

## *Boston: Wednesday, October 24, 1770*

WHEN CAPT. THOMAS PRESTON WOKE in the gray dawn of the Boston gaol, his heart raced with a combination of excitement and fear, like a soldier who knows a deadly battle is at hand. He had survived the seven months since the incident on King St., but it had been a constant worry and strain. He had endured the occasional mob outside the gaol that shouted his name and brandished the rope they would use for his neck if they chose to overwhelm the turnkey and take him away, and suffered the godly reverends who had called for his death from the pulpit of North Church. The written promise that he would never survive until his trial had been delivered in a stack of papers from his lawyers and superior officers in August and, of course, no one knew how it had gotten there. But he was still alive, even if the persistent lack of sleep and the possibility of being hung from the Liberty Tree made him skittish and jumpy, sweat trickling down his neck as he tried to adjust the tail of his wig before they took him the hundred yards to the court room.

He believed he'd done nothing wrong—he and the men he commanded were in mortal danger from a crowd that did everything short of firing muskets at them. Deep in the night, he sometimes thought the Boston crowd should thank him for

preventing more blood in the street, bravely pushing up the muskets of the grenadiers so they couldn't fire a second time. But he'd also seen the raging anger against the Crown and any men in lobster colors that enforced his Majesty's will. With the exception of a few loyal gentlemen and ladies, he was nothing more than a uniform to the people of Boston, one that had forced them to kneel before cannons and bayonets. They would be glad to strip the red from his back and let his body swing in the ocean wind like a bloody flag of independence.

His lawyers seemed to be exceptions. John Adams was a cousin to the hateful Sam, who Preston thought would condemn him to death without blinking an eye and then stage a celebration when his body was taken down. But unknown to Preston, it was Samuel Adams, John Hancock, William Molineux, and several others who had prevailed upon Cousin John, Judge Robert Auchmuty, and Josiah Quincy, Jr. to defend the soldiers. They wanted at least a pretense of a fair trial before the triumphant hanging, and the lawyers had spoken with Preston several times through the summer. Still, it wasn't clear what they might do at trial, and Preston maintained a reasonable fear at leaving his fate in the hands of lawyers so close to the Liberty mob.

With nothing but worry to occupy his time, he'd used a quill to try to make his case and bend the will of the people of Boston. In truth, he stood little chance against the Boston experts who had stoked the fires of Liberty in the years since the fighting against the French. Within a week of his arrest, Preston wrote a notice and paid to place it in the *Boston Gazette* for all to read. He was thankful he'd survived that first night and the week after when the funerals of the dead rabble had kept the people at a boil. He was also a bit surprised that the prominent young lawyers Adams and Quincy had agreed to defend him and the enlisted men. He praised the "Inhabitants in general of this town" and thanked them for "throwing aside all Party and Prejudice" in providing lawyers who

would defend "my injured Innocence."

If his lawyers or the British commander of the Boston troops, Gen. Gage, were at all pleased with this attempt to curry favor with the town, they later wished he had broken the quill and never used it again. He also wrote letters to Gage, who was staying in the more hospitable city of New York, first requesting arrangements for a pardon, and later explaining his actions in front of the Custom House. He charged that the people of Boston had a "malicious Temper," regularly encouraged desertions from the Royal Army, and had a detailed plan to attack and kill the troops on the night of the shootings. Gage sent the letter off to London where it was published to counter the colonists' reports of "the Bloody Massacre," but Liberty supporters there sent copies back to Boston. In June, Preston's bootlicking praise of the town's fairness was printed in several Boston papers alongside his private accusations and petty assessments of the town's character. Quickly, a group of prominent leaders, including several that had secured the lawyers for his defense, visited Preston in gaol and formally demanded proof of his accusations. He claimed that the second letter had been changed by others, but offered no other explanation at the time or in the coming weeks.

If Preston hadn't been so nervous, he might have seen that all the playing cards were already stacked in his favor. Although Samuel Adams' irregulars now controlled the streets, it was the Crown, the Army, and their supporters that controlled the court room.

First, the trial had been delayed for months so that some of the fire for vengeance against the soldiers might die out. Despite his best intentions and constant work, even Samuel Adams couldn't keep all of Boston in the rage that constantly consumed him. Too many were simply relieved that the redcoats now stayed out of sight at Castle William and that the simple pleasures of everyday life could continue without the Royal Army clogging the streets.

Merchants saw that that the cities of New York and Philadelphia had approved the beginning of importation again and were eager for Boston to follow so they could resume building their fortune from trade without the pretense of nonimportation.

The prosecutors chosen to seek the execution of Preston and the soldiers put forth a half-hearted effort. The official directly responsible for the prosecution, Attorney General Jonathan Sewall, had simply disappeared. He busied himself for months with cases in the smaller towns of Charlestown and Ipswich, essentially hiding from the unpleasant task of facing the Boston crowds and prosecuting loyal soldiers. The court appointed Samuel Quincy, a friend of John Adams and brother of the defense lawyer Quincy, to prosecute. He was a man known to bend quickly and easily to the prevailing political winds and would soon declare himself a Loyalist. The Boston Town Meeting, hoping for a direct march from the court to the scaffold, voted to pay the costs of the prosecution and hired John Adams' longtime rival, Robert Treat Paine, to assist Samuel Quincy. Even so, their preparation for the case lagged far behind the efforts of the Crown in gaining statements and witnesses that would be persuasive in court.

Two other related cases had already been decided on terms favorable to the Loyalists. Although the known Customs informer Ebenezer Richardson had been found guilty by a jury of murdering the boy, Christopher Seider, when firing into a threatening crowd from the window of his house, it was against the recommendations of the five judges appointed by the King. As a result, he had not been sentenced to the immediate hanging Boston wanted and he waited untouched in the Boston gaol along with Preston and the soldiers.

A second trial had also concluded, this one against two civilians charged with firing guns from the Custom House into the crowd on King St. at the same time as the soldiers. It was part of the scene gleefully reproduced in Revere's engraving that had been

reproduced throughout the colonies. But the colonial lawyers were sent home in disarray. Only two witnesses were found to testify about the shots, and one was judged "an Idiot . . . of weak understanding." The other was a 14-year-old boy, originally from France, employed as a servant to a Customs officer. His testimony was so weak, directly contradicted by alibis for both men, that he was eventually sent to jail for perjury by the judge who was the strongest Liberty supporter in the town.

One last favorable card had been turned up just a few days before when the court accepted the defense request to try Preston separately from the enlisted men. Since Preston had clearly not fired a shot, convicting him of murder meant that the prosecution would have to prove that first, he ordered the men to fire, and second, if he did give an order, it had been unlawful because it was not in self-defense from a mob that put the soldiers in mortal danger. Given the conflicting loyalties of the prosecutors, proving both points was beyond a long shot.

What Preston witnessed on his first day in the packed court room essentially decided the trial, although he didn't know it. In a capital murder trial, a unanimous decision from all twelve men on the jury was required for a conviction. A single "not guilty" vote would result in acquittal. Using a legal technicality—the defense hadn't been given the names of all the prospective jurors, including those from outside of Boston, a full two days before the trial—the defense was allowed to challenge and remove as many jurors as it wanted "for cause" although explanation of the cause was not required.

By the early afternoon, twelve jurors had been selected and approved by prosecution and defense. Five of them were already declared Loyalists to the Crown or would be within a few months. The defense only needed one of them to decide that Preston was not guilty. In effect, the trial was already decided, but each side would dutifully perform their duties for the viewing pleasure of the

people and officials in Boston and London.

Preston watched the longest trial in Massachusetts history. According to custom, the jurors were prevented from returning home, but because it dragged over six days, they were provided food and spirits each night at their lodgings at the gaol keeper's house. Nearly fifty witnesses testified and few agreed on anything concerning Preston's behavior during the moments before and after the shots mowed down eleven in the crowd. Several disagreed on what Preston was wearing, some identifying him by his bright red coat with a rose on the shoulder, his wig, or the sword he supposedly held high. Others stated that he had on a "cloth colored" surtout or outer coat. A few claimed that Preston had given the order to fire, but more were uncertain if there was an order or where it came from. It might have been shouted by Corporal Wemms, or possibly one of the enlisted men encouraging the others to fire. It might even have come from the crowd that taunted the soldiers with echoing shouts and invitations, such as "Fire, fire, you lobster scoundrel son of a bitch. Fire and be damned."

There was one loud disagreement between the defense lawyers John Adams and Josiah Quincy. Quincy wanted to get testimony on the despicable and dangerous behavior of the Boston crowd. But Adams refused that strategy, threatening to resign if Quincy proceeded. Because there were some respectable merchants and political leaders in the crowd, Adams didn't want to accuse them as a whole and suggest they were the cause of the deaths. He knew their case was strong enough and there was no need to anger the Liberty supporters who had arranged the defense to begin with. When Quincy relented, John Adams' ties to the upper-level Boston leaders weren't endangered by needless slander.

Although there were many more words and speeches, including an elegant summary by Adams emphasizing the English idea that it was better to let a guilty man go free rather than to

imprison an innocent one, the verdict had been assured ahead of time. Capt. Preston strode from the court on Oct. 30 a free man, ready to resume the social niceties of dinners and entertainments enjoyed by British officers and Customs officials and their families at Castle William. Even though he was anxious to put as much distance between himself and Boston as he could, and pursue the generous pension he expected in London, Preston had to wait for the conclusion of the next trial. He might need to testify, pointing a finger if necessary, about the actions of the lowly enlisted men who had finally shot holes in the sailors and mechanics that had fought them for every inch of Boston for nearly two years.

## *Boston: Friday, December 14, 1770*

MATTHEW KILROY nearly gagged as the smell of burned flesh and the screams of fellow Private Hugh Montgomery filled the courtroom. He steeled himself for what awaited, and tried to calm his mind with the thought that the pain of the branding iron on the ball of his thumb wouldn't last as long as the pain from the lashes he'd survived as a sullen recruit in England. But his stomach continued turning as Montgomery's hand was wrapped in cloth and Kilroy saw his face turn the ashen gray of someone suffering a near-mortal wound.

Through the months since his musket ball had torn into Samuel Gray's head and left Gray's blood, bone, and brains on King St., Kilroy fully expected to be hanged, either by the raging Boston crowd or at the high hands of the judges appointed by the Crown as part of the colonial government. He knew the judges, like the rest of the uppers on both sides, saw him as little more than a trained animal. If they needed to swing a soldier or two by the neck to make everyone else happy, they'd be glad to oblige, just like they did for the thieves and highwaymen caught on the wrong side of their bench. In many ways, his prospects were little different than those of Attucks and Gray and the others he'd tangled with. They were at the lowest end, and if the titled lords of England or the

untitled uppers in America needed some of them to die to advance a cause or prove a point, then so be it. It was part of the natural order of things.

He'd made his mark on several legal papers the lawyers told him would help, including the one requesting that Capt. Preston and his men be tried together, but nothing had come of them. He'd eaten the meager food in gaol and begun to suffer the cold nights as well, but the conditions weren't much different than in the Main Guard barracks. The biggest changes were that he wasn't expected to march and drill to exhaustion on the Common or in the squares, and that he no longer got to roam the streets looking for a skull to crack or pick up pennies laboring on the docks or in the warehouses for the hard-eyed businessmen who hired the cheapest labor they could find, redcoat or not.

He didn't keep track of the men on the jury, and didn't notice the importance of the fact that not a single one came from Boston. With approval of the judges, his lawyers had challenged and removed so many Boston men that Loyalist bystanders had to be recruited to fill out the twelve. Again, the trial dragged over several days, and included wildly differing testimony. But Kilroy and Montgomery were the only two identified as aiming at specific people, and two witnesses testified that the point of Kilroy's bayonet and the next six inches were covered with dried blood the morning after the shots, although the source of the blood wasn't identified or even questioned.

No one in the courtroom, including Kilroy, could miss the presence of Samuel Adams each day. Absent from Preston's trial and incensed at the results, he now furiously scribbled notes during testimony and made loud comments as to the mistakes of the court and prosecution before and after. He scoffed at the testimony of the Loyalist surgeon who heard the statement of Irishman Patrick Carr, the fifth victim on King St., just before he died from his wounds ten days after the shots. From his death bed, Carr

supposedly had stated that the soldiers had fired in self-defense and that he didn't "blame the man whoever he was, that shot him." Samuel Adams now dismissed Carr as merely an Irish Papist, a designation in most of Boston that made him entirely untrustworthy and just above a slave on the social scale. This was the same Patrick Carr who had been buried in a grave beside Attucks, Gray and the other patriots in a second very public funeral, organized and supported by Adams and other leaders. At the time, they called him a hero and another martyr of the Bloody Massacre.

When John Adams summed up the defense before the jury would decide, he may have outshone his speech before Preston's jury. In a way that put himself in the most favorable light, Adams again emphasized the importance of protecting the innocent rather than punishing the guilty. Although Kilroy may not have understood all of his words, he couldn't help but notice that Adams didn't propose that he, Montgomery, Wemms, or any of the others hadn't killed anyone. Instead, he blamed the Royal government for sending troops in the first place. Next he described the horrifying vision of a Boston mob seeking bloody vengeance. It was a frightening vision for the jurors who all came from small towns outside of Boston and were unfamiliar with everyday life in the city and the constant confrontations of the previous months. Adams suggested that the civilians from the country would have surely fired in self-defense "till they had shot down as many as were necessary to intimidate and disperse the rest."

Kilroy wasn't surprised when he and Montgomery were the only two taken back to the gaol on December 5, guilty of manslaughter. Immediately, he was instructed by Army officials to learn the "neck verse" from Psalm 51:

*Have mercy upon me, O God, according to thy loving kindness: according unto the multitude of thy tender mercies blot out my transgressions.*

Kilroy needed to commit it to memory since he couldn't read, but he was assured that if he could recite it before the judges, he would be saved from the noose. Originally intended to protect religious officials from judgment by secular courts in England in the 1100s, it had evolved to protect anyone from execution if they could establish that they could read the Bible or recite the appropriate verse. Kilroy and Montgomery had both pronounced it in court under the sympathetic eyes of the Crown judges, and so all that was left was for Sheriff Greenleaf to heat the iron in the brazier and scar their hands so that if they were ever forced to raise a hand in court again, all could see the "M" that marked them as murderers.

Kilroy forced himself to keep his eyes open as Greenleaf approached. The smell of red hot iron filled his nose and throat and he clenched his teeth to prevent any desperate cries of fear or pleas for mercy. As the pain shot through his hand, both arms reflexively struggled against the men who held them down. His gorge rose in his throat and he bent forward to stop the reflex. He closed his eyes as they wrapped his hand with a damp cloth, but he found that his anger was already gone. In its place, a small black kernel of bitterness hardened in his chest. This was the end for Kilroy in America, his hand sacrificed to the need for a Royal show of strength. He had been luckier than the others who'd died there, those in redcoats, and those stained with tar, the ones John Adams himself had termed "a motley rabble of saucy boys, Negroes, and mullatos, Irish teagues and outlandish jack tars." Their health and their lives were pawns in the struggle for riches and power between the upper classes in England and those in the Colonies.

LATER, THE WINTER NIGHT enclosed the streets before 5 PM and most houses were dark by 8, fires banked and mountains of blankets piled high over bodies that could afford them, while the

others felt the chill just beginning. But a lamp burned at the elbow of Samuel Adams in his study on Purchase St. in the South End, the 150 lbs. of his black Newfoundland “Q” stretched between Adams and the hearth. Watchmen walking the streets were never surprised to see his light, and they claimed he sometimes worked through the night in writing his furious essays under a multitude of names.

Adams may have pulled his faded red coat more tightly about him as the fire burned lower, but if anger could bring warmth, tonight he would have been sweltering. Watching Kilroy and Montgomery branded and knowing all eight redcoats would soon sail for England as free men was hardly what he had hoped for after so many good men were sacrificed on King St. True, the soldiers were gone and the British occupation had been exposed in all its brutality, but the people of Boston had lost their anger and outrage too quickly. His cousin and the others had turned the trial into a show of their own, dancing on a wire between the wrath of the town and that of the Crown. Like nearly all the others, they had chosen to be safe rather than sorry. They had said nothing treasonous, settling for mild and vague accusations, pointing to circumstances rather than people.

Few could seem to see the depth of the conflicts as he did: liberty vs. obeisance, the righteous servants of the Lord in America vs. the corrupt and immoral society in England, the principles of levelling the classes vs. the rigid European social boundaries, the democratic choices of free men vs. the divine right of an unworthy king. They could not see or were afraid to admit that the divide was too deep to be avoided with well-meaning words and artful compromises. Many, including Hancock and the other merchants, wanted the benefits of fewer taxes and less intrusion from across the ocean without the discomfort of a loud and powerful lower class.

He struggled to control the tremors in his head and his hand

as he gripped the quill, always worse when his passion burned the hottest. For the moment, he could only use his pen, confident in its mighty power to provoke the sword and bring the conflict to its inevitable match of arms and will. He would preach from the pulpit, give direction from the Town House gallery and the back room of the Grapes, and spark flames in Boston, New York, Philadelphia, and Charleston with letters and essays, mixing facts and fictions. The Bloody Massacre was just a beginning, and Samuel Adams would never let the work of the Sons of Liberty be halted or forgotten. There were thousands more like Attucks, Gray, and the others, willing to fight if they saw the threat before them. It was his job to show them that it was fancy words and high titles that brought the press gangs and bloody redcoats to put a boot on their necks.