



## “Facts are stubborn things”: John Adams for the Defense, December 1770

*The Legal Papers of John Adams*, No. 64, “Rex v. Wemms, et. al.”

Full text here: <http://law2.umkc.edu/faculty/projects/ftrials/bostonmassacre/adamssummation.html>

The next witness that knows any thing, was, *James Bailey*<sup>1</sup>, he saw *Carrol*, *Montgomery* and *White*, he saw some round the Sentry, heaving pieces of ice, large and hard enough to hurt any man, as big as your fist: one question is whether the Sentinel was attacked or not.- If you want evidence of an attack upon him there is enough of it, here is a witness an inhabitant of the town, surely no friend to the soldiers, for he was engaged against them at the Rope-walks<sup>2</sup>; he says he saw twenty or thirty round the Sentry, pelting with cakes of ice, as big as one's fist; certainly cakes of ice of this size may kill a man, if they happen to hit some part of the head. So that, here was an attack on the Sentinel, the consequence of which he had reason to dread, and it was prudent in him to call for the *Main-Guard*: he retreated as far as he could, he attempted to get into the *Custom-house*, but could not; then he called to the *Guard*, and he had a good right to call for their assistance; "he did not know, he told the witness, what was the matter," "but he was afraid there would be mischief by and bye;" and well he might, with so many shavers and genius's round him capable of throwing such dangerous things.

*Bailey* swears, *Montgomery* fired the first gun, and that he stood at the right, "the next man to me, I stood behind him, &c." This witness certainly is not prejudiced in favour of the soldiers, he swears, he saw a man come up to *Montgomery* with a club, and knock him down before he fired, and that he not only fell himself, but his gun flew out of his hand, and as soon as he rose he took it up and fired. If he was knocked down on his station, had he not reason to think his life in danger, or did it not raise his passions and put him off his guard; so that it cannot be more than manslaughter.

When the multitude was shouting and huzzaing, and threatening life, the bells all ringing, the mob whistle screaming and rending like an Indian yell, the people from all quarters throwing every species of rubbish they could pick up in the street, and some who were quite on the other side of the street throwing clubs at the whole party, *Montgomery* in particular, smote with a club and knocked down, and as soon as he could rise and take up his firelock, another club from a far struck his breast or shoulder, what could he do? Do you expect he should behave like a Stoick Philosopher lost in Apathy? Patient as *Epictatus* while his master was breaking his leggs with a cudgel? It is impossible you should find him guilty of murder. You must suppose him divested of all human passions, if you don't think him at the least provoked, thrown off his guard, and into the *furor brevis*, by such treatment as this.

*Bailey* "Saw the Molatto seven or eight minutes before the firing, at the head of twenty or thirty sailors in *Corn-hill*, and he had a large cordwood stick." So that this *Attucks*, by this testimony of *Bailey* compared with that of *Andrew*, and some others, appears to have undertaken to be the hero of the night; and to lead this army with banners, to form them in the first place in *Dock square*, and march them

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<sup>1</sup> Boston sailor and eyewitness to the King Street confrontation; key witness for the defense who characterized the crowd as violent and out of control and claimed to have seen *Attucks* strike Private *Montgomery* with a stick.

<sup>2</sup> A number of Bostonians had brawled with British soldiers only days earlier at the *ropewalks*, i.e. a building where rope was manufactured.

up to *King-street*, with their clubs; they passed through the mainstreet up to the *Main-guard*, in order to make the attack. If this was not an unlawful assembly, there never was one in the world.

*Attucks* with his myrmidons comes round *Jockson's* [*Jackson's*] corner, and down to the party by the Sentry-box; when the soldiers pushed the people off, this man with his party cried, do not be afraid of them, they dare not fire, kill them! kill them! knock them over! And he tried to knock their brains out. It is plain the soldiers did not leave their station, but cried to the people, stand off: now to have this reinforcement coming down under the command of a stout Molatto fellow, whose very looks, was enough to terrify any person, what had not the soldiers then to fear? He had hardiness enough to fall in upon them, and with one hand took hold of a bayonet, and with the other knocked the man down: This was the behaviour of *Attucks*, to whose mad behaviour, in all probability, the dreadful carnage of that night, is chiefly to be ascribed. And it is in this manner, this town has been often treated; a Carr from *Ireland*, and an *Attucks* from *Framingham*, happening to be here, shall sally out upon their thoughtless enterprizes, at the head of such a rabble of Negroes, &c. as they can collect together, and then there are not wanting, persons to ascribe all their doings to the good people of the town.

*Mr. Adams* proceeded to a minute consideration of every witness produced on the crown side; and endeavoured to shew, from the evidence on that side, which could not be contested by the council for the crown, that the assault upon the party, was sufficiently dangerous to justify the prisoners; at least, that it was sufficiently provoking, to reduce to manslaughter the crime, even of the two who were supposed to be proved to have killed. But it would swell this publication too much, to insert his observations at large, and there is the less necessity for it, as they will probably occur to every man who reads the evidence with attention. He then proceeded to consider the testimonies of the witnesses for the prisoners, which must also be omitted, and concluded:

I will enlarge no more on the evidence, but submit it to you. Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence: nor is the law less stable than the fact; if an assault was made to endanger their lives, the law is clear, they had a right to kill in their own defence; if it was not so severe as to endanger their lives, yet if they were assaulted at all, struck and abused by blows of any sort, by snow-balls, oyster-shells, cinders, clubs, or sticks of any kind; this was a provocation, for which the law reduces the offence of killing, down to manslaughter, in consideration of those passions in our nature, which cannot be eradicated. To your candour and justice I submit the prisoners and their cause.