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Iran and Iraq: The Need for Pentagon Papers

by Daniel Ellsberg

The following is a transcript of a speech given at The Future of Freedom Foundation's June 2007 conference, "Restoring the Republic: Foreign Policy & Civil Liberties" held in Reston, Virginia.

Jacob Hornberger: Our two speakers this afternoon might be easily called profiles in courage. Our first speaker, Daniel Ellsberg, was employed by the RAND Corporation when he began working on the top secret Pentagon Papers analysis of decision making in the Vietnam War. Of course, those later became known as the Pentagon Papers. Struck by an uncompromising conscience, Daniel proceeded to photograph all 7,000 of the pages of the Pentagon Papers, and then proceeded to release them to the *Washington Post*, the *New York Times*, and other publications, knowing full well what the likely, almost certain consequences were going to be, and of course those consequences materialized. The Richard Nixon Administration indicted him on 12 felony counts, espionage, releasing official secrets, and so forth, even though the Pentagon Papers was just a straight, truthful analysis of how we'd gotten into the war. And then they actually went to trial. As the trial proceeding is before a jury, all of the revelations about Watergate start coming out, including the illegal break-in, not only of the Watergate Building of course, but of Daniel's psychiatrist's office. And at this point, before the case features a jury for a verdict, his lawyers moved for dismissal based on wrongful misconduct of the government. And as far as I know, I think it's the only case, there may be others, but it's the only case where a federal felony indictment has been dismissed because of wrongful misconduct by the government. His book, *Secrets*, which I highly recommend, goes into all of this. It reached the best seller list across the nation, received many awards, including the *Los Angeles Times* Award for best book, and so it's a real honor to have this man with us. I mean this is a life of courage, this is a life of principle. Please welcome Daniel Ellsberg, who's talking on the need for Pentagon Papers today.

Daniel Ellsberg: Thank you. Thank you very much. Well, when I was invited to come here and I saw the list of speakers, I accepted very promptly because antiwar.com is my home page, it so happens, on my computer; my default page. So the chance to see in the flesh the people I'd been reading, Rockwell, Higgs, Bovard, my friend, Justin Raimondo, I've seen before, and Karen Kwiatkowski, and so that was a wonderful opportunity, and Ron Paul. Where is Paul Craig Roberts, by the way? I love his stuff. He didn't make it here. But that's a real treat. It's also been a little unusual experience for me, in this particular crowd, to have so many people come up and greet me very warmly and say, "I used to think you were a traitor," and of course I'm glad to hear they're recovering. But still, it is a reminder that there are still a lot of people out there, no doubt some of whom you may know, who see it in that light. As one person said to me, I won't give his name, but in the lunch line today, "If my mother knew I was in the same audience with you she'd be shocked. She would die." I said, "Well, don't tell her." I said, "How about your father?" He said, "I don't know." So he just told me just now that he checked with his father who was fine with it. But he told his father not to tell the mother they were here with me.

Well, it was very unsettling for me as an American 35 years ago to be hearing from so many fellow Americans, or be told about other fellow Americans, who thought that telling the truth to Congress and to the public could be treasonous. Actually that wasn't among the 12 counts of felonies that I was charged with. Even my prosecutor, who hung everything on me he could think of, did not find me guilty of attempting to aid and give comfort to the enemy. And as somebody whose life had been spent, really as I thought, patriotically from the time of Pearl Harbor, which I remember very well when I was 10. Some of you I remember were even older than that and a lot not. And who enlisted in the Marines later during the Korean emergency and extended for a year because of the Suez Crisis when my battalion was going to the 6th Fleet and we were expecting to be involved in some kind of a war there, which we were actually. The Suez Crisis, my ship evacuated 1,500 civilians, not too violent an operation, from Alexandria during the harbor while the British and the French were bombing the harbor in fact.

And I remember at that time being very proud, as somebody who had not voted for Eisenhower, but proud of my president, Eisenhower then, who had defined aggression as an act by our two closest allies, the French and the British, not to speak of the Israelis who weren't as clear-cut an ally at that point, and I thought that was wonderful. That's why I joined the Marines, that's why I went in during Korea. The idea of fighting aggression seemed to me a very, very worthy project and I was proud to be able to do that as a Marine. It so happened that I was, before we did the evacuation, we were steaming toward the southeast corner of the Mediterranean, and I was at that point an operations officer. Before I extended, I had been a company commander, but I lost that as I was about to get out. I was replaced by a major it so happens. I was a first lieutenant at the time.

But I was now an operations officer and I was making a plan. They broke out the top secret war plans for the 6th Fleet so I could do landing plans based on that and I was doing a plan for Haifa,

and the other assistant operations officer next to me was making a plan for Alexandria, depending on which side the president decided we were at war with. And my assumption was if we had to use my plan against the Israelis, we would probably not do too well after months at sea. But if we had to land at Alexandria and oppose landing, we would cut through them we were very sure without any problem. In those days, I remember I didn't care that much. I was pleased in the end that we went against the aggressor in this case. Not that I was a fan of Egypt. But that was it. Well, we were actual sided, I should say, against the aggressor. But really, as a former Marine company commander who extended to be with the battalion I'd also been training officer for, and a company that I had been the company commander of and commanded a number of platoons, I had not wanted to read about their being in some kind of combat while I was back at Harvard and showing a fellowship in the Society of Fellows. So I gave up that fellowship, I was able to reapply a year later. And I gave it up, because you couldn't get an extension on it, to be with my battalion.

So at that point, as I say, I really didn't care too much, and didn't regard it as mine to think about, which side the president would decide we would be on. And that's the state of mind that I had, I think, when I went into the government later in 1964, having been a consultant to the government for a number of years at the RAND Corporation before that. So I started to say earlier, for somebody whose life has been spent fighting communism, as I saw it, and that's why I went to Vietnam in the end for the State Department, and for this country, it's very disconcerting to be called a traitor or to have people think of you that way. And the first couple of hundred times you hear that, it's quite shocking. I used to think that it's something you never get used to. But actually in the last few years, the word has been so devalued that not to have Ann Coulter call you a traitor is like being left off of Nixon's enemies list. I had friends who have never fully recovered from that actually, having looked for their name you know, on the list, and others who say I was on higher than you. I was on the... Dan Shore is very proud of that.

But I noticed just today for example in the *Washington Post*, Mike Kinsley's column, he mentions that McCain "came very close to accusing his two Democratic rivals, Hillary Clinton and Barack Obama, of treason." This is today now. "Because, as he said in a speech recently, they were advocating surrender," in the thing. And of course, you can come closer than that, this Administration does, has quite a bit. Going back to Daschle, the Senate minority leader, who lost the election after he'd been called virtually as having given aid and comfort to the enemy.

That's the narrow, narrow definition in The Constitution, and there's a reason why it's so narrow, by the way. The reason is that this country was founded by traitors. Every one of them a loyal subject of King George III in 1774, and a traitor in '75 and '76. When Benjamin Franklin said, "We hang together or we hang separately," he wasn't just using a metaphor at that point. But these are people who found in themselves a loyalty to a different concept of government, and

a different form of government which until recently at least, we have enjoyed ever since in some form.

One of the most striking comments that I've heard in this conference was by Ralph Raico the other day, who said, "It's amazing how each new president makes you nostalgic for the last one." And I was asking about that today and he went further. He said, "Who would have ever dreamed that we would be looking back with fondness on Janet Reno?" I had to sort of... what am I hearing? I didn't want to be asked to feel fondness for Janet Reno. And then I said, "You're really testing me on that one." And he said, "Well, Ashcroft, Gonzales..." You've got a point there. I guess I'll have to reevaluate Janet Reno.

A question does arise, when did this rot set in, this steady erosion it seems like. So we've heard different candidates in here now: Franklin Roosevelt, Woodrow Wilson, just this morning Lincoln. And of course, my friend, Karen Kwiatkowski, is she here? Is Karen here? Oh, great, was really going to the roots, which is what a radical does, when she went back to the time before presidents to the Articles of Confederation. And the fall, she measures the fall from rejecting the Articles of Confederation. Well, I don't know about that actually, but I'm still grieving over the Constitution, which she regarded as part of the fall. As a matter of fact, hell, I'm nostalgic for the Magna Carta, habeas corpus.

I mean this president is not content with reversing the gains since 1775. He's going back to habeas corpus, writing out six, seven hundred years of civil liberties. Well, the Bill of Rights, there has been progress since the Magna Carta I would say. The Bill of Rights, remember that? The good old Fourth Amendment, which I supposed I couldn't have defined which one is the Fourth Amendment until reading in the paper how we'd lost it basically. That's when you come to appreciate something. When warrantless surveillance, a federal judge in Detroit defines that in a judgment, which is now on appeal on the certain effects, defines what the president has been doing since September 2001. That's almost six years. As illegal under the FISA Act, the Foreign Intelligence Surveillance Act, and unconstitutional under the Fourth Amendment, unreasonable search and seizure. And it's still going on under the Democrats, supposedly an opposition party, who swore they would make hearings on this.

There has not, unless I missed something, been an open or closed hearing on what NSA is doing to listen to; as far as we know, everyone. The president says, the program he wants to talk about and the only thing he will let his subordinates testify about, Gonzales and others, is a program that targets only terrorists. International calls, one of them being in the United States to be sure, but one of them being outside, and one of them a known or suspected terrorist. But it's revealed in Frontline Investigation, the television program a few weeks ago, which was very good, which you can still see on the Web, that's untrue. Now even from the beginning, one could take that with a grain of salt from this particular president.

And indeed when Leahy in the Judiciary Committee asked Gonzales, “Well under your understanding of the Constitution and the law, does the president have the right to open letters?” And Gonzales said, “Not under the program I am testifying about.” And Leahy said, “Well, are there other programs under which this might fall?” And Gonzales said, “I am here only to testify about this program, the one I’ve chosen to tell you about.” And apparently lying about that one if he knows, maybe he doesn’t know. But the television program investigators were able to find out yes, they are overhearing conversations that are wholly within the United States.

And suspicion turns out to be an interesting concept, or it has evolved into something new under this administration openly. The idea of the Fourth Amendment is no warrant shall be issued without probable cause. By the way, Gonzales read that clause and says actually there’s no guarantee of warrant in the Constitution. It doesn’t say that. It just says no warrant shall be issued and you can’t search. So in his, what Justice Ginsberg might call it cramped reading, he wasn’t sure that the Constitution did assure a role for the judiciary in surveillance. But anyway, it’s been going on. Gonzales has refused to talk about it until this day.

And that’s a little familiar to me, because it arose in the last weeks of my trial. I was in court, I was under indictment for two years and in trial almost twice. But the last four and a half months in court, in the last couple of weeks of that, I learned that I had been subject to warrantless wiretaps. And what made that especially interesting was not just that they were warrantless, because in those days it wasn’t as clear-cut as it came to be later by the Supreme Court and by the FISA Act, that that was illegal. It was a questionable area. But because the FBI had frequently in the court testified to the judge that I had not been overheard at all, not just once but several times, and suddenly it turned out I had been overheard. So they, on a warrantless wiretap of an NSC aide by the way, Mort Halperin, with the tap continuing long after he left the NSC, and with no suspicion of disloyalty to the country on his part, but the possibility was critical of his boss, Henry Kissinger. They didn’t even find that on the tape or anything. If they talked to him, I think they could have discovered that. But the FBI was worried enough that this might be considered unconstitutional that they demanded that it be authorized by the president through Henry Kissinger and then the records were kept out of the FBI records.

So when my judge asked okay, let’s see the records and see whether it tainted the trial or not, the then acting director of FBI, the former one having just been Gray, had to withdraw his nomination because of obstruction of justice committed in connection with me among other things. So Ruckelshaus, who had now discovered this wiretap, then said we can’t find the records; there are no records. And this was the proximate cause, he needed cause, the judge, asking us if we wanted to rule for dismissal at this point. We’d been having revelations like that for two weeks, one a day. And that was kind of the straw that broke the back. It turned out that the records were in The White House. They had been stolen from J. Edgar Hoover’s private safe, where he was using them as a lever against The White House, all the illegal actions he did for the White House, to stay in office. They had been stolen from his safe by Sullivan, his

number two man, and given to The White House, to Ehrlichman, in The White House so that Hoover could not use those records to blackmail Nixon into keeping him on.

But anyway, that was not discovered until a day after my trial was ended. And in fact the day my trial ended, that day, the headline in the *LA Times* was “John Mitchell Indicted.” He was the one who had indicted me initially. He was indicted for crimes, and Kleindienst had had to cop a plea, his acting successor. So, when they asked me that morning after my trial was dismissed for governmental misconduct that offends the sense of justice, a reporter said, “Well, what are you planning to do now?” And I said, “Well, I’ve been in court for four and a half months and I don’t think I’m ready to go cold turkey. So maybe I’ll attend other people’s trials for a while.” But that was a joke. My wife wouldn’t have let me go near a courtroom at that point.

Now, interestingly of course, on the one hand, the warrantless wiretap has become clearly illegal under FISA. But it’s happening and the president is admitting that it’s happening and isn’t doing anything about it. And just as they couldn’t find the records in the FBI files, they were in the White House, of my wiretap, Arlen Specter, the minority, who was formally when this was discovered the majority leader, Chairman of the Senate Judiciary Committee, complained that he was not able to get any records as to what the programs were, who was wiretapped, what was being done, under what circumstances. Neither he nor the now majority leader, the new one, the Democrat, has been able to get those records though they have asked for them. And as I say they’ve had no hearings, which is very like complicity in a straight overthrow of the Fourth Amendment.

Well as I said, you learn about it when you’ve lost it more or less. Fifth Amendment, my understanding is a major purpose of that, which a layman quoted me earlier was not too clear on, why are you allowed to remain silent? A reminder came to my mind a few months ago when I was being arrested in Crawford for the second time with Cindy Sheehan, and we had been demonstrating out where the president had to pass in the same ditch that Cindy Sheehan had occupied a year earlier. And at that time, it wasn’t illegal, but this district in Texas has now passed a new law exclusive to this particular district, where the president’s ranch happened to be, that the roadway extended into the ditch and beyond to where we were sitting. We were on the road after all. I’ve obstructed a lot of roads, but I didn’t think I was obstructing that road.

And the judge, the magistrate there, said, “You have a right-- And we’d been saying, you know, stop the war, stop, get out with signs that he couldn’t miss in his bubble, his usual bubble, because he had to drive by that thing to go anywhere. One could say that was right of petition with the First Amendment. But the judge says, “You have the right to remain silent.” And it made me think, gee, we weren’t fighting for that right. We were fighting for the right not to remain silent actually. But my understanding now of my major business, why do you allow people to remain silent? So they don’t have to testify against themselves, to discourage the use

of compelled confessions, compelling someone to testify against themselves by torture. You give up that, and the instinct of any people who have you in custody—police, special forces, CIA, whoever—but police, and I'm talking about domestic, if you give that up, the incentive to do, as is done in other countries to which we render people, is to cut through all this gathering of evidence and checking for fingerprints and looking for witnesses to testify and stuff like that, line-ups and everything, is just get the suspect to testify, to tell why, whatever it takes. Whatever it does, as the president calls it—what is it? —enhanced interrogation or alternative measures of interrogation and so forth.

And it's an encouragement to do that. Who are these suspects? Go back to the NSA thing. It turns out from the Frontline, and I'm referring to a TV series, Frontline—you can look them up on the Web, the program is still there. The point of the NSA thing, according to some of the people who are willing to talk a little bit about it, the officials, is to gather enormous amounts of data and analyze it so as to decide who to suspect. Well, that seems understandable, that's plausible. You gather it all, see what their patterns of who they talk to, where they go, all this stuff, and decide whether it's suspicious. But you do that by surveillance, by listening to the conversations of everybody. So the surveillance comes first. The suspicion comes next, and when you have this suspicion, which is very far from proof, it's far from reasonable cause by the way, that's where the officials say in a sense, oh, it's not really reasonable cause anymore—probable cause. It's just reason, though what the Constitution says is probable cause.

And so with that, you discover who to suspect and you can lay on full-scale surveillance of them. You can get a warrant at that point, except you'd have to admit that the evidence for the suspicion was unconstitutional. So you don't go to the FISA court and get a warrant because that would be embarrassing. I am describing in other words a considerable change in the way our rights are conceived and protected by our government, by the Executive Branch. Now, a number of things that were done against me during my trial by a group called the White House Plumbers, so-called because they were supposed to stop leaks, they called themselves The Plumbers, working for The White House. And ex-FBI and CIA guys and officials above them included, as you heard in the introduction, a warrantless, needless to say, burglary search and entry, Fourth Amendment here again, of my former psychoanalyst's office looking for files; an invasion of my civil rights and property and of course, the psychoanalyst.

Also people who the CIA, which was supposed to be limited in those days strictly to foreign intelligence operations and covert operations, not to domestic activity, had done psychological profiles on me. The first they'd done on an American citizen. They had done profiles on Castro and Sadat, Nasser, various other people, various Soviet leaders. So they did that on me knowing, by the way, that they were breaking their charter. So they were told they had to be super, super secret. They did it but had to be assured by the White House that it would remain secret, which in the end it didn't. The CIA had provided disguises and other equipment for the break-in to my psychiatrist's office. So, here was this domestic case.

As I say, I was overheard. Also a dozen former or current CIA assets, Cuban Americans were brought up from Miami on May 3, 1972, with orders to “incapacitate Daniel Ellsberg totally.” And I remember when their prosecutor told me after my trial during Watergate that line and I said, “Well what does that mean? Kill me?” And he said, “The orders were to incapacitate you totally.” He said, “But you have to understand these guys never use the word kill.” You know, neutralize, terminate with extreme prejudice, you remember that? The special forces murder case, and other words like that, neutralize. Well, he thought that they did mean to kill me for other reasons we may or may not have time to go into. I don’t think they did mean to kill me, but to indeed put me out of action, to silence me until after the mining of Haiphong, which I was predicting and which they thought I might have documents showing. I did to some extent have documents showing that they had planned this from the very beginning of the Nixon Administration, the mining of Haiphong. It wasn’t just an ad hoc response to an offensive. So, they were worried about what I might turn up with.

Actually a number of people here have asked me what were the Plumbers about? You know, why did they do all this stuff? And really very few people have understood that at the time, you couldn’t—now you can. For one thing, I’ve become friends of Egil Krogh, who’s a very good guy who was rehabilitated by prison actually, but actually who saw the light before he went to prison, which is after he had been indicted and pled guilty for very good reasons, that he realized and recognized that he had been violating civil liberties of other citizens, that he had been violating the Constitution. He’s just written a memoir for which I wrote the foreword. But having talked to him, it hasn’t come out yet, I learned and from other sources, I learned what they were really up to.

It was not, as Jacob Hornberger—I think, or somebody here on the way in, as I was walking in—said, to defame me. It was to threaten to defame me. They wanted information from a psychoanalyst’s files. Unfortunately for them, psychoanalysts don’t keep notes. But what they wanted was information on me that I wouldn’t want out, that they could blackmail me into silence. About what? The Pentagon Papers were out by that time and Nixon was glad of the substance that they were out. They indicted the Democrats. He was very happy with that. As the tapes show, you can see a lot of this by the way, including the tapes, in the last three chapters of my book, *Secrets*; didn’t know it at the time.

What he worried about was that he learned I had documents on his administration. The Pentagon Papers ended in 1968 before he came in. So he liked those. But he feared that I had documents on his administration, and I did. But not as much as he had good reason to fear. He had been making nuclear threats to North Vietnam secretly. No secret to the Russians or the Chinese or the North Vietnamese to whom we conveyed these threats since 1969, and he was yet to make more in 1972 and he didn’t want the public to know that. The enemies, yes, but the public might get nervous if they knew he’d been threatening nuclear war. If they didn’t meet his terms, which were to get all northern troops out of the southern part of Vietnam as we withdrew troops, that

they could take their troops out and thus allow our Saigon regime, General Tzu, to remain in power indefinitely with the help of our Air Force, our Air Support. His plan was never to allow Saigon to become Ho Chi Minh City.

What actually happened was not the fulfillment of what he had in mind in '68 and '69 when he came in. He expected to keep Saigon and the major cities indefinitely, although he was ready to cede control, effective control of the relatively less populated countryside to the VC where they controlled it anyway already, and we keep control of the cities. It would be something like Korea, and that was internally discussed, the Korean solution. Korea, of course, the war was quite different in a number of ways, including a demarcation line between our guys and their guys, the adversaries, and it didn't have a guerrilla war going on in South Korea, in there where we'd been for the last six years. But the idea was that it would be what they called a leopard-skin division. Not a clear-cut division, and not just at the DMZ, but a division where they more or less had the relatively less populated countryside and we had the cities. A conclusion that would not have been recognized as a clear-cut victory, although by the time he left office Lyndon Johnson would have given his left arm for that resolution. But no defeat. We'd still be in Saigon, our flag would be flying alongside the flag for South Vietnam and indefinitely through '77 and so forth.

The way he was going to get that-- The problem was that the North Vietnamese were not going to buy that. They were not going to get their troops out and they were not going to accept the Tzu regime and they were ready to fight and die indefinitely in any numbers, ten to one losses compared to ours, indefinitely to prevent that. That's what we were up against, or Nixon. Now that should have been no big surprise by 1969 after the Tet Offensive of '68. But Nixon's theory of how to do that was by threatening, in the first instance, all-out air attacks on North Vietnam, much heavier than Johnson had done, including hitting the dikes, which by their calculation would cause from hundreds of thousands to perhaps a million deaths including famine, hitting all of the bases everywhere, hitting up to the Chinese border, total blockade and threatening nuclear weapons, for which targets were selected in the Nixon White House.

And I talked to Roger Morris, who's written a lot since then, who saw the plans for nuclear targets, one a mile and a half from the Chinese border to send a signal to China and North Vietnam. Nixon was afraid that I had documents, not only knew of all that, which I did in general terms. Not all the details but I had documents to show it, which I could have had if people who left the NSC over the Cambodian Invasion, five people left, the only people to resign that I know of during that war and perhaps any war during the war, and protest against the policy; I knew nearly all of them.

I had copied the Pentagon Papers earlier but they didn't know that. They could have given me those documents. The documents came out actually, a number of them, just last year. You can

look them up on the National Security Archives of George Washington University, NS Archive, very interesting. Look up for the Duck Hook documents, which is the code name for them. That's last year, that's almost forty years later. It's been denied up until this point. He feared I had those, and I should have had them in some sense, could have had them for sure. I would say that the people who are ready to end their executive career, or they didn't all end it, but Roger Morris did because he proceeded to be very critical of Nixon. Ready to do that, to resign, could have taken documents with them, could have given them to me or just put them out.

Me, they wouldn't have connected me at that time because the Pentagon Papers hadn't become public. They could have. Had they done so, I think in 1969 when they wrote them, the war would have ended a lot sooner. Ended by Congress cutting off the funding for it, which in the end, Congress never did do until the troops were out. But the effect of that, even as late as that, in 1973, and the ending of my trial had something to do with that, they did cut off funding at a time when Nixon was about to renew it. In fact, according to *Time* magazine, he had given the order to renew the bombing in April of 1973. My trial was on at that point. Except that John Dean, who didn't want to be blamed for the whole cover-up, which he had managed but on orders, revealed to the prosecutor, the Watergate prosecutor, about the break-in to my psychoanalyst's office. Something that now pointed directly to the Oval Office.

None of the other Watergate crimes were ever traced directly to this Nixon. To this day, there's no evidence that he knew of the break-in to the Watergate beforehand. Probably he did, but the people who would have known that, like John Mitchell or Haldeman, kept their mouths shut in jail. And it's never come out. What was traceable to him were in particular the crimes against me, and to some extent the rest of the antiwar movement. The break-in, the assault, the overhearing, the wiretaps, the CIA and so forth, all pointed directly to Nixon. That put him in those days in danger of criminal prosecution and actually, as you'll see in my book from the tape, the first mention of impeachment on the tapes is by Nixon on the day that he was told he had to send John Dean's revelation to my judge.

He had held it up for two weeks as the trial went on, claiming that it was national security, he didn't have to tell the judge, nothing had been found. And finally, Kleindienst, the acting attorney general, and Peterson, the assistant in terms of criminal prosecution, went to Nixon and said you have to send it on, that's the law. Or we will be liable for obstruction of justice and subject to prosecution for obstruction of justice. Rather than that, we will resign if you don't send it. Now they threatened him. So he sent it on and on that day, he said to Kleindienst, make sure the judge knows this is national security, that this gets through to him. He doesn't have to release it, and then he says to Kleindienst, well they talk about impeachment. Well then they get Agnew, how would they like that? Kleindienst says yeah, Agnew was his impeachment insurance, like Cheney, or Quayle you might say. And then of course he lost Agnew to charges of extortion.

And there he was, naked, ready to be impeached if the Constitution were used, which it actually was. The judge did release this, it did get to the judge. There was a degree of independence in the judiciary. The reason the judge kept it going for two weeks after the first revelation was that another point was that Nixon had offered him during the trial, during this period, to be director of the FBI replacing Hoover, who had died, and Gray. And that was his childhood ambition, to replace Hoover someday as head of the FBI. So the Constitution, the idea of an independent judiciary and all these things. These things are not self-enforcing exactly. A judge who wants to be appointed to an appellate level, to a higher level, as my judge, it would have been his second choice, has to get that from the president. If you want to be head of the FBI, you get that from the president. And that's a pretty strong lever that they have on this thing.

And again, going back to my trial for instance, people say the system worked, which is certainly true. Here I am. Here I am. If I'd been found guilty of all charges, I'd be getting out with good behavior in 2008. But let me tell you two other facts that cut both ways about my trial. It turns out, to my amazement as a layman, and even to my lawyers, that I hadn't committed any crime by any previous standard. Now that's true because of our First Amendment it turns out. I got a very expensive education in this subject. Something that probably most lawyers here have not had occasion. How many people here are lawyers? Not so many. Yeah, okay. Good for all of you. I can talk freely then here.

But I have talked to audiences of lawyers recently in the last couple of years, it's kind of an interest in this case for a number of reasons. We don't have, thanks to the First Amendment, a marvelous anarchist statement, or if you prefer, libertarian statement. Congress shall pass no law abridging freedom of speech. It's a restriction on Congress, and by inference, the executive. If Congress can't pass a law, the executive cannot do this either. And eventually the Supreme Court ruled that even applies to the states as well. So you cannot abridge freedom of speech and of the press.

Well, that has been modified a little bit on laws of obscenity and various things: libel, and there are, in fact, restrictions on putting out certain types of classified information, specifically communications intelligence, intercepts, the kind of thing NSA does to foreigners, and now to us. Yeah. But revealing that is illegal. I'll come back to that in a minute. Second, the identities of intelligence agents, that's a relatively recent act, after AG, that arose in the Plame Case and Libby, the revelation of Valerie Plame's name as a covert agent. And third, the nuclear weapons data, restricted data, design and deployment and various things about nuclear weapons.

I don't object to any of those restrictions. They're all restrictions on free speech you could say. But the idea of controlling all those is something that I don't, even nowadays, I've never objected to. What we don't have is what Britain has, and nearly every other country in the world. But the mother country has an Official Secrets Act, and has for a long time, which

criminalizes any revelation of classified information or information that the government chooses to protect for whatever reasons of its own. Put in a safe, maybe it's stamped in various ways. Any revelation of that for any reason, intent is no element, is criminal. In fact, two people just got convicted, I believe, in England of violations of the Official Secrets Act for putting out some information that the public had a right to know I would have said.

But that's Britain. We got away from that and amazingly this is the country without an Official Secrets Act. Now, I didn't know that. I assumed there was. I'd been told that the Espionage Act amounted to an Official Secrets Act a dozen times when I signed agreements on secrecy, which is many times. Every time I got a new clearance when I was in the Marines, when I got promoted, I was always signing secrecy agreements, which I broke in the end. In the end. But I signed them in good faith for sure with no expectation that I would have a problem with those. Those are contracts, and the classification system turns out to be still an executive administrative order, an administrative system for breaking of which you're breaking your agreement, you can be fired, you can lose your clearance, lose access to particular kinds of information or all kinds. That means lose promotions, maybe be fired as I said. But you can't be imprisoned. Actually, you can't even be fined. But your career can be ended, which is a very sufficient disincentive for almost all occasions.

What we don't have is what I was put on trial for. This is rather amazing, and I expect that hardly anybody here knows it, the lawyers or nonlawyers. Let me put it in the form of four facts, which you don't have to believe because I say it but you can easily look it up. I put it to you that the following are facts. The U.S. does not have an Official Secrets Act. The Espionage Act was not meant to be an Official Secrets Act. In fact, in the legislation when it was passed in 1917, many of the legislators said now, we do not want an Official Secrets Act like Britain. It's too restrictive of freedom of speech. It's the way to run an empire like Britain, but we don't want to restrict freedom of speech that much, and of the press. The public has a right to know. So they were very specific. They referred to the British Official Secrets Act as what they did not want. The language of the Espionage Act does have language in it nevertheless that could be read to forbid what I did. In effect, an Official Secrets Act. But as I say, the legislative history would indicate that was some kind of an accident or something, but it wasn't meant. Second, if it were meant by Congress, it would still be very questionable or arguable in view of the Constitution. The act would be, in those days, 1971 now, and earlier, would have been regarded as unconstitutional.

So first point, we don't have Section A. Second, as a result of that lack of a law, no one had ever been prosecuted before for a leak of classified information. So that's the second proposition. Mine was the first, with Tony Russo, the first prosecution for the leak of classified information. It was as unprecedented as the Supreme Court case just before, the injunction. Which again, was ruled to be against the First Amendment. Third fact: nowadays Congress actually did pass an Official Secrets Act, and not for the first time, in October of 2000. By the way, with Janet Reno,

mentioning Janet Reno, Janet Reno's approval. So it's expected to be signed by the president. But after a protest by the newspapers, fourth, Clinton vetoed it. Now, so we don't have Section A.

How many people here knew any of those facts that I just mentioned? I see. Oh, come on. Don't be shy. Oh, in the book. That doesn't-- Thank you. Who has not read my book who knew any of that? Well, supposing I'm right, and that's a safe assumption I'm telling you. Supposing I'm right, isn't that interesting, that nobody knows any of that? And I can tell you that if you were all lawyers, at most one or two of you would have raised your hands at this point. And if you were all journalists, one or two might have raised your hands.

Now, if you don't know you have a right, it's like not having it and you don't notice when it's gone. You don't know and hardly anybody knew that they had passed this act finally, or that Clinton vetoed it. And clearly, if it came up again, which I am sure it will with another 9/11, this president will not veto it. And the Democrats will not probably vote against it after 9/11. And so then we'll have an Official Secrets Act. Now what difference will that make if everybody thinks it's there already as I did, the first time. I assumed I was violating such an act and that I would go to jail forever because of 7,000 pages and so on.

On that, it wasn't until a year into the trial that my lawyer said we've been doing research on this, including unrecorded cases to see what the precedent for this trial is. And he said as far as we-- there is no precedent. He said as far as we can make out, you haven't broken any law, including at that time, I was also charged with theft, or conversion. But as of the laws of that time, as Melville Nemmer wrote in a law review article, you can't steal information. You're not depriving the owner if he owns it, of the use of that information. There are copyright laws, but those are civil laws for tort, for damages. So I hadn't filed any of those either, or conspiracy. They said you haven't broken any law.

So I said, and that's what other lawyers concluded, I said, well great. You know, so I'm home free here then? They said no, it's not as simple as that. They said if the attorney goes into court and says to the jury, the United States versus Daniel Ellsberg, 12 felony counts, et cetera, you can't be sure you'll walk out of that place a free man. And I said well, what are my odds? He said oh, fifty-fifty. I said fifty-fifty? You know, a hundred and fifteen years is what I was facing. And I haven't broken any law? They said, well, let's face it, Dan. Copying 7,000 pages of top secret documents and giving them to the *New York Times* has a bad ring to it, which I could see.

So, the glory then of our system is I would say that I hadn't broken the law at that point, although it may well be that with new judgments by the new Supreme Court and by others, actually the law has evolved in the direction of interpreting this as illegal in the last twenty years

or so. And this court would probably almost surely go along with that. And I would break it if the situation arose again. It seemed to be right. But as of that time, I hadn't broken any law. Amazing, wonderful country I would have said, since I'd done the right thing, it seemed to me, that I shouldn't go to prison for it.

But the law has evolved in a number of ways. The things that were done against me, going into the doctor's office, sneak and peak it's now called, is legal without a warrant under The Patriot Act. The NSA surveillance, or the surveillance at that time was the FBI. Illegal now, but it's done and not being challenged. No hearings by Congress, no nothing. It's not being challenged. Use of the CIA, legal against domestic citizens under the Patriot Act. So, the various reasons that led Nixon to break laws in order to silence me, and then had to break new laws and obstruction of justice to keep his own criminal involvement secret, eventually got tangled up in an independent judiciary with a special prosecutor, which I'm sorry to say we don't have.

Now I don't know if people agree with that, but I'm sorry we don't have that now despite its misuse in various times in the past. That did, of course, bring Nixon out of office facing impeachment and possible prosecution if he hadn't been pardoned. And made it possible to end the war. Nixon would have continued the bombing had he not been removed from office, even if Congress had cut the money off. Reagan after all did face a cutoff of money for terrorists in Nicaragua, which he was financing. And he found the money otherwise, unconstitutionally from the Sultan of Bahrain and from Saudi Arabia and from Iran, a terrorist state, selling arms to them. He found the money not appropriated by Congress. Well, Nixon would have done that. I think he would have invented that sooner than Reagan. But nevertheless, it was possible with that entanglement that came right from our Constitution, basically from observing it in the end, that did in fact make it possible for Congress, at last, to cut off funding after the troops were out and end the war.

I think we're facing three major crises right now. There's been a lot of talk here, more than one would find in almost any other group, of defects in our system of government, even going back indeed to the Constitution, which had a lot of defects, slavery for one: major. But still, many, many wonderful aspects which I've come to appreciate much more than I ever did before: the separation of powers, Article 1 Section 8 almost totally discarded by Democrats and Republicans alike now, which puts the power of getting into war into Congressional hands, not the president's hands. But presidents have been slashing at that ever since, as somebody pointed out, Harry Truman. I thought Taft was wrong at that time to denounce Truman for the precedent he was creating. I was wrong, Taft was right, and Harry Truman was wrong. He created a terrible precedent. So various aspects like that. Of course, The Bill of Rights, and the Impeachment Clause which is now regarded as oh, impeachment off the table.

The three crises we're facing are Iraq, but that's a rolling crisis. My own opinion is that neither Democrats nor Republicans will get us out of Iraq. When it comes to keeping bases there, Hillary has virtually promised, has said explicitly she would keep them there. I won't go into that. She would not get all the troops out. This was March 13, reported March 14 in the *New York Times*. Look it up on Google; it's very worth seeing. She explicitly came out and said I would not get all the troops out of there. Well, she's not alone on that. That is the Pelosi Bill, that's what many other people are coming, and the president himself is not talking about considering plans for cutting things down, in half, staying in the bases in Kurdistan, near Baghdad, the Green Zone, the various other bases. Preventing the country from going into chaos, preventing Turkey from coming into Kurdistan, various other interests that involve keeping our bases in the oil regions forever, I think.

And when the president said, through Tony Snow two days ago, and Gates said yesterday, that he thinks Korea—remember that?—is a good model. Is a good model. We're talking fifty and sixty years and I've been saying that for the last couple of years. That's what I think is likely. Of course, I'm struggling against it. I would like that not to happen. I think that is what is likely to happen, and electing a Democrat will not change that in my opinion.

Second, I just have a minute left here. I'm going to take two minutes, I'm sorry. Second, Iran. There are those people that I respect, Robert Scheer, for example. I respect his opinion in most things, on such things more than mine or as much as mine, and others who think that is zero probability now. I disagree. It's true it would be insanity. It's true that it would be, you know, I don't have time to go through but you know all the reasons why that would be a terrible, terrible effect and its consequences, should be off the table. And yet the Democrats, like the Republicans, have been saying it's on the table, including the use of nuclear weapons if necessary. Well, that could be just braggadocio and bargaining and so forth. I don't happen to think that's the case so I am still very worried about it. I think there is a significant probably high above zero that in the next eighteen months, we will see this president decide to launch an attack, or respond to some provocation and attack by the Israelis or something by a terror attack or something, and go after Iran with even greater catastrophic effects than the attack of Iraq.

And third, I've been describing most of this time a real crisis to our Constitution. Now, I don't have time, but I've pretty much indicated where I think that is. If someone were to say that crisis is over, it's not a crisis now, the Democrats had accepted it, we're going to have a precedent for years for this stuff, it's not being opposed, it would be hard to pull us out. It's too late. Chalmers Johnson thinks that I think, he's saying in effect what E.P. Thompson says, to paraphrase Chalmers Johnson, in *Nemesis*, we don't have a military industrial complex. We are a military industrial complex. And that's so deeply imbedded in every precinct, and so contradictory as an imperial project. The empire is so deep into our economy, in our culture, into our minds now, there's really no going back. That's what he thinks.

I can't accept that. First of all, nothing is that certain. Nothing is certain. It's too great a certainty. Second, where the stakes are this high that it's worth struggling very hard and struggling how, I'll mention one way, or I can generalize it. As some of you have read my article in *Harper's* last October, you can see it on my Web site, Ellsberg.net, *Harper's* article last. The theme of that is I believe that people who know of the plans for catastrophe, what they see as a catastrophic plan in Iran, a new war, or for that matter, a continuation of this war, but especially a new war, which is easier to stop than one that's going on, should consider doing not what I did, doing what I wish I had done years earlier in 1964, '65, when I was in the Pentagon before I went to Vietnam as a member of the State Department for two years.

But when I was in the Pentagon and knew that Lyndon Johnson was lying to the public in every aspect of the war, before the Tonkin Gulf Resolution and after the Tonkin Gulf Resolution, I had those documents in my safe. I wish I had done what Wayne Morse told me would have averted the war. He was the one who voted against the Tonkin Gulf Resolution, but there are only two at that point. He said if you had given me those documents, after I had put them out years later, in 1971. He said, "If you'd given those to me at the time," 1964, "the Tonkin Gulf Resolution would never have come out of committee. And if they had bypassed the committee and gone to the floor, it would never have passed."

Well that's a heavy burden to bear, and I'm telling people in the administration right now you don't have to bear that burden. You do have an alternative, and it might put you in prison. Now, and it might have put me in prison. It was likely. But now, it's even more likely. Why not? Why should not an official be willing to risk prison to avert the deaths of uncountable numbers of Iranians, Iraqis, and American troops in ways that would decrease our security enormously as Iraq has decreased our security. Why should not? Some of these people were in the military. I was in Iraq, I was in Vietnam as a civilian but I used my Marine training to go into combat to observe. And I saw courage all around me. Everybody risking their lives for the orders, for their teammates, for whatever. It was expected of them and they all had it in them. Why could not an official be asked by you, by us to be willing to risk their clearance, their career, their job. These are not light things, this is not something you do routinely. You don't do it every time the government lies. You wouldn't stay in government for a day or a week if that. But when the lies involve this many lives and this catastrophe to our Constitution, because I think in a war with Iran, or the next 9/11, the Constitution and The Bill of Rights will go the way of the Weimar Republic. Just be swept away in a day.

So there's enormous emphasis on averting that, and what's new for me is to apply the same standard to Congress. When as Senator Durbin tells us, I knew in 2002 everything that's come out since, we were told the truth on the intelligence committee but I couldn't tell them because I had promised secrecy. I'll end with this last thought. They've all forgotten the oath that every member of Congress took, that every member of the service took, every civilian official took, which is to protect and uphold the Constitution. To defend and uphold the Constitution. It's not

an oath to the leader, to the fuehrer, to the commander in chief, to superior officers. It is to the Constitution period. Now I don't think, and I've discussed this with Krogh, it ever occurred to us that there could be a conflict between that oath and our sense of loyalty to our boss, to our agency, to the government department, and above all to the president. How could there be a conflict?

Well, there can. There was. I violated that oath every day. Every day that I held onto those documents in the Pentagon knowing that Congress had been lied to, knowing that we were lying not only into a war, but into an unwinnable, wrongful war, neocolonial war, hopeless, endless and so forth. I went along with that. That's true of everybody in the Pentagon right now, every Congressperson, and as Bob Scheer says, the journalists who show, and I've seen this in combat, incredible courage in facing fire. They don't wear a helmet because it interferes with their camera. I used to see that all the time. But back home, the boss, the stories get spiked, the line comes, they don't risk careers. Risk lives but not careers, that's the theme that we're raised in.

Okay, I'm saying it does go against our oath. The Constitution that we take an oath to, and the officials and the people here take very seriously so long as we haven't gotten back to the Articles of Confederation, but with the Constitution, should be taken seriously. I think that the people who wrote that and who earlier said that they would pledge their lives, their fortunes, and their sacred honor for a government without a king. Without a king. We're right to do so, it's right to take those risks now, and when it comes down to Iraq, when I describe a future that the Democrats are buying onto at this point, well the least bad outcome is to keep in those bases and for this reason or that reason, to ignore the fact that that is an indefinite, illegal occupation of a country that does not want to be occupied and that will fire at us and do IADs forever as long as we're there. And I would say, as a moral matter, the United States by the lives we have lost and the lives we have taken, we have bought no right. We've gained no right to decide by fire and bombing who shall live and who shall govern in Iraq. The United States must stop killing Iraqis. Thank you.