

# WARRIOR BARDS

by Kevin McCarthy & Michael E. Tigar

**A Performance in Six Scenes**

*[Note: This play was originally performed in San Francisco by Kevin McCarthy. It is written for performance by one actor who portrays all five lawyers, using changes of dress, demeanor and style to mark their differences, while preserving the theme that their work is unified. It could be done by a series of actors.]*

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*[The curtain rises on a stage set with a standup writing desk, a comfortable chair, a lectern, a hall tree, and an easel. On the easel is set a large portrait of Dan O'Connell, in the costume in which we will first see him. The hall tree has hooks to hang coats and hats and a mirror, in order to permit the actor to check his appearance when changing characters. There will also be a low railing to represent a jury rail. Among the props will be a copy of the New York Times for Malone, a copy of a book of judicial decisions, a schoolhouse ruler, and other items.]*

### **Scene One**

*[Daniel O'Connell enters, wearing a cloak and shovel hat as depicted in pictures of him. Under the cloak he may have on a barrister's robe, and may then put on a wig. He is large, robust, energetic. He would probably have a habit of running his hands through his hair, which was curled and unruly. He has a gentle, cajoling voice. He may roll his eyes to emphasize a point.]*

*[A lawyer who saw O'Connell (Sheil) describes O'Connell as "five-feet eleven and one-half inches, with a high forehead. Eyes blue. Around his mouth plays a cast of sarcasm. Head somewhat larger than medium size. Stout. Appearing to possess strong physical powers. Dressed in olive-brown surtout, black trousers and black waistcoat with cravat carelessly half-tied. "O'Connell's voice was deep, sonorous, and manageable. Its transitions from the higher to the lower notes were wondrously effective. He rather affected a full Irish pronunciation, on which was slightly grafted something of the accent which in his youth, he had involuntarily picked up in France. No man had a clearer pronunciation. He could speak for a longer time than most men, without pausing to take breath. When making a speech, his mouth was very expressive. In his eyes (of a cold, clear blue), there was little speculation, but the true Irish expression of feeling, passion, and intellect played about his lips. Looking at him, as he spoke, an observer might note the sentiment about to issue from those lips, before the words had utterance -- just as we see the lightning-flash before we hear the thunder-peal."]*

*[He takes off his coat, smooths his jacket or vest, and strides downstage.]*

O'Connell:

Stand and deliver! Who am I? I am Daniel O'Connell, that's who I am. I am one of the warrior bards.

What are we doing? We are defending liberty.

Where? Wherever necessary! In court, under the beady eyes of judges, wherever some poor soul stands in danger.

Why? For the love of justice. And for a decent fee, whenever possible.

And how? The gift of gab. Poetry. Old cases from the law books.

*[Pause.]*

A suitable combination of weapons.

*[Sings.]*

The minstrel boy to the war has gone,  
In the ranks of death you will find him.  
His father's sword he has girded on,  
And his wild harp slung behind him.  
The sword, but also the harp.

*[Takes a deep breath. Thinks.]*

God bless England! She forbade us for long years to read and write the Irish language. So be it. But we looked back to the old times of kings and poets -- the warrior bards. We Irish lawyers learned to speak the English language, as a poet would, as a warrior would. We had clients to defend. For me, Daniel O'Connell, my clients are the Irish people. My client is Ireland, and I stand as advocate of the rights, and liberties, of that people. And these rights I seek to deliver.

If boring people to death with long-winded speeches could be prosecuted as homicide, half the English lawyers I know would have been hanged a long time ago -- and all the judges. But your average Irish lawyer, well, you may convict his client, but you will not fall asleep while he is trying to persuade you not to.

Tourists coming to Ireland are told they can get this gift of gab for a few shillings: 'Just climb the stairs of Blarney Castle and kiss the Blarney Stone.'

That may be true, so far as it goes. But with Irish lawyers, the gift is wrapped in a different metaphor.

The Four Courts in Dublin, from which is dispensed what passes for justice, sit in a lovely building beside the River Liffey. But the basement, where all the barristers put on their wigs and gowns, is damp. And on a high tide, when the winds are wrong, the river pushes up into it and can make everything awash.

When you say of an Irish lawyer that he has the gift of gab, you say "He has been dipped in the Liffey."

There was a morning just after I came to the bar, in 1798: The great barrister John Philpott Curran rushed into the basement, only to find us all knee-deep in water and his robe and wig afloat. He garbed himself. Looking like a river god, he strode into court.

His lordship the judge looked down and twitched his nose. 'And how are your friends coming on below, Mr. Curran?'

'Swimmingly, my lord!'

*[Pauses.]*

God bless England! She yoked herself to us without the consent of the Irish Parliament. I cannot endure that forced Union. But I'll give England this. She did for us what she did for you Americans -- she was so heavy in her hand that we learned the love of liberty and the need to fight for it.

God bless England! She set over us Protestant judges and ruled that only Protestants, supporters of the Union with England, could serve on the juries. Oh, that was a challenge to the Catholic advocate. I learned to walk up to the twelve in the jury box and put it to them squarely.

*[Enacts a bit of jury argument.]*

This is not the time to discuss how you were put in that jury box, let alone get any remedy on that subject. There is considerable discrepancy of opinion between you and me, at least as to the Repeal of the Union. If you had not so differed from my own opinion, you would not be in this very box. This is a disadvantage which does not terrify me. You swore an oath to administer justice. I challenge you to keep it. Or will you let this prosecutor trap you into betrayal of your jurors' oath out of misguided zeal for your religion?

You, sir, in the front row. You look well-fed enough to be a lawyer. You certainly know this simple, beautiful and inflammatory notion. Every time you stand before a jury in a criminal case, you are drawing all over again the most important line the law can draw -- between the idea of reasonable doubt and the reality of some poor soul on trial for his life or his liberty. And you take on the sacred duty to persuade that jury to set aside intuition and prejudice and walk that line.

You all know how to argue to a group of people who are set against your most basic beliefs. You never get them by showing them that you have got the matter all worked out, in a set speech like the catechism -- or whatever might be the Protestant equivalent of the catechism.

We can't drag the jurors along with us. Make them imagine that their movements are directed by themselves. Pay their capacities the compliment of not making things too clear. Rather than elaborate reasonings, throw off mere fragments, or seeds of thought. These will take root and shoot up into precisely the conclusions we want.

Sometimes you will do this soft and soothing. But there will be times, when you suspect the jury's purity, to remind them of their juror's oath. Then approach and defy them to balance for an instant between their malignant prejudices and the clear and resistless justice of the case.

God bless England? When we united against her, informers were sent among us, to spy on our political meetings and bear tales back to Dublin Castle, the headquarters of England's power in Ireland. So we learned first to despise, and then to cross-examine, the members of that tale-bearing trade. We learned to show that informers who have nothing to tell, invent. We learned to expose what temptations were held out to reward scraps of falsehood and betrayal. I would tell a jury plain.

*[Enacts jury argument.]*

I speak not now of the public proclamation for informers, with a promise of secrecy, and of extravagant reward. I speak of what your own eyes have seen, from the box where you are now sitting; the number of horrid miscreants, who acknowledged, upon their oaths, that they had come from the seat of government -- from the very Chambers of Dublin Castle -- where they had been worked upon, by the fear of death and the hope of compensation, to give evidence against their fellows. Oh, yes, the mild, the wholesome, the merciful councils of this government are perched over catacombs of living death, where the wretch that is buried a man, entombed till his heart has had time to fester and dissolve, is then dug up a witness!

*[Steps back. Moderates his tone.]*

We learned to cross-examine rough if need be, or smooth if required. We had to know the sort of witness we were up against.

For instance, you have to understand that a Kerry man loves the truth, the strict literal truth. There was this lawsuit over the validity of a will, and one of the attesting witnesses swore on his oath that at the time the will was signed, "the deceased still had life in him."

So I crossed him:

'On your oath as a Kerry man, are you telling this jury he was alive?'

'He had life in him, Mr. O'Connell.'

'Well, isn't it the fact that you put a live fly in the dead man's mouth before you attested the will?'

'That's what I've been after saying. He had life in him.'

God bless England! She made our lives so dark at times, that at day's end a person needs a jar, or so -- you know what I'm saying. Drink -- and especially the homemade variety known as poteen -- is a terrible thing. It induces a man to shoot at his landlord. And then, it makes him miss.

Well, I remember the witness who told his tale firmly, that he had seen my client near where the crime was done. But the witness and I knew that the time of this seeing was towards the end of afternoon.

So I asked him, 'Now, Tim, isn't it true that you had been drinking quite a time before you had this vision you've been telling us about?'

Tim, he shifted a bit in the witness box. 'Well, sir,' he says, 'I had a bit of poteen.'

'A bit of homemade whisky,' says I. 'On your oath, surely it was more than a bit.'

'Well,' says he, 'I had only my share of a pint.'

'Only your share?'

'On my oath, that was all.'

'And tell the jury, now, Tim, will you. Isn't your share of a pint everything but the pewter?'

Tim's smile and shrug were all the answer I needed.

Well, God bless England yet again. In her Court of Star Chamber she wrought, and wove into the tapestry of law the doctrine of conspiracy. And fearing that even so fine a net would not snare her limit of patriotic Irishmen, she wove conspiracy law even more tightly and brought it to Ireland. And I found myself caught up in the net. Charged I was, with others in the movement, for a conspiracy to organize against English rule in Ireland. And there in the jury box, and on the bench, sat the very people against whose domination we were protesting.

*[Goes into his summation.]*

The entire strength of this prosecution consists in that cabalistic word, 'conspiracy.'

Members of the jury, I know that I have but a short time to labor in my vocation here, and that there is an eternity on which I must soon enter. I approach that judgment which cannot be long postponed, and do you believe that under such circumstances I would be guilty of that with which I stand charged? Ah, no, you do not think I would have the cruelty, the folly, the absurdity to enter into such a conspiracy. Put your hands to your hearts and say you believe it. I am sure you do not.

Pardon me if I have made too free, but I will say there is not one of you can spell a conspiracy out of all that was laid before you during the eleven hours -- eleven hours --

during which the Attorney-General was ringing changes on that word, going backwards and forwards, from meeting to meeting, and from policeman to policeman, in colored clothes and out of colored clothes, in pantaloons and petticoats -- not one of you can believe that any such conspiracy ever existed. I proclaim, firmly, you cannot believe it.

*[Pauses, musing.]*

Perhaps what the Attorney-General wants you to believe is, that I was a conspirator without knowing it -- that I fell into a conspiracy as a man tumbles into a pit - - without knowing it was there. No! This was in open day, all that I have done and said. I saw the pitfall. In the technicality of the law, I could say that I could not be convicted because I had no guilty knowledge, but I scorn to make points of law. I want your verdict as a matter of your own common sense.

Oh, this is a serious invention -- this sweeping conspiracy of the Attorney-General! It has been so powerfully put to you already that I will not repeat it at any length: There would be an end to every great movement for the amelioration of human institutions if you were to consent to the Attorney-General's theory of conspiracy. This theory, born on English soil, has in Ireland been shaped by malign hands into a creature so monstrous and vile that its own parents should put it away. Oh yes, some august persons first conceived the idea of punishing people for their words and thoughts, and now you are to be put as it were into a sleep with this incubus -- this imaginary conspiracy -- resting on your consciences and minds.

But one of your number may say, what has this to do with me? I share neither politics, nor allegiance, nor faith with this chap O'Connell. He takes every opportunity to rail against the privileges of those loyal to the English crown. Let him rot in a prison for his damned conspiracy.

Well, I will put to that person a case. Surely you share with me the knowledge that human slavery is an abomination against God and nature. How was slavery abolished in England and her colonies? Would not the abolition movement -- which used the same tactics that have here in Ireland propelled me into the dock -- have been set back a decade or more, if the Attorney General's doctrine of conspiracy had been brought to bear against its leaders?

The advocates of abolition had their public meetings, their private meetings, their monster meetings. They published the guilt of the slave-owners. They made themselves bitter, unrelenting enemies by so doing.

Oh, how people would have stared if this doctrine of conspiracy that the Attorney-General is offering today was sooner invented, and the slave bound forever, till somebody with milk and water accents -- with mild tea-table talk endeavored to persuade some one to abolish it, until some one went to America and spoke soft things to the owners of the slaves, and having, in as gentle a way as possible, insinuated the atrocities practiced towards the slaves, then, by and by to coax the owners, and win their consent to the abolition of slavery.

I care not though the gloom of a prison should close upon me, my heart rewards me with the consideration that humble, ungifted, and undistinguished as I am, I had the honor to belong to that conspiracy by which the slave trade was abolished in England, and -- by the grace of God and the courage of men -- will someday be abolished in America.

*[Summation over, he turns to audience.]*

What's that, sir? What has this to do with you? It has everything to do with you. You, or your father, or your father's mother -- those young men and women who fled out of Ireland -- or out of anywhere -- to the new world needed to lay careful hold of their memories of oppression in their native lands. And if they were lawyers, and if they would keep faith, they would not apologize for injustice in their new land.

Stand and deliver! The warrior bards, with harp and sword, will make their mark in the New World.

*[O'Connell crosses upstage and hangs up his jacket. He smooths his hair, perhaps puts on glasses, and puts on a tailored jacket. He may adjust his tie, or change it for a cravat of the period. He becomes Malone, and crosses down to a writing desk.]*

## Scene Two

*[Malone is at the podium/writing desk. He is looking with evident pride at the New York Times. In pictures taken at the time, Malone resembles a young James Cagney. He is well-dressed, hair slicked back, cocky. He seems almost pixie-like at times. He does not have an Irish accent, but rather a sort of upstate New York twang, or a flat New York City voice, educated but regionally identifiable. He is precise of speech and manner.]*

Malone:

Look, Dan! The New York Times is good for something other than the bottom of birdcages. They published my letter to the President.

*[Reads.]*

'September 7, 1917.'

'To Woodrow Wilson, The White House, Washington, D.C.

'Dear Mr. President: Last Autumn, as the representative of your administration, I went at your special request into the states where women have the vote to urge your reelection. The most difficult argument to meet among the seven million voters was the failure of the Democratic Party, throughout four years of your first term in office, to pass the federal suffrage amendment looking toward the enfranchisement of all the women of the country. And if the women of the West voted for you, I promised them that I would spend all my energy, at any sacrifice to myself, to get the present Democratic Administration to pass that amendment. But the present policy of your Administration puts splendid American women in jail in Washington, not for carrying offensive banners, not for picketing, but on the technical charge of "incommoding and obstructing traffic." This is a denial even of their constitutional right to petition.

'It, therefore, now becomes my profound obligation actively to keep my promise to the women of the West. . . .'

*[Looks up.]*

And so on. I resign as collector of customs. Signed, Dudley Field Malone.'

These women, by the hundreds, peaceably paraded on Pennsylvania Avenue. So they send the police to lock them up.

What a trial! These brave women demanded two things, the right to vote, and the right to parade on the public street. The first of these rights old Judge Maloney would

never endorse. The way he saw things, it was a man's right to vote, and that apparently by virtue of his personal plumbing arrangements -- his equipment being all on the outside.

The second right he could not see at all, since it was probably true that Wilson ordered the arrests, and Maloney, given a choice between loyalty to the Administration that appointed him and the oath he had taken, did not trouble very much in making up his mind.

Oh, yes, lest we be overcome with pride of Irish ancestry, Maloney is no doubt the direct descendant of a County Cork potato farmer. He now digs for favors on the dung heap of politics.

I rushed out of court to the White House. The President received me, smug as you please. These women, I said, were manhandled by the police. Their entire trial was a perversion of justice.

What has this to do with me? says Woodrow Wilson.

Now wait a minute, Mr. President. You are speaking to the man who had more to do with your re-election than anybody else in the campaign. Me, and the millions of women in the West you told me to make those promises to--and whose representatives are now being whacked around by the cops.

Well, says the President, your complaint, Dudley, your complaint lies with the police, and the Commissioners of the District of Columbia.

Mr. President, the police chief and the commissioners serve at your pleasure.

*[Aside.]*

Pleasure, indeed. What can you think of a President who pleasures himself at the sight of the cops hauling women off to jail?

Well, said I, I'm taking their case on appeal. So that night, there they sat, in the red-hot, foul-smelling coop of a workhouse in Occoquan, Virginia, being knocked about by guards.

Oh, I love the New York Times: "All the news that fits." Here's what they said about the female pickets: 'That the female mind is inferior to the male need not be assumed. That there is something essentially different, and that this difference is of a kind and degree that with votes for women would constitute a political danger is or ought to be plain to everybody.'

We filed, Eddy O'Brien and I, a writ of habeas corpus, in the federal court across the river in Virginia. Why, we wanted to know, were women convicted of a petty offense in the District of Columbia spirited out of Washington to be imprisoned in Virginia? And why were they being held, not in a common jail under the common law, but at hard labor in a workhouse?

In the witness chair, before his devoted retinue of guards, sat Warden Zinkhan, who admitted that he was the one who gave the order to send these women to that pestilential lockup.

'Warden Zinkhan, can you tell his Honor where in the statute books you get the authority to send petty offense prisoners from the District of Columbia to the Virginia workhouse?'

'No,' says he.

'Then how you can claim such a power?'

'Orders, says he.'

'What orders?'

Zinkhan shifts in his chair. He looks at the ceiling, then at the government lawyer.

'Warden, no use looking at the prosecutor. He cannot give you truth, or courage, or anything else you might be lacking. Answer my question, sir.'

'There was a meeting of the D.C. Commissioners and they gave me oral and explicit orders.'

'When was the meeting?'

'Five or six years ago.'

'Five or six years ago? Where are the minutes?'

'None were kept. It was "oral," like I said.'

'Who was there?'

'The Commissioners,' he says.

'Well, of course, but who else?'

'I don't remember very well.'

'If you can't remember who gave the order or just what it was, will you favor us with an explanation of why you decided to send these prisoners to the workhouse, where they have been chained to the bars of their cells, offered rotten food and roughed up by guards?'

'Humanitarian motives,' says he.

*[Gesture of triumph.]*

Oh, dear God, the witness is mine. He has stumbled down the circles of witness-hell: arrogance, vagueness, makeshift invention and then an answer that doesn't pass the straight-face test!

'Warden Zinkhan!'

'Yes?'

'Are you telling Judge Waddill that you were activated by humanitarian motives when you sent Mrs. Nolan, a woman of 73 years, to the workhouse? Did you think her soul or body would benefit from that "useful labor"?'

And so on.

Oh, to hell with it! Even if we win, we simply get them moved to another jail. What we need is a theory. A motion, pleasing your lordship, for jail delivery.

So I turned and supplicated. Dan! Great Dan O'Connell! You in the shovel hat. Dan O'Connell, patron of the warrior bards, give us a sign!

*[Pauses, smiles.]*

And there it was. In Dan O'Connell's own case. Remember it? The great Dan O'Connell, found guilty by a jury on a charge so vague he could hardly sum up on it. Somehow by holding orderly public meetings he had become a conspirator. Guilty: The House of Lords was convinced he was a guilty bastard, so it was with some reluctance they overturned his conviction. And they gave this reason: The law says -- here as in Ireland -- that you've got to inform the defendant of the specific conduct of which she's accused, and say how that conduct violates the law. I will give you a precedent, from this very law book.

What's that, sir? Am I making this up? Sir, you must be a judge. I am going to cite to your Honor, Nation versus District of Columbia, volume 34 of the D.C. Appellate Reports.

In the year of our Lord 1910, on a day so cold a weary traveler could use a drink, a woman walked into the bar at Union Station in Washington, brandishing an axe in each hand.

Her name was Carry Nation. What a scene! Beer foamed from severed hoses, shards of glassware and fine old mirrors flew everywhere, and the contents of broken whisky bottles flowed out the door, mixed with a small contribution from the bartender, who was so frightened that he soiled himself.

The court of appeals set aside Carry Nation's conviction for the same reason that the House of Lords set aside Dan O'Connell's: The charge failed to allege the facts with enough detail that Carry could prepare a defense. Well, if such a rule of law can spare a brave woman who put the axe to good whisky, can I turn it to the aid of women who only want what you demanded for Ireland -- the vote?

Here is the charge: 'That the defendants did congregate and assemble on Pennsylvania avenue, North West, and did then and there crowd, obstruct and incommode the sidewalk.' Incommode!

Here is no charge of riot, or rout, or even unlawful assembly -- those glorious words invented by English judges.

For all that appears from this charge, these women simply stood, or walked, on the street and inconvenienced somebody. They incommoded, in the commodious and unaccommodating language of this . . . commodity.

*[At the last word, he holds up the charging paper]*

Can that be a crime?

I'll tell you what. I will give you a nine-word indisputable definition of incommoding the sidewalk:

*[Counts it out on his fingers.]*

Three hundred pounds of William Howard Taft walking home!

What an image! Will it work, Dan, for me, as it did for you? We'll see. Will the prosecutor's argument wind up. . . in commode? *[Cheerily.]* I'm off to court.

*[Malone picks up his book and either walks off or goes to the coat rack. At the coat rack, he changes jacket and becomes Vincent Hallinan. The vest is off, the tie different, the hair mussed up a bit. Hallinan is large, lantern-jawed, bellicose. When he talks, his lower jaw does not appear to move. His gestures are large. He was a boxer and football player in college. He played in 28 straight games without missing a single play. His manner tells us of his working class background. He does not speak with an Irish accent.]*

### Scene Three

*[Hallinan appears to be looking at Malone go off. He ambles downstage center.]*

Hallinan:

Hallinan, Vincent Hallinan. Member of the Bar of California since February 1920. A product of the fragrant village of Petaluma, California, and of its Catholic schools. All the Hallinan children marched up the dusty streets of Petaluma into the presence of the big forbidding sister in the habit.

Vincent, she would say, Vincent Hallinan. And you knew you were for it.  
*[Brandishes old fashioned school ruler.]* It was years before I could look at a ruler without just a twinge going through me.

I don't remember just when I first wanted to be a lawyer, and to fight with my words as well as with my fists. My father used to tell us a story.

There was a lawyer from County Kerry, defending a fellow named Murphy who was charged with stealing chickens. Murphy insisted, against his lawyer's advice, to testify in his own defense. On cross-examination, the prosecutor bore down so hard on him that right there in court he broke down and confessed.

But Murphy's lawyer was a Kerry man, and convinced the jury to find his client not guilty. The argument, you see, was that Murphy was such a notorious liar and thief that you couldn't believe anything he said.

My parents were Irish. Vivian's and my six sons are Americans. I am the bridge generation. I am moved by those things that caused my parents to leave Ireland. I want my sons to inherit from me the combative urge to fight for justice. Now don't get me wrong. There is a dark intolerant side to the Irish spirit. You run smack up against it when you get to the two "r's" -- religion and reproduction.

*[Relishes the thought.]*

Me, I lost my taste for organized religion at an early age. Maybe it was the ruler. I'll tell you a story. Some years ago, an elderly lady in San Francisco passed away. When the family came to read her will, she had disinherited her kinfolk and left all the money to the Catholic Church, to say prayers for the repose of her soul. Some priest had convinced her that she would spare herself some time in purgatory. Well, when you convince somebody to spend their money to get something, you should have some evidence to back up your claims. I sued the Catholic Church to challenge that will. Go ahead, I said to the court, make the Church give us some evidence that what they told that old lady is true.

Did I lose?

I lost.

*[Turns to the O'Connell portrait.]*

I wish I could tell you what it was like to be a "foreigner": in 1920. There was this huge outcry against immigrants, and if you were a foreigner with a taste for organizing labor unions, you were in trouble twice over. It was the time of Palmer raids, Pinkertons and prosecutions. The time when Clarence Darrow made his name.

In 1920, the year I escaped from St. Ignatius law school and became a lawyer, an immigrant fellow, name of Harry Bridges, came to America. Twenty-nine years later, he was still fighting for the right to stay in America and for the union he helped to found. In those 29 years, he beat back two efforts to deport him, once by going all the way to the Supreme Court. There was a song about it.

*[Sings.]*

Oh the FBI is worried

The bosses they are scared

For they can't deport six million men they know

And we're not going to let them send Harry over the sea

We'll fight for Harry Bridges and build the CIO.

In 1949, the tack was to change. They charged Harry with lying in his naturalization proceeding, and conspiring to lie -- and they dredged up the same old paid witnesses. And this Irishman you're looking at defends him.

Now, I should hesitate to repeat what I told the jury in my opening statement, because the judge held me in contempt for it. So when Bridges was finally vindicated, once again by the Supreme Court, I wound up being the only one in the trial to do any time. But I'm as proud of my time in jail as Dan O'Connell was of his, so here goes. The jury speech guaranteed to get you six months in a small room.

*[Approaches jury rail.]*

Now we have been told that counsel is going to prove that there was a conspiracy. And there was. There was a conspiracy and a criminal conspiracy. And when a jury is required to determine whether a conspiracy exists, the causes for it, what its purposes may be, it is never sufficient merely to look at the final product; but the jury must go down into the sources and beginnings, the hidden roots and channels, the veins and arteries that supply the final product. In this case a conspiracy will be proven, and the jury is going to see something like -- not to use this as an argument, but merely by way of illustration -- what are those cryptogammic fungi that grow in the jungles of the East Indies that have their roots in mycelium, deep hidden in the dark ground beneath the undergrowth of the thickets, that spring up in a single night and establish themselves there, monstrous, seven feet in diameter, fetid, nauseous, horrible -- and grow at a terrific speed in the darkness of the jungle in the night and as soon as the sunlight shines upon them in the morning, wither and fade away.

The conspiracy that you are going to have proven to you here -- as counsel has said there is a conspiracy and we agree -- will disclose itself as having certain tap roots that penetrate into the soil from which it derives its sustenance. And these roots feed upon greed, hate, malice, falsehood, man's inhumanity to man. Because the conspiracy that will be demonstrated here to a moral certainty and beyond any reasonable doubt is not a conspiracy of these defendants to help Harry Bridges obtain citizenship; we will show the jury that the witnesses who take the stand, one and all, and the principals who directed and placed them on the stand, are engaged in a mean and criminal and fraudulent and inhuman conspiracy to destroy one man.

To determine why these people should enter into this conspiracy which springs to its worst flower in this courtroom, it is necessary to go back quite a few years, at least to 1933 or 1934, down to a terrible struggle on the San Francisco waterfront.

Harry Renton Bridges was born in Australia in 1901, of what the prosecutors consider a respectable family. They weren't even working class people. His father had been an official of the government, descendant of some of those old Irish who immigrated there, probably under force during the rebellions of 1798 that we younger Irish used to recite poems about in our childhood. Well, young Harry Bridges followed the sea himself, became an ordinary sailor before the mast.

But Harry Bridges carried in his heart a love for America, a love of the United States that surpassed his love for his native land. And he dreamed of the day when he might come to America, and become an American citizen. It was the same dream that my parents had, and your parents, or grandparents, or however far back you need to count, because none of you are Navajo or Apache or some other kind of Native American.

In 1920, Harry Bridges stepped off a ship in San Francisco as a common seaman. He stepped from the deck to the wharf and engaged his activities in the longshore occupation. And he worked with others to form a union. And that union, as we will show, was a militant, democratic and sensible body of men. To describe Harry Bridges as their leader is to use the word in a special and limited sense. He by no means walked ahead of them, but side by side and shoulder to shoulder with the rank and file.

And this union put an end to the shapeup on the waterfront, where the men on the docks were at the mercy of the ship-owners and the gang bosses. Against the power of that union has been arrayed all the forces that the employers could command. Thugs, police, guardsmen. An 85-day strike. Two stevedores killed, 400 wounded. And through it all this charge, now for the third time corruptly made and carried forth on the tongues of liars and paid informers, that Harry Bridges is a Communist and that he lied about it.

*[Stops. Looks at O'Connell portrait.]*

So you see, Dan, you were a bit off the mark. In your latter days, you reminded us of the words from the gospel, "A prophet is not without honor, save in his own country, and in his own house." Well, Dan, if you want to see a prophet really get in trouble, tell him to immigrate to another country -- like America -- and start to raise hell. [He smiles wryly and begins to exit. He thinks better of it and crosses upstage.]

#### Scene Four

*[We meet O'Dwyer sitting in a chair. His leonine head is cocked to one side. He is the embodiment of gentleness and decency. He is as soft and smooth as Hallinan is hard and rough. He is wearing a sweater vest, perhaps with a tweed jacket, to help create the image of softness. He is a listening, giving sort of person. His determination is quiet, insistent. He leans forward in his chair as he begins the monologue, then at the appropriate moment rises and crosses downstage center.]*

Fighter for justice and dreamer of dreams. When I, Paul O'Dwyer, stepped off the boat in New York Harbor, April 21, 1925, I imagined myself to be both.

Forty-five years later. The year was 1970. The place was Washington, D.C., in a Senate hearing room. The witness was FBI Director J. Edgar Hoover. Hoover asserted that two Catholic priests, Phil and Dan Berrigan, who were at that moment in federal prison for destroying draft files, had hatched a plot to set off bombs in Washington and kidnap Secretary of State Henry Kissinger. This, said Hoover, was part of their opposition to the war in Vietnam.

War -- it was as though some peculiar madness had come over our leaders while they slept, and when they awoke they were determined to pen up the people who opposed their war. Now I don't put all the blame there; the protests, mostly brave, were sometimes futile, sometimes cruel.

In my boyhood in Ireland, in County Mayo, I had seen political repression. I saw a big nation try to impose a destiny on a small nation. I carried the will to oppose such things in my satchel, as it were, when I stepped off the boat in New York Harbor.

The law offices of Paul O'Dwyer were enlisted for the defense. My wife Kathleen would chide me: 'Paul O'Dwyer,' she would say, 'why would you choose to spend your

seventh decade on this earth sitting in courtrooms at the far ends of the country, representing the likes of Father Philip Berrigan.'

Well, I would say, it's a bit off the wall, I'll admit. But it's the first time in me life that a priest has wanted to confess to me.

The government charged that Father Philip Berrigan had been the leader of a conspiracy from his cell at Lewisburg, Pennsylvania, Federal Penitentiary, a conspiracy to kidnap Henry Kissinger, to hold him for a few days and try to convert him from a hawk to a dove. And to be sure, there had been some wild talk among the Berrigans, and some nuns from Marymount, and some other folk, about ways to dramatize opposition to the war. But nothing, Dan, that you would have called a conspiracy. It seemed as silly as the case we used to sing about as children, making fun of the "Peelers," as we used to call British police:

*[Sings.]*

The Peeler went out one night on duty and patrolio

He met a goat upon the road and took him for a strollero.

The song goes on to tell of the goat's trial for sedition.

Well, there in Harrisburg, to hear these charges, sat a jury that Dan O'Connell would have recognized in a moment. Protestants of a rather fundamental sort.

*[Turns to O'Connell portrait.]*

And, Dan, how did the prosecutors plan to prove that the defendants' talk amounted to a conspiracy? In the old-fashioned way. With an informer. Boyd Douglas by name. The government had paid him handsomely and promised him more, to infiltrate this band of antiwar stalwarts, stir up trouble, and bear tales back to J. Edgar Hoover. The FBI even excused Douglas's self-admitted crimes, into the bargain. Douglas claimed he attended the meetings that the defendants had, and heard them plot and scheme. He carried their messages, so he said. If the jury believed him, the defendants -- priests, nuns and laity -- were as good as convicted.

I warmed to the task of cross-examining Douglas. But the Berrigans and some of the other lawyers laid a hand on my sleeve. 'Go easy on him. He's just misguided, this Douglas fellow. If you try and cut him up, the jury will take pity on him. He's sincere, but just misguided, they told me. He might be persuaded to see the error of his ways.

'Go easy?' I said, 'Are you daft, then? You want an Irish lawyer to go easy on an informer? It's against my training! There may be something genetic about it, the manner of an Irish advocate face-to-face with the odious and reptile band of talebearers. For polite cross-examination of informers, you need a Protestant from Darien whose lips don't move when he talks.

You see, Dan, I remembered your jury speech about an informer named Carey.

*[Recalls the speech for us.]*

I am going to talk to you about Carey.

If it was not known by unfortunate experience, and particularly in many recent instances, it could scarcely be conceived that such abominable turpitude could find place in any human being. It could scarcely be conceived, that any being, imbued with a rational and immortal soul, would deliberately come forward to forswear himself in a court of justice when if he is believed the life or liberty of the accused will be forfeited.

Look at him. He admits to treason and proudly carries the pardon in his pocket. Yes, his pardon in his pocket, so that he will not be executed as a traitor. And more, his

bribe -- not yet in his pocket. Yes, yielding up the tie of friendship, to watch the steps of his friends for the bribe of government.

I have heard of assassination by sword, by pistol, and by dagger; but here is a wretch who would dip the Evangelists in blood; if he thinks he has not sworn his victim to death, he is ready to swear, without mercy and without end: but oh! do not, I conjure you, suffer him to take an oath; the hand of the murderer should not pollute the purity of the gospel: if he will swear, let it be on the knife, the proper symbol of his profession!  
*[Comes back to the present.]*

I rumbled on a bit in that vein, and finally they all let me have a go at Douglas in my accustomed way. Dan, you should have seen what happened in the court in Pennsylvania. At first, the jury believed Boyd Douglas's every word. His big FBI expense account seemed to fascinate these good Protestant folk. His demand that the FBI pay him a bounty of \$50,000 seemed simply the amusing antic of a harmless rogue.

And meanwhile, he wove his tale of what these priests and nuns and their cohorts had allegedly said and plotted. How was I to convince this jury of good Protestants that Douglas was the sort who would tell any lie, or betray any friendship, to earn the bribe of government? What misdeed of his would so anger this jury that they would believe that he would tell lies under oath?

Then Dan, I took the one chance I had left to strip off the mask of this rogue and show -- as you would say it -- the festering hole where his heart had been.

*[He acts out both sides of this exchange and provides a running commentary.]*

Mr. Douglas, do you know a young woman named Betsy Shandel?

Yes, he says, but wariness creeps around his lips.

She is a young college student from a small town, is she not?

I believe so.

Now with respect to Betsy Shandel, did you urge her to go to demonstrations?

Well, now the prosecutor is on his feet. What demonstrations, he wants to know.

The prosecutor's name is Lynch, by the way. I don't know if he changed it just for this case. But I keep on.

Any demonstrations, any demonstrations at all, Mr. Douglas?

I told Betsy Shandel that people were coming down from the Catholic Left.

Did you tell her in those words? Did you say, 'Betsy, there are people coming down from the Catholic Left.'?

If I knew who was coming down, I would tell her, yes.

No, did you tell her people are coming down from the Catholic Left?

No, I may not have in that exact tone.

In any event, you told her people were coming down to demonstrate outside of the penitentiary?

I did.

Now the jurors are getting interested, a bit quizzical. Why, they are saying, is this old white-haired Irishman going on about this?

Next question: And you urged Betsy Shandel to go to the demonstrations?

Douglas is wary now. Well, I believe that I left that up to her. If she wanted to go, I didn't make her go. It was up to her. If she wanted to go, she went.

*[O'Dwyer's tone becomes more insistent.]*

I am asking you if you urged her to go.  
Well, the only way -- you must be asking did I tell her to go to the demonstrations.  
Now, you see, the witness is refusing to answer my question. He would rather answer some other question. The jury understands what's going on. So I repeat.  
No, did you ask her to go?  
Reluctantly, he says 'I may have asked her, yes.'  
And Mr. Douglas, on the 6th of July did your FBI bosses show you pictures of demonstrators outside the penitentiary?  
They did.  
And did you point out young Betsy Shandel as being one of the demonstrators?  
Did you identify her photograph to the FBI?  
I am sure I did, if she was there.  
And did you describe her to the FBI as a student at Bucknell?  
The FBI knew that.  
Did you describe her to them as a student at Bucknell?  
Yes, yes, well -- well, yes, I did.  
And now I paused and looked at the jury, inviting their gaze back to Douglas's eyes.  
And Mr. Douglas, did you ask Betsy Shandel to marry you?  
Possibly.  
And was this before or after you pointed her picture to the FBI?  
I don't recall.  
Oh, it was electric. In the silence that followed, the jury saw Douglas as a man who lured a young lady from a small town, seduced her with promises of marriage, persuaded her to participate in demonstrations, and then turned her in to the FBI. A fellow who would do that would, in their view, stop at nothing.  
The jury foreman turned in his chair, for he could no longer look upon Douglas's face.  
I had only to speak to the jury, Dan, as you did, and remind them of what they had seen.

*[Shows us a bit of summation.]*

Members of the jury, go now and deliberate, so that if ever you are assailed by the villainy of such a person, you may find refuge in the recollection of the example you are about to set. I pray that Eternal Justice record the deed you are about to do, and give you a requital in mercy upon your souls.

The old craft of the warrior bard, Dan. I hand on my place at the table to the younger men and women coming up.

*[O'Dwyer walks upstage and hangs up his coat and sweater-vest.]*

### Scene Five

*[Kennedy's step and mien distinguish him from O'Dwyer. He wears wire-framed glasses and is quite well-dressed. He is earnest, young, and diffracts energy and commitment.]*

Michael, the old man said, Michael Kennedy. Where does that name come from?

My father was born in County Cork, I told him.  
Michael, said the old man, I am charged in a great grand jury indictment with a great federal crime.  
I read it in the paper, I said.  
Paul O'Dwyer, the old man says, tells me you are worthy.  
I'm flattered. I'll defend you, Michael Flannery.  
It's not me that needs defending, he says. I am nearly 78 years old and am soon to be judged more reliably and surely than a jury in Brooklyn could manage. It is an idea that needs defending, the idea of human liberation. The idea that unites the spirits of George Washington and Dan O'Connell.  
Well, all right, I'll defend the idea.  
Now, of course, says Flannery, there will be some evidence about guns.  
What evidence?  
Well, there was the FBI, with spy cameras and microphones, agents up telephone poles, down manholes, and in unmarked cars. They not only provided all the guns, but they made sure we could never get them out of the garage and off to Ireland. Or that's what they hoped, anyway.  
They tape recorded every conversation on my telephone for a year, while we were involved, as it were, with this fellow who turns out to be working for the FBI, the CIA and God knows who else. And now, he's going to be the main witness against us. It was one of these "sting" operations. You see, Michael, we were buying guns from this fellow to send to Ireland. And sometimes me and the other boys would talk about it on the telephone, but always in code, like.  
If it was in code, what could be the problem?  
Sometimes the code broke down, you know. There is this one tape, goes like this:  
"Paddy!"  
"Yes, Michael?"  
"Paddy, did you do any good with the fellow today?"  
"I surely did. I bought a machine."  
"You bought a machine? Where the hell is it?"  
"In me garage."  
"Jesus, Mary and Joseph, you've got a tank in your garage? In the middle of New York City?"  
"No, Michael, I've got a bazooka in me garage?"  
"Paddy, how many times have I got to tell you? A bazooka is called a pencil. A tank is called a machine."  
Well, Michael Flannery, the government will say this is a case about guns and not about your noble sentiments. But every gun was sold to you by these government agents parading under false identities. We must help the jury see that you are not a liar and a terrorist, but a victim of the government's plan to discredit you and your movement.  
A grand idea, but what if the judge tries to stop us?  
Well, he'll be wrong, and we'll have to tell him.  
He won't like that.  
That will be in a grand tradition of Irish advocacy, facing judges with robe fever, who forget that they do not own and did not invent the law. And when shown up in argument, leaning over, red in the face, to bully the lawyers.

I am with the great advocate John Philpott Curran, who stood on his right to cross-examine an informer until his lordship rumbles, "Mr. Curran, if you say another word, sir, I'll commit you for contempt."

And Curran, with a twinkle in his eye, replies, "If your Lordship should do so, we shall, both of us, have the satisfaction of reflecting that I am not the worst thing your Lordship has committed."

*[Smiles, shrugs, remembers.]*

Well, I'll say one thing for modern times. The informers of modern times come wired for sound. But it is the same old story, Dan. Will the jury believe that the surest way to tell if an informer is lying is that his lips are moving?

*[Returns to the remembered conversation.]*

Michael Flannery, I asked, what would possess you to pile up a stock of guns?

It was a long story, having something to do with the unwillingness of the British to leave Ireland voluntarily. The telling of it took eight weeks in a Brooklyn court before the jury acquitted everybody. What was the evidence?

John Winslow, an FBI agent, had posed as John White, arms dealer. John White, arms dealer equals John Winslow, high-tech FBI agent informer. John Winslow leads the defendants to believe he is not only an arms dealer but may be hooked up with the CIA. Three things, Dan, the classic three things, to show the jury about the informer and FBI agent Mr. Winslow: First, he lies. Second, he is a bumbler. And third, he is more dangerous than the defendants now on trial.

*[Cross-examines Winslow.]*

Mr. Winslow, have you had any dramatic training to help you play the part you acted for these defendants?

I was in a play once, in the third grade.

And never in another production after that?

No.

You were able, weren't you sir, to deceive these defendants as to what you were about?

I don't understand what you mean.

Do you know what the word "deceive" means?

To mislead.

Have you had any specialized training in deceiving people?

Now up jumps the prosecutor and objects. The judge cuts me off. But this is the heart of it. These defendants led down the path by this fellow. I am ready to do battle.

I think for a moment about John Philpott Curran, and about you, Dan. I pretend not to understand the objection. I ask if there is a school in the FBI where people are taught to mislead.

Of course not, Winslow says, getting all self-righteous.

Well, sir, what I am trying to ask is, did you learn to lie or is it a natural gift? The government objects again. The judge can't stand it any more. He looks at Winslow and says, despite himself, "The question is where did you learn how to be such a great con man?"

And Winslow blurts out: "I guess it came naturally."

But we cannot be done with this. This man lied to the defendants. Would he lie to the jury if it suited him?

Mr. Winslow, you have admitted that in playing this character White, you had to mislead people. In fact, you had to tell lies, didn't you?

Winslow doesn't like being a liar. Being an actor was so much more honorable-sounding. He wiggles a bit and says, "I guess you could term them lies. I would call them falsehoods."

Do you make, sir, any Jesuitical or semantic distinction between falsehoods and lies?

Oh, yes, he said, and then he actually went on to explain. A lie is wrong. A falsehood is something you tell when you had a reason for not wanting somebody to know the truth--like national security.

Point one for our side. Now about that bumbling. Remember, Dan, in your summation, your wondrous parody of police informers and prosecution witnesses falling over one another--in pantaloons and petticoats.

*[Turns back to witness.]*

In fact, Mr. Winslow, you knew where these guns were every minute of the time, didn't you.

Well, not really.

When did you not know?

Well, we saw two of the defendants carrying a bag that might have metal objects in it, and we were afraid they were transporting weapons.

You were so afraid you arrested them, didn't you?

Yes, we did.

And in the bag you found two cans of beer, isn't that right?

*[Shrugs, turns away.]*

Against this litany of lies and bumbling stood Michael Flannery, who swore that he would not willingly break the law, though he cared deeply for Irish freedom.

But there was point three--who was more dangerous.

Mr. Winslow, you remember the tape where you were talking about dynamite with the defendant?

Yes, I do.

And in fact, sir, you tried to sell him dynamite but he said he wasn't interested, right.

That's about it.

And you tried to sell him a gun sight so that the IRA could shoot down helicopters, but he said no, isn't that so?

He said he didn't want it.

And that gun sight and the dynamite you offered, they were more lethal things than any weapons he was talking about, isn't that so?

He waffled a little, Dan, but his demeanor answered more than his words.

Yes, I could see the pattern in Michael Flannery's case, because it was so much like the old cases tried by O'Connell, and Curran, and Plunket. Looking back at you, Dan. Or maybe standing on your shoulders so I could see farther.

*[Turns to portrait.]*

Here's looking at you, Dan.

## Scene Six

*[Kennedy casts off his coat. O'Connell puts his on, and comes down center, somewhat truculent. It is obvious that he may have been drinking.]*

O'Connell:

You're looking back at me are you? Stood on my shoulders, did you now? I suppose I'm flattered. For I'll tell you, I never met a lawyer who was better than a common thief -- when it came to lifting some other person's turn of phrase, that is, and parading in front of the jury as though he had just made it up for this case.

And me, I look back at the warrior bards -- the real ones, in the real battles. I'll tell you about bearing the battle. I told the jury in my own case:

I am ready to reassert in court all that I have said, not taking upon myself the clumsy mistakes of reporters -- not abiding by the fallibility that necessarily attends the reporting of speeches, and, in particular, where those speeches are squeezed up together, as it were, for the purposes of the newspapers. I do not hesitate to say that there are many severe and harsh things of individuals, and clumsy jokes, that I would rather not have said, but the substance of what I have said I avow, and I am here respectfully to vindicate it; and as to all my actions I am ready, not only to avow them, but to justify them. I have struggled for human freedom. Others have succeeded in their endeavors, and some have failed; but succeed or fail, it is a glorious struggle.

*[Looks into audience.]*

Michael, Paul, Vincent, Dudley, all you warriors. Blessings on you. But I have words for you. As you wield the sword, you are stern of countenance. Remember also the harp, slung on your back, to be wielded with a smile and a song. When you pick up the gun, you pick up something heavier than the gun, and that is the responsibility for having picked it up. You cannot make a bargain with history; you can only act in it, hoping that those who follow you, and rail at your misdeeds, will call to mind the dark times that brought them forth.

So remember the poet's warning,

"Too long a sacrifice

Can make a stone of the heart.

O when may it suffice?

That is heaven's part, our part

To murmur name upon name,

As a mother names her child,

When sleep at last has come

On limbs that have run wild."

What's that, sir? Have I been drinking? Of course I've been drinking. Haven't you heard anything that's been said here tonight? And how do you presume so familiarly in any case? Are you a Rotarian, by any chance? You know what they are. They were the first ones to call John the Baptist "Jack."

Well, I'm off. But, if you get yourself out of bed early some morning in Dublin, take a walk down the South side of Merrion Square. You'll know my window. It will be the one with the light in the study. And peeking in -- for you look like the type who might -- you will see a tall man closely resembling myself standing at a writing desk, surrounded with law books and papers. Yes, that's me, at work before the bird of the morning has sounded the retreat to the wandering specter of night.

And as for my having taken a drink, I leave you with this: There was a judge in County Meath, when I was a younger barrister, who leaned over the bench one morning and said, "Mr. O'Connell, do I smell liquor on your breath. And I said to him what I say to you, 'If Your Lordship's sense of justice is as keen as his sense of smell, my client has nothing to fear this day.'"

*[He smiles, cocks his head, and exits.]*