

A Nation Deceived

Being a Complete Transcript of

America's First Presidential Felony Trial

In the

Court of Common Opinion

by Craig S. Barnes

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Dramatis personae:

Reporter: Sandra Jones

Bailiff

Worthington Stern: A judge in the court of common opinion

Lawyers:

Old Man, country lawyer from Colorado

Joe Ranger, Counsel for defendant Bush

Samuel Pounder, Counsel for defendant Cheney

Wiley Chance, Counsel for defendant Rumsfeld

Witnesses:

Congresswoman Geraldine Worthy

Agent, former CIA expert on Middle East

Professor, advisor to presidents, special trade envoy

Pentagon man, assistant secretary of defense

Historian

Act I

Setting: Inside the court of common opinion. Counsel tables are piled high with documents. Judge's chair and table are up center, a witness chair to judge's left. A lectern is to judge's right.

At rise: REPORTER is alone in empty courtroom.

REPORTER: Jim, I am live this morning in the fabled Court of Common Opinion to witness a trial unlike any we have ever seen in this country. Never before has a president of the United States, his vice president and secretary of defense been called to account to justify their reasons for going to war. The prosecution is led by one of those mysterious public interest lawyers who appears to know little of Washington or of politics but is forever showing up trying to shape history. The president and his team are of course defended by the finest law firms in the land, so we have a classic case today of someone, we don't really know much about, who may be trying to foment class war in America. We will see today, whether he can do that, or whether more balanced opinions may prevail. The court is filled with reporters from every media outlet in America and none of us can roll cameras during the hearing. So here we go and over to you, Jim; this is Sandra Jones live from the Court of Common Opinion.

[REPORTER exits. OLD MAN enters. RANGER follows at a distance, goes to his own counsel table and then slowly moves across to counsel table of OLD MAN.]

RANGER: Good morning sir. Glorious are the days made in the image of the Lord. How are you, sir?

OLD MAN: Well, pretty fine, I think. How are you?

RANGER: I am blessed to be alive. Blessed most surely. Sir, let me be frank. The president does not need this lawsuit and I have told him it is never too late to reach an accommodation. Do you believe that?

OLD MAN: Well, if he would be willing to go to jail, I suppose I could agree to that.

RANGER: You are a hard man, indeed! For now, have it your way, let us render unto Caesar what is his. [Turns to leave.]

OLD MAN: Sir, I surely would like to possess a certain document called "Foreign Suitors for Iraqi Oil." You want to be a true Christian, you got to follow the rules and get me that document.

RANGER: I'm afraid I don't know what you are referring to.

OLD MAN: The Oil Exhibit. How many times do I have to ask for it? You got that?

RANGER: I could not give you that document, if I had it, which I am not saying I do. A very good morning to you, sir.

[RANGER returns to his own counsel table. Enter CHANCE, who goes to defense counsel table. Enter POUNDER, who stops at table of OLD MAN.]

POUNDER: You know, old man, there are a great many people here in the capitol who believe that you are being paid for by Iranians. Did you know that?

OLD MAN: Can't help that, I'm afraid.

POUNDER: Paid for and supported by so-called charities which funnel money from say, the bin Ladens?

OLD MAN: Seems to me your people have met, slept, ate, flown planes, drilled for oil, together with a whole slew of bin Ladens. Maybe I'm just one of the boys.

POUNDER: With comments like that you will have no reason to call me your friend.

OLD MAN: I don't know how I feel about that, but I think I am all right with it.

BAILIFF: All rise!

[POUNDER moves to his table. All stand, judge enters and is seated].

COURT: Be seated.

All right. This is the matter of the People vs. George W. Bush, Dick Cheney, and Donald Rumsfeld. The court notes that none of the three defendants is in the courtroom, each having asked to be excused to perform duties pertaining to our national security. For convenience of the court, all prospective witnesses have previously been sworn. You may begin.

OLD MAN: Thank you, your honor. Good morning.

Back in 1215, a group of angry barons met with the king of England and forced upon him an agreement to stop treating them like imbeciles. The king was obliged to agree and ever thereafter in the history of England and in the history of our country the king was made to be subordinate to the law. Now that was one of those moments in history that changed everything until just about five years ago. Without that moment, in 1215, no Bill of Rights, no American constitution, no rule of law. It was that big.

Now for the first time in that glorious history once again we have a rogue leader out on the loose who has decided he can pretty much say what he wants, make war when he wants, against any nation that he wants, put people in jail when he wants, suspend habeas corpus, and suspend the Fourth Amendment to the US Constitution. He is, again, after 700 years, treating his subjects like imbeciles. Some people say, "Isn't it too bad; we are losing the New Deal?" I say, "Isn't it too bad, we are losing 700 years of the most important legal tradition in the history of the planet?"

We will show that these three defendants lied about their intentions for this war, lied about the justifications for this war, and lied about the

conduct of this war. I did not say I would prove every single one of their lies because that would take us clear into haying season, but I did say I would prove this much: that lying about their intentions and justifications was a fraud upon Congress, a violation of section 371 of the United States Code, Title 18. Further, lying about the conduct of this war has been a violation of the torture statutes, Sec. 2430A of Title 18.

Other than that, these fellas are pretty clean.

COURT: [To the defense.] Gentlemen?

RANGER: The Constitution says the president has the power to act in a time of war. Legally, that's indisputable. So this case is not about the law. Its real purpose is to undermine the faith of the people in their president. But we say the courts are not the place to play around with our faith, or anyone's faith. If they want to change faiths in the country, let them try winning an election, or once in a while they could even go to church. At the proper time, we will ask you to dismiss your honor. Thank you.

POUNDER: I think, your honor, you must find out who is paying for these people and who is behind this case, behind the innocent face of that old man. Whom does he represent, really? Who is funding this lawsuit that calls into question the very integrity of one of history's most courageous presidents. I would even suggest clearing the courtroom, to make it safer for us all. Take the media and all these unknown people out of here. We can handle this quietly by ourselves.

COURT: Well, I'm not going to empty the courtroom. But,
[indicating OLD MAN] counsel, you want to say anything about whom you represent?

OLD MAN: I will list every one of my financial backers, your honor, on the day that that fellow lists everyone of his bin Laden, Dubai, Haliburton and former Enron backers. I believe he has more terrorists in support of him than I have in support of me.

COURT: All right. Enough. I'm going to assume that you are funded by the ACLU or some such group, but, Mr. Pounder, with all due respect, funding is certainly not the issue here.

POUNDER: That should be the issue, your honor, let me warn you. Be careful. We don't know who is trying to use this court here today for the most nefarious of purposes.

COURT: Thank you, sir. Next?

CHANCE: Thank you, your honor, we welcome the chance to be here this morning and to use the great American judicial process to set this matter to rest forever.

These people say they want to talk about truth and the rule of law. Well, now, do they really?

In this morning's news an earth damn has shattered and collapsed in Hawaii, waters rushing down the valley killing innocents below. And that is true. In this morning's news riots are exploding in the prisons of Palestine and innocents are caught in gunfire in the streets. And that is true! In this morning's news the weather is upside down: drought grips the Southwest of our own country while floods gorge the rivers of New Jersey. And that is true! That is the real world in which we live, not some dream world.

Democracy and civil process are in retreat all over the world: Russians, Uzbecks and Chinese round up political dissidents, the UN is corrupted by greed and paralyzed by bureaucracy.

That is our world today. And that is true! Innocents suffer everywhere in this world, through no fault of their own and few there are with the courage to protect them in their travail.

Speak of truth and tell of a real world consumed by violence and hatred and clans and cabals of evil! Let the honorable prosecution in this case tell us how the flimsy tissue of medieval law will hold back these waves of violence and self interest. They speak as if civilization mattered, and

would have you believe that a president telling the truth about his necessary police actions would hold the thin web of civilization together while all about him the storm of hatred and pestilence and disease rages. They are not saying so, but this is about the progress of free men and women, and whether a few leaders have the fiber, the timber, the character to lead through the storm. This is about truth, yes; it is about true character, in a republic, in a time of trouble.

Your honor, children pray for peace, but men fight for it. This case is brought by that old man for the sole purpose to humble freedom fighters and humiliate our soldiers in the field, and that is the truth, your honor, if you want truth.

COURT: Does being commander in chief mean that all democratic restraints are dissolved?

CHANCE: There is no bright line between democracy and leadership, your honor. There is no formula. There is no simple code but rather the judgment of men who are there in the storm amid the crash of the waves when the cyclone strikes. When the gales of misfortune blow the captain, and only the captain, must seize control of the ship or all will go down together. When the law stands in the way of such necessity, shall it be the people who will die by the millions and be destroyed or the law that will bend a tiny bit? That is the question before you today. Of course, the law must bend a tiny bit and so it has bent for every American president in time of war since Abraham Lincoln. War is not kind to truth, and the president cannot be forced to become a saint in a sea of snakes.

COURT: [To OLD MAN] Counsel, to show presidential fraud under section 371 you are going to have to show that these defendants knew they were lying or knew they didn't know. You have to show that honest people in the Congress relied upon them and were done in by that reliance. No one has ever shown that about an American president.

OLD MAN: Well, your honor, they have given us a lot of material.

COURT: When you push the court beyond tradition, you create a crisis, not only of the law, but of the constitution; not only of the constitution, but of society. I am very reluctant to do that for you.

OLD MAN: Don't do it for me. Do it for the country. This is about parents, wives and husbands of the massacred and mutilated, the road-bombed and kidnapped. If they cannot complain to a law court, where can they go?

COURT: Like Mr. Ranger said, they can try elections.

OLD MAN: Tried that. Didn't work. Courts took the election away. Sir, if the courts can select a president they can at the least try to control the mooncalf they created.

COURT: Are you going to share with us what you mean by that?

OLD MAN: Monster.

COURT: I'm sorry I asked. All right. You may proceed.

OLD MAN: Thank you, your honor. We call Congresswoman Geraldine Worthy.

[WORTHY comes forward.]

OLD MAN: How did you vote on the resolution of October 2002, authorizing the use of force in Iraq?

CONGRESSWOMAN: I voted for it.

OLD MAN: Who persuaded you to vote for it?

CONGRESSWOMAN: Bush, Cheney and Rumsfeld, primarily.

OLD MAN: Have you come to find out that the president was not actually consulting the Congress?

CONGRESSWOMAN: On September 25, 2002, after meeting with some of us he said, "Of course, I haven't made up my mind if we are going to war in Iraq." We now know that in March, six months earlier he told Condi Rice, "Fuck Saddam. We're taking him out." He had made up his mind long before.

OLD MAN: What purpose would it serve to have him say to you that he had not decided?

CONGRESSWOMAN: It would make us think that we were being consulted, as the Constitution requires.

OLD MAN: How about Rumsfeld? Did he tell you the truth?

CONGRESSWOMAN: He told us that they knew where the weapons of mass destruction were. He said: "We know where they are; they are north, south, east and west."

OLD MAN: And did you rely on him?

CONGRESSWOMAN: The Secretary of Defense is supposed to know what he is talking about. Unfortunately, he did not. He was guessing.

OLD MAN: So you voted for the use of force based upon his guesses?

CONGRESSWOMAN: He made it sound like Saddam was about to attack us. He was making it up.

OLD MAN: Any other way they tried to persuade you of that?

CONGRESSWOMAN: In October, 2002, they gave to the Congress a little booklet, 25 pages, all slicked up, making it sound as if they had the intelligence to support the claim that Saddam was very dangerous.

OLD MAN: Was the report complete?

CONGRESSWOMAN: It was an edited version of a fuller CIA report; it did not include the doubts or uncertainties.

OLD MAN: That's two out of three of these defendants. What about the third one? Did the vice president tell the Congress in the fall of 2002 that he knew that Saddam Hussein was preparing a nuclear weapons program? Did he say he actually knew that? Or did he say, "he might be" or some such thing?

CONGRESSWOMAN Mr. Cheney said it was a fact.

OLD MAN: Have you come to find out where he got that fact?

CONGRESSWOMAN: The source was a man named Al Libi. Libi told that story when he was being interrogated, maybe tortured, about a year before.

OLD MAN: Did the vice president know that Libi might be lying?

CONGRESSWOMAN: The Defense Intelligence Agency had told him that Libi was probably unreliable, yes. Cheney just didn't tell Congress. He knew he did not really know.

OLD MAN: But he said he did know?

CONGRESSWOMAN: Yes.

OLD MAN: Well, what difference does it make that he just pretends to know? Would it have affected your vote to use force?

CONGRESSWOMAN: Certainly. Lying to Congress, giving them false information when they are voting on war is defrauding that body. You do that, you're supposed to go to jail. Title 18, section 371, United States Code.

POUNDER: Your honor, she is acting like a trained seal. He throws up the fish; she opens her eyes wide; swallows the thing whole.

COURT: There is no such thing, I don't believe, as a trained seal objection.

RANGER: Well, your honor, the question calls for a legal conclusion. That's the business of the Court, not some Congresswoman.

COURT: *That* objection will be sustained.

OLD MAN: When did the Iraq war begin?

CONGRESSWOMAN: March 20, 2003.

OLD MAN: When was the last time the president told the country that he had not decided whether to go to war because he was still trying for peace?

CONGRESSWOMAN: March 6, 2003, at a press conference two weeks earlier, I have the White House record.

OLD MAN: Two weeks before the war did the president say he was just doing his very best to avoid it?

CONGRESSWOMAN: [Referring to notes.] On page two of the White House report he says: "Across the world and in every part of America, people of goodwill are hoping and praying for peace. Our goal is peace...." On page four: "I don't like war.... Nobody likes war... if war is forced upon us because Saddam has made that choice...." On page six he says: "I hope we don't have to go to war, but if we go to war...." On page seven: "... in the name of security and peace, if we have to—if we have to—we'll disarm him." Page eight: "If we were to commit troops—if we were to commit troops—I would pray for their safety." Finally, on page ten, "We hope we don't go to war."

OLD MAN: Does that make you just a little bit sick?

CONGRESSWOMAN: Well, you know, we trusted him. What can the Congress do if it cannot trust the chief executive?

OLD MAN: There was an armada of more than 100,000 troops, tanks, guns, planes and warships already in the Middle East ready to pounce. You trusted him? Does the oath in Congress require you to park your brain?

CONGRESSWOMAN: No sir, but you cannot not survive very long in politics out on a limb by yourself. The president has a lot of power.

OLD MAN: Tough, I suppose, being in Congress.

What did he tell you about his intentions in his State of the Union message that year?

CONGRESSWOMAN: He said, he would fight in Iraq only "if war is forced upon us."

OLD MAN: And you believed that?

CONGRESSWOMAN: Well, he said, "We seek peace. We strive for peace.... If war is forced upon us, we will fight..."

OLD MAN: Which you also believed. Is there a reward, in politics, for being really, really naïve?

COURT: Counsel, will you approach the bench, please?

[OLD MAN moves to the bench.]

[Whispers.] You are badgering your own witness, sir. I will not have that.

OLD MAN: Yes, sir. Sorry, sir. [Returns to his table.]

Congresswoman, do you know about the meeting between Bush and Tony Blair two days later, after that State of the Union where he would only go to war if it was forced upon him? The one where they were talking about painting a plane?

CONGRESSWOMAN: Yes, sir, I do now. Only two days later, on January 31, Mr. Bush met with Tony Blair and proposed painting a US plane in the colors of the United Nations. He said it might draw fire from Hussein and start the war.

OLD MAN: He said that to Blair two days after he told the Congress he would only go to war if forced to?

CONGRESSWOMAN: Yes.

OLD MAN: And the Congress kept swimming along with the current, like a school of obedient fish?

CONGRESSWOMAN: We don't have that much power.

OLD MAN: You did not have enough power to use your own brain when he said, "I seek peace?"

CONGRESSWOMAN: I did not know about the painted planes at the time. You do have to trust the president, don't you know?

OLD MAN: I don't know, but thanks for asking.

Well, so now that you have gotten smarter, and you don't trust so much, what other evidence have you got that shows that these three defendants, the whole cabal of them, was gearing up for war from the very beginning of their imperial reign?

POUNDER: Objection! Gratuitous slander!

OLD MAN: Excuse me. ... of their administration.

CONGRESSWOMAN: [Referring to notes.] Before he even took office, the first question from Cheney to then-Defense Secretary Cohen was for a briefing on Iraq. Then, in January, 2001, one month later, first week in office, the whole cabinet began discussing an attack on Iraq. That's according to Treasury Secretary O'Neil.

OLD MAN: At that point, war was certainly not being “forced upon them,” right? Iraq was quiet as a mouse, right?

CONGRESSWOMAN: Yes, sir, that is correct. Now, looking back, I can see that. You are right, after that there was a progression:

Nine months into the new administration came 9/11.

OLD MAN: Very, very convenient.

CONGRESSWOMAN: Yes, sir. Next day, the president asked Richard Clarke to find justification to attack Iraq. Clarke said: “Mr. President, there isn’t any.” The president said: “Go find it.”

OLD MAN: Keep going.

CONGRESSWOMAN: November, 2001: the president asked Secretary Rumsfeld if he was ready with war plans to invade Iraq. The Secretary said he was working on it. No one had made any connection between 9/11 and Iraq, but the Secretary was already planning an invasion.

Six months later: May, 2002: the president ordered the Joint Chiefs of Staff to prepare battle plans for that invasion. Still there was no connection between Saddam and 9/11 and no other known justification.

June, 2002: president announced a policy to allow pre-emptive war, which meant he could conduct an invasion anywhere he pleased. Which of course meant Iraq.

All this while he kept telling us in the Congress that he was “seeking peace.”

OLD MAN: How do you know all this?

CONGRESSWOMAN: It’s all a matter of public record. Eyewitnesses or statements by the defendants themselves.

RANGER: Oh, boy. Like somewhere in the files of the library of Congress? We just have to read and hope that whatever is written is accurate? Hearsay!

POUNDER: I renew my trained seal objection, your honor.

COURT: Which is denied. I will receive it for what it's worth.

OLD MAN: Was the defendant Rumsfeld a part of the conspiracy to make a case for war?

CONGRESSWOMAN: Rumsfeld said in June, 2002, that the absence of evidence was not evidence of absence.

OLD MAN: Where I come from, you sell a man a pregnant mare and a year later he comes back and says, "Hey, no colt; your mare was barren," and you say, what? "The absence of evidence is not evidence of absence?" What in the Sam Hill does that mean? Some day the mare may turn up pregnant?

POUNDER: *Horses*, your honor, and WMD!? For God's sake!

COURT: Is that an objection?

POUNDER: Irrelevant, immaterial, inconsequential, fuzzy minded and amateurish! How's that?

COURT: He's a westerner. They talk differently. Denied. The witness may answer.

CONGRESSWOMAN: Rumsfeld meant that the absence of evidence of WMD did not mean that Saddam did not have them.

OLD MAN: And did you all over there in the people's body catch on to this yet? Your president was going to invade Iraq, wasn't he, no matter what he didn't find?

CONGRESSWOMAN: No sir, we did not catch on.

OLD MAN: While you are over there being careful not to get 'out on a limb' as you put it, was there anything that Saddam could do to prove to you that he did not deserve to be invaded?

CONGRESSWOMAN: He was trying to prove that he had nothing, or, I guess, more correctly, that he *didn't* have nothing. Logically, you cannot do that. Something can always be somewhere.

OLD MAN: Did Saddam try to persuade you that 'he did not have nothing?'

CONGRESSWOMAN: He presented 12,000 pages of documents to show that he had destroyed his WMD.

OLD MAN: 12,000 pages that showed there was nothing?

CONGRESSWOMAN: Rumsfeld said that it was too much evidence of nothing. A smokescreen. Saddam should have produced less.

OLD MAN: But weren't these documents the evidence of absence?

CONGRESSWOMAN: Rumsfeld said it was too much evidence of absence.

OLD MAN: Was there anything Saddam could do that was not either too much, or too little?

CONGRESSWOMAN: He was probably as confused as we were.

OLD MAN: Did the Congress ever notice that everything the president was doing was actually increasing tensions, rather than reducing them?

CONGRESSWOMAN: We did not notice, no sir.

OLD MAN: He undermined inspections, ridiculed sanctions, bullied the diplomats and set an aggressive timetable. Every speech, every demand, escalated tensions. And the Congress said: "Fine. Fine." Because you trusted him?

CONGRESSWOMAN: If there is not trust, a democratic society is ungovernable.

OLD MAN: Did it ever occur to you that with too much trust we could be at war forever?

CONGRESSWOMAN: Oh, I think we will stop sometime.

OLD MAN: On March 6, 2003, just before the war, the president said, "let Saddam bring the weapons out in a parking lot and show us he is destroying them. Let him come clean." Were you catching on, yet?

CONGRESSWOMAN: Like, how?

OLD MAN: Jesus. If Saddam did not have any weapons, he could not bring nothing out into the parking lot, could he? He could not disarm if he had already disarmed, could he?

CONGRESSWOMAN: No, sir. But nobody saw that.

OLD MAN: On March 16, 2003, four days before the war, the defendant Cheney went on TV with Tim Russert of NBC and said of Saddam Hussein, "We know he's got the capability for chemical and biological weapons; we know he's trying to produce nuclear weapons and we know he's connected to Al Qaeda." Do you, now, at this time, have evidence that shows that they made this whole story up?

CONGRESSWOMAN: Yes. Nine months earlier, the president told the British Prime Minister's representatives that they did not yet have the evidence but that they would go to war anyway. That's the Downing Street Memo, July 2002. The intelligence would be fixed to support the decision. War was inevitable. But we in the Congress are not

responsible for that. We did not know that; we were unaware of that at the time.

OLD MAN: Sure, sure. But now you do know that. And what you know is that nine months before the war, July, 2002, these defendants acknowledged that they did not yet have the evidence but told the British that they would *make it up*?

CONGRESSWOMAN: It took them another three months, until the fall.

OLD MAN: That was the fall of 2002. Was Saddam taunting them, getting them mad? Killing people? Rampaging? What was he doing?

CONGRESSWOMAN: He was rather quiet.

OLD MAN: No new weapons were being exploded? No genocide? No persecutions? The next crisis for the president was not in Iraq, was it, at all? It was really here, in this country, was it not?

CONGRESSWOMAN: What do you mean?

OLD MAN: When did the mushroom cloud campaign begin?

CONGRESSWOMAN: October and November, 2002.

OLD MAN: Just before the mid-term Congressional elections.

CONGRESSWOMAN: That is true. In October, all three defendants began to say in unison, "America cannot wait until there is a mushroom cloud."

OLD MAN: So this was a war to win an American election, right? And you went along, just to get elected, like everyone else?

CONGRESSWOMAN: If we don't get elected, we don't serve anyone.

OLD MAN: Well, what help is it for you to get elected if the only human being on the whole damn planet whom you serve is a falsifying, lyifing, president?

COURT: Counsel, I warned you.

OLD MAN: Yes, sir. Strike that. Madam, Is it true that all these things happened, the battle plans, the pre-emptive strike policy, the tell-tale meetings with the British Prime Minister, the warnings against a mushroom cloud, all in the year *preceding* the statements by the president to the Congress that he would only go to war if he was—what were his exact words?— “forced to”? That he “sought peace”? That his intention was peace?

CONGRESSWOMAN: That is correct.

OLD MAN: Would you buy a used car from this man?

POUNDER: Objection! Jesus!

CONGRESSWOMAN: No sir.

COURT: Sustained. Strike all that.

OLD MAN: Me neither. Thank you, Congresswoman. [OLD MAN sits down.]

COURT: Cross examination?

POUNDER: Congresswoman, a nuclear attack on the US, God help us, would be catastrophic, wouldn't it? [Witness nods.] And even though the odds of that happening are—we hope—small, the president always has to plan for that because he has to do everything to avoid such a horrendous event, does he not?

CONGRESSWOMAN: Yes.

POUNDER: Prudence therefore requires war plans, all the time, does it not?

CONGRESSWOMAN: To attack Iraq is not just planning.

POUNDER: You are not actually accusing the president and vice president of anything more than having been mistaken, are you? And being mistaken is not fraud, is it?

CONGRESSWOMAN: Except that every mistake led in the same direction, towards escalation and war. I guess if it was not fraud, they were just really foolish.

POUNDER: Which is not a crime, is it?

OLD MAN: [Rising slowly.] Oh, my, your honor, we will stipulate that they were fools.

POUNDER: And we will stipulate that *they* are, not were, but *are*, cowards!

OLD MAN: [Still on his feet.] Fools or liars, take your pick.

COURT: Quiet, both of you!

POUNDER: Everyone thought at the time that there was an Al Qaeda connection, didn't they? That is what everyone believed?

CONGRESSWOMAN: Yes, the president said in October, 2002, "We know that Iraq and Al Qaeda have had high-level contacts that go back a decade." A direct quote. In March, before the attack, he said Saddam Hussein "has trained Al Qaeda." A direct quote.

POUNDER: So he knew that Saddam and Al Qaeda were connected?

CONGRESSWOMAN: Except when he said they weren't. On January 31, 2003, he was asked by the press: "Do you believe that there is a link

between Saddam Hussein ... and the men who attacked on September the 11th?" and he replied: "I can't make that claim."

POUNDER: You liberals don't even believe that there is any such thing as a war on terror, do you?

CONGRESSWOMAN: This was not a war on terror; it was a war on Saddam Hussein. Saddam had nothing to do with terror.

POUNDER: These defendants were depending, just like everyone else, on the CIA, weren't they?

CONGRESSWOMAN: Mr. Rumsfeld said that they had "bulletproof evidence" of a connection between Al Qaeda and Saddam. I don't believe that there is a single intelligence report that will support that statement. So he was saying something was absolutely true that he knew was false, or at least, he knew he did not know. You're the lawyer, but that sounds like fraud to me.

POUNDER: It's rather quaint, you know. You rely upon old principles of common law fraud. Do you know when those principles were first established?

CONGRESSWOMAN: No.

POUNDER: Before planes that fly into towers, before nuclear weapons, even before machine guns, before the constitution. Would you apply principles that regulated the markets of medieval Europe to terrorists who fly jet planes?

CONGRESSWOMAN: Probably not.

POUNDER: And so presidents must be different, too, must they not?

CONGRESSWOMAN: In some ways, yes.

POUNDER: We cannot go on defending our country with knights in armor, and padded horses? You do not want this court and the American people to go back 700 years?

[No answer.]

You want to fight sophisticated bomb-making terrorists with medieval law?

[No answer.]

No further questions.

COURT: Mr. Ranger, for the president?

RANGER: You are talking about telling the Congress a few more details, are you not? Always a judgment call, isn't it, especially when it comes to classified matters?

CONGRESSWOMAN: I am talking about leaving out critical facts so that Congress could not make an informed opinion about invading a country with which we were at peace.

RANGER: You know that other presidents have had to bend the law in times of war? Lincoln suspending Habeas Corpus; FDR putting Japanese in concentration camps? Truman seizing the steel mills?

CONGRESSWOMAN: Yes, but it's not good.

RANGER: But it does happen, doesn't it? Over and over? Because war is different than peace? You would admit that, wouldn't you?

CONGRESSWOMAN: That war is different than peace? Usually, yes, except for the last five years.

RANGER: You have faith we can just go on being nice to people and they will reward us by not flying airplanes into any more buildings?

CONGRESSWOMAN: I don't think I said that....

RANGER: Other people in the Congress believe that we have to stay strong and hold up the cross of freedom. You don't deny their right to a different faith than yours, do you?

CONGRESSWOMAN: No.

RANGER: None of the statements that you have complained about were under oath, before God, were they? They could have been press statements, or political speeches, the standard sort of puffery that everyone takes for granted, couldn't they?

CONGRESSWOMAN: I suppose so.

RANGER: In your own campaigns you never do spin? Never have exaggerated? Never fudged the truth a little?

[Silence.]

COURT: Answer the question.

CONGRESSWOMAN: Sometimes, we do, I suppose.

RANGER: Of course you do. But you don't expect us to throw you in jail, do you?

CONGRESSWOMAN: No.

RANGER: And you wouldn't expect to throw these defendants in jail just because they do what you do, would you? Of course not.

Nothing further.

COURT: Redirect?

OLD MAN: Congresswoman, have you ever made up false facts for the Congress to persuade that body to exercise its war-making powers?

CONGRESSWOMAN: No.

OLD MAN: You ever stand up and say: "We know where the WMD are: they are east, north, south and west?"

CONGRESSWOMAN: No.

OLD MAN: Ever make a speech calling for peace and two days later design a ruse with fake planes to draw Hussein into war?

CONGRESSWOMAN: No.

OLD MAN: Ever tell Hussein to bring his weapons out into the parking lot when you knew he did not have any?

CONGRESSWOMAN: No.

OLD MAN: I didn't think so. Nothing further.

COURT: Congresswoman, you may be excused. The court will be in recess for five minutes. [CONGRESSWOMAN leaves the stand.]

BAILIFF: All rise!

[COURT leaves.]

POUNDER: [All lawyers but POUNDER exit. POUNDER gets out his cell phone and punches in a number.]

Yeah. It's me. There are people in this courtroom whom I do not know. Get someone over here with a camera; we need pictures and background checks immediately. Also do one more check on the judge's email. Someone is paying for all this; Syrians; Iranians. Not sure. Only got a minute. Got to go.

[POUNDER exits. RANGER returns.]

RANGER: This lawyer just threw sand in that woman's eyes, obscuring the fact that the president himself twice said that there was an Al Qaeda connection and once told the world that there was none. And all the while I carry in my heart the love for truth and, I believe, justice somehow. Oh, what, I wonder, would Jesus do had he the innocence and at the same time the guilt that I have? Do I not also myself engage in spin before this court? Do I not have the Oil Exhibit that the Old Man so desperately wants? Can it be enough to merely say, "I am a lawyer and lawyering justifies pretending innocence?"

POUNDER: [POUNDER returns, on his cell phone.] Get to Fox. The war on terror is being undermined in this courtroom today and the country will be the weaker for it.

[OLD MAN returns.]

BAILIFF: All rise! [All stand.] [COURT returns.]

COURT: Counsel, call your next witness.

OLD MAN: Your honor, the previous testimony has shown how the president kept telling the congress and the American people that he was so hoping that he could keep the peace. At the same time, he was telling the British that he was going in, willy nilly, and they could come or not come. He was either lying to the British, or he was lying to us, and as it turns out he was sure not lying to the British, because in he went, like a coyote after the chickens.

So, first there were those lies about intentions and second there were more lies about the justifications, what the coyotes were telling each other as they headed down the road to the chicken house. It is time to turn to the conversations between coyotes.

POUNDER: God in heaven! First, horses, now coyotes and chickens! The man thinks he is on funny farm!

COURT: Are you worried about being a coyote or a chicken?

POUNDER: Never mind.

OLD MAN: We call Mr. Smith, formerly from the CIA. As agreed, for purposes of national security, it is a pseudonym.

[AGENT comes forward and is sworn.]

OLD MAN: Sir, you coordinated all US intelligence on the Middle East, from 2000-2005, is that right?

AGENT: Yes.

OLD MAN: Please describe the relationship between what the CIA told the President about Iraq's nuclear weapons program and what Bush told the Congress.

AGENT: The President proclaimed in his State of the Union address in January, 2002, that Iraq was a "grave and growing danger. " To the contrary, the CIA's National Intelligence Estimate of December 2001, only one month before, stated that Iraq did *not* have nuclear weapons, was *not* trying to get nuclear weapons and did *not* appear to have reconstituted its nuclear weapons program. So what he told the Congress was the opposite of what the CIA told him.

OLD MAN: The exact opposite?

AGENT: Yes.

OLD MAN: Were there other examples?

AGENT: Later that year, in early October, 2002, the CIA issued a report stating that Iraq was *not* likely to use nuclear weapons, even if it had them. The president ignored this report and continued to warn the Congress of the danger of a mushroom cloud.

OLD MAN: So if he is relying on the CIA, it seems like he is relying just to prove them wrong? Right? He's relying, as in, whatever they say, he says the opposite?

AGENT: It was never that clear. He just made up his facts as he went.

OLD MAN: Before the war, in 2002, did the CIA send Iraqi-Americans to Iraq to try to find out about Saddam's weapons programs?

AGENT: Yes. We sent a woman doctor working and living in Cleveland and about 30 others to go and ask their relatives to find out about weapons programs in Iraq. The doctor's brother had been part of the Iraqi nuclear weapons program in the 1980s. When she and the others came back, they all said the same thing: the Iraqi nuclear weapons program was dead.

OLD MAN: What information did you get about chemical weapons?

AGENT: Hussein's brother-in-law had been in charge of that program in 1991. He defected and came here. He said: "I personally ordered destruction of all chemical weapons." He also said that there were no nuclear weapons.

OLD MAN: And the CIA told the Congress about that?

AGENT: No, this information, like the doctor's and many others was never cited in the October 2002 National Intelligence Estimate which was used to convince Congress to vote for war.

OLD MAN: You were in charge of collecting all US intelligence, and organizing it. What was your ultimate conclusion, in the year before the war, 2002, about the threat from Saddam Hussein?

AGENT: The entire body of US intelligence, taken together, thought that war with Iraq could and should be avoided.

OLD MAN: Was that conclusion ever put before the Congress of the United States?

AGENT: No.

OLD MAN: So then is it accurate to say, as these three defendants so often do, that Congress had all the same intelligence that they did?

AGENT: That would be false. In effect, that is a lie to cover a lie.

OLD MAN: Could you tell whether all this was intentional, or accidental?

AGENT: One lie could be an accident. A second lie to cover the first must be intentional.

OLD MAN: Intentional to do what?

AGENT: Intentional to deceive the Congress and the American people.

OLD MAN: Is it accurate to say that the defendants Bush, Cheney and Rumsfeld were just mistaken, like everyone else?

AGENT: The CIA was repeatedly receiving demands from Cheney to find more evidence. Why would he demand that unless he was after something he knew he didn't have? If he knew that he didn't have it, he wasn't just mistaken. I believe he intentionally held back the flaws in his case.

OLD MAN: Did the CIA encourage war with faulty intelligence?

AGENT: On balance, the intelligence that I oversaw counseled against the war. The intelligence that was released by the White House to the Congress stated only reasons for war. That was not faulty intelligence; that was selective reporting of some of the intelligence.

OLD MAN: Selective to make it more accurate?

AGENT: No. Selective to make it less accurate.

OLD MAN: Again, from your experience in the CIA could this have been an accident?

AGENT: We are professional intelligence people. They are professional politicians. If there was an accident, it was not with the professional intelligence. You would have to decide for yourself whether professional politicians might alter the evidence.

OLD MAN: Did the CIA send the report of Ambassador Joseph Wilson to the White House? That was the report that said that there was no yellow-cake-connection between Niger and Iraq?

AGENT: Yes. This was one of those extra efforts that Cheney and his team were making to try to find some evidence against Saddam. The only problem was that the report came back negative.

OLD MAN: No connection to African yellow cake and Saddam. And you sent that on to the White House?

AGENT: Yes.

OLD MAN: In Mr. Bush's State of the Union address for 2003 did he indicate that he had heard about the Wilson report?

AGENT: He told the Congress that "British intelligence" had made a connection between Niger and Iraq. He did not say anything about our intelligence.

OLD MAN: Which said that there was no such connection?

AGENT: Right.

OLD MAN: In that case, did the President give the Congress the whole truth?

AGENT: He hid what his own CIA did know. He also hid another report that said that the claim about Niger yellow cake was probably a forgery.

OLD MAN: Could this double hiding of the evidence have been an accident?

AGENT: The Director of the CIA had told the president not to use the forged report, earlier, in October, and the White House had agreed at that time, not to use it. But later, before the Congress and the world, he used it. Nothing in the State of the Union is ever unintentional.

OLD MAN: In conclusion, were the justifications for the war true or false?

AGENT: They were substantially false. They were, at a minimum, grossly misleading.

OLD MAN: Are you aware of any information that would suggest that this misleading was accidental?

AGENT: I am not.

OLD MAN: Nothing further.

CHANCE: Every major intelligence service in western Europe agreed that Saddam had or was going to have weapons of mass destruction, isn't that the case?

AGENT: That is not the case. The UN Agency under Mohammed El Baradei had not found any capacity to make nuclear weapons and Hans Blix seriously doubted that any chemical or biological weapons capacity existed. That is why they both urged more inspections.

CHANCE: So you would counsel an American president to just sit back and wait until some monster like Saddam Hussein attacked us, and then, if there was anything left of us, to go after him?

AGENT: The CIA never made any finding of any intention of Saddam Hussein to attack us. Who else knew more than the CIA? The president who claims never to read newspapers?

CHANCE: Now you don't know any better way to stabilize the Middle East, do you, than with military power? This has been the law of the Middle East forever, has it not? Every power in the world has had to do what we have done, so you're not disagreeing with the lessons of history, are you? You never tried to tell the Congress to go against history, did you?

AGENT: No.

CHANCE: That would be stupid, wouldn't it?

AGENT: I suppose so.

CHANCE: Nothing further. [Sits.]

RANGER: Sir, you say that Mr. Bush, cherry-picked the evidence to make a case for war, but actually, you did not give us a single specific fact that he left out or ignored?

AGENT: It is hard to remember every detail. But I'm sure that he was very selective.

RANGER: You are testifying against a president of the United States in a felony trial, and you don't remember all the evidence? You call it fraud that the president did not remember but you can't even remember yourself?

AGENT: The president could have forgotten some things, yes.

RANGER: It is quite likely, don't you think, that the president might not remember what some lady doctor from Ohio found about her brother's work in Iraq?

AGENT: Yes, the president could have missed that.

RANGER: Confusing or leaving some evidence out in a time of great national crisis is not fraud is it?

AGENT: I don't know.

RANGER: You would really like to know, but you just don't. People make honest mistakes?

[Silence.]

Nothing further.

COURT: Redirect?

OLD MAN: Oh, my. There was such a blizzard of evidence that a poor old president could not keep track of what was what?

AGENT: He was going to miss some of the details, I suppose.

OLD MAN: Like the lady doctor and the former son-in-law of Saddam?

AGENT: Yes.

OLD MAN: As I recall, the CIA actually penetrated the very highest levels of the Iraqi government and got to their foreign minister Najir Sabri, right?

AGENT: We did, yes. In 2002, during the build up to war.

OLD MAN: The foreign minister of Iraq himself was a CIA asset?

AGENT: He was, yes.

OLD MAN: What did the foreign minister tell the CIA about Iraqi nuclear weapons?

AGENT: That they didn't have any.

OLD MAN: Which you passed on to these defendants, of course. What was their response?

AGENT: They said, forget Sabri. Don't even go back to Sabri.

OLD MAN: They told the CIA to ignore a high-level asset in the country with which they were planning a war? And not tell Congress about this asset? You had turned the Foreign Minister and they said to ignore him?

AGENT: That is correct.

OLD MAN: And instead tell Congress dangerous, forboding, scary things? [Pause.] You are under oath, sir.

AGENT: Yes.

OLD MAN: Out in the mountains, you know, in Colorado, just where the ordinary people are, we might just call hiding the truth, "lying." What would you call it?

AGENT: Lying comes pretty close.

OLD MAN: Thank you. Nothing further.

COURT: All right. We will be in recess for fifteen minutes.

BAILIFF: All rise. [Court exits.]

[All three defense counsel walk out with their cell phones on, talking to someone. OLD MAN sits at his desk, doing nothing. A man dressed in

black walks through the audience with a small camera taking pictures of the audience. Shortly, all three defense counsel return, looking grave.]

RANGER: Tell me, my friends, are these witnesses not to some degree correct? Is there no problem here with statements that were at least misleading?

CHANCE: C-Span has been reporting from this courtroom directly to the Congress and there is an uproar over there. CNN has been carrying 15 minute updates on the testimony. This is taking an ugly turn! History will not be kind to those who lose today.

RANGER: We are advocates. Is that all? Has truth no place in a courtroom? Is a lawyer a prostitute? There is some pain here I had not expected.

POUNDER: Get real. Look about you. Forces conspire today to take the republic down, whether fairly or no, and they claim the law to their case! We will be the fools if we do not find out who they are. Someone is paying for all this!

BAILIFF: All rise!

[Court returns.]

COURT: Counsel?

OLD MAN: We have one more short item before we break, your honor. It is the simple business of lying about the prosecution of the war about violations of US Code that regulates conduct of American troops.

COURT: All right.

OLD MAN: We call James Hillman, former assistant secretary of defense.

[Hillman comes forward.]

Mr. Hillman, did you or your boss ever authorize torture, at Guantanamo, or Abu Ghraib or anywhere else?

PENTAGON MAN: No sir, we did not. The United States opposes torture. It is against the law. We are a civilized country.

OLD MAN: Even though we are a civilized country, Mr. Rumsfeld certainly did authorize torture, did he not?

PENTAGON MAN: Extreme measures, but not torture. We had a law.

OLD MAN: What you were doing was just questioning?

PENTAGON MAN: Yes, sir.

OLD MAN: So you would not object if I just questioned you a little more about it?

PENTAGON MAN: All you want, sir, my answer will not change.

OLD MAN: I believe that. Now tell me, is water-boarding torture?

PENTAGON MAN: Water-boarding?

OLD MAN: You strap a guy to a chair and lower his head under water and make him think he is going to drown, or leave him under so long he is terrified. Is that torture?

PENTAGON MAN: Extreme pressure is not torture.

OLD MAN: So you won't mind if we just do a little water-boarding here and now will you?

PENTAGON MAN: I would certainly object!

OLD MAN: Why is that?

PENTAGON MAN: Because it is.... Because it is....

OLD MAN: Yes, sir, because what? Tough one, isn't it? Well somewhere around here I think I have a bucket of water. We can try this and then you can give the court your honest opinion whether your bosses lied when they said water-boarding is not torture. So, let's

PENTAGON MAN: Not ever!

OLD MAN: Because why? [Pause]

I'm sorry, I didn't quite hear it, yet. Because why?

PENTAGON MAN: Because it's.... Because it's

OLD MAN: Now you see the problem, sir, don't you. It looks to us like you are saying it would be torture if applied to you, but is certainly not torture if applied to someone else. You see the problem that puts us in, sir?

PENTAGON MAN: Extreme pressure is not torture.

OLD MAN: Well, yes sir, I can see that you would like to make that distinction but you know it just doesn't solve our problem because it will still look as if we cannot do extreme pressure on you but it would be OK to do extreme pressure on someone else. So there we are still looking very unfair, sir, in the eyes of the world.

PENTAGON MAN: I am not a criminal!

OLD MAN: Well, sir, you are not a proven criminal, not yet, and you probably think we would just be tormenting you because of some organization you belong to, not because of who you are?

PENTAGON MAN: You are lumping me together with other neo-cons! We are not all criminals! Holding a belief is not criminal!

OLD MAN: I'm sorry, you can't argue that, either, sir. If you do, you'll have to let go all those Talibans that you rounded up just because of what they called themselves. We'd have to empty Guantanamo. That excuse would get you in a lot of trouble, sir, back at the office, if you survive the water boarding. We got to find something else, sir.

PENTAGON MAN: I am not a terrorist!

OLD MAN: Yes, sir, that sounds very nice, but how do we know unless we water-board you? Isn't that what water-boarding is for? Let's us just see if we can find a bucket...

CHANCE: Jesus, God! That's torture! Just making the *threat* is torture!

OLD MAN: Thank you, counsel. Thank you very much. I do believe that that is an admission on the record.

Violation of Sec. 2430A of Title 18, United States Code, prohibiting torture. There, your honor, that's our case. Lies about how they have prosecuted this war. Claiming they did not do torture and now admitting that they do.

No further questions.

COURT: Cross?

POUNDER: My God, your honor, what nonsense. No. Nothing. Of course we would not dignify this. [Witness steps down.]

COURT: All right, this court will be in recess until 1:30 this afternoon.

BAILIFF: All rise!

[COURT exits.] [OLD MAN exits.] [Three defense lawyers rise and move in separate directions, dialing and then talking on cell phones.]

POUNDER: Yes, sir. Yes, sir. All right. No, sir. No sir. I don't know where this guy gets his information but it sure as hell does not come from western Colorado; he has to be getting help from somewhere and there is not a loyal American anywhere who would put him up to this. Yes, sir. He has got to be part of some world-wide gang that is trying to bring down this whole country. Yes, sir. Yes, sir; I agree. All right, let's go to the source. Yes sir. To the source; better than just heading them off here.

[Signs off and redials with a single button.]

This message to O'Reilley at Fox: From the Vice President's office: We are going to move to Plan B; we are going to go to the source. Tell O'Reilley to stand by with maps and facilities locations of nuclear sites in Iran. Yes, I said Iran. Copy same as we provided on contingency this morning.

[RANGER comes back to counsel table, meets POUNDER there. CHANCE joins them.]

RANGER: Senator Feingold's censure motion is picking up signers in the Senate. Representative Conyer's resolution to investigate grounds for impeachment is gaining adherents among democrats in the House. CNN instant poll has the president down to 30 percent. The Old Man is going to come back in this afternoon looking for that Black Gold oil exhibit.

CHANCE: Under court rules we have held that back as long as we can.

POUNDER: Redact it.

CHANCE: On what grounds?

POUNDER: It does not matter. Redact it. We have to win here or this is a failed presidency. Call the President's office and tell them the Vice President has decided that it is time to move to Plan B. Either we take control now, or lose it forever.

RANGER: On what grounds? The Non-Proliferation Treaty says that that country can enrich uranium for peaceful purposes! Seriously! We have no legal justification for Plan B whatsoever!

POUNDER: Counsel, you represent the president of the United States. He needs your help. He needs my help. He is in a position where the law does not any longer protect him. When that happens, that is what tanks and planes are for. That is the story of history and you, counselor, are not going to change five thousand years! Make your calls, guys.

[RANGER and CHANCE get back on their phones and drift away from the table. POUNDER moves center stage and slowly pulls out his phone and dials a number.]

Jane? [Pause.] Something evil brewing here. On the face of it, we look OK, we have scored some points on cross, but the case for lying is picking up support. I have spoken to the Vice President and we have decided to move to Plan B. [Pause.] Yeah. There may be some reaction. Crowds. House. People could get out of hand. Get the boys.

[Pause. Listens.] Montreal. Hotel Regal. I'll call you there tomorrow. Yeah. Yeah. The Iranians are crazy. They could react very irrationally. Yeah. Yeah. You know, honey, I always tell everyone else we judge a man by who he is in a crisis; when the bullets are coming in, who will get out of the foxhole and lead? [Pause.] Gallipoli? No, it is not Gallipoli. But even if it is, we have to go forward. [POUNDER exits.]

[RANGER returns talking on a cell phone.]

RANGER: What higher calling than complete loyalty? And yet, where in the Bible is loyalty ever next to Godliness? Must we, ever loyal, keep secret the Black Gold Exhibit, and now this? Now Iran! Look at me. I am actually sweating. Ah!

[OLD MAN comes back to retrieve some papers. RANGER stands in front of his desk, as if paralyzed.]

Can we speak a moment? Lawyer to lawyer?

OLD MAN: Sure. What do you want?

RANGER: Listen. I don't like it; I don't like it at all, but there is going to be something very big that is going to happen and it could upset this whole thing. Very big. I don't like it at all.

OLD MAN: Pounder is going to say that this is my first trip east of the Mississippi?

RANGER: Don't be a fool. You are not a naïve country lawyer like you pretend to be and Pounder thinks that steps have to be taken.

OLD MAN: Steps? What steps?

RANGER: [Pauses.] Be prepared for war on Iran.

OLD MAN: What!? [Pause.] When?

RANGER: In time to be sure that this case is never decided.

OLD MAN: You are leaking this to me? Why?

RANGER: Sometimes even a lawyer has to do what is right.

OLD MAN: Jesus.

RANGER: Don't say "Jesus." If it weren't for Him, I wouldn't be doing this.

OLD MAN: Well, damn. Coming around the final bend with a nose in the lead and someone shoots my horse! Boom. Done. I'm over.

[Exit RANGER and OLD MAN. Enter REPORTER, microphone in hand.]

REPORTER: Jim, yes, it is true, no question, the president has been put on the defensive, but from what we hear in the hallways over here, it

may all be unimportant. There is a rumor about Iran. If that happens, I can tell you, this trial will be over in a blink. As the saying goes, truth is no player on the battlefield of war. This is Sandra Jones, live at the Court of Common Opinion, and we are definitely waiting for the next shoe to drop!

Act II

Setting: OLD MAN is alone at his table. Defendants' counsel are seated at their table. A man with a camera drifts through taking pictures of the audience, trying not to be noticed.

BAILIFF: All rise!
[Court enters.]

COURT: Counsel, I am informed that there is a national crisis brewing at the White House. I will tell you I am very uneasy about this case, just at this time.

OLD MAN: There is always a crisis brewing at the White House, your honor. They use crisis escalation like it was a an ingredient in a salad. Of course they are escalating.

COURT: Cynicism, sir, is beneath you.

OLD MAN: Well, if I can get a copy of the Oil Exhibit, I believe I could show you how it works.

COURT: What is that?

OLD MAN: Not sure, your honor, until I can see it, but I have requested it several times and all they will actually turn over is a redacted copy. What the hell use is that?

COURT: Mr. Pounder?

POUNDER: Got to keep these things under wraps sir, we all know that. But if the court orders it, we might be able to have it by tomorrow morning. That would be the very earliest.

COURT: All right, tomorrow morning then. Sir, you may proceed with your defense.

Defendants are ready?

POUNDER: Yes, your honor. We call professor Adam Rabinowitz, advisor to five presidents and professor of economics at more schools than I can list.

[RABINOWITZ comes forward.]

POUNDER: Professor, does Section 371, prohibiting acts to defraud the Congress apply to the president in time of war?

PROFESSOR: The president has the power as commander in chief to do what is necessary to protect this country. More than that, he has the responsibility. He must do that.

POUNDER: The idea that Congress must declare war is by now a practical fiction, is it not?

PROFESSOR: Teddy Roosevelt took Panama on his own initiative. Truman went into Korea without congressional declaration of war. Eisenhower went into Beirut. Reagan sent troops into Grenada. Clinton, into Bosnia. The requirement for a declaration of war is no longer real in American practice.

POUNDER: Is the president required to supply to Congress every detail of his plans, in advance, or can he hold something back?

PROFESSOR: You don't tell the enemy when you are going to strike, in advance. That would be silly.

POUNDER: And therefore you don't share with the Congress all the details of CIA reports or defense intelligence, do you?

PROFESSOR: That would insure that any military effort would fail.

POUNDER: So, it's not fraud to withhold certain information from the Congress, is it?

PROFESSOR: It is a military necessity.

POUNDER: And therefore certainly not a violation of section 371 of the US Code, title 18?

PROFESSOR: Of course not.

POUNDER: Professor, do you have an opinion why no president has ever been found to have violated section 371?

PROFESSOR: The section was clearly intended to apply to witnesses who testify under oath to the Congress and not to political exhortations which are never under oath.

POUNDER: And therefore certainly not to statements made in the State of the Union address or in press conferences?

PROFESSOR: Clearly those are cases where the president is trying to muster political support for his national agenda, a perfectly appropriate function of presidential rhetoric. Rhetoric is not lying, or defrauding the Congress.

POUNDER: And none of the utterances cited by the prosecution in its case was under oath, was it?

PROFESSOR: No. They were all political statements.

POUNDER: Thank you, sir. Nothing further.

OLD MAN: Now you are a very wise man, and you have written a great deal and you say that it is not against the law for a president to deceive the Congress about when he intends to go to war or about his justifications. Why do you suppose that the Constitution requires him to go to Congress at all?

PROFESSOR: To consult.

OLD MAN: Consult about what?

PROFESSOR: About the war.

OLD MAN: About whether it is advisable?

PROFESSOR: Of course.

OLD MAN: Now, can you just explain to this court how it is useful to consult the people's body, when you don't tell that body the facts? You say to your neighbor what do you think about me buying that horse but you don't tell him that the horse is bloated, barren, lame and got the colic? What kind of consulting is that?

POUNDER: Jesus!

COURT: Is that an objection?

POUNDER: Of course! He's making speeches. This is a court of law not a country pulpit.

COURT: Ask a simple question, sir.

OLD MAN: All right. You said that practically speaking, it's very important to keep secrets from Congress. Can't win wars if the people's house knows what the president is doing. Right? President has to be president. No one else can be president? Right?

PROFESSOR: Exactly.

OLD MAN: So who else is going to be *Congress*?

Who else is going to advise and consult and weigh the consequences, just as the Constitution requires? Who else to maintain the balance of powers? Who else you got in mind for that job? Some un-elected university professor who writes in his books and papers that lying and empire building is OK?

PROFESSOR: I just said that the commander in chief cannot tell the Congress everything.

OLD MAN: Oh, you have said more than that, haven't you? You have written, professor, and your neo con friends have written, that it is perfectly OK to lie to win, OK to be a pagan to win, OK to mislead to win? You even write about being pagans in a modern world, don't you?

PROFESSOR: Some of us have written that, yes.

OLD MAN: And you have read the writings of Leo Strauss of the University of Chicago, and Robert Kaplan and all those others who openly advocate American empire, have you not? They advocate a "pagan ethos?" You know that? And a "pagan ethos" is one that admits the value of presidential lying, right?

PROFESSOR: I have read them, yes.

OLD MAN: Not very Christian, are they? You ever hear of Christ advising people to lie?

PROFESSOR: I can't answer that.

OLD MAN: And you going to tell this court, under oath, that you have not agreed with those fellas when you were advising these three defendants?

PROFESSOR: I have agreed with these writings, yes.

OLD MAN: You bet. And defendants Cheney and Rumsfeld have read them, and all those boys who advocate torture have read them, and you know that to be a fact, do you not?

PROFESSOR: I can't say what they have read.

OLD MAN: You just don't know. Maybe they kept it from you. OK to tell some people some things and other people other things?

PROFESSOR: Of course. Everybody does it. You do too.

OLD MAN: So how does a man who advises presidents and this court know when to tell the whole truth and when to tell half truths? You got some rule for when to tell half truths?

PROFESSOR: There is no such thing, except in philosophy and religion, as complete truth. Everything in real life is competition in perceptions. Your truth is certainly not mine.

OLD MAN: So you could tell—not just presidents—but this court just about anything, always relative to something else?

PROFESSOR: As a philosophical matter, yes, truth is relative.

OLD MAN: So if it's relative, why did you come here and swear to tell the whole truth?

PROFESSOR: You cannot actually tell the whole truth, sir. No one knows the whole truth.

OLD MAN: You going to let us know when you are telling half truths or do we have to guess?

PROFESSOR: I was being truthful, just now.

OLD MAN: But there is no such thing as the whole truth, so maybe you were telling this court half truths?

PROFESSOR: You are twisting my meaning.

OLD MAN: No, sir, it is you who are twisting the meaning of an oath in this court, or the oath of a president to serve his people.

No further questions.

COURT: Professor, you may be excused.

POUNDER: We call Thomas Smithson, historian.

[HISTORIAN takes the stand.]

Sir, in the long history of the presidency, has it been customary for presidents from time to time to lie?

HISTORIAN: Of course. Bill Clinton lied about his affair with Monica Lewinski. Ronald Reagan lied about his support for the Contras in Nicaragua. Richard Nixon lied about Watergate. Lyndon Johnson lied about Tonkin Bay. Dwight Eisenhower lied about the U-2 flights over Russia and his jeep driver. They all lie.

POUNDER: Any of them ever get brought before a court to answer for those lies, some of which were necessary to protect the nation?

HISTORIAN: Of course not.

POUNDER: You have studied war history. Does a commander in war depend upon deception and surprise?

HISTORIAN: Of course. In battle, deception is his greatest asset.

POUNDER: And if it is necessary for the commander in chief to shade the truth, or use it sparingly, in order to keep the enemy off guard, or to surprise a terrorist cell, that is what the Constitution expects of him as commander in chief, is it not?

HISTORIAN: Historically, his constitutional power overrides the powers of the legislative branch when necessary to defend us.

POUNDER: Article II sometimes requires him to do in time of war things he could not do in times of peace?

HISTORIAN: Yes. That was true for Abe Lincoln; for Woodrow Wilson, for Franklin Roosevelt and every president in time of war. The powers of the commander in chief are paramount when the nation is threatened.

POUNDER: Your witness.

OLD MAN: Kind of like having toast for breakfast? President's just lie because they can?

HISTORIAN: Yes. They all do.

OLD MAN: But sir, in this case, there is more involved than merely lying, isn't there?

HISTORIAN: I don't know what you mean.

OLD MAN: Well, this is not just telling the American people a misleading story about the Gulf of Tonkin, or Monica Lewinski, is it? There is actually something else going on, don't you think?

HISTORIAN: I don't think so. It's a pretty normal case of political talk and diplomacy.

OLD MAN: Except sir, when your CIA has told you Saddam Hussein does not have WMD, and you then give Saddam an ultimatum "bring your WMD into the parking lot," and when and in addition you tell him that if he does not bring them into the parking lot you will go to war, you have created a formula for inevitable escalation, have you not?

HISTORIAN: No, you have made a diplomatic demand.

OLD MAN: Oh, no, it is way more than that, isn't it? If you were, say,—let us change the example—to tell the Iranians that you will negotiate, but before you will negotiate they must forfeit rights to which they are entitled under international law, rights upon which you know they will insist, you have created a formula for inevitable escalation, have you not?

HISTORIAN: In that case, Iran just has to come to the table.

OLD MAN: Only you have set a pre-condition which you know that politically for them is impossible: that they give up even a peaceful program for enriched uranium. Under the law they are entitled to that program, but you say to their proud leaders that they must give it up before we will even talk. You then give them “weeks, not months” to decide to give up their rights. No wiggle room. That is a formula designed to fail, is it not?

HISTORIAN: It is called tough bargaining, not letting ourselves be pushed around by false claims and false promises.

OLD MAN: Not only is it designed to fail, it is designed to excuse us from any further diplomacy and therefore certainly escalate toward armed conflict, is it not?

HISTORIAN: I thought we were talking about Iraq.

OLD MAN: Yes, excuse me, of course we are. So, in Iraq, you say to Saddam show us proof of a negative, proof of nothing buried in any hole anywhere in the sands of the desert, and you know that Saddam can never prove that. That was a demand designed to fail, was it not?

HISTORIAN: Not if he came clean.

OLD MAN: Came clean with what? Your CIA has told you he has nothing to come clean with! And in that case, sir, you have made a so-called diplomatic offer to settle the dispute; it makes you look good; but you have actually made an offer which is guaranteed to escalate to war. Correct?

HISTORIAN: If Saddam told the truth, we would not have had to make such demands.

OLD MAN: Didn't matter if he told the truth, did it? What he did, or said, either one, was guaranteed to fail: No documents, or 12,000 pages of documents, either one. The formula for inevitable escalation had him nailed.

HISTORIAN: That is cynical, radical extremist talk.

OLD MAN: A little like Kaiser Wilhelm leading into World War I? He got the war he wanted, too, didn't he? Talked peace, intended war? You have any reason to think this administration is less cynical than Kaiser Wilhelm?

HISTORIAN: There is no comparison.

OLD MAN: A little like Hitler demanding concessions in the Sudetenland? Designed to fail, don't you think?

HISTORIAN: That is slanderous!

OLD MAN: Not only inevitable escalation designed to lead to war, but designed to escalate just during our congressional elections?

HISTORIAN: You are insinuating that the rest of the president's justifications were all lies.

OLD MAN: That is the logical conclusion, yes sir.

Nothing further.

POUNDER: That is all that we have, your honor.

COURT: All right. We will take a five minute recess.

BALIFF: All rise. [Court exits.]

POUNDER: Was that old man ever married? He got any kids of draft age? Who the hell was he before he came here? I can't believe we did not know who he was before he walked in.

RANGER: He's just another public interest lawyer! You know, some of these guys, especially the old ones, work for nothing, just for the love of the law.

POUNDER: Jesus, Joe! Get real! No one loves the law more than his country and he is screwing his country!

RANGER: I would rather you not "Jesus, Joe!" me.

POUNDER: Sorry! Jesus God! How's that?

CHANCE: The buzz on Iran is having its effect. Get ready for an evening interview on Fox. I don't know about you gentlemen but I think victory is on the way. [CHANCE and POUNDER exit.]

[RANGER rises and walks out after OLD MAN who is also leaving. Looks as if he would like to speak to him. Hesitates. Stops. Returns to courtroom.]

RANGER: I would be loyal to the Word if I could and I would be loyal to my president, if I could. Now they are in conflict and I, a man of conscience, seem a worm, twisting in the wind. And yet it is somehow false to imagine that in a moment of maximum moral uncertainty one somehow *decides*. I do not decide; I feel compelled.

Oh, noble compulsion! I am no longer sweating!

[OLD MAN comes back in. RANGER reaches into his case and pulls out a brown envelope. He looks it over slowly, turning pages. Standing. Slowly, he walks over to OLD MAN.]

I have something for you to look at.

OLD MAN: What are you, some kind of mole? Like in a spy novel?
By God, I never thought I would really, honestly, meet a mole!

RANGER: If Jesus speaks to the president he is telling him
different things than he is telling me.

OLD MAN: And?

RANGER: I I do not like taking advice from pagans. The country
is ill. Anyone can see that. I may be on the wrong side. Would Christ
talk to you? Maybe he would.

Just take this little offering and then forget we ever spoke.

OLD MAN: [Looks inside the envelope. Immediately grasps the
importance of what is inside.] This is the Oil Exhibit! Yes! I knew it
existed. I'll be go to hell.

[RANGER leaves. OLD MAN reads carefully, starts to count names on the
pages.]

BAILIFF: All rise! [Court re-enters.]

COURT: Sir, do you have any rebuttal?

OLD MAN: Well, you know, it just turns out, I have one more
exhibit, your honor.

COURT: All right. What is it?

OLD MAN: Well, I call it the Oil Exhibit, your honor. It is proof of
some serious motive for telling lies.

The first two pages...

are a list of foreign oil companies lined up to get contracts from Saddam
Hussein. The date is March 5, 2001. That is about six weeks after Mr.
Cheney came to power and was supplied to his Energy Policy Task Force.

The document they were looking at is entitled: "Foreign Suitors for Iraqi Oilfield Contracts. " It has a list of companies and countries from the "A"s, Australia, the BHP company, Belgium, Petrofina, Canada, the Ranger corporation, status: "signed MOU in Baghdad." It's all here. China, the Czechs, all the way through Japan, Russia, to Turkey, the UK, and even Vietnam. There are 30 countries on that list. Every one with a designated oil company for a specific location in Iraq: Khurmala, Tuba, Rumaylah, Nasiriya, on and on.

POUNDER: Wait a minute! Where did he get that! Where did that come from? Objection! Who does he think he is! That's a national security document!

COURT: Well, can you authenticate it, counsel?

OLD MAN: Seems to me, Mr. Pounder just did. He told the court it was a national security document. He knows it's real or he would not be screaming.

COURT: Well, where did you get it?

OLD MAN: Like in, where did it come from originally? or where did it come from most ... recently?

COURT: Beats me. Where is it from originally?

OLD MAN: Could I just have a five minute recess your honor?

COURT: Now?

OLD MAN: Just to check something, your honor. Won't take a second.

COURT: All right. Five minutes. Happy hunting.

BAILIFF: All rise! [Court exits.]

POUNDER: Jesus! Where did he get that?! That could kill us! He has a mole in the Commerce Department, I knew he looked foreign!

CHANCE: Call Commerce and check it out!

POUNDER: Call the freakin' FBI!

[POUNDER and CHANCE walk out bringing out their cell phones.]

OLD MAN: [Gets out a cell phone of his own, punches in a number.] Joe?

RANGER: Yeah?

OLD MAN: Joe? Joe? Where did I get this? Quick.

RANGER: [Looking wildly around.] Honey? Honey? Oh, honey, I can't talk now!

OLD MAN: Can't talk?! Can't talk?! Joe, this is the whole case. Where did I get this thing?!

RANGER: Honey? Honey? You're shopping? Shopping, did you say? Good honey, keep shopping?

OLD MAN: Shopping? Shopping? Like in shopping where! Jesus!

RANGER: Honey, don't you say "Jesus!" like that, or we're done!

OLD MAN: Oh, no, not Jesus. Just Gimminy Crickets! Where did I get this thing? Shopping for what?!

RANGER: On the commercial markets, honey? Really? Listed on the commercial markets? Oh! Oh! Here comes the court, honey. As far as I can tell it's judicial watch time and just try to stay commercial baby. OK? Got to go, Honey.

OLD MAN: Joe Ranger. What would Jesus say?

RANGER: Ah!

The Commerce Department. Obtained public in response to a Freedom of Information Act Request from Judicial Watch, a conservative group in Washington, DC. [Hangs up.]

OLD MAN: [Hangs up. Under this breath:] Thank you, Jesus!

[Re-enter POUNDER and CHANCE. The COURT follows.]

BAILIFF: All rise.

COURT: Be seated. Where'd it come from, counsel?

OLD MAN: Thank you your honor, thank you. Yes, sir, I did have to check that out. I believe Sir, that this document was ...

POUNDER: Ha!

OLD MAN: ... was supplied.... Ah, yes, sir. This document was supplied to Judicial Watch, a court watch-dog group in response to a ... a... to a ... a... FOIA request. It has a Department of Commerce Official stamp and was kept in the normal course of business. It's called the Oil Exhibit and not many of us have been able to get their hands on it. I just happen to have a copy.

POUNDER: Whoa! That's the exhibit we call Black Gold! It's a national security document!

COURT: Well, if it was supplied pursuant to a FOIA request it is authentic. You may proceed counsel. You were listing all the countries on that exhibit lined up for Iraqi oil. Did that list include the United States?

OLD MAN: No, your honor, not including the United States. That was the problem. If something was not done to remove Saddam Hussein

from power every one of those 30 countries was in line ahead of the United States for the huge resources of Iraqi oil. Every one.

COURT: Are you saying that if we did not go to war to unseat Saddam, that all his oil was pledged to someone else? And that is what motivated Mr. Cheney to go to war? That's what's on this so-called Black Gold Exhibit?

OLD MAN: The CIA witness testified this morning, your honor, that this was not a war on terror, it was war against Saddam. Here's why: In March, 2001, the Cheney Task Force demanded the full list of those countries already in Iraq, and here is the response and it was appalling. Thirty countries were already negotiating contracts. Cheney was an oil man. He knew the stakes. Sanctions against Hussein would not get those countries out. Inspectors for WMD would not get those countries off this list. There was no legal way to get those countries out; they were all in front of the United States, and of course, in front of Haliburton. There was no civil remedy! The American oil industry had been completely out-maneuvered in the world-wide scramble for oil reserves. There was simply no way to get all those countries out of our way without a war.

COURT: What is the map?

OLD MAN: It shows the blocks of oilfields. They are all laid out in front of Dick Cheney in March, 2001. He is having a meeting of his *domestic* Energy Task Force and here they are looking at a map of oil reserves in Iraq!

COURT: What is the date of that map, again?

OLD MAN: March 5, 2001, your honor. Six months *before* 9/11.

They were looking at this map before they made up all that business about weapons of mass destruction, before they made up the war on terror.

COURT: It does suggest a motive.

POUNDER: Objection! We don't know what else they were looking at! It could simply be evidence that they were looking at all the oil reserves in the world. That's all. The document is not probative, a waste, a scrap!

COURT: Counsel?

OLD MAN: Here in the Black Gold Exhibit was a motive for deception and a good motive makes this war seem a lot less like an accident, or even a mistake, which is their whole defense. Look: If they intended democracy, the results have been disastrous. But what if they did simply intend to plant American military bases on the world's third largest oil reserves?

POUNDER: Same objection! Irrelevant! The document is not probative!

COURT: Counsel?

OLD MAN: Well, now, let's just think this through. These three defendants armed—as I recall—equipped and sent their friend Ahmad Chalabi, a convicted Iraqi embezzler, to Iraq the first month of the invasion with a private force of 700 men.

POUNDER: We still object! It is irrelevant what Chalabi did!

COURT: How is Chalabi relevant?

OLD MAN: Under the interim Iraqi government, Ahmad Chalabi was Oil Minister. All those 30 countries who were in front of the United States on the Black Gold Exhibit would have been required to submit their bids through him. Chalabi was in position to rewrite all those contracts. He was in position to throw the Black Gold list out the window.

What did this war accomplish for democracy? Nothing. What did it accomplish for Haliburton? Well, it erased the 30 countries on the Black Gold list, that's what. And these three defendants are now in charge of

who gets that oil. No failure in Iraq for them. That is a completely successful result, if your purpose, all along, was only oil.

POUNDER: Your honor is aware that serious matters are brewing at the White House and that casting doubt about the motives of the president of the United States is tantamount to letting courts interfere in foreign affairs. To be interested in oil is no crime, your honor. We object to this whole line of testimony because it opens the door to prejudice and is horribly misleading.

COURT: The oil exhibit suggests a motive not related to terror and will be received.

OLD MAN: We are ready to close, now, sir.

COURT: All right, proceed.

OLD MAN: Thank you, sir.

First, they lied about their intentions to invade Iraq. Second they lied about their justifications. Third, they have lied about how they conducted their occupation, the torture they used.

They lied about their true objective which was to camp out on Iraqi oil and hold it, for all time. They were planning that from March, 2001, when they first got the Oil Exhibit. Then, along came 9/11, and that was very, very convenient. Oh, yes, that was very, very convenient, it surely was. It gave them an excuse to go after someone, somewhere. Well, actually, it gave them the perfect excuse to go after anyone, anywhere. The only trouble was that the attackers did not apparently come from the land of Black Gold, and so they had to spend the next 15 months trying to make the connection so the Congress would buy it. "Bulletproof," said defendant Rumsfeld, as if he knew of the Al Qaeda connection. "We know it," says defendant Cheney, as if he knew. But they didn't know. "Well, I can't make that connection," said defendant Bush, and for a moment, he admitted that none of them knew. Before, of course, he went back and said he knew.

Now, it is not a crime, maybe, to lie to the American people. But how can the Congress be Congress without true facts? How can Congress be a fair *advisor* without true facts? And how can they have true facts if they are informed by those who do not know the difference between what truth is whole and complete—and what is only half? How can there be any working relation between the executive and any other branch of government when everything that is said is only half of what it seems, or twice what it seems, or not what it seems at all? And how can any government thus confused—awash in a sea of such confusion—long persevere to protect the common good?

How can any court, this court, trust the very information it has heard here today, if the very idea of truth is itself corrupt at the core? We don't know if one word they told you here today was true because they said, with pride in their wisdom, that they did not know what truth is! No, they do not know at all.

POUNDER: Your honor, I believe we can no longer tolerate this man going on and on, spouting slogans of the extreme left, and not know the answer to the question, 'Who does he represent?' Burundi? The PLO? Al Qaeda?

COURT: Counsel, you want to put this to rest?

OLD MAN: He wants to know who pays me?

COURT: I guess he wants to know how you have an interest in this case.

OLD MAN: Well, you know, he's got me there. I do not have any property interest in this case. I do not have any dime to make or lose. I do not have standing in the sense of some great corporation about to go out on its ear. He has nailed me; he has. I am just here as a man who has spent his life in the law, has a love and reverence for the law as the crown jewel of western civilization; who has inherited his rights, like every other American from the Constitution, and before that the English Bill of Rights and before that the Magna Carta. Other than standing up for all those human beings, men and women of color and conscience throughout the

ages who have depended upon the law, I don't suppose I represent anybody.

POUNDER: Won't work, your honor. Just anybody could come to court under those premises.

COURT: You represent just you?

OLD MAN: And, I suppose, a few others who don't like what happened to ancient Rome and don't like what is happening here. Could be a few million of us. And then, too, I suppose, you have to count the millions of our grandchildren and their grandchildren who, five hundred years from now will look back upon this time and read the history of this great republic and weep. They will weep when they learn that there was a moment in history when the tide of tyranny could have been resisted and was not. There could be a few million of them, too.

COURT: Well, you may represent yourself long enough to finish your argument but without a property interest, it is hard for me to find that you have standing. Mr. Pounder is right.

OLD MAN: Doesn't the Constitution require you to protect the *general* welfare?

COURT: Proceed, sir, and be done. I will decide standing if we ever get that far.

OLD MAN: Thank you. I just say, before I go home, let this court apply the law because if the law does not apply to the high born and the mighty as well as to the impoverished and the downtrodden, then the law has no meaning. If those who are in power may freely lie, but those who are not in power must go to jail for lying, then the law has no meaning. Put the law back in our lives today. Give it meaning once again today, for all the people, and they will be grateful to you, for all time.
[Sitting.]

COURT: Closing statements from the defendants?

POUNDER: For what reason might a man whose organization and allegiance we do not know, attack his own country? Disgruntlement? Disappointment? A preference for party above patriotism? Do not rule out the possibility, your honor, of mere avarice, an avarice which when flamed can rise even above his affection for his fellow citizen. Why, yes, it is avarice, of course. We cannot know the source, from what un-loving mother, what harsh father, from what disappointed professional career the coils of a malignant heart; we can only do our best to rise above these petty insults to our persons and carry on to defend this great land. I do not think this case was brought to defend the law. I think this case is about disappointment and failure in an ordinary life, masked to look like an interest in principle. Trace these principles back to their source, however, and they are apt not to come from this land, from the engine of American creativity or individualism so much as from some benighted collectivism, some communal dismissal of the value of the common man. Know all this, your honor, and rest easy with your decision to dismiss, rest easy with the idea of the courts in balance with the executive but not ruling over the executive, and all will be well. Thank you. Do your duty; dismiss this case, and all will be well.

CHANCE: Civilization is not ever maintained by weakness or by cowardice. These times demand great leadership and the advance of our republic depends entirely upon our will. That is why the Constitution gives the commander in chief extraordinary powers, because times of war are not like times of peace. He is fully entitled under the law to make judgments about when and where to defend this country. More than entitled, he is required to do so.

We live in a new world. Can we afford to wait for the next plane to fly into the next tower, the next bomb to explode in a great sea port, or the next bridge to come crashing down? Of course, we cannot. These idealists want the flimsy fabric of medieval law to hold back evil. It will not do that. It has never done that. Only strength and will and courage can do that. Only aggressive pursuit of evil can do that. Do not turn naïve, your honor, do not hold back a great leader when most of all he needs the freedom to lead. When our work is done, then it will be time enough to make a fetish of the law, time enough to laud the gentle and the kind, time enough to make music and sing of peace. But civilization

has not yet gotten to that place, your honor, and until it does the world needs leaders like George Bush and Dick Cheney and Don Rumsfeld.

RANGER: I have nothing to add, your honor.

COURT: Nothing?

RANGER: No sir, nothing.

COURT: Surely, sir?

RANGER: I am not able to add, your honor, to combat upon a field upon which perfidy and prejudice and pride are so thoroughly mixed, where truth has no certain friend, and justice is not blind. No, not blind at all, not for one side or for the other. This is a sad day sir, and I cannot see how it will end.

POUNDER: [Rising.] Your honor, I think we have a problem.

BAILIFF: One moment, your honor. [BAILIFF rises and quickly leaves court. Immediately comes back with a note for the judge.] Your honor. [Hands the note over.]

COURT: I have received information that the United States has begun bombing nuclear facilities in Iran.

[Pause.]

POUNDER: How sad. How sad. That the world should come to this. But there it is, again, your honor, the need for strength and will in this time of enemies on every side. Clearly, your honor, at this time you must dismiss this action. We are at war, an ever expanding war, and no president of the United States has ever been forced to such indignities as to be subjected to a felony trial which is, on its face, ridiculous reward for courage under fire.

[OLD MAN sits with his head bowed.] [POUNDER takes his seat.]

COURT: Counsel, I am not inclined to sit on this bench and meddle into the foreign affairs of this government, nor hamper a duly-elected government in the exercise of its constitutional powers to make war and prosecute that war as needs may be to protect the people of this country.

So we are through. Under the court's rules you are entitled to have a final rebuttal.

OLD MAN: In 1215, in England, King John was a lecher and a murderer and a wimp and a cheat and the barons were not a whole lot better, but what they had learned after years of fighting was that, no matter who you are, war sucks and drains and bleeds and kills a nation. So they proposed a whole new principle: no more war, no more new taxes, unless we all meet in council to talk about it. And no more courts, either, just wandering around after the king doing his bidding. That's the origin of people's courts, your honor, and it was not meant to protect kings, it was meant to protect people who were not kings.

Now, Mr. Pounder and Mr. Chance come to this court and tell you that you have got to suspend the law just long enough to get another war going. You think we have not heard this before? We heard this 700 years ago. George Bush already has two wars going, and now he will start a new one because he likes to do that before elections. At the outset of the war in Iraq he was fond of saying that 12 years was long enough to wait for Saddam Hussein to comply with UN resolutions, which, he said, had the force of law. Well, let those of us who believe in the law, tell him something: 700 years is long enough to wait for little boy kings to stop playing around with murder and mayhem and criminality and cruelty pretending to spread freedom and justice.

When I went to school, we believed that the march of civilization was important, and that the march of democracy was important, and that the march of the law was important. You suspend the law for another of these wars, and I'll tell you honestly you take us back 700 years. We never did believe, out where the people are, that we would see a king again, this time in a blue suit and a red tie, come along and tell us that the law does not matter; we never did expect that. No we did not.

The people rest, your honor.

COURT: Gentlemen, neither side will have any objection, I believe, if, in the interests of democracy I take this case under advisement.

POUNDER: What?? Your honor promised to dismiss this case!

COURT: You know, I think I said “inclined” which is not the same as “promise.” Now, I believe that you all today have given me a great deal to think about. Magna Carta, Constitution, rule of law, indeed.

This Court will be in recess.

BAILIFF: All rise!

[Counsel stand and judge exits.]

[REPORTER appears down left with microphone in hand.]

REPORTER: Jim, the court seemed about to dismiss this case, but at the last minute seemed to change its mind and took the whole matter under advisement. The issue, according to the prosecution, is the very rule of law, and all this business about Iran is merely a smokescreen to cover the expansion of presidential power.

The defense says that in the war on terror the president can and must do whatever he in his sole discretion considers necessary. The law, they say, may have to bend a tiny bit when the lives of millions are at risk.

If the prosecution is right, the whole thing, both in Iraq and in Iran, is a ruse to cover some other objective that the president has not yet honestly told the nation, probably oil. If the defense is right, we are surrounded on all sides by a danger of spreading terrorism, a danger that makes it inappropriate and impossible to restrain powerful leadership.

When, as they were leaving the court house, I asked the Old Man what was likely to happen next, the last thing he said was: “Well, I said in there that the people rest.” And then, Jim, looking me straight in the eye, he said: “I was wrong. The people will never rest.”

That’s the story for now, live from the Court of Common Opinion.

Back to you, Jim.