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Law & Society seminar

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“A Modern Guide to the Trial of Sir Thomas More”

Introduction:

What procedural due process did More have coming to him as a matter of right under early 16th century criminal treason procedure? Mapping out More’s trial, we use our standards as a guidepost. Turns out, treason defendants enjoyed astonishingly few procedural protections. Even so, by the low standards of England in the 1530's, whether the trial of More was a fair one or not comes down which version of the trial one accepts and which interpretation of the Treasons Statute one finds most convincing.

Along the way, we get a look at More’s work as an attorney in his own case, and get to consider his defense of silence and whether it was consistent with his own principles.
From the number of lawyers, judges, students and professors who have taken time away from their busy practices and studies, it’s clear that Thomas More convicted of treason 475 years ago, later declared a saint and recently made the patron of statesmen remains a highly attractive if sometimes puzzling figure. His trial, which has become emblematic of injustice, is of particular interest to lawyers, as is his life, which can serve as an example of how to live one’s profession with integrity.

Now, I am also aware that there is another incentive to help explain the presence of so many attorneys, the CLE requirements of the State Bar. In putting this program together, David Oakley and I came to the strong belief that a critical, careful examination of More’s trial will prove highly instructive for those attorneys desirous to better understand and explore our contemporary doctrines of due process, especially in the context of criminal trials, as well as legal ethics.

In the past three years I’ve spent examining More’s trial and reading the best scholarship concerning it, one of the most interesting insights I’ve gained is an appreciation of how little most of us know about this famous trial. If you are like me, if pressed by someone to explain what actually happened in More’s trial in terms of the specific charges and the applicable laws, I would have had to confess only the vaguest of notions. Reflecting on that, I would have to confess my knowledge was drawn mainly from Robert Bolt’s excellent play and Paul
Scofield’s masterful film portrayal. As it turns out, that’s not such a bad place to start, since it’s based closely on the events as reported by More’s son in law, William Roper, who was a highly trained lawyer, but who did not witness the trial and wrote his Life of More some 20 years afterwards, based on eyewitness accounts.

So why don’t we just look at the trial transcripts? Well, that’s a thing of our day, not his. The official government reports contained in the aptly named, Bag of Secrets, contains precious little in the way of details. In the 20th Century, however, scholars have unearthed a few other accounts from eyewitnesses to the trial, along with documents including the Indictment and notes by Richard Rich and Cromwell that supplement More’s own accounts of the pre-trial interrogation in letters to his daughter Margaret. Nevertheless, the great contemporary More scholars, have assembled the various trial accounts in a forthcoming book I helped edit.

Professors Kelly and Wegemer then took those accounts and fashioned them into a conjectural docu-drama. In the final part of this talk, before taking questions, we will present our own conjectural version of closing arguments. Mr. Oakley has created the closing argument for the Crown and I have taken various reported statements by More and fashioned them into a closing argument. Our hope is that this presentation will help bring the trial to life.
Of course, it would be impossible to examine More’s trial for reliable insights into trial procedure and legal ethics without some understanding of the political and legal landscape at the time. For instance, we lawyers might cringe upon discovering that the entire case against More was fashioned from statements and actions by More while in custody in the Tower. But it will hardly do to condemn Cromwell and the crown for conducting custodial interrogations in violation of *Miranda* and our constitutional rights to counsel and against self-incrimination when such doctrines did not exist at that time.

Indeed, when we ask the historical question, what procedural due process did More have coming to him as a matter of right under early 16th century criminal procedure? It turns out that treason defendants enjoyed astonishingly few procedural protections.

So, in the first part of this discussion, Mr. Oakley will present a short biographical sketch of More’s life. Then, he and I will alternate in discussing the trial itself in terms of procedure and substantive law from a roughly chronological perspective. We’ll follow that with the closing arguments I mentioned, and conclude with time for questions.