



NORTH CAROLINA
BAR FOUNDATION

CASE MATERIALS

Justice Iredell Middle School Mock Trial Tournament¹

Sponsored by:
The North Carolina Bar Association Foundation Law-Related Advisory Committee

THE CROWN)
)
)
V.) **96 ISBA 424**
)
)
THOMAS/TAMARA PRESTON)

A criminal action brought by the Crown against Captain Thomas/Tamara Preston for the deaths of five citizens of the Boston, Massachusetts Colony.

A mock trial problem based on the facts of the Boston Massacre.

STATEMENT OF FACTS

March 5, 1770, was a clear cold night in Boston. The moon was in its first quarter and glistened on about a foot of hard caked snow.

¹ Adapted from the Illinois State Bar Association, 1996 High School Mock Trial Competition

The political situation in Boston was anything but cool. Boston, the capital of the Massachusetts Colony, was an armed camp. Soldiers had been sent by the King of England, George III, to keep the peace; warships were anchored in the harbor. The town had seen a series of protests against taxes and other policies which the colonists deemed unfair. The stage was set for the "Boston Massacre."

For at least five years prior to the Boston Massacre, there had been incidents and demonstrations against the authority of the British king and his Parliament. The most recent prior confrontation had occurred in February 1770, resulting in the death of a youth named Christopher Seidor. A group of Boston citizens had gathered in front of the home of Ebenezer Richardson, a prominent Boston merchant. Richardson was accused of violating the Colonist strategy of not importing and selling British goods. The group, some would say mob, threatened to burn Richardson's house to retaliate for what they felt were actions against liberty. Stones were being thrown breaking the glass in his windows. Richardson appeared at the door with a musket and threatened to kill anyone who continued to threaten him or his home. Threats continued; Richardson shot and mortally wounded a youth who was in the crowd named Christopher Seidor. Richardson was charged with murder. Seidor became a martyr in the cause of liberty and his death resulted in a massive demonstration and funeral, on February 27, 1770, which helped set the stage for the events to follow. Boston was like a tinder box waiting to burst into flames.

On Friday, March 2, a group of soldiers attempting to find temporary work at a rope factory became involved in a fight with several Boston townspeople. This was a major brawl and several soldiers and townspeople were injured. Feelings ran high over the weekend. The British officers kept a close watch over their troops and many were confined to their barracks to avoid confrontations. Except for a few minor incidents, nothing irregular happened during the weekend.

Early on the evening of Monday, March 5, trouble was brewing throughout the city. Groups of soldiers and towns people were roaming through the area seeming to look for confrontation. After several scuffles, the British officers ordered their off duty troops into the barracks; however, groups of towns people continued to gather in small groups. When the church bells began to toll, the signal for fire, a frequent occurrence in colonial America, citizens grabbed fire fighting equipment, shovels, bags and leather buckets, and ran out to search for the fire. The words "fire, fire" were being shouted repeatedly by some of the groups. The people soon discovered that fire was not the reason for the bells. The bells were being used to sound a general alarm to bring people together to confront the British authorities.

Using the fire alarm as an excuse, groups of townspeople roamed the town ostensibly looking for a blaze, but the groups of citizens often stopped in front of barracks and other government buildings to demonstrate and to call names to those who may have been on duty.

Several citizens gathered in the Custom House square. The Custom House was one of the most despised government buildings in Boston. Revenue officials worked out of this building and it was in this building where the loathsome custom taxes and duties were paid and kept. A lone British sentry named Hugh White was standing his watch near a sentry box located by the Custom House. There were a few people inside the Custom House, mostly clerks and tenants who were renting rooms.

The sentry had been taunted by several youth all evening and snow balls and other debris had been thrown in his direction. At about 7:30 p.m., an apprentice barber and wigmaker, Edward/Edwina Garrick approached the sentry and made statements accusing the sentry's commanding officer, Captain John Goldfinch, of not paying a bill owed to the business in which Garrick worked. The sentry, Hugh White, responded by informing Garrick that the commanding officer was a gentleman and always paid his debts. Garrick responded vehemently by stating, "There are no gentlemen in this company."

Sentry White responded by allegedly raising his rifle and striking Garrick on the side of the head causing injury. Garrick was assisted back to his business establishment at the edge of the square, near the Custom House, where the wound was cleaned and bandaged. Garrick stayed in his/her lodgings from that point on, watching from the window, with a severe headache, as the events that followed unfolded.

The blow to Garrick's head stirred the anger of the crowd, primarily made up of young people who were demonstrating in the square. They gathered around Sentry White and started calling him names. He retreated to a slightly raised stoop in front of the Custom House. With his back to the Custom House for protection, Sentry White assumed a position with his bayoneted rifle extended in front of him to ward off potential attackers. The crowd continued to call names and taunts at him, "Lobster back," and worse. Snow balls, caked ice and sticks were thrown at him. Sentry White threatened to use his weapon as he shouted for help.

The crowd in the Custom House square was growing as the news of the Garrick incident spread through the town. Groups of citizens arrived in the square shouting "fire, fire" as they ran to join the taunting of Sentry White. Within a half hour a crowd of two to three hundred had gathered.

Captain Thomas/Tamara Preston had the dubious distinction of being the officer of the day. As such, he/she was watching the situation with Sentry White develop from the far end of the Custom House square where the troops were quartered. As the crowd became larger and more vocal, Preston feared a major incident was about to occur.

The dilemma facing Preston was a difficult one. The Captain did not want to take any action that might further enflame the crowd; however, Sentry White and, perhaps, the Custom House itself was in danger.

At about 8:00 p.m. Captain Preston ordered a squad of six soldiers commanded by Corporal William Wemms to follow him to the customs house. With bayonets drawn and weapons loaded, Preston led this small squad through the crowd. The citizens called out verbal abuses and did their best to make it difficult for them to pass. Eventually Preston and the troops made it to the Custom House where they formed a semicircle on the front stoop. Sentry White fell in with them. Their weapons were raised so that the butt of the musket was at the hip and the musket was extended at about a 45 degree angle in order to effectively use their bayonets to ward off the crowd.

For about 20 minutes they stood their ground doing nothing in response to the jeers and taunts from the crowd. Preston told several in the crowd that they did not intend to fire but that the crowd should disperse. At some point a local justice of the peace was seen. The crowd fearing that the "Riot Act" was about to be read, chased the justice of the peace away.

Meanwhile, the crowd was becoming larger and more boisterous. The troops were taunted and many in the crowd called them names for not using their weapons. Knowing that the troops were under orders not to fire and believing that they could not fire legally unless the Riot Act was read, the crowd pushed right up to the troops and dared them to fire. "You lobsters, why don't you shoot if you're so brave!" was heard clearly over and over.

Samuel Gray, who had been in the fight with the soldiers at the rope factory a few days earlier and Crispus Attucks, a muscular sailor, were two of the people who seemed to be urging the crowd to continue to press the soldiers.

At some point, a club was thrown from the crowd, striking Private Montgomery on the head. He fell forward, but as he got up, he fired his musket. For a second there was silence. Seeing that no one had fallen or showed a wound, the crowd suspected the weapons were unloaded. Then, one by one, the other soldiers started firing into the crowd. In seconds it was over. Captain Preston was seen running through the troops ordering them to stop firing and striking the weapons from the hands of several of the men. Five citizens were killed and six were wounded in the fray.

Preston pulled the men back, who were then joined by other British soldiers, to a narrow street near the barracks where he took up a defensive position.

Lt. Governor Hutchinson asked for and received a full report of the incident from Preston. The town council was meeting and issued a warrant for the arrest of Preston and the troops. Hearing of this warrant and believing that his actions and those of his men were just, Preston surrendered, as did his troops, to the civil authorities for trial.

As the result of a confrontation on the evening of March 5, 1770, there were wounded and/or killed, by a discharge of musketry by the soldiers, eleven citizens of Boston:

Crispus Attucks, deceased
James Caldwell, deceased
Samuel Gray, deceased
Samuel Maverick, deceased
Patrick Carr, deceased
Christopher Monk and John Clark, both about seventeen years of age, wounded
Edward Payne, merchant, standing at his door; wounded;
John Green, Robert Patterson, and David Parker; all wounded.

Captain Preston and seven soldiers were charged and tried for murder. John Adams, who would later become a leader in the American Revolution and this country's second president, represented the British soldiers. The Crown wanted the trial to proceed so they could demonstrate that the British authority and rule of law still prevailed in the colonies. There actually were two trials, one for Captain Preston and another for the seven soldiers. The witness statements were developed from witnesses who actually were at the trial.

What actually happened on the night of March 5, 1770 may never be fully known. Although there were many witnesses present, their testimony largely depends on whether they were pro-British or pro-American. To the pro-British witnesses, a mob of unruly citizens threatened a group of British soldiers who were attempting to maintain law and order. The soldiers fired in self defense. To pro-American witnesses, the British intentionally fired upon a group of unarmed citizens who were peacefully exercising their free-speech rights. Regardless of which view is true, the Boston Massacre and the events which followed became one of the major incidents leading to the American Revolution.

There will be three witnesses for the defense and three for the Crown. Your team must select which two witnesses will elicit the best information for the side of the case you will argue at any given trial.

The witnesses were actually at the Boston Massacre. In reality, almost all witness and observers in Custom House Square that night were men; however, for purposes of the mock trial, female students may play any of the roles.

The statements of several actual witnesses in some instances are combined for purposes of the mock trial. Historical accuracy is maintained as much as possible in a mock trial context.

Witnesses:

For the Crown:
Edward/Elvira Garrick
Lt. Governor Thomas/Tabitha Hutchinson

Robert/Roberta Goddard

For the Defense:

Captain Thomas/Tamara Preston

Dr. Jeffery/Jessie Palmes

Andrew/Andrea Smith

Statement of Edward/Elvira Garrick - Witness for the Crown

I am 17 years old and work as an apprentice wigmaker and barber in a Boston shop located at the edge of Custom House Square. I have lived in Boston for about six months. I live in a room in the back of the barber and wig shop. Before moving to Boston, I lived in a small town about a 100 miles away.

There has been trouble brewing in Boston for several years. People are upset with taxes and duties. The arrival of the British troops quartered right here in Boston has made the public mood a bad one. I managed to stay away from these troubles until the night of March 5, 1770 when I was clubbed in the head by a soldier.

At about 7:30 in the evening I was standing on the square near the Custom House with some of my friends. The barber and wig shop where I live was nearby, off to the side of the Custom House a bit. Kids were throwing snow balls and calling names at the sentry posted near the Custom House. I recognized the sentry as belonging to the unit commanded by Captain John Goldfinch, because I'd seen them before around the town.

Captain Goldfinch had been fitted for a wig a few days before and had not paid for it yet. I don't know what got into me, but I joined in the name calling. I moved closer and yelled that his commanding officer was "a deadbeat and didn't pay his debts." The Sentry, he was named White, yelled back that "His officer was a gentleman and would certainly pay what was owed. I then yelled, "there are no gentlemen in the whole army."

This really set White off. He moved over to me and said let me see your face. The moon was not full and there was not much light. The only way one could see clearly was to be very close. Many shops were closed, but some on the square were open and so there was some dim candlelight showing through the windows.

Being brave and not expecting what would follow, I showed him my face. Before I could say or do anything, the soldier hits me on the side of the head with his rifle. Needless to say, I was hurt a bit and was a bit woozy. My friends got me back to my room, which is right on the square, where I watched and listened to what happened the rest of the evening. I had a terrible headache, but I could hear and see pretty well from my safe vantage point in the front of the wig shop.

It seemed like hundreds of people yelling "fire, fire" came into the square at once. White, by this time probably fearing for his life, had moved up onto the Custom House

stoop. People were really yelling and throwing things at him. He yelled for help but the troops quartered at the other end of the square did not come.

Finally, after about ten minutes, Captain Preston and about seven soldiers came out of the barracks and moved toward the Custom House. They had bayonets on their muskets which glistened in the light from the candles in the windows and from the moon.

The crowd gave them a hard time. They had to force their way through the mob of people.

The troops formed a semicircle on the stoop of the Custom House. Their bayonets were at the ready position, held forward and down in front of the men, pointed at the crowd. Sometimes individuals got close to the soldiers and made insulting remarks to the soldiers, daring them to fire. From the back of the crowd, people threw snow balls and sticks. Some of the soldiers thrust their bayonets at the crowd. The people in the front of the crowd who had clubs banged on the soldiers muskets and pretended to enter into a bayonet duel. I could see Captain Preston well. Preston was the only soldier with a regular wig and officer's hat; the rest had those large black grenadier type hats.

Preston was standing in the back of his/her troops, close to the corner where the barber shop was, when all of a sudden one of the soldiers fell. When the soldier got up, his gun fired into the crowd. I guess it was a mistake; his musket could have gone off when he tried to get up.

But, then this person in the back of the troops, it must have been Preston, yelled, "Fire." Then gun after gun fired for at least two minutes. The troops must have reloaded. Finally, Preston ordered the troops to stop firing. By then, five people had died.

I don't know why the soldiers opened fire. While it was a demonstration against the troops, it was no worse than some of the other demonstrations that had been happening in Boston. No one from the government had read the Riot Act or ordered the crowd to disperse. The Justice of the Peace had showed up earlier in the evening, but he saw the mood of the people and I saw him hurry away. I think he just got nervous and left. I was around all evening, and I never saw him come back and never heard the Riot Act read aloud.

Statement of Lt. Governor Thomas/Tabitha Hutchinson - Witness for the Crown

I am the Lt. Governor of the Massachusetts Colony. I was the highest ranking government official on duty the night of March 5, 1770. Although I am a merchant and not a lawyer by training, I have served as a judge. I am quite familiar with the law and legal process.

I certainly never commanded the troops to fire and to my knowledge no civil authority asked for military intervention that night. I was aware that there was a major disturbance

that night, but these kinds of disturbances had, in fact, been going on for several years. It wasn't unusual for the so-called patriots to turn out mobs of ruffians to try to threaten government officials.

I wish the colonials would understand that the officials are simply attempting to legally collect the King's taxes and duties. The colonial patriots have made a habit of intimidating merchants who won't go along with their non-importation schemes. Houses have been broken into in the past and the contents destroyed.

With all this unrest, I need more than two regiments of the King's troops to keep the peace in this town.

I heard a disturbance on the evening of March 5, but it didn't sound that much different from the other disturbances this city had experienced in the recent past. After I finished my meal, I grew concerned that the demonstration was still going on, so I decided to go see what all the fuss was about. I arrived at the square just as the shooting started. The shots seemed to be fired at random, but there was a lot of shooting. I could tell this was not a regulation volley where the men all shoot at once and then reload while those behind step forward to take their places. These shots were randomly fired, not fired in unison as a regulation volley.

While I had a hard time seeing in the moonlight, the townspeople were running past me at great speed, adding to the confusion. There must have been at least 200 people there. I was able to enter the square and I saw several dead and wounded men. The soldiers seemed to be following the commands of Captain Preston, who was at the back of the regiment. Preston clearly ordered the troops to take up a position in a narrow street just off the square. The general alarm had been sounded to gather more troops. Other soldiers joined the group with Preston in a defensive street firing formation.

I assume the officers and soldiers alike thought there would be retaliation for their shooting. Quite honestly, I too was afraid that this could be the start of a major confrontation.

Moments after the soldiers retreated to the narrow street, I was approached by two Boston aldermen. I assured them there would be a full inquiry into this shooting and the major concern should be to keep the violence from spreading. Fortunately, there was no more violence that evening, and there has been an investigation, which led to an indictment and this trial. I have cooperated and even encouraged this prosecution.

Shortly after the crowd had dispersed, I sought out Captain Preston near the barracks and demanded an explanation. Preston indicated that the troops had been ordered to load their weapons with shot but that no order to fire had been given. In fact, I heard Preston repeatedly shout "Hold your fire," but there were shouts and taunts of "Fire, fire" coming from all over the square.

Preston obviously felt the troops had needed to protect themselves. He said to me, "They were being threatened." He then told me, "I can't blame the troops for shooting." In fact, Preston said, "I blame myself for not making them stop firing sooner."

Preston said that once the shooting started, there had been mass confusion. Preston told me, "I was knocked over by someone; by the time I got up from the ground the shooting had started. All I could do was yell for my men to cease firing."

I can understand Preston being knocked over and having trouble being heard. This I can believe, after having personally experienced the excitement and passion of the crowd that night. Preston did comment to me later that, "Those Sons of Liberty ruffians finally got a taste of the King's order." They certainly did. I truly regret the loss of life, but the Sons of Liberty are making too much of this incident, especially when it was they who instigated the entire situation.

Statement of Robert/Roberta Goddard - Witness for the Crown

I am Robert/Roberta Goddard, a merchant in Boston. I am a member of the Sons of Liberty, as well as the Boston City Council.

I was in Custom House Square on the night of March 5, 1770. I was standing within ten feet of the soldiers. In fact, I was so close that at times the soldiers' bayonets and Captain Preston's sword brushed my coat. I was closer to Preston than several of the British troops were.

Captain Preston was dressed in a British officer's red coat, hat and wig and was standing to the side and toward the back of the rest of the troops. The troops seemed to be following Preston's commands well enough. I heard Preston say something about warning the people the guns were loaded and the crowd should not press so close. After all, everyone knows those muskets can go off if they are jostled or jarred in any way. And, it was easy to see the muskets were cocked and ready to fire.

Captain Preston was attempting to make a statement while the crowd surrounding him was rather noisy. Captain Preston began to say, "In no way shall I order the troops . . . to fire." For the first part of Preston's sentence, only those that were near him/her could hear the words. I was close enough to hear those words clearly, but it was obvious the troops that stood at a greater distance from Preston would not have been able to hear the statement. At the very end of the statement, when Captain Preston said, ". . . to fire," the crowd had become less noisy and the words "to fire" were easily heard at what appeared to be a much greater distance than the earlier part of the sentence. Within a few seconds, the troops began to fire. I was looking straight at Captain Preston, and I distinctly heard the words come from his/her mouth. And fire they did. They even reloaded and fired again. I didn't hear Preston order them to fire after the first round of firing, and I didn't hear Preston yell to stop firing until far too late. I never thought I'd see the day when His Majesty's troops would open fire on innocent, unarmed citizens.

Since I was beside the troops and they seemed to be firing at the main part of the crowd who was trying to run away, I stayed put and watched.

After what seemed a span of minutes, I finally turned to see what Captain Preston was doing. He/She was brushing himself/herself off as if he/she'd been hit by snow or had fallen and was putting him/herself in order again. Preston finally ordered the troops to stop firing. By that time, the people had run away. I heard Preston say, "Why did you fire when I had not ordered you to do so?" Several of the troops immediately replied that they had clearly heard the command to fire.

When the shooting stopped and the confusion lessened, I went to help out the wounded. I remember helping pick up a large man; the people called him Crispus Attucks. He I still cannot believe this happened. These people were merely demonstrating. Sure there were some youngsters in the crowd who were calling the soldiers names like "lobster back," but basically it was a peaceful, law-abiding crowd.

I always knew nothing good would come from stationing troops in this town. Since the troops have left, peace and quiet have returned. But it will take a long time for us to get over what the British did here.

Statement of Captain Thomas/Tamara Preston - Witness for the Defense

I am Thomas/Tamara Preston, a Captain in His Majesty's Army. I am from Ireland and serve in the 29th Regiment, which is made up of mostly Irish troops. I was officer of the day on March 5, 1770.

At about 8:00 p.m. on March 5, 1770, it was reported to me that a group of Boston citizens were attacking and threatening a sentry posted in front of the Customs House. I decided to send a small squad to rescue the sentry and protect the building. I went with this squad so a senior officer would be in charge. I knew the crowd was angry at having soldiers in Boston, but it was much worse than expected. I had to threaten the crowd with my sword and with the troops' bayonets to gain passage through the mass of people.

When I arrived at the Custom House, there was a crowd of about two or three hundred with more arriving every minute. People kept pouring into the square shouting "fire," as if the town were burning. My troops took up a defensive position in front of the Customs House. White, the sentry who had been having trouble, fell in with us.

My little group of eight soldiers were overwhelmed by the size of the crowd. Individuals called us names, and there were snowballs, ice cakes, sticks and even stones thrown at us. I ordered the men not to fire and to remain patient. They were in a defensive

bayonet attack position. The men had their bayonets fixed and their weapons held low in front of them, pointed at the crowd. I thought this stance would offer a strong warning to the public.

The front of the crowd was so close that they actually hit my sword and the soldier's bayonets with sticks and maybe even swords they were carrying. The situation was very tense. I kept hoping that the civil authorities would arrive and give us some direction.

To make matters worse, some of the fools in the crowd kept challenging the troops to fire. I tried as much as possible to stand between the crowd and my men. The muskets were primed and ready to fire. I was risking my own safety by putting myself in the position between the guns and the crowd. Especially with all the confusion and the press of the crowd. The guns could have accidentally fired at any time.

After about twenty minutes, I was engaged in a conversation with a Dr. Palmes and a Mr./Ms. Goodard. They were dressed well and seemed to be in some type of leadership position amongst the colonials. Dr. Palmes asked, "Are your weapons loaded with shot," to which I responded that they were. They then asked if I intended to fire at the crowd. I said, "By no means do I intend to fire."

Just then, I heard a shot. I saw Montgomery at the far end of the squad standing with a smoking musket. Before I could do anything, I was struck down by a blow to the shoulder by some sort of club. All the troops were on their feet and firing, and there was a great deal of noise, pushing, and confusion. I regained my feet and began to order the troops to cease firing. I even knocked the muskets out of some of their hands.

The colonials were running away. After I finally got control of the troops, I ordered them to regroup in a narrow street off the square where I was finally reinforced. Shortly thereafter the Lt. Governor arrived and asked me why I had fired.

I said, "I had to save the sentry and my troops." The Lt. Governor responded by stating that I had murdered three or four innocent citizens to save one sentry. I told the Lt. Governor I would be glad to return to the headquarters and discuss this more. The Lt. Governor refused my offer and seemed more interested in the views of the colonials.

I still believe that the shooting was justified, whether ordered or not. Even soldiers have a right to self defense and to protect the authority of the King. I, of course, never ordered the troops to fire. As a career officer, if I was going to order the troops to fire, I would have had them first assume a firing stance: two lines of men, one line kneeling ready to shoot and the second line standing behind, ready to fire when the first line was reloading. But they had been ordered into a bayoneting position, and I certainly would not have been in front of the troops when the volley occurred. This was absolutely unauthorized random firing by inexperienced troops who panicked in the face of a rowdy, threatening crowd. I regret I was unable to stop the confrontation and shooting sooner, but I had been knocked to the ground, and it took me some time to regain my

feet because of the press of the bodies and the confusion. As soon as I heard that a warrant was issued, I turned myself and my troops in to the custody of the sheriff. I am convinced that I have done no wrong and am perfectly willing to submit to trial to offer whatever explanation I can for the actions of my troops and for my own conduct.

Statement of Andrew/Andrea Smith - Witness for the Defense

My name is Andrew/Andrea Smith. I am the house servant of the prominent Boston citizen Oliver Wendell. While I am currently a slave, I can read and write and hope to buy my freedom soon.

Mr. Wendell sent me to Custom House Square to investigate the shouts of "fire" that were being heard all over Boston. I worked my way through the crowd and stood next to the Custom House on the edge of the stoop where the troops took up their position. Captain Preston, who I had seen visit Mr. Wendell, had a hard time reaching the Custom House; the crowd tried to prevent the troops from passing. I was near Captain Preston, about fifteen feet away, right in back of the line of troops. In spite of the noise from the crowd, I could hear fairly well what was being said around me. With the fairly bright moonlight that night, I could see quite well.

The crowd was in an ugly mood that night. After I reached the stoop of the Custom House, I saw Justice of the Peace Murray come into the square, and start moving toward the Custom House. Someone in the crowd yelled that he was there to read the Riot Act. The bells of Boston were ringing the alarm. Before Mr. Murray could open his mouth, the crowd began yelling at him and shaking their fists in his direction. Mr. Murray turned and hurried from the square and did not return. At least not that I saw.

When I arrived, I truly feared Sentry White was going to be hurt. The threats and name calling from the people became more aggressive when Captain Preston arrived with the troops. While most of the people in the square were youths, I saw a number of grown men with clubs and even a sword or two.

As the troops were standing in front of the Custom House, the crowd surged repeatedly and came very close to the troops several times. Captain Preston was at the front of the troops, between them and the crowd. At times, the movement of the crowd would push the Captain to the side or into the troops. Captain Preston kept on asking the crowd to disperse, but they paid no attention. One man ran up to one of the soldiers and said, "Lobster back! Are you going to hit me?" The man dueled with the soldier, using a stick against the soldier's bayonet. After a minute, the man with the stick ran back into the crowd.

Other people would press right up to the soldiers, hitting the muskets and daring the men to fire. Meanwhile, groups of people were entering the square and people in the crowd were shouting, "Join us, they dare not fire." "We aren't afraid of them." and "Knock them over."

In the midst of all the shouting and taunting, someone with a stick struck one of the soldiers hard. It was then that I heard someone yell, "Fire!" Preston was standing out in front of the troops, speaking to Dr. Palmes and Mr./Ms. Goddard. I couldn't see Preston's face, but I know him and had talked with him prior to that evening. I am certain that it was not Preston's voice that ordered the troops to fire. The voice came from a different direction.

In the few seconds after someone yelled, "Fire," all of the soldiers fired their muskets. I didn't know what would happen, so I decided to run like most of the people were doing. Captain Preston must have been hit by something, because I do remember seeing the Captain lying on the ground. I saw him/her moving as if trying to regain his/her footing. If he/she was hurt, I don't think it was bad. I left before I saw the Captain stand again.

After a few minutes, I heard the firing stop. By that time I was some blocks away. I did not go back to the Square that night. I was too afraid.

Statement of Dr. Jeffry/Jessica Palmes - Witness for the Defense

I am Dr. Jeffry/Jessica Palmes. I have been a doctor in Boston for several years. I am active in the Sons of Liberty and I think it is terrible that the King has sent troops to occupy our city. I believe independence may be the only right course to pursue to provide the citizens justice.

I was in Custom House Square on March 5, 1770. I arrived just as the sentry, White, smashed the young apprentice Garrick in the head with his musket. I saw this incident clearly and then helped to treat the wound back at the wig shop.

By the time I returned to the square, a large but fairly orderly crowd, under the circumstances, had gathered. There were a few hot heads shouting things, and some young people were throwing snowballs. Then Captain Preston and the troops appeared.

This seemed to stir the emotions of the crowd. People started calling the soldiers names and daring them to fire, even yelling "fire" at them. The troops took up a position on the stoop of the Custom House. After a few minutes of watching the crowd taunt the troops, I pushed my way through the crowd and started to talk with Captain Preston. Preston said that the troops had loaded muskets but they did not intend to fire. At the time, Preston was standing near the end of the line.

Just then, a shot rang out, and someone yelled, "Fire." I could not see Preston's face, so I cannot say for sure that it was not his/her command, but it sounded like the command came from another person.

At this point, I thought hard about whether to save my own life or try to stop the shooting. I raised my walking stick to strike the musket out of the hand of the nearest soldier; however, I slipped on the snow and ice and struck Captain Preston instead,

knocking him to the ground beside me. I fell too. As we lay on the ice I heard several shots. Finally Preston regained his/her footing and ordered the shooting to stop. I think this should have been done sooner. The shooting must have gone on for at least two minutes.

The troops then left the square, and I got up and began treating the dying and wounded. Five people died and six were wounded. One of the persons who died of his wounds several days after the massacre was my patient, Patrick Carr. He was an immigrant from Ireland who had participated in the demonstration.

On several occasions before Carr died, he told me, "I'm surprised that the soldiers didn't fire sooner." He felt that the soldiers had been abused a great deal and may have been hurt had they not fired. He also said, "I heard many people crying out to urge the crowd to kill the soldiers. The people wanted blood."

Patrick Carr, rest his soul, felt that the soldiers had fired in self defense. It's not uncommon for my patients to make confessions to me when they know they are dying. Patrick did. He said quite clearly, "I forgive the man who shot me, and pray that God look kindly upon me." Poor man.

Since the Boston Massacre, I have continued to work to have the troops removed and to further the cause of the Sons of Liberty.

IN THE CIRCUIT COURT OF THE MASSACHUSETTS COLONY
BOSTON, MASSACHUSETTS

THE CROWN,)
)
Plaintiff)
)
v.)
)
THOMAS/TAMARA PRESTON,))
)
Defendant)

No. 70 M 505-01

INDICTMENT

COUNT I

The Grand Jurors Chosen, selected and sworn, in and for the Massachusetts Colony, upon their oaths present that on or about March 5, 1770, at or within the City of Boston, Massachusetts Colony, the Defendant, THOMAS/TAMARA PRESTON, did commit the offense of FIRST DEGREE MURDER, in that the Defendant, without legal justification, in performing acts or upon his/her order of an act which caused the death of some individual, by his/her order to his/her troops to fire their firearms, an individual was killed, and that at the time of the killing, the Defendant either intended to kill or do great bodily harm to that individual or another, or knew that such acts created a strong possibility of death or great bodily injury to that individual or another, in violation of 720 MC 5/9-1, and AGAINST THE PEACE AND DIGNITY OF THE SAME PEOPLE OF THE COLONY OF MASSACHUSETTS.

Prosecuting Attorney

A TRUE BILL

Foreman

IN THE CIRCUIT COURT OF THE MASSACHUSETTS COLONY
BOSTON, MASSACHUSETTS

THE CROWN,)
)
Plaintiff)
)
v.)
)
THOMAS/TAMARA PRESTON,))
)
Defendant)

No. 70 M 505-01

INDICTMENT

COUNT II

The Grand Jurors Chosen, selected, and sworn, in and for the Massachusetts Colony, upon their oaths present that on or about March 5, 1770, at or within the City of Boston, Massachusetts Colony, the Defendant, THOMAS/TAMARA PRESTON, did commit the offense of SECOND DEGREE MURDER, in that the Defendant, without legal justification, in performing acts or upon his/her order of an act which caused the death of an individual, killed an individual, and that at the time of the killing, the Defendant either intended to kill or do great bodily harm to that individual or another, or knew that such acts created a strong possibility of death or great bodily injury to that individual or another, and the Defendant believed that the circumstances existed which would justify or exonerate the killing, but said belief was unreasonable, in violation of 720 MC 5/9-2, and AGAINST THE PEACE AND DIGNITY OF THE SAME PEOPLE OF THE COLONY OF MASSACHUSETTS.

Prosecuting Attorney

A TRUE BILL

Foreman

IN THE CIRCUIT COURT OF THE MASSACHUSETTS COLONY
BOSTON, MASSACHUSETTS

THE CROWN,)
)
 Plaintiff)
)
 v.)
)
 THOMAS/TAMARA PRESTON,))
)
 Defendant)

No. 70 M 505-01

INDICTMENT

COUNT III

The Grand Jurors Chosen, selected, and sworn, in and for the Massachusetts Colony, upon their oaths present that on or about March 5, 1770, at or within the City of Boston, Massachusetts Colony, the Defendant, THOMAS/TAMARA PRESTON, did commit the offense of Involuntary Manslaughter, in that the defendant unintentionally killed or caused to be killed an individual or individuals, without lawful justification, committing involuntary manslaughter because his/her acts, or the acts of those directly under his/her legal supervision, whether lawful or unlawful did recklessly cause the death of named parties in this case, in violation of 720 MC 5/9-3, and AGAINST THE PEACE AND DIGNITY OF THE SAME PEOPLE OF THE COLONY OF MASSACHUSETTS.

Prosecuting Attorney

A TRUE BILL

Foreman

AFFIRMATIVE DEFENSES

- A. Affirmative Defense - A defense of justifiable use of force, or of exoneration, based upon the provisions of this Article, is an affirmative defense.
- B. Use of Force in Defense of Person - A person is justified in the use of force against another when and to the extent that he reasonably believes such conduct is necessary to defend himself or another against imminent use of unlawful force. He is justified in the use of force which is intended or likely to cause death or great bodily harm if he reasonably believes such force is necessary to prevent imminent death or great bodily harm to himself, or another, or the commission of a forcible felony.
- C. Use of Force Pursuant to Statute or Common Law (Riot Act) - An officer is justified in the use of force against another when and to the extent that he reasonably believes that (1) twelve or more persons have been assembled, unlawfully and to disturb the peace, (2) a justice of the peace has been summoned and determined it proper to command said persons to disperse, (3) said justice of the peace has commanded said persons to disperse, (4) said persons have not dispersed, and (5) use of force is necessary to disperse said persons and/or to suppress a riot.
- D. Necessity - Conduct which would otherwise be an offense is justifiable by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct.

STATUTES

5/9-1. **First Degree Murder**

First degree murder:

- (a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death:
 - (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another, or
 - (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another.

5/9-1 Penalties for First Degree Murder - The sentence for First Degree Murder shall be death or life in prison without parole.

5/9-2 **Second Degree Murder**

Second degree murder:

(a) A person commits the offense of second degree murder when he commits the offense of first degree murder and either of the following mitigating factors are present:

(1) At the time of the killing he is acting under a sudden and intense passion resulting from serious provocation by the individual killed or another when the offender endeavors to kill, but he negligently or accidentally causes the death of the individual killed; or

(2) At the time of the killing he believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of this Code.

(Article 7 conditions include self-defense, defense of others, or necessity)

5/9-2 Penalties for Second Degree Murder - The sentence for Second Degree Murder shall be 20 years at hard labor.

5/9-3 Involuntary Manslaughter - A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts, whether lawful or unlawful which cause the death of such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly.

5/9-3 Penalties for Involuntary Manslaughter - The sentence for Involuntary Manslaughter shall be 5 years at hard labor.

The Riot Act

These are the conditions under which the Riot Act may be implemented:

1. A group of 12 or more people has gathered both unlawfully and to the disturbance of the peace.
2. Any justice of the Peace, sheriff, under-sheriff or mayor of a town deems it proper to command the crowd to disperse.
3. Such officer shall command them to disperse and they do not disperse.
4. Peace officers and their assistants shall be indemnified, that is, protected from criminal or civil action against them, if they shall kill or injure any of the mob while attempting to disperse them and/or suppress the riot.

The statute also made it a felony to oppose or attempt to prevent the reading of the proclamation to disperse.

The statute does not indicate that the peace officers are indemnified when the rioters prevent the proclamation to be made.

The state of the common law of England in 1770 was such that, if soldiers attacked or fired upon an assembly of British subjects without the protection of the Riot Act, then the soldiers could be prosecuted by the Crown for murder, manslaughter, mayhem or battery, depending on the type and severity of the harm inflicted by the soldiers. However, soldiers could use force in self defense or to prevent crimes from occurring.

The original version of the Riot Act declared the "riotous assembling of twelve persons, or more, and not dispersing upon proclamation" was a form of high treason against the crown. By 1714, the crime of "riotous assembly" had been reduced to a felony. It was this version of the statute that was in effect in the Massachusetts Bay Colony on the night of March 5, 1770.

4 Blackstone's Commentaries 142, 143 (1765-1769).

STIPULATIONS

Both sides have stipulated that the shootings described in this problem did take place in Boston on the evening of March 5, 1770 and that all gunfire during the evening came from the British soldiers.

Both sides have stipulated the gunfire during the evening of March 5, 1770 was what caused the deaths of all parties named in this case.

Both side have stipulated it was a clear, moonlit night with the moon in its first quarter, with at least minimal light to see, and there were no street lamps.

Both sides have stipulated that muskets in the 1770's were not reliable or dependable weapons and that the firing mechanisms on the muskets were quite sensitive and it was routine for these guns to misfire or fire when they were jostled or jarred excessively.

Both sides have agreed and stipulated to the definitions of bayonet position and firing position (see illustration).

Both sides have agreed and stipulated to the accuracy of the diagram of Custom House Square (see illustration).

The defense must disclose to the prosecution, prior to the trial, its intention to raise exoneration (to clear from accusation or blame) or justification (the act or an instance of [justifying](#) : [vindication](#)) as an argument in their defense.

JURY INSTRUCTIONS

2.03 Burden of Proof

The Crown has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the Crown throughout this case. The defendant is not required to prove his innocence. If the defendant argues that he/she is justified or should be exonerated, he/she must introduce evidence to establish that argument, but the Crown retains the burden of proving that the argument is unreasonable.

5.01 Recklessness-Wantonness

A person acts recklessly when he consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

5.03 Accountability

A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of that offense, he knowingly solicits, aids, abets, agrees to aid, attempts to aid the other person in the planning or commission of the offense, or order the other person to commit the offense.

7.01 Definition of Murder

A person commits the offense of murder when he kills an individual without lawful justification if, in performing the acts which cause the death,

1. he intends to kill or do great bodily harm to that individual or another; or
2. he knows that such acts will cause death to that individual or another; or
3. he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or
4. he is attempting to commit the offense of murder.

7.02 Issues in Murder

To sustain the charge of murder, the Crown must prove the following propositions:

First: That the defendant, or one for whose conduct he is legally responsible, performed the acts which caused the death of the parties; and,

Second: That when the defendant, or one for whose conduct he is legally responsible, did so,

1. he intended to kill or do great bodily harm to all named parties in this case;
or
2. he knew that his act would cause death or great bodily harm to all named parties in this case; or
3. he knew that his acts created a strong probability of death or great bodily harm to all named parties in this case; or
4. he was attempting to commit the offense of murder.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

7.05 Definition of Voluntary Manslaughter (Second Degree Murder) - Intentional Belief in Justification

A person commits the crime of voluntary manslaughter when he kills an individual if, in performing the acts which cause the death,

1. he intends to kill or do great bodily harm to that individual or another; or
2. he knows that such acts will cause death to that individual or another; or
3. he knows that such acts create a strong probability of death or great bodily harm to that individual or another;

and at the time of the killing he believes that circumstances exist which would justify the deadly force he uses, but his belief that such circumstances exist is unreasonable.

7.06 Issues in Voluntary Manslaughter (Second Degree Murder) - Intentional Belief of Justification

To sustain the charge of voluntary manslaughter, the Crown must prove the following propositions:

First: That the defendant, or one for whose conduct he is legally responsible, performed the acts which caused the death of all named parties in this suit; and

Second: That when the defendant, or one for whose conduct he is legally responsible did so,

1. he intended to kill or do great bodily harm to all named parties in this suit;
or
2. he knew that his acts would cause death or great bodily harm to all named parties in this suit; and
3. he knew that his acts created a strong probability of death or great bodily harm to all named parties in this suit; and

Third: That when the defendant, or one for whose conduct he is legally responsible, did so he believed that circumstances existed which would have justified killing named parties in this suit; and

Fourth: That the defendant's, or one for whose conduct he is legally responsible, belief that such circumstances existed was unreasonable.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

7.08 Issues in Involuntary Manslaughter

To sustain the charge of involuntary manslaughter, the Crown must prove the following propositions:

First: That the defendant, or one for whose conduct he is legally responsible, performed the acts which caused the death of all named parties in this suit; and

Second: That the defendant, or one for whose conduct he is legally responsible, performed those acts recklessly; and

Third: That those acts were likely to cause death or great bodily harm.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.

24-25.06 Use of Force in Defense of A Person

A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself or others against the imminent use of unlawful force.

However, a person is justified in the use of force which is intended to likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or others.

Pattern Jury Instructions: Criminal