oliver, Origins and Progress of the American Rebellion, p. 92. Italics in original.
5. Cary, Joseph Warren, p. 97.
6. Carter, Correspondence of General Gage, II, 118-19 (ft), 550.
7. Wroth and Zobel, "Boston Massacre Trials," p. 330.
8. Zobel, "Law Under Pressure," p. 203.
9. Josiah Quincy, Jr., Reports of Cases Argued and Adjudged in the Superior Court of Judicature of the Province of Massachusetts Bay: 1761-1772, (Boston: 1865), p. 383.
10. Zobel, The Boston Massacre, p. 246.
11. Wroth and Zobel, "Boston Massacre Trials," pp. 330-31.
12. Zobel, The Boston Massacre, p. 246.
13. Carter, Correspondence of General Gage, II, 125, 563.
14. Josiah Quincy, Jr., Reports of Cases, p. 384.
15. Zobel, The Boston Massacre, p. 259.
16. Massachusetts Spy, Oct 27-30, 1770.
17. Randolph G. Adams, "New Light," pp. 337-39.
18. Carter, Correspondence of General Gage, I, 282-83; II, 125, 563-64.
19. Calender of Home Office Papers of the Reign of George III, (London: Macmillan, 1878-1899), vol. for 1770-1772, 638.
20. Bradford, Speeches of the Governors, p. 287.
21. Wroth and Zobel, "Boston Massacre Trials," p. 331.

22. Mayo, "Additions to Thomas Hutchinson's History," p. 32.
23. Ibid., pp. 32-33. Hutchinson was receiving his information from Robert Auchmuty. William Gordon, History of the Rise, Progress, and Establishment of the Independence of the United States of America, (4 vols.; London: for the author, 1788), I, 291. That Gordon, who personally knew John Adams, should support this accusation is a telling point.
24. Zobel, "Newer Light," p. 124.
25. Randolph G. Adams, "New Light," pp. 348-49.
26. Bancroft, History of the United States, VI, 374.
27. Zobel, "Newer Light," p. 127.
28. Carter, Correspondence of General Gage, I, 287.
29. Calender of Home Office Papers, vol. for 1770-1772, 191-93.
30. Peter O. Hutchinson, Diary & Letters of Thomas Hutchinson, I, 81. Quoted from the London Gazette, Oct 26, 1770.
31. Humphrey Milford, ed., Letters of a Loyalist Lady, (London: Oxford U. Press, 1928), p. 29. Written by Ann Hulton, sister of a Customs Commissioner.

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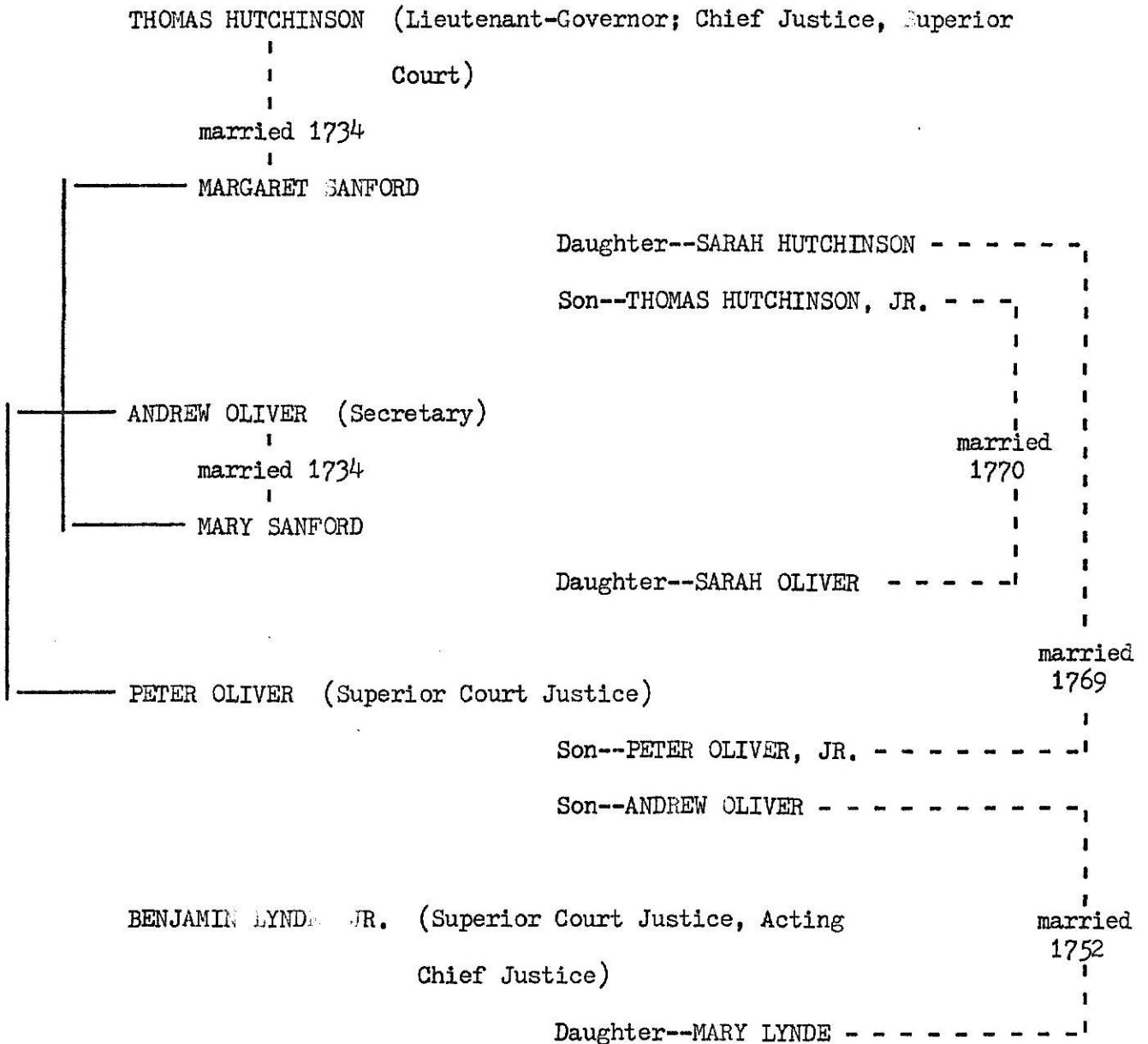
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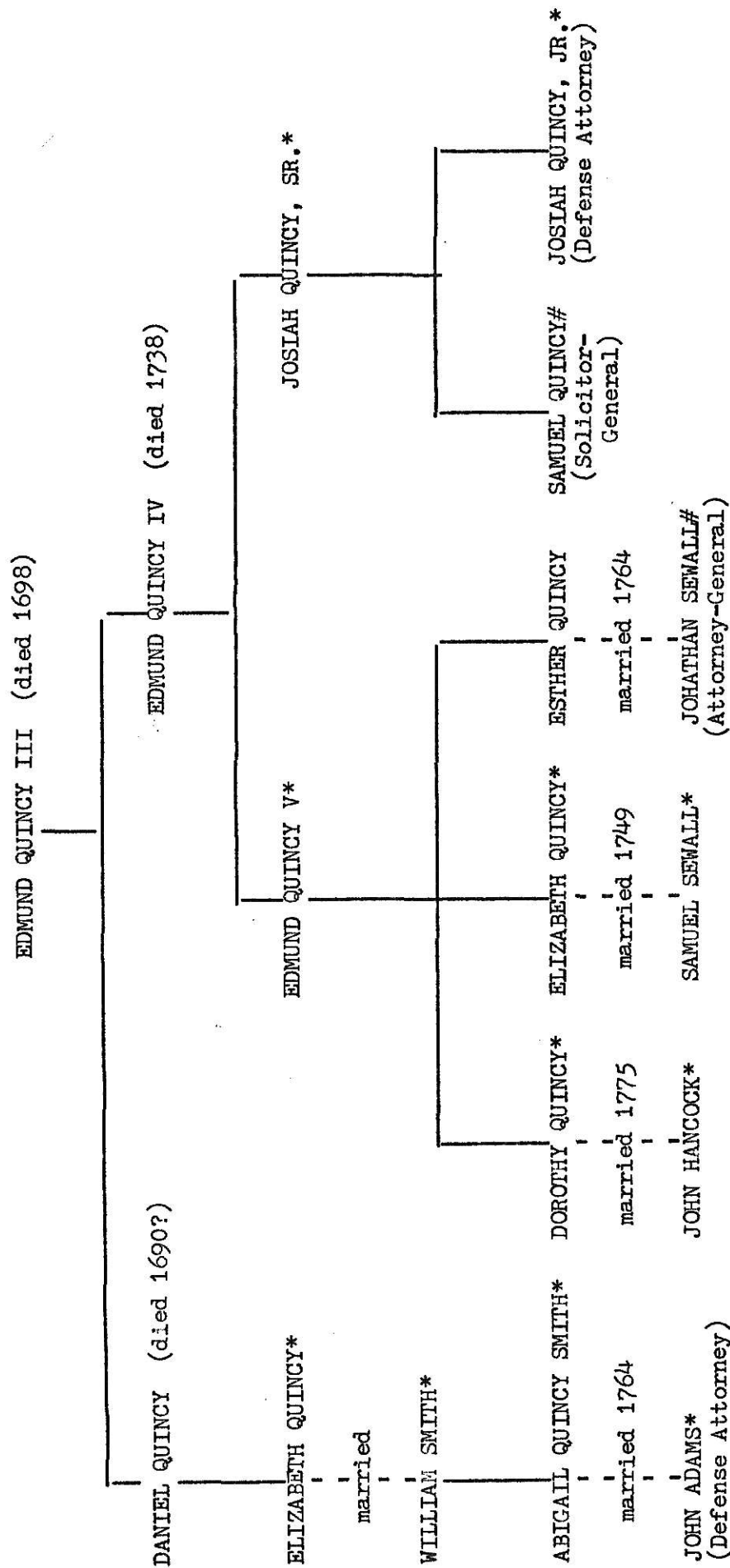
APPENDIX A



— Sibling Ties

- - - Marriage Ties

(Chart does not include all family members)



— Parental Ties

- - - Marriage Ties

Contemporary Political Alignments 1770

* Radical

Loyalist

(Chart does not include all family members)

JOHN ADAMS AND THE BOSTON MASSACRE TRIALS

by

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AN ABSTRACT OF A MASTER'S THESIS

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ABSTRACT

The Boston Massacre Trials of 1770 provide the student of pre-revolutionary Massachusetts with a unique insight into the status of royal and colonial government as practiced in that colony. Although the events preceding and succeeding the Boston Massacre cannot be detached from the general stream of American history, the trials themselves can be utilized to isolate the participants therein and to examine the personal motivations and political aspirations of some key figures of Massachusetts history. Such personalities as Lieutenant-Governor Thomas Hutchinson, General Thomas Gage, Samuel Adams, and Josiah Quincy, Jr., can be studied in an attempt to accentuate their thoughts and opinions of 1770 in the swiftly changing political climate between 1763 and 1775.

John Adams is examined in such a way in this work, as he became the most central figure in the drama. Due to his primary role in the trials, and his later political successes, Adams' contributions to the evolving legal profession in the American colonies have been much discussed by historians. A close examination, however, of the Massacre, the events of the summer of 1770, and of the trials leads to some startling conclusions. The trials were more political than judicial in nature, the ultimate verdicts were reached outside the courtroom walls, and John Adams was equally interested in legally protecting his clients and in politically protecting the character and good name of the town of Boston from defamation in the colonies and abroad. Indeed, at times it almost

seems as if Adams put the latter goal foremost, and did not perform his legal duties in the best interests of his clients.

In order to substantiate the above claims, this thesis delves deeply into the background and political climate of Boston in 1770 and follows closely the actions of the leading governmental personalities between March and November of that year. The various roles, privileges and prerogatives of the factions of royal government in Massachusetts are examined, as Hutchinson, Gage and the Customs Commissioners attempted to use the Massacre and its aftermath as a tool to delineate their respective powers and positions. A small faction of colonists, identified with a desire to expand the independent powers of Massachusetts and to define the Parliamentary control of that colony, also enter the picture. The colonists, led by Samuel Adams and numbering among others John Adams, are called radicals by the author. They also used the Massacre in an attempt to fulfill their respective goals. These radicals worked primarily through the Boston town meeting and the Massachusetts General Assembly, both of which bodies they were able to dominate from time to time.

In short, the soldiers accused of murder before the Superior Court of Massachusetts were not tried as simple civil offenders against the province, but were used as political pawns to justify and define the positions of the royal governmental agents, and the colonial radicals of Massachusetts. This picture of the Boston Massacre is presented in an effort to reach a more realistic understanding of parties and politics in pre-revolutionary Massachusetts.