

>> Peter Robinson: Welcome to Uncommon Knowledge, I'm Peter Robinson. Andrew McCarthy is a former Assistant United States Attorney for the southern district of New York. He led the 1995 terrorism prosecution of Sheikh Omar Abdel Rahman and 11 others, all of whom are now serving long sentences for the 1993 bombing of the World Trade Center. Now a senior fellow at the Foundation for the Defense of Democracies, Andy McCarthy is the author of, Willful Blindness, a Memoir of the Jihad. The trial. We'll turn in a moment to the lessons you learned, but first in brief, the central story. February 26, 1993, a handful of men under the inspiration of Sheikh Omar Abdel Rahman drive a car bomb into the World Trade Center, park, walk away, and detonate it. Six people are killed and over 1,000 are injured. Today the blind Sheikh, as Rahman is called, he's become blind at the age of 4?

>> Andrew McCarthy: At 4, right.

>> Peter Robinson: Childhood diabetes?

>> Andrew McCarthy: Right.

>> Peter Robinson: The blind Sheikh sits in prison serving a life sentence. What role did Andy McCarthy play?

>> Andrew McCarthy: Well after the bombing we quickly, as a government, found out that the same people who had carried it out were plotting something that was an even more ambitious atrocity, a bombing simultaneously of the Lincoln and Holland Tunnels, the UN Complex on the east side of Manhattan, and perhaps even the FBI's lower Manhattan headquarters.

>> Peter Robinson: Who's intelligence was that? FBI? Largely?

>> Andrew McCarthy: It was largely FBI, because we had an informant who was in the organization, who was let go before the Trade Center Bombing, but reinstalled after the Trade Center Bombing.

>> Peter Robinson: Got it. All right.

>> Andrew McCarthy: And the prosecutors who were assigned to the first Trade Center prosecution, which was narrowly targeted at the bombing transaction itself, were in a position where they had to both prepare for trial and try to follow up with this other investigation, which was too much to do. So I was brought in to run the investigation and ultimately the trial. And the idea behind that investigation was to go after not just the transaction, but to peel the onion back and get a, a read on the organization that had carried out both the Trade Center attack, the subsequent plot on the New York landmarks, and going back to the 19, early, or late 1990's, plotted other jihadist activity.

>> Peter Robinson: Rudy Giuliani hired you into the United States Attorney's Office. How long had you been there by the time of the bombing

in 1993?

>> Andrew McCarthy: I guess about 8 years.

>> Peter Robinson: Eight years, all right. Here's the question I have, was that event and the discovery that such people existed in the New York Metropolitan Area, people who were then planning to go on and bomb the Lincoln Tunnel, the Holland Tunnel, the UN, was that a terrible shock to you? Or was that just one more piece of intelligence of the kind that's floating around all the time?

>> Andrew McCarthy: It was a complete shock. This was something new. Yeah, in, in fact, I, as I mentioned in the book, I didn't even know the bureau had a double life, even though I, I had worked with the bureau for years. All the cases I had worked on with the FBI were criminal investigations. I didn't really ever focus in on the fact that there was a whole other side of the bureau's house, the Foreign Counter Intelligence Division, which actually is our domestic national security service.

>> Peter Robinson: All right. Can I just ask just briefly now, give me some way to think about the trial, which took place in 1995?

>> Andrew McCarthy: Right.

>> Peter Robinson: What kinds of resources did that trial absorb for the prosecution? What kinds of resources did the trial absorb for the defense? How long did it take? I want, I want some weight of this large grinding event at the end of which the conspirators ended up in prison.

>> Andrew McCarthy: The case took about a year and a half to get to trial, and nine months to try.

>> Peter Robinson: All right.

>> Andrew McCarthy: There were 12 defendants at the start of the trial, and 10 went to verdict. Two of them pled guilty during the trial. Everybody had at least one defense lawyer. Some of the defendants had multiple ones. The blind Sheikh had three.

>> Peter Robinson: Paid for by?

>> Andrew McCarthy: The United States taxpayers they were trying to kill.

>> Peter Robinson: All right.

>> Andrew McCarthy: We had three government prosecutors, probably scores of agents between the law enforcement and intelligence sides. It was a mammoth endeavor, and much different from the normal criminal case, because of the nature of the defendant we were dealing with.

>> Peter Robinson: Two and a half years roughly, 10's of millions of dollars?

>> Andrew McCarthy: And that's just round one. I'm not going into the appeal, which you could add another 2 or 3 years.

>> Peter Robinson: All right. By the way, who presided over the trial?

>> Andrew McCarthy: Judge Michael Mukasey, who I am now practicing.

>> Peter Robinson: And whatever happened to him?

>> Andrew McCarthy: Ah, [unclear] something, he, he, became some lawyer in Washington.

>> Peter Robinson: Attorney General of the United States Mukasey.

>> Andrew McCarthy: That's the one.

>> Peter Robinson: Two final questions about the trial itself. In your mind was justice served? Question 1. Question 2, was national security served?

>> Andrew McCarthy: Yes and no. Justice was served in that the people that we indicted got a full and fair trial, more due process than the average defendant gets. And were rightfully convicted. And are rightfully neutralized. They're serving

>> Peter Robinson: As a criminal prosecution it came down the way it should have?

>> Andrew McCarthy: Exactly! As a national security matter you can't turn your national security challenges into legal problems. And by using the criminal justice system as the point of our counter terrorism sphere, we badly limited ourselves in how many of our enemies we could actually bring to justice or neutralize. And that had an emboldening affect on the radical Islamic movement, which I think we're still feeling the affects of.

>> Peter Robinson: That is to say, bad guys the world over said, look what they have to go through to put one of our people behind bars.

>> Andrew McCarthy: Right. And, and that was the, you know, look in 8 years we took out less than 3 dozen people.

>> Peter Robinson: Right. All right. A religion of peace. We turn now to the lesson that you learned in, give me your own background. You grew up in the Bronx.

>> Andrew McCarthy: Right.

>> Peter Robinson: You're a McCarthy, am I assuming you're a good Irish Catholic?

>> Andrew McCarthy: A Bronx Irish Catholic. I went to Cardinal Hayes High School in the Bronx. Columbia College and New York Law School at night while

>> Peter Robinson: Goes without saying I'm talking to a Yankees fan?

>> Andrew McCarthy: No, I'm a Met fan.

>> Peter Robinson: You must be joking?

>> Andrew McCarthy: No. Some of us in the Bronx in the 60's and 70's were Met fans.

>> Peter Robinson: So we must have a strong contrarian streak there.

>> Andrew McCarthy: Yeah. All right. I think that's probably fair.

>> Peter Robinson: Okay. So, but the point I'm trying to establish is that for Andy McCarthy suddenly hit with these characters who tried to kill his fellow New Yorkers, the world of Islam and the Muslim theology is an entirely new world?

>> Andrew McCarthy: That's exactly right.

>> Peter Robinson: And you dove into it?

>> Andrew McCarthy: Yes. Well you have to dive into it. The great thing about a criminal trial, there's a lot of down sides to them, but the great thing about it is that you can't win one with politically correct nostrums. You actually have to prove evidence and give the jury a sensible explanation for why people do what they do. Which means as the prosecutor your obligation is to get an accurate read on why they do what they do. Because juries demand to know the motivations of.

>> Peter Robinson: In Willful blindness you write about quote, the chasm between the Islam of western fantasy and the Islam that actually exists. Give me a couple of sentences on what you mean.

>> Andrew McCarthy: Well the ideology we're dealing with, it would be wonderful if it was a French group of lunatics who had perverted or hijacked an otherwise peaceful doctrine. In fact, we're dealing with an ideology that is 14 centuries old, has commanded the allegiance of the rich and the poor, the old and the young, the educated and the uneducated. It's got a deep pedigree. It is rooted in a little, literal interpretation of the Islamic scriptures, and it probably commands the allegiance of hundreds of millions of people. Not, not all of whom would become terrorists, but many of whom share the goals of the terrorists.

>> Peter Robinson: President Bush on September 17, 2001, I quote, Islam is peace. Close quote.

>> Andrew McCarthy: Sorry. Wrong.

>> Peter Robinson: He's just plain wrong.

>> Andrew McCarthy: No, he's wrong.

>> Peter Robinson: Willful Blindness, again Jihad. I mean you've talked about Islam, but Jihad won't go away. There would be no Muslim world without it. Closed quote. Tell me what it means, and tell me why you say it won't go away; why it's central to a Muslim understanding.

>> Andrew McCarthy: Jihad is a, Jihad is most, most accurately understood as holy war. It is the struggle to expand the Islamic world. It is the means by which there is an Islamic world, because that's how Islam was mostly spread by the sword, not by peaceful persuasion. And there have been admirable efforts to redefine it, because it's a very troublesome term. But the fact is it is a

>> Peter Robinson: You mean admirable [unclear] efforts on behalf of reform within the Muslim world.

>> Andrew McCarthy: And without, you know, I think there are western people who are sympathetic to Islam, don't want to see the world as a clash of civilizations, and therefore trying to help them reform. But of course, we can't do that; it has to be reformed from within. And the problem with the reform is the, the people who are doing the reform sound to the Muslim world like the people who were dancing on the head of a pin. Where as the Jihadist themselves, the people we refer to as Jihadists or, or terrorists are the ones who will seem to be more authentic, because their interpretation within the tradition, exactly. They are rooted solidly in the scriptures.

>> Peter Robinson: Let me present two ends of the spectrum. On one end the founder of Islam himself engages in violence, we know that, we know that is a matter of the historical record, or at least of the legends that have grown up around him. One way or the other you look at the founder and you see a man who engaged in violence himself. And in the early first 2 or 3 centuries of Islam the religion spreads primarily by the sword. This is by contrast, obviously, with Christianity where the founder not only doesn't kill people, but dies himself and before it becomes the official Roman religion. For 3 centuries Christianity spreads by persuasion. You've got a sharp contrast. So you've got the notion here that Islam is inherently expansionist, dangerous, intolerant, one end of the spectrum. The other end of the spectrum Daniel Pipes, [phonetic] quote, radicalism is the problem and moderate Islam is the solution. Close quote. This end of the spectrum Islam is complicated culturally, religiously, doctrinally, but there are people with whom we can work, and it's our job to encourage the moderates. Inevitable class of civilizations let us gird for war, because it's coming at us. Intellectual war, a cultural war, not neces,

[phonetic] and, and perhaps, well we're at war in Iraq. Over here, wait a minute. Let's slow down. Let's bind. Let's work very hard to find the people with whom we can work and encourage them. Where is Andy McCarthy on that spectrum?

>> Andrew McCarthy: Somewhere in the middle, but closer to the, to the harsher interpretation. I, I am a great admirer of Daniel Pipes, but in this particular I think that I'm waiting for the moderates to emerge that, that he speaks about. And I've been waiting for them for a long time. I've, I've actually tried to empower them myself. But I don't think that you can empower them unless you come accurately to grips with what the dynamic is that you're dealing with. And that I don't think we've done. By acknowledging or by conceding that there is a vibrant moderate Islam, which I don't actually see the evidence of; I think we are, in a way, stopping it from developing. Because we're allowing a lot of people who are not moderates and who actually mean us harm, to operate under the radar screen and infiltrate throughout our society, and particularly throughout our government. This government's interpretation of moderate Islam, unfortunately, is if you are not today in the act of blowing up a building you're capable of being a moderate. As long as you say that you want the immoderate things that you want to impose, like Shiria, [phonetic] you're willing to impose through a political process. And I don't think that's moderation.

>> Peter Robinson: All right. Jihad in America. Let's begin again with your direct personal experience. Tell us about the Alkifah. Am I pronouncing that correctly?

>> Andrew McCarthy: Alkifah.

>> Peter Robinson: The Alkifah Refugee Center on Atlantic Avenue in Brooklyn.

>> Andrew McCarthy: Well that

>> Peter Robinson: Minus the usual disregard for Brooklyn and a man from the Bronx would have, of course. But tell us about the Atlantic Avenue in Brooklyn.

>> Andrew McCarthy: Well that actually was a, a cell of what ultimately became Al Kida. It was really the Al Kida branch in the United States, which became Sheikh Abdel Rahman's sort of hub. It began operating here in the late 1980's.

>> Peter Robinson: Attached to a mosque; is that not correct?

>> Andrew McCarthy: Well, yes attached to the mosque in, in, in Brooklyn. And what it was a hub for was jihadist activity. Actually you had a group of activists who were all influenced by the blind sheikh, who at the time was the head of the Islamic group, Gamat Islamiya, [phonetic] which is one of the most ruthless terrorist organizations in the world. Rahman had also been responsible for the fat [unclear], the religious edict that supported the murder of President Sadat in Egypt. But these people were conducting paramilitary training on weekends. The FBI actually surveilled them in 1989 on consecutive weekends doing shooting practice out in Calverton, Long Island. And one of the most important

activists in the group was a guy by the name of Sied Nosair, [phonetic] who in late 1990 commits one of the most infamous homicides in the recent history of New York, namely the murder of Mier Gahani. [phonetic]

>> Peter Robinson: Willful Blindness, I'm quoting you again. The wide birth Americans reflexively grant religious practices creates immense opportunities for Islamic terrorists to meet and plan in the safety of Mosques. Close quote. You, you describe Alkifah in Brooklyn as the first of a pattern. At its worst how bad did that become? Give me some feeling for how extensive jihad in America became.

>> Andrew McCarthy: At its worst I think you can just look at 911. I mean, take a look at where 911 gets plotted. It may have been hatched in Afghanistan, but it gets plotted in Hamburg, in Madrid, in New York, in Fairfield County, Sarasota, Florida, Arizona, which is to say, jihadists are very adept at exploiting the freedoms that are available to them in western democracies. The fact that the blind sheikh was here rather than in Egypt, was a reflection of the fact that he was able to operate here in a way he never could have in his home country, the police state under Mobaric. [phonetic]

>> Peter Robinson: Let me, again, let me quote Willful Blindness. Between 1986 and 1990, the blind Sheikh applied for visas to enter the United States on at least 4 occasions. Only once did the state department deny a request. On each occasion CIA officials were responsible for reviewing the applications. Close quote. What was going on?

>> Andrew McCarthy: This is, Peter, it's, it's a, if it wasn't so tragic it would be a, a comedy that was actually somewhat amusing. But the bottom line is, he wasn't put on the terrorist watch list, even though we knew he was a terrorist. When he was put on the terrorist watch list, the people who are responsible for looking at didn't look at it. When they finally did look at it one side of the house didn't know what the other side was doing. So while one

>> Peter Robinson: Meaning CIA didn't know

>> Andrew McCarthy: Well,

>> Peter Robinson: Is it CIA, FBI, or [unclear] state?

>> Andrew McCarthy: Well it's, it's CIA, State, Immigrations, Customs, there's a whole web. But the fact is that the right hand didn't know what the left hand was doing. So for example, at one point when they finally, on one side, connected all the dots and said, this is a guy we shouldn't have in our country let's try to get him out of here, that's one INS office. Another INS office had already given him a green card as a religious instructor. So that the next time he tried to come into the country we had to let him in, because he was a lawful permanent resident.

>> Peter Robinson: Quote, the woeful tale about Abdel Rahman's breath, I'm quoting you again, breathtakingly unrestricted travel in and out of the United States is not sinister. It is instead a story of inefficiency, political correctness, and incompetence. Close quote. Do

you see any evidence that the FBI, CIA, State, Customs, are systematically more alert today than they were in the 1980's?

>> Andrew McCarthy: They are systematically more alert, but they're also systematically, this is unbelievable in the wake of 911, but they are systematically more resistant to seeing Islam as a problem rather than something that is contributing in a beneficial way to the, to answering a threat that we're dealing with, which to me is mind boggling, frankly.

>> Peter Robinson: Let me, let me give ya, see when I read Willful Blindness what I see is, in part, what I see is this story of a couple of pieces of government that actually work pretty well. Namely the United States attorney's office in the southern district of New York, Rudy Giuliani ran a very tight, tough shop. You guys had a high sense of morale. You were hard working.

>> Andrew McCarthy: And Mary Jo White [phonetic] who

>> Peter Robinson: And Mary Jo White who succeeded him. And who was a Clinton appointee, and, there's a kind of bipartisan sense of excellence there. And yet you're all working on government salaries. And the FBI seem in New York to have been alert and doing its job. You get gov, pieces of government that work pretty well. And then this morass out beyond, once you leave the New York area, the guys you were working with, you've got this morass of incompetence, and political correctness, and inefficiency, all the things that you write about. And so the question is,

>> Andrew McCarthy: Well can I, can I just respond to that?

>> Peter Robinson: Yeah, please [unclear].

>> Andrew McCarthy: Cause I, I don't want to suggest, I think we made some blunderous mistakes as, as, as a U.S. Attorney's Office and as a Justice Department. And I think the FBI did as well. I wouldn't want to absolve us. I think we did a lot of good things, and did a lot of good, but I wouldn't want to say that a, that we were free from what I think overall in government was a failure to come to grips with, not only what the threat was that we were confronted by, but what was motivating it. And the reason the book is called, Willful Blindness, aside from the fact that my lead defendant was blind and Willful, is the fact that, that I think this ostrich mentality that gripped us as, as early as 1993 when that bombing first happened, is the same mentality that we're in the grip of today.

>> Peter Robinson: All right. Law enforcement and national security. Take me through the contrast. First law enforcement. You write, the long, the line drawn here in law enforcement is that it is preferable for the government to fail in a prosecution than for an innocent person to be wrongly convicted. Explain what you mean.

>> Andrew McCarthy: The theory of our system is that the, the accused has to stand as the peer of the prosecutor. That's when, when we have somebody who is brought into the domestic criminal justice system.

>> Peter Robinson: Criminal.

>> Andrew McCarthy: Right. Our Constitution regards him as an innocent. He's presumed innocent. We interpose things like defense lawyers and courts to make sure that his rights of privacy are respected, his rights of liberty are respected. There are presumptions and hoops that the government has to go to take away liberty, to, to invade privacy. And the concede of our system is in a sense we would rather see government lose. We would rather see the guilty go free, than the innocent be wrongly convicted.

>> Peter Robinson: And that fundamental presumption runs all the way through the criminal justice system.

>> Andrew McCarthy: And we wouldn't want to change it a wit for anyone who's rightly in it.

>> Peter Robinson: Okay. Now to national security. The line drawn here you write is that government cannot be permitted to fail. Close quote. Explain that.

>> Andrew McCarthy: The, the liberties that we cherish and that we identify ourselves as Americans by, are dependant on the system that, our, our governmental system, our constitutional system, in order to protect them. Our liberties don't come from government, but without government we wouldn't have them. That's the reason that we organize government in the first place. When we're dealing with foreign threats to the United States we're not dealing in a situation where our government has a monopoly over the use of force. We're dealing with, you know, almost 200 nations, sub national groups, and terrorist organizations, all of whom assume the right to use force. And some of whom, like terrorists, reject the civilized rules of warfare. In that circumstance we are not bringing someone in our domestic body politic to heal for violating our laws, we're protecting the American people and protecting the system on which our rights depend. And we can't have a situation where we presume those people innocent. And we say we would rather see government fail.

>> Peter Robinson: So is it true to say that even as you were successfully prosecuting Sheikh Rahman in 1995, you were thinking to yourself, this is not the way to go about dealing with such people.

>> Andrew McCarthy: I wish I was precient enough Peter to say that I, I realized that in 1993 at the beginning of the process. But by the end of the process when you see the way it works everyday, when you realize that this is really more of a crime, more of a war than a crime. And you realize that by complying with our due process rules that we're basically edifying the enemy about our intelligence, about our methods and sources of collecting intelligence while they're trying to kill us. I don't think that you could get a

front row seat like I had for that, for two years, and not at the end of it come out and say this is nuts.

>> Peter Robinson: Got it. Listen to a remark by a man who, but for about 100,000 votes in Ohio would now be completing his first term as President of the United States, John Kerry. Quote, we have to get back to the place where we were, where terrorists are not the focus of our lives, but a nuisance. As a former law enforcement person I, John Kerry, know we're never going to end prostitution, we're never going to end illegal gambling, but we're going to reduce to a level where it isn't threatening peoples lives everyday. It's something that you continue to fight, but that's not threatening the fabric of your life. Close quote. Fundamental mindset. I think what he's; the fundamental mindset is let's treat this as criminal [unclear], he's wrong.

>> Andrew McCarthy: There's a canyon in Lower Manhattan where two pretty big buildings used to stand, and, and I don't think it was put there by prostitutes and gamblers.

>> Peter Robinson: Okay now, here's the; oh I can see why you'd be good in court. Remind me never to cross you. Okay, here's the, the little tickle in the back of my mind. I see your point, and I see it vividly. Criminal prosecution will not work on terrorists. On, on the other hand, isn't John Kerry right that a war on terror, if, if you call something the war on terror, there's an implicit misleading of the public suggesting that this has an end point. That it's like the Civil War or the Second World War, that there's some expectation that it's some single digit number of years. It ought to end. It ought to end in a victory. And terrorism just isn't like that. It's more of a condition. There's no reason to suppose that we can break this group or that group, but there's no reason to suppose we won't be facing the danger of terrorism indefinitely.

>> Andrew McCarthy: Well let me

>> Peter Robinson: Isn't, isn't that right?

>> Andrew McCarthy: Well let be quibble with your, your sense of war.

>> Peter Robinson: Okay.

>> Andrew McCarthy: Because I, I think that the idea that war is a sort of a single digit yearly phenomenon is, is a fairly recent historical development.

>> Peter Robinson: Go ahead.

>> Andrew McCarthy: I mean we've had hundred years wars, we've had the 30 years war. You know, before our, our republic, the idea of war being something that was fixed in time and space is, it was not really the conventional understanding of war. You have to face this as either something you manage as a crime problem. When you regard something as a war I think it's probably correct to say war on terror is the wrong term, because terror is a, a method of operation.

>> Peter Robinson: Right. Right. Right. Right.

>> Andrew McCarthy: We should be talking about who the enemy is. But the idea of war is that we have to suppress the ability of these terror networks to project power on the scale of a nation's state. And I don't think that that's a mission that can't be accomplished, even though it'll take a long time. It'll require a war footing on the part of government, and it will require an understanding of what the ideology is that drives this, but it can be done. It will take a long time. I think to the extent that Kerry and people like him suggest that we need to have a rethinking of how we deal with this. I think there's a lot of merit to that. We have these two different paradigms, military and the legal system. After 7 years I, I think, you know, what we're dealing with here is, is not a conventional war like the wars that we understand. And it's probably not a good idea to be looking at this as something that should be prosecuted exclusively through the military system, as we've used the military system in prior wars. We need a better system.

>> Peter Robinson: The war, the law, and the Bush Administration. I want to ask you to grade and comment on the current administration, but first I want to establish the criteria.

>> Andrew McCarthy: Okay, [unclear]

>> Peter Robinson: These are the criteria that occur to me, but we'll see if you, if you buy them. Philip Bobbitt, [phonetic] author of *Terror and Consent*. We must, quote, conform our, our strategic behavior to the rule of law. And the law to which we conform must be reformed to take into account changes in the strategic context. The rule of law must remain important as we prosecute the war on terror, but it has to be reformed to, adjusted to the current reality. You buy that, right?

>> Andrew McCarthy: I'm resistant to the term, rule of law, because the way it's been debated in our

>> Peter Robinson: oh really?

>> Andrew McCarthy: Yeah. Well, post 9/11 rule of law is, is the banner, or the emblem, or the slogan that's used by the people who attack the Patriot Act, or attack the NSA Program, the warrantless surveillance. Rule of law does not mean Congress passes statutes. The president has authority under Article 2 of the Constitution, precisely because the framers, unlike our conventional society, recognize that there were hostile forces out there. There were enemies of the United States that might threaten us, if not strategically, even existentially. And the president has the ability to react to that. And when he reacts to it that doesn't, if it doesn't comply with a statute, that doesn't mean he's operating outside the law. The law under which we live is the Constitution. Not the, not just the statutes enacted by congress.

>> Peter Robinson: That's as straight a channeling of Abraham Lincoln as I've heard in a long time.

>> Andrew McCarthy: Well I could channel worse, I guess.

>> Peter Robinson: You could channel a lot worse. Okay, so you, your point is that the minute you start talking about the rule of law you've

already made a rhetorical concession.

>> Andrew McCarthy: Yeah. And I don't want to, I don't want to suggest that I'm-

>> Peter Robinson: The rule, while properly understood.

>> Andrew McCarthy: Correct.

>> Peter Robinson: Is what you're arguing.

>> Andrew McCarthy: Yeah. I, I believe in the rule of law. I love the rule of law. But I want to make sure that we, that we have it right.

>> Peter Robinson: Got it. Okay, now let me, okay, so let me, let me test you, test your thinking another way, probe your thinking another way. Here's an exchange that took place between me and Philip Bobbitt at this very table a couple of weeks ago. He was talking about the way the administration might have failed. Anyway, so I said, suppose when we picked up these enemy combatants and put them in Guantanamo, the President had made a speech saying something like, these are neither criminals nor soldiers, so American criminal law does not apply to them, nor do the Geneva Conventions. There's something new. And we're putting them in Guantanamo for that purpose. But at the same time I'm appointing a distinguished panel of jurists, it would include Andy McCarthy. And they will

>> Andrew McCarthy: This is total fiction.

>> Peter Robinson: They will, they will, and these jurists will examine the legal problems, what to do with enemy combatants, such as we have captured and are now detaining in Guantanamo. And they, well, I give them the grant to examine other legal situations, which are new to the war on terror. The law by its very nature tends to lag. It, it, it, it is an organic development of the past, and there are moments when we need to adjust. And Bobbitt said that's exactly what Bush should have done. What do you think?

>> Andrew McCarthy: Well, I almost completely agree with that. The only caveat I have is I think it was fair to give the president maybe a couple years even-

>> Peter Robinson: All right.

>> Andrew McCarthy: To grapple with this problem while we were at war, while we, while he was dealing

>> Peter Robinson: Got ya.

>> Andrew McCarthy: with the threat.

>> Peter Robinson: Okay.

>> Andrew McCarthy: But I think otherwise, that's exactly what should have happened. And 7 years out, it should happen, it should have happened already, and there's no reason why it can't happen today. And that's why, for example, I, I argue in the book that we ought to have a, a national security court, which I think, given that we're dealing with a sort of a hybrid between war and crime. I think more on the war side, but, but a hybrid, I don't think we should try to pigeon hole it into either the military system or the criminal justice system. We have these two ways of dealing with it, let's take the beneficial parts of the military system, which allow us to protect classified information, and which allow us to give a modicum of due process, but not the full fledged due process that you get in the criminal justice system, to people who are our enemies and who are trying to murder the American people. On the other hand, we, we have parts of the criminal justice system that work much better than the military system has been able to work. For example, federal judges can get these cases done. I'm not a big fan of judges making the law up as they go along. But I think that you have to take your hat off to federal judges in terms of what they do that we expect them to do. Their, their main job, which is to get these cases, whip them into shape, and get them from beginning to end. Which is something the military system, for some reason, it's not it's own, own fault not it's own, but, but it bears a lot of the fault. They haven't been able to get it done.

>> Peter Robinson: Right.

>> Andrew McCarthy: It's not a big priority. When the military is fighting war, I mean, we're basically asking them now to dispense justice while they're fighting war, which is really not a fair imposition on them. And by this point in time I think we really should have devoted, in, instead of going after each other like we've gone after each other.

>> Peter Robinson: Can I just ask, in the legal culture

>> Andrew McCarthy: Right.

>> Peter Robinson: Law schools

>> Andrew McCarthy: Right.

>> Peter Robinson: Maybe this has happened, but if it has I'm not aware of it. Why haven't the kinds of people who sit on the boards of trustees of the nations leading law schools set up half a dozen programs at, where, where did you go to? Oh, NYU?

>> Andrew McCarthy: New York Law School, but Bolt Hall is a good

>> Peter Robinson: Bolt Hall, New York. To examine the law in the light of the new circumstances of the war on terror.

>> Andrew McCarthy: I fear, Peter, that the, the legal elites are actually post sovereign. I think they're, they're part of the problem. And I think that if given their druthers if they were going to do the kinds of studies that we're talking about, they would attack it from the premise that we're, we're not really the United States at war trying to succeed and, and win victory in a war. We're instead legal elites under a framework of international law, whose main job is to do justice to these people who have been picked up under some, occasionally at least, dubious circumstances, and figure out whether they really are terrorists. And frankly, when they, when they figure out that they are terrorists, I think they're more interested in trying to figure out why are they terrorists than actually dispensing justice. But I, I think what you're asking is something that ought to be done, but it's gotta be done by people who are starting from the premise that we are the United States, we're at war, we have a, a, an innate right to defend ourselves, and we need to win. And part of winning is, in this particular, making sure that we, we give people we capture enough justice, so it doesn't look like a kangaroo court, so that we can continue to maintain the cooperation of our allies. That we need

>> Peter Robinson: Respect ourselves. Self respect.

>> Andrew McCarthy: Exactly right. Exactly.

>> Peter Robinson: Is part of the problem here. We have to keep our own moral high. Okay, last couple of questions. Give me a grade. Bush Administration on it's administration of the law and on its prosecution of the war.

>> Andrew McCarthy: B, B minus.

>> Peter Robinson: For administration of the law?

>> Andrew McCarthy: Well I, I, I thought you were asking me for one.

>> Peter Robinson: Oh, I'm trying for 2 grades, I'm sorry.

>> Andrew McCarthy: Administration of the law I would say, probably a C.

>> Peter Robinson: Because they should have been, they should have done things by now.

>> Andrew McCarthy: Well I think it, it was, it was the right thing to say that the criminal justice system can't work for this, but we should have fixed it by now.

>> Peter Robinson: Got it. Okay. And on the administration, for prosecution of the war?

>> Andrew McCarthy: Ah, boy I'd give that an incomplete. Because I, you know,

>> Peter Robinson: Fair enough.

>> Andrew McCarthy: I, I, I just don't think the war is only in Afghanistan and Iraq.

>> Peter Robinson: Okay. Last question. I wave a wand. I give you 2 or 3 sentences that you may speak to the next President of the United States, what do you say?

>> Andrew McCarthy: Come to grips with the ideology that's fueling this. Smoke out the people who are pretending to be moderates and aren't moderates. And devote some energy to fixing our system of dispensing justice, so that we can protect our national interest, but at the same time have a system that other countries are willing to cooperate with, because we need their help.

>> Peter Robinson: Andy McCarthy, thank you very much.

>> Andrew McCarthy: Thank you Peter.

>> Peter Robinson: Andrew C. McCarthy is the author of Willful Blindness, a Memoir of the Jihad. I'm Peter Robinson at the Hoover Institution. Thanks for joining us.