

## *Delaware Model Unit Gallery Template*

This unit has been created as an exemplary model for teachers in (re)design of course curricula. An exemplary model unit has undergone a rigorous peer review and jurying process to ensure alignment to selected Delaware Content Standards.

**Unit Title:** **Interpreting the Past – The Case of the “Bloody Massacre”**

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**Content Area:** **Social Studies**

**Grade Level(s):** **6–8**

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### **Summary of Unit**

This unit uses the “Boston Massacre” as a case study to uncover reasons for different interpretations of the same event. Students will analyze primary source materials to construct their own interpretations of what happened on March 5, 1770, and then critique interpretations advanced by others.

The original version of this unit involved an attempt to address all three history standards for grades 6–8. This adaptation focuses on History Standard 3 and is made available at this time for piloting. The authors will continue efforts to improve the unit during the pilot phase. We invite your feedback at the following link:

[Social Studies 6–12 Pilot Unit Survey](#)

**Preview:** the activities in this unit include but are not limited to:

1. **Concept Formation** (“Massacre”) – teacher fleshes out understandings and misconceptions relating to the concept of “massacre.”
2. **Description of the Case** – students read about what happened in the days and hours leading up to the “massacre.”
3. **Thinking Chronologically** – students put events of March 5, 1770, in chronological order to infer causes and trends.
4. **Mapping the Scene** – students map where Captain Preston, soldiers, and crowd may have been standing at the moment the first shot was fired. Students compare different conclusions and note the interpretive nature of history.
5. **Fishbowl Role-Play** – students assume roles to debate the question—should John Adams serve as attorney for the British soldiers?
6. **Mock Trial** – students work with competing eyewitness depositions to simulate the trial of Captain Preston. The proceedings highlight the importance of questions and ways in which sources can be used differently.
7. **Application of Concept of Massacre** – students revisit the concept of massacre developed in Activity 1. Students apply their definitions to the events of March 5, 1770. Was it really a “massacre”?

8. **Engraving Analysis** – students interrogate the Pelham-Revere engraving of the "Bloody Massacre" and consider its use as a propaganda tool.
9. **Venn Diagram** – students complete a Venn diagram to compare and contrast the "Boston Massacre" and Kent State tragedy. Did history repeat itself?
10. **Photograph Analysis** – students analyze "Pieta" photo from Kent State and consider how it might be used.

### **Background Information (*from the Clarifications Document*)**

In the 6–8 cluster, History Standard 3 introduces students to the concept that historical accounts of the same event may differ because historians have asked different questions of the same sources or because they have used the sources differently. Historical records just lie there. The factual information in them does not jump out without questions being asked. The questions help to determine the answers and, therefore, the conclusions. At this time, historians are not likely to discover a trunk full of new documents explaining the origins of the slave trade. But, two different historians can phrase their questions differently while investigating the early slave trade. The first may ask, "Why did Europeans begin enslaving Africans"? Seems like a straightforward question. The second may ask, "Why were Africans unable to prevent the slave trade"? This also seems like a straightforward question. Upon closer scrutiny neither one is.

The first rests upon the assumption that Europeans alone began the slave trade. Historical research does not support that. Africans sold Africans to the Europeans, who could not go far into the African interior because of their vulnerability to diseases. The second phrasing shifts the responsibility, although it is not clear how much, for the slave trade to Africans themselves rather than to Europeans. It also seems to suggest that the slave trade could have been prevented, if only Africans had wanted to prevent it. Each of these questions as guides to research will certainly lead to two very different books on the origins of the slave trade. Now comes the hard part for the student. Which sheds the most light on the subject, given the limited documents available? The well-armed student is aware that the phrasing of the questions underlying a research design influences the conclusions. After a few pages of a historical narrative, it is obvious usually where that historian's methods and original questions will lead. Now the student can assess how persuasive the argument is while realizing it is that historian's argument and not the last word on the topic.

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## **Stage 1 – Desired Results** (What students will know, do, and understand)

### **Delaware Content Standards**

- Include those addressed in Stage 3 and assessed in Stage 2.

**History Standard Three 6-8a:** Students will compare different historians' descriptions of the same societies in order to examine how the choice of questions and use of sources may affect their conclusions.

### **Big Ideas**

- Transferable core concepts, principles, theories, and processes from the Content Standards
- Investigation
- Interpretation

### **Unit Enduring Understandings from Clarification Document**

- Full-sentence, important statements or generalizations that specify what students should understand from the Big Ideas (s) and/or Content Standards and that are transferable to new situations
- What is written by a historian depends upon that historian's personal background and methods, the questions asked about the sources, and the sources used to find the answers to those questions.
- Historians select important events from the past they consider worthy of being taught to the next generation. That selection process, deciding what to emphasize, and the questions that historians ask of the documents and other evidence, contributes significantly to the conclusions drawn.
- History is what the historian says it is. Historians may collect, use, and emphasize sources in ways that result in differing interpretations as they describe, compare, and interpret historical phenomena. Disagreement between historians about the causes and effects of historical events may result from these differences.

### **Unit Essential Question(s)**

- Open-ended questions designed to guide student inquiry and learning
- Why might historians disagree about the same historical event?
- To what extent does history change?

### **Knowledge and Skills**

- Needed to meet Content Standards addressed in Stage 3 and assessed in Stage 2

#### **Students will know...**

- Content vocabulary
  - Conclusion
  - Massacre
  - Historical interpretation
  - Sources
- Reasons why conflicting descriptions of historical events exist
- How the sources one relies on influence the interpretations one arrives at
- How the questions one asks can influence the interpretations one arrives at

**Students will be able to...**

- Use social studies materials and knowledge as evidence to solve problems and to make and support reasoned decisions, explanations, conclusions, or predictions.
- Use content-appropriate vocabulary in order to communicate understanding of key content and concepts.
- Analyze, access, manage, integrate, evaluate, and create information in a variety of forms and media.
- Develop, implement, and communicate new ideas to others.
- Work productively with others.

## Stage 2 – Assessment Evidence

Evidence that will be collected to determine whether or not Desired Results are achieved

### Suggested Performance/Transfer Tasks

- Performance/transfer tasks as evidence of student proficiency.

An effective assessment for ALL students should be designed to include:

- Complex, real-world, authentic applications
- Assessment(s) for student understanding of the Stage 1 elements (Enduring Understandings, Essential Questions, Big Ideas) found in the Content Standards
- Demonstration of high-level thinking with one or more facets of understanding (e.g., explain, interpret, apply, empathize, have perspective, self-knowledge)

This summative assessment is a “near” transfer task that requires students to use knowledge and understandings to perform a task in a new setting or context.

The assessment and scoring guide should be reviewed with students prior to any instruction. Students should do the assessment at the conclusion of the unit.

### Essential Questions

- Why might historians disagree about the same historical event?
- To what extent does history change?

<b>Prior Knowledge</b>	Now that you understand that historians disagree and some reasons why they might disagree, you are prepared to critique sources about the Boston Massacre.
<b>Problem</b>	Delaware’s largest newspaper features a “Life and Leisure” section that offers book, video, and website reviews every Sunday. The editor of the “Life and Leisure” section has given you the assignment of preparing a special feature on the Boston Massacre as part of its March Into History series—a series highlighting famous events that occurred in March.
<b>Role/Perspective</b>	You are a feature writer for Delaware’s largest newspaper.
<b>Product/Performance</b>	You are to write a review of a book, video, or website that deals with the Boston Massacre (maximum length is 250 words). Your review should include: <ul style="list-style-type: none"><li>▪ A description of the interpretation(s) that appear in the source</li><li>▪ A critique of the interpretation(s) based on the evidence that is used to support it</li><li>▪ Reasons why you would OR would not recommend the book, website, or video</li><li>▪ The use of content-appropriate vocabulary (interpretation, conclusion, sources, massacre)</li></ul>

<p><b>Criteria for an Exemplary Response</b></p>	<p>Be sure to include:</p> <ul style="list-style-type: none"> <li>▪ A description of the interpretation(s) that appear in the source</li> <li>▪ A critique of the interpretation(s) based on the evidence that is used to support it</li> <li>▪ Reasons why you would OR would not recommend the book, website, or video</li> <li>▪ The use of content appropriate vocabulary (interpretation, conclusion, sources, massacre)</li> </ul>
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**Teacher Tip:** Have students read a sample book review prior to beginning their own review. Important elements such as the thesis, supporting evidence, gaps, and what question drove the author should be identified. Book reviews that might be used as models are available at the following site: <http://ehistory.osu.edu/osu/reviews/?orderby=title>

## Rubric

- Scoring guide to evaluate performance/transfer tasks used as evidence of student proficiency.

An effective scoring guide should:

- Measure what is appropriate for the Content Standard that is assessed.
- Provide opportunities for differentiation of the performance/transfer tasks used as evidence of student proficiency.

## Transfer Task Rubric

Scoring Category			
This review provides...	Score Point 3	Score Point 2	Score Point 1
a description of the interpretation(s) that appear in the source	The explanation provides a <b>thorough description</b> of the interpretations that appear in the source	The explanation provides a <b>partial description</b> of the interpretations that appear in the source	The explanation provides a <b>minimal description</b> of the interpretations that appear in the source
a critique of the evidence that influenced the interpretation(s)	Provides a <b>persuasive</b> critique of the factors used to support those interpretations	Provides a <b>somewhat persuasive</b> critique of the evidence used to support those interpretations	Provides a <b>minimally persuasive</b> critique of the evidence used to support those interpretations
reasons why you would OR would not recommend the book, website, or video	Provides <b>well-developed reasoning</b> for why you would or would not recommend the book, website, or video	Provides <b>partially developed reasoning</b> for why you would or would not recommend the book, website, or video	Provides <b>minimally developed reasoning</b> for why you would or would not recommend the book, website, or video
the use of content appropriate-vocabulary (interpretation)	The content-appropriate vocabulary is <b>well developed and evidence</b>	There is <b>some evidence</b> of content-appropriate vocabulary	There is <b>minimal evidence</b> of content-appropriate vocabulary

**Total Score:** \_\_\_\_\_

**Above the Standard:** \_\_\_\_\_

**Meets the Standard:** \_\_\_\_\_

**Below the Standard:** \_\_\_\_\_

## **Other Evidence**

- Varied evidence that checks for understanding (e.g., tests, quizzes, prompts, student work samples, observations, and supplements the evidence provided by the task).

Formative assessments conclude each teaching strategy as a Check for Understanding.

## **Student Self-Assessment and Reflection**

- Opportunities for self-monitoring learning (e.g., reflection journals, learning logs, pre- and post-tests, self-editing—based on ongoing formative assessments).

When students are required to think about their own learning, to articulate what they understand and what they still need to learn, achievement improves.

– Black and William, 1998; Sternberg, 1996; Young, 2000.

How a teacher uses the information from assessments determines whether that assessment is formative or summative. Formative assessments should be used to direct learning and instruction and are not intended to be graded.

The Checks for Understanding at the end of each instructional strategy should be used as formative assessment and may be used as writing prompts or as small-group or whole-class discussion. Students should respond to feedback and be given opportunities to improve their work. The rubrics will help teachers frame that feedback.

An interactive notebook or writing log could be used to organize student work and exhibit student growth and reflection.



## Stage 3 – Learning Plan (Design learning activities to align with Stage 1 and Stage 2 expectations)

### Key Learning Events Needed to Achieve Unit Goals

- Instructional activities and learning experiences needed to align with Stage 1 and Stage 2 expectations.

Include these instructional elements when designing an effective and engaging learning plan for ALL students:

- Align with expectations of Stage 1 and Stage 2
- Scaffold in order to acquire information, construct meaning, and practice transfer of understanding
- Include a wide range of research-based, effective, and engaging strategies
- Differentiate and personalize content, process, and product for diverse learners
- Provide ongoing opportunities for self-monitoring and self-evaluation

### Lesson One

#### Essential Questions

- Why might historians disagree about the same historical event?
- How might the use of sources and questions one asks influence the interpretations one arrives at?

#### Strategy 1: Gathering Information

##### Think-Pair-Share

Project a copy of one perception illusion (e.g., Rubin Vase/Faces Illusion at <http://dragon.uml.edu/psych/rubin.html> or the Old Lady/Young Lady illusion at <http://dragon.uml.edu/psych/womal.html>). Ask students to think about what they see. Then, have students pair-up with another student and share what each saw when they first looked at the image. Raise the following questions to the whole group:

- a. What did you see?
- b. Did anyone see something different?
- c. Ask for 2 volunteers to come up to the projected image and, using their finger or pointer, trace the outline of the image that they saw. Make sure the two volunteers arrived at different conclusions. How did each student use the source image differently to explain their conclusion?

### Check for Understanding

Why might two people perceive the same thing differently? Offer an example other than the one presented in Strategy 1—be sure to highlight “how sources are used” when reviewing responses with the class.

#### Rubric

**2** – This response gives a valid reason with an accurate and relevant example.

**1** – This response gives a valid reason with an inaccurate, irrelevant, or no example.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

## Strategy 2: Extending & Refining K-W-L and Jigsaw

Students should understand the historical context for the “Boston Massacre.” Have students complete the “K” column—what do they KNOW were causes of the tension that led to the Boston Massacre?

### K-W-L Chart: Causes of the Boston Massacre

What I Know	What I Want to Learn	What I Have Learned

Then, ask students, “What do you WANT to learn about the Boston Massacre?” and fill in the W column of the KWL.

### Jigsaw

Expert groups: Place students in 5 expert groups and assign each student to a letter A–E. Give each group one of the following to research:

- Proclamation Line
- Quartering Act
- Stamp Act
- Sugar Act
- Stationing of British Troops in Boston

Expert group tasks:

1. Date – find the date that each step was taken;
2. Details – explain what each of the events involved;
3. Effect – explain how each contributed to tensions between the colonists and British authorities.

Then, direct students to background materials regarding that time period. They may use their textbook and/or the following websites:

- Prelude to Revolution <http://www.historyplace.com/unitedstates/revolution/rev-prel.htm>
- A Chronology of 18<sup>th</sup> Century American History – Digital History <http://www.digitalhistory.uh.edu/historyonline/chron18.cfm>
- The Townshend Acts by John Hancock 1768 (annotated) – highlights the relationship between the Stamp Act, the Townshend Acts, and the Quartering Act [http://www.digitalhistory.uh.edu/documents/documents\\_p2.cfm?doc=281](http://www.digitalhistory.uh.edu/documents/documents_p2.cfm?doc=281)

*Mixed Groups:* have students move into mixed groups so that each group contains one person from the A–E expert groups. Have those in the mixed groups share and record their findings. Students can record their findings in a chart like that presented below.

<b>Event</b>	<b>Date</b>	<b>Details: What Happened?</b>	<b>Effects - How Did This Contribute to Tensions?</b>
Stamp Act			
Troops Stationed in Boston			
Sugar Act			
Quartering Act			
Troops Stationed in Boston			

Then, ask the students to create a timeline of the events that they just discussed. Ask what trend developed over time [deteriorating relations between the colonists and British authorities].

After students complete their timeline, they should fill in the "L" column in their KWL charts. When students finish, lead a class-wide debriefing around the following questions:

- Did you uncover any evidence in your sources that the colonists were responsible for the tensions?
- Did you uncover any evidence in your sources that the British were responsible for the tensions?
- How might the two questions just asked illustrate why historians might arrive at different conclusions [different questions might lead to different conclusions; sources could be used differently to support different conclusions]?

*Content Note:* You may 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 believed that the British ministry was unraveling a well-designed plot to strip the colonists of their liberties. This anxiety helps to explain some of the colonists' deep resentment toward the presence of British troops in America.

### **Check for Understanding:**

3-2-1: Ask students to work with a partner to identify...

- 3 – causes of the tensions between colonists and British authorities.
- 2 – reasons why someone might arrive at different conclusions about the same event.
- 1 – question they still have about the "Boston Massacre."

### **Strategy 3: Extending and Refining Concept Formation**

A baseline definition of the term *massacre* will serve as a basis for deciding whether the events of March 5, 1770, meet the criteria for a massacre. Students will consider and refine this concept during the mock trial of Captain Preston and the analysis of the Pelham-Revere cartoon.

Write the word "massacre" on the board. Ask students to think about the most important question a person should ask if their assignment is to define the term "massacre."

For example, if asked to define the term “scholar,” a person might begin with the question—does a person have to study late at night to be a scholar? Or, does a person have to get good grades to be a scholar? Or, does a person have to be a researcher to be considered a scholar?

Ask the students to write down their question, and then a definition of massacre that flows logically from their questions.

Have a few students share their questions and definitions. Ask:

- Did all of the students ask the same questions?
- Did their questions lead to similar or different definitions?

Refine definitions: Raise the following questions with the students—these questions will come into play when students decide whether a “massacre” actually occurred on March 5, 1770. Be sure to record different responses where everyone can see:

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”?

Provide time for students to revise their original definitions. Tell them to keep their definition in mind as they proceed through the activities that follow.

### **Check for Understanding:**

Why do the questions you ask matter? Support your explanation with an example other than the ones discussed in the previous activity.

*Rubric*

**2** – This response gives a valid explanation with an accurate and relevant example.

**1** – This response gives a valid explanation with an inaccurate, irrelevant, or no example.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

### **Strategy 4: Extending and Refining Reading in the Content Area – Selective Underlining or Highlighting**

Have students work with a reading buddy to read the “Statement of the Case” ([Appendix 1](#)). Ask them to focus on the following overarching questions:

- Should Captain Preston have been charged with a crime and put on trial?
- Did the colonists get what they deserved?
- What evidence serves as the basis for your conclusion?

Discussion: discuss these questions with the whole class after the students read the Statement of the Case.

Note to Teacher: The Statement of the Case is a lengthy but *very* important reading that offers details students will draw upon throughout the unit. Consider assigning 1-2 paragraphs at a time, pausing to have students summarize or focus attention on what appears to be unimportant details without clueing (e.g., snow on ground—could cause people to slip; moonlight—offers advantages to witnesses; people shouting “fire”). You

might also consider having students use a marker or pencil to underline key statements and circle key words that help answer the questions.

*Optional Activity:* "G1T1" (Give One, Take One) – A list of "to know" questions relating to the Statement of the Case is offered as [Appendix 1b](#). Have students answer the questions in chunks as they read. Then allow one-half of the class (management in mind) to walk around and give and take one answer with any other standing or sitting student. Then switch and let the other half walk around if there are still unanswered questions.

### Check for Understanding

Suggest 2 different questions that someone might ask about March 5, 1770, that would lead to different conclusions. What conclusions might follow from each question?

*Rubric*

**2** – This response gives an appropriate question with an accurate and relevant conclusion.

**1** – This response gives an appropriate question with an inaccurate, irrelevant, or no conclusion.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

### Strategy 5: Extending and Refining Role-Play - Perspectives in the Fishbowl

Select six students to play the roles of John Adams; Abigail Adams; John Adams, Jr.; Mr. James Forrest; Samuel Adams; and James Otis (distribute the role descriptions in [Appendix 4](#)). Seat the 6 role-players in a circle in the center of the room (the "fishbowl"). Other students should sit in a larger circle outside the center circle listening and looking into the fishbowl. The scenario begins with Mr. James Forrest entering the home of John Adams with a plea that Adams serve as the attorney for Captain Preston who is now charged with homicide as a result of the deaths of the 5 colonists on the night of March 5, 1770. At this point, Preston cannot find an attorney to defend him. The role-players are to convince Adams that he should or should not take the case. Encourage each student to begin with a question to Adams (e.g., Mrs. Adams might ask, "Do you realize what might happen to your law practice if you defend a British soldier"? James Forest might ask, "How can you demand rights for colonists while denying them to others"?).

Have students compile a list of questions (see chart below) that might lead John Adams to different conclusions.

Questions raised that <i>encouraged</i> John Adams to defend Captain Preston	Questions raised that <i>discouraged</i> John Adams from defending Captain Preston

Ask volunteers to share their questions with the rest of the class. Alternate between questions that might lead Adams to defend Captain Preston and ones that would discourage him from doing so.

## Check for Understanding

Draw a web that contains the words **conclusion**, **question**, and **perspective** and that uses arrows to show how one flows from the other. Then, provide an example of each in the vicinity (e.g., below, beside) of each word.

*Rubric*

**2** – This web illustrates the relationship between perspective, questions, and conclusions and provides a valid example.

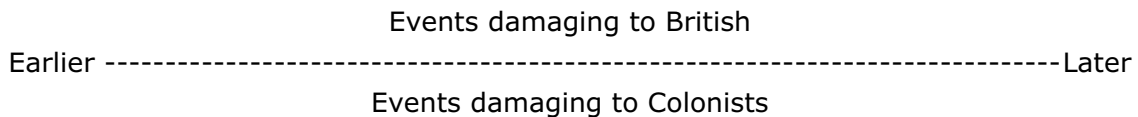
**1** – This web illustrates the relationship between perspective, questions, and conclusions but fails to offer a valid example.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

## Strategy 6: Application Construct a Timeline

This shows students how a single source might be used to generate different interpretations.

Arrange students in small groups and ask them to use the “Statement of the Case,” [Appendix 1](#), and the “Event Strips” on [Appendix 2](#) to create a chronology of events leading up to the “massacre.” Distribute the Appendix with the event strips and scissors. Ask the students to cut out individual strips and lay them out chronologically on their desks/tables. Have them place events that suggest the British were to blame on the top of the timeline. Place the events that suggest the colonists were to blame on the bottom of the timeline (see illustration below).



After students complete their timelines, ask:

- a. Based on the limited number of events provided on the sentence strips, who appeared to be more to blame for the casualties?
- b. How does this activity illustrate the point that the manner in which a person uses sources (e.g., a timeline) can explain why historians sometimes arrive at different conclusions?

## Mapping the Scene

Distribute copies of [Appendix 3](#) and ask students to draw their mental maps of King Street at the moment when a British soldier fired the very first shot. Tell the students to limit what they put on their maps to (using the key below):

- **P = Captain Preston** (noting his position relative to the soldiers and colonists)
- **S = Soldiers** (noting their position, e.g., straight line, 2 rows, semi-circle, as well as how many. One “S” for each soldier.)
- **C = Colonists** (noting how many and their location. One “C” for each colonist.)

Emphasize that their maps must be as accurate as possible with particular emphasis on numbers and locations (how many were there and where were they standing). Also, emphasize that their maps must represent the scene at the very moment the first shot was fired.

Give students time to complete their maps. Walk around the room in search of students who arrive at different interpretations (e.g., soldiers were in a straight line versus soldiers were in 2 rows; Preston stood to the side of his soldiers versus in front of them). When students complete their maps, ask 3 students who produced different “accounts” to come up and draw their map on the board. Have them label their maps Interpretation 1, 2, and 3. Raise the following questions to the entire class:

- Are the 3 interpretations the same or different?
- In what ways are the interpretations different?
- Why might there be different interpretations given that the 3 students all relied on the same source of information, i.e., the Statement of the Case? (Again, for purposes of the benchmark, emphasize that they used the same source—Statement of the Case—differently and may have asked different questions, e.g., where would I stand, or would it have been possible for the soldiers to maintain a disciplined formation?)

### Check for Understanding

#### Error Check

Two historians using the same source of information will arrive at the same conclusion about the past. Agree or disagree with this statement and explain why.

#### *Rubric*

**2** – This response recognizes the error with an accurate and relevant explanation.

**1** – This response fails to recognize the error or provides an inaccurate, irrelevant, or no explanation.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

## Lesson Two

### Essential Question

- Why might historians disagree about the same historical event?
- How might the sources that an investigator relies on influence the interpretations at which he or she arrives?

### Strategy 1: Gathering Information Analyze Eyewitness Accounts to Learn Roles

The main activity in this lesson is a mock trial. See [Appendix 5](#), Prosecution Team Packet, and [Appendix 6](#), Defense Team Packet, for a list of witnesses who might testify at the trial and witness depositions. The depositions were taken in the hours and days following the “massacre” and will serve as the witness statements. Divide the class into prosecution and defense teams, assign roles (e.g., attorneys, witnesses, jurors, bailiff) and distribute the primary sources’ depositions or witness statements to the appropriate students. There are enough roles so that you can conduct a “bench trial” where the judge determines the verdict and everyone can play a witness or attorney. This eliminates the challenge of keeping jurors engaged while the other students prepare their roles. Alternatively, you might invite a colleague’s students to serve as jurors.

### Recommended Attorney-Witness Groupings

- Attorney 1a – receives witness statement. Prepares questions and responses with witness. Conducts direct examination of witness.
- Witness 1 – receives same witness statement. Prepares questions and responses with Attorney 1.
- Attorney 1b – receives same witness statement to develop cross-examination questions but does not get to prepare with Witness 1.

You will also need to select attorneys to give the opening (1 prosecution, 1 defense) and closing (1 prosecution, 1 defense) statements.

A teacher or other knowledgeable authority figure should serve as the judge. You might also recruit an actual judge.

Provide an overview of the case so that everyone understands the purpose of the trial. Consider reading the “Jury Instructions” ([Appendix 7](#)) and “Stipulated Facts” ([Appendix 10](#)). Briefly, Captain Preston has been charged with the crime of manslaughter on the assumption that he gave his men an illegal order to fire on a crowd of civilians on the night of March 5, 1770. Under the law at the time, it was illegal to give such an order unless:

- a. A civilian authority (e.g., the governor) gave him permission.
- b. He or his men were threatened with death or serious bodily injury.

If the prosecution cannot convince the judge (or jury) that Captain Preston did not order his men to fire or that he either had permission from a civilian authority or he or his men were threatened with death or serious bodily injury, Preston must be found guilty.

So, the central question that students must address is: did Captain Preston give an illegal order to fire their weapons into a crowd of civilians?

Give “friendly” attorneys time with their witnesses to prepare and rehearse their questions and responses. The “friendly” attorneys should coach their witnesses by asking questions in advance. Those “adversaries” (attorneys) who are assigned the role of cross-examining



witnesses should receive the witness statement of the person they will cross examine so that they can prepare their cases but should not be given the opportunity to work with the witness prior to the trial.

The “Simplified Steps in a Mock Trial” ([Appendix 9](#)) offer a nice overview of trial procedures. Take time to review these with the students. [Appendix 11](#) (optional) offers Tips for Students as they prepare their varied roles.

### **Teacher Tips**

- You are encouraged to recruit a local attorney as a guest presenter to help students understand legal procedures (contact the Delaware Law Related Education Center at [delrecntr@aol.org](mailto:delrecntr@aol.org) for assistance in recruiting attorneys). He or she could share with students trial strategies, and explain how to ask effective questions and how to make effective presentations.
- 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.
- Under 18<sup>th</sup> century rules, defendants were not permitted to testify on their own behalf because the accused were expected to lie. Although Captain Preston did not testify at his own trial, Captain Preston gave his deposition sometime between March 5<sup>th</sup> and March 14<sup>th</sup>. Do not share Preston’s deposition until the unit is completed as it may influence the outcome of the verdict in a way that it would not have in 1770.

### **Check for Understanding**

Suggest two different questions that might be asked at the trial of Captain Preston that would lead jurors to two different conclusions. Be sure to include answers to both questions.

### **Rubric**

**2** – This response offers 2 different questions with 2 different but plausible responses.

**1** – This response offers less than 2 different questions and/or does not provide plausible responses.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

### **Strategy 2: Extending and Refining Role-Play**

Arrange the classroom to mirror a courtroom prior to the students’ arrival. Conduct the mock trial of Captain Preston. The defense and prosecution should use the notes that they compiled in Strategy 1. The witnesses may use the primary source depositions as they testify. Legal teams can call witnesses in the order that they were actually called (see [Appendix 5](#) and [Appendix 6](#)) or in an order that seems to make more sense.

### **Practical Considerations**

With class sizes ranging in the high 20s, a challenge 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 unit). 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 of the case.

Distribute or have students re-create the chart that appears below. Tell students that each of them will be asked to write a closing statement at the end of the trial. Their task will be to convince jurors that Captain Preston is either guilty or not guilty (their choice). Students should record information in the chart that they can use as notes when they write their closing statements. Tell them that they do not have to record everything they hear, just that which seems particularly significant to Preston’s guilt or innocence.

	Which <b>helped</b> Captain Preston’s case?	Which <b>hurt</b> Captain Preston’s case?
<p><b>Questions</b></p> <p>Which questions did the attorneys raise that most effective?</p>		
<p><b>Use of Sources</b></p> <p>What did specific witnesses say that helped/hurt Preston’s case?</p>		

**Check for Understanding**

Have students write an abbreviated closing statement for the case in which they try to convince a jury that Captain Preston should be found guilty or not guilty of the charges. Emphasize that the students can write a closing for EITHER side, i.e., they are not restricted to writing one for the side that they represented in the mock trial. Tell them that they must demonstrate their understanding of the case by:

- a. Being persuasive.
- b. Supporting their arguments with appropriate source (testimony) information.
- c. Noting any question(s) that each side raised and/or answered effectively.

Remind students that History Standard 3 anticipates that students will be able to explain why people arrive at different interpretations of the past due to the *questions* they ask or the manner in which they *use sources* (depositions). This exercise is tailored to let them demonstrate that understanding.

*Rubric*

**2** – This statement convincingly argues a specific verdict (interpretation) that is supported by questions and evidence.

**1** – The closing statement either convincingly argues a specific verdict (interpretation) argument that is supported by either questions or evidence but not both, or the argument is unconvincing in spite of the questions addressed and evidence presented.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

## **Debrief**

Review History Standard 3 with the students and the chart on which they took notes during the mock trial. Ask them to share the questions that they found most effective in the trial and indicate which verdict those questions supported. Do the same with the use of sources highlighting the question—which witnesses could have been used to both help and hurt Captain Preston’s case?

### **Strategy 3: Extending and Refining Fishbowl Jury Deliberations (if you conduct a jury trial)**

Students playing the role of jurors deliberate in a circle in the center of the class while the rest of the class listens attentively in the outer circle. Through the deliberation discussion, the jurors should refer to the graphic organizer that they created. The outer circle should create a T-chart or matrix on which they record differences in evidence that is central to the verdict.

### ***Background Information for the Teacher***

In his deposition (see [Appendix 8](#)), Captain 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 and that 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.”

### ***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 5<sup>th</sup>, 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 5<sup>th</sup> revealed that he stated that “he would never miss an opportunity of firing upon the Inhabitants. He had wanted such an 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 14<sup>th</sup> 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.

### **Check for Understanding**

How did the use of the sources or questions influence the jury’s verdict (conclusion)? Support your answer with examples.

*Rubric*

**2** – This response gives a valid explanation with an accurate and relevant example.

**1** – This response gives a valid explanation with an inaccurate, irrelevant, or no example.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

## Lesson Three

### Essential Questions

- Why might historians disagree about the same historical event?
- To what extent does history change?

### Strategy 1: Gathering Information Analyzing a Primary Document Think/Pair/Share

**Activity 1:** Distribute copies of [Appendix 12](#). Ask students to answer the questions in Column 1 based *exclusively* on the Statement of the Case and the testimony given at the Mock Trial. Pair students to discuss their answers, and then share responses with the entire class.

**Activity 2:** Divided Image. Distribute copies of [Handout 13](#)—the Pelham-Revere engraving of the “Bloody Massacre.”

Ask students to cover up the right side of the engraving and individually analyze the side populated by British soldiers. Then have them cover up the left side and analyze individually the section populated by colonists. Lastly, have them analyze the engraving as a whole. After analyzing the engraving, ask students:

- How might this source be used to support or harm the patriot cause?
- How might the engraving influence the conclusions of historians writing about March 5, 1770?

Have volunteers report their conclusions during a class-wide debriefing.

### Check for Understanding

Draw a version of shootings on March 5, 1770, that offers a balanced interpretation of the tragedy. Explain how your source (i.e., drawing) might be used to arrive at different interpretations of the past.

#### *Rubric*

**2** – The drawing offers a balanced interpretation with a persuasive explanation of how it might be used to arrive at different interpretations.

**1** – The drawing offers a balanced interpretation with a mediocre or no explanation of how it might be used to arrive at different interpretations.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

### Strategy 2: Extending and Refining Compare-Contrast

Ask students to return to [Appendix 12](#). Tell them to address the same 10 questions in Column 1 and then record their responses in Column 3, relying exclusively on the information presented in the Pelham-Revere engraving of the “Bloody Massacre.” After completing the chart, students should get into small groups and discuss:

- Were the answers to the questions the same or different when you compared previous testimony (Column 2) to the engraving (Column 3)? Why might there be differences?
- How might this chart illustrate the importance of questions when investigating the past?
- Should we expect there to be more than one history of the same event? Why?

- What are some other questions that might be asked about the engraving that might lead to new accounts of March 5, 1770?

Then the groups will revisit the concept of “massacre” from Lesson One. Ask them:

- What is a reasonable definition of the term massacre?
- Do the events of March 5, 1770, qualify as a “massacre?” Support your answer with evidence.
- Why might the event have been labeled a massacre?

Introduce the concept of propaganda. Ask students if they have ever heard of the word and elicit definitions. Suggest a dictionary definition (e.g., Webster’s New Collegiate Dictionary: “the act of instance of killing a number of usually helpless or unresisting human beings under circumstances of atrocity or cruelty”) and then distribute copies of [Appendix 14: Frayer Model](#) with “propaganda” as the word or concept to be defined. Work with the whole class to come up with:

- A definition
- Characteristics
- One example
- One non-example

Pose the following questions to the students:

1. Who might have been responsible for the “Bloody Massacre” propaganda and what was their purpose?
2. Might historians be divided over whether propaganda was used in the case of the Boston Massacre? Explain.
3. Should propaganda evidence be used by historians who tell the story of the past? If so, how?
4. How should you and other researchers approach historical sources/accounts now that you know about propaganda?

**Debrief:** Tell students that propaganda is a common tactic used during conflicts to sway people to a certain side. Historians often raise the question, why do people leave the safety of their everyday life to join sides in a conflict? One answer is propaganda. The Revere-Pelham engraving is considered to be one of the earliest and most effective illustrations of propaganda in American history. Note, however, that propaganda is still used in situations other than war (e.g., advertising).

### Check for Understanding

Have students take their Frayer Models home and generate at least one example and one non-example of propaganda used in modern times with an explanation of why each qualifies as an example or non-example.

*Rubric*

**2** – This response gives valid examples with accurate and relevant explanations.

**1** – This response gives examples with an inaccurate, irrelevant, or no explanation.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

### **Strategy 3: Application**

#### **Writing in the Content Area**

Distribute copies of [Appendix 15](#). Place students in groups of 3-4 and tell them that they are now going to read what has been written about the “Boston Massacre” in American history textbooks over the past 200 years. Their tasks are to:

- a. Read the various accounts.
- b. Identify any differences in the accounts, including what is or is not included.
- c. Create a timeline that summarizes new twists on the history of the “massacre” and that show when the different accounts appeared.
- d. Create a title for their timeline.

**Discussion** to follow the construction of the timelines:

- Has the history of the “Boston Massacre” changed over time?
- Why might history textbooks offer different interpretations of the same event?
  - Which pieces of evidence might each historian or textbook author have used (e.g., defense or prosecution depositions)?
  - How might their choices of questions have influenced their conclusions (e.g., Why were the soldiers sent to Boston? Where did the witnesses say Captain Preston was standing? Were the colonists doing anything to provoke the soldiers? Was the crowd an imminent threat to the soldiers?)

**Enrichment:** Have students research what was happening during the period when each textbook account appeared and draw inferences as to how *what was happening* shaped *what was written*.

#### **Wrap-Up**

1. How might author’s (historian) use of evidence explain different conclusions?
2. How might questions shape an author’s conclusions?
3. Why might historians disagree about the same historical event?

#### **Check for Understanding**

The timeline will serve as the Check for Understanding.

## Optional/Supplemental Lesson

### Lesson Four

#### Essential Question

- Why might historians disagree about the same historical event?
- To what extent does history change?

#### Strategy 1: Gathering Information

##### Reading in the Content Area – Selective Underlining

Students should pair up with a reading buddy to read *The Tragedy at Kent State – 1970* ([Appendix 16](#)). The pair should use selective underlining or highlighting to focus on answering the questions:

- Did history repeat itself?
- What is your evidence?
- Why might one historian say yes while another says no?

Students should discuss their findings.

#### Check for Understanding

What question might a historian ask when researching The Tragedy at Kent State? Explain why that question might become the focus of a historian’s research.

#### Rubric

**2** – This response gives a valid question with an accurate and relevant explanation.

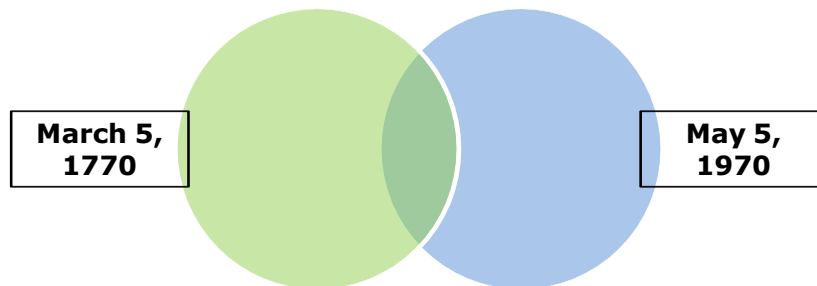
**1** – This response gives a valid question with an inaccurate, irrelevant, or no explanation.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

#### Strategy 2: Extending and Refining

##### Creating a Venn Diagram

Using the evidence compiled in the previous strategy, students will create a Venn diagram comparing the events of March 5, 1770 to May 5, 1970.



Students should then revisit their initial findings to the questions:

- Did history repeat itself?
- What is your evidence?
- Why might one historian say yes while another says no?



## Check for Understanding

How might graphic organizers help historians compare historical sources? Support your answer with an example.

### *Rubric*

**2** – This response gives a valid explanation with an accurate and relevant example.

**1** – This response gives a valid explanation with an inaccurate, irrelevant, or no example.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

## Strategy 3: Application Document Analysis

Using the “Pieta” photo from Kent State ([Appendix 17](#)) students will examine the purpose of the photo and the interpretation of Kent State based on the photograph. Analysis should focus on the following questions:

- How might this photographic evidence be used to show the soldiers or the students in a favorable or unfavorable light?
- How might this evidence influence a historian’s conclusions about May 5, 1970?
- What might you see in a photograph if it had been taken by someone who wanted to capture a different story about Kent State?

A class-wide debriefing should follow and also include the questions:

- How might a historian’s use of evidence explain different conclusions?
- How might questions shape a historian’s conclusions?
- Why might historians disagree about the same historical event?

## Check for Understanding

How might the interpretation of history change due to the questions asked or the sources used? Support your answer with an example.

### *Rubric*

**2** – This response gives a valid explanation with an accurate and relevant example.

**1** – This response gives a valid explanation with an inaccurate, irrelevant, or no example.

For administration of formative assessment see [Student Self-Assessment and Reflection](#)

## Resources and Teaching Tips

- A variety of resources are included (texts, print, media, web links).
- Help in identifying and correcting student misunderstandings and weaknesses.
- For the original version of the Case of the “Bloody Massacre: Rex v. Preston”:  
[http://www.udel.edu/dssep/units\\_and\\_lessons/history\\_resources.html](http://www.udel.edu/dssep/units_and_lessons/history_resources.html)
- John and Abigail Adams – The Boston Massacre  
[http://www.pbs.org/wgbh/amex/adams/peoplevents/e\\_massacre.html](http://www.pbs.org/wgbh/amex/adams/peoplevents/e_massacre.html)
- An American Time Capsule: Three Centuries of Broadsides and Other Printed Ephemera – On the death of five young men who was murdered, March 5th, 1770. By the 29th regiment. [Massachusetts 1770]  
[http://memory.loc.gov/cgi-bin/ampage?collId=rbpe&fileName=rbpe03/rbpe037/03700300/rbpe03700300.db&recNum=0&itemLink=D?rbpebib:1:/temp/~ammem\\_EUIm::&linkText=0](http://memory.loc.gov/cgi-bin/ampage?collId=rbpe&fileName=rbpe03/rbpe037/03700300/rbpe03700300.db&recNum=0&itemLink=D?rbpebib:1:/temp/~ammem_EUIm::&linkText=0)

- An American Time Capsule: Three Centuries of Broadsides and Other Printed Ephemera —An account of a late military massacre at Boston, or the consequences of quartering troops in a populous town, March 12, 1770. [New York, John Holt, 1770.]  
[http://memory.loc.gov/cgi-bin/ampage?collId=rbpe&fileName=rbpe10/rbpe104/10401000/rbpe10401000.db&recNum=0&itemLink=D?rbpebib:2:/temp/~ammem\\_EUIm::&linkText=0](http://memory.loc.gov/cgi-bin/ampage?collId=rbpe&fileName=rbpe10/rbpe104/10401000/rbpe10401000.db&recNum=0&itemLink=D?rbpebib:2:/temp/~ammem_EUIm::&linkText=0)
- Boston Massacre Obituary – Boston Gazette; March 12, 1770  
<http://www.earlyamerica.com/earlyamerica/obits/bostonmassacre.html>
- Account of the Boston Massacre – Boston Gazette and Country Journal; Monday, March 12, 1770 <http://www.earlyamerica.com/review/winter96/massacre/massacretext.htm>
- The Boston Massacre Trials: An Account  
<http://www.law.umkc.edu/faculty/projects/ftrials/bostonmassacre/bostonmassacre.html>

For additional background consider Hiller Zobel’s book, “The Boston Massacre.”

### Differentiation

- Stage 2 and 3 allow students to demonstrate understanding with choices, options, and/or variety in the products and performances without compromising the expectations of the Content Standards.
- Instruction is varied to address differences in readiness, interest, and/or learning profiles.
- Accommodations and differentiation strategies are incorporated in the design of Stage 2 and 3.

Differentiation is embedded within the teaching strategies.

### Design Principles for Unit Development

At least one of the design principles below is embedded within unit design.

- **International Education** - the ability to appreciate the richness of our own cultural heritage and that of other cultures in to provide cross-cultural communicative competence.
- **Universal Design for Learning** - the ability to provide multiple means of representation, expression and engagement to give learners various ways to acquire and demonstrate knowledge.
- **21<sup>st</sup> Century Learning** – the ability of to use skills, resources, and tools to meet the demands of the global community and tomorrow’s workplace. (1) Inquire, think critically, and gain knowledge, (2) Draw conclusions make informed decisions, apply knowledge to new situations, and create new knowledge, (3) Share knowledge and participate ethically and productively as members of our democratic society, (4) Pursue personal and aesthetic growth.(AASL,2007)

### 21<sup>st</sup> Century learning skill development includes:

- Analyze, access, manage, integrate, evaluate and create information in a variety of forms and media
- Develop, implement, and communicate new ideas to others
- Work productively with others

### Technology Integration

The ability to responsibly use appropriate technology to communicate, solve problems, and access, manage, integrate, evaluate, and create information

Opportunities to integrate technology are included in this unit. For instance, readings can be accessed electronically if student computers are available. The transfer task also provides the option of students creating a review for a book, website, or video.

## Content Connections

Content Standards integrated within instructional strategies

**History Standard One 6-8:** Students will examine historical materials relating to a particular region, society, or theme; analyze change over time, and make logical inferences concerning cause and effect.

**History Standard Two 6-8b:** Students will examine historical documents, artifacts, and other materials, and analyze them in terms of credibility, as well as the purpose, perspective, or point of view for which they were constructed.

**APPENDIX 1**  
**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 29<sup>th</sup> 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 Instanced, been unwarrantedly been resisted..." (Zobel 85 – Hillsborough to Admiralty 28 July 1768 CO 5/86) Troops from the 29<sup>th</sup> 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 an 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."<sup>1</sup> Then, on March 2<sup>nd</sup>, 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 ropemakers 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 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.

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<sup>1</sup> Zobel, Hiller B. The Boston Massacre. W.W. Norton and Company, New York. 1970. pg. 178

As Hugh White was standing guard on the evening of March 5<sup>th</sup>, 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 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 mastery 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 29<sup>th</sup> Regiment." At that point, White left his post. Garrick moved to meet him. "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 29<sup>th</sup> Regiment has 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 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 nor 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 by 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. Other 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:

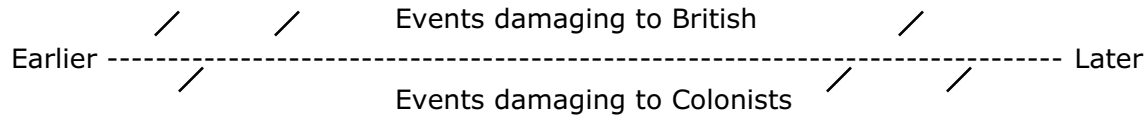
- Rex v Preston – Captain Thomas Preston
- Rex v Wemms – Corporal William Wemms, James Hartegan, William McCauley, High White, Mathew Kilroy, William Warren, John Carroll and Hugh Montgomery

**Appendix 1b (Optional)**  
**Give & Take Questions: Statement of the Case**

1. What were the weather 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. Who stood guard in front of the customs house on King Street?
5. When did the British troops arrive in Boston?
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 rope makers on March 2<sup>nd</sup>?
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 (i.e., "fire", "kill", etc.)?
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 was 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?
27. Did Captain Preston speak to anyone immediately after the shootings? What was said?
28. With which crime was Captain Preston charged?
29. Did anyone in the crowd specifically hear Captain Preston give an order to fire?

**Appendix 2**  
**Thinking Chronologically Event Strips**

**Directions:** cut out individual strips and lay them out chronologically on your desk or table. Place events that suggest the British were to blame on the top of the timeline. Place the events that suggest the colonists were to blame on the bottom of the timeline (see illustration below).



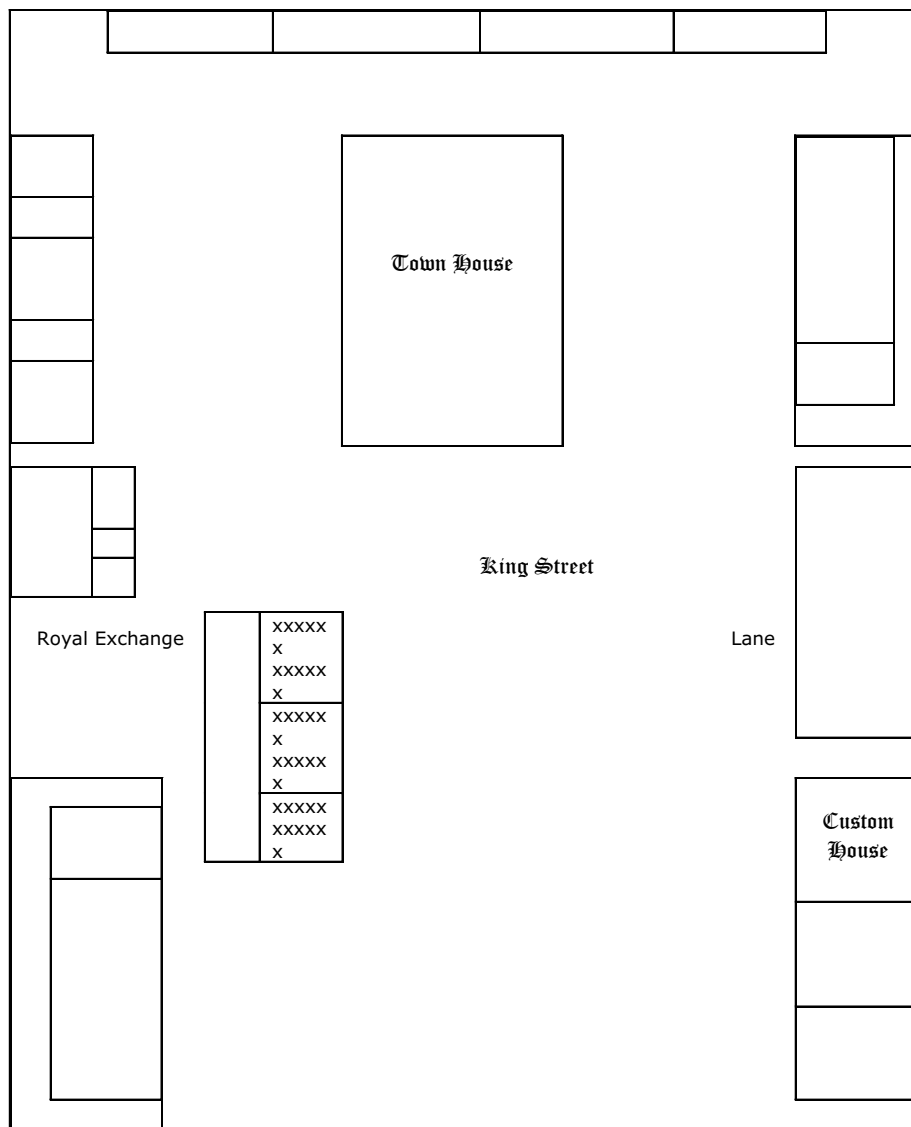
Private Hugh White struck Edward Garrick across the face with the butt of his musket (gun).
Parliament passed the Townsend Acts.
A stick struck Private Hugh Montgomery and he fell to the ground.
Edward Garrick shouted, "There goes the fellow that won't pay my master for fixing his wig."
Ebenezer Richardson shot and killed Christopher Seider.
Fire bells in Boston rang out for the first time.
A British soldier fired his first shot into the crowd.
An additional two thousand British soldiers arrived in Boston at the request of Lieutenant Governor Thomas Hutchinson.
Captain Thomas Preston ordered his men to stop firing.
Nine British soldiers including Captain Thomas Preston positioned themselves in front of the Customs House.
A crowd of at least 50 people angrily confronted Private Hugh White.
Boston rope makers fought British soldiers.



### Appendix 3 "Mapping the Scene"

Shortly after the "Boston Massacre" a map of the scene was drawn for use at the trial of Captain Preston. The original map identified the locations of those who were killed or wounded. Below you will find a modified version of the original map. You will notice that the Customs House is located in the bottom right hand corner of the map at the corner of King Street and (Royal) Exchange Lane. The Town House is at the top of King Street. The locations of the dead and wounded have been removed for the purpose of this activity.

Now that you have read the "Statement of the Case," use symbols to create a visual representation of the moment when the shootings occurred. Use the symbols listed under the map to represent the crowd and its actual size, the correct number of soldiers as well as their formation, and the spot where Captain Preston may have been standing.



**Symbols:**      P = Captain Preston                      S = Soldiers                      C = Colonists

#### **Appendix 4**

### **Working With Historical Documents: Who Will Represent the Captain?**

Background regarding key legal council:

**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 suspended 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 or 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.

**Samuel 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 provide 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.

## **Appendix 5 Prosecution Team Packet**

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

1. Edward Garrick
2. **Thomas Marshal**
3. Peter Cummingham
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**
19. Joseph Belknap
20. 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 other soldiers to the Customs 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.

\*A "surtout" is a man's long, close fitting overcoat.

**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" 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 Centry."

**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 at 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, "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 sentinel 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 sentinel. 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 sentinel. 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 sentinel say, "damn their bloods, if they touch me I will fire."

In about 3 minutes after the sentinel 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.

## **Appendix 6 Defense Team Packet**

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

1. Brazen Head Jackson
2. **Edward Hill**
3. Benjamin David, 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 Price** (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.

**Teacher Tip:** 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<sup>2</sup>**  
**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 acquaintances 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.<sup>3</sup>" 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 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 filled-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.<sup>4</sup>" The crows turned about and pelted somebody who ran through Pudding Lane. I ran to Phillips corner.

I went through 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 nothing 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 say, "Damn him, he is going to fire." And then they all began

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<sup>2</sup> 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.

<sup>3</sup> Because of the red color and design of the soldiers' uniforms, colonists frequently called them "lobsters."

<sup>4</sup> James Murray, the owner of Murray's Barrack's, 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 then be held guiltless." (I George I, Statute 2, c. 5 - 1714)

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 big the soldiers to "fire, damn you, you dare not fire." I jumped back and heard 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" cam 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.

**Defense Witness**

**Newton Prince**

**Anonymous Summary of Defense Evidence**

Newton Prince, being first duly sworn upon 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**

**James Gifford**

**Anonymous Summary of Defense Evidence**

James Gifford, being first duly sworn upon 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 later 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, "... 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."

"Sire, 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 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 firing of the first and second gun for the Captain to have spoken to his men. He stood leaning 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 crows in front of the soldiers was thin.

**Defense Witness**

**Edward Hill**

**Anonymous Summary of Defense Evidence**

Edward Hill, being first duly sworn upon 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 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 Murray's Barracks. The soldiers were gone. They 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 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**

## **James 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 centinel what was the matter. He didn't know. Some people came by and said, "there's the centinel, the bloody back rascal, let's go kill him."

They kept gathering throwing snow balls, oyster shells and chunks of wood at the centinel 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 centinel to recover his gun, fall into his rank and march up the main guard. The centinel 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 centinel - 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 soldier. 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 second shot.

**Defense Witness**  
**Dr. John Jeffries<sup>5</sup>**

**Anonymous Summary of Defense Evidence**

Dr. John Jeffries, being first duly sworn upon oath, deposes and says:

I was sent for at about 11 p.m. on March 5<sup>th</sup> 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.

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<sup>5</sup> 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 14<sup>th</sup> from complications related to his wound.

**Appendix 7**  
**Jury Instructions<sup>6</sup>**  
**(The Charge of the Court)**

**Rex V. Preston**

**AT HIS MAJESTY'S SUPERIOR COURT OF  
JUDICATURE, COURT OF ASSIZE AND GENERAL  
GOAL DELIVERY; COURTY 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 sufficiently 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

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<sup>6</sup> Based on the instructions given by Justice Trowbridge, one of 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 official 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.

**Appendix 8**  
**The Deposition of Captain Thomas Preston<sup>7</sup>**  
**(date unknown)**

**Not for students to see until after the activities relating to the Boston Massacre have been completed. Preston was not allowed to testify at the trial. The assumption was that an accused would lie.**

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, ... 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 cock<sup>8</sup> and charged bayonets<sup>9</sup>, 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...<sup>10</sup>

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<sup>7</sup> 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 18<sup>th</sup> 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.

<sup>8</sup> The cock of a musket had to be fully drawn back (cocked) for the musket to fire.

<sup>9</sup> The charged bayonet position is one in which the soldier is holding the musket around his waist with the barrel and musket pointing in an adversary. This position allowed the soldier to lurch 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).

<sup>10</sup> 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.

## **Appendix 9**

### **Simplified Steps in a Mock Trial**

1. **Calling of the case by the bailiff:** "All rise. His Majesty's Superior Court of Judicature, Court of Assize and General Gaol Delivery for the County of Suffolk, Massachusetts is now in session. Honorable Justice Trowbridge presiding."
2. **Opening Statements:** The prosecution has the burden of proof. Therefore, the prosecution gives the first opening statement, then the defense attorney. In the opening statements, the attorneys explain what their evidence will be and what they will try to prove.
3. **Presentation of the prosecution's case:** The prosecution's witnesses are called to testify (direct examination) and other physical evidence is introduced. After each witness testifies under direct examination, the defense may cross-examine them (ask questions which will break down the story or discredit the witness.)
4. **Presentation of defendant's case:** Same as step three except that the witnesses for the defense are called (direct examination) and each one may be cross-examined by the prosecution.
5. **Closing statements:** An attorney for each side reviews the evidence and asks the jury to decide in his or her side's favor.
6. **Jury instructions:** The judge explains to the jury appropriate rules of law that it is to consider in weighing the evidence. As a general rule, the prosecution must meet the burden of proof in order to prevail. In a criminal case, this burden is very high. In order that most innocent people do not lose their freedom, the prosecution must set out such a convincing case against a defendant that the jurors believe "beyond a reasonable doubt" that the defendant is guilty.
7. **Jury deliberates and decides:** In making a decision, the jury considers the evidence presented and decides which witnesses were most credible. Once the jury has reached a verdict, the jury foreperson writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."
8. **Sentencing:** If the defendant is found guilty, the judge pronounces the sentence.

**Appendix 10**  
**Stipulated Facts**

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 the purpose 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 Customhouse on King Street. Three died instantly, one shortly thereafter. Patrick Carr died as a result of his wounds on March 14<sup>th</sup>.

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 the 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.

## **Appendix 11**

### **Mock Trial Tips for Students**

#### **Opening Statements**

Purpose:

1. To introduce yourself and your client.
2. To acquaint the judges with the nature of the case.
3. To outline what you are going to prove through witness testimony and the admission of evidence.

Preparation for Trial:

1. Write a short summary of the facts.
2. Determine the burden of proof (the amount of evidence needed to prove a fact and who has it in this case).
3. Develop a clear and concise overview of each witness and the physical evidence you will present.
4. Judge how each will contribute to proving your case.
5. Learn your case thoroughly.

Presentation:

1. Stand before the scoring judges.
2. Introduce yourself and your colleagues.
3. Make eye contact with the judges.
4. Appear confident in what you are saying.
5. Outline the case from your point of view.
6. Use the future tense in describing what you will do (e.g., "The facts will show...").
7. Mention testimony of key witnesses.
8. Tell what relief you are requesting.

Avoid:

1. Too much narrative about witness testimony.
2. Exaggeration and overstatement of facts that may not be proven.
3. Promising to prove something you will not or are not able to prove.
4. Reading your whole statement.
5. Repeating undisputed facts.

#### **Presenting Evidence**

##### ***Direct Examination***

Purpose:

To obtain favorable information from your witnesses to prove your case facts.

Preparation for Trial:

1. Study your witness statements. Look for all the good points that are favorable to your case.
2. Prepare a series of questions based on these good points.
3. Avoid leading questions (except for questions that pertain to name, address, etc.).
4. Do not ask questions requiring opinion testimony until you have laid the proper foundation to qualify the witness as an expert.

- Presentation:
1. Stand before the podium except when introducing evidence.
  2. Be relaxed and clear in the presentation of your questions.
  3. Keep to simple questions that you have practiced with your witnesses.
  4. Listen to the answers.
  5. 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.
  6. When your facts are in, cease questioning.

- Avoid:
1. Wasting time asking questions that are not pertinent.
  2. Complex and verbose questions.
  3. Redundant and monotonous questions.
  4. Eliciting conclusions.
  5. Too much narrative (can be dangerous if you lose control of witness testimony).

### ***Cross Examination***

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

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

- Presentation:
1. Be relaxed and ready to adapt your prepared questions to the testimony that is actually heard during the direct examination.
  2. Listen with care to the answers of the witness.
  3. Ask leading questions that require only a "yes" or "no" answer whenever possible.
  4. 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.
  5. 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.
  6. 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.

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

Avoid:

1. Giving the witness the opportunity to reemphasize the strong points made during direct examination.
2. Quarreling, harassing, intimidating or showing hostility toward the witness. Judges usually resent it.
3. "Fishing" expeditions which give the witness a change to clarify damaging statements. When you have a favorable answer, drop the matter and wait for closing arguments to emphasize it.
4. Allowing the witness to explain anything. Try to stop the witness if he/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.

### **Objections**

Purpose:

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

Preparation for Trial:

Practice both making and responding to objections.

Presentation:

1. Rise to address the presiding judge.
2. Upon the raising of an objection, opposing counsel should immediately be prepared to respond to the objection, arguing why it should be overruled.

### **Physical Evidence/Exhibits**

Purpose:

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

Presentation:

1. Ask the judge if you can approach the bench so the exhibit can be marked for identification.
2. Show the exhibit to opposing counsel.
3. Request permission from the judge to approach the witness.
4. Hand the exhibit to the witness and walk back to the podium.
5. Remind the judge if any of the stipulations establish part of the necessary foundation for the exhibit.
6. Ask the judge if you can approach the witness to retrieve the exhibit.
7. Request permission to approach the bench.
8. If permission is granted, do so and hand the exhibit to the judge and ask that it be admitted into evidence.

## **Closing Arguments**

### **Purpose:**

1. To summarize your case.
2. To put the pieces together for the scoring judges.
3. To point out credibility, bias, self-interest or prejudice of witnesses.
4. To be an advocate for your client.

### **Preparation for Trial:**

Organize in advance by anticipating your opponent's arguments.

### **Presentation:**

1. Stand facing the scoring judges.
2. Make eye contact with the judges.
3. Point out testimony which supports your case.
4. Point out testimony which damages your opponent's case.
5. Simply state your case until you are sure it is fully understood.
6. Discard the unimportant and only argue what you feel is important.
7. Correct any misunderstandings that the judges may have.
8. Be relaxed and ready for interruptions if a judge asks questions.
9. 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.
10. Believe in your point of view.
11. Be dynamic. This is high drama. Take advantage of it.

### **Avoid:**

1. Assuming the scoring judges have understood the impact of all of the testimony.
2. Using ridicule except with caution: for while it can be effective, it is also dangerous.
3. Confusing or illogical arguments.
4. Using weak words such as "We believe" and "We think."
5. Asking the juror to put themselves in your client's position.
6. Overt appeals to sympathy and prejudice of scoring judges.
7. Reading the whole statement.

### **Note:**

The prosecution's rebuttal is limited to the scope of the defense's closing argument.



## **Witness Statements and Testimony**

- General Suggestions:
1. If you are to testify about records, familiarize yourself with them before the trial.
  2. 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).
  3. When called to the stand, be as relaxed and in control as you possibly can be.
  4. If asked if you have discussed the case with anyone, indicate any occasion when you have talked with your attorney in preparation for trial.
  5. 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".
  6. 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.
  7. 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 them, say you do not know.
  8. If you answer a question incorrectly, ask the judge if you may correct it.
  9. If the judge interrupts or an attorney objects to a question you answer, stop talking immediately. Do not resume until arguments and rules on an objection, the judge will instruct you to answer or not to answer the question asked.
  10. Be polite while answering questions and do not lose your temper.
  11. Be courteous to attorneys and the judge.
  12. When answering a question from the judge say, "Yes, your Honor" or "No, your Honor".
  13. 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:
1. Learn the case inside out, especially the witness statement.
  2. 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.
  3. Practice with your attorney.

- Presentation:
1. An appearance of confidence and trustworthiness is important.
  2. Be sure your testimony is consistent with the facts set forth in your statement.

3. Remain calm if the attorney or judge asks you a question you haven't rehearsed.
4. Wait for your attorney to complete a question before beginning your answer.
5. Occasionally, look at the judge when answering a question posed by your attorney.
6. Avoid annoying distractions while testifying, such as rocking back and forth.
7. 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:

1. Learn the case thoroughly, especially your witness statement.
2. 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.
3. Practice with your team's attorney who will be conducting cross-examination of the person you are portraying.

Presentation:

1. Be sure your testimony is consistent with the witness statement.
2. If you make an incorrect statement during direct examination that wasn't caught, don't be afraid on cross-examination to admit your mistake.
3. 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.
4. 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.
5. Good cross examination can be tough, so don't get flustered. A witness who can respond well during cross examination can give his/her team some well earned points.

**Appendix 12**  
**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.

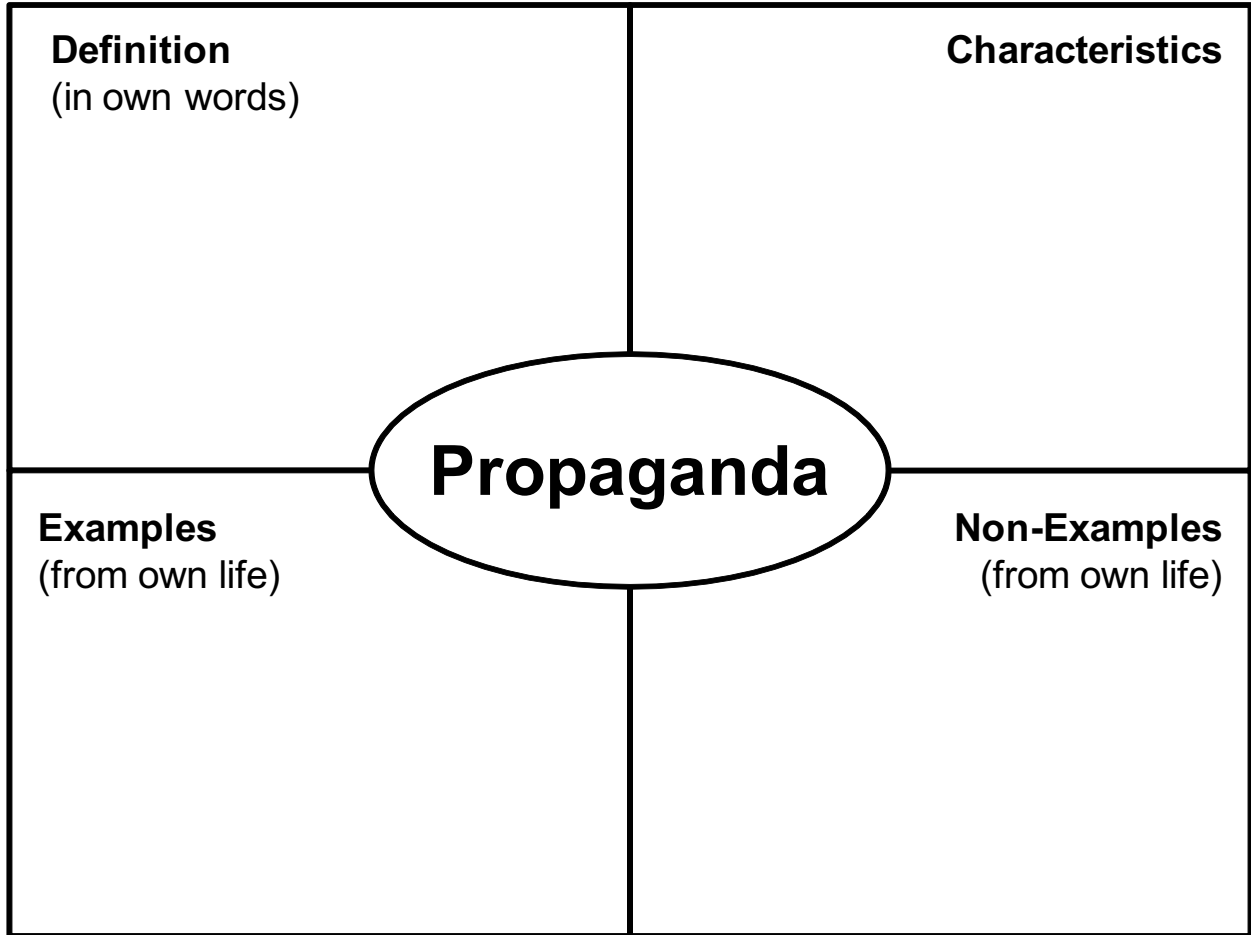
	<b>Witness Testimony</b>	<b>Engraving</b>
How many soldiers were present at the shooting?		
How many people were in the crowd that confronted the British Soldiers?		
Describe the emotions revealed in the faces of the soldiers just prior to the shooting.		
Were the townspeople threatening the soldiers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

**Appendix 13**  
**Engraving of "The Bloody Massacre"**



**Appendix 14**  
**Fray Model: Propaganda**

Name: \_\_\_\_\_



## **Appendix 15**

### **The Massacre in Textbooks Over Time**

#### **Account 1**

In Boston, the presence of the British soldiers caused constant affrays. In one of these, the soldiers fired upon the populace and killed three men: one of these men was the Negro who had excited the disturbance. This deed was called the Boston Massacre, and caused high indignation among the people: they were, however, much in fault, having aroused the attack which ended so fatally.

In the course of a few months, the captain who had ordered the soldiers to fire was tried in Boston for murder: notwithstanding the strong feeling of the excited Bostonians against him, two distinguished citizens, John Adams and Josiah Quincy, undertook his defense, and he was acquitted.

Berard, A.B. *School History of the United States*. Philadelphia: H. Cowperthwait & C. 1855. 113-15.

#### **Account 2**

One night –it was in the evening of the fifth of March, 1770 –some young men threw snowballs at a sentinel who was on guard at the Customhouse. He probably repelled the assault somewhat rudely and this led to a disturbance. Soon a crowd collected, and there were indications of a riot. The captain of the guard, hearing of this difficulty, sent a sergeant and six men to the spot. He thought the appearance of the soldiers would intimidate the crowd and drive them away, but it seemed only to increase their excitement and exasperation. At last the command was given to fire. The soldiers obeyed. Three of the crowd were killed on the spot, and two more were mortally wounded. This occurrence produced a prodigious sensation, and aroused the people almost to phrensy [sic]. They called it a massacre.

Harper's School History, *Narrative of the General Course of History*. New York: Harper and Brothers. 1856. 368-69.

#### **Account 3**

Between seven and eight o'clock in the evening of March 5, a mob collected armed with clubs, and proceeded toward King street, now State street, crying, "Let us drive out these rascals –they have no business here –drive them out! Drive out the rascals!" Meanwhile, there was a cry that the town had been set on fire.

The bells rang, and the throng became still greater, and more tumultuous. They rushed furiously to the custom-house, and seeing an English sentinel there, shouted, "Kill him! Kill Him!" –at the same time attacking him with pieces of ice and whatever they could find. The sentinel called for the rest of the guard, and a few of them came forward.

The guard now marched out with their guns loaded. They met a great crowd of people, led by a gigantic Negro, named Attucks. They brandished their clubs and pelted the soldiers with snowballs, abusing them with harsh words, shouting in their faces and even challenging them to fire. They even rushed close upon the very points of their bayonets.

The soldiers stood awhile like statues, the bells ringing and the mob pressing upon them. At last, Attucks with twelve of his men, began to strike upon their muskets with clubs, and to cry out to the mob, "Don't be afraid –they dare not fire –the miserable cowards –kill the rascals –crush them underfoot!"

Attucks now lifted his arm against the captain of the guard and seized hold of a bayonet. "They dare not fire!" shouted the mob again. At this instant the firing began.

Attacks dropped dead immediately. The soldiers fired twice more, and two others were killed and others still wounded....

On the 8<sup>th</sup> of March, the three slain citizens were buried....

There is no doubt that in most of these transactions the mob were in the wrong ;the source of the mischief lay, however, in the fact that the British government insisted upon keeping an army among a people outraged by a series of unjust and irritating laws. This conduct showed that the king and parliament of Great Britain intended to compel the colonists to submission by force of arms, and not to govern them by fair and proper legislation.

Goodrich, C.A. *A Pictorial History of the United States with Notices of Other Portions North and South*. Philadelphia: E.H. Butler & Co. 1866. 176-177.

#### **Account 4**

The king and his followers were determined to enforce the unpopular laws. In order to show their determination in the matter, troops were sent to Boston to help enforce the trade laws. These troops were looked upon by the colonists as intruders. There were many street quarrels between soldiers and citizens. The soldiers gambled, held horse races, and indulged in other sports, all of which annoyed the church-going Bostonians. Finally, the fatal clash came. On March 5, 1770, as the result of a street quarrel the soldiers fired into a crowd of men and boys who had been calling them names and pelting them with snowballs. This event, afterwards known as the "Boston Massacre," stirred the whole country against Great Britain and helped to fan the fire of hatred.

Cornish, H.R., and T.H. Hughes, *History of the United States for Schools*. New York: Hinds, Hayden & Eldridge, Inc. 1936. 116.

#### **Account 5**

Your textbook. What does it have to say about the "Boston Massacre?"

**Appendix 16**  
**Historical Analysis**  
**The Tragedy at Kent State (1970)**

**Did History Repeat Itself?**

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 student 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. Sprints 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 that car, jumped on it, then led a chant "one, two, three, four, we don't want a ...war!" A drunk on a balcony hurled a bottle into the street and suddenly the crowd turned ugly. Students smashed the car 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, then 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 student 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 ROTC building facing the Commons. They 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 police 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 at 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 the 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 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 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 once 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 sounds 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 Guardsmen 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.<sup>11</sup>

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<sup>11</sup> Time Magazine. May 18, 1970. (edited for younger audiences)

## Appendix 17

# John Filo's Pulitzer Prize Winning "Pieta" Photograph



Sources:

[http://en.wikipedia.org/wiki/John\\_Filo](http://en.wikipedia.org/wiki/John_Filo)

[http://en.wikipedia.org/wiki/Mary\\_Ann\\_Vecchio](http://en.wikipedia.org/wiki/Mary_Ann_Vecchio)