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# TRANSCRIPT

## CELEBRATION OF CHARTER DAY AND THE 500TH ANNIVERSARY OF THE BEGINNING OF THOMAS MORE'S STUDY OF LAW

*Thomas O'Malley, S.J., Moderator\**  
*Edward Gaffney, Commentator\*\**  
*Malcolm M. Lucas, Commentator\*\*\**  
*Karl Manheim, Commentator\*\*\*\**  
*Elliot Richardson, Commentator\*\*\*\*\**  
*Art Torres, Commentator\*\*\*\*\**

### I. INTRODUCTION<sup>1</sup>

**FATHER O'MALLEY:** Welcome to this auditorium. We are celebrating, as you know, the 500th anniversary of Thomas More's entrance into Lincoln's Inn to begin the study of law.<sup>2</sup> And

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\* President, Loyola Marymount University.

\*\* Dean, Valparaiso University School of Law. The transcript of Dean Gaffney's speech is unavailable for publication.

\*\*\* Chief Justice California Supreme Court.

\*\*\*\* Professor of Law, Loyola Law School, Los Angeles.

\*\*\*\*\* Former Attorney General in the Nixon administration, Secretary of Commerce, and Secretary of the Department of Housing, Education and Welfare.

\*\*\*\*\* Chairman of the California Democratic Party, and former California State Senator and State Assemblyman.

1. The commentary and panel discussion reproduced here are part of Loyola Marymount University's celebration of its charter and the five-hundredth anniversary of the beginning of Thomas More's study of law. The transcript of the panel discussion has been edited for clarity. Footnotes have been added where appropriate. —Eds.

2. See DAVID HUGH FARMER, *THE OXFORD DICTIONARY OF SAINTS* 284 (1978). Thomas More entered Lincoln's Inn in 1496. *Id.* "For the next five years More pur-

that suggested to Mr. Keane, here present, Mr. and Mrs. Keane, the notion that we should have a celebration, and it developed that it would be a celebration of the "principled resignation."

I have, as usual, blundered on without introducing myself. My name is Father Tom O'Malley. I am President, and I am very happy to welcome Mr. and Mrs. Richardson here. Especially since they speak in the same language that I speak, more or less, with that sovereign disregard for the *r* and also a peculiar misplacement of it where it doesn't belong. But that's how words are supposed to be pronounced.

Mr. Richardson's career is an extraordinary one. He graduated from Harvard College in 1941, and then, like many of their generation—but he in an especially distinguished way—went into the service and followed from D-day until V-E Day the progress of that war, the so-called "good war."

He was a clerk after graduating from Harvard Law School. He clerked for Judge Learned Hand, surely a name to conjure with in legal circles. In the U.S. Court of Appeals, he was a law clerk—then, as if that were not enough, for Justice Felix Frankfurter. He was a member of the very well-known Boston law firm of Ropes & Gray, and then, after being an associate there, some years later he went on to be a partner. He has forsaken his Boston residency and lives now in Washington D.C.

The law school of Loyola, Loyola Law School, an integral part of this university, has been enormously helpful in setting up today's conference. And they down at the law school are enchanted to have Mr. Richardson, who is not only a former Secretary of HEW [Housing, Education and Welfare], as it was then called, Secretary of Commerce, but also was Attorney General at a particularly vexing and trying time in this nation's history. He had a run at being United States Ambassador to the Court of St. James, which is something he would like to go down in history as the first time repeater in that post. And I hope that you make that among your ambitions.

Mr. Richardson is fond of saying that his artistic work and occasional watercolor are more productive in the form of doodles, which sometimes make their way into charity auctions. He is a fisherman, I presume a fly fisherman, and a fond grandfather. We are very happy to welcome him among our distinguished panelists,

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sued the usual course of study of a law student in Lincoln's Inn . . . ." JOHN ROBERT O'CONNELL, SAINT THOMAS MORE 24 (1935).

who will be Dean Gaffney of Valparaiso Law School, Mr. Chief Justice Lucas, and our own Karl Manheim from Loyola Law School. That being said, let me present to you Mr. Secretary, Mr. Attorney General Elliot Richardson.

## II. MR. RICHARDSON'S COMMENTARY

**MR. RICHARDSON:** Thank you very, very much Father O'Malley for those warm and generous words of introduction. And most especially for refraining at the last moment from saying, "And I now present the former Elliot Richardson."

Distinguished fellow panelists, ladies and gentlemen, it is a great privilege in the very truest sense of the word to be standing here in this beautiful new auditorium on such an extraordinary anniversary as the one we now celebrate on the occasion of the Charter Day of this university.

I have no affiliation with Lincoln's Inn other than having been a member of a Harvard law organization called Lincoln's Inn, but I am wearing the necktie today of one of the fellow "inns of court" of Lincoln's Inn, the Middle Temple.

It was in any case, as you have heard, and I'm sure you really know, exactly 500 years ago last month that Thomas More was admitted to Lincoln's Inn to begin his preparation for the bar, which was completed in 1501.<sup>3</sup>

Thomas More is one of the few lawyers who would be remembered 500 years later, even if one left out of his life the climactic events that led to his canonization.<sup>4</sup> I don't know whether any other lawyer has ever been canonized. But I would venture that nonetheless there is no other saint, who happened also to have been a lawyer, who would have been remembered as a lawyer even if he had not been canonized.

Thomas More was, of course, a man not only of extraordinary humane values, he was a man of the very highest ethical and moral standards in his personal life and personal relationships, as a father and as a friend. He was also a man of luminous intelligence whose written work, best remembered perhaps for *Utopia*,<sup>5</sup> would have given him an honored place even if he had died peacefully at a ripe old age. But certainly it was the leaving of his life, both the cause that brought it about and the manner of his doings all, that immortalized him.

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3. See O'CONNELL, *supra* note 2, at 24.

4. See *id.* at 286. More was canonized in 1935. See *id.*

5. See *id.* at 284. "[More's] reputation as a man of letters and a wit was helped by his publications, the most notable of which was *Utopia*, written in Latin in 1516, but soon translated into the principal European languages." *Id.*

When I got from Dean [Gerald] McLaughlin<sup>6</sup> the telephone call inviting me here today, I immediately accepted because of the challenge of the opportunity, the occasion, in fact, to think through the issues presented by the concept that we are addressing here today, that of *principled resignation*. That was partly because in the back of my mind, and sometimes in the foreground of it, is the most difficult, single problem I ever addressed in government. I was, in fact, conscious of the example of Thomas More. So it was the chance to try to see in perspective the very much lesser, much less portentous and demanding situations to which I had been exposed, and the great example of More that led me to feel this would be a great undertaking that would at least be instructive to me and would also, I hope, serve as a starting point, a curtain raiser, for the discussion that will follow these opening remarks.

What then, if we are addressing the question of principled resignation, do we mean by "principle" in that or other contexts? My own conclusion in answer to that question is that a principle embraces two distinguishable elements. First, it is a value that transcends day to day pressures, impulses, or desires. It is, in a sense, a point on a moral compass. But a principle embraces as well a commitment to such a value that can elicit, and deserves to elicit, significant sacrifice—the willingness to give up something of genuine importance in one's own life for its sake. Both of these elements of principle—the value on the one side and the willingness to sacrifice on its behalf—are self-evidently subject to a very wide range. We, of course, normally speak of a person of principle in admiring tones. A person of high principle we view as someone not prone to yield to expediency or lacking in conviction. Someone rather who, like the helmsman following a compass course, can adhere to it despite the buffeting of winds and changes of tide. And yet, as you have heard from Father O'Malley, I did serve as law clerk to a revered judge. Many would regard him as the greatest American judge of the twentieth century, Learned Hand. Great name for a judge by the way. He was actually christened Billings Learned Hand.<sup>7</sup> His old friends would call him "B."<sup>8</sup> How much vanity had to do with it, I don't know, but he dropped the Billings, and it would be pretty hard to think of a more impressive

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6. Gerald T. McLaughlin is the dean of Loyola Law School.

7. See GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* 4-5 (1994).

8. See *id.* at 5.

name for a figure, who in himself, his cragginess, his massive brow, tufted eyebrows, square shoulders, and resolute jaw, was a sculptor's dream of what a judge should look like—with a possible exception, of course, of the chief justice sitting to my left.

At any rate, I was a bit startled fairly early on in the year of my law clerkship when the judge said to me, I've forgotten the context, "Beware the man of principle." He said that more than once in the course of the year. And, of course, he is famous to those who know much about him for also using, on many occasions, the admonition directed by Oliver Cromwell to the Church of Scotland: "I beseech ye in the bowels of Christ, to bethink that ye maybe wrong."<sup>9</sup> That utterance, said Judge Hand, should be inscribed over the portals of every county seat, schoolhouse, library, and courthouse in the United States.

So how then could a man of such revered stature as a judge and as a human being, a thoughtful, indeed, profound human being—be capable of imparting to an impressionable young man like myself the precept: "Beware the man of principle."

Well, I think clearly enough the answer to that is that he was talking about the person who is so narrowly committed to a view, embracing some aspect of exclusion—the put-down of others—that this kind of narrowness of focus, tenacity of commitment, takes the destructive form of bigotry, condescension toward and lack of respect for those who hold differing views. It is significant that if there was a saint in Learned Hand's pantheon it was probably Oliver Wendell Holmes, Jr., who in his own career as a soldier, four times wounded in the Civil War,<sup>10</sup> exhibited one form of devotion: the readiness of a soldier to give his life in a cause which he may not fully understand and yet seems only worthy of sacrifice.<sup>11</sup>

9. THE OXFORD DICTIONARY OF AMERICAN LEGAL QUOTATION 92 (1993). Cromwell stated, "I beseech you, in the bowels of Christ, think it possible you may be mistaken." *Id.* (citing *Writings and Speeches of Oliver Cromwell* 2:303 (Wilbur C. Abbott ed., 1939)).

10. See EDITH PATTERSON MEYER, *THAT REMARKABLE MAN: JUSTICE OLIVER WENDELL HOLMES* 26-35 (1967). Justice Holmes was actually wounded three times during his Civil War service. He was shot in the chest, the neck, and, for the third time, in the heel. *See id.*

11. See OLIVER WENDELL HOLMES, *The Soldier's Faith*, in *THE MIND AND FAITH OF JUSTICE HOLMES: HIS SPEECHES, ESSAYS, LETTERS AND JUDICIAL OPINIONS* 18, 20 (Max Lerner ed., 1943).

[T]here is one thing I do not doubt, that no man who lives in the same world with most of us can doubt, and that is that the faith is true and ador-

Indeed, that was a theme that Oliver Wendell Holmes, Jr. celebrated often in his own remarks, whether to a new generation of students or to his old colleagues in the Civil War.<sup>12</sup> I took with me, in fact had with me throughout my own overseas service from D-day in Normandy until the end of the war in Europe, a volume entitled, *The Mind and Faith of Oliver Wendell Holmes*.<sup>13</sup> And curiously, when I looked at it—I have to go back one step. This soldier's faith, which he called a fighting faith,<sup>14</sup> seemed very sufficient to me at the time. Looking back at it since, I've been surprised that I thought this because it stopped short of any apparent need to fill in what it is exactly that the cause the soldier is fighting for is addressed to. What is its content? In fact, in the case of the Civil War, it would not have been difficult to fill in. In a sense, the moral justice of the northern side—and to feel that the fundamental values of human dignity that became the core of the northern cause—were values of the kind that we address here as principle. And yet, curiously also, Holmes and Hand and their next generation disciple—almost next generation—my later chief, Felix Frankfurter, seemed to take almost for granted, as the inspirational core of their own lives, the dignity and worth of all human beings. They didn't stop to spell out the proposition that one could feel a sense of commitment to the values implicit in the Constitution of the United States and the Declaration of Independence as being universals that are well worth not simply fighting to maintain but giving one's life for, should that become necessary. And indeed, I think it is fair to say, that their actual behavior—and implicit in all their utterances—was in fact just that affirmation.

So, we come then to the role of this kind of value as it applies to the conduct of public service or the fulfillment of a public trust.

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able which leads a soldier to throw away his life in obedience to a blindly accepted duty, in a cause which he little understands, in a plan of campaign of which he has no notion, under tactics of which he does not see the use.

*Id.*

12. See HOLMES, *supra* note 11.

13. See *id.*

14. See *id.*

The experience of the Civil War was the maturing force in Holmes' life. From it, [he] derive[d] . . . the great elements of his thinking: . . . that one must be a good soldier with a 'splendid carelessness for life' in a cause; and that one must have a fighting faith—that 'to act with enthusiasm and faith is the condition of acting greatly.'

*Id.*; see also HOLMES, *supra* note 11, at 18-25. Holmes is not actually quoted using the term 'fighting faith,' but this phrase has been ascribed to Holmes' philosophy. See *id.*



And here, I think the single most important word, at least to me, is "integrity." Integrity, of course, derives its origin from the word "integer," or "whole."<sup>15</sup> And so we think of integrity in terms of the wholeness of the commitment to honesty, fair dealing, mutual respect, carrying out one's promises, fulfilling one's commitments to other people, most especially the commitments to other people that derive from holding public office itself. And of course, the unique thing about our form of government is that it is a government literally created by us, the people. We have, from the outset, entrusted to some among us responsibilities and things that concern us in common.

And once you understand that in public office you hold that kind of a trust on behalf of your fellow citizens, you do or should feel a sense of commitment that, at the very least, should compel the willingness to sacrifice on behalf of the fulfillment of its integrity. And it's fair to say that in my own public life, which goes back really to the town almost neighboring the one where Father O'Malley grew up—he in Milton, Massachusetts, where I went to school later and I in Brookline, Massachusetts. I began there as a town meeting member. I served on the library board and began to work for statewide candidates and then the governor. I came really up through all the levels of government to the national government. In each of those situations, I would try to anticipate what might be the crunch points, at which what seemed to me, to be demanded by the public interest.

I don't mean in a doctrinaire sense, but rather through a balanced effort to discern what, on the whole, best represents a sensible, workable, fair solution to the problem at hand. And I would try to anticipate at what might be the point at which I would be challenged to hold, what seemed to me, the necessary line. And having identified the threat and determined that line, I would then devote considerable effort and ingenuity to try and head off the necessity for having to defend it. I usually did pretty well. Ironically, as it turned out, there was one point at which I had already written out, at least in my own mind, a letter of resignation to President Eisenhower when I was number three in the Department of Health, Education and Welfare in his second term. The man who saved me was Richard Milhous Nixon. It's too long a

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15. See *THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE* 938 (3d ed. 1992).

story to tell now, but the fact is, I attended a cabinet meeting sitting behind my boss, sitting behind Nixon actually, where an education bill, and if my fellow panelists will forgive me, I'll add a little bit. This is a bill that would have provided funding to all institutions of education, public and private, for our construction of facilities of all kind in anticipation of the onset of the baby boom. I had a number of meetings with the Catholic organizations representing universities like this because I was determined at the outset that they should be eligible, notwithstanding the church/state issue, and so on and so on.

Anyway, the bill became my principle responsibility in 1959, but my boss didn't get anywhere with it in the management budget or the White House staff. I finally got Eisenhower to put it in a cabinet meeting, and I was there. And at each point the decisive intervention on behalf of the bill was made by Nixon. And finally, Nixon, having knocked down all the opposing arguments—I'll never forget, Eisenhower across the table, I was behind Nixon opposite Eisenhower—Eisenhower looked up and said, "All right, send it up!" He didn't like it much, but it went up. I figuratively tore up my resignation.

Now there is a case where it could be questioned whether this was a principled resignation, or would have been, as distinguished from a feeling that only my own effectiveness and commitment having been at stake were now compromised and so on. And yet, I think it's a hard line to draw between fighting on behalf of something that you think is right and important, losing on it, and then concluding that you should resign partly because the institution to which you belong has, in effect, rejected what you consider important to the conduct of its own business, and partly because you believe that the purpose for which you fought is an important one, in a broader sense. In any event, skipping over other situations which never reached that point and where I found again and again that simply the process of preparing for the battle—which somehow got across to the opposition, and when the confrontation came, it turned out often that there was no real battle at all. A situation that from my point of view was most difficult, and the one that brought to mind Saint Thomas More, was the Agnew resignation. Most of you, I'm sure, remember that he was forced to resign.

I'll never forget the day when the United States Attorney for the District of Maryland came to see me with a couple of his assis-

tants and told me Agnew was under investigation. They had uncovered vast amounts of evidence indicative of his having received bribes and kickbacks while Governor of Maryland, and he had even continued to receive money as Vice President on account of past favors to contract his architects and so on during his governorship.<sup>16</sup>

That's a long story too, but the key point came when in negotiations with his lawyers. I got an agreement that he would issue a statement acknowledging culpability, and regardless of the disposition of the case, he would plead guilty and, regardless of the disposition of the case, the government would publish a full account of these charges against him. Well, he choked on the letter acknowledging culpability. The negotiations broke down. In the meantime the house hearings on the impeachment of President Nixon were under way.<sup>17</sup> We could indict Agnew, but the legal process from beginning through appeals could well have gone beyond the period in which Nixon might have been forced to resign or impeached. And it seemed to me critical that we get him out so another person could be named as Vice President to take over, if necessary, if Nixon was forced out of office.

So I began to wonder whether or not there was an issue of principle involved in the extraction of and acknowledgment of culpability. I was reminded of the question I had when I saw first the play and then the movie, *A Man For All Seasons*,<sup>18</sup> about Thomas More and the issue of the resignation over Catherine of Aragon.<sup>19</sup> I don't mean to compare the relative importance in the geopolitical sense. That divorce did have enormous geopolitical importance in its day.<sup>20</sup>

But the striking thing about More's treatment of the divorce on the one side, and the issue of the supremacy of the king of England over the church, was a fundamental distinction that More drew very carefully. He refused to condone the divorce but in effect kept quiet about it.<sup>21</sup> The king's assertion of privacy over the

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16. See FRED EMERY, *WATERGATE: THE CORRUPTION OF AMERICAN POLITICS AND THE FALL OF RICHARD NIXON* 300, 377 (1994).

17. See *id.*

18. ROBERT BOLT, *A MAN FOR ALL SEASONS* (Vintage Books 1990).

19. See *id.*; JOHN E. PAUL, *CATHERINE OF ARAGON AND HER FRIENDS* 109-25 (1966).

20. See RAYMOND W. CHAMBERS, *THOMAS MORE* 223, 249 (Harcourt Brace & Co., Inc. 1935).

21. See *id.* at 249. "Henry's leading noblemen had signed a joint letter to the

church was something else again.

I only mention that because when Dean McLaughlin called me, I remembered this. I remembered having thought of the role of More, and yet the dean—and perhaps anyone else who thought of asking me to speak here today—would surely have remembered not the Agnew situation but the Watergate investigation and the issue of independence of Special Prosecutor Archibald Cox—the firing of Cox and my resignation and the resignation of my deputy, Bill Ruckelshaus, on the day that later became known as the “Saturday Night Massacre.”<sup>22</sup> Actually, that was a very clear-cut situation. I leave to you whether it deserves to be ranked very high in the context of principled resignation. What was involved, basically, was the independence of Archibald Cox as the investigator of all the facts and circumstances arising out of the set of wrongdoings and criminal actions, known generally as Watergate. When Nixon asked me to leave the Department of Defense to become Attorney General of the United States, a step, incidentally, I was very reluctant to take, he left me with the question as to whether a Special Prosecutor should be appointed. Again, let me make this as compressed as I can. I decided within a week that I should seek the appointment as Special Prosecutor and that in the course of my confirmation hearing, lead to a lot of negotiations with the Senate Judiciary Committee over the degree of the Special Prosecutor’s independence. I had taken the position that since I would be appointed Special Prosecutor, I could not fully abdicate all responsibility to him. His powers would be delegated to him by me.

The upshot was an agreement worked out with Senator Hart of Michigan, under which I retained ultimate responsibility, including the power to fire Cox but only for extraordinary impropriety on his part. So, therefore, again telescoping quite a bit, Cox held a press conference on Saturday, October 20, 1973, refusing to accept conditions on his access to White House tapes. At the end of the press conference, I got a call from the President’s Chief of Staff, Al Haig, saying the President has instructed me to tell you to fire Archibald Cox. We didn’t have any discussion at all. I said, “Al, tell me when I can see the President.” He came back in a couple of minutes and said, “At three o’clock this afternoon.” So I was there

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Pope urging him to give sentence, and declaring that many famous universities held the King’s marriage unlawful . . . More’s name is conspicuously absent.” *Id.*

22. See EMERY, *supra* note 16, at 397.

at three o'clock to submit my resignation. The decision and the circumstances were not difficult. There was no way that it could be said that Cox's position toward access to the tapes, whether you agree with it or not—I strongly agreed with half of it, and took a somewhat noncommittal [view] on the other half—but there was no way you could say this was an "extraordinary impropriety" on his part. When I got over to the White House, Haig offered various inducements to me to delay my resignation or to not let it be announced, even though I submitted it, and other such nonsense. But when I went in to see Nixon, the one thing that was difficult was that he knew I had a long-standing interest in the Middle East, and he painted the picture of potential conflict with the Soviet Union. By the way, the U.S. forces had been placed on nuclear alert the night before on account of the Yom Kippur war.<sup>23</sup> He painted a picture of Brezhnev<sup>24</sup> coming to the conclusion that he, Nixon, had lost control of his administration when he couldn't contain such insubordination as Cox's defiance, and the resignation and so on. I thought it was pretty farfetched intellectually, and yet, here was the Commander in Chief, the President of the United States, painting this picture. I was thinking of mushroom clouds—that was difficult for a moment or two.

The conversation ended when the President said, "Elliot, I'm sorry you choose to put your purely personal commitments ahead of the public interest." I could feel the blood rushing to my head. I could barely maintain a steady voice when I said, "Mr. President, it would appear that we have a different view of the public interest." Those were the last serious words that I ever had with the late President.

Now that resignation—speaking of principled resignations whatever or however you might assess it—has been compared of late with the departure from the Johnson administration of Robert McNamara as Secretary of Defense.<sup>25</sup> Of course, you all know his recent book, *In Retrospect*.<sup>26</sup> McNamara talks about the process whereby he reached the conclusion that the U.S. intervention in

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23. See *id.* at 387, 408.

24. Leonid Ilyich Brezhnev served as the chairman of the Presidium and secretary of the Communist Party before becoming president of the U.S.S.R. in 1977.

25. See John P. Sears, *The Art of Exits: What, You're Still Here?*, L.A. TIMES, July 25, 1993, at M2.

26. ROBERT S. MCNAMARA, *IN RETROSPECT: THE TRAGEDY AND LESSONS OF VIETNAM* (1995).

Vietnam had been a mistake.<sup>27</sup> But he left the Defense Department quietly to become President of the World Bank,<sup>28</sup> and some people of late, given the publication of that book, have unfavorably compared his conduct with that of my own.<sup>29</sup>

I submit to you that is a totally unfair comparison, and the most telling indication of that is that I became number two in the Department of State on January 21st or so, 1969, less than a year after McNamara had left the Johnson administration. One of my primary responsibilities in that period was to develop proposals for a political solution in Vietnam that the North Vietnamese should have been willing to accept. We began early on the process of Vietnamization of the war that would allow the drawdown of American forces.<sup>30</sup> And yet, in fact, the war continued until the very end of the Nixon first term.<sup>31</sup> And the total number of Americans killed nearly doubled.<sup>32</sup>

But from our point of view, whether the initial intervention had been a mistake was not material. The question we had was: How can the United States extricate itself while maintaining the credibility of its leadership in the free world's role in the Cold War?

McNamara surely had to have the same considerations in view. He knew that even if he convinced Johnson that we ought to begin the process of getting out—and he did convince Johnson that the present negotiations should begin<sup>33</sup>—he could hardly be consistent with the same views that we held throughout the Nixon administration.<sup>34</sup> They made a big public noise saying along the lines then advocated by Senator George Aiken of Vermont, “We should simply declare victory and get out!”<sup>35</sup>

I also go into this because it invites some examination of the

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27. See *id.* at 319.

28. See *id.* at 311.

29. See Mary Battiala, *War of the Worlds*, WASH. POST, June 30, 1996, at D6; Harvey Gittler, *Futile Gesture: A Resignation-in-Protest Accomplishes Little, Except to Harm the Person Resigning*, INDUSTRY WK., Oct. 2, 1995, at 36.

30. See EMERY, *supra* note 16, at 14.

31. See *id.* at 223-24.

32. See MCNAMARA, *supra* note 26, at 307; GUENTER LEWY, *AMERICA IN VIETNAM* 147 (1978).

33. See MCNAMARA, *supra* note 26, at 306-07.

34. See EMERY, *supra* note 16, at 39.

35. “George Aiken was a U.S. Senator from Vermont, who, at a point still relatively early in the Vietnam War suggested that Washington simply declare victory and get out.” *Nightline* (ABC television broadcast, June 17, 1993).

question of what principle demands. In any event, it is clear that there is a major distinction between the examples of what might be called situational integrity that I have just been citing on the one side and the kind of fundamental commitment that was manifested in the principled sacrifice of life itself by Thomas More.

Certainly, one needs to have in view both the character of the principle and the dimensions of the sacrifice in assessing the net significance of the conduct at stake. In the case of More, he was dealing with a principle intrinsic to one's sense of the significance of life itself. A principle that was integral to the meaning and value of life—that accounted for the significance of all individuals including oneself.

So, for him, the principle at stake was essentially the principle of the integrity of the church itself.<sup>36</sup> It was a commitment to the belief that the disciples of Christ and his apostles had built "a church."<sup>37</sup> This was the church that carried the message of salvation: "That one believeth that God so loved the world that he had given his only begotten Son so that we, each of us, might have eternal life."<sup>38</sup>

If you believed in a church arising out of the sacrifice of the life of the Son of God, then for a lay monarch to proclaim himself the head of that church<sup>39</sup> represented an issue quite different in order of magnitude from the kinds of things I have been talking about. And I say that, mind you, as a Unitarian.

But I can understand it, and I can admire it. And when you join with that, in that degree of clarity, in terms of the definition of principle with the character of the sacrifice, the example is hard to find a match for. Father, it would be interesting to see a study by a church historian that sought to find comparable examples even among those who have been raised to sainthood.

Certainly, in any event, there can have been few, if any, individuals who in their last months, days, and especially hours, behaved with the serenity, human kindness, humor, and dignity that Thomas More did. And one must suppose that this serenity, dignity, humor, and kindness, even in his last words with the execu-

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36. See THOMAS STAPLETON, *THE LIFE AND ILLUSTRIOUS MARTYRDOM OF SIR THOMAS MORE* 144 (Reynolds ed. & Philip E. Hallet trans., 1966).

37. *Id.* at 167-69, 178.

38. See *John* 3:16. ("For God so loved the world, that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life.")

39. See STAPLETON, *supra* note 36, at 177.

tioner, were made possible by the strength of the conviction attached to the principle for which he gave his life. Thank you.



## III. CHIEF JUSTICE LUCAS'S COMMENTARY

**CHIEF JUSTICE MALCOLM M. LUCAS:** Thank you very much. It is true that I was appointed to the federal bench by President Nixon, which has lead me to formulate an immutable principle—that Nixon can't be all bad.

I had some concern about how to address our first speaker. I asked him, "Should I speak of you as Mr. Secretary or General or perhaps Ambassador?" He paused momentarily, I then suggested, "Would a simple Your Reverence do?" But then he was good enough to say, "Well, I answer to Elliot," which was very nice indeed.

Let me thank first of all Dr. Jabbra<sup>40</sup> and Loyola Marymount University for inviting me to participate on this panel on this very challenging topic. Today we do celebrate the 500th anniversary of St. Thomas More's commencement of the study of law.<sup>41</sup>

I did a little arithmetic. I think it was fifty-nine years ago that Elliot Richardson began the study of law. It is possible that some, what would that be, 441 years from now, his commencement of the study of law may well be celebrated, and I hope that's true.

Now, we were speaking of the canonization of lawyers. I regret to tell you that, at least during my tenure as chief justice, there has been no canonization of lawyers. Indeed, there have been some disbarments of lawyers. As Mr. Richardson has observed, it offers us time, this whole celebration, to contemplate what we mean by the term "principled."

I suggest that our sense of the principled person is often what separates those in history we think well of from those that we do not rate as highly. By "principled" I mean a quality that too often eludes even the most powerful among us. It is a quality that starts with what the late Senator Sam Ervin termed, "intellectual and moral integrity."

You have heard Mr. Richardson today state that the most important word in all of this complicated formula is "integrity." The word integrity contains within it notions of both completeness or wholeness and of uncompromising adherence to a code of moral or

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40. Dr. Joseph Jabbra is the academic vice president of Loyola Marymount University.

41. See CHAMBERS, *supra* note 20, at 66.

other values. In examining responses to complex moral dilemmas, as we have been, I suggest that we must consider both of these facets. Finding moral steadfastness alone, thus, is not the end of an inquiry into principled action. We need to consider how that adherence fits into the greater scheme of things before we can truly evaluate whether an action has been principled in the highest sense of that phrase.

To me, truly principled behavior involves decision making and choices. It is not a mechanical process nor is it a question of relativism. As Mr. Richardson has suggested, holding fast to an ideal without admitting the possibility of a valid opposing view or different approach may in fact be myopic, not principled. That's contained in the expression, "Beware the man of principle" that Learned Hand advanced.<sup>42</sup>

Thomas More chose to stand by his beliefs when he refused to take the oath of succession that recognized King Henry VIII's divorce from Catherine of Aragon and repudiated papal supremacy.<sup>43</sup> He did so because he was committed to a principle that he believed transcended the demands of his king.<sup>44</sup>

He made his choice knowing full well the potential consequences as well as the options available to him.<sup>45</sup> His choice was impelled by his conclusion that what was asked of him struck at the heart of his beliefs.<sup>46</sup> At times, however, we may find steadfastness alone less than admirable. Even dying for one's beliefs, thus, may not alone establish that one was in fact truly principled.

For Elliot Richardson, our speaker today, adherence to principles had concrete consequences as well. He too was faced with a difficult choice between allegiance to his superior and allegiance to the independence he had guaranteed to Cox.<sup>47</sup> Fortunately for us and for him, Mr. Richardson, unlike Saint Thomas More, still has his head. We're very blessed with that fact.

Personal sacrifice in the name of principle that results in refusing the requests of one's superiors in our society usually does not carry the same penalty as it did 500 years ago. But does it make it any less or more principled?

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42. See Elliot Richardson, *The Spirit of Liberty is Skeptical*, 75 B.U. L. REV. 231, 233 (1995) (reviewing GUNTHER, *supra* note 7)

43. See FARMER, *supra* note 2, at 285.

44. See CHAMBERS, *supra* note 20, at 236-37.

45. See *id.*

46. See *id.*

47. See *id.* at 389.

Mr. Richardson's resignation, in one of our nation's darkest hours, continues to spark debate as we are having here. How should you respond to an order you morally and philosophically oppose when made by a person to whom you owe allegiance?

As I stated before, we must look at the complete picture. In Mr. Richardson's case his refusal to obey a presidential order required balancing, not only allegiance to the individual who had appointed him, but also to the agreement made with Cox and the Senate Judiciary Committee about the independence of the special prosecutor.<sup>48</sup> Should he conform to the directions of his superior, the President of the United States? Should he step down to honor a pledge he had made both personally and as a part of his official duties? Or should he stay in office and disobey orders and wait to be fired? As Mr. Richardson has said today, it is a hard line to draw, and also it was the most difficult, single problem that he had ever encountered in government.

By choosing to resign, Mr. Richardson showed great courage. Included in this, as we have heard, his resolution, "Brezhnev be damned!" I thought that was a very interesting insight that such would be brought up.

Behind his agreement, without directly challenging the authority of the President in the way that staying in office and defying an order would, he could remain true to his own beliefs, including respect for presidential authority.

Now, on the other hand, Solicitor General and later acting Attorney General Robert Bork, fired Cox.<sup>49</sup> Did this make him a less principled man? I would argue it did not. Mr. Bork was in a different position than Attorney General Richardson. He was not personally bound by the same pledge. Indeed, apparently he believed that firing Cox was a matter of executive privilege within the autonomy of the office of the President.<sup>50</sup>

He was designated to carry out an order that comported with his principle view of the role and authority of the President.<sup>51</sup> He had not committed himself to particular standards for the office of special prosecutor,<sup>52</sup> and the men who had been closer to the

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48. See EMERY, *supra* note 16, at 388.

49. See *id.* at 399.

50. See *id.* at 398.

51. See *id.*

52. See *id.*; see also *Nomination of Elliot L. Richardson, of Massachusetts, to be Attorney General: Hearings Before the Senate Comm. on the Judiciary, 93rd Cong. 144 (1973) (discussing duties and responsibilities of the special prosecutor).*

process, by their resignations, had already made a point about Cox's independence. Thus, the balance for Judge Bork was different. He may have agreed with Richardson, but he was also concerned about the need for the Attorney General's Office to function with continuity in this crisis.<sup>53</sup> And that is yet another factor in the mix.

He reasonably may have decided that, in his position, principles favoring the institutional authority of the President took precedence. We can argue about who made the better decision. It is quite likely, in my view, that both men were right, although the results of their choices were very different. And that may be the essence of our fascination with the subject of the principled resignation. There may not be one simple answer. Different circumstances and factors have profound effects on an individual decision and how we evaluate it. Whether to resign because of opposition to a policy or an order by a superior requires summoning unique strength and courage. By definition, you may take a position that will leave you unpopular with those who put you in power in the first place. When does this amount to "biting the hand that feeds you?" When is it principled conduct? How does "self-interest" weigh in?

Mr. Richardson spoke today about the risks associated with compromising principle in the name of power and acclaim. As he observed, reluctance to give up power can lead to its abuse. Sometimes those in power fall prey to the belief that what they are doing is so important that compromising otherwise applicable moral principles is necessary. And, to make matters more difficult, some would say there are times they would be right in doing so.

Was Watergate an isolated example of the abuse of power or simply another example of a few men believing they were above the law and acting accordingly? Sadly, I agree with many that it was one in a long and continuing series of exercises of questionable morality.

How can we avoid future Watergates? Is there a way to insure that those we entrust with political power will be properly guided by fundamental principles of public trust and individual morality, that those who lead have the necessary balance and vision to serve the greater public good?

A few suggestions have been made by those closest to the Wa-

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53. See EMERY, *supra* note 16, at 398.

tergate crisis. One instructive suggestion was made by Mr. Richardson himself in October of 1974 at the American Bar Association meeting. He observed that one way to curb amoral practices by public leaders is to rebuild our sense of community in order to create a stronger sense of values and responsibility to the greater entity. But how do we build that stronger sense of community?

Again, I have no easy answer. Slogans abound suggesting we are all part of a global village and each of us is a traveler on the information superhighway connecting us all.<sup>54</sup> But at the same time, our sense of community, of fitting in and moving ahead together, seems to be diminishing. We all too often seem interested in finding weak spots in others, rather than in building trust.

Our panel's focus today can provide a model for the tensions we see today between self-interest and interest in the community's greater welfare. How do we encourage sacrifice in pursuit of a larger goal?

As it has for Elliot Richardson, this panel has provided me a welcome opportunity to consider some of these issues. I will retire from the bench in less than two months. Happily, I made my decision without being faced with any moral dilemmas such as those faced by Sir Thomas More, Elliot Richardson, or Robert Bork, for that matter, when they took their stance. Even so, I know how difficult it was for me. And therefore, it gives me a heightened appreciation for what these men and others like them experienced.

Today's discussion raises more questions than it answers, but that is as it should be. The tasks that lie ahead are to keep the dialogue open, to honor as we do today those who we believe have taken the principled road and to continue to explore the proper balance among competing principles that gives rise to the best choices for us all. Thank you.

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54. See Thomas B. Rosenstiel, *Wiring the World: The New Age of Global Telecommunications*, L.A. TIMES, July 26, 1994 (World Report, special ed.).

## IV. MR. MANHEIM'S COMMENTARY

**KARL MANHEIM:** Good morning. It is a true honor to be here today to commemorate the quincentennial of Saint Thomas More's induction into Lincoln's Inn.<sup>55</sup> I have been in this great room twice before this year but not for so great an occasion.

I share the podium today with respected leaders and eminent jurists, scholars, and statesmen, and I wonder why I have been asked here. What insightful things can an ordinary lawyer, an ordinary teacher of the law, say about Saint Thomas More?

Perhaps it is to reflect on More as the archetype of the ethical lawyer and teacher; an ideal we should all strive for, but alas few are likely to achieve. Perhaps it is to reflect on More's *Utopia*,<sup>56</sup> his vision of a society that might be; a society so just that lawyers are unnecessary.

Perhaps, I was invited here today because they thought I was the Karl Mannheim who wrote *Ideology and Utopia*<sup>57</sup> back in 1929 and that I would defend a competing vision. Fortunately, I am not *that* Karl Mannheim. He has been dead for half a century.<sup>58</sup> Nor do I have a utopian vision to share with you.

So instead I will explore with you for a few minutes what remains of More in a time surely as turbulent as his, in a time when principle is so often just another commodity, and one nearly incompatible with power.

Indeed, in the modern era, standing for principle is so rare that we don't soon forget the names of those who are its participants. That's why for some, Elliot Richardson is nearly a household word, at least among my generation. His resignation that fateful Saturday night, against the command of the President,<sup>59</sup> stands to this day as a testimony to principle and to the rule of law.

I was in the middle of my law studies when the nation was thrust into a constitutional crisis, a crisis that had been building for some time. The Supreme Court had begun to erode doctrines of

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55. See *supra* note 2 and accompanying text.

56. ST. THOMAS MORE, *UTOPIA* (Edward Surty, S.J., ed., 1964).

57. KARL MANNHEIM, *IDEOLOGY AND UTOPIA: AN INTRODUCTION TO THE SOCIOLOGY OF KNOWLEDGE* (Louis Wirth & Edward Shils trans., Harcourt Brace and World ed. 1966).

58. See BRIAN LANGHURST, *KARL MANNHEIM AND THE CONTEMPORARY SOCIOLOGY OF KNOWLEDGE* 4, 20 (1989) (Mannheim lived from 1893 to 1947).

59. See EMERY, *supra* note 16, at 397.

constitutional faith.<sup>60</sup> The President had usurped congressional authority and waged a secret war against Cambodia.<sup>61</sup>

There were attempts to influence an ongoing criminal trial through break-in and secret meetings with the judge.<sup>62</sup> For the first time in American history, an American President sought to restrain the press.<sup>63</sup> And then, Watergate challenged the very structure of our government.<sup>64</sup>

If Richard Nixon was the modern day Henry VIII, we surely needed a Thomas More to guide us through the thicket of despair. There were Thomas Cromwells<sup>65</sup> to be sure—men willing to do the king's bidding. It is all the worse that some of those Cromwells were lawyers.

Some of the parallels are quite eerie. When More was called to answer charges before Cromwell,<sup>66</sup> his family bid him to take care. More replied that he need not worry. "[Cromwell is] not the Devil,"<sup>67</sup> he said, "he's a lawyer! And my case is watertight!"<sup>68</sup> More's wife replied, "They say he's a very penetrating lawyer."<sup>69</sup> More replied, "What, Cromwell? Pooh . . . [he's just a] plumber."<sup>70</sup>

Mr. Richardson recounts Learned Hand's admonition, "Beware the man of principle."<sup>71</sup> The form of principle that Hand cautioned and the one we honor today are polar opposites.

The former is the principle of "exclusion," of intolerance, of rejecting all views save one's own. It is the principle of King Henry, who demanded submission or death.<sup>72</sup> This is the principle

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60. See Stanley I. KUTLER, *THE WARS OF WATERGATE* 506-26 (1990).

61. See 2 STEPHEN E. AMBROSE, *NIXON* 269-72 (1989).

62. See EMERY, *supra* note 16, at 144, 205-06.

63. See *New York Times Co. v. United States*, 403 U.S. 713 (1971) (holding that the United States government had not shown justification for imposing restraints on the press).

64. See KUTLER, *supra* note 60, at 514-15.

65. See LEO FRANK SOLT, *CHURCH AND STATE IN EARLY MODERN ENGLAND 1509-1640*, 3 (1990). Thomas Cromwell served as the Vice-Regent to King Henry VII from January 1535 until his arrest for high treason on June 10, 1540. Cromwell was executed on July 28, 1540. JASPER RIDLEY, *HENRY VIII, THE POLITICS OF TYRANNY*, 15-16, 342 (Viking Press 1985).

66. See CHAMBERS, *supra* note 20, at 291-300.

67. See BOLT, *supra* note 18, at 112.

68. See *id.*

69. See *id.* at 113.

70. See *id.*

71. See *supra* note 7 and accompanying text.

72. See Richard H. McAdams, *Cooperation and Conflict: The Economics of Group Status Protection and Race Discrimination*, 108 HARV. L. REV. 1003, 1005-07, 1019 (1995). For a general discussion of King Henry VIII, see RIDLEY, *supra* note

of fundamentalism, which today has many names.

The form of principle we honor here, however, is the principle of "inclusion," of tolerance, of embracing one's fellow man, whose welfare is our welfare. It is the principle of Saint Thomas More, who demanded only of himself fidelity to God and to law. This is the principle of enlightenment, which today has precious few names indeed.

Because principle can take opposing forms, we must always approach it with studied care. Mr. Richardson gives the example of loyalty, a valued trait that is often associated with principle. But it matters to whom and to what we owe our allegiance. If it is to a leader, a king, a president, a party, we are then loyal subjects and may share in the blessings of power and privilege. But if our loyalty is to an idea—morality, perhaps the rule of law—then we will surely disappoint our leaders from time to time and incur their wrath. We cannot be both servant to politics and principle, unless our principle is that of expediency.

Above Langdell Hall reads an inscription, *Non sub Hominae sed sub Lex et Deo*—"Not under man but under law and God." That is the principle of Saint Thomas More. He paid allegiance to his king but owed fuller allegiance to his conscience and to the law, not to the king's law—not even to the law of Parliament, when it ratified the king as head of the English church—but to a higher ideal of law, one based on reasoned discourse. Positive law that defies reason and morality is not law and ought to be resisted—through resignation when necessary, through civil disobedience when that is necessary—but always vigilantly resisted.

Mr. Richardson speaks of More's commitment to moral values, and the chief justice echoed that sentiment: an awareness of our fellow human beings. This is perhaps best revealed in More's writings, particularly in the two books of *Utopia*.<sup>73</sup>

You may recall that More went into public service as undersheriff of London in 1510<sup>74</sup> and soon rose to the rank of commissioner of sewers for the left bank of the Thames,<sup>75</sup> an honor in any era, I'm sure. He acquitted himself so admirably as commissioner of sewers that he was elected Speaker of the House . . . of Com-

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73. See MORE, *supra* note 57.

74. See JOHN A. GUY, *THE PUBLIC CAREER OF SIR THOMAS MORE* 5 (1980).

75. See *id.* at 7. More's title was "commissioner of sewers for the Thames district between Greenwich and Lambeth." *Id.*



mons.<sup>76</sup> Before his promotion, however, More wrote *Utopia*.<sup>77</sup> His law practice brought him into contact with all of London's classes.<sup>78</sup> His clients included not just wealthy merchants, but also the poor, thieves, and beggars.<sup>79</sup> He thus spoke knowledgeably when he railed against English justice and economic inequality. He knew first-hand of men driven by unemployment into hunger, by hunger into crime, and by crime into the arms of the law.

More protested against a society in which the rich seemed to grow richer and the poor sunk into greater poverty.<sup>80</sup> This maldistribution of wealth and opportunity was to More in *Utopia* the cause of social strife.<sup>81</sup>

Society has not the right, More wrote, to allow youth to grow up in an environment of idleness and vice and then punish them by death for their crimes:<sup>82</sup> I pray you, what other thing do you do than make thieves and then punish them?<sup>83</sup>

More was unbending in his devotion to the rule of law. In Robert Bolt's play, *A Man For All Seasons*,<sup>84</sup> he recounts this encounter between More and his son-in-law Roper while More was still chancellor.<sup>85</sup> More was implored to arrest one of Cromwell's henchmen.<sup>86</sup>

*More:* There are no grounds to arrest him if he was the Devil himself, until he [breaks] the law!<sup>87</sup>

*Roper:* So now you'd give the Devil the benefit of law!<sup>88</sup>

*More:* Yes. What would you do? Cut a great road through the law to get after the Devil?<sup>89</sup>

*Roper:* I'd cut down every law in England to do that!

*More:* And when the last law was down and the Devil turned round on you—where would you hide, Roper, the

76. See FARMER, *supra* note 2, at 284.

77. See *id.*

78. See GUY, *supra* note 74, at 5-7.

79. See CHAMBERS, *supra* note 16, at 66-68.

80. See *id.* at 143-44.

81. See MORE, *supra* note 57, at 75-81.

82. See *id.* at 27-28.

83. See *id.* at 28 (paraphrasing from original text: ". . . [W]hat else, I ask, do you do but first create thieves and then become the very agents of their punishment?").

84. See BOLT, *supra* note 18.

85. See *id.* at 65-67.

86. See *id.* at 65.

87. See *id.* at 66.

88. See *id.*

89. See *id.*

laws all being flat? This country's planted thick with laws from coast to coast—man's laws, not God's—and if you cut them down . . . [do] you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.<sup>90</sup>

Fidelity to the rule of law is not always cheaply secured. It requires a devotion beyond the raw legalism of a king's edict, a loyalty to principle rather than to power. And so it was, I believe, with Mr. Richardson. During his confirmation hearings, as he told you, he made a promise to Senator Hart of Michigan and to the Senate Judiciary Committee to protect the independence of the Special Prosecutor. That promise was made not only to the Senate but to the nation as a whole.

Thus, while the President can ordinarily order the removal of any member of the executive branch, and his order to do so is law, such an exercise of power represents in More's terms, "no law at all, merely that danger of legalism."

That danger lurks in many quarters—for instance, modern rules of standing, habeas corpus, abstention, and immunity, rules designed to keep worthy suitors and worthy causes from adjudication. These are rules of law, but I doubt if they fulfill the rule of law.

As More reminds us, legalism and law are easily confused. "Some men think the earth is round,"<sup>91</sup> More said, "others think it is flat; it is a matter capable of question. But if it is flat, will the King's command make it round? And if it is round, will the King's command flatten it?"<sup>92</sup>

Mr. Richardson humbly minimizes his own contribution of principle by noting that the scale of sacrifice is tame in modern America compared to sixteenth century England. I agree with the observation but not necessarily with the implied conclusion. It is true that resignation is seldom fatal nowadays, even in political terms. Spiro Agnew and Richard Nixon both resigned in disgrace.<sup>93</sup> Yet Agnew's bust now lies in the Capitol Rotunda. And Nixon was held as an elder statesman in his later years.<sup>94</sup> On the

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90. *See id.*

91. *See id.* at 133.

92. *See id.*

93. *See* EMERY, *supra* note 16, at 382-83, 449-82.

94. *See* Susan Douglas, *The Nixon Amnesia*, THE PROGRESSIVE, June 1994, at 19.

other hand, resigning in Iraq for instance, as Saddam Hussein's son-in-law did last month,<sup>95</sup> is very much like disappointing Henry VIII.

Still, in this country resignation on principle typically carries little impact. Who here remember the five foreign policy officers who have resigned from the Clinton State Department to protest our Bosnia policy?<sup>96</sup>

In their book on protest and resignation, Weisband and Franck<sup>97</sup> report that between 1900 and 1970 over 350 prominent American officials have resigned, often during the prime of their political careers.<sup>98</sup> Some quietly, some in anger, but in most cases, resignation has meant ruin of fortune or career.<sup>99</sup>

More spoke to this. He said,

If we lived in a State where virtue was profitable, common sense would make us good, and greed would make us saintly. . . . But since in fact we see that avarice, anger, envy . . . [and] . . . pride . . . profit far beyond humility . . . justice and thought, [we] have to choose, to be human at all . . . why then perhaps we *must* stand fast a little. . . .<sup>100</sup>

Standing fast for More meant the ultimate sacrifice. As Mr. Richardson suggests, in this regard More has no peer.

Perhaps Gandhi in his fast<sup>101</sup> or Mandela languishing in

95. See *Saddam Warns Top Staff to Abide By Law*, NEW ORLEANS TIMES-PICAYUNE, Aug. 17, 1995, at A17.

96. See Laura Blumenfeld, *Three Young Men Cut Short Their Careers on Principle*, WASH. POST, Aug. 28, 1993, at F1 (stating that three State Department employees resigned to protest United States policy on the war in Bosnia: Marshall Freeman, Bosnia desk officer; Stephen W. Walker, Croatia desk officer; and John Western, Eastern European analyst). Two other State Department employees resigned for reasons apart from United States Bosnia policy. See Mary Curtius, *State Dept. Tries to Boost Its Influence*, BOSTON GLOBE, Dec. 29, 1993 at 2 (stating that Les Aspin was forced to resign largely because of his handling of the United States' military role in Somalia, and Deputy Secretary of State Clifton Wharton, Jr. resigned under pressure from Warren Christopher due to his perceived lack of experience); See Dick Kirschten, *Life Jacket, Anyone?*, NAT'L J. 1500 (1994).

97. EDWARD WEISBAND & THOMAS M. FRANCK, *RESIGNATION IN PROTEST* (1975).

98. See *id.* at 201.

99. See *id.* at 121-23.

100. See BOLT, *supra* note 18, at 140. This figure does not include the myriad other public officials who may have resigned from office for reasons of conscience, yet with little fanfare. For instance, during the Vietnam War, my great uncle, Edward Levin, resigned from the Chicago Draft Board rather than send young men to their peril in an undeclared and questionable war.

101. See generally ERICK H. ERICKSON, *GANDHI'S TRUTH* (1969) (a biography dis-

Palsmar Prison for a quarter century,<sup>102</sup> perhaps these come close. But Mr. Richardson is correct, we do not have to share Saint Thomas More's faith to revere his devotion to it, nor do we have to share his sacrifice to commit ourselves to principle.

As we enter the twenty-first century, many will think of More as a sixteenth century relic. He is hardly that. Many of his social and legal views are readily found in modern discourse. For instance, More advocated doctor-assisted suicide for the painfully incurable.<sup>103</sup> He advocated limits on the accumulation of wealth.<sup>104</sup> He took up the causes of the poor and the accused.<sup>105</sup>

But the most important lesson that I think came from Sir Thomas More, Saint Thomas More, is the ideal of law. On the eve of his trial, Cromwell again bid More to accept the king's edict.<sup>106</sup>

*Cromwell:* You don't seem to appreciate the seriousness of your position.

*More:* I defy anyone to live in that tower [cell] for a year and not appreciate the seriousness of his position.

*Cromwell:* Yet the State has harsher punishments.

*More:* You threaten like a dockside bully.

*Cromwell:* How should I threaten?

*More:* Like a Minister of State, with justice!

*Cromwell:* Oh, justice is what you're being threatened with.

*More:* Then I'm not threatened.<sup>107</sup>

Thank you very much.

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cussing Gandhi's life and the origins of militant nonviolence).

102. Bruce W. Nelan, *South Africa: No Easy Walk to Freedom*, TIME, Feb. 19, 1991, at 42.

103. Maria T. CeloCruz, *Aid-in-Dying: Should We Decriminalize Physician-Assisted Suicide and Physician-Committed Euthanasia?*, 18 AM. J.L. & MED. 369, 375 (1992).

104. See STAPLETON, *supra* note 37, at 82-83.

105. See *id.* at 67.

106. See CHAMBERS, *supra* note 20, at 326-27.

107. BOLT, *supra* note 18, at 133-34.

## V. SENATOR TORRES'S COMMENTARY

**SENATOR ART TORRES:** Ambassador General Secretary Elliot, it is good to be with you. I worked very closely with Jonathan Moore at Harvard many years ago. He has always spoken very highly of you, and it is an honor to be on this dais with you as well.

President O'Malley, a pleasure as well. And of course to Chief Justice Lucas, who we all regret is retiring, and who has had a distinguished career on the bench in California. And one of my heroes is his son, Greg Lucas, a member of the media in Sacramento, who without fail has always maintained his integrity, and you ought to be rightly proud.

My purpose today is to begin, I guess, to provide a political as well as a legal approach in terms of the discussion and the issues we are faced with today regarding integrity and Sir Thomas More.

I begin, then, with the notion that having taken over the chairmanship of the Democratic Party last week in California—I wonder whether that was an act of principle or of sheer insanity? I'm beginning to think that the latter is clearly the case.

The fact of the matter is that here in California, and in Washington as well, we have various branches of government. Obviously, those branches are the legislative, executive, and judiciary. There are other branches of government that also exist in California and in the federal government, for example, the branch of the media, as we have known it to be called. Here in California we have the California Shield Law, which protects reporters to make sure that they are allowed to maintain their integrity and the integrity of their sources for stories.<sup>108</sup>

We also have a third house in California national government, more commonly called the lobbyist, within this framework. How do lobbyists maintain their integrity? Having been in the private sector for the last year and a half, I also wish to put on the table what ought to be the integrity of the entrepreneur within a public society, especially an entrepreneur encountering cultural differences and differences in how business is done, whether it is in Asia or Latin America, or in Europe or in Africa. What kind of dimension ought that public member have? And, looking to the heroes that we've all had today within the religious community as well,

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108. See CAL. EVID. CODE § 1070 (West 1994).

the contemporary religious heroes, Cardinal Romero of Central America,<sup>109</sup> the Cardinal of Hanoi<sup>110</sup> whom I prayed with in the garden outside the cathedral of Hanoi, putting forward a basic courage in terms of protecting the church within a communist government. Or clearly, more contemporaneously, the cardinal of Guadalajara, who fought the drug lords and yet endured multiple assassination attempts.<sup>111</sup>

Where we are to reach for in terms of integrity and principles ought to be the common ground for all of us. We know that public officials cannot control themselves at times. That is why the public has decided here in California, and clearly in the national government, that there ought to be agencies and jurisdiction over their behavior within the public sector—The Fair Political Practices Commission—which became a political reform movement in California, lead by the then-Secretary of State, Jerry Brown.<sup>112</sup> Again, because people in California and the voters of California didn't feel the public officials could adhere to their principles, therefore an administrative agency was created. The Federal Elections Commission, which today regulates the presidential primaries and members of Congress, the United States Senate, and appointees to the Executive Branch of national government.<sup>113</sup> Again, a Congress, a people, concerned that the principles of an individual could not be maintained; therefore, a jurisdiction needed to be incurred.

More clearly, where ought we define the essence of what integrity is and what principles are? It really comes down to, in my opinion, a very simple criteria: the individual versus the institution. But more importantly, who defines what is the institution?

A freshman senator arriving in Sacramento may decide that the institution is much more important to adhere to than his own principles. Or perhaps conferring with a lobbyist and an exchange

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109. See *For God, Not Pinochet or Marx*, THE ECONOMIST, Feb. 3, 1979, at 14; *World in Brief: El Salvador: Rebels Demand Big Reduction in Army*, L.A. TIMES, June 20, 1990, at A7.

110. Cardinal Trinh Van Can. See *Obituaries*, WASH. POST, May 22, 1990, at B6.

111. See *Drug Kingpins Elude Mexican Dragnet*, WASH. TIMES, Oct. 16, 1994, at A8.

112. See Robert S. Thompson, *Judicial Retention Elections and Judicial Method: A Retrospective on the California Retention Election of 1986*, 61 S. CAL. L. REV. 2007 (1988); Paul Jacobs, *Democrats Put on Spirited Race; Outcome Uncertain*, L.A. TIMES, May 18, 1994, at A3.

113. See 2 U.S.C. § 437(c) (1994).

of contributions to his or her political campaign, may in fact, cloud that legislator's decision in terms of what is right or what is wrong; what is principle and what is integrity.

I believe that no agency and no public outcry can determine the behavior of an institution composed of individuals. I believe that it is the individual, and ultimately the individual, that must decide for him or herself what is his or her integrity and how far conscience should be within those boundaries.

It was Ghandi who said that political reform begins from within.<sup>114</sup> It is that very statement that has always guided my life during twenty years of service and public service, which comes down to my very basic principle: that is, no agency, no public outcry as I have said before, can determine the political integrity of an individual.

And therefore, if we are going to reform a society to make sure that behavior is modified—to ensure integrity—then we are moving down a pathway which will create no solution or resolution. I truly believe that political reform within one's self does determine the nature and extent of how an institution evolves.

Therefore, as I have said before, the criteria for determining adherence to one's integrity—adherence to individual principles—the institution must be subjected to the rule of the individual and the individual moral compass.

Lastly, I believe that we ought to be considering a number of reforms within the current system. And that is, the public needs to be involved much more carefully in terms of scrutinizing the public officials that are there because that does force and that does implement the individual moral compass to persevere.

That morality, if you will, is not only the ability to exercise the franchise much more appropriately, but even more so, to ensure that the individual is subject to that criteria within and outside of that institution.

Too often I have seen young and energetic and idealistic people come into the legislature of California and within a year succumb to the embrace of corruption within that legislative body. Some have faced that corruption with appropriate penalties. Others still languish in those halls, whether it is in the Congress or whether it is in the state legislature, without their moral compass

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114. For a general discussion of Ghandi's political philosophy, see ERICKSON, *supra* note 102.

being reviewed appropriately or adequately.

I sit before you today not as a judge of one's moral compass—clearly, I can only be a judge of myself. But the fact of the matter remains that the courage and the integrity that we saw in Sir Thomas More can very well, and is very well, repeated every day in the halls of the legislature, of the Congress, of the judiciary and clearly in the public face and forms that we all confront on a daily basis. And I suggest that it is the individual which must, and must always, supersede an institution or a commitment to the institution.



**FATHER O'MALLEY:** In your name I want to thank all of our panelists and bring this first morning session to a close. I can see you wriggling a little, but consider what you've just heard. What I was struck by was not only to be a participant in the great events of history but also the sweep, the sweep of everyone who spoke here today. To begin with, Elliot Richardson's own sweep professionally from a liberal arts education and a first-rate law education, and from a military service he went on to so many offices and so many concerns. They include peacemaking in Vietnam; they include justice at Nicaragua and fair elections there; they include the Philippines and multilateral aid there; they include a list of publications by the way, which any faculty member at the law school or here at Westchester would rejoice in. And then you saw how easily all of the respondents moved in history and citations of Thomas More and not content with the usual bones offered from that splendid life. So, go thou, go we, and do likewise.