that is in the Christian world?" Had Lord Coke taken leave of his senses when he said that the Court of Star Chamber "doth keep all England quiet?" Was William Hudson having a senior moment when he said, in his Treatise of the Court of Star Chamber, written in 1621, that "mercy and truth are met together" in Star Chamber? Could 16th Century lawyer and legal commentator, William Lombarde, have been mistaken when he called Star Chamber the "most noble and praiseworthy Court, the beams of whose bright justice do blaze and spread themselves as far as the realm is long or wide?" Was there another Court of Star Chamber that we missed; an evil twin perhaps? Will the real Star Chamber please stand up!

The description of Star Chamber that I provided above is completely false but it is probably close to the belief held by the vast majority of the bench and bar. The quotations of Bacon, Hudson and Lombarde describe the real Court of Star Chamber. After all, these three legal giants were "on the ground" in 16th Century England (as a Floridian poll watcher might say) and surely they knew what of they spoke. So how does history get so stood on its head? One reason for our misunderstanding of the origins and practices of Star Chamber is that history is written by the winners. Star Chamber was the King's "prerogative" Court. It was eventually abolished by a jealous and retributive Parliament, that then wrote the history. This history came to be known as the "Whig myth." True, by 21st Century American legal standards, Star Chamber would have fallen somewhat short of administering the process that was due, but then so would almost every other court of every other era. After all, America, when compared with the rest of the world, is due process heaven.

First, a quick refresher of some basic history. William the Conqueror subdued England at the battle of Hastings in 1066 and set England on its current evolutionary path. The King's Council, originally called the Curia, (showing its Frankish origins) would eventually evolve into the executive, legislative and judicial branches of government. The executive and judicial functions of the Curia branched out around 1176 with the judicial branch being known as the Curia Regis. It would take another 300 years for Parliament to fully evolve. On a different evolutionary track and with an earlier start than this King's "prerogative" court, were the common law courts such as the Court of King's Bench and the Court of Common Pleas. In 1215, King John I assented to the demands of the Barons and signed the Magna Carta. In 1347, the Black Death decimated Europe and paralyzed governments. Anarchy would not be an overstatement to describe how society functioned during this time.

Star Chamber got its name from the six point stars that were carved in plaster relief on the ceiling of the room in Westminster Palace where the Council met. How it came to be is not altogether clear, but it took more than four hundred years to get there. However, as in any feudal lord system, the development of an independent legislature and judiciary involves a slow extraction of power from the king. Of course, the struggle can be punctuated by precipitous exchanges, such as seen with the French revolution in 1789 or even earlier at Runnymede in 1215. However, the over-
all speed of judicial and legal change in England has been more evolutionary than revolutionary and sometimes it has been glacial.

In some sense, all courts evolved out of the inability of an individual King to resolve all disputes brought before him by his subjects. In England, the King’s advisors or councilors were delegated this duty. This process eventually resulted in the development of the common law courts. However, early English courts were inefficient and were slow to meet the needs of an expanding population and a more complicated society. Meeting this need was the Council Court of the King, exercising the “prerogative” jurisdiction of the King. Parliament, in the mid-1300’s made attempts to restrict the jurisdiction of this Council Court but, in doing so, recognized its legitimacy. The Court’s early operations were mostly ad hoc affairs, at least for the first one hundred years. In 1485, the battle of Bosworth Field marked a change of power in England from the Yorks to the Tudors (1485-1603) and, in a real sense, the start of modern England. Henry VII, (1485-1509) the first Tudor King, wielded a strong hand. Under his leadership, the King’s Council began exercising real effective bureaucratic control over the day to day affairs of England.

The popular date given for the birth of the Court of Star Chamber is 1487 with the passage of an act commonly known as Pro Camera Stellata (“For the Starred Chamber”). In reality, the Court had been operating on a less formal basis for over one hundred years. The act designated four of the King’s chief administrators and two common plea judges to address cases that were not being effectively resolved in the common law courts, especially cases involving the King’s authority or interests. The King’s representatives included the Lord Chancellor, the Lord Treasurer, the Lord Privy Seal, the Lord President of the Council, the Lord Steward and the Lord Chamberlain. It would also include a bishop or archbishop and the Chief Justices of the King’s Bench and Common Pleas Courts. Much of the Court’s early jurisdiction involved a mix of criminal misdemeanors and equitable civil matters. At the end, its jurisdiction was almost entirely criminal. Its procedures resembled the early beginnings of an administrative tribunal. The Court had no felony jurisdiction, which meant that the Court could sentence no person to death. As was common then, most criminal prosecutions were carried forward by the victim in a private capacity.

The Court’s procedures were quite simplified when compared with the common law writ and jury system. However, there was nothing summary about Star Chamber proceedings, which often took two to three years to reach conclusion. The use of pleas, demurrer, replication and rejoinder were used with great care. Following the pleading stage, discovery was by the formal interrogation of the parties and the witnesses, but this was done by each side on an ex parte basis. In many ways, the procedural safeguards for fairness and truth determination were much advanced over the common law courts. For example, through the interrogatory process, a defendant could testify in his own behalf in Star Chamber proceedings. This was not so in the common law courts. While common law proceedings were commonly done without counsel, especially in the case of criminal defendants charged with felonies, in Star Chamber, both sides had counsel. In the Assizes, where common law criminal proceedings took place, it was common for several defendants to be placed on trial, on several indictments, at the same time, before the same jury and to have all matters resolved in a morning’s time.

After all of the pre-trial proceedings were conducted, the matter was submitted on the record to the Court and set for trial. The trial would have more resembled our oral arguments on appeal and a panel of Judges would have heard the case. While this procedure resembled the continental inquisitorial adjudicatory method and sounds quite un-English, it had strong roots in the Council’s equitable and ecclesiastical jurisdictional history. Finally, all of Star Chamber’s proceedings were public. Secrecy was not part of their procedures.

The justice meted out by Star Chamber might look cruel by today’s standards. After all, the times were not that remote from those where ordeal, dunking and immersion in boiling water were used to determine veracity. While most Star Chamber verdicts resulted in fines, imprisonment or public confessions, the cutting off of an ear or the slitting of a nostril was not uncommon. Contrary to popular myth however, torture was not administered by or at the direction of the court. However, torture would have been a common investigatory technique used by officers of the Crown. If one were looking for bodies stretched on the rack to extract confessions or hanging from gallows, the Court of King’s Bench, where acts of treason were tried, was the place to go.

The Court of Star Chamber grew in form, function and popularity over its second 100 years, under the leadership of legal luminaries such as Cardinal Wolsey (1475-1530) and Sir Thomas More (1477-1535). Eventually it would become the victim of its own success. At this time in England, there were seven common law crimes. These included murder, suicide, manslaughter, burglary, rape, robbery and mayhem. Anything not included in these seven fell into the undefined category of trespass. As the Court of Star Chamber gradually melded its equitable jurisdiction with the common law (and then passed its legal theories on to the common law courts), it defined several new crimes such as fraud and forgery, obstruction of justice, as well as the anticipatory crimes of attempt and conspiracy. It was also instrumental in the development of crimes that compromised the justice system, such as perjury, churning, jury tampering and malicious prosecution. In the area of commercial crimes, it developed the law of bribery, extortion and libel. With this added jurisdiction (which eventually came to include commodity price controls) came a complexity that the court was not able to handle. Pre-trial skirmishing became more common and more burdensome to the litigants. Venal court clerks became susceptible to bribes by attorneys or solicited favors themselves. As the litigation became vexatious and the process corrupt, public confidence in the court waned. The Court’s efforts to expand its jurisdiction made it unpopular with the common law lawyers and Parliament.

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The demise of Star Chamber was a combination of too much success, too little reform and two weak Kings, James I and Charles I. James I was unable to manage Parliament for several historical reasons. First, he failed to protect the Barons' holdings in France. Second, there was a built up resentment toward the previous King, Richard the Lionhearted, James' brother, for being on expedition too long on the Continent and, consequently, ignored problems at home. Charles I dissolved parliament in 1630 and then increasingly relied on Proclamations to govern and on Star Chamber to enforce those proclamations. This diminished legitimacy of Charles' rule ended up corrupting all the courts and Star Chamber was at the head of this line. During the 1630's, Parliament was kept dissolved by Charles and he used the Courts to carry out every possible scheme needed to fund his reign. Star Chamber had been a private litigant court, meeting the needs of a growing society. Charles I turned it into his private Attorney-General's court. When Charles I was forced to recall Parliament back into session in 1634, because of an impending war with Scotland, Parliament extracted its pound of flesh from the weakened King and abolished the Court of Star Chamber. The unintended consequence of this was that Star Chamber's criminal jurisdiction was taken up by the Court of King's Bench where the death penalty was available. Despite being poisoned by the King, the Court of Star Chamber left a substantial legacy to the English and American common law. It was the originator and developer of the laws that we now call white collar crime and crimes against the justice system.

So, it seems that most of what we commonly believe about "star chamber proceedings" is just not true. If terrorists were to be tried today in a star chamber court, they would have access to counsel, full pre-trial discovery, including deposing witnesses ex parte and a right to attack their indictment by motions. While their trial would before a panel of judges, not a jury, the judges would be the most respected and highest ranking in the Land. All proceedings would be held in public and, if found guilty, the defendant would not be subject to the death penalty. There is an old English aphorism that says: "Justice must not only be done, it must also be seen to be done - and that quickly." It is as good advice today as it was five hundred years ago - and now, the whole world is watching.

**SOURCES:**


Hudson, William, A Treatise of the Court of Star Chamber, (First editions self-published in 1621; Temple-Bar edi-

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Stuckey, Michael, *The High Court of Star Chamber* (Holmes Beach Fl, Gaunt Inc., 1998).


1. The origin of the term "kangaroo court" is unknown but most etymology believe that it is not Australian. The consensus (without any direct proof) is that it originated around 1849 during the California gold rush. The term was used to describe the informal and extrajudicial proceedings used to resolve disputes over claim jumping.

2. When the Earl of Shaftesbury started a new political faction, his enemies dubbed it the "Whigs," after a group of Protestant guerrilla fighters in Scotland who were opposed to Shaftesbury and his followers. In turn, Shaftesbury's followers named their opponents "Tories," after Catholic guerrillas fighting in Ireland. Both names stuck.

3. Since the King had a duty to insure justice for all of his subjects and since all governmental power resided in the King, any Court, exercising authority delegated from the King was exercising the King's "prerogative." As the powers of Parliament expanded and as Parliament expanded the authority of the common law courts, it became common to describe the King's conciliatory courts as "prerogative" courts.

4. It would be a mistake to equate the term misdemeanor as used in 14th Century England with the way we use it now. Misdemeanors made up the bulk of crimes then but they were more serious in nature. The better analogy would be to compare it with the way it is used in our Constitution to define the predicate for impeachment, i.e. "high crimes and misdemeanors."

5. Thomas Wolsey was the son of a butcher who became, under the reign of Henry VIII, the second most powerful and rich person in England. He became both a Cardinal and the Lord Chancellor of England in 1515. (Apparently having had an illegitimate son and daughter did not hurt either his clerical or political career.) Wolsey fell out of favor with the King when he could not persuade Pope Clement VII to grant Henry an annulment from Catherine of Aragon. Being out of favor with the King, Wolsey was now an easy target for his numerous enemies. He was indicted for treason, stripped of all his titles and died in custody while awaiting trial in 1530. Wolsey, for all his other faults, was a brilliant legal mind who greatly expanded the jurisdiction of the Court of Star Chamber.

6. Charles I engaged in a long civil war with Parliament. He was eventually defeated and was beheaded on January 30, 1649. England would then be under the civil-military rule of Oliver Cromwell, Lord Protector for the next nine years. Cromwell died in 1659 and Charles II was restored to the throne in 1660.