

A Classroom Performance Model

Introducing

A "Bloody Massacre"

featuring
a Mock Trial

Rex v. Preston

Boston, 1770



Instructional Activities and Performance
Tasks for Grades 6-8
Developed for: State of Delaware
Department of Public Instruction

Developed by:
Fran O'Malley
Calley Middle School

Table of Contents

	page
I. Teacher Information: About the Classroom Performance Model	i-iv
II. Instructional Activity I - Defining "Massacre"	1-2
III. Instructional Activity II -The Mock Trial of Captain Preston	3-38
Steps in a Mock Trial	4
Simplified Rules of Evidence and Procedure	5-6
Tips for Students	7-12
Statement of the Case	13-15
Developmental Activities	
1. "Mapping the Scene"	16
2. "Thinking Chronologically"	17
3. "Who Will Represent the Captain?"	18
Stipulated Facts	19
Relevant 18th Century Law	20-21
Statements of Witnesses for the King (Prosecution)	22-26
Statements of Witnesses for the Defense	27-33
Notable Visuals:	
"A New and Accurate Plan of the Town of Boston..."	34
"Paul Revere's plan of the Massacre"	35
Charge to the Jury (Jury Instructions)	36-37
Deposition of Captain Thomas Preston	38
IV. Description of Assessment Task and Scoring Rubrics	39-42
V. Instructional Activity III	43
Fact or Propaganda: Analyzing the Pelham-Revere Engraving?	44-46
The Pelham-Revere Engraving	47
VI. For the Teacher: Important Information About the Testimony and Verdicts	48
VII. Instructional Activity IV: Historical Analysis	49
The Kent State Tragedy: Did History Repeat Itself?	50-52
VIII. Debriefing Questions	53
IX. Annotated Bibliography	54

Teacher Information

The Classroom Performance Model (Instructional Activities and Task)

The Social Studies Classroom Performance Model entitled "Rex v. Preston" focuses on the event known as the "Boston Massacre." It contains four major instructional activities and one performance task. The major instructional activities include analyses of the term "massacre" and the famous Pelham-Revere engraving, a mock trial and a compare/contrast activity involving the Kent State killings of 1970. Several developmental activities are included as well. After conducting the mock trial of Captain Thomas Preston, who was charged with manslaughter as a result of allegedly giving an illegal order to fire into a crowd of civilians, students will engage in the task of writing closing arguments for either the prosecution or defense.

Prior Instruction

Students should understand the historical context for the "Massacre." Prior to using this instructional model, it is strongly recommended that the teacher provide students with background information regarding the growing tensions between the colonists and their mother country. Specifically, students should have a general understanding of the sources of tension including the Proclamation of 1763, the Quartering Act, Sugar Act, Currency Act, Stamp Act (and subsequent riots), and the Townsend Acts as well as the decision to station troops in Boston following the passage of those Acts.

You may also want to discuss the colonists' ideological ("republicanism") suspicion of standing armies and their fears of imminent tyranny once standing armies were introduced. Historians Bernard Bailyn and Gordon Wood had convincingly demonstrated the fact that colonial radicals had a deep seeded paranoia about standing armies. Some radicals were even convinced that a well designed conspiracy to strip the colonists of their liberties had been laid by the British ministry. This anxiety helps to explain some of the colonists' resentment toward the British troops in America.

The pilot study also revealed that many students were unfamiliar with some of the terms that appear in the model. Students should familiarize themselves with the following terms prior to engaging in the activities: apprentice, bayonet, burden of proof, civilian, corroborate, credibility, indictment, malice, manslaughter, musket, nonimportation agreement, presumption of innocence, prosecution, redcoat, sentinel, sentry and surtout.

Educational Merits

At some point in our lives, many of us will find ourselves in a courtroom. In the process of becoming effective citizens, students should acquire an understanding of our justice system. This Model enables students to learn one aspect of it from simulated experience. Additionally, this model engages students in a variety of critical thinking exercises including gathering, analyzing, synthesizing, interpreting and evaluating information that are designed around the new state and national standards.

Standards Addressed

Although a number of state and national standards are identified and addressed throughout this Performance Model, the main performance task used to evaluate student achievement focuses on the following Delaware social studies content standards:

Civics Standard 4: Students will develop and employ the civic skills necessary for effective, participatory citizenship.

History Standard 2: Students will gather, examine and analyze historical data

History Standard 3: Students will interpret historical data.

Importance of the Case

In describing the case of Rex v Preston, John Adams wrote in his autobiography that "this would be as important a Cause as ever was tryed in any Court or Country of the World." Indeed it could be argued that the Boston Massacre trials¹ were the trials of the century in colonial America.

It seems fair to conclude that the Boston Massacre moved Americans closer to independence. In

¹ Captain Preston was tried separately from the other eight soldier-defendants.

the process, it caused the revolutionary generation to reflect on a number of important questions which are as relevant today as they were in 1770. Among the questions are, what obligation do those who preach the cause of liberty and justice have to deliver it to those whom they view as their oppressors? Should important causes be advanced at the expense of ethical considerations such as fairness and honesty? Is violence an acceptable tactic in movements which have noble ends in mind?

The events surrounding the Boston Massacre are important for students on yet another level. The theme of violence and its consequences are highlighted by this event. Some of the major figures in the tragedy were school age youngsters. The tensions which led up to the massacre were aggravated by the shooting of an eleven year old boy named Christopher Seider. Christopher was throwing rocks at the home of a man connected with alleged violations of the Son's of Liberty nonimportation agreement. Fourteen year old Edward Garrick triggered the confrontation with the Custom House sentinel just before the killings on March 5, 1770. And seventeen year old Samuel Maverick, an apprentice to an ivory turner who had just finished eating supper, was one of the five people killed in the Massacre. In a day and age when violence is a central concern to teachers throughout the United States, the case of the Boston Massacre also offers opportunities for illustrating the tragic, deadly and unforeseen consequences of senseless violence.

Practical Considerations

With class sizes averaging in the high twenties, the problem with many mock trials is the limited number of roles. The case of *Rex v. Preston* contains many witness statements (not all of which are included in this Model). There are a variety of ways to approach this case. In most mock trials, there are 3-4 witnesses and 3 attorneys. You may decide to limit the size of the legal teams (3-4), have each attorney examine multiple witnesses and use some students as jurors. Or you may wish to pair one attorney with each witness. Either approach will work. Sound teaching practices imply that you will adjust the materials to the special needs of your class.

If you have a small class, you may have one class challenge another to a mock trial competition. One class may play the prosecution while another plays the defense. Jurors may be drawn from other classes, from the faculty or from your pool of active parents. Or, you may screen the witness statements and select those who you feel bring out the central issues in the case. I have placed an asterisk next to the names of those witnesses whom each side considered to be their most important witnesses.

Additionally, if you really want to make this an event, contact a lawyer and ask if it is possible to reserve a courtroom for a day. The New Lawyers Committee of the State Bar Association has been particularly helpful with such efforts. They may even be able to arrange for you to have an actual judge preside over the case. In Delaware, the Widener University School of Law is another resource to be considered. Law students enjoy the opportunity to work with students. Contact the coordinator of the "Street Law" program.

It should take approximately 8-10 periods to complete the entire model. If you are short on time, you may elect to use some parts of the model but not others or assign some of it for homework.

Suggested Procedures

- I. Instructional Activity - Defining the word "massacre."
- II. Have students read the "Statement of Facts"
- III. Have students engage in Developmental Activities 1-3
- IV. Teach Steps in a Mock Trial
- V. Teach the "Simplified Rules of Evidence and Procedure"
- VI. Assign Roles for the Mock Trial & Distribute Witness Statements - the gender of the witnesses is dictated by historical reality. Do not, however, let the gender of the witnesses prevent you from assigning male roles to the young ladies in your class or vice versa. Few students object to

gender reversal in role-play activities.

- VII. Discuss the "Tips for Students" which outline what should occur at each phase of the mock trial.
- VIII. Peer & Teacher Coaching - pair student-attorneys with their witnesses and have the attorneys prepare questions for the witnesses. Students who have been assigned roles as attorneys should develop questions for homework in preparation for the "coaching" phase of this activity.
- IX. Have students read the "Charge to the Jury" (jury instructions). Both sides in the case must be aware of what the prosecution must prove. The jury instructions provide them with that information. The burdens of proof should guide the students during every phase of the mock trial.
- X. Conduct the Mock Trial
- XI. Have Students Write a Closing Statement - permit the students to choose the side for whom they wish to argue. You may want to try to schedule this assignment so that the closing statements are collected on a Friday. This will enable you to select the best one. The students who wrote the best closings should then be asked to deliver the closing to the rest of the class on Monday.
- XII. Have Judge Read Jury Instructions to the Jury/Class and review them with the class.
- XIII. Jury Deliberations and Verdict.
- XIV. Instructional Activity III- Analyze the Pelham-Revere Cartoon. Have students compare witness statements to the cartoon. Is the cartoon an example of propaganda?
- XV. Reveal the Actual Verdict - Captain Preston was found to be "not guilty." In the trial of the soldiers, two were found guilty of manslaughter. They pleaded "benefit of clergy," were branded on the thumb and returned to England. The other six soldiers were found "not guilty."
- XVI. Instructional Activity IV - Compare and contrast the Boston Massacre with the Kent State tragedy.
- XVII. Debrief the students - sample questions are found at the end of this instructional model.

Additional Mock Trial Considerations

The "Simplified Rules of Evidence and Procedure" are included in this Model for those who wish to use them. If this is the first time your students have engaged in a mock trial, you may wish to ignore them or simplify them even further. If you allow objections, make it a rule that the only person who may object is the "attorney" who is responsible for examining the witness being questioned. Otherwise, you may find that frequent objections impede the progress of the trial in a rather unproductive fashion.

Several pieces of physical evidence appear in this packet. Each piece reflects a different degree of objectivity. The map of Boston is reasonably neutral. Paul Revere's "Plan of the Massacre" contains some points of controversy (e.g. formation of soldiers). The Pelham-Revere cartoon, however, is clearly slanted in favor of the prosecution. It may have its place in the mock trial but I would not show it to the

students until we were ready for Instructional Activity III.

If you want to spice up the trial, you may consider other pieces of physical evidence to which you have access (e.g. a stick, plastic sword or oyster shell thrown by the crowd or a plastic sword or musket held by Captain Preston or one of the soldiers). The further you venture into such drama, however, the further you may remove your students from historical accuracy and risk introducing evidence which is unfairly prejudicial to one side in the case.

What Students Should Look For

As the students prepare for the mock trial and their closing statements, and as they evaluate the Pelham-Revere cartoon, suggest that they focus on the following questions:

- Where were the witnesses standing?
- Where was Captain Preston standing?
- What was Captain Preston wearing?
- How were the soldiers positioned at the time of the shooting?
- Whose testimony is corroborated?
- How large was the crowd in front of the soldiers?
- Was the crowd threatening? If so, how serious was the threat?
- Was anyone besides the soldiers in possession of any weapons?
- What were the people/soldiers saying/shouting?

Students should be told to look for contradictory and corroborating evidence as they prepare questions, listen to the testimony and write their closing statements.

Sources of Evidence

Most of the materials for this case is drawn from primary sources. Altogether, 96 depositions were taken in the hours and days following the "massacre." The witness statements and charges to the jury were modified to make them more understandable to middle school students. I found Hiller Zobel's book and the "Legal Papers of John Adams" to be of most help. Several reviews have been critical of the book, however (see the annotated bibliography). Additional witness statements can be found in the "Legal Paper." It is available at the Morris Library (U of D) and at the Widener University School of Law library.

Materials Needed

Mock trials require few materials other than copies of the materials contained in this Model. It is important that the student-attorneys have copies of the witness statements for those whom they are assigned to examine. The witness statements enable the attorneys to develop questions.

If it is at all possible, you should try to secure a gavel for the judge (and perhaps robes).

Arrange the room courtroom style. A diagram of a mock courtroom is provided in the packet of materials.

The Pilot Study

The entire model was piloted at Talley Middle School during the last two weeks of January in 1996. Revisions to earlier drafts were made in light of observations. The model was used in five homogeneous classes involving students from all ability levels (two honors, one academic and two basic level classes). Students at every level enjoyed the activities and worked diligently on the various tasks. Students in the basic level classes needed more guidance but their performances were wonderful. As might be expected, the range of accomplishment on the closing statement task varied but students demonstrated their ability to grasp the essence of instructional purposes. In fact, I was more pleasantly surprised at the work submitted by students at the basic levels than any other. It was concluded that this performance model can be used with students at every ability level.

Portions of the activities were videotaped and samples of student work were saved. The culminating activity was a public demonstration of the mock trial at the Daniell L. Herrmann Courthouse in Wilmington. Students from every ability level participated. The entire public performance was filmed.

Acknowledgements

The description of "Steps in a Mock Trial" and the "Simplified Rules of Evidence and Procedure" are taken largely from materials developed by the National Institute for Citizenship Education in the Law (NICEL) which is based in Washington, DC.

The "Tips for Students" and pattern for writing the "Stipulated Facts" are taken largely from a mock trial which was developed by the Arizona Bar Foundations Center for Law-Related Education for their state high school mock trial competition (State of Arizona v Pat Haines 1992).

Many of the primary sources were originally obtained from Marge Montgomery who is a Middle School teacher in Massachusetts and who has served for a number of years on the Executive Board of the Center for Research and Development in Law-Related Education (CRADLE) which is centered at Wake Forest University's School of Law.

Special thanks to several members of Delaware's legal community including attorney Francis J. (Pete) Jones of the Delaware State Bar Association and the firm of Morris, James, Hitchens and Williams (Wilmington) for his much needed suggestions regarding the legal aspects of this Model. Pete wrote the "The Charge of the Court" (Jury Instructions). Judge Vincent Biferato of the Superior Court, who has remained a devoted friend of law-related education in Delaware, secured court facilities for piloting the mock trial.

Finally, I would like to thank Sue Cleary and my student teacher Amy Lalla who helped to pilot and revise the model. Evidence of their valuable suggestions appears throughout the final product.

Instructional Activity I

Defining the Term "Massacre"

Directions: Instructional Activity I is designed to get students to think about the term "massacre" so that they can reflect on it as they engage in Activities II (the mock trial of Captain Preston) and Activity III (analyses of the Pelham-Revere cartoon and revolutionary propaganda).

Begin by brainstorming. Ask students to write down a definition of the term "massacre."¹ Have them share their definitions. Once they have offered their own definitions, ask them to consider the following questions:

1. What is the minimum number of people who would have to be killed in order for a killing to be classified as a "massacre?"
2. Must the killing be unprovoked in order for an event to be considered a "massacre?"
3. Must the killing involve horrible acts of violence?
4. Can a "massacre" occur if both sides in the killing (killers and victims) are armed?
5. Is the ratio of victims to killers an important consideration in defining a "massacre?"
6. Must the killings be indiscriminate in order for an event to be considered a "massacre?"

The questions which are enumerated above will invariably lead to more questions. Once you feel that the students have formulated a well considered definition, tell them to keep that definition in mind as they proceed through the Classroom Performance Model. Tell them that they will return to the definition in Instructional Activity III.

¹ Webster's New Collegiate Dictionary defines "massacre" as "the act or an instance of killing a number of usually helpless or unresisting human beings under circumstances of atrocity or cruelty."

Simplified Rules of Evidence and Procedure

Direct Examination

Purpose

- to have friendly witnesses present evidence which supports one side's arguments
- it is best to have the witness tell the story to the jury

Form of Question

- attorneys may not ask leading questions during direct examination (i.e. one that points the witness in the direction of a desired answer). For example, "Isn't it true that the crowd was throwing sticks?".
- ask questions which elicit narrative responses (e.g. "What was the crowd doing?").

Scope of Questions

- a witness may not testify to any matter of which he or she has no personal knowledge
- evidence about the character of a witness may not be introduced unless the person's character is an issue in the case

Refreshing a Witnesses Recollection

- sometimes a witness forgets information. If a witness forgets or contradicts information in his or her witness statement, the attorney may introduce that portion of the statement that will help the witness remember.

Cross Examination

Purpose

- to "impeach" the witness. On cross examination, the attorney wants to point out reasons why the other side's witness should not be believed. Point out contradictions in the witness' testimony and highlight information that appears incredible.

Form of Questions

- on cross-examination the attorneys should ask leading questions that require brief answers. Do not let the witness explain what appears to be damaging testimony.
- never ask a question that you do not know the answer to

Redirect Examination

Purpose

- to restore the credibility of the witness and to clarify testimony that damages your argument
- questions are usually limited to issues raised during cross-examination

Grounds for Objections

- attorneys should understand that judges and juries find the raising of numerous objections irritating. Object only when it is important. Also, during mock trials, objections may only be raised by the attorney who is responsible for examining the witness who is testifying.

Hearsay - is testimony by a witness that is not based on personal knowledge. It is a repetition of what another person allegedly said. Hearsay evidence is usually not admissible because it is impossible to test its truthfulness.

Irrelevant Evidence - evidence/testimony that is not related to an issue in the trial is termed immaterial or irrelevant.

Witness Opinions - as a general rule, unless a witness is declared an "expert," he or she may

not give opinions unless they are logical deductions of the facts (and relevant to the case).

Leading Questions - may not be asked during direct examination.

Beyond the Scope - questions on cross and redirect examination are generally confined to what the witness stated on direct examination. Also, in mock trials, a witness may not be asked to testify to information which does not appear on his or her witness statement.

Lack of Personal Knowledge - witnesses cannot be expected to answer questions related to matters about which they have no personal knowledge.

Badgering the Witness - attorneys may not use forceful or threatening language in an attempt to extract information which otherwise might not be given.

TIPS FOR STUDENTS

I. OPENING STATEMENTS

- Purpose:** To introduce yourself and your client.
To acquaint the judges with the nature of the case.
To outline what you are going to prove through witness testimony and the admission of evidence.
- Preparation for Trial:** Write a short summary of the facts.
Determine the burden of proof (the amount of evidence needed to prove a fact and who has it in this case).
Develop a clear and concise overview of each witness and the physical evidence you will present.
Judge how each will contribute to proving your case.
Learn your case thoroughly.
- Presentation:** Stand before the scoring judges.
Introduce yourself and your colleagues.
Make eye contact with the judges.
Appear confident in what you are saying.
Outline the case from your point of view.
Use the future tense in describing what you will do (e.g., "The facts will show...").
Mention testimony of key witnesses.
Tell what relief you are requesting.
- Avoid:** Too much narrative about witness testimony.
Exaggeration and overstatement of facts that may not be proven.
Promising to prove something you will not or are not able to prove.
Reading your whole statement.
Repeating undisputed facts.

II. PRESENTING EVIDENCE

DIRECT EXAMINATION:

- Purpose:** To obtain favorable information from your witnesses to prove your case facts.
- Preparation for Trial:** Study your witness statements. Look for all the good points that are favorable to your case.
Prepare a series of questions based on these good points.
Avoid leading questions (except for questions that pertain to name, address, etc.).
Do not ask questions requiring opinion testimony until you have laid the proper foundation to qualify the witness as an expert.

Presentation: Stand before the podium except when introducing evidence.
Be relaxed and clear in the presentation of your questions.
Keep to simple questions that you have practiced with your witnesses.
Listen to the answers.
Be able to think quickly if the witness gives you an unexpected answer and add a short follow-up to be sure you obtained the testimony you wanted.
When your facts are in, cease questioning.

Avoid: Wasting time asking questions that are not pertinent.
Complex and verbose questions.
Redundant and monotonous questions.
Eliciting conclusions.
Too much narrative which can be dangerous if you lose control of witness testimony.

CROSS EXAMINATION:

Purpose: To discredit the witness.
To discover flaws in his/her testimony.
To secure admissions which help your case.

Preparation for Trial: Study your opponent's witness statements. Look for all the points that are not favorable to his/her case.
Prepare a series of questions based on these points.
Try to anticipate how each witness will answer your questions so that you can adapt your questions during trial according to what is actually said.
Prepare short questions using easily understood language.
Ask only questions to which you already know the answer.

Presentation: Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
Listen with care to the answers of the witness.
Ask leading questions that require only a "yes" or "no" answer whenever possible.
Ask questions on important points that will raise doubts about the credibility of a witness. If a witness has not been truthful, ask the witness to identify his/her statement and then read that portion of the statement which is contrary to what he/she just said.
Pose questions that weaken the testimony of the witness by showing his/her opinion is questionable; such as a witness with poor eyesight claiming to have observed all the details of a fight that took place 500 feet away in a crowd.
Ask questions that show that a witness who has testified to an opinion is not competent or qualified due to lack of training or experience, such as a psychiatrist testifying to the need for dental work or a high school graduate

testifying that in his/her opinion the defendant suffers from a chronic blood disease.

If testimony is given which you feel contradicts the witness' statement, confront the witness with the statement and bring out inconsistencies in testimony given.

Avoid:

Giving the witness the opportunity to reemphasize the strong points made during direct examination.

Quarreling, harrassing, intimidating or showing hostility toward the witness. Judges usually resent it.

"Fishing" expeditions which give the witness a chance to clarify damaging statements. When you have a favorable answer, drop the matter and wait for closing arguments to emphasize it.

Allowing the witness to explain anything. Try to stop the witness if his/her explanation is going on and hurting your case by saying, "Thank you. You've answered my question." If the witness continues and you have difficulty cutting the witness off, you may ask the judge to admonish the witness to not volunteer information not asked for.

III. OBJECTIONS

Purpose: To present to the judge a rule of evidence which would bar an answer to the questions asked or result in striking the answer from the record, if already given.

Preparation for Trial:

Practice both making and responding to objections.

Presentation:

Rise to address the presiding judge.

Upon the raising of an objection, opposing counsel should immediately be prepared to respond to the objection, arguing why it should be overruled.

IV. PHYSICAL EVIDENCE/EXHIBITS

Purpose:

To provide information that may be referred to in detail and parts read in court.

Presentation:

Ask the judge if you can approach the bench so the exhibit can be marked for identification.

Show the exhibit to opposing counsel.

Request permission from the judge to approach the witness.

Hand the exhibit to the witness and walk back to the podium.

Remind the judge if any of the stipulations establish part of the necessary foundation for the exhibit.

Ask the judge if you can approach the witness to retrieve the exhibit.

Request permission to approach the bench.

If permission is granted, do so and hand the exhibit to the judge and ask that it be admitted into evidence.

V. CLOSING ARGUMENTS

- Purpose:** To summarize your case.
To put the pieces together for the scoring judges.
To point out credibility, bias, self-interest or prejudice of witnesses.
To be an advocate for your client.
- Preparation for Trial:** Organize in advance by anticipating your opponent's arguments.
- Presentation:** Stand facing the scoring judges.
Make eye contact with the judges.
Point out testimony which supports your case.
Point out testimony which damages your opponent's case.
Simply state your case until you are sure it is fully understood.
Discard the unimportant and only argue what you feel is important.
Correct any misunderstandings that the judges may have.
Be relaxed and ready for interruptions if a judge asks questions.
Always be flexible by adjusting your statement to the weaknesses, contradictions, etc., in the other side's case that actually came out at the trial.
Believe in your point of view.
Be dynamic. This is high drama. Take advantage of it.
- Avoid:** Assuming the scoring judges have understood the impact of all of the testimony.
Using ridicule except with caution; for while it can be effective, it is also dangerous.
Confusing or illogical arguments.
Weak words such as "We believe" and "We think".
Asking the jurors to put themselves in your client's position.
Overt appeals to sympathy and prejudice of scoring judges.
Reading the whole statement.
- NOTE:** The prosecution's rebuttal is limited to the scope of the defense's closing argument.

VI. WITNESS STATEMENTS AND TESTIMONY

GENERAL SUGGESTIONS:

- If you are to testify about records, familiarize yourself with them before trial.
Do not memorize what you will say in court, but try to recall just what you observed at the time of the incident. (Picture it in your mind as if you were there).
When called to the stand, be as relaxed and in control as you possibly can be.

If asked if you have discussed the case with anyone, indicate any occasion when you have talked with your attorney in preparation for trial.

Speak clearly so you will be heard. The judge must hear and record your answer. Do not respond by shaking your head "yes" or "no".

Listen very carefully to questions. Before you answer, make sure you understand what has been asked. If you do not understand, ask that they be repeated.

Do not give your personal opinions or conclusions when answering questions unless asked to do so. Give only the facts as you know them, without guessing or speculating. If you do not know, say you do not know.

If you answer a question incorrectly, ask the judge if you may correct it.

If the judge interrupts or an attorney objects to a question you answer, stop talking immediately. Do not resume until the judge tells you to do so. After the court hears arguments and rules on an objection, the judge will instruct you to answer or not to answer the question asked.

Be polite while answering questions and do not lose your temper.

Be courteous to attorneys and the judge.

When answering a question from the judge say, "Yes, your Honor" or "No, your Honor".

If the judge rules against your attorney on an objection, take the ruling gracefully.

DIRECT EXAMINATION:

Purpose: To provide favorable information in order to prove the facts of your case.

Preparation for Trial: Learn the case inside out, especially the witness statement. Know the questions that your attorney will ask you on direct examination and prepare clear and convincing answers that contain the information that the attorney is trying to elicit from your testimony. Practice with your attorney.

Presentation: An appearance of confidence and trustworthiness is important. Be sure your testimony is consistent with the facts set forth in your statement. Remain calm if the attorney or judge asks you a question you haven't rehearsed. Wait for your attorney to complete a question before beginning your answer. Occasionally, look at the judge when answering a question posed by your attorney. Avoid annoying distractions while testifying, such as rocking back and forth. Don't be afraid to be a little animated.

CROSS-EXAMINATION:

Purpose: To make the other side's factual presentation less believable.

**Preparation
for Trial:**

Learn the case thoroughly, especially your witness statement. Anticipate what you will be asked on cross examination and prepare answers accordingly. Isolate all the possible weaknesses, inconsistencies and problems in your testimony and be prepared to explain them. Practice with your team's attorney who will be conducting cross-examination of the person you are portraying.

Presentation: Be sure your testimony is consistent with the witness statement.

If you make an incorrect statement during direct that wasn't caught, don't be afraid on cross to admit your mistake.

Don't volunteer information. If a question calls for a simple answer, give it and stop even if there is an uncomfortable silence before the next question.

Don't feel that you have to explain away testimony that the opposing counsel has made to appear bad for your side. That is the job of your attorney on redirect. Your attorney can, and should, come back on redirect and clear up any areas that need further explanation or clarification.

Good cross examination can be tough, so don't get flustered. A witness who can respond well during cross can give his/her team some well earned points.

Statement of the Case

Rex v. Preston (1770)

Conditions in Boston on the evening of March 5, 1770 were pleasant but chilly. Nearly a foot of hardened snow and ice chunks lay on the ground. Although Boston would not have street lamps until 1774, a first quarter moon appeared in the cloudless southern sky and reflected considerable light off of a snow whitened King Street.

At the corner of King Street and Royal Exchange Lane stood the Customs House. The Customs House was a two storied, brick structure with three curved steps leading up to the centered, front door. Viewing the front of the building from King Street, one would see a small sentry box just off to the left of the front door and a hitching post to the left of the box. Under orders from Lieutenant Colonel William Dalrymple, a single soldier, Private Hugh White of England's 29th regiment, stood guard in front of the Customs House. All of Boston's customs records and whatever money had been collected recently were stored in the Customs House. It was here that ship masters entered and cleared their ships and paid duties on their cargo. The second floor of the building also served as home to the family of a minor revenue official named Bartholomew Green.

The evening began quietly enough considering the degree to which tensions had been mounting since the passage of the Townshend acts in 1767 and the arrival of the British troops on October 1, 1768. In the aftermath of the Stamp Act riots, Parliament deemed it necessary to station 2,000 troops in the city to support and protect British officials and to enforce "a due Obedience to the Laws of this Kingdom, the execution of which has, in several Instances, been unwarrantedly been resisted..." (Zobel 85 - Hillsborough to Admiralty 28 July 1768 CO 5/86) Troops from the 29th Regiment were posted at various locations throughout the city that evening. A 40 year old Irishman named Thomas Preston was in charge of the soldiers as the captain of the day.

The tensions which gripped the city resulted in occasional acts of violence. Two of them were especially notable for they would remain fresh in the minds of some of the people who were involved in the "Massacre." On February 22, 1770 a eleven year old boy named Christopher "Seider" (aka "Snyder") was shot and killed by Ebenezer Richardson. Seider was one of a group of boys who was throwing stones at Richardson and his house as he attempted to cut down a sign that identified his neighbor, Mr. Thophilus Lillie, as a violator of the nonimportation agreement. The funeral procession for Seider stretched for five- eighths of a mile and involved an estimated 2,000 mourners. According to Sam Adams, it was "the largest perhaps ever known in America."¹ Then, on March 2nd, a group of Boston's rope makers got into a street fight with several British soldiers. The fight started when one of the rope makers offered a soldier some nasty and degrading part time work ("...go and clean my s_ _ _ house!"). The ropewalkers who outnumbered the soldiers won the fight but no one was seriously hurt.

What was somewhat remarkable up to this time was the fact that, despite the mounting hostility between the people of Boston and the British soldiers, not once had a British soldier shot and killed a colonist. In fact, British law was designed to prevent just such a thing from happening. Under the law, if a person died as a result of an officer who gave his soldiers an order to fire without permission from a civil official, or a person died as a result of a soldier who fired without doing so to prevent serious bodily injury or a loss of life, both the officer and the soldier could be found guilty and put to death. So far the law had worked to prevent soldiers from killing citizens of Boston. Things were about to change.

As Hugh White was standing guard on the evening of March 5th, Lieutenant John Goldfinch of the British army and a wigmaker's apprentice named Edward Garrick happened to walk by Private White at the same time. Referring to Goldfinch, Garrick shouted, "There goes the fellow that won't pay my master for fixing his wig." Goldfinch, having the receipt for payment in his pocket, ignored the comment. Garrick left for a time, accompanying a fellow apprentice on a walk down King Street. Several minutes later, Garrick returned telling three passers-by that Goldfinch was "mean" and that he owed his master money. The comments were made loud enough for White to hear. Unaware that the debt had already been settled, White shouted that Goldfinch was a gentleman and would pay what was owed. Garrick replied that "there were no gentlemen in the 29th Regiment." At that point, White left his post. Garrick moved to meet him.

¹ Zobel, Hiller B. The Boston Massacre. W.W. Norton and Company, New York. 1970. p. 178

"Let me see your face," White commanded. "I am not ashamed to show my face," Garrick replied. Then, White struck Garrick across the side of his head with the butt of his musket (gun). Garrick cried out in pain.

From the other side of Dock Square, near Murray's sugar house on Brattle Street came the sound of shouts as another scuffle between British soldiers and townspeople started. Part of the 29th Regiment had their barracks there. At the same time, a town fire bell rang out. Men began to shout "fire."

Meanwhile, sometime between 8:30 and 9 p.m., eight or nine men and boys gathered around the front of Private White's sentry box where Garrick was crying. The boys dared White to come out and fight. "Lousy rascal, damned rascally scoundrel lobster," they shouted to White. Within minutes, the crowd's size increased to nearly fifty people. White, plainly scared, moved to a position on the steps of the Customs House and loaded his musket. The crowd hollered at White and began throwing snowballs, ice and oyster shells. White attached a bayonet to his musket and lowered it. Henry Knox, a bookseller who knew a lot about military law, told White that if he fired on the crowd he would die for it. "Damn them," White responded, "if they molest me I will fire." He knocked on the door to the customs house trying to get in but no one answered. The crowd, growing in size, began to shout "Kill him, kill him, knock him down. Fire, damn you, fire, you dare not fire."

A first year law clerk to John Adams told the people to "come away, and stop molesting the sentry." A few left. A town watchman tried to reassure White saying that those who were taunting were only boys and would not hurt him. White was not convinced and yelled for help - "Turn out, Main Guard!"

While the confrontation at the Customs House was developing, similar incidents erupted in other nearby areas where British soldiers were stationed. One man was heard rushing up Boylston's Alley toward Brattle Street shouting "Town born, turn out! People of Boston, come out!" The fire bells continued to ring. In 1770, Boston had no fire company. The law required every able bodied person to respond in the event of a fire. Even though some had come to realize that there was no fire, the bells continued to draw men and boys onto King Street like a magnet.

Meanwhile, at the Main Guard house, Captain Preston struggled to decide what to do. He could see and hear the mob at the Customs House. Two people told him that Private White was in trouble. Eventually, after debating nervously with himself, Preston ordered a subordinate to "take out six or seven of the men, and let them go down to the assistance of..." Private White. After pushing through the crowd, the relief party of seven soldiers arrived at White's sentry box and loaded their weapons.

Shortly thereafter, Captain Preston arrived. He ordered Private White to join in with the rest of his men and, together, they tried unsuccessfully to move through the crowd and return to the Main Guard house. Believing that there was little chance for escape, the soldiers fell into formation in front of the Customs House between the Sentry box and the hitching post near Royal Exchange lane. The crowd continued to taunt the soldiers and throw various objects at them.

Suddenly a stick like projectile struck Private Hugh Montgomery and he fell to the ground. Almost immediately, some claimed, the word "fire" was heard and a shot rang out. Instantly, the crowd began to push in two directions, dividing itself and leaving the area immediately in front of the soldiers fairly clear. More shots rang out as the crowd reacted.

The soldiers quickly reloaded and cocked their weapons. The mob which had reacted to the shootings by moving away, began to approach again. Uncertain as to whether the crowd was moving to help the people who had been shot or moving to attack the soldiers, the soldiers lifted their muskets into firing position. Pushing the guns up with his arm, Captain Preston shouted, "Stop firing...Do not fire!" At that point, a townsman named Benjamin Burdick stepped closer to the soldiers to get a better look at them. "I want to see some faces," he said, "that I may swear to another day." An upset Captain Preston turned and replied, "Perhaps, sir, you may."

In front of the Customs House, the scene cleared rapidly as the soldiers returned to the Main Guard. Meanwhile, townspeople carried the dead and wounded to various places (Boston had neither a mortuary or a hospital). News of the tragedy spread quickly and brought nearly 1000 stunned and angry people out onto King Street. Many were shouting "to arms!" Captain Preston sounded the general alarm for all of the British troops in Boston. The situation was moving beyond control until Lieutenant Governor Thomas Hutchinson appeared from the balcony of the Town House facing King Street to address the people. After expressing his deep concern, Hutchinson promised a full investigation into the shootings and pleaded with the people to go home. "The law shall have its course," he said, "I shall live and die by the law." Slowly, the streets of Boston emptied.

As a result of the shots fired by the soldiers, four people in the crowd were killed, another was mortally wounded and died nine days later. Six more civilians were wounded but survived.

At approximately 2 o'clock in the morning, Captain Preston and a number of witnesses were brought before the Lieutenant Governor and two Justices of the Peace in council chambers where they were asked to describe what had happened. At the hearing, some witnesses said that they heard Captain Preston give the order to fire. Others stated that they heard the word "fire" but did not know whether it came from Preston or whether it was part of an order to "not fire." Captain Preston was sent to jail at about 3 a.m. The other eight soldiers who were present at the shooting surrendered the next morning and were imprisoned.

After lengthy legal discussions, it was decided that Captain Thomas Preston would be tried separately from the rest of the soldiers and that he would be tried first. Preston was charged with murder on the grounds that he allegedly gave an unlawful order to fire that resulted in the deaths of five people. Remember, under British law at the time, it was illegal for a military officer to give his men an order to fire into a crowd of civilians without permission from a civil official.

The remaining eight soldiers were charged with murder as well. This mock trial, however, will deal only with the charges against Captain Preston.

The Defendants

Rex v Preston - Captain Thomas Preston

Rex v Wemms - Corporal William Wemms, James Hartegan, William McCauley, Hugh White, Matthew Kilroy, William Warren, John Carroll and Hugh Montgomery

Lesson Plan

1. Brainstorm definition of "massacre."
2. Read Statement of Case
3. Ask students the case questions.
4. Ask students to draw the scene.

Case Questions

1. What were the weather/ground conditions in Boston on March 5, 1770?
2. On what street did the massacre occur?
3. Was it dark or well-lit when the massacre occurred?
4. When did the British troops arrive in Boston?
5. Who stood guard in front of the customs house on King Street?
6. Who was in charge of the British soldiers on the night of the massacre?
7. What did British law state about firing on civilians?
8. What happened to Christopher Seider on February 22, 1770?
9. What started the fight between the British soldiers and the ropemakers on March 2nd?
10. What caused an angry crowd to form around Private Hugh White on the evening of March 5, 1770?
11. What did Private White do to Garrick? Why did he strike Garrick with his gun?
12. How many people confronted Private White after he struck Garrick?
13. What caused a lot of people to come out onto King Street that evening?
14. In what ways did the crowd threaten Private White?
15. How many soldiers were present at the time of the massacre?
16. How many were in the crowd at the time of the massacre?
17. Were any of the soldiers in danger of death or serious bodily injury?
18. Was anybody in the crowd on King Street shouting anything at the time of the massacre? ("fire" "Kill him")
19. What happened just before the first shot was fired? (Private Hugh Montgomery was hit by a stick, he fell...the first shot was fired)
20. Did anyone in civilian authority give Captain Preston permission to order his men to fire?
21. Did Captain Preston give his men an order to fire?
22. What did the soldiers do after they fired the first round of shots into the crowd?
23. What did Captain Preston do after the first volley of shots were fired?
24. How many people died as a result of the shots fired on March 5, 1770? How many injured?
25. What time was it when the Massacre occurred?
26. Did anyone get a good look at any of the soldiers after the shootings? (Benjamin Burdick)
27. Did Captain Preston speak to anyone immediately after the shootings? What was said?
28. What crime was Captain Preston charged with?
29. Did anyone in the crowd specifically hear Captain Preston give an order to fire?

Developmental Activity 2 "Thinking Chronologically"

Standards Addressed

Delaware Standard 1: Students will employ chronological concepts in analyzing historical phenomena.

National History Standard 1: Chronological Thinking - Students should be able to identify in historical narratives the temporal structure of a historical narrative or story.

As you can see, the new state and national history standards reveal a consistency in the belief that chronological thinking is at the heart of historical reasoning. A sense of chronology - of when events occurred and in what temporal order - enables students to examine relationships among those events and to explain historical causality.

It is very difficult for students to form valid arguments or conclusions about the events of March 5, 1770 without understanding the causal relationships between the developments that occurred prior to the killings. Can you piece together this historical puzzle? When did everything happen?

Directions: In this activity, you are asked to arrange chronologically developments which led to the "Boston Massacre." A description of some of the developments is listed below. Each development is identified by a letter. Arrange the events in the order that they occurred. Use the letters accompanying each event to construct your chronology.

<u>Event</u>	<u>Order of Occurance</u>
A. Private Hugh White struck Edward Garrick across the face with the butt of his musket (gun).	1st _____
B. Parliament passed the Townsend Acts.	2nd _____
C. A stick struck Private Hugh Montgomery and he fell to the ground.	3rd _____
D. Ebenezer Richardson shot and killed Christopher Seider.	4th _____
E. Fire bells in Boston rang out for the first time.	5th _____
F. A British soldier fired his first shot into the crowd.	6th _____
G. An additional two thousand British soldiers arrived in Boston at the request of Lieutenant-Governor Thomas Hutchinson.	7th _____
H. Captain Thomas Preston ordered his men to stop firing.	8th _____
I. Nine British soldiers including Captain Thomas Preston positioned themselves in front of the Customs House.	9th _____
J. A crowd of at least 50 people angrily confronted Private Hugh White.	10th _____
K. Boston rope makers fought British soldiers.	11th _____
L. Edward Garrick shouted, "There goes the fellow that won't pay my master for fixing his wig."	Last _____

Developmental Activity 3

Working With Historical Documents: Who Will Represent the Captain?

Document 1

The following document is an excerpt from John Adams "Diary and Autobiography." It was written over 30 years after the Boston Massacre. Read it and complete Activity 1.

"The next morning [March 6, 1770] I think it was, sitting in my Office, near the Steps of the Town house Stairs, Mr [James] Forrest came in, who was then called the Irish Infant. I had some Acquaintance with him. With tears streaming from his Eyes, he said I am come with a very solemn Message from an unfortunate Man, Captain Preston in Prison. He wishes for Council [i.e. a lawyer], and can get none."

John Adams

Activity 1 - Think-Pair-Share: Pretend that you are John Adams. You and your family live in Boston. Your neighbors do not like soldiers in town and are especially angry at them after the "Boston Massacre." You have been approached by Mr. Forrest who says that Captain Preston cannot find a lawyer to represent him at his trial. Knowing of the dislike for the British soldiers and British sympathizers, will you take his case? Explain your decision to another student who should play the role of Mr. Forrest.

Document 2

On March 22, 1770, the father of a famous Boston lawyer named Josiah Quincy wrote the following letter to his son from Braintree, Massachusetts. Both father and son were named Josiah. Read the letter then complete Activities 2 and 3.

"My Dear Son, I am under great affliction at hearing the bitterest reproaches [expressions of unhappiness] uttered against you, for having become an advocate [lawyer] 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 their defence [i.e. agreed to represent the soldiers at their trial]. Since then I have been told that you have actually engaged for Captain Preston; and I have heard the severest men who had just before manifested the highest esteem for you, as one destined to be a savior 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 will repeat, I will not believe it unless it be confirmed by your own mouth, or under your own hand.

Your anxious and distressed parent, Josiah Quincy"

Activities:

2. Summarizing: In one sentence, explain why Josiah Quincy wrote this letter to his son.
3. Letter Writing Activity: Assume the role of Josiah Quincy, son and attorney. Pretend that you have agreed to be Captain Preston's lawyer. Write a response to your father's letter dated March 22, 1770 and explain why you have agreed to represent the Captain.

John Adams

You are one of Boston's best lawyers, are well known in the community and have thoughts about running for office someday. In law school, you learned that every person who is accused of a crime has a right to a lawyer. As a lawyer in private practice, however, you also know that you do not have to take every case. You are not sure whether you will represent Captain Preston.

Abigail Adams

You are the wife of John Adams and you are afraid that if your husband acts as Captain Preston's lawyer, your family will be criticized, punished and your husband's future political and legal careers will suffer. The Sons of Liberty may even trash your house just like they did to the suspected stamp tax collectors during the Stamp Act riots. Try to discourage your husband from taking the case.

John Adams, Jr.

You are the son of John and Abigail Adams. You are afraid that if your father represents Captain Preston, you will lose all of your friends and they will probably pick on you when you go to school and go out to play.

Mr. James Forrest

You are a friend of Captain Preston. He has been arrested on charges of murder. He is sitting in jail and is afraid that no one will represent him in court as his lawyer because everyone is afraid that radicals like the Sons of Liberty will punish them for representing a British soldier, especially after his men shot and killed 5 colonists. Try to talk Captain Preston into taking the case.

Sam Adams

You are a Son of Liberty and John Adams cousin. You want the British soldiers out of America and believe that, if Captain Preston is found guilty, the soldiers will be forced to leave. You do not want your talented cousin to represent a lousy British soldier who you believe is responsible for the deaths of 5 colonists.

James Otis

You are also a son of Liberty but you want John Adams to represent Captain Preston because it will prove that the colonists truly care about people's rights, even if they are the rights of people who are extremely unpopular. If Captain Preston does not get a lawyer, England will ask why they should care about the colonists rights when the colonists do not care about theirs.

AT HIS MAJESTY'S SUPERIOR COURT OF JUDICATURE,
COURT OF ASSIZE AND GENERAL GAOL DELIVERY
BOSTON

Rex

v.

Preston

STATEMENT OF STIPULATED FACTS

It is stipulated for purposes of this mock trial, that the following facts have been properly introduced into evidence and may be relied on by both parties in the presentation of their case:

A.

The 2000 British soldiers who were stationed in Boston in 1770 were legally garrisoned there since 1768.

B.

Five colonists were killed on the night of March 5, 1770 as a result of shots fired by the British soldiers who were in front of the Customs House on King Street. Three died instantly, one shortly thereafter. Patrick Carr died as a result of his wounds on March 14th.

C.

There were nine soldiers present at the shooting counting Captain Preston. Seven shots were fired. Captain Preston was not carrying a gun.

D.

Captain Preston was in command of the other eight soldiers at the time of the shooting. He was carrying a sword.

E.

Captain Preston was not authorized by civilian authorities to give his men an order to fire.

F.

All of the witness statements included in these case materials are authentic; no objections to their authenticity will be entertained.

G.

Participants may rely on the information given in the foregoing Statement of Facts as true and accurate.

H.

The indictment and the charge of the court are accurate in all respects; no objection to the indictment or charge will be entertained.

The Boston Massacre: Charges and the Law

Note: No transcript of the Rex v. Preston trial has survived. Someone, however, recorded at least part of the trial. A summary of each witness's testimony was prepared immediately after the trial, apparently at Governor Hutchinson's request, to be sent to England. Robert Treat Paine's courtroom minutes have survived as well (Zobel 249)

Charges Against Captain Preston

Captain Preston had not directly killed or wounded anyone. He stood accused of felonious murder as a result of ordering his men to fire without sufficient provocation.

Relevant Law

Note: Captain Preston is charged with having offended the common law and only by that law is he to be judged. The common law relevant to the 18th Century is describe below.

Use of Deadly Force

Soldiers may use deadly force on civilians only when ordered to do so by civilian authorities (e.g. governor)

Burden of Proof

If the defendant pleads not guilty, the burden of proof rests with the Crown (prosecution).

During a trial, once the fact of a killing is proved or admitted, the defendant bears the burden of proof in convincing the jury that homicide was legally justified.

Admissibility of Previous Threats

Since the arrival of the British soldiers to the town of Boston, a number of violent conflicts had erupted. At times, both the townspeople and the soldiers were guilty of threatening the other side. This raises an evidentiary question: could either side be permitted to offer evidence of "previous threats" during the trial of Captain Preston. Any records which may have dealt with this question have not been found, but no testimony regarding "previous threats" appears to have been introduced. (Zobel 244) For purposes of this case, "previous threats" shall refer to threats which were made prior to March 5, 1770.

Common Law

Murder is a felony under common law. Those convicted of murder may not plead benefit of the clergy *1.

Homicide

Kinds of Homicide

HOMICIDE is of three kinds: justifiable, excusable and felonious. The common law also recognizes degrees of guilt in felonious homicide - murder versus manslaughter (4 Blackstone 177, 8). Manslaughter is less serious offense than murder (4 Blackstone 190). Those found guilty of manslaughter may plead benefit of clergy.

JUSTIFIABLE HOMICIDE involves no guilt at all and therefore, a person who commits justifiable homicide has not committed a crime and shall not be punished. Killing a person who attempts to rob or murder, to break into a person's house in the night, or to burn it, or by force to commit any other felony a person, his spouse, child servant, friend, or even a stranger, if it cannot be otherwise prevented, is

justifiable homicide (1 Hale, 488 and 4 Blackstone, 180).

EXCUSABLE HOMICIDE is homicide committed in self-defense. It is homicide where a person engaged in a sudden fight, quits the fight before death occurs, retreats as far as he safely can, and then urged by mere necessity, kills his adversary in the defense of his own life (1 Hale, 479 and Foster, 277). Excusable homicide differs from justifiable homicide in that the accused shares blame for engaging in the fight, and therefore must retreat as far as he can safely. Justifiable homicide does not involve an obligation to retreat.

MURDER by the common law is the unlawful killing of a reasonable person for reasons of malice aforethought, by a person of sound mind (4 Blackstone, 195). Malice is the grand criterion that distinguishes murder from all other forms of homicide. Malice is a disposition to do evil (4 Blackstone, 199).

MANSLAUGHTER is the unlawful killing of another person without malice (4 Blackstone, 191). Manslaughter differs from excusable homicide in that in the case of excusable homicide, the homicide is committed as a result of an apparent need for self-preservation. In manslaughter, the homicide was not necessary. Rather, it is a result of a sudden act of revenge (4 Blackstone, 192).

Criminal Responsibility

When a number of persons assemble together to do an unlawful act, and in the prosecution of that act one of them kills a man, all the rest of the company are in law considered as abetting him to do it (1 Hale, 440 and 1 Foster, 351).

England's Bill of Rights

The raising or keeping of a standing army within the kingdom in a time of peace, unless with the consent of Parliament, is against the law.

Mutiny Act

The Mutiny Act, passed by Parliament, gave the King the power over all armed forces within the British empire. As the principal keeper of the peace, the King is empowered to station troops within the empire in order to restore the public peace or to aid and assist civil magistrates in the preserving of it.

Riot Act

The Riot Act "makes it a felony for twelve rioters to continue together for an hour after the reading of a proclamation by a magistrate ordering them to disperse. It then requires the magistrates to seize and apprehend all persons so continuing together, and it provides that if any of them happen to be killed, maimed or hurt in dispersing, seizing, or apprehending them, the magistrates and those who act under their orders shall be held guiltless." (1 George I, Statute 2, c. 5 - 1714) (see Butterfield pp70-71)

*1 "Benefit of clergy," an outgrowth of the conflict between the royal and ecclesiastical jurisdictions in medieval England, at first provided that no clergyman would be punished by a secular court but would, upon proving his status, be turned over to the ecclesiastical courts for disposition. As the usual badge of a clergyman was the ability to read, in time anyone who could read could claim clergy, the test imposed being the ability to read Psalm 51, verse 1, the 'neck verse.' Benefit of clergy' survived until 1827..." (Butterfield 31) A person who was convicted of a crime for the first time could plead benefit of clergy upon conviction. If he could read the passage from the Bible, his thumb would be branded with a sign of the cross and would receive no further punishment. Those who plead benefit of clergy had to leave the jurisdiction where the crime was committed.

Rex v. Preston

**Prosecution Team
Packet:**

**All Witness
Statements**

	A	B	C	D
1	PROSECUTION WITNESSES	WITNESS	DIRECT EXAMINATION	CROSS EXAMINATION
2	John Cox			
3	Thomas Marshall			
4	Isaac Pierce			
5	Benjamin Burdick			
6	Henry Knox			
7	William Wyat			
8	Robert Goddard			
9	Daniel Calef			
10				
11	DEFENSE WITNESSES			
12	Jane Whitehouse			
13	Andrew, Servant			
14	Matthew Murray			
15	Richard Palmes			
16	James Woodall			
17	James Gifford			
18	Edward Hill			
19	Newton Prince			
20	Dr. John Jeffries			
21	Captain Thomas Preston			
22				
23				
24	OPENING STATEMENTS	PROSECUTION	DEFENSE	
25				
26				
27	CLOSING STATEMENTS	PROSECUTION	DEFENSE	REBUTTAL

Preparation for Trial

Each side must develop a strategy which drives all of the questions, testimony and opening/closing statements. Get together and find a common theme. Focus on corroborating and contradictory testimony.

The Prosecution should focus on witnesses who are consistent in their claim that Preston gave the order to fire. Emphasize witnesses who had a clear view of what happened. Prosecutors considered William Wyatt, Daniel Calef and John Cox to be their best witnesses. Remember...the prosecution has the burden of proof. You must prove "beyond a reasonable doubt" that Captain Preston gave the order to fire and that it was not done in self-defense.

The Defense must focus on conflicting testimony and the inability of the prosecution to meet its "burden of proof." The defense has to prove nothing. Captain Preston is considered "innocent until proven guilty." The prosecution must prove "beyond a reasonable doubt" that Captain Preston gave the order to fire and that it was not done in self-defense. The defense considered Richard Palmes and Andrew Oliver to be their best witnesses.

Focus on the following questions as you develop questions for your witnesses and seek corroborating or conflicting testimony. Remember, though, some of your witnesses will not be able to answer all of these questions. The witnesses can only testify to that which is in their witness statements.

- Where were the witnesses standing?
- Where was Captain Preston standing?
- What was Captain Preston wearing?
- How were the soldiers positioned at the time of the shooting?
- Whose testimony is corroborated?
- How large was the crowd in front of the soldiers?
- Was the crowd threatening? If so, how serious was the threat?
- Was anyone besides the soldiers in possession of any weapons?
- What were the people/soldiers saying/shouting?

Preparation for Trial

Each side must develop a strategy which drives all of the questions, testimony and opening/closing statements. Get together and find a common theme. Focus on corroborating and contradictory testimony.

The Prosecution should focus on witnesses who are consistent in their claim that Preston gave the order to fire. Emphasize witnesses who had a clear view of what happened. Prosecutors considered William Wyatt, Daniel Calef and John Cox to be their best witnesses. Remember...the prosecution has the burden of proof. You must prove "beyond a reasonable doubt" that Captain Preston gave the order to fire and that it was not done in self-defense.

The Defense must focus on conflicting testimony and the inability of the prosecution to meet its "burden of proof." The defense has to prove nothing. Captain Preston is considered "innocent until proven guilty." The prosecution must prove "beyond a reasonable doubt" that Captain Preston gave the order to fire and that it was not done in self-defense. The defense considered Richard Palmes and Andrew Oliver to be their best witnesses.

Focus on the following questions as you develop questions for your witnesses and seek corroborating or conflicting testimony. Remember, though, some of your witnesses will not be able to answer all of these questions. The witnesses can only testify to that which is in their witness statements.

- Where were the witnesses standing?
- Where was Captain Preston standing?
- What was Captain Preston wearing?
- How were the soldiers positioned at the time of the shooting?
- Whose testimony is corroborated?
- How large was the crowd in front of the soldiers?
- Was the crowd threatening? If so, how serious was the threat?
- Was anyone besides the soldiers in possession of any weapons?
- What were the people/soldiers saying/shouting?

The Boston Massacre: Rex v. Preston (1770)

The Complete Witness List for the Prosecution

Witness List and Order of Testimony (the statements of the witnesses whose names are underlined are included in this packet of materials)

1. Edward Garrick
- *2. Thomas Marshal
3. Peter Cunningham
- *4. William Wyat
- *5. John Cox
6. Theodore Bliss
- *7. Henry Knox
- *8. Benjamin Burdick
9. Robert Fullerton
- *10. Daniel Calef (considered the Crown's best witness)
- *11. Robert Goddard
12. Obadiah Whitson
13. Dimond Morton
14. Nathaniel Fosdick
15. Jonathan Williams Austin
16. - Langford
17. Francis Archibald Jr.
- *18. Isaac Pierce
20. Joseph Belknap
21. Jonathan Mason

*Samuel Drowne was not called but Lieutenant Governor Thomas Hutchinson felt that his deposition was "the strongest" for the prosecution. The fact that many townspeople thought of him as feeble-minded may explain why he was not called to testify

WITNESS FOR THE KING (PROSECUTION)
***WILLIAM WYAT**
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

WILLIAM WYAT, being first duly sworn upon oath, deposes and says:

I heard the fire bell as I walked up Cornhill street and saw people running in several directions. The largest group of them went down to the North of the Town House.

I went to the south side where I saw an officer leading out 8 or 10 soldiers. Somebody met the officer and said, "Captain Preston, for Gods sake, mind what you are about and take care of your men." He went down to the centinel, drew up his men, ordered them to face about and prime and load their weapons.

I saw about 100 people in the street huzzaing, crying "fire, damn you, fire." In about 10 minutes I heard the officer say "fire." The soldiers took no notice of the command. The officer's back was to me. I heard the same voice say, "fire." The soldiers did not fire. The officer then stamped his feet and said, "damn your bloods, fire, be the consequence what it will." Immediately, the first gun was fired.

I have no doubt that the officer was the same person who was speaking to the man when I saw him coming down with the others soldiers to the Custom House. His back was to me when the last order to fire was given. I was standing about 2 yards away from the officer when the first order was given and about 5 or 6 yards away when the last order was given. The officer who gave the order to fire stood in the rear of his men when the guns were fired.

Just before the first shot was fired, I heard a stick which sounded like it was hitting a gun. I did not actually see a stick hit a gun though.

The officer was wearing, to the best of my knowledge, a plain colored surtout.

After the shootings, the captain stepped forward before the soldiers and struck up their guns. One of the soldiers was loading his weapon again and he damned the soldiers for firing. He severely reprimanded the soldiers.

I did not mean that the Captain had a surtout on, rather it was the man who spoke to him when coming to the Customs House with the other soldiers.

WITNESS FOR THE KING (PROSECUTION)
***DANIEL CALEF**
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

DANIEL CALEF, being first duly sworn upon oath, deposes and says:

I was present at the shooting. I heard one of the guns rattle, I turned around and heard the officer who stood on the right in a line with the soldiers give the word "fire" twice. I looked at the officer in the face when he gave the word and saw his mouth. He had on a red coat, yellow jacket and silver laced hat. There was no trimming on his coat.

The defendant is the officer I am talking about. I saw his face plain, the moon shone on it. I am sure of the man though I have not seen him since the shooting. I was standing about 30 feet away from the soldiers when the word "fire" was given. The officer had no surtout on.

WITNESS FOR THE KING (PROSECUTION)
***JOHN COX**
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

JOHN COX, being first duly sworn upon oath, deposes and says:

I saw the officer after the shooting and spoke to the soldiers. I told them that it was a cowardly action to kill men at the end of their bayonets. The soldiers were pushing at the people who seemed to be trying to come back into the street.

After the shooting the Captain came up and stamped his feet saying, "damn their bloods fire again and let 'em take the consequence." I was within four feet of the Captain. He had no surtout on, rather he was wearing a red coat with a rose on his shoulder.

The soldiers were pushing and striking people with their guns. I saw the people's arms move but saw no sticks.

WITNESS FOR THE KING (PROSECUTION)
COLONEL THOMAS MARSHALL
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

COLONEL THOMAS MARSHALL, being first duly sworn upon oath, deposes and says:

At about 5 minutes after 9 o'clock I left Colonel Jackson and came up Royal Exchange Lane. All was still. I saw no one but the sentinel.

I went home and heard the cry of murder in the street. There was a great noise. At my door I saw a group of people rushing down the street from the Main Guard with swords crying, "damn them where are they, let them come, by Jesus." A similar group shortly thereafter came up Quaker Lane crying "fire." I went in and heard the bells ring. The cry of "fire" became could be heard all over. I then went out by the Customs House.

The people kept gathering. I saw no uneasiness with the sentinel. I stood within 30 feet of the sentinel and would have seen any disturbance.

A party of soldiers then came down from the Main Guard. I thought that they came to relieve the sentinel. I heard one gun and thought that it was to alarm other soldiers in the barracks. A little time after the first shot, I heard another, and then several more...

When the first shot was fired, there was no one within 12 - 15 feet of the soldiers except on the wings. I cannot say that I heard an order to fire nor that I clearly saw Captain Preston.

Between the firing of the first shot and the second, there was enough time for an officer to step forward and give the word "recover" if he wanted to. No one did this.

WITNESS FOR THE KING (PROSECUTION)
ISAAC PIERCE
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

ISAAC PIERCE, being first duly sworn upon oath, deposes and says:

After the shootings had occurred, the Lieutenant Governor asked Captain Preston, "didn't you know that you had no power to fire upon the inhabitants or any number of people unless you had a Civil Officer to give order." "You must know it," said the Lieutenant Governor.

The Captain replied, "I was obliged to, to save my Country."

WITNESS FOR THE KING (PROSECUTION)
ROBERT GODDARD
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

ROBERT GODDARD, being first duly sworn upon oath, deposes and says:

At about 9 o'clock I heard the fire bell ring. I ran into King street where I saw 8 or 9 men coming down pushing their bayonets and damning the crowd.

The soldiers came up to the centinel and the officer told them to place themselves into a half moon position. The Captain told the boys to go home lest there be murder done. The boys were throwing snowballs and did not leave but threw more snowballs.

The Captain went behind the soldiers. The Captain told them to fire. One gun went off. A sailor or townsman struck the Captain. He thereupon said, "damn your bloods, fire, think I'll be treated in this manner." This man who struck the Captain came from among the people who were seven feet away and who rounded one wing of the soldiers as they stood in formation. I saw no person speak to him. I was so near to the Captain that I would have seen it.

After the Captain said, "damn your bloods," the soldiers all fired one after another (about 7 or 8 in all) and then the officer ordered them to prime and load again. He stood behind the soldiers the whole time.

Mr. Lee went up to the officer and called the officer by his name - Captain Preston.

I saw Captain Preston coming down from the Main Guard behind the party of soldiers. I went to the gaol (jail) the day after the shooting, being sworn for the grand jury, to identify the Captain. I said, pointing to him, "that's the person who gave the word to fire." He said, "if you swear that you will ruin me everlastingly."

I was so near the officer when he gave the word "fire" that I could touch him. His face was towards me. He stood in the middle behind the soldiers. I looked him in the face. He then stood within the half moon formation of soldiers. When he told them to fire he turned around and faced me. I looked him in the face.

WITNESS FOR THE KING (PROSECUTION)
BENJAMIN BURDICK
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

BENJAMIN BURDICK, being first duly sworn upon oath, deposes and says:

When I came out into the streets that night, I was told that there was a scuffle between the soldiers and the people. Upon receiving that information, I went back to my house and got my sword. I never used to go out without a weapon.

When I came into King Street at about 9 o'clock I saw the soldiers round the centinel. I asked one of them if his weapon was loaded and he said yes. I asked him if he would fire. He said, "yes, by the eternal God," and pushed his bayonet at me.

I did not draw my sword from its sheath until after the soldier pushed at me with his bayonet. I would have cut his head off if he had stepped out of his rank to attack me again.

I heard the word "fire" and am certain that it came from behind the soldiers. I saw a man behind the soldiers who I took to be an officer. He was passing busily behind the men. Before the firing I saw a stick thrown at the soldiers. The firing came a little time after. I saw some person fall. The word "fire" I took to be a word of command.

When the first shot was fired, most of the people were in Royal Exchange Lane. There were about 50 people on King Street.

After the shooting, I went up to the soldiers and told them that I wanted to see some faces so that I might be able to identify them under oath in the future. The centinel, in a melancholy tone said, "perhaps Sir, you may."

WITNESS FOR THE KING (PROSECUTION)
HENRY KNOX
ANONYMOUS SUMMARY OF PROSECUTION EVIDENCE

HENRY KNOX, being first duly sworn upon oath, deposes and says:

I came up Cornhill Street where I was told that the soldiers had been fighting with the people. I went up to the centinel who was stationed in front of the Customs House and saw him loading his gun. The boys were damning him and dared him to fire. I thought that he had snapped his gun, but then as I thought about it, I am now inclined to think that he did not because I saw no fire in his musket pan.

There were about 20 or 30 people in front of the centinel. One boy swore that he would knock him down for snapping his gun. I saw the Captain coming down with his party of men. I took Preston by the coat and told him "for God's sake, take care of your men for if they fire, your life will be answerable." In an agitated state, he replied, "I am sensible of it."

A Corporal was leading the troops as they went down to the Customs House. The Captain stopped with me and the party of soldiers proceeded to the centinel. The people cried, "stand by." The soldiers pushed through the people with their bayonets charged in order to get through. The people shouted, "make way, damn your bloods."

The Captain then left me and went to join the rest of the soldiers in front of the Customs House.

I heard the centinel say "damn their bloods, if they touch me I will fire."

In about 3 minutes after the centinel said, "damn their bloods," the party of soldiers arrived. I stood at the foot of the Town house when the guns were fired. I heard the people cry, "damn your bloods, fire on."

To the best of my recollection, the Corporal [Wemms] had a surtout on. I did not.

Rex v. Preston

**Defense Team
Packet:**

**All Witness
Statements**

The Boston Massacre: Rex v. Preston (1770)

The Complete Witness List for the Defense

Witness List and Order of Testimony (the statements of the witnesses whose names are underlined are included in this packet of materials)

1. Brazen Head Jackson
- *2. Edward Hill
3. Benjamin Davis, Sr.
4. Joseph Edwards
5. John Frost
6. Benjamin Leigh
7. Jane Whitehouse
- *8. James Waddel (Woodall)
9. Joseph Hilyer
- *10. Richard Palmes (key witness for defense)
11. John Coffin (probably a prosecution witness)
- *12. Matthew Murray
- *13. Andrew ("Oliver") - negro servant of Oliver Wendell (another key witness)
14. Oliver Wendell (called to establish Andrew's credibility)
15. Jack (negro servant of Dr. James Lloyd)
- *16. Newton Prince (free black)
- *17. James Gifford
18. Thomas Handasyd
19. John Gillespie
20. Captain Brabazon O'Hara

*John Hickling was not called but some historians think that he would have made a good witness. The reason for not calling him is unknown.

**Dr. John Jeffries's testimony was included in this packet although he did not testify at the trial of Captain Preston. Jeffries did testify at the trial of the other soldiers and his testimony was compelling. If you use his testimony, I would encourage you to save his testimony for the end of the trial.

DEFENSE WITNESS
*ANDREW, A NEGRO SERVANT*1
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE

ANDREW, being first duly sworn upon oath, deposes and says:

Hearing the bells ring I came out. I met one of my acquaintance at the bottom of School Street holding his arm. He said that soldiers had begun to fight and were killing everybody. One had struck him with a cutlass and almost cut his arm off. He advised me not to go. I told him that a good club was as good as a cutlass and he had better go and see if he could not cut too.

I went to the Main Guard where I saw two centinels who were much enraged with the people who were crying, "who buys Lobsters." *2 I stood there for about two or three minutes when I saw the people, about 20 of them, some with sticks run down by Jackson's corner. We went on towards the whipping post. Some threw snow balls at the people round the Custom house. They returned none. Some boys who stood near the middle of the street said that they "have his gun away and now will have him." I then heard them give three cheers round the custom house. Then they ran up to the Town house to see if the main Guard would not turn out.

I went to the corner and 7 or 8 men came out. They were in a line when an officer came before them with a sword in his hand, a laced hat on, and a red coat, and I remember silver on his shoulder. They then filed-up and went down to the Custom house. The men seemed to be in great rage. The officer was either on the northerly side of them or in front of them. I was behind them. I did not see the officer as he passed the corner of the Town house. I stood at Peck's corner.

The soldiers got down to the Custom's house. The people gave 3 cheers. The boys at Pecks corner kept throwing snow balls toward the soldiers. I jumped off a post on which I stood and pushed through the crowd to get to the Customs house. I heard the people holler, "here comes Murray with the Riot Act." *3 The crowd turned about and pelted somebody who ran through Pudding Lane. I ran to Phillips corner.

I went from there to try to get to the Custom house and get through the people. When I was at the head of Royal Exchange lane I heard the Grenadier who stood next to the corner say "damn your blood, stand off, or back." The people in the back were pushing in to see those who were closer to the soldiers and being pushed back by the Grenadier with his bayonet. A young fellow said, "Damn you, you bloody back Lobster, are you going to stab me?"

"By God I will," he said.

A number of people said, "come away, let 'em alone, you have noting to do with 'em."

Turning around to see who was there, I saw the officer and two men who were talking to him. Some of the people were jumping on each others backs to hear what was being said. I heard somebody I took to be the officer say "stand off" and something I could not understand. I then heard somebody say, "Damn him, he is going to fire." And then they all began to shout, gave three cheers, clapped hands and said, "Damn them, they dare not fire" and began to pelt the soldiers with snow balls. I saw snow balls thrown and saw the soldiers dodging and pushing their bayonets. I saw several snow balls hit them.

I was crowding to get as near to the officer as I could. A person who stood just behind me struck the Grenadier's gun with a long stick as he was being pushed. The Grenadier told 'em to draw back. If he had stepped from his station he might have killed me. I was just out of his reach.

Some that stood round me tried to go back. Some people came from Jackson's corner saying "Damn 'em, knock 'em over, we are not afraid of 'em." A stout man forced his way through and came up between me and the Grenadier. He had a stick in his hand. I saw him swing at the officer. People were talking with the officer. I saw him dodge the stick and try to fend off the blow with his arm. The man then began to swing at the Grenadier's gun who stood about a yard and a half from the officer on the right. I saw the Grenadier attempt to stick him with his bayonet. The man pushed the soldier's gun aside with his left hand, stepped in and hit the Grenadier's neck or shoulder with his club. It was a cord wood stick not very long.

As he struck the soldier I turned about, looked at the officer, and saw that there was a lot of movement. The stout man still had hold of the Grenadier's bayonet. I later took this Grenadier to be the one who killed the Mulatto [Crispus Attucks].

While I was looking at the Captain, the people crowded me on between the soldiers. As the stout man gained the upper hand in his scuffle with the Grenadier, the crowd began crying, "kill him, kill him, knock 'em over." Thereupon the Grenadier stepped back, relieved himself, and began to jab at the people with his gun to beat them back. They rushed back very quickly, making a great noise or screeching, huzzaing, and bid the soldiers to "fire, damn you, you dare not fire." I jumped back and hard a voice cry "fire" and immediately the first gun fired. It seemed to come from the left wing...from the second or third man on the left. The officer was standing in front of me with his face towards the people. I am certain that the voice which shouted "fire" came from beyond him.

The officer stood in front of the soldiers at a sort of a corner. I turned round and saw a Grenadier who stood

on the Captain's right swing his gun and fire. I took it to be Killroy. I looked a little to the right and saw a man drop. The Mulatto was killed by the first gun by the Grenadier on the Captain's right. I was so frightened after the shooting that I did not know where I was. The next thing I remember I was in Dehone's entry.

* 1 Although it does not appear that Andrew's (a slave) credibility was questioned, his owner (Oliver Wendell) was put on the stand to testify to his good character & veracity.

*2 Because of the red color and design of the soldiers uniforms, colonists frequently call them "lobsters."

* 3 James Murray, the owner of Murray's Barracks, was also a justice of the peace. The Riot Act was copied from the English original which stated that, "It makes it felony for twelve rioters to continue together for an hour after the reading of a proclamation by a magistrate ordering them to disperse. It then requires the magistrates to seize and apprehend all persons so continuing together, and it provides that if any of them happen to be killed, maimed or hurt in dispersing, seizing, or apprehending them, the magistrates and those who act under their orders shall be held guiltless." (1 George I, Statute 2, c. 5 - 1714)

**DEFENSE WITNESS
NEWTON PRINCE
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE**

NEWTON PRINCE, being first duly sworn under oath, deposes and says:

I heard the bell ring and ran out. I came to the Chapple and was told there was no fire but something better, there was going to be a fight. Some of the people had buckets and bags and some had clubs.

I went to the west end of the Town House where there were a number of people. I saw some soldiers coming out of the Guard house with their guns and running down one after another to the Custom house. Some of the people said "let's attack the Main guard, or the centinel who is gone to King street." Some said, "for God's sake don't touch the main guard."

I went down to King street and saw the soldiers planted by the Custom house two deep. The people were calling them Lobsters, daring them to fire saying, "damn you, why don't you fire." I saw Captain Preston come out from behind the soldiers. He stood in the front at the right. He spoke to some people. The Captain stood between the soldiers and the gutter, about two yards from the gutter. I saw two or three people strike the soldiers guns with sticks. I was going off to the west of the soldiers and heard the guns fire and saw the dead carried off...

The people whilst striking on the guns cried "fire, damn you, fire."

I heard no orders given to fire, only the people in general cried "fire."

**DEFENSE WITNESS
CAPTAIN JAMES GIFFORD
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE**

CAPTAIN JAMES GIFFORD, being first duly sworn under oath, deposes and says:

At about 10 o'clock I went to the main guard and found Captain Preston. He told me that he had sent a party of soldiers to protect the centinel. He said that the mob had attacked the soldiers so furiously that they fired upon them.

DEFENSE WITNESS
***RICHARD PALMES**
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE

RICHARD PALMES, being first duly sworn upon oath, deposes and says:

I was at the Coffee House a little after 9 o'clock when I hear the bells ringing. I went up to King Street. I saw the guard in front of the Customs House walking quietly. I then went up by the Town House. People told me that the soldiers at Murray's barracks were abusing the townspeople. I went there and saw a number of officers at the gate with guns and about 20 or 30 people in front of them. I asked the officer why he had his men out after 8 o'clock. "Do you mean to teach me my duty," he asked. "No," I replied, "just to remind you of it." One of the officers said that the soldiers are going into the barracks and that every one should go home. Mr. Lamb told the people to go home and they went off.

Then I saw Mr. Pool Spear. I walked with him to the pump. Somebody there said that there was a rumpus in King Street. I went down. When I got there I saw Captain Preston at the head of 7 or 8 soldiers at the Custom house with their guns drawn up breast high and their bayonets fixed to their muskets. I found Theodore Bliss talking with the Captain. Bliss was saying, "why don't you fire" or words to that effect. I don't know what the Captain answered but Bliss then said, "God damn you why don't you fire." I was close behind Bliss. they were both in the front of the soldiers. Then I stepped immediately between them and put my left hand in a familiar manner on the Captain's right shoulder to speak to him. With Mr John Hickling looking over my shoulder, I said to Preston, "are your soldiers guns loaded?" He answered, "yes with ball and powder."

"Sir, I hope you don't intend for the soldiers to fire on the inhabitants," I stated.

He said, "by no means."

The instant he spoke I saw something resembling snow or ice strike the soldier who was standing just to the right of the Captain's. At that time, he was the only soldier standing to the right of the Captain. The soldier instantly stepped one foot back and fired the first gun. At that time I had my hand on the Captain's shoulder.

After the gun went off I heard the word "fire." The Captain and I stood in front about halfway between the crowd and the muzzle of the soldiers' guns. I don't know who gave the word fire. I was then looking on the soldier who fired. The word "fire" was given loud. The Captain might have given the word and I not distinguish it.

After the word fire in about 6 or 7 seconds the soldiers on the Captain's left fired and then the others one after another. The Captain stood still until the second gun was fired.

After that I turned and saw the soldier who fired the first shot attempting to prick me by the side of the Captain with his bayonet. I had a large stick in my hand. I swung the stick and hit the soldier in his left arm, knocking the gun from his hand. I had not struck at anybody before that. Upon that I turned, thinking that the other soldiers would do the same and struck at anybody and hit Captain Preston. I was actually swinging at the soldier next to Preston but my foot slipped, my blow fell short, and I hit Captain Preston. Afterwards he told me that I had hit him on the arm.

When I heard the word "fire" the Captain's back was to the soldiers and his face was toward me.

Before I recovered, the soldier who fired the first gun was attempting again to jab me with his bayonet. I tossed my stick in his face. He fell back and I jumped toward Royal Exchange Lane. He pushed at me there and fell down. I turned to catch his gun. Another soldier pushed at me and I ran off.

I soon returned and saw the dead being carried off. By that time the soldiers were gone. The gun which went off scorched the nap of my Surtout at the elbow.

The whole incident lasted about 45 seconds. There was enough time between the firing of the first and second gun for the Captain to have spoke to his men. He stood leaning on on his sword which was still in its sheath.

At the time of the shooting there was between 50 and 80 people at some distance from the soldiers and not crowding them. The crowd in front of the soldiers was thin.

**DEFENSE WITNESS
EDWARD HILL
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE**

EDWARD HILL, being first duly sworn under oath, deposes and says:

A little after 9 o'clock I heard the bells. I came down as far as the Town house. I asked where the fire was and was told that there was none but that the soldiers were killing the towns people. Some of the people said that they would take the centinel off of his post at the Custom house.

I was going down towards the Post Office and heard one or two guns fired. I turned back. When I got to Jackson's corner, I heard two more. I went down towards the centinel and saw one gun fired. The bullet struck off of the stone wall. After all of the firing, Captain Preston put up the gun of a soldier who was going to fire and said, "fire no more, you have done mischief enough."

**DEFENSE WITNESS
JAMES WOODALL
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE**

JAMES WOODALL, being first duly sworn upon oath, deposes and says:

I came into King Street, saw a great number of people there and a party of soldiers and an officer at the Main guard and followed them to the Custom house.

The sentry box was in the gutter and the sentinel fell into line with the soldiers. They were drawn up. I saw one soldier knocked down. His gun fell from him. I saw a great many sticks and pieces of sticks and ice thrown at the soldiers. The soldier who was knocked down took up his gun and fired directly.

Soon after the first gun was fired I saw a gentleman behind the soldiers in velvet or blue or black plush trimmed with gold. He put his hand towards the soldiers backs. Whether he touched them I know not and he said "by god I'll stand by you whilst I have a drop of blood," and then said "fire." Two guns went off then the rest - up to 7 or 8.

I stood between Captain Preston and Royal Exchange Lane.

The Captain, after, seemed shocked and looked upon the soldiers. I am very certain that he did not give the word "fire." I did not hear the word but once until after all of the firing. The crowd said that it was only powder and dared them to fire.

I saw one person speak to the Captain when the first gun was fired. The people at the time of the firing were about 4 yards away from the soldiers.

The soldiers were in a single line. The gentleman behind them had a wig on.

**DEFENSE WITNESS
MATTHEW MURRAY
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE**

MATTHEW MURRAY, being first duly sworn upon oath, deposes and says:

I heard the bells and ran out and heard what was going on on King Street. I went in and got a broom handle. I went to King Street and saw no soldiers. I went to Murrays Barracks. The soldiers were gone. He told me to go home.

Then I went down to King street where I heard the barber's boy say that "this is the man who struck me with the breech of his gun." The soldier went to the steps and loaded his gun. They dared him to fire.

The guard came down. I saw them load their weapons. Somebody spoke to the Captain and told him that he had best withdraw because none of the people would interrupt him. I stood next to the soldier. I saw a stick or piece of ice strike him upon his right side after which he instantly fired and I left.

I heard no order given to fire. I stood within two yards of the Captain. He was in the front talking with a person whom I do not know. I was looking at the Captain when the gun was fired. The soldier who fired stood on the Captain's right. I saw two or three snowballs thrown at the soldiers before the gun was fired, but none after for I left immediately.

The Captain had a sword in his hand. I do not know whether he had a Surtout on but believe he had. I know Captain Preston by sight. He is the defendant.

A woman crowded by and spoke to the second soldier on the right. I think that if the Captain had given orders I would have heard anything loud.

**DEFENSE WITNESS
JANE WHITEHOUSE
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE**

JANE WHITEHOUSE, being first duly sworn upon oath, deposes and says:

I live near the Customs house. I heard a noise and went outside. I asked the sentinel what was the matter. He didn't know. Some people came by and said, "there's the sentinel, the bloody back rascal, let's go kill him."

They kept gathering throwing snow balls, oyster shells and chunks of wood at the sentinel and forced him to move out of his box to the steps.

A little time after that I saw a party of soldiers coming from the Main Guard. An officer which proved to be Captain Preston was with them. He told his men to halt and the sentinel to recover his gun, fall into his rank and march up to the main guard. The sentinel fell in and the men wanted to move forward to the Guard house but could not because of the riot.

The people called out, "fire, damn you why don't you fire, you can't kill us."

I stepped toward the soldiers and heard a gentleman ask the Captain if he was going to order his men to fire. He said, "no Sir, by no means, by no means."

A man - the sentinel - then pushed me back. I stepped back to the corner. He bid me go away for I should be killed. A man came behind the soldiers and walked backwards and forwards, encouraging them to fire.

The Captain stood on the left about three yards. The man touched one of the soldiers upon the back and said "fire, by God I'll stand by you." He was dressed in dark colored clothes. I don't remember if he had a surtout or any lace about him. He did not look like an officer. The man fired directly on the word and clap on the shoulder. I am positive that the man who said fire was not the Captain. My attention was fixed on him, for the people said "there's the officer, damn him, let's kill him." I am sure he gave no orders.

I saw the people throw things at the soldiers. I saw one man take a chunk of wood from under his coat, throw it at a soldier and knock him down. He fell on his face. His gun fell out of his hand. He was the right handed soldier near the sentry box. This was before any of the firing occurred. The man recovered himself and picked up his gun. The chunk was thrown a few minutes before the man clapped the soldier on the back.

The second gun went off about a minute after the first. I didn't hear anybody say "fire" between the first and the second shot.

**DEFENSE WITNESS
DR. JOHN JEFFRIES*1
ANONYMOUS SUMMARY OF DEFENSE EVIDENCE**

DR. JOHN JEFFRIES, being first duly sworn upon oath, deposes and says:

I was sent for at about 11 pm on March 5th and spent the night caring for the shattered arm of one Edward Payne who had been shot by the soldiers on King Street. The next morning I saw Mr. Patrick Carr, one of my patients. He was clearly dying from a wound caused by a musket ball. I was with him every day until he died. He knew at the time that he had no hope of living.

I asked him whether he thought the soldiers would fire. He told me he thought they were going to fire long before they did.

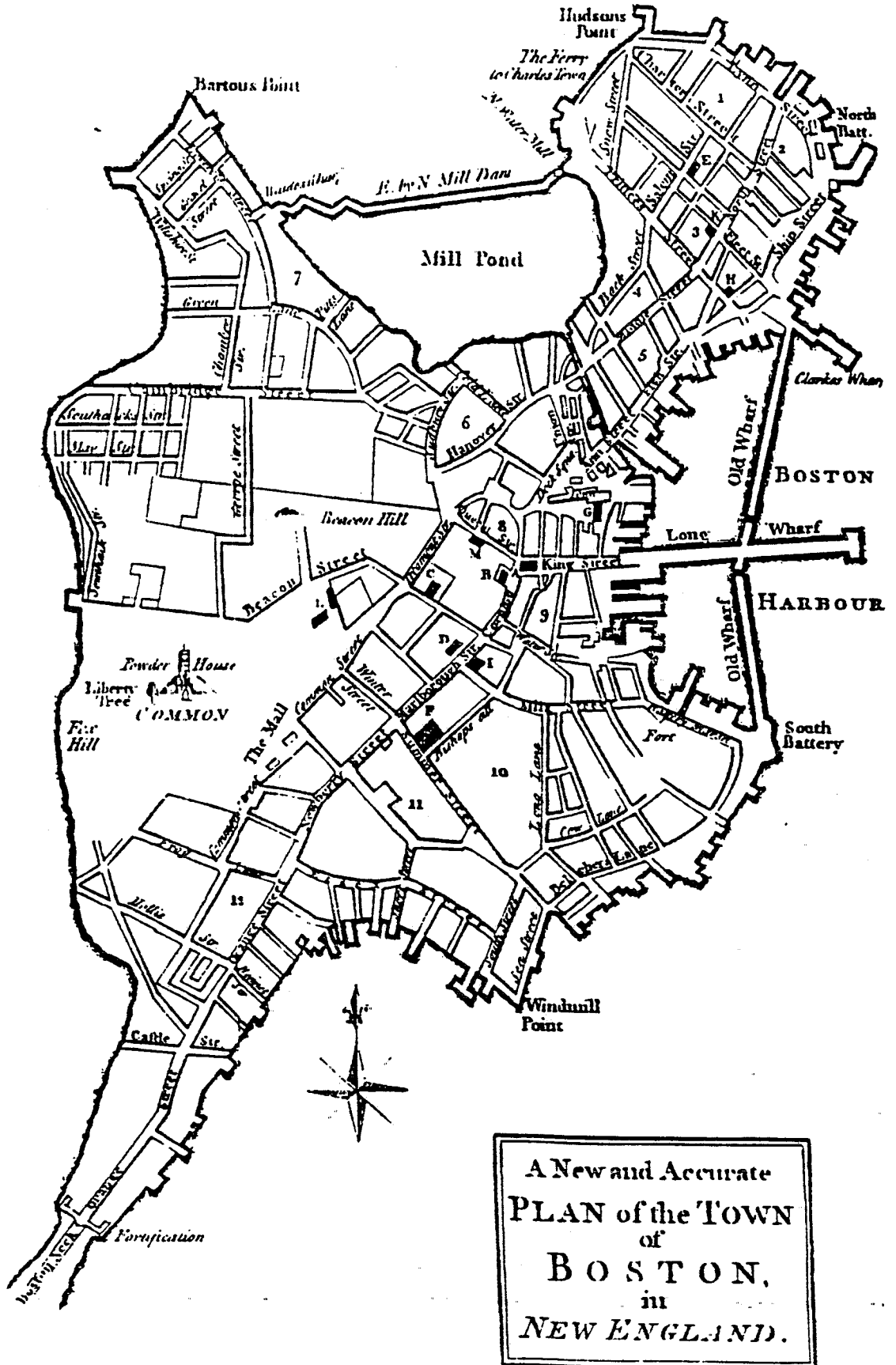
I asked him whether the soldiers were abused a great deal, after they went down there to King Street. He said, he thought they were.

I asked him whether he thought the soldiers would have been hurt, if they had not fired, he said he really thought they would, for he heard many voices cry out, "Kill them."

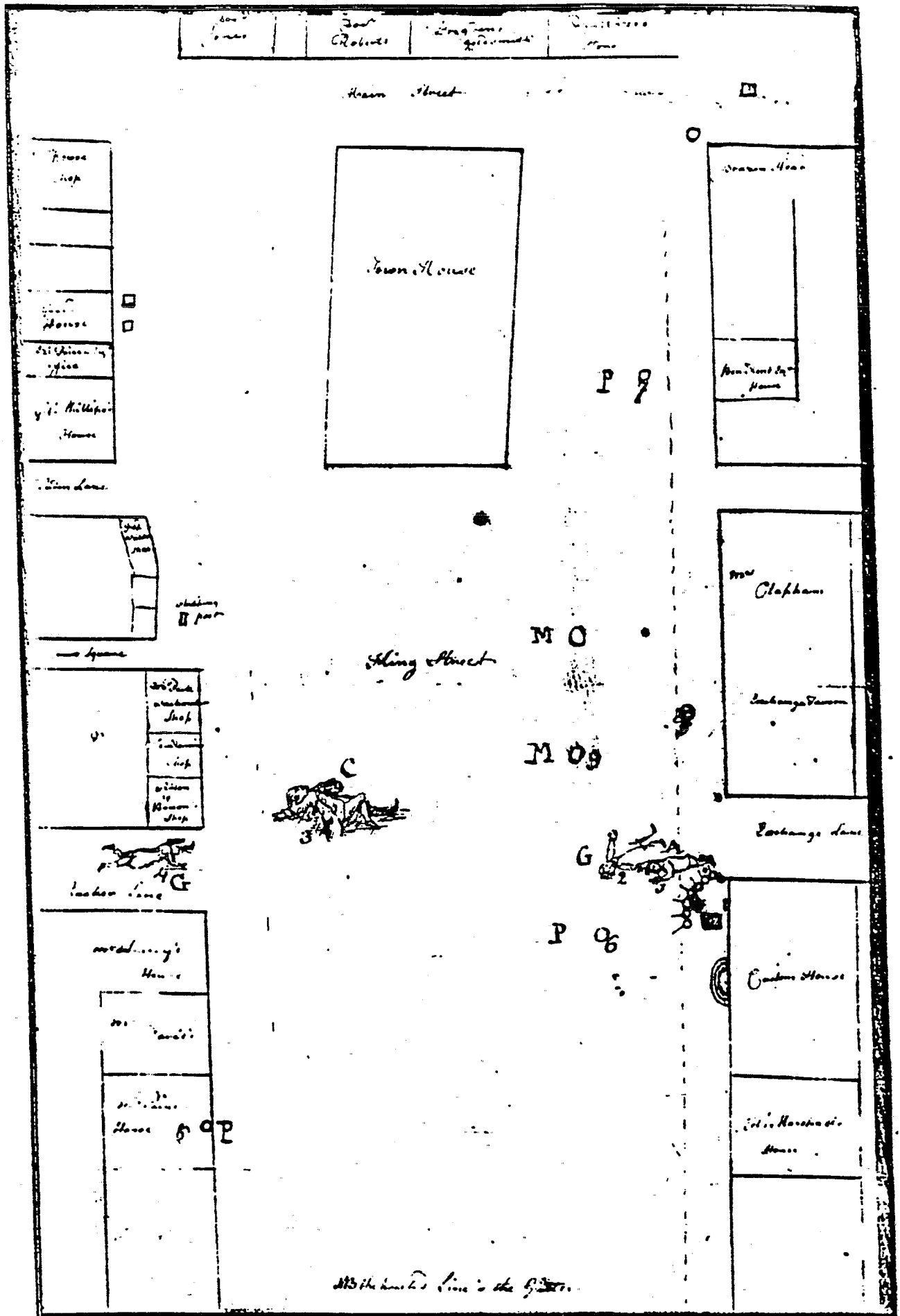
I asked him then, whether he thought they fired in self defense. he said he really thought they did fire to defend themselves, and that he did not blame the man that shot him.

*1 Dr. John Jeffries did not actually testify at the trial of Captain Preston. He did testify at the trial of the other 8 soldiers on December 1, 1771. Dr. Jeffries served as a physician to Patrick Carr who was one of the people shot on March 7, 1770. While tending to Carr's wounds, Dr. Jeffries engaged in a number of conversations with the dying man about the events surrounding the "massacre." Patrick Carr died on March 14th from complications related to his wound.

CHARLES RIVER



A New and Accurate
PLAN of the TOWN
of
BOSTON,
in
NEW ENGLAND.



III. Paul Revere's plan of the Massacre, drawn for use in the subsequent trial. From the Mellen Chamberlain Autograph Collection.

Jury Instructions:

The Charge of the Court

Jury Instructions¹
(The Charge of the Court)

Rex v. Preston

At His Majesty's Superior Court of
Judicature, Court of Assize and General
Goal Delivery; County of Suffolk Massachusetts.

Members of the Jury:

You are considering the case of Rex v. Captain Thomas Preston.

Captain Preston has been charged with the crime of manslaughter. Captain Preston has pleaded not guilty.

The defendant, Captain Preston, is presumed to be innocent until proven guilty. You are to presume that he is innocent until the prosecution presents evidence that is sufficient enough to convince you beyond a reasonable doubt that he is guilty.

However, the prosecution is not required to prove the guilt of Captain Preston beyond all moral and legal certainty. Reasonable doubt is all that can be expected. Reasonable doubt means just what it says. It is a doubt of a fair minded, impartial juror, honestly seeking the truth.

If after considering all of the facts and circumstances of this case, your minds are wavering, unsettled, unsatisfied, then that is reasonable doubt and you must acquit the defendant (i.e. find him "not guilty"); but if that doubt does not exist in your minds as to the guilt of the accused, then you may convict the defendant (i.e. find him "guilty").

English common law applies in this case. Captain Preston has been charged with the crime of manslaughter. Manslaughter is the unlawful killing of another person without malice (i.e. evil intent or reason). It is a killing which results from a voluntary act committed during the heat of passion. In manslaughter the killing does not occur as a result of the need for self-preservation (i.e. to save one's own life).

British law states that soldiers could use lethal force on civilians only when ordered to do so by the civilian authorities. In this case, in order to find Captain Preston guilty of manslaughter, you must determine if Captain Preston gave the order to fire. If you find that Captain Preston did not give the order to fire beyond a reasonable doubt, then you must find in favor of Captain Preston. If, however, you find beyond a reasonable doubt that Captain Preston gave the order to fire, then Captain Preston is guilty of manslaughter unless you find that he acted in self-defense.

The law provides that a person who kills another person but is acting in self defense is not guilty of manslaughter. A person acts in self defense when he is engaged in a sudden fight, retreats as far as he safely can and then, having no reasonable choice, kills his adversary in the defense of his own life. The burden of proving self defense is on the defendant. Therefore, if you find that Captain Preston gave no order to fire but you find that Captain Preston has proven to you that he acted in self-defense, then you must find in favor of Captain Preston. If, however, you find that Captain Preston gave the order to fire and that he was not acting in self defense, you must find Captain Preston guilty of manslaughter.

In deciding whether Captain Preston was acting in self defense, you may consider that the Mutiny Act passed by Parliament provides that the King of England has the power to station British soldiers in Boston to keep the peace and aid the officials whom he has sent to carry out laws such as the Townsend Acts. You may also consider that it is the duty of peace officers such as Captain Preston, to suppress riots and unlawful assemblies (gatherings). The common law allows peace officers the power to suppress riots and to raise a sufficient force to enable him to do it.

It is your job to weigh the evidence to determine what witnesses you will believe and what witnesses you will choose not to believe.

The verdict must be unanimous.

¹ Based on the instructions given by Justice Trowbridge, one of the presiding judges in the trial of 1770.

The Deposition of Captain Thomas Preston¹ (date unknown)

"The mob still increased and were outrageous, striking their clubs or bludgeons one against another, and calling out, come on you rascals, you bloody backs, you lobster scoundrels, fire if you dare, G-d damn you, fire and be damned, we know you dare not, and much more such language was used. At this time I was between the soldiers and the mob, parleying with, and endeavoring all in my power to persuade them to retire peaceable, but to no purpose. They advanced to the points of the bayonets, struck some of the and even the muzzles of the pieces, and seemed to be endeavoring to close with the soldiers. On which some well behaved persons asked me if the guns were charged. I replied yes. They then asked me if I intended to order the men to fire. I answered no, by no means, observing to them that I was advanced before the muzzles of the men's pieces, and must fall a sacrifice if they fired: that the soldiers were upon the half cock² and charged bayonets³, and my giving the word fire under those circumstances would prove me to be no officer. While I was thus speaking, one of the soldiers received a severe blow with a stick, stepped a little to one side and instantly fired...On this a general attack was made on the men by a great number of heavy clubs and snowballs being thrown at them, by which all our lives were in imminent danger, some persons at the same time from behind calling out, damn your bloods - why don't you fire. Instantly three or four of the soldiers fired...On my asking the soldiers why they fired without orders, they said they heard the word fire and supposed it came from me. This might be the case as many of the mob called out fire, fire, but I assured the men that I gave no such order; that my words were, don't fire, stop your firing..."⁴

¹ from "Publications of The Colonial Society of Massachusetts, Vol. VII (Boston: The Colonial Society of Massachusetts, 1905) pp. 8-9. Please recall that Captain Preston was not permitted to testify at his own trial. Apparently it was assumed under 18th Century law that a defendant would lie to protect himself or herself. Nevertheless, after the mock trial, the students may want to hear what he had to say.

² The cock of a musket had to be fully drawn back (cocked) for the musket to fire.

³ The charged bayonet position is one in which the soldier is holding the musket around his waist with the barrel and musket pointing at an adversary. This position allowed the soldier to lunge the bayonet into an intended victim. The normal firing position was at armpit height with the butt of the musket pressed against one shoulder with the other end at a level whereby the holder could take aim (i.e. eyesight).

⁴ Depositions were also taken from the soldiers, three of whom claimed, "We did our Captain's orders and if we don't obey his commands should have been confined and shot..." As with Preston's deposition, the jury was not aware of that statement.

**Description of
Assessment Task**

and

Scoring Rubrics

Description of Assessment Task

For this Classroom Performance Model, the assessment task consists of writing a closing argument for the mock trial case entitled "Rex v Preston." The writing of a closing argument provides an authentic vehicle through which you can demonstrate your ability to summarize, analyze and interpret conflicting historical information. It also allows you to demonstrate a civic understanding of the American trial process.

In writing the closing arguments, students should keep in mind that your goal is to demonstrate your ability to meet three standards. They are:

Civics Standard 4: ...to develop and employ the civic skills necessary for effective, participatory citizenship;

History Standard 2: ...to gather, examine and analyze historical data.

History Standard 3: ...to interpret historical data.

While writing your closing arguments be sure to pay particular attention to the expectation that you will analyze and interpret the evidence and issues which surfaced in the trial of Captain Preston.

Additionally, bear in mind that a well written closing argument summarizes the important evidence and issues in the case and argues effectively for a particular side (prosecution or defense). Feel free to argue for either side. Your score for this assessment will not be affected by your choice of sides. Your argument will be scored on the basis of the criteria described below. You will "exceed" the standards if you

- ___ write a clear, concise, logical and accurate summary of the case
- ___ demonstrate a thorough understanding of the important evidence and issues in the case
- ___ present highly effective arguments for one side in the case (prosecution or defense) which address the "burdens of proof"
- ___ analyze the strengths of one side and the weaknesses of the other
- ___ assess the credibility of the evidence
- ___ offer a well-supported, plausible interpretation of the events
- ___ separate fact from opinion and flawed perception
- ___ show that you understand trial processes and procedures
- ___ write a closing argument that contains few errors in grammar and spelling

Suggested Strategies

Write as if you are speaking to the jury at the close of a trial

1. Greet the jury, introduce yourself and identify the side you represent.
2. Briefly summarize the important facts of the case.
3. Explore the evidence in light of the burden of proof - was the order given to fire and was it self-defense ("beyond a reasonable doubt")?
4. Examine the strengths of one side and the weaknesses of the other. Discuss conflicting and corroborating evidence as well as the perceived credibility of witnesses.
5. Be persuasive!
6. Close your statement by asking the jury to return with a specific verdict.

As you write your closing argument, imagine that you are an attorney who is being paid to argue the most important kind of criminal case i.e. one in which a person has been accused of the most serious capital crime - murder. If you believe that Captain Preston's actions illegally caused the deaths of 5 human beings, you must argue passionately for a guilty verdict. If, on the other hand, you believe that Captain Preston did not engage in illegal acts on the night of March 5, 1770, then you should argue in a manner that will prevent the people from imposing their most severe sentence i.e. execution. This is truly a case of life and death! Argue accordingly.

At this time, you may begin writing your closing argument. You are advised to outline your argument before you begin writing. Then, after you complete the writing of your closing statement, review the criteria that is described above to make sure that you work "exceeds" the standard.

Feel free to use any materials that you have collected including the Statement of the Case, stipulated facts, personal notes, witness statements and/or the jury instructions.

Good luck!

Closing Statement: Mock Trial of Captain Preston

Closing Statement Checklist

As you write your closing argument, imagine that you are an attorney who is being paid to argue the most important kind of criminal case i.e. one in which a person has been accused of the most serious capital crime - murder. If you believe that Captain Preston's actions illegally caused the deaths of 5 human beings, you must argue passionately for a guilty verdict. If, on the other hand, you believe that Captain Preston did not engage in illegal acts on the night of March 5, 1770, then you should argue in a manner that will prevent the people from imposing their most severe sentence i.e. execution. This is truly a case of life and death! Argue accordingly.

Write as if you are speaking to the jury at the close of a trial

1. Greet the jury, introduce yourself and identify the side you represent.
2. Briefly summarize the important facts of the case.
3. Explore the evidence in light of the burden of proof - was the order given to fire. If so, was it self-defense ("**beyond a reasonable doubt**")?
4. Examine the strengths of one side and the weaknesses of the other. Discuss conflicting and corroborating evidence as well as the perceived credibility of witnesses.
5. Use facts to support your argument (e.g. witness names, what they said, what the conditions were like, names of places)
6. Be persuasive!
7. Close your statement by asking the jury to return with a specific verdict.
8. Check for errors in spelling and grammar.

Worth 100 points!

Closing Statement: Mock Trial of Captain Preston

Closing Statement Checklist

As you write your closing argument, imagine that you are an attorney who is being paid to argue the most important kind of criminal case i.e. one in which a person has been accused of the most serious capital crime - murder. If you believe that Captain Preston's actions illegally caused the deaths of 5 human beings, you must argue passionately for a guilty verdict. If, on the other hand, you believe that Captain Preston did not engage in illegal acts on the night of March 5, 1770, then you should argue in a manner that will prevent the people from imposing their most severe sentence i.e. execution. This is truly a case of life and death! Argue accordingly.

Write as if you are speaking to the jury at the close of a trial

1. Greet the jury, introduce yourself and identify the side you represent.
2. Briefly summarize the important facts of the case.
3. Explore the evidence in light of the burden of proof - was the order given to fire. If so, was it self-defense ("**beyond a reasonable doubt**")?
4. Examine the strengths of one side and the weaknesses of the other. Discuss conflicting and corroborating evidence as well as the perceived credibility of witnesses.
5. Use facts to support your argument (e.g. witness names, what they said, what the conditions were like, names of places)
6. Be persuasive!
7. Close your statement by asking the jury to return with a specific verdict.
8. Check for errors in spelling and grammar.

Worth 100 points!

Standards for Scoring Closing Arguments

The students should be evaluated on the quality of their presentation and not on their decision to argue for a particular side. The criteria for scoring their closing arguments are described below:

<u>Points</u>	<u>Performance</u>	<u>Criteria for Rating Performance</u>
below 30	Well below the standard	The closing statement fails to summarize the important evidence and issues in the case, wavers in its arguments, contains little if any analysis and interpretation, contains many grammatical and spelling errors and reveals a flawed understanding of the trial process.
30-34	Below the standard	The closing statement contains a summary of some of the important evidence but argues ineffectively for one side. Little analysis is offered and the interpretation and argument lack adequate support. It contains numerous spelling and grammatical errors and is often unclear and redundant. Finally, it fails to reveal an understanding of the trial process.
35-37	Approaching the standard	The closing argument contains a summary of most of the important evidence and issues as well as a reasonable argument for one side. However, it fails to point out the weaknesses in the other side's argument and contains inadequate support for the interpretation of events. Some errors in spelling and grammar are found.
38-44	Meets the Standard	The closing contains a clear and logical summary of most of the important evidence and issues surrounding the case. The analysis addresses the strengths of one side's argument and the weaknesses of the other's. The argument and interpretation are plausible and supported adequately. The argument may be redundant at times and overlooks the importance of corroborated evidence. Few errors in grammar or spelling are found.
45-50	Exceeds the standard	A closing statement "exceeds" the standard if it includes a clear, concise, logical and thorough summary of the important evidence and issues, a highly effective argument for one side, an analysis of one side's strengths and the other side's weaknesses, an attention to the corroboration and credibility of evidence, an interpretation and argument that is both plausible and well-supported and very few errors in grammar or spelling. The closing distinguishes fact from opinion/perception and reveals an accurate understanding of trial rules.

Standards for Scoring Mock Trial Performances

Students should be rated on their role-play performance, not on the legal merits of the case or the intrinsic strength of the roles which they are playing.

<u>Points</u>	<u>Performance</u>	<u>Criteria for Rating Performance</u>
1-10	Well below the standard	A students' presentation earns a "well below" if the students assumes the responsibility for the role and shows up for the trial, but is otherwise an ineffective participant.
10-20	Below the standard	A student's presentation earns a "below standard" rating if the performance displays minimal performance and preparation. The performance lacks depth in terms of knowledge of the task and materials; communication lacks clarity and conviction.
20-30	Approaching the standard	A student's presentation is "approaching" the standard if the performance shows a general understanding of the role and the issues, makes some of the main points, has clear objectives, and is partially successful in attaining the objectives.
30-40	Meets the standard	A student's presentation "meets" the standard if the performance shows a clear understanding of the role and the issues, makes many of the main points, has clear objectives, and is successful in attaining most of the objectives.
40-50	Exceeds the standard	A student's presentation "exceeds" the standard if the performance shows a thorough understanding of the role and the issues, is very persuasive on all of the main points, has clear objectives, and is highly successful in attaining the objectives.

You may want to refer to the "Tips for Students" for further clarification of the standards.

Instructional Activity III

The Pelham-Revere
Engraving:
Fact or Propaganda?

Instructional Activity III

The Pelham-Revere Engraving: A Case of Propaganda?

In this activity, students will compare their understandings of the "Boston Massacre" based on the mock trial (Rex v Preston) evidence with the famous Pelham-Revere engraving depicting the same event. Students should analyze the information, separate probable truth from fiction and interpret the purpose of the cartoon.

Several days after the "Boston Massacre" Henry Pelham used his talents to depict a dramatically colorful interpretation of the scene of the March 5th killings. Somehow, a copy of the drawing fell into the hands of radical leader Paul Revere who, without permission, engraved, reprinted and sold Pelham's work. Although Pelham was understandably upset, there was little that he could do to thwart Revere's actions.

In a day and age of no photography/television, the Pelham-Revere cartoon imprinted a powerful image in the mind's eye of its viewers as it circulated throughout the colonies. In fact, it probably remains one of the most memorable images in American history. But was it accurate?

By comparing the actual testimony with the Pelham-Revere engraving, it is hoped that students will increase their understandings of the use of propaganda and become more vigilant as they view visual images.

Materials Needed:

1. Copies of the Pelham-Revere cartoon for the students (you may want to make this a cooperative exercise and save on xeroxing - perhaps one copy for every two students).
2. Overhead transparency of the cartoon (optional but recommended) for class review and an overhead projector. Color copies of the cartoon have a greater impact (a lot of blood spilling from the wounds of the citizens).
3. Class copies of the Pelham-Revere engraving comparison chart.

Suggested Procedures

1. Distribute copies of the comparison chart. Instruct students to complete the chart as you progress through this instructional activity.
2. As a class activity, conduct a review of the testimony which came out of the mock trial. Allow students to debate the probable "facts" of the case and use a pencil to complete the "Testimony" side of the chart.
3. Ask the students why the soldiers came to Boston in 1768. Then ask them what they think those who were involved in the March 5th conflict were hoping to accomplish (ideally, the students will understand that many townspeople wanted the British soldiers out of Boston).
4. At this point, you may want to tap into the creative energies of the students and ask them to draw a scene which depicts what they would have seen on the evening of March 5, 1770. You may even want to have them assume roles as loyalists, soldiers or radicals as they draw. Have the students compare their work. How do the "soldiers" depictions differ from those of the "radicals"?
5. Next, set the stage for the Pelham-Revere engraving. Describe who drew it and when it was drawn. Then, distribute copies of the engraving and have students work with their charts to analyze the engraving and compare it with their understandings of the testimony. Ask students to use a pencil to complete the

"Engraving" side of the chart.

6. Discuss the students' comparisons as a class. Flash the overhead copy on the screen as the class describes their findings.

7. Have students look up the word "propaganda"¹ or brainstorm about its definition. Ask students if the use of the word "massacre" and the Pelham-Revere engraving should be classified as propaganda? If so, as students to explain the purpose for which the word and cartoon were used. Also, ask them to describe the probable political beliefs of Henry Pelham and Paul Revere. Were the moderates, radicals, conservative-loyalists...?

Enrichment Activity

Have students scour newspapers and magazines in search of suspected propaganda and share their discoveries with the rest of the class.

1

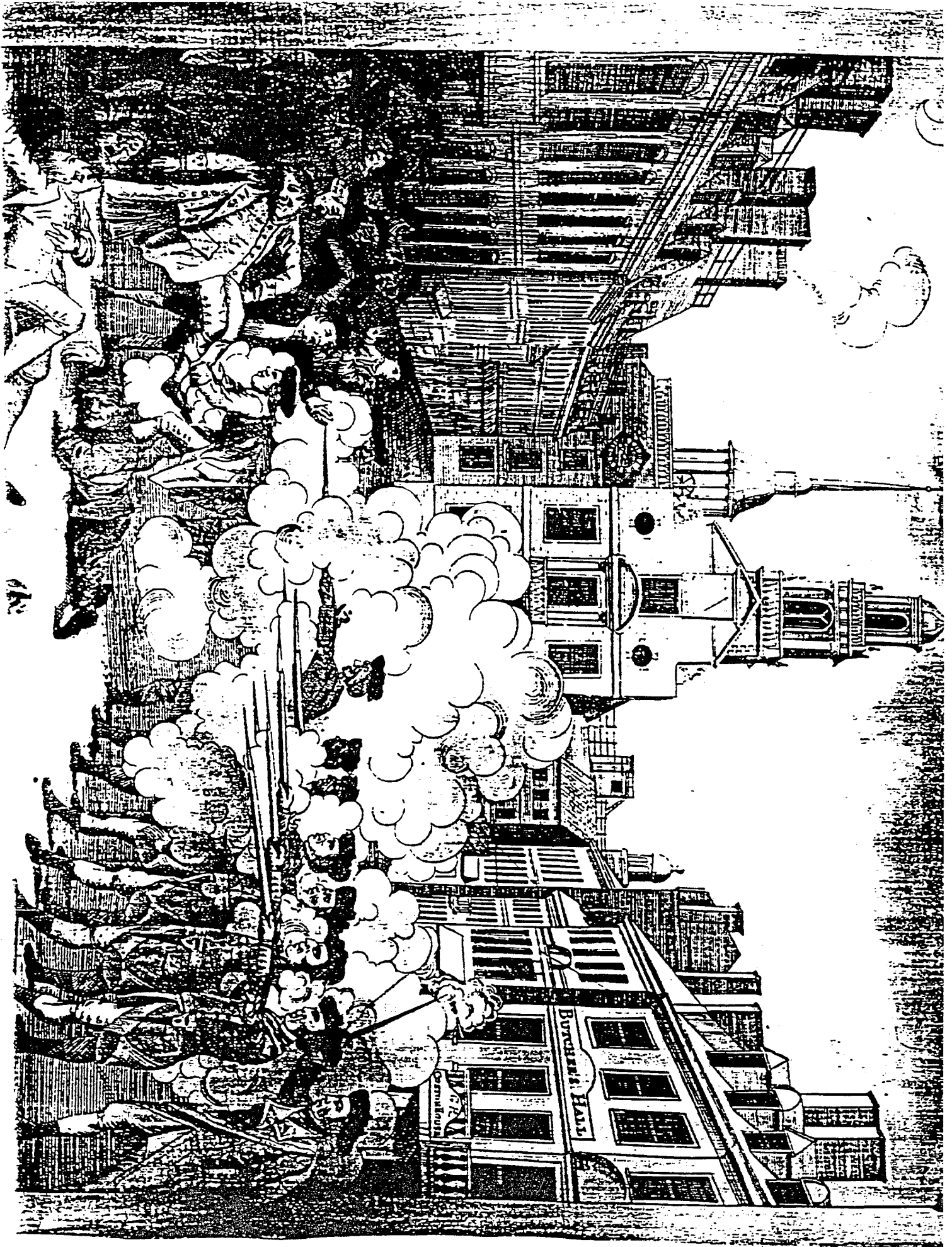
Webster's New Collegiate Dictionary defines propaganda as "the spreading of ideas, information, or rumor for the purpose of helping or injuring an institution, a cause or a person: ideas, facts, or allegations spread deliberately to further one's cause or to damage an opposing cause; also: a public action having such an effect."

Instructional Activity III

Historical Analysis: Boston Massacre Comparison Chart

Directions: In this activity you are to compare the information drawn from the testimony in the mock trial with the famous engraving drawn by Henry Pelham and reprinted by Paul Revere several days after the alleged massacre. Complete the left hand column ("Based on Witness Testimony") before you view the cartoon.

	Based on Witness Testimony	Based on the Engraving
<i>How many soldiers were present at the shooting?</i>		
<i>How many people were in the crowd that confronted the British soldiers?</i>		
<i>Describe the emotions revealed in the faces of the soldiers just prior to the shooting.</i>		
<i>Were the townspeople threatening the soldiers in any way? If so, how?</i>		
<i>Describe the formation of the soldiers.</i>		
<i>What was the name of the building that the soldiers were standing in front of?</i>		
<i>Were shots fired by anyone besides the soldiers standing on King Street?</i>		
<i>Was it a dark or well-lit night?</i>		
<i>Where was Captain Preston standing?</i>		
<i>Did Captain Preston give the order to fire?</i>		



About the Testimony and Verdicts

The Trial of Captain Preston (Rex v Preston)

Under 18th Century rules, defendants were not permitted to testify on their own behalf. It appears to have been assumed that an accused would lie. Although Captain Preston did not testify at his own trial, his deposition was taken down sometime between March 5th and March 14th and is extant. It can be found on page 38.

Essentially, Preston denied having given the order to fire. He noted that he was standing in front of the soldiers when the first shot was fired, therefore, it would have been suicidal for him to have given an order to fire. He stated that one of the soldiers fired after having been hit with a stick. He went on to state that the crowd continued to taunt and throw objects at the soldiers. Shortly after the first shot, several other soldiers fired. He also stated that, "All our lives were in great danger..."

The jury found Captain Preston to be "not guilty."

The Trial of the Other Soldiers (Rex v Wemms)

Since the jury concluded that Captain Preston did not give the order to fire, the issue in the trial of the other soldiers was whether there was sufficient provocation to fire and/or whether any of the soldiers acted out of malice. Additionally, if the soldiers were assembled legally on the night of March 5th, the prosecution had the burden of proving that specific soldiers actually shot and killed specific individuals. This proved difficult in most of their cases. The prosecution even conceded that Corporal Wemms musket had not even fired.

The evidence was, however, particularly damaging to two privates - Hugh Montgomery and Matthew Killroy. Several witnesses specifically identified Montgomery as the one who killed Crispus Attucks testifying that he fired after recovering from being hit by a stick. Regarding Killroy, testimony about conversations held prior to March 5th revealed that he stated that "he would never miss an opportunity of firing upon the Inhabitants. He had wanted Such and Opportunity ever since he had been in the Country." (Wroth and Zobel, 130)

Perhaps the most dramatic testimony to surface at either trial came from Dr. John Jeffries - the physician who tended to the dying Patrick Carr (recall that he survived his wounds until the 14th of March). Acting on the advice of those who realized the importance of Carr's testimony, Dr. Jeffries repeatedly interviewed Carr as he lay dying. On the stand, Jeffries corroborated testimony revealed that Carr "told me [Dr. Jeffries] he thought the soldiers would have fired long before [they actually did]... for he thought the soldiers were abused a great deal." Then, possibly sealing at least six of the soldiers' verdicts, Jeffries testified that "he [Carr] really thought they did fire to defend themselves; that he did not blame the man whoever he was, that shot him." (Wroth and Zobel, 213-214)

On December 5, 1770 the verdicts were read. Corporal William Wemms, James Hartegan, William McCauley, Hugh White and William Warren were found "not guilty." Privates Matthew Killroy and Hugh Montgomery were found "guilty" of manslaughter.

Killroy and Montgomery successfully pleaded benefit of clergy. On Friday, December 14, 1770 they were branded on the thumb and released.

Instructional Activity IV: Historical Analysis

**The Tragedy at Kent
State
(1970)**

**Did History Repeat
Itself?**

The Tragedy at Kent State University (1970)

It took half a century to transform Kent State from an obscure teachers college into the second largest university in Ohio with 21,000 students and an impressive array of modern buildings in the main campus. But it took less than 10 terrifying seconds in May of 1970 to change the traditionally conformist campus into a bloodstained symbol of the rising students rebellion against President Nixon's Administration and the war in Southeast Asia (Vietnam). When National Guardsmen fired indiscriminately into a crowd of unarmed civilians, killing four students, the bullets wounded the nation.

Strangely, the turn towards violence at Kent State was not inspired by the war or politics. The first rocks thrown in anger were hurled through the muggy Friday night of May 1 by beer drinking students who could not resist the urge to dance on a Kent street. Hundreds of students were drinking at the bars that flourish in most college towns. Spirits were light. A crowd swarmed into the warm night blocking busy North Water Street, responding to rock music.

"GET OUT"

One irate motorist gunned his car's engine as if to drive through the dancers. Some students climbed atop the car, jumped on it, then led a chant "one, two, three, four, we don't want your [bleep]ing war!" A drunk on a balcony hurled a bottle into the street and suddenly the crowd turned ugly. Students smashed the car's windows, set fires in trash cans, and began to bash store windows. Police were called. Kent Mayor, Leroy Satrom, had ordered a curfew but few students were aware of it. Police stormed into bars after midnight turning up the lights shouting "get out!" Some 2,000 more students, many of whom were watching a basketball game on TV were forced into the street. Police and sheriff's deputies pushed the youths back toward the main campus, the fired tear gas to chase them away.

Saturday began quietly. Black student leaders who had been demanding the admission next year of 5,000 more blacks to Kent State and leaders of the mounting anti-war sentiment on campus talked of joining forces. They got administrative approval to hold a rally that evening on the 10 acre commons at the center of the campus. There, despite the presence of faculty members and students marshals, militant war protesters managed to take complete charge of a crowd of about 800, many still smarting from the conflict of the night before. They disrupted a dance in on university hall, then attacked the one story Army ROTC building facing the Commons. The smashed windows and threw lighted railroad flares inside. The building caught fire. When firemen arrived, students threw rocks at them and cut their hoses with machetes until policed stepped in with tear gas. Without bothering to consult Kent State authorities, Mayor Satrom asked for help from the National Guard. Governor James Rhodes, who was still engaged in his tough (and ultimately unsuccessful) campaign for the Senate nomination, quickly ordered Guardsmen who were elsewhere in Ohio keeping a lid on a tense truck driver's strike transferred to Kent State.

Within an hour, 500 Guardsmen, already weary from the three nights of duty at the strike, arrived with fully loaded M-1 semi automatic rifles, pistols, and tear gas. They were in time to help police block the students from charging into the downtown area. Students reacted by dousing trees with gasoline, then setting them afire. Order was restored before midnight. On Sunday, Governor Rhodes arrived in Kent. He made no attempt to seek the advice of Kent State President Rover White and told newsmen that campus troublemakers were "worse than communists and vigilantes - they're the worst type of people that we harbor in America." He refused to close the campus as others had requested; instead he declared a state of emergency and banned all demonstrations on the campus. Late that night, about 500 students defied the order and staged a sitdown on one of Kent's busiest intersections. Guardsmen, their number now grown to 900, moved into the face of a rock barrage to arrest 150 students.

"Our Campus"

On Monday, the campus seemed to calm down. In the bright sunshine, tired young Guardsmen flirted with attractive female students under the tall oak and maple trees. Classes continued throughout the morning. But the ban against assemblies was still in effect, and some students decided to test it again. "We just couldn't believe they could tell us to leave," said one, "this is our campus!" At high noon, youngsters began ringing the school's victory bell, normally used to celebrate a football win but rarely heard of late. About 1,000 students, some nervous but many joking, gathered on the Commons. Another 2,000 ringed the walkways and buildings to watch.

From their staging area near the burned out ROTC building, officers in two Jeeps rolled across the grass to address the students with a bullhorn: "Evacuate the Commons area. You have no right to assemble." Students raised middle fingers. The Jeeps pulled back. Two skirmish lines of Guardsmen, wearing helmets and gas masks, stepped away from staging area and began firing tear gas canisters at the crowd. The Guardsmen moved up about 100 yards closer to the crowd and fired gas again. A few students picked up canisters and threw them back, but they fell short of the troops. The mists of stinging gas split the crowd. Some students fled towards a men's dormitory and were blocked by an L-shaped building. Others scattered.

Leaderless

A formation of fewer than 100 Guardsmen - pursued fleeing students between the two buildings. The troopers soon found themselves facing a fence and flanked by rock throwing students, who rarely got close enough to hit anyone. Occasionally, one managed to toss a tear gas canister back near the troops, while delighted spectators, watching from a hilltop, from the windows of buildings, and the roof of a dormitory, cheered. Many demonstrators were laughing.

Then the outnumbered and partially encircled group of Guardsmen ran out of tear gas. Suddenly they seemed frightened. They began retreating up a hill, most of them walking backward to keep their eyes on the threatening students below. The crowd on the hilltop consisted almost entirely of onlookers rather than rock throwers. The tight circle of retreating Guardsmen contained officers and regulars from the two regiments, but apparently no one had been appointed leader. With them, in civilian clothes was Brigadier Robert Canterbury, the ranking officer on the campus, who said later "I was there but I was not in command of any unit." Some of the troops held their rifles pointed skyward. Several times a few of them turned, pointed their rifles toward the crowd threateningly, and continued their retreat.

When the tight formation of Guardsmen reached the top of the hill, some of them knelt quickly and aimed at the students who were hurling rocks from below. A handful of demonstrators kept walking toward the troops. Other Guardsmen stood behind the kneeling troops, pointing their rifles down the hill. A few aimed over the students heads. Several witnesses later claimed that an officer brought his baton down in a sweeping signal. Said Jim Minard, a sophomore from Warren, Ohio: "I was harassing this officer. I threw a stone at him, and he pointed a .45 caliber pistol at me. He was brandishing a swagger stick. He turned away. He was holding his baton in the air, and the moment he dropped it, they fired." Within seconds, a sickening staccato of rifle fire signaled the transformation of a one-peaceful campus into the site of an historic American tragedy.

Like a Firing Squad

"They are shooting blanks - they are shooting blanks," thought Kent State journalism Professor Charles Brill, who nevertheless crouched behind a pillar. "Then I heard a chipping sound and a ping, and I thought, 'My god, this is for real!'" An army veteran who saw action in the Korean war, Brill was certain that the Guardsmen had not fired randomly out of their individual panic. "They were organized," he said. "It was not scattered. They all waited and they all pointed their rifles at the same time. It looked like a firing squad." The shooting stopped, as if on signal. Minutes later, the Guardsmen assumed parade-rest positions, apparently to signal the crowd that the firing would not resume unless the Guardsmen were threatened again. "I felt like I'd just had an order to clean up a latrine [bathroom]," recalled one Guardsman in the firing unit. "You do what you're told to do."

The campus was suddenly still. Horrified students flung themselves to the ground, ran for cover behind buildings and parked cars, or just stood stunned. Then screams broke out, "My God, they're killing us!" one girl cried. They were. A river of blood ran from the head of one boy, saturating his school books. One youth held a cloth against the abdomen of another, futilely trying to check the bleeding. Guardsmen made no move to help the victims. The troops were still both frightened and threatening.

After ambulances had taken away the dead and wounded, more students gathered. Geology Professor Glen Frank, an ex-marine, ran up to talk to the officers, he came back crying. "If we don't get out of here right now," he reported, "the Guard is going to clear us out any way they can - they mean *any* way."

In that brief volley of shots, four young people - none of whom was a protest leader or even a radical - were killed. Ten students were wounded, three seriously. One of them, Kean Kahler of Canton, Ohio, was paralyzed below his waist by a spinal wound.¹

¹ Time Magazine. May 18, 1970. (edited for younger audiences)



Instructional Activity Historical Analysis: Did History Repeat Itself?

George Satayana, a Harvard educator and philosopher once stated, "Those who do not remember the past are condemned to repeat it." It is a phrase which is familiar to almost every historian.

Many young people question the value of studying history. Students are always asking why they have to study about the past. A common reply is that the stories of the past offer examples that enable us to make wiser decisions about present and future problems. In this activity, you will have the opportunity to decide whether the events surrounding the Boston "Massacre" of 1770 were so similar to the events surrounding the Kent State tragedy of 1970 that Mr. Satayana's comment has some validity. Does history repeat itself?

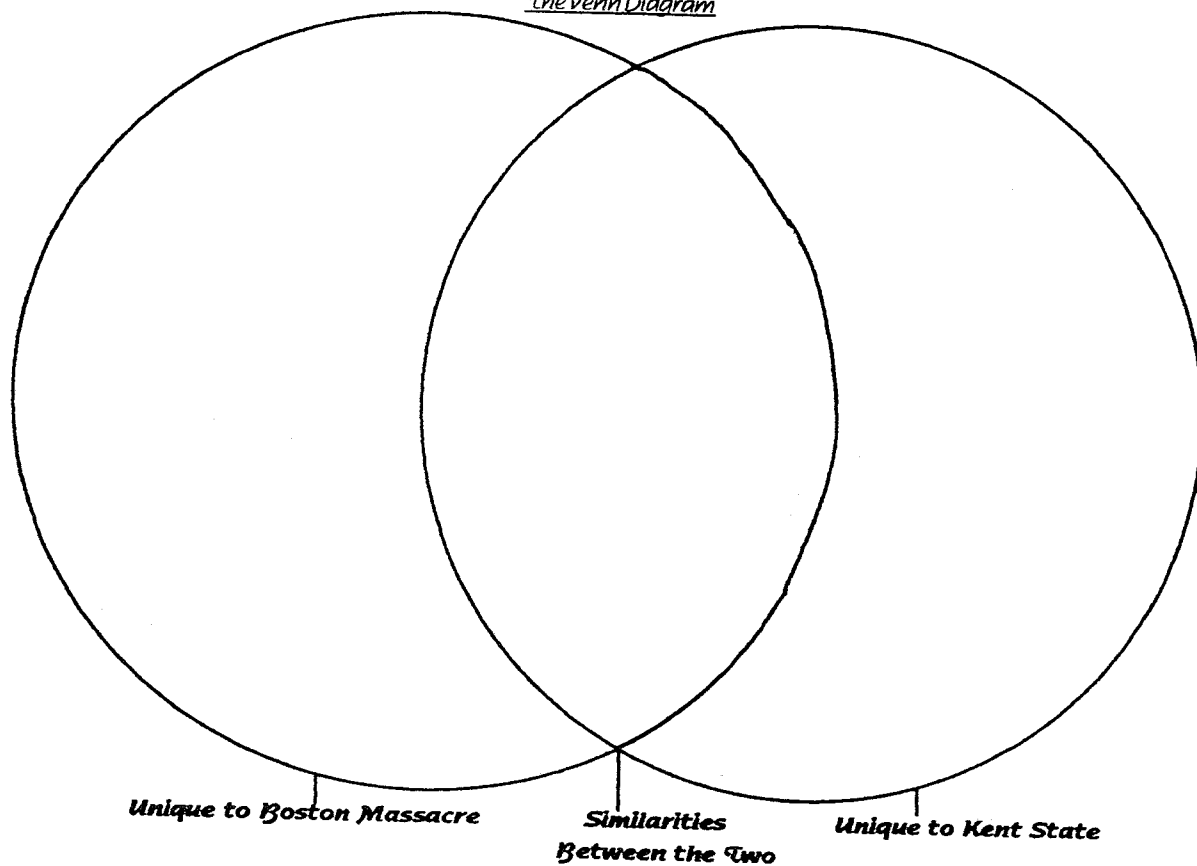
Addressing the Standards

As you probably know by now, "standards" represent what students should know and be able to do. Once again, both the state and national standards hold out the similar expectation that students will be able to "gather, examine, and analyze historical data" (state standard 2) and "compare and contrast differing sets of ideas, values, personalities, behaviors, and institutions by identifying likenesses and differences." (national standard 3) Furthermore, it is expected that "students should be able to utilize visual and mathematical data presented in...Venn diagrams, and other graphic organizers to clarify, illustrate, or elaborate upon information presented in the historical narrative." (national standard 2)

Directions

After reading the article entitled "The Tragedy at Kent State University," your task is to create a Venn diagram in which you compare and contrast the Boston Massacre and the Kent State tragedy by listing the similarities and differences between the two events.

The Venn Diagram



Culminating Question: Based on your analysis of the Boston Massacre and the Kent State tragedy, would you conclude that, in these cases, history repeated itself? Explain your answer.

Boston Massacre Engraving Analysis
Mr. O'Malley

Student Name _____
 Period _____

Scoring Criteria
 0 Points = Incredible Response (information not derived from evidence)
 1 Point = Incredible Response (information derived directly from evidence)
 2 Points = Exceptional Response (information credible with corroboration/inconsistencies noted)

	Witness Testimony	Measure	Engraving	Measure
How many soldiers were present when the shooting occurred?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
How many people were in the crowd that confronted the soldiers?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
Describe the expressions on the soldiers faces at the moment of the shooting.		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
Were members of the crowd threatening the soldiers in any way? If so, how?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
Describe the formation of the soldiers.		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
What was the name of the building that the soldiers were standing in front of?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
Were shots fired by anyone other than the soldiers in the street?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
Did the shooting occur in a dark or well-lit setting?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
Where was Captain Preston standing?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional
Did Captain Preston give an order to fire?		<u>Circle One</u> 0=Incredible 1=Credible 2=Exceptional		<u>Circle One</u> 0=incredible 1=Credible 2=Exceptional

Total Score = _____ out of 40

United States History
Mr. O'Malley

Student Name _____
Period _____

Description of Propaganda Piece: _____

PROPAGANDA PRESENTATION SCORING CRITERIA

<u>Category</u>	<u>Points</u>	<u>Criteria</u>	<u>Student Score</u>
Selection of Propaganda	0-1	Student offered one example	---
	0-2	Example offered met the definition of propaganda	---
Source Information	0-1	Student specifically identified the source of propaganda	---
	0-1	Student identified an individual or organization responsible for the piece	---
Analysis	0-4	Student distinguished facts from opinions, misinformation, rumor etc.	---
	0-4	Student offered evidence to support claims of fact v. misinformation, opinion, rumor etc.	---
Motive	0-1	Student describe a motive for the propaganda piece	---
	0-1	The alleged motive appeared credible	---
Precautions Recommended	0-1	Student identified a characteristic of propaganda which may serve as a warning sign to others who may encounter similar forms of propaganda	---
Presentation	0-1	Students presentation was clear	---
	0-1	Students visuals were easily perceived by the class (projected or distributed)	---
Requirements Met	0-1	Student's presentation did not exceed time restriction	---
	0-1	Student made a bulletin board copy available	---
			Total Score ____ (20)

United States History
Mr. O'Malley

Student Name _____
Period ____

Checklist for Analysis of Similarities and Differences Between the Boston Massacre and the Kent State Tragedy

Unique to Boston Massacre

Similarities

Unique to Kent State

- 5 killed
- 6 wounded
- occurred in colony of Massachusetts
- occurred on college campus
- involved an imperial army
- 1770
- colonists protesting
- involved a protest against legislation
- 9 soldiers involved
- approximately 100 civilians in crowd
- setting was a moonlit night
- trial of soldiers

- soldiers killed & wounded civilians
- preceded by several days of disturbance
- civilians greatly outnumbered soldiers
- soldiers carried loaded guns
- civilians without guns
- civilians threatened soldiers
- crowds warned to disperse
- involved protests against an allegedly abusive government
- a crowd goal was to have soldiers removed
- objects thrown at soldiers
- orders to fire allegedly given by officer in command
- crowd ringleaders probably trying to spark an "episode"
- victims included innocent bystanders
- no convictions *of officer*

- 4 killed
- 10 wounded
- occurred in state of Ohio
- occurred in town
- involved the national guard
- 1970
- students protesting
- involved a protest against war
- approximately 100 soldiers involved
- from 1,000-3,000 civilians in crowd
- setting was a bright sunshiney day
- investigation of soldier conduct

Rating Scales

Boston Massacre Differences

- Score... if...
- 5 = 11-12 checks
 - 4 = 9-10 checks
 - 3 = 7-8 checks
 - 2 = 4-6 checks
 - 1 = 1-3 checks

Similarities

- Score... if...
- 5 = 13-14 checks
 - 4 = 10-12 checks
 - 3 = 7-9 checks
 - 2 = 4-6 checks
 - 1 = 1-3 checks

Kent State Differences

- Score... if...
- 5 = 11-12 checks
 - 4 = 9-10 checks
 - 3 = 7-8 checks
 - 2 = 4-6 checks
 - 1 = 1-3 checks

Score = ____ +

Score = ____ +

Score = ____

*Total Student Score = ____ out of 15

13-15 = Outstanding
10-12 = Excellent
7-9 = Good
4-6 = Fair
1-3 = Poor