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## A Better Way

“You cannot be serious!” exclaimed Roger Cole.

“Indeed I am, my good friend,” replied John Benson. “Indeed I am.”

Cole shot a look of incredulity at the man who walked next to him, then turned his head and looked back out onto Boston Harbor, as it was in the winter of 1771, The waters were calm and cold, frigid blasts of air swept through the town. It was almost one o’clock, but the walk through the town was invigorating, and Cole was enjoying it. He had not eaten lunch, but he was not yet hungry. He looked again out at the waters. Boston was the city of his youth, and it was the city he planned to die in.

His thoughts were interrupted as Benson stopped and stared disapprovingly at Cole. “You mean to tell me that you have been completely happy with the British policies towards America?”

“No, of course not,” muttered Cole, “But it’s nothing that can’t be resolved. I’m quite confident that—”

“You’re quite confident!” Benson sputtered. “You were quite confident that the sun would be shining today. Look at the sky!”

“I admit there has been some difficulty between our peoples, but it’s nothing that can’t be resolved,” Cole repeated, his voice hard-edged.

“Need I remind you of what’s happened in the last twenty years? In 1760 it was writs of assistance. In 1764 it was the Sugar Act. In 1765 it was the Stamp Act. Then we had Lord Townshend’s financial policies to deal with. We still do!”<sup>1</sup> He spat. “Some difficulty indeed.”

“But that’s all in the past,” sighed Cole.

“I might remind of the King Street incident of just last year,” returned Benson, speaking of what we know today as the Boston Massacre.<sup>2</sup> “And I assure you, dear sir, that it has not been forgotten.”

“Say what you will. I am confident that we will all soon realize that peace is the best solution.”

He looked up to find Benson staring at an exquisitely-crafted pocket watch. “Well, my friend, I’ve been enjoying our little talk, but I’m afraid I must go. Business calls.”

Cole nodded, and Benson walked briskly back the way they had come, quickly disappearing into the city. Cole turned his gaze back to the harbor, and the city beyond it. As a merchant, he had been to many other places, but nowhere did the buildings seem so familiar, the horizons so beautiful, as when he was home. He was the owner of a small fleet of trading vessels, and he could see one of them now, being loaded with a shipment intended for the British Isles. His thoughts turned to Benson, and what he would say, and Cole laughed. He couldn’t see what there was to be afraid of. It would all work out in the end.

As he walked farther into the outskirts of town, the crowds began to dissipate, until he was the only one left on the street. The air was definitely getting colder, and he was about to turn back and go home. His stomach growled, and Cole was about to begin his return trip when he heard it. A muffled scream perhaps, or a shout. He stopped and strained to listen, but there was nothing. He began walking, but it came again, louder this time. It was definitely a scream. It was coming from the next street, and he hurried to it.

He turned the corner and came upon a small alleyway, damn and dusty, crowded in between two buildings. At the far end of the alley, he saw a flash of movement, someone running towards the end of the street and around the corner. He only saw it for a split second, but he was sure someone had been there. He turned his attention back to his surroundings, and finally looked down. On the ground before him lay a man, dressed in the uniform of the Imperial Navy. It looked like he was high-ranking, and he was covered in blood. There was a wound in his chest, and a knife lay next to the body, its blade sheathed in blood.

Cole bent down, to see if the man was breathing, if he was still alive. He bent his ear to the man’s mouth, when he heard a shout from the other end of the street. He looked up and saw another Navy officer. “My God!” this man exclaimed. “What have you done?”

Cole was speechless. he gaped at the officer, unable to utter a word. He looked down at himself, at the blood smeared over his body, and the knife that lay by his knee, and realized what it must look like to this man, who was now approaching, his musket drawn. Slowly, Cole rose, and put his hands in the air. The next few hours were a daze, and he watched helplessly as he

was arrested, thrown in jail, and charged with the murder of Captain Arthur Maybury, His Majesty's Navy.

Inside the Boston General Court's Queen Street courthouse, John Benson tugged at his stiff shirt collar., the warmth of the crowds surrounding him. There must have been fifty people crowded into the standing area behind the metal bar at the back of the courtroom. He pushed his way to the front, and looked out onto the scene of the coming battle. He snuck a glance at Cole, now behind bars in the prisoner's cage next to the judge's bench. His eyes swung around to the jury box, at the other side of the bench.<sup>3</sup> Sitting in it were a dozen men whom Benson had never seen before. The 1717 Acts of Parliament may have ensured that "the accused may be tried and judged"<sup>4</sup> by a jury, but Benson had his doubts about that jury's composition.

Benson's train of thought was interrupted by the judge, Thomas Hutchinson. He was chief justice in Boston, and had gained notoriety the previous year, being head judge in the Boston Massacre trials.<sup>5</sup> He cleared his throat and turned to the jurors. "Repeat my words," he told them. "I shall well and truly try and make true deliverance..."

"I shall well and truly try and make true deliverance" came the chorus of voices.

"Between our sovereign lord the king, and the prisoner at the bar,"

"Between our sovereign lord the king, and the prisoner at the bar,"

"Whom I shall have in my charge according to the evidence,"

"Whom I shall have in my charge according to the evidence,"

"So help me God."

"So help me God."<sup>6</sup>

Hutchinson banged his gavel upon his bench and declared the court to be in session. The lawyer for the prosecution rose to give his opening statement.<sup>7</sup> It was Gary Manning, generally regarded to be one of London's finest lawyers.. He happened to be on the H.M.S. *Justice*, Maybury's ship, and the Navy hired him into their service. It was rumored he was better even than Boston's own legal geniuses, John Adams and James Otis.<sup>8</sup> He was a man who looked like he had been through a lot in life, none of it pleasant. He had a hard edge to him, a cold gaze and a voice that ran through one's blood like ice. As he began to speak, a hush came over the crowd, and during the pauses you could have heard a pin drop.

“Captain Arthur Maybury is dead. No one is disputing this fact. He was killed by a knife thrust into his chest. Neither is anyone disputing this. He was killed while walking down the streets of Boston, for no reason, and with no cause. Every piece of evidence the police — the Boston police — have come up with points to Roger Cole. He denies murdering Maybury, but this is to be expected from a criminal.

“Cole was found at the scene of the crime, the knife in his hand. From this evidence, how can any other conclusion be drawn? He is a man known to be dishonest; he is a merchant, a group of people known to be untrustworthy.<sup>9</sup> In addition, he is a known supporter of the American rebels who want to overthrow the peace of British rule. The murder of Captain Maybury was more for political reasons than for anything else. Is this the sort of man you want roaming your streets, gentlemen? I for one, think murderers such as this are better off dead.”

Manning stopped speaking, and Benson stole another glance at Cole. His fists clenched around the bars of his cage, one could see the fury in his eyes, as if he wanted to reach out and choke the life out of Manning. Benson shook his head and wondered about the man, what had really happened, and what would happen in the days to come. The law made no provision for the defense to speak at this time,<sup>10</sup> and Manning proceeded to call Lieutenant James Richmond to the stand.

Manning, who had until this time been seated at one of the counsel tables in front of the judge’s bench, now rose and approached the witness. “Lieutenant, you were Captain Maybury’s personal attaché, were you not?”

“Yes, sir, that’s correct,” came the shaky response. The man was dressed in his dress uniform, a resplendent navy blue, and he seemed uneasy about the proceedings around him.

“Could you tell the court what your observations were on the afternoon of February fourteenth, of this, the year of our Lord, seventeen-seventy-one?”

Richmond took a deep breath, and began his tale. “We had just gotten into Boston the other day, our ship had come in with a load of reinforcements for the fourteenth regiment, for General Gage.”

With a wave of his hand, Manning interrupted him. “Pardon me, General who?”

“Gage, sir, General Gage. Commander in Chief North America.”<sup>11</sup>

“I see. And an entire regiment of British troops are stationed in Boston, you say?”

“Two, actually, sir. The twenty-ninth as well, sir.”<sup>12</sup>

“Might I ask why?”

“To keep the peace, sir.”

“I see....” Manning put his hand to his chin. “I must remember that,” he mused. “But please now, go on with your description.”

We were walking to our ship, but the Captain ordered me to go to the local offices over on Queen Street, and pick up his messages. So I started walking along, thinking to myself what an ugly town Boston is. It’s so gritty and grimy, and so cold. I don’t think I could live here for even a year, let alone a life time. I think I’d go insane!”

For the first time in the trial, the defense’s counsel spoke. Henry Smith, a local Boston lawyer, had been hired by Cole to represent him. Smith was not an exceptional lawyer, but he was generally regarded as a good one, and he was available. Now he stood and addressed the judge. “I object, your honor. This testimony is irrelevant.”

Hutchinson looked down from his bench and nodded. “Noted, Mister Smith. Please continue, Lieutenant, but try to keep within the facts of the matter.”

“Yes, sir. I hadn’t gotten but a hundred yards, when I heard a scream. It sounded like the Captain, so I turned and started back, to see what the problem was. Then I heard another scream, louder this time, and a muffled shout. I started running, and I made it back to the street as quick as I could. I turned the corner, and that’s when I saw him.”

“Saw who?” prompted Manning.

“Captain Maybury! He was covered with blood, and just lying there on the side of the road. And next to the Captain was him.”

“Note for the record that Lieutenant Richmond is pointing at the defendant.”

“He was leaning over the body, covered in blood. There was a knife lying on the ground, right there.” Richmond buried his head in his hands. “He was dead! He killed him!”

In eighteenth century America, courts of law were much faster than those of the twentieth. It was almost unheard of for a criminal case to take longer than a day,<sup>13</sup> and this looked to be no exception. The court members were now filing in from their lunch break, and the trial was more

than half over. By now, the prosecution had finished its case, and the defense had made its opening statement. As the room filled, the defense counsel walked over to Cole. "Hello, Roger."

Cole turned and looked at Smith, a sad bit of hope visible in his eyes. "We're doing all right, aren't we, Henry?"

"Of course. You'll be fine, don't worry."

Cole frowned. "Why don't you put me on the stand? I could tell them what really happened."

"I can't do that." Smith shook his head. "The rules of evidence prohibit it."<sup>14</sup>

"But I was the only one who was there!"

Smith started to reply, but was interrupted by the sound of Hutchinson pounded his gavel "You will now call your first witness," he was told.

Smith mouthed the words "don't worry" to Cole and rose. "Yes, your honor. I call to the stand Mister John Benson."

Cole watched as the court officials opened the gates and his friend walked up to the witness stand. He was seated, and the bailiffs had him swear his oath. Smith then stood up and walked over to him.

"Mister Benson, you are Mister Cole's friend, if I recall correctly?"

Benson nodded. "Yes, indeed I am."

"Tell me, have you ever known him to be violent or aggressive?"

"No, never."

"Is he the sort of man you would think capable of a cold-blooded murder?"

"Again, no."

"That's all." Smith sat down, and gave Cole a hopeful nod.

Hutchinson turned to the prosecution. "Your witness."

Manning again stood and walked over to the witness stand. He glanced around, then back at Benson. He paused, then spoke. "You just described yourself as Mister Cole's friend, did you not, Mister Benson?"

"Yes, that's correct."

"And so your relationship with Mister Cole has been, shall we say, on a personal level."

Benson frowned. "Yes."

"You said earlier that in your judgment, your friend would not be capable of a murder. But tell me something, Mister Benson, is that entirely true?"

"I'm not sure what you mean, sir."

"For example, if someone attacked him, mightn't he defend himself by killing his assailant?"

"I suppose he might." Benson frowned again.

Glancing around the room, Manning continued. "So you might revise your earlier statement to mean he would not be capable of a non-*justifiable* murder."

"Yes," Benson said, nodding tentatively. "I would suppose that would be correct."

"Now, Mister Benson, you are a merchant in this town of Boston, am I correct?"

"Yes, that's right."

"And you do a lot of business with other merchants from this town."

Not sure where the conversation was leading, Benson replied with a simple "Yes."

"And now tell me, Mister Benson, isn't it true that you are involved with a conspiracy to overthrow your government, the good rule of the British Empire?"

There was a sudden burst of noise from the crowd, as the onlookers hurriedly whispered to each other. Judge Hutchinson struck his gavel several times to quiet the room, then motioned for Benson to answer. "I'm not sure what you're talking about," was his reply.

"Let me remind you. In 1768, you helped organize a riot regarding John Hancock's sloop *Liberty*, which had been legally seized for smuggling.<sup>15</sup> This is correct, is it not? May I remind you that you are under oath."

Benson glanced at Cole for a moment, a look of worry in his eyes. “Yes, that’s correct.”

Manning’s voice took on a hard, almost satirical edge. “Isn’t it also true that you were a member of the Loyal Nine, a group organized for the specific purpose of resisting the Stamp Act, a legitimate law passed by Parliament?”<sup>16</sup>

“Yes.”

“I could go on and on. It will suffice, however, to say that you were, as I said earlier, involved in a conspiracy to overthrow the British government. And now, Mister Benson, might I ask what your feelings are towards Captain Arthur Maybury?”

“I did not know him, sir.”

“But you admit to resisting the British military on other occasions. Isn’t it true that you did not like him simply out of his position, as you despise all those employed in the Royal armies and navies?”<sup>17</sup>

“I... I guess so,” Benson stammered.

“And then isn’t it true that if Roger Cole *was* guilty of the murder of Captain Maybury, that you might consider it justifiable? That you might lie to protect him, and secretly cherish the occurrence?” Manning paused. “Isn’t that true, Mister Benson?”

For a moment there was silence. Then Benson responded, his gaze penetrating deep into Manning’s cold and deadly eyes. “Yes,” he whispered, and Roger Cole watched his world collapse.

It was nearing evening, and the light filtering in through the courtroom windows began to take on an orange glow as the sun sank low into the sky. The defense had closed, and the prosecution had finished its rebuttal statement.<sup>18</sup> One could see that the jury was fatigued; under common law, they received no food, drink, light or fire from the time the trial began until they gave their verdict.<sup>19</sup> Given their conditions, and especially under the peculiar lighting effects, their faces looked particularly haggard, and it was no wonder that they were so eager to finish the case.

Judge Hutchinson silenced the court, and turned to address the jury. “Good gentlemen, you have sat here in this courtroom for almost eight hours, you have waited patiently for this moment, for the moment when you must decide the fate of this man, Roger Cole. He is a man



charged with murder. He is a man found at the scene of the crime, a man found with the blood on his hands. It seems to me that, as sure as the Lord created the heavens, that this man is guilty. But it is not my decision to make, it is yours.”

The judge’s voice hardened. “Of course, if it remains only doubtful in your minds whether he did commit murder not, you can’t charge him with doing it. But I would remind you that the only evidence to his benefit is a character witness of ill credit, and judging the credit of the witnesses is entirely with you: the only man willing to stand up for the prisoner is a man shown to be engaged in activities destroying the very system that brought you here today. I urge that you consider that. And now, good sirs, I leave the case entirely in your charge.”<sup>20</sup>

It had not been but a minute after Hutchinson stopped speaking when the jury reached a verdict.

Roger Cole stared out at the gathering crowd. Why was it, he wondered, that so many people gathered to see a man die, but so few gathered when one had been given his life? He had no doubts that this would be his last hour alive, and he absorbed his surroundings, cherishing each last breath of air, each last glimpse of Boston, the city of his youth and of his dreams.

He was standing on a wooden platform, the sun burning hot overhead: the one day the sun finally came out, he could not enjoy it. He wanted to scream out, to tell them about the injustice, the wrong, but he found he could not. With a peaceful demeanor that was not his own, he watched as the noose was fitted around his neck, and as the waiting minister prayed over him. He watched as the signal was given, and as he slipped, he watched his world turn to darkness.

Perhaps it was just as well, for he therefore never heard one of the onlookers turn his head and whisper to his neighbor, “Damn. Too bad, really, he was a good man.”

“Well,” replied John Benson, “I can think of many worse ways to die.”

“True. And what you said in the court, that’s is true. Maybury was a despicable man.”

“I know.” Benson grinned. “That’s why I killed him.”

## Endnotes

<sup>1</sup> Boyer, Clark, et al, *The Enduring Vision* (Lexington, Mass: D. C. Heath and Company, 1993) 140-145, 149-151

<sup>2</sup> Hiller D. Zobel, *The Boston Massacre* (New York: W.W. Norton & Company, 1970) 4-5

<sup>3</sup> Description of the courtroom here and elsewhere derived from the Boston Massacre courtroom as described by Zobel 247-248

<sup>4</sup> Zobel 123

<sup>5</sup> G. B. Warden, *Boston 1689-1776* (Boston: Little, Brown and Company, 1970) 272

<sup>6</sup> Zobel 246

<sup>7</sup> Zobel 248

<sup>8</sup> Zobel 122

<sup>9</sup> This was a view of American merchants generally held by the English legislature, says James Truslov Adams, *Revolutionary New England* (Boston: The Atlantic Monthly Press, 1923) 301-302

<sup>10</sup> Zobel 248

<sup>11</sup> Frederick Bernays Wiener, *Civilians Under Military Justice* (Chicago: University of Chicago Press, 1967) 78-79

<sup>12</sup> John R. Alden, *A History of the American Revolution* (New York: Alfred A. Knof, 1969) 105-106

<sup>13</sup> Zobel 248

<sup>14</sup> Zobel 254

<sup>15</sup> Alden 99-100

<sup>16</sup> Boyer, Clark, et al 144-145

<sup>17</sup> Alden 106

<sup>18</sup> Zobel 253-254

<sup>19</sup> Zobel 250

<sup>20</sup> Portions of this speech are based on Judge Trowbridge's charge in *Rex v. Preston*, as reported by Zobel 264-265

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