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Legal Language and Theatrical Presence: Transforming a Legal Inquiry into Theatre in version 1.0's Deeply Offensive And Utterly Untrue

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Abstract

In late 2005, it was revealed that the Australian monopoly wheat exporter AWB Ltd had significantly breached Australian Government backed UN sanctions by paying A\$290 million in bribes or 'kickbacks' to the Iraq Government.¹ As the purpose of these sanctions was to prevent Saddam Hussein's Government from gaining access to hard currency with which he might purchase or develop weapons, Australian media reportage regularly referred to AWB Ltd's 'kickback' payments as the 'wheat-for-weapons' scandal. To investigate the scandal, the Australian Government established the Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme (the Cole Inquiry). Presided over by Commissioner Terence Cole QC, the high-profile inquiry undertook a forensic investigation of the legally and ethically murky world of international wheat trade.

Legal Language and Theatrical Presence: Transforming a Legal Inquiry into Theatre in version 1.0's *Deeply Offensive And Utterly Untrue*

David A Williams

Your editorial suggesting the Australian Government went to war in Iraq to protect its wheat market is deeply offensive and utterly untrue (Downer 2006).

In late 2005, it was revealed that the Australian monopoly wheat exporter AWB Ltd had significantly breached Australian Government backed UN sanctions by paying A\$290 million in bribes or 'kickbacks' to the Iraq Government.¹ As the purpose of these sanctions was to prevent Saddam Hussein's Government from gaining access to hard currency with which he might purchase or develop weapons, Australian media reportage regularly referred to AWB Ltd's 'kickback' payments as the 'wheat-for-weapons' scandal. To investigate the scandal, the Australian Government established the *Inquiry into Certain Australian Companies in Relation to the UN Oil-for-Food Programme* (the Cole Inquiry). Presided over by Commissioner Terence Cole QC, the high-profile inquiry undertook a forensic investigation of the legally and ethically murky world of international wheat trade.

While the potential political implications of the affair were of interest to the community at large, especially due to the extremely close links between AWB Ltd and the Australian Government, the

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Cole Inquiry was fundamentally confined to the realm of the legal. How might theatre be able to meaningfully engage with the legal language of such an inquiry? To begin to address this question, this paper will examine the production and performance of *Deeply Offensive And Utterly Untrue* (2007) by the performance group, version 1.0, which undertook a theatrical re-making of the 8500 pages of the Cole Inquiry's transcript. It will examine the means by which the production navigated the spaces between the domains of law and theatre.

Despite the volume of transcripts from the Cole Inquiry's hearings, the basic story of the so-called wheat-for-weapons scandal was fairly simple. Although operating under a sanctions regime whose purpose was to prevent Saddam Hussein from gaining access to hard currency to continue his weapons programs, in 1999 AWB Ltd was asked to pay a new fee, ostensibly for 'trucking', in US dollars and in cash. Rather than risk missing out on a major wheat sale, the company agreed to pay the US\$7.2 million in cash to Iraq, knowing that this was against the spirit of the sanctions. After convincing AWB Ltd to cheat once, Iraq increased the trucking fee over the next four years and AWB continued to pay. In all, it seems an estimated A\$290 million was paid to the Government of Saddam Hussein, and AWB Ltd actively tried to conceal the payments through a string of front companies.

The Australian Government had close ties to AWB Ltd and its management and, despite thirty-five documented warnings that the company was engaged in corrupt behaviour, chose not to investigate and aggressively defended the company against all concerned parties. Simultaneously, the Australian Government aggressively pushed the case for war against Iraq using the claim that Iraq was rorting the sanctions program as one of its justifications. Thus, while AWB Ltd was the biggest single rorter of the sanctions, the Australian Government was their biggest defender. In 2005 the UN conducted its own inquiry and the resultant report by Paul Volker recommended further investigation of companies including AWB Ltd. In December 2005, the Cole Inquiry began hearing evidence in Sydney. The inquiry concluded in September 2006 and Commissioner Cole's report was tabled in

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Figure 1 Former Prime Minister John Howard (David Williams) declares war on Iraq, as the messy wheat contracts are hidden away in version 1.0 *Deeply Offensive and Utterly Untrue*. Photograph: Heidrun Löhrl

Parliament on 27 November 2006. It recommended to a task force that charges be laid against eleven former staff and directors of AWB Ltd for possible breaches of the *Crimes Act* 1914, the Criminal Code, the Crimes Act 1958 (Vic), the Banking (Foreign Exchange) Regulations and the *Corporations Act* 2001.

In January 2007, the version 1.0 team began work on the transcripts of the Cole Inquiry. Founded in 1998, the theatre company has created a body of theatre works exploring vexed issues in Australian public life.² These have often juxtaposed a range of tightly edited found materials including public documents such as parliamentary transcripts, Senate inquiries, royal commission proceedings and media interviews. While the version 1.0 had previously used the proceedings of public inquiries and the reportage surrounding them to make theatre, most notably the 2004 project *CMI (A Certain Maritime Incident)*, the task of distilling the theatrical on this occasion was of far greater magnitude.

The transcript of the Cole Inquiry's seventy-six days of public hearings totalled almost 8500 pages. Together with the 2000 or so pages of Cole's report, and thousands of pages of journalism and other commentary, this presented a veritable mountain of paper.

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Figure 2 Kym Vercoe as Dominic Hogan, AWB Regional Manager, Middle East, is subjected to severe scrutiny in version 1.0 *Deeply Offensive and Utterly Untrue*. Photograph: Heidrun Löhner

Scaling this mountain and transforming it into theatre was never going to be simple, however, making theatre from documents that are defiantly non-theatrical is something version 1.0 has become quite skilled at in recent years. Nonetheless, to say that the process was challenging is a severe understatement and it was, perhaps, with this mountain-climbing metaphor in mind, that one of the artists involved described their efforts as an ‘extreme sport’ (Di Fonzo 2007).

A large part of the difficulty lay in the nature of the material itself. As became increasingly apparent from version 1.0’s research, the Cole Inquiry’s nature as a *legal* inquiry made it very different to the company’s more familiar territory, namely that of the *parliamentary* inquiry. The ritually combative language of parliamentarians is, perhaps unsurprisingly, a beast of quite a different order to the ritualised combative language of lawyers. The codes by which legal practitioners operate was in no way immediately apparent to the version 1.0 team, and this was not assisted by either the arcane area of law explored during the inquiry (international maritime law) nor AWB Ltd’s legal defence, perhaps best described, to non-legal eyes at least, as obstruction.³

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Figure 3 Jane Phegan, Stephen Klinder, Kym Vercoe, David Williams and Yana Taylor re-present AWB Managing Director Andrew Lindberg's litany of 'I don't knows' as if a choral arrangement in version 1.0 *Deeply Offensive and Utterly Untrue*. Photograph: Heidrun Löhrr

The inquiry seemed concerned with the finest of fine details and counsel assisting the inquiry asked probing questions of minute and often-impenetrable detail, in no immediately apparent narrative or chronological order. These details included the date of a meeting, the distribution list of an email, and the exact significance of a scribble on a document. These legal strategies — which involved modes of questioning often deployed during cross-examination to test witness believability and consistency — might be familiar to legal audiences, however, general public readers attempting to understand the complex nature of the 'wheat-for-weapons' scandal might well become frustrated. Additionally, the repeated responses to such questioning — 'I don't recall' — appeared to advance neither dramatic nor investigative coherence. One of the key witnesses in version 1.0's performative remix of the inquiry, the Managing Director of AWB Andrew Lindberg, used variations of 'I don't recall' 158 times in a single day's testimony.⁴

How might theatre approach such obstructionist language? What might theatre be able to do when faced with protagonists who engage in such excessive and, at times, virtuosic acts of avoiding straight answers?

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Figure 4 Peter Geary, AWB General Manager, Trading (Stephen Klinder) delivering testimony against a live-feed video projection of a mouse and baited trap in version 1.0 *Deeply Offensive And Utterly Untrue*. Photograph: Heidrun Löhrr

Perhaps unsurprisingly, given the nature of version 1.0's ensemble practice, in the performance of *Deeply Offensive And Utterly Untrue* this question was addressed using several different strategies, each of which engaged with varying degrees of irony with the legal language of the transcript. The most straightforward approach was the slyly comical representations of media interviews with former Foreign Minister Alexander Downer that punctuated the performance. Downer, portrayed by Stephen Klinder, became almost the narrator of the show, albeit a fairly unreliable and pompous narrator, appearing in live crosses broadcast, glass of red wine in hand, from the theatre bar to give his take on the unfolding scandal. Sitting both outside the world of the inquiry, and physically located outside the auditorium, Downer's explanatory interludes offered comedic relief from the complex legal manoeuvring occurring inside both the inquiry and the performance itself.

Another approach to the obstructionist legalese that appeared in the inquiry was to magnify its obstructiveness. In an early section of the performance that purported to be a presentation of 'edited highlights of testimony from Andrew Lindberg, Managing Director of AWB Ltd' (version 1.0 2007: 10), the five performers lined up downstage facing

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the audience, each with a music stand in front of them. On the music stand was placed the transcript of a single day's testimony and the performers delivered an orchestrated litany of 'I don't know's' as if they were a choral group, finding the implicit musicality in linguistic denial.

Perhaps the most striking treatment of inquiry transcript was applied to the testimony of AWB Manager Peter Geary. In discussing the nature of contracts negotiated between AWB Ltd and the Iraqi Government, Geary became increasingly confused and incoherent. In staging the scene, each of the questions directed at Geary were removed, but his responses were left unaltered, transforming his testimony into an unravelling monologue delivered by performer Stephen Klinder. As he spoke, two live-feed images of a real mouse circling around a baited mousetrap were projected onto the screens behind him. While the mouse nibbled its way ever-closer to sudden death, Geary's testimony noted helpfully that 'there were a number of mechanisms that should have happened' (version 1.0 2007: 30). With the mouse now taking the bait, the trap should have gone off, but hadn't. 'What happened then was', Geary observed, 'between that period, war broke out. Those contracts, in effect, ceased to exist' (ibid). The war in Iraq began and, paradoxically, people at AWB Ltd such as Geary now seemed to feel safe from scrutiny. While the mouse survived, unharmed, Geary might not prove so fortunate, being one of twelve AWB staff recommended by Cole for criminal prosecution.⁵

The juxtaposition of Geary's text and the increasingly unsettling image of the potential imminent death of a mouse did not simply parody the hapless AWB Manager, but instead suggested that the matters under investigation were far more disturbing than the comic approach adopted elsewhere in the performance might have indicated. Despite the ridiculousness of much of the impenetrable legal technique used throughout the Cole Inquiry, at its heart the wheat-for-weapons scandal involved the pain and suffering of faraway others. Indeed, this was at the core of a class action against AWB Ltd in the US, where a group of Iraqi women sued AWB Ltd on the grounds that its proven material support for Saddam Hussein's regime made the company at

least partially responsible for the murder of their husbands by Hussein's secret police. Despite dismissal of the case in October 2008, largely due to uncertainty around jurisdiction, it remains clear that the so-called 'kickbacks' effectively funded violence, and all of AWB Ltd's obstructions within the Cole Inquiry failed to conceal that a number of its staff appeared to be well aware that, potentially, the money would be used for violent ends. This was best illustrated by an infamous email tabled as evidence in which two AWB sales managers joked with each other that the monies were being used for the construction of bunkers that:

... will have cement walls and floors so they are actually designed for burying the kurds [sic] — under the cement? They intend to build them with fumigation capability so the mind boggles as to whether they are fumigating insects or any other pest that pisses them off (Borlase 2001).

Despite Alexander Downer's declaration that the 'suggestion that the Australian Government went to war in Iraq to protect its wheat market is deeply offensive and utterly untrue' (Downer 2006), it seems clear that war and the wheat market were deeply entangled.

The usual line about the wheat-for-weapons scandal from Government spokespeople such as Downer included variations of 'It's terribly complicated' (Downer 2006a). Like the best political spin, this was both true and misleading at the same time. Yes, the Cole Inquiry and associated documents were mind-bogglingly complex in the mass of details they continually disgorged but, as previously stated, the issue itself was pretty straightforward. Downer's insistence that everything was terribly complicated encouraged citizens not to waste their time thinking closely about it, and such strategic avoidance of thinking obviously served very particular political interests.

Part of the urgency that drove version 1.0's *Deeply Offensive And Utterly Untrue* was to actively resist such exhortations to stop thinking and, instead, to encourage citizens to closely interrogate the processes by which their democracy operates, and the ways in which national representatives, both governmental and commercial, act in our name. Against the Australian Government's line, 'It's terribly complicated',

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and AWB management's repeated refrain, 'I can't recall', version 1.0 attempted to put the pieces of the kickback jigsaw together and, in the process, to entertain, provoke and inform citizens. Together with its audiences, version 1.0 sought accountability for both corporate malfeasance and governmental negligence. The task might have been impossible, but since when was that ever a good reason not to try?

Notes

- 1 For further detail about AWB Ltd's involvement in the rorting of the UN Oil-For-Food Programme, see Overington (2007) and Bartos (2006).
- 2 For further information about version 1.0's past performance work, see online at: www.versiononepointzero.com. For scholarly accounts of this work see, for instance, Dwyer (2006), McCallum (2006) and Williams (2006, 2007, 2008).
- 3 It is worth noting that AWB Ltd's legal strategy appeared obstructionist to legal eyes as well, with Commissioner Cole describing AWB's attitude towards the inquiry as being categorised by 'non-co-operation' and a 'lack of frankness' (as cited in Hart 2006).
- 4 When Commissioner Cole handed down his report in November 2006, Lindberg was deemed to be a 'witness of truth'. This was somewhat baffling to the version 1.0 artists after reading hundreds of pages of denials, evasions, and refusals to admit that anything was even wrong.
- 5 It is worth noting however that these criminal proceedings have now been abandoned by the Australian Federal Police (AFP) and the Australian Securities and Investment Commission, with the AFP regarding the cases as unwinnable in court, and deeming any further pursuit of the company through the criminal courts as 'not in the public interest' (Wood and Grattan 2009).

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