

# The James Otis Lectures

## ANNUAL LECTURE SERIES



This lecture series is fittingly named after the man who not only ignited the American Revolution, but whose very words in opposition to the writs of assistance inspired much of the language of the Fourth Amendment, James Otis.

Born in Great Marshes (now West Barnstable), Massachusetts, Otis would devote his life to the law, as his father and grandfather had done before, becoming a revered trial advocate and legal orator in colonial Massachusetts. He was appointed to the coveted position of Advocate General of the Vice-Admiralty Court at just thirty-one years of age, a position he would later resign to champion the cause against the Crown's arbitrary issuance of writs of assistance. The writs were general search warrants that permitted the authorities to search anywhere they pleased for any reason—or for no reason. In one of the first defiant stands against British authority in the Colonies, Otis attacked the writs as “against the fundamental principles of law.”<sup>1</sup> He asserted, among other things: “A man’s house is his castle; and while he is quiet, he is as well guarded as a prince in

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<sup>1</sup> TELFORD TAYLOR, TWO STUDIES IN CONSTITUTIONAL INTERPRETATION 36-37 (1969) (quoting John Adams, Petition of Lechmere, in 2 LEGAL PAPERS OF JOHN ADAMS 125 (L. Kinvin Wroth & Hiller B. Zobel eds., 1965)).

his castle. This writ, if it should be declared legal, would totally annihilate this privilege.”<sup>2</sup> Importantly, Otis articulated for the first time in history a comprehensive view of what search warrants should require: an oath; a particular description of the place to be searched and things to be seized; and probable cause to justify the intrusion.

John Adams, who witnessed Otis's impassioned oration, afterward declared: “Every man of an [immense] crowded [a]udience appeared to me to go away, as I did, ready to take [a]rms against [Writs] of Assistance. Then and there was the first scene of the first [a]ct of [o]pposition to the arbitrary [c]laims of Great Britain. Then and there the child Independence was born.”<sup>3</sup>

Although Otis may have lost his case before the Massachusetts Superior Court in Boston's Old Town Hall that day, he gained a place in history. In that case, “the American tradition of constitutional hostility to general powers of search first found articulate expression.”<sup>4</sup> It was Adams, so inspired by Otis's words, who later drafted Article Fourteen of the Massachusetts Declaration of Rights of 1780, which served as the model for the Fourth Amendment.<sup>5</sup>

Although eventually reduced to insanity and ultimately silenced by a bolt of lightning, James Otis will forever remain first among America's Fourth Amendment advocates.

*Thomas K. Clancy\**

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<sup>2</sup> *Id.* at 37 (quoting John Adams, Petition of Lechmere, *supra* note 1, at 142).

<sup>3</sup> John Adams, Petition of Lechmere, *supra* note 1, at 107.

<sup>4</sup> M.H. Smith, THE WRITS OF ASSISTANCE CASE 7 (1978).

<sup>5</sup> See generally Thomas K. Clancy, *The Framers' Intent: John Adams, His Era, and the Fourth Amendment*, 86 IND. L.J. 979 (2011).

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