The "Writs of Assistance" were general warrants allowing officials to search for smuggled material within any suspected premises. James Otis was Advocate-General when the legality of these warrents was attacked, but promptly resigned his office when called upon to defend that legality. The Boston merchants then retained him as their counsel to oppose the writs before the Superior Court of Massachusetts. Otis refused the fee they offered, saying that in such a cause he despised all fees. In a five-hour speech, which was witnessed by a young John Adams, Otis argued that the writs were unconstitutional. He based his case on the rights guaranteed in English common law.

...In short, he asserted these rights to be derived only from nature and the Author of nature; that they were inherent, inalienable, and indefeasible by any laws, pacts, contracts, covenants, or stipulations which man could devise. These principles and these rights were wrought into the English constitution as fundamental laws. And under this head he went back to the old Saxon laws and to Magna Carta and the fifty confirmations of it in Parliament and the executions ordained against the violators of it and the national vengeance which had been taken on them from time to time, down to the Jameses and Charleeses, and to the position of rights and the Bill of Rights and the revolution.

He asserted that the security of these rights to life, liberty, and property had been the object of all those struggles against arbitrary power, temporal and spiritual, civil and political, military and ecclesiastical, in every age. He asserted that our ancestors, as British subjects, and we their descendants, as British subjects, were entitled to all those rights by the British constitution as well as by the law of nature and our provincial character as much as any inhabitant of London or Bristol or any part of England, and were not to be cheated out of them by any phantom of "virtual representation" or any other fiction of law or politics or any monkish trick of deceit and hypocrisy.

He then examined the Acts of Trade, one by one, and demonstrated that, if they were considered as revenue laws, they destroyed all our security of
property, liberty, and life, every right of nature and the English constitution and the charter of the province. Here he considered the distinction between "external and internal taxes," at that time a popular and commonplace distinction. But he asserted that there was no such distinction in theory or upon any principle but "necessity." The necessity that the commerce of the Empire should be under one direction was obvious. The Americans had been so sensible of this necessity that they had connived at the distinction between external and internal taxes, and had submitted to the Acts of Trade as regulations of commerce but never as taxations or revenue laws. Nor had the British government till now ever dared to attempt to enforce them as taxations or revenue laws.

The Navigation Act he allowed to be binding upon us because we had consented to it by our own legislature. Here he gave a history of the Navigation Act of the first of Charles II, a plagiarism from Oliver Cromwell. In 1675, after repeated letters and orders from the King, Governor Leverett very candidly informs His Majesty that the law had not been executed because it was thought unconstitutional, Parliament not having authority over us.