

A RHETORICAL ANALYSIS OF
JOHN EHRLICHMAN'S WATERGATE TESTIMONY

by

DAVID W. BENEDICT

B. A., Manhattan Christian College, 1961
M. Div., Christian Theological Seminary, 1967

A MASTER'S REPORT

submitted in partial fulfillment of the

requirements for the degree

MASTER OF ARTS

Department of Speech

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1974

Approved by:


Major Professor

LD
2668
R4
1974
B46
C.2
Document

CONTENTS

PREFACE	i
INTRODUCTION	i
METHODOLOGY	8
THE ATMOSPHERE OF THE HEARINGS	15
EHRlichman'S KNOWLEDGE OF THE COVER-UP	21
EHRlichman'S AUTHORIZATION OF THE "ELLSBERG BREAK-IN"	28
EHRlichman AND "HUSH-MONEY" FOR THE WATERGATE DEFENDANTS	45
EHRlichman'S SHIFT OF RESPONSIBILITY TO JOHN DEAN	53
CONCLUSION	62
APPENDIX A	67
APPENDIX B	71
APPENDIX C	73
APPENDIX D	74
APPENDIX E	77
APPENDIX F	78
APPENDIX G	80
BIBLIOGRAPHY	81

PREFACE

At about 2 a.m. on June 17, 1972, three Washington, D. C. police officers, in response to a call from night guard Frank Wills, entered the Watergate Building, and in the office used as headquarters by the Democratic National Committee, arrested five "burglars." This simple act of law enforcement was the beginning of what has become the most extensive investigation and perhaps the greatest potential scandal and crisis in American political history. The outcome of "The Watergate Affair" is not yet completely known. But no one can reasonably doubt that its effects will be far-reaching.

There have been a total of thirty-six persons accused of crimes related to the Watergate burglary, or to other investigations arising out of that situation. More importantly, twenty-six of those indicted and/or convicted or acquitted have been either appointed officials in the Nixon Administration or employees of the Committee to Re-Elect the President, and among the accused are men who were top aides in the President's personal staff at the White House, as well as a former Attorney General of the United States.

The investigation of these crimes and allegations has taken twenty-five months, as of this writing, and it is still incomplete. During this time, the search for facts has involved three grand juries; two special prosecutors appointed by the President; investigators of the media; appellate courts and the Supreme Court; and a special Select Committee of the Senate. Just now in final deliberation is the hearing of the House Judiciary Committee on whether to recommend that the House impeach President Richard M. Nixon.

What all of this involves is a vast amount of talk, a monumental persuasive and counterpersuasive effort, and this aspect of the Watergate Affair becomes of special interest to the rhetorician. In the countless numbers of words which have been used by the participants in these investigations and their counsels is a rich specimen field for the analysis of persuasion. A part of that analysis is the purpose of this report.

The framework for understanding the analysis lies in a knowledge of the events out of which the persuasive attempts have arisen. This could not be fully explored in the report, since the background of events is so complex, but to aid the reader a chronology is included as Appendix A. But to carry this idea a bit further, it should be said that it is not really mere words and argumentative techniques that should concern the rhetorical analyst, but how they are used as tools in building or breaking society. Herbert A. Wichelns has written:

Rhetorical criticism lies at the boundary of politics . . . Its atmosphere is that of the public life, its tools are those of literature, its concern is with the ideas of the people as influenced by their leaders. The effective wielder of public discourse, like the military man, belongs to social and political history because he is one of its makers.*

D. W. B., July, 1974

*Herbert A. Wichelns, "The Literary Criticism of Oratory," from Studies in Rhetoric and Public Speaking in Honor of James Albert Winans (The Century Co., 1925).

INTRODUCTION

On the surface of things, the Senate hearings into "Watergate and Related Activities" fall within the category of rhetoric which Aristotle referred to as "political." The committee was to consider the matter and to propose legislation dealing mainly with the future. But in reality, the hearings had a strong undercurrent of, and often rather openly became "forensic"--the rhetoric of legal prosecution and defense, dealing with events of the past: "Forensic speaking either attacks or defends somebody: one or the other of these two things must always be done by the parties in a case."¹ In these hearings, we certainly see the interplay of attack and defense, even though the committee did not have any judgment to make or sentence to pass, in a legal sense. The committee had the task of reporting the results of its investigations at the end of February, 1974, and as Senator Sam Ervin, committee chairman, noted in his opening statement, "that report will reflect the considered judgment of the committee on whatever new legislation is needed to safeguard the electoral process through which the President of the United States is chosen."² (Because of the gradual unfolding of facts and allegations in the case, this deadline was not met, and the committee functioned until July 13, 1974).

Charged with reporting out recommendations for legislation, the committee hearings nonetheless did more in the quest which Ervin, a Democrat, described as being to "uncover all the relevant facts surrounding these matters, and to spare no one, whatever his station in life may be, in our efforts to accomplish that goal."³ That this threat to persons named or unnamed was inherent in the

work of the committee, was not lost on any intelligent observer. In fact, Senator Howard Baker of Tennessee, Republican Vice-Chairman of the committee, described the "central question" of the hearings as the guilt or innocence of President Nixon in planning or covering up aspects of Watergate.⁴ Though the proceedings were not judicial/forensic in an official sense, it is undeniable that the testimony presented there, given under oath, will become evidence in later judicial proceedings, as well as the impending impeachment inquiry in the Congress. In fact, testimony has already figured heavily in many of the criminal indictments handed down by the Watergate grand jury, on and since March 1, 1974.

The point, then, is that the rhetoric of the hearings became forensic in tone at many points even though judicial decision was outside the scope of the Senate Committee's power. The resulting factor of attack and defense served to color the content and apparent purpose of much of the testimony considerably, and perhaps accounts for the evasive and defensive verbal posture assumed by the witnesses on several occasions, in spite of their testimony that they had come to aid the committee in its search for facts.

While the preceding general observation may be made, as to the forensic tone of the hearings overall, before a specific analysis of the rhetoric can be undertaken, it becomes necessary to limit the scope of the task. Not much could be accomplished for the purposes of this report by trying to view the testimony as a whole. The publication of the hearing transcripts has to date yielded 13 volumes, comprising 5,858 pages. So, it is a practical necessity to narrow the focus of interest. The logical, most obvious approach would be to trace the line of a particular rhetorical feature through some portion of the testimony, or to analyze a variety of rhetorical features in testimony by one or two witnesses. The latter course has been chosen for this study.

The most politically explosive testimony came from John Dean, former Counsel to the President, on June 25-29, 1973, in which he implicated important White House personnel in being involved in what he alleged was a deliberate attempt to cover up the facts about the Watergate affair--in legal terms, they had attempted to obstruct justice. But Dean's testimony is not as interesting as that of some others from a rhetorical point of view, since he also implicated himself. In admitting his complicity, he avoided the necessity of trying to persuade anyone of his innocence.

A second great temptation would be to move beyond the hearings and testimony to the concurrent discourse that the President has been conducting with the American public through the media. Since his opening statement on Watergate on June 22, 1972, denying any White House involvement in the matter, Mr. Nixon has had to wage what almost seems a verbal rear-guard action as developments in the case have involved persons closer and closer to the Presidency. Suspicion of his personal complicity has been openly asserted by prominent public figures and members of the press. Added to these are the taint of corruption left by the sudden resignation of Vice President Spiro Agnew, in 1973, guilty of tax evasion and suspected of other crimes; the questions of the President's own taxes, and of campaign contributions allegedly linked to political favors; and running word-battles and legal battles on executive privilege with regard to evidence. The opportunity is great for rhetorical study in Presidential disclaimers and admissions growing out of these and other Watergate-related matters, but in view of the still unresolved and potentially volatile outcome of this rhetorical exchange, now is probably not the proper time. It may be years before the smoke clears enough for objective analysis of the situation.

Almost the same problem holds true for discussion of the one who has

been selected as the subject of this study. Litigation is still pending concerning the alleged involvement of John Ehrlichman, the President's top domestic advisor at the time of the break-in. He has been indicted by the grand jury for conspiracy, and obstructing justice. The difficulty encountered is partly indicated by the necessity of using terms in this study indicating the still undetermined results of the hearings and other proceedings connected with Watergate. We find ourselves forced to write in the language of unfinished-ness. "To date . . .," "As of this writing . . .," or in the phrase that came to be part of the "jargon" of the hearings, "At this point in time" One must be careful in an analysis such as this not to pass judgment prematurely on men yet to be tried--and who still protest their innocence, in the face of considerable skepticism, as well as physical evidence to the contrary.⁵

One may well ask in a case such as this whether the persuasive effort of these witnesses in the hearings can yet be fully judged, since the committee did not explicitly or at least did not officially render a judgment. In such a situation, the rhetorical critic must judge for himself, if at all, whether the "persuasion" of the witnesses was effective. But, this of course, is not necessarily the function of the critic. If, in Aristotle's terms, rhetoric is "observing in any given case the available means of persuasion"⁶ the emphasis is on the persuasive attempt, the means rather than the results. The rhetorical statement, in this case the testimony, still bears criticism since the point of rhetoric is "not simply to succeed in persuading, but rather to discover the means of coming as near such success as the circumstances of each particular case allow."⁷ The testimony in question may certainly be evaluated from this perspective, even though its ultimate result is still undetermined. It may also be possible to render a partial

judgment of the immediate persuasive effect by noting certain cases of immediate audience response. But more will be said of this later.

John Ehrlichman is of interest in this study, and is chosen as its subject for several reasons. Unlike John Dean and others, he admitted no complicity in any wrong-doing in his testimony before the Senate Committee. In maintaining complete innocence, he voluntarily undertook a formidable persuasive challenge. He had been implicated in the cover-up by previous testimony in the hearing. Physical evidence had been introduced and marked for exhibit indicating his connection with unlawful activities. He sought to meet these challenges with refutation and re-interpretation, as well as other rhetorical devices we will note later. So the rhetorical task he undertook for himself makes his testimony of interest to the critic.

A second interest, not so closely related to the rhetorical, is the fact that the high position in the Administration which this man occupied actually seemed to make his position as a would-be persuader more precarious. It does not seem excessive to say that to a large extent he faced a hostile audience in much of his testimony. Despite the fact that he was not on trial, and despite the principle which is supposed to be operative in American legal proceedings, that a man is to be considered innocent until he is proven guilty, Ehrlichman seemed at times to be facing a presumption of guilt. Perhaps this accrues as a sort of occupational hazard for politicians. This witness faced apparent skepticism not only at times from the members of the committee, but from the live audience present in the hearing room, from the press, and the public who "analyzed" the testimony through various reporting media. The idea of a witness attempting to prove his innocence in the face of hostile audience and evidence is intriguing to the student of rhetoric, whether being sympathetic he might marvel at the daring of the attempt, or

being hostile and skeptical he rather would scoff at its audacity. But more intriguing still than to marvel or to scoff is to analyze the details of the persuasive effort.

Further limitation is in order. The testimony of Ehrlichman is itself extensive (comprising the bulk of two of the transcript volumes) and beyond the scope of this study. So the plan here is to analyze the rhetoric he employed in attempting to deal with several major suspicions or allegations and to explain apparent evidence. Particular attention will be paid to issues he confronted in his prepared opening statements, but attention will also be given to how these and other issues are met again in later testimony. The study will analyze his statements about:

1. Why he was unaware of the Watergate cover-up.
2. His responsibility in the burglary of the office of Daniel Ellsberg's psychiatrist.
3. His alleged reassurances to Herbert Kalmbach about "hush-money."
4. His thoughts about John Dean.

We will look at some language features which run through the discussion of all these issues, and some motive appeals raised in the testimony.

FOOTNOTES

¹Aristotle, Rhetoric and Poetics, trans. by W. Rhys Roberts (New York: The Modern Library, 1954), p. 32.

²U.S., Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book I (Washington, D.C.: U.S. Government Printing Office, 1973), p. 1.

³Ibid., p. 4.

⁴Watergate and Related Activities, Book 6, p. 2587.

⁵The committee had received from John Dean a memo showing Ehrlichman's approval of a "covert operation" against the office of Daniel Ellsberg's psychiatrist, as well as other memos relating to it (See Appendices C, D, and E.). They also held the transcript of a telephone conversation between Ehrlichman and Herbert Kalmbach, in which Ehrlichman admitted approving payment of money to Watergate defendants. (See Appendix F.)

⁶Aristotle, Rhetoric and Poetics, p. 24.

⁷Ibid., p. 23.

METHODOLOGY

In any critical effort it is necessary to have a systematic means of analyzing the subject under discussion. As this particular study began we were for a time uncertain as to what course to pursue in terms of method, with the result that the decision was made to follow two courses. In analyzing the broad structures of argument in the testimony we intend to use the critical device which Kenneth Burke has called Dramatism, with its pentad of descriptive terms drawn roughly from an analogy to the theatrical stage. On the other hand, the types of appeals used as well as details of persuasion and style will be described in Aristotelian terms.

This approach might reasonably cause the reader to suspect that we have chosen two courses because we do not know enough about either system to utilize them singly in depth. There may be truth to this suspicion, but it is not the motivational factor in the method chosen. We recall the time when we investigated the possibility of pursuing a degree in ministry at the doctoral level, at a certain mid-western church-related university. The professor who discussed it with us described the program as consisting of the process of choosing and getting thoroughly involved intellectually with "your own theologian," (from the ranks of the "reputable" ones). Since we found it hard to visualize either the value or interest to be derived from such a concentration on the thought of one man, we abandoned our interest in that program of study. In similar fashion, in exploring theories of rhetorical criticism, we have discovered that no one system encompasses all particulars,

and so choose not to be limited to a single one. It is hoped that the systems selected to aid our analysis in this study involve the best features of both classical and modern rhetoric. From time to time in our discussion, if the expressions of Watergate testimony seem to call for it, we may also refer to descriptive systems other than the Aristotelian and Burkeian.

A description of the elements of the rhetorical systems employed is appropriate here. As noted, the broad patterns of structure will be observed in the framework of the dramatistic pentad. According to Kenneth Burke, this device is a comprehensive way of viewing any statement about motives, about why a thing was done. He says:

. . . any complete statement about motives will offer some kind of answers to these five questions: what was done (act), when or where it was done (scene), who did it (agent), how he did it (agency), and why (purpose).¹

The witness under study offered many statements of motive in his testimony--explanation of why things happened, how they could happen, why he did certain acts. The dramatistic pentad seemed to us a very appropriate device for analyzing the structures of his arguments. He often saw himself (or at least described himself) as an agent (actor) in certain situations (scenes) which affected the nature, purpose, and agency of his acts. Further, the pentad has the property of being applicable to individual statements of motive, or to a group of statements taken as a collective whole. It is reasonably easy to see how this pentad might be used in analysis of rhetorical structure. But the question can arise, "Is this a conscious, deliberate, structure? Can the rhetorician use the device creatively, for persuasive effect?" We think that this is possible, and that this, in fact is what often happened in Ehrlichman's testimony. The pentad is a way of viewing reality in the world of motives. And persuasion can be thought of as the effort to

get the audience to "see it my way." Discussing the pentad, David A. Ling states:

If persuasion is viewed as the attempt of one man to get another to accept his view of reality as the correct one, then the pentad can be used as a means of examining how the persuader has attempted to achieve the restructuring of the audience's view of reality.²

But Burke himself acknowledges that this system for viewing a statement about motives can be more widely applied than just in critical analysis. It can become the creative basis of a persuasive effort.

We can note a related source of rhetoric: one may deflect attention from scenic matters by situating the motives of an act in an agent (as were one to account for wars purely on the basis of a "war-like" instinct in people) or conversely, one may deflect attention from criticism of personal motives by deriving an act or attitude not from traits of the agent, but from the nature of the situation.³

This latter approach is readily observable in the Ehrlichman testimony, as we shall see in more detail later.

Basically, the pentad can be used rhetorically to determine what view of the world a speaker would like to have his audience accept. Burke notes that a rhetorical statement often reflects a certain sense of a pre-existing ratio between the elements of the pentad, a ratio which dominates the statement. This idea of ratio indicates a relationship between two elements of the pentad in which one depends on or derives its nature from the other. So one may say that, as Burke does in describing a couple of the possible ratios, "the scene contains the act" or, "the scene contains the agents," meaning that "the nature of acts or agents should be consistent with the nature of the scene."⁴ In other words, the quality of a scene or situation contains implicitly the quality of the action which can be expected to take place within it. A statement which clearly expresses this scene/act ratio was made by John Dean as he opened his testimony before the Senate Committee.

The Watergate matter was an inevitable outgrowth of a climate of

excessive concern over the political impact of demonstrators, excessive concern over leaks, and insatiable appetite for political intelligence. . . .⁵

The scene, a "climate" of excessive concern, "inevitably" led to the excessive acts of the Watergate affair, in Dean's evaluation. Of course, Ehrlichman's evaluations were quite different, as we shall see.

The ratios possible are ten in number, according to Burke, but rather than a detailed enumeration of examples of each, it may be simpler and more helpful to note that in most statements, one of the elements of the pentad will appear to dominate. This dominance can further be identified with major philosophical points of view, which fact may add further insight to the analysis of rhetorical statements. For instance, when statements about act dominate, the philosophy is realism, in the sense that the real is that which takes form, and becomes actual. The dominance of scene is related to determinism and materialism, and is often reflected in behaviorist statements about the effect of the environment. Statements in Darwinism and Marxism exemplify scene domination, as when Marx wrote that "Justice can never rise superior to the economic conditions of society."⁶ Idealism is the philosophy corresponding to the term agent, for where agent dominates, the view of the world is rational, the product of reason and mind comes to the fore. In expressions emphasizing agency, the point-of-view of pragmatism is featured, and in statements where purpose dominates, the philosophy of mysticism, with its sense of the individual lost in an over-arching purpose, is operative. An example would be a statement by a Christian that his individual life-goals are centered in fulfilling the will of God.

We will see cases in the Ehrlichman testimony where statements related to certain of these pentadic terms dominate, and reflect the corresponding philosophical perspective.

One way that the speaker shifts or establishes the emphasis of a statement is through the use of terms that reinforce that emphasis in his audience's minds. Burke has described as statistical a method of sifting a series of statements for lists of terms which contribute that reinforcement of emphasis. It should be possible to observe such cumulative lists in the Ehrlichman testimony.

As we analyze the pages of testimony for structures relating to the dramatistic pentad, it will also be possible to add to our insight into the witness's attempts to persuade by measuring details of his statements and strategies against Aristotelian rhetorical concepts. Foremost among these, in our estimation, is the great division of persuasive appeals into the categories of logos, pathos, and ethos. This is such a simple, and yet inclusive cataloguing of the possibilities of the appeal, that not to examine the Ehrlichman testimony in this light would be amiss. And the examination will be enlightening, for the witness at various points made clear attempts to sway his audiences with logical, emotional, or ethical appeals.

We will be able to observe details of logical appeals in the testimony. Aristotle saw these primarily as being composed of examples, and enthymemes, or reasoned arguments. Ehrlichman employed both devices, as is to be expected. It is possible, in fact, to view those arguments by Ehrlichman which we will break down pentadically as enthymemes. Also in the area of logos is our witness's attempts at refutation of previously alleged events or acts. He made his refutational thrusts by several means, of which the most notable are direct denial, minimizing the significance of evidential materials, re-interpretations of statements or actions, and, of course, the pentadic shift of emphasis to another "view" of the situation.

In the category of persuasion by pathos, the appeal to emotion,

Aristotle observes a direct application to forensic proceedings, even though he does not totally approve of it:

In a political debate . . . there is no need . . . to prove anything except that the facts are what the supporter of a measure maintains they are. In forensic oratory this is not enough; to conciliate the listener is what pays here.⁷

He recognizes that this practice is common, but would prefer that it were otherwise. "It is not right to pervert the judge by moving him to anger or envy or pity—one might as well warp a carpenter's rule before using it."⁸ Aristotle had a fear of the "unscrupulous practices" which can thrust themselves all too easily into the practice of emotional appeals in rhetoric. But he recognized that there are times when the persuader has little else to resort to in certain situations.

Ehrlichman, while aware that the members of the Senate Committee were not naive men swayed easily by emotional appeals, nonetheless at various points in his testimony resorted to the use of pathos. We will try to observe some of these cases.

The rhetorical device called ethos "depends on the personal character of the speaker." This kind of persuasion, like the others, should be achieved by what the speaker says, not by what people think of his character before he begins to speak.

Ehrlichman tried to build his ethos before his various audiences at different points and in different ways during his testimony, and we will attempt to note some of these instances as well.

A final portion of this study will be devoted to an evaluation of the effect of the persuasive effort we have analyzed.

FOOTNOTES

¹ Kenneth Burke, A Grammar of Motives (Berkeley: University of California Press, 1969), p. xv.

² David A. Ling, "A Pentadic Analysis of Senator Edward Kennedy's Address to the People of Massachusetts, July 25, 1969," from Robert L. Scott and Bernard L. Brock, Methods of Rhetorical Criticism (New York: Harper and Row, 1972), pp. 329, 330.

³ Burke, A Grammar of Motives, p. 17.

⁴ Ibid., p. 3.

⁵ U.S., Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book 3 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 915.

⁶ Burke, A Grammar of Motives, p. 13.

⁷ Aristotle, Rhetoric and Poetics, trans by W. Rhys Roberts (New York: The Modern Library, 1954), p. 21.

⁸ Ibid.

THE ATMOSPHERE OF THE HEARINGS

The committee had to be suspicious of Ehrlichman, even skeptical, before he began to testify. John Dean's testimony had pointed to him with unquestioning directness. John Ehrlichman, along with others, was trying to cover up involvement of the White House and the Committee to Re-Elect the President in the Watergate break-in. The committee was naturally civil in its treatment of the witness, but the previous testimony and physical evidence had the effect tending to prejudice them against Ehrlichman. At times members of the committee were rather open in their skepticism about the testimony.

Ehrlichman seemed to sense this attitude from the outset, and was defensive about it. He met the committee with vigorous argumentiveness, as indicated in Watergate, a book written by a team of London Sunday Times reporters:

That he should attack John Dean and defend himself and the President was only to be expected. But few people were prepared for his tone. The joviality he effected [sic] was not very warming. As he read his prepared statement, through heavy half-glasses, he thrust his chin aggressively forward and waved his arms about when he felt emphasis was needed.¹

Ehrlichman's argumentative spirit was often met with similar response from the committee members and committee Majority Counsel, Sam Dash. A "Congressional Quarterly" writer noted, "Ehrlichman argued heatedly . . .". with Chairman Ervin over the interpretation of a significant phone conversation with Herbert Kalmbach. He adds,

Ehrlichman's exchanges with counsel Sam Dash were often bitter and heated. On two occasions Dash accused Ehrlichman of "making speeches" instead of answering. Ehrlichman responded at one point, "You have a way of assuming your questions, Mr. Dash, with facts that are only in

your knowledge."¹²

At another point Dash questioned him, and the exchange went as follows:

DASH: Mr. Ehrlichman, I suggest what you are doing again is anticipating the meaning of my question. The question put to you was, did you know that Mr. Liddy was employed at the Committee to Re-Elect the President, not did you have a responsibility in that employment.

EHRlichman: I see.

DASH: When you said no, I said, when did you first learn? You said from the testimony. Now you can correct that answer.

EHRlichman: I see.

DASH: You were assuming one meaning in my question which was not in my question.

EHRlichman: That, I understand, is Ervin's law at work.³

Ehrlichman was never shy about telling the committee members what he thought about their procedures. One discussion with Chairman Ervin went like this:

EHRlichman: I think that the thing that your argument artfully chooses to avoid dealing with--

ERVIN: I am not trying to avoid anything. I am trying to get this proposition of whether the President has power to suspend the fourth amendment to get on--

EHRlichman: Mr. Chairman, you interrupted me. You have a delightful trial room practice of interrupting something you do not want⁴ to hear. (Laughter) I would like, if I could, to finish the sentence.

It is not hard to imagine the tone of sarcasm which must have accompanied this comment by Ehrlichman.

Ehrlichman also expected and got no sympathy from committee member Daniel Inouye, the Democratic senator from Hawaii. John Dean had testified that in a discussion by White House staff of committee members before the hearings, Ehrlichman had said of Inouye, "His name is pronounced 'ain't-no-way,'" because "there ain't no way he's going to give us anything but problems."⁵ Inouye did show a strong animosity to Ehrlichman in the hearings, and after finishing one session of questions with the witness, the Senator was heard to mutter, not so inaudibly, "What a liar!"⁶

The total atmosphere of the hearings during Ehrlichman's testimony

became for a while a little less than dignified. Apparently many people, after Dean's testimony, had been anticipating Ehrlichman's appearance with not-so-objective relish--especially those in the hearing-room audiences (whom Ehrlichman sarcastically characterized several times as the "gallery."):

The hearing-room audience repeatedly applauded Ervin's remarks and wisecracks and laughed at some of Ehrlichman's answers. The audience had begun regularly giving Ervin standing ovations when he enters [sic] the hearing-room for morning and afternoon sessions.⁷

This atmosphere was enhanced by friendly banter and "country lawyer" jokes between committee members and counsel, especially Senators Ervin and Baker. But the antics drew expressions of discontent from some members of the press: "Up to now, there has been one ingredient missing to make the daily Watergate show a smash hit: an applause meter."⁸ This caustic comment from an editor of the Orlando (Florida) Sentinel minced no words. The editorial criticized further the "weighted audience reaction" and press items about the hearings "slanted" to "make a folk-hero out of Ervin," and the "show biz approach to a very serious subject." The writer concluded:

The committee has nothing to be proud of in the carnival atmosphere . . . and it is time Ervin did something about it. . . . The Washington press corps wins no laurels for objectivity in its behavior.⁹

Another editorial, by F. B. Smith, appeared in the Burlington (Vermont) Free Press, sarcastically couched in a side-show barker's language:

Here we are at the Watergate circus, folks, and do we ever have a biggie today! I mean, like wow, this is really super. The Watergate persecutors--pardon me--prosecutors--have just discovered that President Nixon has had virtually all of his conversations secretly recorded since early 1971. Isn't this shocking, folks?¹⁰

The editorial then listed a series of scandals or rumors that had been associated with presidents and major political figures since Franklin Roosevelt, and suggested that the Watergate hearings were really to promote the interests of Senator Edward Kennedy and to "get Nixon." Smith concluded:

We mustn't lose sight of the purpose of this Watergate circus. Get Nixon!

Well, folks, the circus is just about over for today, but we'll be back tomorrow, and tomorrow, and tomorrow, until we can tear down this President.¹¹

Of course, like the hearings they attack, the complete objectivity of these editorials could easily be called into question.

The "circus" atmosphere finally led to cautions to the audience and later to rather apologetic statements from Ervin and Baker:

On behalf of the committee, I want to make a request to the audience and that is that the audience refrain from expressing its approval of anything which occurs in connection with the interrogation of the witness.¹²

Baker added:

I thoroughly concur in the chairman's statement. . . . This committee has a tough job, and . . . it makes it infinitely tougher if we are cast in the role of conducting a circus or an entertainment.¹³

As the next session began, Ervin spoke on this again:

I wish to reiterate the request to the audience to refrain from expressing approval or disapproval of anything said or done. I have to say that probably Senator Baker and myself were quite guilty of a little contributory negligence, we both so interested ourselves and probably laughed and probably set an example for others, but I do ask in the interest of the work of the committee, from the interest of fairness to the witnesses, that the audience will refrain from expressing approval or disapproval in any audible manner in respect to any matter or thing.¹⁴

From that point the hearings calmed somewhat, but antagonism toward Ehrlichman in the audience was still occasionally apparent. In a later statement, minority counsel Fred D. Thompson voiced his strong feeling:

I would like to say this, and I don't know whether it is appropriate but I feel compelled to say this: That I am a lawyer and I am used to courtroom procedure, and this witness has been the subject of moans and groans from the audience, hisses, applause, sustained applause on some occasions and other demonstrations and, as far as I know, he is the only witness who has been subjected to all of these things. I think it's unfair to the witness and I don't think it does the work of this committee any good.

It's not that you, Mr. Ehrlichman, are to be treated any better than any other witness but you shouldn't be treated any worse. . . . I think that the situation has been rectified now, at least I hope it has, and I just wanted to state that for the last few days' testimony, I have regretted this situation and find it personally embarrassing.¹⁵

It is fair to state, however, that in spite of some abuses of the type just discussed, John Ehrlichman got a fair chance to state his case in his five days of hearings, in the opinion of this writer.

FOOTNOTES

¹ Lewis Chester, et al, Watergate (New York: Ballantine Books, 1973), pp. 261, 262.

² Congressional Quarterly, Vol. XXXI, No. 30, July 28, 1973, p. 2036.

³ U.S., Congress, Senate Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book 6 (Washington, D.C.: U.S. Government Printing Office, 1973), pp. 2539, 2540.

⁴ Ibid., p. 2632.

⁵ Ibid., Book 3, p. 983.

⁶ Chester, Watergate, p. 263.

⁷ Congressional Quarterly, p. 2037.

⁸ Edward W. Knappman, Ed., Editorials on File (New York: Facts on File, 1973), p. 986.

⁹ Ibid.

¹⁰ Ibid., p. 985.

¹¹ Ibid.

¹² Watergate and Related Activities, Book 6, p. 2602.

¹³ Ibid.

¹⁴ Ibid., p. 2616.

¹⁵ Ibid., Book 7, p. 2863.

EHRLICHMAN'S KNOWLEDGE OF THE COVER-UP

Ehrlichman began with little external ethos going for him, so he sought first to establish internally a better view of his character in the minds of the Committee. He combined protestation of innocence with derogatory allusion to John Dean:

Because I sincerely do not believe I am guilty of any wrong doing, I have not invoked the Fifth Amendment, nor have I attempted to negotiate "immunity" for myself from anyone.¹

(Dean had testified under an order of immunity from the use of his testimony for prosecution.) Ehrlichman moved ahead to reinforce his denial: "I am here to refute every charge of illegal conduct on my part."² Ehrlichman also attempted to present an image of cooperativeness.

I will try to fully answer all questions put to me by the committee within the new executive privilege guidelines. I welcome this opportunity to lay out the facts, and publicly set the record straight on a number of questions.³

He continued by noting that he had already "fully testified" before three grand juries investigating various aspects of the case, and to FBI agents; made his "pertinent records" available to the committee staff, "despite my attorney's advice" that the committee's authority to investigate did not reach into such matters. But he had nothing to hide: "I look forward to answering your questions."⁴ A bit further on Ehrlichman cast himself in the image of sacrificial public servant. Talking about his earlier law career he notes: "I took a substantial financial cut to come into the government."⁵ How could the committee possibly doubt someone who made such a sacrifice in financial terms? But Ehrlichman is a loyal patriot:

I came because the President asked me to, and because I became convinced that there was an opportunity to really accomplish things for the country by assisting him.⁶

Then Ehrlichman moves from ethos-building to pathos:

My wife and family made the greatest sacrifice, of course. Their lives were totally disrupted in moving here. I worked long hours and everyday, and they were asked to make new lives around that schedule. For us the only real compensation for all this was a great sense of accomplishment as we saw the President's ideas begin to take hold and his goals begin to be achieved.

In my view, all this talk of White House staff power and status is meaningless currency which can not possibly pay for one's lost time with his family and the lost freedom to live one's own life.⁷

Toward the close of his opening statement Ehrlichman made a moderate attempt to ingratiate the committee members:

I have faith that good can result from this committee's efforts. In the future participants in political campaigns will surely be aware of the history of this time. And the standards which they will wish to impose on themselves will be the product of the lessons of that history, whatever it may turn out to be. I have great optimism that the history of this era will bring only good for this country.⁸

After he had made his opening show of cooperativeness, Ehrlichman listed the questions which the hearings had raised to which he was going to give the true answers or "some measure of perspective." Then he moved to one matter to which John Dean had testified.

John Dean said one thing in his testimony . . . falsier than all the other falsehoods there, when he said: "[The Watergate] was probably the major thing that was occurring at this point in time."⁹

The assertion had been made by Dean that the cover-up activities occupied much of Ehrlichman's time in the month following the Watergate break-in. Looking at the issue through Burke's pentad, we see that this following construction had been presented by Dean: the scene is "this point in time"--the period mentioned above; the agent is John Ehrlichman; the act is the attempt to hide the truth about Watergate from authorities and the public; the agencies are many according to Dean, but one major allegation is that

"hush money has been paid to the seven defendants charged with the actual burglary"; the purpose: to protect high White House officials from scandal and prosecution.

Ehrlichman constructs a very different pentad for the committee. Only the scene and agent are the same. There is a major shift in the character of the act. Contrary to the suspicion and allegations, Ehrlichman contended that he spent little time thinking about Watergate in this period, none covering it up--and in fact, remained ignorant of the cover-up, and as a result innocent of involvement in it.

But how could this possibly happen, if, as Dean had testified, so much cover-up activity was occurring. Here the brunt of persuasive effort lies in Ehrlichman's emphasis on the agency by which he remained ignorant and innocent of the cover-up. That agency was the constant press of "more important" matters within the duties of a presidential advisor. This agency derives from the purpose conceived in the pentad--the overarching goal of serving President and country.

Ehrlichman threw the emphasis on the agency which made it impossible, in his view, for him to give much time to the relatively insignificant Watergate matter during the period in question. To do so, he made a number of references to the pressing duties which prevented his involvement in any cover-up. The terms used in these references cluster into a strong agency-emphasis. Some representative examples are listed here:

regular work . . . continued unabated
 busier . . . than in other years
 burdened with governmental duties
 involved in little campaign activity
 represented . . . the President
 traveled with the President
 active involvement in problems
 tough legislative issues
 time (spent on domestic affairs) . . . in great quantities

documenting . . . researching . . . analyzing . . . checking
 trip to Hawaii for conference with the Japanese prime minister
 pressing issues
 considerable time
 long days . . . additional burdens
 pressures . . . busy time
 vast percentage of time . . . to domestic issues
 great block of time
 heavy duties!¹⁰

This agency-emphasis is meant to be the basis of a logical argument which says that it is not only possible but probable that Ehrlichman could have remained unaware of and uninvolved in a cover-up. Aristotle notes: "If you have no witnesses on your side, you will argue that the judges must decide from what is probable."¹¹ Ehrlichman's evidence attempts to present such a strong case for involvement in other duties that it will seem probable that he could have kept out of the cover-up. He even tried to quantify the relative insignificance of the Watergate affair in his actions by noting that during the period of time in question he had accumulated a personal file of notes, memos, and records of meetings in which he was involved, which made a stack of material eight inches in thickness. From this, he testified, notes pulled out which contained even as much as a passing reference to Watergate made a stack only one-quarter of an inch in thickness. He concluded this portion of his argument with the summary:

The vast percentage of my working time was spent on substantive issues and domestic policy. About one-half of one percent was spent on politics, the campaign, and the events with which you are concerning yourself as a committee.¹²

Finally, Ehrlichman tied in the President's situation with his own:

You must measure the President's role in all of this in true perspective. The 1972 campaign, the Watergate and its investigation, competed for his attention with the claims of hundreds of members of Congress, economists, diplomats, educators, scientists, labor leaders, businessmen and countless other citizens, and with the demands of the problems of the Nation in their manifold and compound complexities, with the daily mail and endless meetings, the speeches and other communication with the public, with the need for management, leadership, inspiration, and the desire for time to study and think.¹³

Naturally Ehrlichman expected the committee to see his own situation as an advisor as similar to the President's.

Ehrlichman does establish the possibility of his isolation from the cover-up with this pentadic view of the situation, but whether he also sets up the probability of that isolation is an open question.

As earlier noted, an emphasis on agency in the pentad often reflects a strong pragmatist point of view, and that is certainly present here. But in some later constructions, we will see that Ehrlichman's overriding ratio in the pentad is that in which the purpose determines the agency. Another common expression of this ratio is the proverb which states that "The end justifies the means." And the great overarching purpose of making all things subservient to President and (possibly) Nation takes on an almost mystical force--which Burke has noted as a feature of the purpose emphasis. Ehrlichman's regard for this purpose is summed up with almost religious fervor at the end of his five days of testimony:

I do not apologize for my loyalty to the President any more than I apologize for my love for this country. I only hope that my testimony here has served them both.¹⁴

There is another subtle structure running through all of Ehrlichman's testimony which is worth mentioning here briefly. This device was used by Ehrlichman repeatedly, and ties in with the pentad we have just examined. There he sought to establish by the agency of constant duties a motive for now knowing much about the Watergate cover-up. Not only did he not know much, according to his own testimony, but there was also much that he claimed not to remember of things he may once have known. Though he began by saying, "I will try to fully answer all questions put to me . . ." it became apparent before long that he was either unable or unwilling to make good on that pledge. The later testimony is replete with such phrases as "I don't recall,"

"I can't recall . . .," "I can't say . . .," "I can't tell . . .," "I don't think I knew that . . .," "I have no recollection . . .," "I don't remember . . .," and "I don't believe that I ever. . . ." Dozens of times such terms appear to block a full revelation of truth on particular details. As in the previous pentad, there was a hint from time to time of a set of agencies which became a motivation for this failure to give a full account. Ehrlichman noted the fallibility of his memory; the length of time being discussed and the elapsed time since the period under discussion; the complexity of the events involved. In a comment on his memory, he used a simile that was a little strained in its comparisons: "I have to be like an elephant and suck up the contents and then come somewhere and regurgitate them. It is a laborious process."¹⁵

But in spite of this difficulty of recall, which under many circumstances might reasonably be admitted, Ehrlichman seemed to have little trouble remembering details which might seem to exonerate him from implication in a particular matter. So that, for example, when Senator Gurney at one point asked whether he and the President had discussed Watergate at a particular meeting in January of 1973, Ehrlichman testified, "I do not recall . . ." and in a few moments, "I just do not have any recollection of specific topics."¹⁶ But when asked at another point about his alleged reassurances to Herbert Kalmbach about payments of "hush money" to the Watergate burglary defendants--to which Kalmbach had already testified under oath--Ehrlichman's memory was razor-sharp: "I am just morally certain that there was no such request of him that I vouch for the activity."¹⁷

This pattern of tenuous recall when convenient seemed to be designed, at least at times, as a deliberate device, combined with Ehrlichman's "dedicated" aloofness from the Watergate cover-up, to convince the committee that he was doing all he could for them, but that he could not do much.

FOOTNOTES

¹ U.S., Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book 6 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 2510.

² Ibid.

³ Ibid.

⁴ Ibid., p. 2511.

⁵ Ibid., p. 2514.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid., p. 2522.

⁹ Ibid., p. 2513.

¹⁰ Ibid., pp. 2518-2522.

¹¹ Aristotle, Rhetoric and Poetics, trans. by W. Rhys Roberts (New York: The Modern Library, 1954), p. 86.

¹² Watergate and Related Activities, Book 6, p. 2522.

¹³ Ibid.

¹⁴ Ibid., Book 7, p. 2864.

¹⁵ Ibid., Book 6, p. 2609.

¹⁶ Ibid.

¹⁷ Ibid., p. 2569.

EHRlichman's AUTHORIZATION OF THE "ELLSBERG BREAK-IN"

One of the most fascinating sections of Ehrlichman's testimony came when committee members questioned him about his alleged knowledge of and/or contribution to the infamous break-in and burglary of the office of Daniel Ellsberg's psychiatrist, Dr. Lewis Fielding, on September 3, 1971. Ellsberg had been one of those responsible for the "leak" of the "Pentagon Papers" to the press, and consequently had become a target of White House anger (John Dean had testified earlier in the hearings that the "climate of excessive concern" over leaks had been a contributory factor in the Watergate affair.).

The committee already had received in evidence three memos which bore on Ehrlichman's knowledge of the break-in. (Copies of these are included as Appendices C, D, and E.) In each memo, there was mention of an "operation" to be undertaken by "Hunt and Liddy." In the first memo, dated August 11, 1971, and sent to Ehrlichman by Egil "Bud" Krogh and David Young, there was first a discussion of the progress of the Justice Department in grand jury investigations of Ellsberg, and an expression of disappointment at a psychological profile on Ellsberg prepared by the Central Intelligence Agency. This leads to the statement:

In this connection we would recommend that a covert operation be undertaken to examine all the files still held by Ellsberg's psychoanalyst covering the two-year period in which he was undergoing analysis.

The second memo, to Ehrlichman from Young on August 26, after a lengthy discussion of various ramifications of the Ellsberg investigation, revealed what the purpose of the "covert operation" would apparently be: "(9) How

quickly do we want to try to bring about a change in Ellsberg's image?"²

To this question the following is footnoted:

In connection with issue (9), it is important to point out that with the recent article on Ellsberg's lawyer, Boudin, we have already started a negative press image for Ellsberg. If the present Hunt/Liddy Project #1 is successful, it will be absolutely essential to have an overall game plan developed for its use in connection with the Congressional investigation.³

Young then noted that Charles Colson, Special Counsel to the President, had accepted the job of filtering the materials for the "damaging of Ellsberg's Image" into the investigation. But Young wanted the process tied down:

I believe, however, that in order to orchestrate this whole operation we have to be aware of precisely what Colson wants to do.

Recommendation: That you sign the memorandum to Colson asking him to draw up the game plan.⁴

This led to the third memo, from Ehrlichman to Colson on August 27, on the subject: "HUNT/LIDDY SPECIAL PROJECT #1." The content is as follows:

On the assumption that the proposed undertaking by Hunt and Liddy would be carried out and would be successful, I would appreciate receiving from you by next Wednesday a game plan as to how and when you believe the materials should be used.⁵

Ehrlichman himself had issued this memo to Colson, and he had initialed his acknowledgement of the second memo from Young. But the most difficult item for him to explain to the committee was his hand written response to the request for a "covert operation" in the Krogh/Young memo. Ehrlichman wrote his initial in the blank marked "Approve:" and then scrawled beneath it: "If done under your assurance that it is not traceable."⁶

The task before Ehrlichman, therefore, was to persuade the committee that the situation surrounding these memos was not what it seemed. His line of argument was a double one, and might justifiably be caricatured under the title, "I Didn't Do It, but If I Did It Was Okay."

To see what Ehrlichman made of these points, we can first begin with a pentadic view of how the situation apparently appeared to the committee

members as testimony on the issue began. For most of them, as Ehrlichman well knew, it would not be straining the rules of logic to conclude from the memos that he had, in effect, ordered the break-in and burglary of the psychiatrist's office. In the pentad, the structure might be as follows: The scene is an administration in the White House sensitive, perhaps too sensitive, to criticism and dissent and to leaks of its privileged secrets; the agent, John Ehrlichman, has committed the act of signing a memo approving a "covert operation" against the office of Ellsberg's psychiatrist; the purpose is to protect the White House against criticism of its policies and to prevent more leaks, perhaps even to take revenge on some of its "enemies." This is to be accomplished through the agency of discrediting Ellsberg with the information to be gained through the "Hunt/Liddy Special Project #1."

Naturally, it was easy for the committee members to identify the "covert operation" of the memo with the break-in actually perpetrated on September 3, 1971, especially since the involvement of Hunt and Liddy in that crime had only been discovered in the investigation of their part in the Watergate break-in and "bugging." The new development no doubt added significance to the memo's reference to "Project #1" with its implication of more operations to follow. The committee was also aware by the time of the hearings of the existence since before the "Ellsberg" break-in of the White House Special Investigations Unit, headed by Egil Krogh and David Young and nicknamed "The Plumbers" in reference to its function of stopping "leaks."

Ehrlichman set out to change the committee's view of the situation. As noted, one line of the argument he used was "I didn't do it"--or more accurately, he argued that he didn't know the ultimate nature of the operation he approved. In pentadic structure, his argument envisioned a scene of potential threat to the security of the nation through leaks of secret

information to the public and foreign powers. By the agency of discrediting Daniel Ellsberg with psychological information at least one source of leaks might be stopped, and perhaps others, and thus the purpose of protecting national security would be at least partially accomplished. Ehrlichman was still definitely the agent in this situation, but the nature of the act was quite different from what the committee apparently assumed from the external evidence.

Ehrlichman could not deny, of course, that he had signed the memo in question. But he proceeded to re-interpret or re-define what that act actually was--or wasn't.

First he narrowed the definition of the word. In answering questions on the memo by Committee Counsel Sam Dash, Ehrlichman stated:

Now, "covert" in its literal meaning, and in its everyday meaning, is simply that it is a covered operation; that is to say, you do not identify yourself as being an investigator.⁷

Following this line of reasoning, Ehrlichman asserted, under questioning by Senator Talmadge, that his signature on the memo was not any kind of an approval of an illegal act:

TALMADGE: Well, you authorized the break-in did you not?

EHRlichman: No sir, I did not.

TALMADGE: You affirmed it yesterday in a memorandum that I saw; You said it was your signature provided it could not be traced.

EHRlichman: No, sir, I submit that is not what the memorandum says.

TALMADGE: Where is the document?

EHRlichman: What that memorandum says is that the investigation which had been previously authorized by me should also include an attempt to ascertain the contents of these files. There is nothing in there about the means to be pursued, and my testimony was, and continues to be, that my assumption was that that could be done by completely conventional investigative means.⁸

During this line of questioning by Senator Talmadge, Ehrlichman stated several times that he did not think of a "covert operation" as referring to a criminal act. "It simply was not in contemplation that a break-in as such,

would be engaged in."⁹ And a few minutes later in the testimony: "I do not think anybody, at least I certainly did not contemplate that anybody was going to rob the doctor."¹⁰ And again in a few moments: "It certainly wasn't in my contemplation that there was going to be a breaking and entering here. My contemplation, from the beginning, was that this could be done without that."¹¹

In the light of these assertions, Senator Talmadge found it necessary to question Ehrlichman more specifically about the suspicious-sounding notation, "If done under your assurance that it is not traceable." Here again, Ehrlichman's persuasive device was re-interpretation of the obvious.

I explained yesterday, Senator, that my concern there, and the thing to which that handwritten note refers, is that I was not keen to have anyone go out and be flashing White House credentials as a White House investigator.¹²

The reference to the previous day's testimony recalled his statement to Sam Dash:

The reason I certainly acquiesced in the use of the term "covert" here, was that I was not keen on the concept of the White House having investigators in the field and known to be in the field, and I just don't think from a public standpoint, from a public relations standpoint, from a public policy standpoint, that that is a desirable situation, and I was not anxious to have anybody go in and flash a White House pass, credentials, and say "I am from the White House and I want this or that and I want to ask questions." That is the sense in which I conceived, at least, of this investigation as being a covert investigation, and that is the sense in which I endorsed on here what I did in my hand.¹³

Ehrlichman's point might well be a telling one, in a legal sense-- that is, in a situation in which it would be necessary to prove "beyond a shadow of a doubt" that he knew the "covert operation" was to be a break-in. But here, again, his argument seems to only establish possibility that he did not know, rather than probability. To believe in the light of the memos that Ehrlichman thought the operation was to be a normal "undercover" investigation rather than a break-in somewhat strains the usual limits of credibility. The

persuasive possibility, however, is enhanced by the vague, ambiguous language of the memos.

Ehrlichman may have been aware himself of the weaknesses in his argument, so he did not make a re-interpretation of the meaning of "covert" the major thrust of his persuasive effort regarding the Ellsberg break-in. As if anticipating the possibility, or even the likelihood, that committee members and public might not be persuaded by that line of argument, he developed another, and at more length. The second part of the argument is basically (again this is my caricature), "Even if it could be proved that I did indirectly know about/approve/authorize the break-in--it was all right."

When this argument is cast into the Burkeian pentadic structure we find that there is a shift in the emphasis in four of the term-areas: those of the agent, the act, the agency and the purpose. It is well to recall that the pentad is rhetorical, that is, persuasive in function, when the persons or realities corresponding to the pentadic terms are changed or the emphasis is shifted in order to restructure the audience's view of the situation.

The agent now becomes the President, primarily, but he is regarded as acting with co-agents, Ehrlichman and Egil Krogh and others more minor. The emphasis in this pentad is strongly on the act, which in this case is seen as legally conspiring to, authorizing, and/or performing, breaking and entering into the office of Daniel Ellsberg's psychiatrist. The scene in which this act is done is still that of the alleged threat to national security created by leaks. But the agency is the point on which Ehrlichman sought to establish the legality of the act in question. That agency, in his view, was a law, Title 18 U.S.C. 2511: "Interception and Disclosure of Wire or Oral Communications Prohibited." The purpose in the pentad now had to be one appropriate to the agent. The purpose of the allegedly legal breaking and

entering was presented as, in the words of the statute, ". . . to protect the Nation. . . ." Nothing so base or mundane as a desire to discredit Ellsberg could be brought in here. In fact, implicit in Ehrlichman's argument here was the idea that the purpose and agency in this construction applied to many acts other than the one in question--the break-in at Dr. Fielding's office. A correct understanding of the persuasive intent of this argument requires us to realize that Ehrlichman and his attorney, John J. Wilson, meant for the committee and the public to understand their reasoning to have far wider application than the Ellsberg break-in. Though this was only implicit, it was clear to see that his argument was an umbrella to cover many possible charges related to White House intelligence gathering.

Another point should be made before discussing the details of the argument. Although the President is mentioned as the agent, both in my analysis and in the actual testimony, he was regarded as a symbol only, the ultimate authority, rather than as the culpable individual. Ehrlichman's argument was designed to show legal authority for the act(s) in question, not to in any way implicate the President. He made it clear that the mistakes in judgment leading to the break-ins occurred at lower levels in the administrative hierarchy. An important feature of this argument (though Ehrlichman did not put it in these terms) was a scapegoat in the person of Egil Krogh, head of the "Plumbers" special investigative unit. In this way, the President's authority could be discussed in an academic sense without accusing him of anything personally. Senator Howard Baker, the Committee Vice Chairman, verbalized this formality at one point:

Mr. Chairman, just so the record is clear, in the description of the legal dilemma we find ourselves in [executive authority vs. individual rights], I hope we do not imply that the President authorized this. I will stand on whatever the record develops to that respect and that was certainly not the implication.¹⁴

Chairman Ervin concurred, perhaps not so positively, in the same context:

"I don't believe Mr. Ehrlichman conceded that the President of the United States was the man who ordered this burglary."¹⁵

The argument came up on the first day of the testimony as the committee counsel Sam Dash was questioning Ehrlichman about whether he was concerned, after Watergate, that the additional revelation that Hunt and Liddy were also involved in the Ellsberg break-in would compromise the President's re-election campaign. Ehrlichman was not worried:

DASH: Are you telling the committee that the additional information that these former White House staffers working under your direction had broken into Mr. Ellsberg's psychiatrist's office would not have created an even more seriously embarrassing situation for the campaign?

EHRlichman: I would not think so, Mr. Dash, for several reasons. Number 1, that episode was a part of a very intensive national security investigation which had been impressed with a very high security classification. The likelihood of that being disclosed was very slight.

Number 2, those people were operating, at least I believe they were operating, under express authorization--

DASH: Express authorization to break in?

EHRlichman: Yes sir. Under a national security situation, under a situation of considerable moment to the Nation in the theft of top secret documents, and their apparent delivery to the Soviet Embassy. It was never my view that Hunt and Liddy, as individuals, had done something that was completely irrational in the break-in. In other words, they were operating in a national security setting and pursuant to either instructions or authorization.¹⁶

Ehrlichman's calm comment here that he was not concerned if this break-in became known, because he did not view what Hunt and Liddy had done as "something completely irrational" is interesting to compare in passing with a comment he made about the Watergate break-in later the same day:

I think there was a sense of the political implications of this thing [among Ehrlichman, Haldeman and Dean]. It was a dumb, shocking unredeemable kind of thing for people connected with the Committee to Re-Elect the President to have done to the Democrats. There isn't any way of glossing it.¹⁷

Comparison of these two statements could easily cause a certain incredulity or at least confusion about what Ehrlichman's real feelings were

about "national security" break-ins. At best this was poor persuasive technique. It is the kind of inconsistency which a high-school debater would easily recognize and attack.

Let us return now to the main line of the argument. A few moments later in the testimony, Ehrlichman specified his view of the authorization:

I considered the special unit's activities to be well within the President's inherent constitutional powers, and this particular episode, the break-in in California, likewise to have been within the President's constitutional powers as spelled out in 18 U.S. Code 2511.¹⁸

Title 18, U.S.C. 2511 (which is included in this study as Appendix G), is a law which, as its heading suggests, specifically deals with prohibitions regarding wiretaps and other interceptions of oral communications. Ehrlichman brought it out because it contains a concluding section (3) which states that the law is not meant to limit "the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities."

Ehrlichman did at least two things by bringing up Law 2511. One, he cast the President in the role of ultimate agent in this argument, despite the co-agents also mentioned, and despite the disclaimers previously quoted to show that no implication of the President's personal responsibility was intended. By doing this the discussion came closer than perhaps at any other point to the "central question" of the President's own culpability. Two, Ehrlichman's citing of the law opened the way for a bit of judicial oratory in the classic sense, when Chairman Ervin allowed Ehrlichman's lawyer, John J. Wilson, to argue the point of law his client had raised. The advocate-client relationship so familiar to us today is based on Roman custom, as our law is based on Roman law.

In Greece litigants or those accused of crime ordinarily pleaded their own cases, though they might have help from a professional speech writer. At Rome by the time of the later republic most members of the upper classes were prepared to speak in court, but they regularly got their most eloquent friends to help them and persons without rhetorical training almost necessarily turned to a pleader.¹⁴

Like the forensic orators of Roman times, Wilson made a speech developing his client's case, even though, as we earlier noted, the hearings were deliberative oratory in the strictest sense, rather than forensic. Since Ehrlichman was a lawyer himself, this situation was comparable to what George Kennedy described above as acquiring the help of a more "eloquent" friend. The reason the point is interesting here, is that Wilson was used to speak for Ehrlichman, not merely to advise him of his legal rights and plan strategies with him. In a sense, then, Wilson's arguments became an extension of Ehrlichman's rhetoric. He was a calculated part of Ehrlichman's choices between the "available means of persuasion."

On this basis we can note, if only briefly, some of the points made by Wilson in his argument. That argument was primarily an expansion of the idea raised by Ehrlichman--that the break-ins were legal within the constitutional powers granted to the President. The introduction to the interchange is of interest. First, Ehrlichman mentioned the statute, to which Senator Ervin replied:

ERVIN: Now this statute has nothing to do with burglary. It has only to do with--

EHRlichman: It has to do with the U. S. Constitution, Mr. Chairman.

ERVIN: No, sir. That is not the purpose of the statute. The Constitution has taken care of itself even there. This has to do with the interception or disclosure of wire or oral communications prohibited.

EHRlichman: No, sir, it also has to do with the Congress' recognition of what the Constitution provides with relation to the powers of the President.

ERVIN: Is there a single thing in there that says the President can authorize burglaries?

EHRlichman: Well, let us read it, Mr. Chairman.

WILSON: Mr. Chairman, this being a legal point, do you not think that maybe you and I should debate this?

ERVIN: No. I think he is a lawyer. He was counsel to the President.

EHRlichman: Not for a long time, Mr. Chairman. I have been out of the law business for several years.²⁰

Senator Ervin and Ehrlichman argued for a minute more, with Ervin making the point that the fourth amendment was designed to protect persons against "unreasonable searches and seizures." And then:

WILSON: May I get into this, may I get into this legal debate?

ERVIN: Well, yes. You claim that, do you, Mr. Wilson?²¹

But it was not until the next morning that Wilson really had his opportunity to speak at length on the issue. In a twenty-minute presentation he first made the point that the President's power of surveillance and seizure is demonstrably limited in matters involving domestic security. He cited a case he himself argued, the Steel seizure case, in which the Supreme Court held that President Truman had no powers to seize certain coal mines. Then he turned to another case, described the situation, and asserted:

It has been settled in the Plamdon case that for domestic security purposes the fourth amendment rear its protective head and despite whatever may be the constitutional power of the President, he must apply for a prior judicial action in order to carry out wire-tapping of a domestic security case.²²

Wilson then moved to the point that reasonable searches and seizures are warrantable with probable cause shown, and that there are cases where such acts may be undertaken without warrant.

You know that an arrest by a police officer of a felony on the probable belief that a felony was committed where he arrests a man inside his house, he may search the house or the immediate vicinity of where the arresting man is. He does not have a warrant. He did not have a warrant for the arrest, he did not have the warrant for the search, so there is some incursion upon the idea of searches and seizures.²³

It is worth noting here that in his hypothetical example Wilson was implicitly comparing the Ellsberg psychiatrist's burglary with a probable cause and arrest search--a secret, covert act with a public, open act. Whether such a comparison strains the logic of relationship the reader must judge.

The next point in Wilson's "enthymeme" was to show that while the President is clearly limited in his powers relating to domestic security, this

may not be the case as regards foreign subversion:

But the question is wide open, if you please, as to whether, in the case of foreign intelligence, the cloak that the fourth amendment wraps itself around the President and requires prior judicial action.²⁴

And a moment later:

Now, nobody can dispute me on one point and I am sticking my neck out, that the Supreme Court [in the Plamondon case] reserved the question of the use of the reservoir of, a possible reservoir, let me put it that way, of constitutional power reposed in the President to violate the law in respect of foreign intelligence, foreign espionage, foreign collaboration, . . . for the purpose of permitting the President to otherwise--to do what would otherwise be a crime, to protect the Nation.²⁵

Wilson quickly pointed out that he was not pushing this point to the absurd conclusion that the President could commit any crime with impunity. And then he moved to the next logical step in the argument:

It is not a silly proposition for us to contend that our entry into the psychiatrist's office under grounds which would technically state burglary, because there is no Federal crime in that respect, is no different than an entry through his telephone system.²⁶

Finally Wilson concluded:

Today there is no one living, indeed there is no one in this room, who can assert with categorical certainty that the President of the United States, does not have the constitutional power to cause the entry under what would be otherwise illegal circumstances in pursuit of foreign intelligence.²⁷

By the same token, of course, no one could state with certainty that the President did have that power, so Wilson's case was once again an establishment of possibility falling short of probability.

Wilson's argument was an extension of Ehrlichman's, as we noted (Although it may have originated the other way, with Ehrlichman's legal point injected into the hearings because of Wilson's counsel.). A close reading of the material might cause one to question whether Wilson was "more eloquent" than Ehrlichman. In terms of style, his thoughts and phrases sometimes seemed a little disconnected, as if transitional words were left out, or the wrong ones used. Ehrlichman, on the other hand, seemed more fluent, even in response to

questioning which demanded quick thinking. At any rate, Wilson, as Ehrlichman's co-persuader, sought to expand his client's argument of the legality of the break-in, which we have seen represents a major shift in the pentadic view of the act.

We will not at this point comment on how successful this argument seemed to be before the committee, but will reserve that for inclusion with the section on Ehrlichman's persuasive effect overall. But before leaving this argument, a note or two should be made regarding the "scapegoat" feature mentioned in passing earlier. The immediate legal responsibility for the Ellsberg break-in fell on Egil Krogh, the director of the "Plumbers." The emphasis had already gone that way when Ehrlichman argued that he did not suspect that "covert operation" indicated a break-in. The implication here could be that his subordinates, Krogh and Young, deliberately misled him by that use of the language in the memo. But this possibility is only implicit and Ehrlichman never specifically suggested it.

The next step, however, was when Ehrlichman seemed to describe his authority (and therefore, control) over Krogh's actions as minimal. When Chairman Ervin asked why Liddy and Hunt were kept on the White House payroll after their connection with the Ellsberg burglary was known, the explanation began this way:

EHRlichman: My advice was that both Hunt and Liddy had acted pursuant to an authorization . . .

ERVIN: An authorization from whom?

EHRlichman: Well, I assumed from Mr. Krogh.

ERVIN: Well, Mr. Krogh, I believe, got his authorization from you, didn't he?

EHRlichman: Well, not as far as I know, he didn't, no, sir.

ERVIN: Well, he was under your supervision.

EHRlichman: He was generally under my supervision on the domestic council staff as a routine proposition.²⁸

Here, Ehrlichman admitted that Krogh worked for him, but only "sort of." The language, especially "generally" and "routine," was calculated to make the listener

sense that Ehrlichman's connection with Krogh gave the latter plenty of room to act on his own.

A final note in this thrust to place the onus of guilt on Krogh utilized the President's own argument, given in his Watergate speech on May 22, 1973. The subject came up when Senator Talmadge asked Ehrlichman whether the President had authorized the Ellsberg break-in"

EHRlichMAN: Not in express terms; no, sir. At least not to my knowledge.

TALMADGE: As a matter of fact, in a subsequent statement he expressly denied it, didn't he?

EHRlichMAN: I read his statement, and I have heard testimony here. I would not be totally responsive to your question, however, if I did not add one thing, Senator. On the 24th of July (1971) I sat in a meeting where the President put it to Mr. Krogh and the people in this unit to take such steps as were necessary.²⁹

Senator Talmadge then read the President's declaration from his speech:

Consequently, as President, I must and do assume responsibility for such acts despite the fact that I, at no time, approved or had knowledge of them.³⁰

But Ehrlichman then quoted further from an earlier statement in the President's speech, which reinforced his own comment:

Because of the extreme gravity of the situation and not then knowing what additional national secrets Mr. Ellsberg might disclose, I did impress upon Mr. Krogh the vital importance to the national security of his assignment. I did not authorize and had no knowledge of any illegal means to be used to achieve this goal. However, because of the emphasis I put on the crucial importance of protecting the national security I can understand how highly motivated individuals could have felt justified in engaging in specific activities that I would have disapproved.³¹

Ehrlichman then commented:

Now that refers to this July 24 conversation between the President and Mr. Krogh, and I must say that I think this is a fair characterization of the urgency which the President expressed to Mr. Krogh and undoubtedly a recognition of the fact that one in Mr. Krogh's situation might well believe that he had been charged with taking extraordinary measures to meet what the President described in very graphic terms.³²

The result of these statements was that, though nothing really even critical was said of Egil Krogh, the impression was presented that the Ellsberg break-in

(and who knows what else?) could easily have been no more than the bumbling efforts of this over-zealous subordinate. It is perhaps worth noting here that Egil Krogh served a six-month sentence for his admitted part in the Ellsberg break-in.

FOOTNOTES

¹ U.S. Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Exhibit No. 90, Book 6 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 2645. See Appendix C.

² Ibid., Exhibit No. 91, p. 2649. See Appendix D.

³ Ibid., p. 2650. See Appendix D.

⁴ Ibid. See Appendix D.

⁵ Ibid., p. 2651. See Appendix E.

⁶ Ibid., Exhibit No. 90, p. 2645. See Appendix C.

⁷ U.S., Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book 6 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 2546.

⁸ Ibid., p. 2600.

⁹ Ibid.

¹⁰ Ibid., p. 2602.

¹¹ Ibid., p. 2603.

¹² Ibid., p. 2600.

¹³ Ibid., pp. 2546, 2547.

¹⁴ Ibid., p. 2597.

¹⁵ Ibid.

¹⁶ Ibid., p. 2542.

¹⁷ Ibid., p. 2582.

¹⁸ Ibid., p. 2543.

¹⁹ George Kennedy, The Art of Rhetoric in the Roman World (Princeton: Princeton University Press, 1972), p. 12.

²⁰ Watergate and Related Activities, Book 6, pp. 2575, 2576.

²¹ ibid., p. 2576.

²² ibid., p. 2591.

²³ ibid.

²⁴ ibid.

²⁵ ibid., p. 2592.

²⁶ ibid.

²⁷ ibid., p. 2593.

²⁸ ibid., p. 2578.

²⁹ ibid., p. 2603.

³⁰ ibid., p. 2604.

³¹ ibid.

³² ibid.

EHRLICHMAN AND "HUSH MONEY" FOR WATERGATE DEFENDANTS

Another major issue in the testimony Ehrlichman gave in the hearings was that of the "hush money" which was paid to the seven Watergate break-in defendants during their trial. That this was fact had already been established by the testimony of Herbert W. Kalmbach (who had been the President's personal attorney, as well as in the Finance Committee to Re-Elect the President) and Anthony Ulasewicz (a retired N. Y. C. Police Detective who had been hired to deliver the money to the defendants' counsel), as well as John Dean and others.

The payment of these monies had come to light in a tragedy, when E. Howard Hunt's wife, Dorothy, was killed in the crash of a Chicago-bound airliner. Crash investigators found that Mrs. Hunt's purse contained \$10,000 in \$100 bills, one of which bore the penciled message "Good luck, F. S." which was later thought to be connected with one of her husband's co-defendants, Frank Sturgis.

The discovery of the money was the first indication anybody had that for the past five months a river of cash had been flowing secretly into the pockets of the Watergate Seven and their attorneys. By the time of Mrs. Hunt's death around \$300,000 had changed hands. The sum would later approach the half-million mark.¹

Previous testimony, particularly that of Herbert Kalmbach, had indicated that Ehrlichman was well aware of the payment of this "hush money." Kalmbach, who had received orders to transfer the money from Dean, testified that he had been concerned about the legality and advisability of such payments, and had sought Ehrlichman's assurance that he should go ahead with the procedure, and had received it. This left the committee with

a perspective on the situation which we can structure pentadically.

The scene was one in which the danger of the seven defendants implicating the White House further in their scandal was very real. Through the agencies of a face-to-face conversation and confirmation later in a telephone conversation, Ehrlichman, the agent, had performed the act of telling Kalmbach that payment of the money was all right, and to go ahead. The purpose was to reassure Kalmbach, and obviously, to keep the defendants quiet.

This was another difficult perspective for Ehrlichman to deal with rhetorically, but he was consistent in his method. Out of this structure he created, or attempted to, a different view of the situation, primarily by re-interpretation and direct denial. When we examine the pentadic structure of Ehrlichman's view of the situation, it looks like this: The scene was changed, from one hinting a scandal to the simple and innocent situation of the defendant's natural needs for living expenses and legal fees. Ehrlichman pictured the scene when questioned by Fred D. Thompson, committee minority counsel:

THOMPSON: When did you first become aware of the fact that money was being raised to pay Hunt among others?

EHRlichman: I am not sure I knew who money was being raised for in any specific sense. You have asked me about Hunt.

THOMPSON: The Watergate defendants?

EHRlichman: Yes, I was aware that there was a need for a defense fund, attorneys' fee fund.

THOMPSON: When did that come to your attention?

EHRlichman: It must have been late in June [1972] and it came to me through Mr. Dean, who said that the defendants were losing their attorneys, attorneys were quitting, they were not being paid.²

There was no admission of knowledge that the fund was a "blackmail" fund.

Ehrlichman denied discussing the matter in these terms with anyone as his exchange with Thompson continued:

EHRlichman: . . . It was not until we got into about the 20th of March that I became aware that Hunt was in fact making strong money demands.

THOMPSON: You didn't have any discussions with anyone, Dean or anyone

else, during all this period of time, about Hunt was in fact threatening to blow the lid off unless his money demands were met?

EHRlichman: No, I don't believe so.³

So Ehrlichman presented a scene in which he simply viewed the situation as a normal need for a defense fund for the seven. Only in such a situation, he contended, did he act as an agent. And he testified that the act he performed was not what the committee believed, either. The committee, in its examining of Kalmbach, had heard a very graphic description of the exchange between Kalmbach and Ehrlichman. After explaining his concern over the fund assignment because of its secrecy, Kalmbach said he went to Ehrlichman for reassurance about Dean's authority to give him the assignment, and about the propriety of the assignment:

KALMBACH: . . . and I said, "John, I want you to tell me"--and you know, I can remember it very vividly because I looked at him, and I said "John, I am looking right into your eyes. I know Jeanne and your family, you know Barbara and my family. You know that my family and my reputation mean everything to me, and it is just absolutely necessary John, that you tell me, first that John Dean has the authority to direct me in this assignment, that it is a proper assignment, and that I am to go forward on it."

DASH: And did he look at you in the eyes?

KALMBACH: Yes, he did.

DASH: What did he say to you?

KALMBACH: He said, "Herb, John Dean does have the authority, it is proper, and you are to go forward."⁴

The committee had of course assumed that this act occurred as Kalmbach reported, especially since it was confirmed in broad outline by the transcript of a later telephone conversation, recorded by Ehrlichman himself, just before Kalmbach was to testify before the grand jury (See Appendix F for the complete transcript):

KALMBACH: You know, when you and I talked and it was after John [Dean] had given me that word, and I came in to ask you, John is this an assignment I have to take on? You said, yes it is period and move forward. Then that was all that I needed to assure me that I wasn't putting my family in jeopardy.

EHRlichman: Sure.

Ehrlichman's method of persuasion here was to admit that he had given Kalmbach assurance to go ahead with the assignment through the agency of a meeting and the telephone conversation but that the purpose was only to reassure Kalmbach and to aid the defendants, not to quiet them. But he flatly denied the exchange that Kalmbach recalled so vividly:

THOMPSON: Now, did that happen?

EHRlichman: I am sure that if had looked into my eyes and we had invoked the names of our wives, I am sure I would remember that solemn occasion and I am sorry to say that I don't remember.⁵

Ehrlichman continued:

If Herb Kalmbach had ever said to me, "Do you vouch for the propriety or the legality of what I am doing?" I would have been very, very slow to make an assurance to Herb without a lot of research to satisfy myself. And that is why I am pretty sure that that kind of request was not made of me and I did not make a response.⁶

But he was more than just "pretty sure":

I am morally certain that there was no such request of him that I vouch for the activity, nor was there any vouching on my part.⁷

Ehrlichman pointed out that Kalmbach was acting on his own initiative by this time since the money had been delivered for several weeks by him. They had never discussed it, he testified, until Kalmbach "was well into the project." He stated:

He is not my employee, he is not my vassal, I hold no sway over him. It was very much a "situation" where Mr. Kalmbach undertook this . . . some 6 weeks before we had this conversation.⁸

So by contradicting Kalmbach, Ehrlichman asserted that the act was no eye-to-eye, heart-to-heart pledge for a legal defense and support fund.

I conceived of this as being like, you know, the Daniel Ellsberg defense fund and the Angela Davis defense fund and the Berrigan brothers defense fund. It is apparently a commonplace of American life these days that these kinds of funds are created and that people do donate to them.⁹

Senator Ervin then raised the question of the secrecy of the fund in two ways:

Yes, well, Daniel Ellsberg and the Angela Davis defense funds were raised

in public meetings and the newspapers carried new items about it, did they not?¹⁰

Ehrlichman's answer was hedging:

I am not sure that we know who the donors to those funds were. I dare say there are many people in this country who contributed to those funds who would not want it known.¹¹

Ervin pressed the point by recalling a reference in Kalmbach's testimony, when Kalmbach had said:

Now, he [Ehrlichman] said, in commenting on the secrecy, he explains that as saying that but for the secrecy, this whole assignment, getting these funds to these people for this purpose could get into the press and be misinterpreted. And then I remember he used the figure of speech, he said, "They would have our heads in their laps," which again would indicate to me that it would jeopardize the campaign.¹²

Senator Ervin reminded Ehrlichman of this exchange:

He also testified when he got to you that you told him it was all right and to see that the money was delivered in secret because if he didn't deliver it in secret their heads would be in their laps. Didn't that occur?¹³

Ehrlichman never admitted the use of this expression recalled so specifically by Kalmbach. His defense again was reinterpretation:

I have no doubt that we, if he says so, that we discussed the question of secrecy because I do recall his saying that Mr. Ulasewicz was carrying money back and forth.

Now, I had in my mind at that time the realization that this, what I considered to be a legitimate undertaking, could be terribly misconstrued if someone were to impute the efforts of the President's lawyer to this defense fund for Watergate burglars. I mean there is room for misunderstanding.¹⁴

The final section of argument on the "hush money" took an interesting turn. Ehrlichman, because of his own telephone conversation transcript, had to admit that he had given Kalmbach instructions to go ahead with the fund payments, but only as a legal defense fund, of course. But actually, Ehrlichman testified, he was not giving the go-ahead at all--the project had already been underway for six weeks--and Ehrlichman insisted that he was merely, as a matter of routine, backing up John Dean.

He [Dean] had talked to me about it. He said, "Look, I am going to see if we can get Herb Kalmbach wound up to raise some attorney's fees . . ." He said, "If he checks with you, back me up on this."¹⁵

Six weeks later, when Kalmbach finally got around to checking with Ehrlichman: "I related that to Dean's very brief conversation with me before about this."¹⁶

To further drive this point home, Ehrlichman took several opportunities to remind the committee of one particular section of his telephone conversation transcript. Referring to his "Sure" uttered when Kalmbach had asked if Ehrlichman recalled his earlier assurance to him, Ehrlichman said:

That was in response to the statement that I made at the bottom of page 2, Mr. Chairman, in which I made clear that Mr. Dean came to me, as I have testified here, and asked me to back him up without giving me any specifics.¹⁷

As Ervin pressed the questioning on this point, Ehrlichman repeated the argument:

You have to read that in the context of the previous comment which I just referred to in which I vouch that the urgency of the matter was not anything I knew of my own knowledge but what Mr. Dean told me.¹⁸

The argument is stated still a third time, this time with the interesting note emphasized that even though Kalmbach was uneasy about Dean's authority to make the assignment, Ehrlichman chose, according to his testimony, to trust Dean's judgment "without specifics" about the assignment.

ERVIN: . . . but he had gotten dubious with Dean and that is the reason he came to you and you told him here that this was an assignment he should take on.

EHRlichman: But I did it in terms of the context which is at the bottom of page 2, Mr. Chairman, where I say, "Mr. Dean came to me and gave me assurance and I have made no independent inquiry . . ." and it has to be taken in that context, Mr. Chairman, or it is not meaningful.¹⁹

By this time, the audience was expected to believe the astounding revelation that Ehrlichman was not really the actor in this episode. It is not Ehrlichman who gave assurances ultimately, but Dean, as the carefully chosen language of the last quotation indicates. What we can observe here, rhetorically, is a

rather subtle shift of view from thinking of Ehrlichman as agent, to putting John Dean in that role. This shift amounts to something like Ehrlichman saying, "Why did I reassure Kalmbach and tell him to go ahead? I didn't really. What really happened is that Dean gave me assurance and I trusted him." That is not a quote of course, but a characterization of Ehrlichman's argument.

This shift of agent in the pentad was basically the conclusion of Ehrlichman's argument on the point. But the shift, and the testimony immediately following the section just quoted, form a telling introduction to the last major line of persuasion by Ehrlichman with which we will deal in this study.

ERVIN: So at that time you relied implicitly on Dean?

EHRlichman: Yes, sir.

ERVIN: And now you do not trust him?

EHRlichman: Sir, that is correct.

ERVIN: Yes.

EHRlichman: And I dare say that the dawn broke somewhere toward the end of March of this year.²⁰

FOOTNOTES

¹ Lewis Chester, et al, Watergate (New York: Ballantine Books, 1973), p. 213.

² U.S., Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book 6 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 2566.

³ Ibid., p. 2567.

⁴ Ibid., Book 5, p. 2106.

⁵ Ibid., Book 6, p. 2568.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid., p. 2575.

⁹ Ibid., p. 2567.

¹⁰ Ibid., p. 2570.

¹¹ Ibid.

¹² Ibid., Book 5, p. 2107.

¹³ Ibid., Book 6, p. 2571.

¹⁴ Ibid., p. 2572.

¹⁵ Ibid., p. 2569.

¹⁶ Ibid.

¹⁷ Ibid., p. 2574.

¹⁸ Ibid.

¹⁹ Ibid., p. 2575.

²⁰ Ibid.

EHRLICHMAN'S SHIFT OF RESPONSIBILITY TO JOHN DEAN

On March 23, 1973, James McCord, one of the Watergate defendants, revealed in a letter to Judge John Sirica, that the case involved persons in high offices, and that the defendants had committed perjury in response to "political pressures." McCord's letter "blew the lid off" the cover-up.

On March 31 and April 1, 1973, John Dean, who by his own testimony "did not have the constitution internally" to carry the cover-up further, "decided to start swimming the other way"¹ and gave a sworn statement to Justice Department prosecutors investigating the Watergate affair.

Ehrlichman's statement that he no longer trusted Dean can therefore be reasonably understood, and even be seen to be something of an understatement.

The reason that this attitude is of interest to this study is because the testimony of John Dean was behind many of the suspicions surrounding Ehrlichman. And in Ehrlichman's own testimony numerous references to Dean were made, and they were not all simply statements of fact. Some were clearly expressions of Ehrlichman's changed attitude toward Dean, and this attitude affected his persuasive goals by causing him to attempt to place the responsibility on Dean.

The line of thought Ehrlichman expressed toward Dean was, in essence, an argumentum ad hominum. There were logical points within it, of course, but throughout there was a web of bitter feeling toward Dean, and expressions calculated to help arouse mistrust of Dean in Ehrlichman's hearers.

The structure of the pentad here is as follows: The scene is one

of suspicions about Ehrlichman's involvement in the cover-up, a scene created, or at least strongly reinforced by, the act of John Dean's testimony implicating Ehrlichman and others. Dean therefore is the agent, and his testimony is the agency. In the minds of many or all the members of the committee, Dean's statement of purpose for the act--that he simply could not carry on the cover-up in good conscience, would be thought credible. Therefore Ehrlichman sought implicitly to shift the committee's view of this purpose. He tried to suggest subtly that Dean had testified to make it easier on himself, and that Dean himself was much more than just an innocent scapegoat caught in the web of the cover-up. Taken overall, his statements about Dean are a broad pattern of the attempt to shift the committee's view to Dean (rather than Ehrlichman) as the primary agent in the cover-up.

We have already seen how Ehrlichman shifted the responsibility to Dean in the Kalmbach "hush money" assurances, and earlier in the study, his favorable comparison of himself to Dean because he, Ehrlichman, had not asked for nor received any immunity because of his testimony. The subtle suggestion was that since Dean did seek and receive immunity, that he must have committed indictable offenses. Dean admitted this, of course, but Ehrlichman's desire is to make the committee believe that Dean had committed criminal acts, but that he himself did not.

The suggestion, therefore, that Dean misled him occurs several times in Ehrlichman's testimony. At the beginning, when he was emphasizing how busy he had been on matters other than Watergate, he stated:

I do not suggest that we were all just too busy to have noticed. We did notice, and we kept informed through John Dean and other sources on the assumption that he was giving us complete and accurate information.²

In the same context, Ehrlichman took a verbal jab at Dean's activities:

John Dean, on the other hand, never found things so quiet and he planned

the most expensive honeymoon in the history of the White House staff right along this period.³

The implication of the first comment, of course, was that Dean was not providing "complete and accurate information." This comment is followed by one on the delegation of responsibilities in the White House, hinting at Dean's delegated responsibility of keeping them (primarily the President, Ehrlichman and Robert Haldeman, White House Chief of Staff) informed, and the note that "a chain of delegation is only as strong as its weakest link."⁴ We have no difficulty in surmising who he feels is the "weakest link." He went on with a description of the duties of the Counsel to the President (a position Ehrlichman held prior to Dean), emphasizing the position's importance as a source of information for the President, and concluding with the note that Dean had ample opportunity to report anything to the President (Dean had testified to some difficulty in gaining a hearing from the President on the results of his investigations, and had in fact not met with the President from September 15, 1972 until February 27, 1973.). Ehrlichman suggested that Dean could have especially communicated by means of written memos:

Mr. Dean admits he informed the President, even hourly, of some occurrences in this way. It was an open channel, and he knows it.

Ehrlichman added at this point:

Any member of the White House staff having vital or sensitive information for the President alone could have and would be seen by the President if he requested an opportunity.⁶

The suggestion here is that, rather than being thwarted in his alleged efforts to make the President aware of what was going on, Dean was not making a real effort to do so.

Ehrlichman emphasized the point that he and the President continually relied on Dean for information up to April 30, 1973, when the "Investigation" was transferred from Dean to himself. It was Dean that they had trusted:

During the months of June and July [1972] as I testified before, John Dean

had really two basic responsibilities; one was to determine whether there was any White House involvement in this break-in; and the other one was to keep us informed of developments as they occurred.

We had to rely on somebody for authentication, and the man we were relying on was the man who was in the cockpit of this thing from these two standpoints. . . . I must tell you, that we were getting nothing but reassurances all through this period of time from Mr. Dean.⁷

If it was accepted as true that Dean kept giving reassurances that there was no White House involvement, it was then not a difficult logical step to the possibility that Dean was the one who was actually covering up the truth. Dean's testimony, however, indicated that he kept trying to suggest to the President from the time of his first meeting with him in the spring of 1973 (February 27) that not only he, Dean, but other White House personnel might be implicated in obstruction of justice. The interesting discrepancy between Ehrlichman's testimony and Dean's is that they were referring to different periods of time. Ehrlichman tried to make it seem that Dean always kept reassuring the President, which is not the case according to Dean.

One chief method Ehrlichman used for answering allegations raised by Dean was by direct denial. In one exchange with Senator Inouye he professed that he meant to make no accusations:

INOUE: And you are maintaining that you had no knowledge of the cover-up and you further maintain that the mastermind of the cover-up was John Wesley Dean III?

EHRLICHMAN: Well, I would like to speak for myself. I had no part in any cover-up. I am not here to make charges against other people. As you say, this is not an accusatory forum. I think the evidence will speak for itself when it is all in.⁸

Accusing or not, Ehrlichman was forceful and unequivocating at several points in his denials of Dean's allegations. And although he never used the terms "liar" or "lie" in referring to Dean, we have already noted his comment that one item in Dean's testimony was "falsier than all the falsehoods there." Though he may not have called it an accusation, it certainly was one.

A few examples of his denials can be noted. Dean had testified that

shortly after the discovery of E. Howard Hunt's involvement in the break-in Hunt's White House safe had been opened, revealing politically sensitive materials.

I subsequently met with Ehrlichman to inform him of the contents of Hunt's safe. . . . I remember well his instructions: He told me to shred the documents and "deep six" the briefcase. I asked him what he meant by "deep six." He leaned back in his chair and said: "You drive across the river on your way home at night--don't you?" I said, yes. He said, "Well, when you cross over the bridge on your way home, just toss the briefcase into the river."

I felt very much on the spot, so I told him in a joking manner that I would bring the materials over to him and he could take them because he also crossed the river on his way home at night. He said, no thank you, and I left his office and returned to my office.⁹

According to Ehrlichman, this conversation never occurred:

I have no recollection of that kind of a conversation. . . . I certainly would not have and did not propose the destruction of those documents.¹⁰

Dean had also indicated in his testimony that he had informed Ehrlichman, Robert Haldeman, and the President on March 21, 1973, that he had reason to suspect that the three of them, Ehrlichman, Haldeman, and himself, were all indictable. Committee counsel Dash asked, "Did Mr. Dean so state?"

Ehrlichman's reply was:

I have no recollection at all, Mr. Dash, of that being said at that time. As a matter of fact, it was several weeks after that, before we had a conversation with Mr. Dean in which he finally alluded to my relationship with Mr. Kalmbach as presenting some embarrassment to me but certainly nothing that would be indictable.¹¹

The revelation of this possible "embarrassment" occurred, Ehrlichman testified, on April 13, 1973, and there was still at that point (contrary to Dean's testimony) no suggestion of a potential indictment:

You will recall he testified about five different ways, about looks of anguish, disbelief, scorn, whatnot, on my face at the time he said I was indictable. In point of fact at the time he said that I was not indictable but that the Kalmbach thing might be a problem for me as being misunderstood.¹²

Another assertion about Dean's "falsehoods" was made in reference to an alleged discussion of possible executive clemency for the Watergate Seven.

Ehrlichman maintained that executive clemency was never discussed at any time. Senator Gurney broached the issue:

Mr. Dean testified before this committee and was very positive in his testimony that as a result of this meeting that occurred on January 3 [1973], Ehrlichman checked with Nixon and told Colson to give Bittman [attorney for the Watergate defendants] assurance clemency would be offered.¹³

Ehrlichman denied that had happened, and reinforced the denial with the assertion that Dean not only lied, but was inconsistent in his lies:

That is a story that had an out-of-town tryout like many of Mr. Dean's episodes. Now, what we would see is that a story would appear in one of the news magazines or a newspaper in a certain version and when Mr. Dean would testify, he had a slightly different version, but the differences were extremely material. This was one of them. The version that got the tryout was that I had jumped up from the meeting, run out--presumably to the President's office--come back and said, "Fine fellows, it is all set, you have got it." And that had its problems, because . . . the President's log makes it very clear the fact that I had no meeting with the President that day. So factually, the printed story in the media would not wash.

Now, when Mr. Dean testifies, his story was, well, we had this meeting, and this was discussed, and then I [Dean] heard a day or two later that Mr. Ehrlichman had given assurances to Mr. Colson that he had checked this and that it was okay. Now, that likewise is not going to wash.¹⁴

Ehrlichman's material evidence here was again the assertion that his checking with the President could not have occurred because the log showed the only meeting with the President at that time as also involving both Bob Haldeman and Henry Kissinger.

EHRlichman: I can assure you, Senator, that executive clemency was not discussed at any time.

GURNEY: To put it bluntly, your testimony is that John Dean told an untruth?

EHRlichman: Yes sir, twice. Once in the out-of-town tryout, and once here.¹⁵

As far as why Dean would lie about all these things, Ehrlichman never made a definitive statement about what he felt Dean's motives were, but the implicit message came through strongly that he felt Dean was simply trying to shield himself from prosecution for things he had done, by trying to

make it seem that others were involved, or had more authority in what was done than he did. He noted that when the possibility of involvement by White House aides was becoming more clear, Dean had a strong and persistent interest in obtaining immunity:

EHRLICHMAN: His theory was that the President should negotiate blanket immunity for the White House staff.

GURNEY: But when somebody talks about immunity, obviously they are afraid of ending up in the pokey.¹⁶

It is interesting here that it was the Senator and not the witness who verbalized the explicit statement about Dean's possible motivation. At any rate, his statement served Ehrlichman's purpose well. A factor here may have been that Gurney, a Republican, was considered to be the best friend of the White House on the committee. But he continued the questioning:

GURNEY: Did he say, "Now, we are all going to jail so we had better get some immunity here?"

EHRLICHMAN: No, he said he was concerned that people would not talk freely [to the grand jury]. . . . This was a line that picked up, I guess, about this time and then was replayed over and over in his conversations with Mr. Haldeman.¹⁷

Ehrlichman alleged other activities by Dean which he indicated were apparently done to reinforce the testimony that Dean knew by then he was going to give. He asserted that Dean planted stories with various people:

I discovered that in this time era, Mr. Dean was apparently salting the mine a little bit. He was getting around and suggesting events to different people.¹⁸

One example was that Ehrlichman was supposed to have suggested and authorized at one point early in the affair that E. Howard Hunt be gotten out of the country.

GURNEY: Why would he plant the Hunt story, I mean what purpose would that serve?

EHRLICHMAN: I confess, I don't know except--well, this is really remote, but I do understand that in fact Mr. Dean did make the call to have Hunt leave the country, and . . . he has tried apparently to tie events of that kind to someone else's authority.¹⁹

It is not hard to see from these examples in the testimony that, in spite of his assertion, "I am not here to make charges against other people," Ehrlichman very strongly sought to shift the weight of suspicion from himself to Dean, and as we have seen, the shifting of focus or emphasis is a primary means by which the pentadic structure of thought functions persuasively.

No suggestion is made here that Ehrlichman consciously thought in the specific terms of the dramatistic pentad. It is even reasonable to suppose that he had never heard of the concept. But as Burke suggested, any complete statement about why a thing was done or occurred will have some suggestion to make, either explicitly or implicitly, about each of the five terms. This writer's theory is that the pentad, as a structure of criticism or persuasion, is a modern rhetorician's term for an argumentative structure closely akin or identical to the enthymeme of which Aristotle wrote.

What remains now is to take a somewhat speculative look at the effect of Ehrlichman's persuasive attempts. The last section of this study will briefly undertake this.

FOOTNOTES

¹U.S., Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book 3 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 1094.

²Ibid., Book 6, p. 2514.

³Ibid., p. 2520.

⁴Ibid., p. 2514.

⁵Ibid., p. 2516.

⁶Ibid.

⁷Ibid., Book 7, pp. 2720, 2721.

⁸Ibid., Book 6, p. 2625.

⁹Ibid., Book 3, p. 938.

¹⁰Ibid., Book 6, p. 2613.

¹¹Ibid., Book 7, p. 2856.

¹²Ibid., p. 2756.

¹³Ibid., Book 6, p. 2610.

¹⁴Ibid., pp. 2610, 2611.

¹⁵Ibid.

¹⁶Ibid., Book 7, p. 2742.

¹⁷Ibid.

¹⁸Ibid., p. 2719.

¹⁹Ibid.

CONCLUSION

The problem inherent in evaluating the effect or effectiveness of Ehrlichman's persuasion was noted at the outset: the Watergate hearings were not a forum in which a decision was to be made about Ehrlichman's guilt or innocence; yet that was an overriding issue during the period when he testified. He used many approaches within Aristotle's three great divisions of persuasion. He was an able speaker in terms of language style, although somewhat given to bureaucratic jargon. Throughout the five days of testimony he was an able debater and almost never displayed any inconsistency in answering similar questions on the same subject, even if they were asked several hours or days apart. But did he persuade? That is our question at this point.

He certainly did not effectively persuade the members of the committee. If any of them, even the reputedly most partisan Republican, Senator Gurney, thought that most of Ehrlichman's assertions were credible, they did little to indicate that. Rather, most expressions indicated their disbelief of many points. Their ablest spokesman in this regard was the Chairman, Senator Ervin. Some of his responses can be noted as examples. Confronting Ehrlichman's and lawyer Wilson's arguments about the legality of the Ellsberg break-in on grounds of defense of national security, Ervin stated:

Now, I cannot see the slightest relationship between Dr. Fieldings . . . notions of the mental state of Daniel Ellsberg and foreign intelligence activities. The only activity I think the doctor was engaged in was in trying to determine what the mental state of his patient was. He was not engaged in any foreign intelligence activities, and I think--this is my interpretation of the Constitution--I think that the emissaries that were sent out there for the plumbers to try to steal the doctor's notes were

domestic subversion and not in defense of this country against foreign intelligence activities.¹

After a good deal more testimony and examination of the witness on the Ellsberg matter, Ervin, who is considered a constitutional expert, brought in his own persuasive argument, recalling a case under President Lincoln when a "Copperhead," a Southern sympathizer, was to be tried by the government in a military court although the man was a civilian. The case was brought before the Supreme Court and argued by Jeremiah Black, "one of the greatest lawyers this nation ever produced." Ervin continued:

The Supreme Court of the United States rejected the argument that the President had any inherent power to ignore or suspend any of the guarantees of the Constitution, and Judge David Davis said, in effect: "The good and wise men who drafted and ratified the Constitution foresaw that troublous times would arise, when rulers and people would become restive under restraint and seek by sharp and decisive measures to accomplish ends deemed just and proper, and that the principles of Constitutional liberty would be put in peril unless established by irrepealable law." Then he proceeded to say: "And for these reasons, these good and wise men drafted and ratified the Constitution as a law for rulers and people alike, at all times and under all circumstances." Then he laid down this great statement: "No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government." And notwithstanding that we have it argued here in this year of our Lord 1973 that the President of the United States has a right to suspend the fourth amendment.²

Ervin's sarcasm in the last statement indicated clearly he was not persuaded; and not only so, the whole passage is a thoughtful piece of counter-persuasion.

Other Senators were less free than Chairman Ervin to voice counter-arguments or statements of disbelief, although we noted earlier in this study Senator Inouye's open incredulity about Ehrlichman's testimony.

Another clue to the ineffectiveness of Ehrlichman's persuasive efforts is the response in the press. An editor of the Roanoke (Virginia) Times was troubled by Ehrlichman's testimony that he had warned the President in July 1972,

against ever discussing clemency for the defendants. The editor noted that in July 1972 no one had any real suspicion that White House personnel might be involved. That suspicion was not aroused for several months. Why, this editor asked, ". . . would anyone, as Ehrlichman foresaw, even think of approaching the President to ask clemency?" The editor concludes:

That one possible answer is that--far from wanting to break the Watergate case wide open--some people in the White House wanted to protect their flanks by learning as little as they could about it.³

This editorial is interesting as a response to Ehrlichman in that it not only expresses disbelief, but increased suspicion because of his testimony. That does not seem to be a great vote of confidence in the persuasiveness of the witness.

The editorial in The New York Times on July 31, 1973, also contains an indicative response:

An air of unreality hung about the testimony of John D. Ehrlichman before the Senate Watergate Committee. It was as if he thought he had been asked to testify about the governing of a hypothetical country and had a clean slate to write upon.

Ehrlichman's testimony about the Ellsberg matter was most suspect.

The basic Ehrlichman thesis seemed to be that the President can do anything he wishes if, in his judgment, it protects the security of the nation. . . . The Ehrlichman thesis of total Presidential power provided a chilling insight into the minds of many of the men who have stood closest to Mr. Nixon . . . it is beneficial for the nation for that thesis to be exposed to public scrutiny and to be measured against the constraints of the Constitution and the nation's laws.⁴

The same sort of mistrust of this attitude in a national leader was stated by the Dayton (Ohio) Daily News:

Mr. Ehrlichman has shown himself to be a man of blithe amorality concerned almost exclusively with the expediency of any matter.⁵

The Washington Post sounded the same note:

If you saw the world that way--which is to say, if you saw those who differed or disagreed with you in that light--it would be a short step to the conclusion that democracy simply can't be trusted. And Mr. Ehrlichman

seems to have had rather little trouble in taking that step. Thus there is evidently no criminal or autocratic act that he would deny Mr. Nixon and the Nixon entourage the right to commit on the theory that they know best and are only doing whatever it is--spying, housebreaking--for our own good.⁶

The words of the editorial in The Denver Post were unequivocating:

The concept of executive power which John Ehrlichman and his attorney offered the Senate Watergate Committee this week would be appropriate for the dictator of a totalitarian society. It is totally inappropriate for the President of the United States.⁷

The tenor of these editorials, the tone of questioning in the hearings, leads this writer to the conclusion that Ehrlichman very nearly destroyed his chances for persuasive success with the argument that the President had the inherent power to perpetrate such acts in the interests of national security. Had he confined himself simply to the argument that he did not know that the "covert operation" was going to be a break-in, his entire testimony might have seemed more plausible.

In reflecting on Ehrlichman's appearance in the hearings, the student of rhetoric may well ask what has been learned. To this writer, the specific techniques and approaches used by Ehrlichman seem neither new nor novel. He argued reasonably well, and certainly vigorously, but essentially failed to persuade. The lesson to this writer--and no doubt personal bias enters into what we learn from any experience or study--is that Ehrlichman--and other would-be persuaders--might do well to consider once again Quintilian's maxim: "A good speaker is a good man."

FOOTNOTES

¹U.S., Congress, Senate, Select Committee on Presidential Campaign Activities, Watergate and Related Activities, Book 6 (Washington, D.C.: U.S. Government Printing Office, 1973), p. 2594.

²Ibid., p. 2631.

³Edward W. Knappman, Ed., Editorials on File, 1973 (New York: Facts on File, Inc., 1973), p. 983.

⁴Ibid.

⁵Ibid., p. 985.

⁶Ibid.

⁷Ibid., p. 988.

APPENDIX A
A CHRONOLOGY OF EVENTS RELATED TO
JOHN EHRLICHMAN'S WATERGATE TESTIMONY

- January 1969 - Richard M. Nixon inaugurated for first term.
- Autumn 1969 - The President orders the CIA to try to find foreign origins of anti-war demonstrations. CIA report negative.
- Spring 1970 - Followup investigation by FBI with negative results.
- April 1970 - The invasion of Cambodia leads to more riots and demonstrations.
- June 1970 - Initiation of White House program resulting in the "Huston Plan," intensive intelligence-gathering extremes opposed by J. Edgar Hoover, FBI Director.
- Spring 1971 - President has recording system installed in the White House.
- April 1971 - Committee to Re-Elect the President created. James McCord is Director of Security.
- May 1, 1971 - Demonstrations and arrests in Washington. White House attempts to coordinate intelligence gathering through the Internal Security Department under Robert Mardian, Assistant Attorney General.
- June 13, 1971 - "The Pentagon Papers" appear in the New York Times
- July 1971 - The ISD removes Director Hoover's logs of telephone taps on newsmen and National Security Council personnel to John Ehrlichman's safe. The White House Special Investigative Unit, "The Plumbers," is established.
- Late July 1971 - CIA instructed to provide a psychological profile on Daniel Ellsberg. Results unsatisfying to White House.
- August 11, 1971 - Egil Krogh and David Young, "Plumbers" heads, recommend "covert operation" in a memo to Ehrlichman. (See Appendix C)
- August 25, 1971 - E. Howard Hunt and Gordon Liddy reconnoiter the office of Lewis Fielding, Daniel Ellsberg's psychiatrist.
- September 3 or 4, 1971 - The break-in at Dr. Fielding's office occurs.

Through late 1971 - Charles Colson, Special Counsel to the President, compiles White House "enemies" list. FBI instructed to investigate newsman "enemy" Daniel Schorr. White House attempts to get IRS tax audits of "enemies."

November 24, 1971 - Gordon Liddy becomes General Counsel (Actually an investigator) for CRP. Committee intelligence effort begins.

January 27, 1972 - Liddy shows the "Gemstone" intelligence and subversion plan to John Mitchell, John Dean, and Jeb Magruder, Deputy Director of CRP.

February 4, 1972 - The second Liddy plan is submitted.

February 15, 1972 - John Mitchell becomes Director of CRP.

March 30, 1972 - Liddy, now with the Finance Committee to Re-Elect the President, shows final plan to Mitchell, Dean and Magruder. Plan was approved, according to Magruder's later testimony.

May 2, 1972 - J. Edgar Hoover dies.

May 29, 1972 - The first "bugging" of the Democratic National Committee Headquarters by Hunt, Liddy, et al.

June 17, 1972 - The aborted Watergate break-in.

June 1972 - Series of meetings of White House, CRP personnel to determine involvement and response.

June 20, 1972 - Hunt's White House safe opened. Ehrlichman orders Dean to "deep six" briefcase of sensitive papers (According to Dean's later testimony. Ehrlichman denies.).

June 27, 1972 - Part of safe contents given to FBI.

June 28, 1972 - Most sensitive part of contents given, sealed, to Acting FBI Director Patrick Gray. (Gray testified that he kept them in his closet, unread, until after Christmas, when he destroyed them.)

June 28, 1972 - Discussion of a Watergate "defense fund" in a meeting of Mitchell, Dean, Mardian, and Fred LaRue, Mitchell's aide. Dean talks to Kalmbach about payments to defendants.

July 1, 1972 - Mitchell resigns as director of CRP. Clark MacGregor takes over.

August 29, 1972 - President publicly commends John Dean for his investigation and asserts that the White House is not involved in Watergate.

September 15, 1972 - Watergate "Seven" indicted. Dean meets with the President and Haldeman, President commends Dean again. (Dean testified that Nixon knew of the cover-up at this time.)

November 17, 1972 - Senator Mike Mansfield begins to explore the possibility of a Congressional investigation of Watergate.

Late 1972 - Suggestions filter from Watergate defendants to White House that Executive Clemency be considered.

January 3, 1973 - Senator Mansfield calls for public hearings.

January 8, 1973 - Trial of the "Watergate Seven" begins.

January 11, 1973 - Senator Sam Ervin selected to chair a Senate committee on Watergate.

January 12, 1973 - James McCord discusses possibility of clemency with John Caulfield, Ehrlichman's aide.

January 30, 1973 - Liddy and McCord found guilty.

February 2, 1973 - The Senate Select Committee on Presidential Campaign Activities of 1972 is formally established.

February 27, 1973 - Series of significant meetings between Dean and President Nixon begins.

March 13, 1973 - Dean and Nixon meet. (Dean testified that he suggested silence of defendants might cost a million dollars, and that Nixon said raising the money would be "no trouble.")

March 21, 1973 - Dean and Nixon meet. (Haldeman testified that it was at this meeting that the President said the money would be no trouble to raise, but that he added the statement, "But it would be wrong.")

March 22, 1973 - Start of President's "personal investigation" of Watergate.

March 23, 1973 - Dean sent to Camp David by President to write a report. Decides to "step forward" and talk.

March 23, 1973 - Day for sentencing of Watergate defendants. McCord tells Judge John Sirica in a letter that he will talk.

March 31/April 1, 1973 - Dean makes a statement to Justice Department prosecutors.

April 14, 1973 - Magruder talks to prosecutors.

April 19, 1973 - Kalmbach calls Ehrlichman for reassurance about payments to defendants. (See Appendix F.)

April 26, 1973 - New York Daily News reveals that Gray destroyed evidence.

April 27, 1973 - Gray resigns as FBI Director.

- April 30, 1973 - Haldeman, Ehrlichman, Dean resign White House posts. Attorney General Kleindienst resigns. President makes speech accepting responsibility for, but denying involvement in cover-up.
- May 17, 1973 - Senate Watergate hearings begin. Magruder's testimony implicates almost everyone but the President.
- June 25, 1973 - Dean's testimony begins, and does implicate President Nixon.
- July 13, 1973 - Alexander Butterfield, former Deputy Assistant to the President, reveals that presidential conversations have been tape recorded since 1971.
- July 23, 1973 - Watergate Committee votes to subpoena tapes.
- July 24, 1973 - Testimony of John Ehrlichman begins.

APPENDIX B
BIOGRAPHICAL NOTES

- Baker Jr., Senator Howard H. - Senator from Tennessee, Vice-Chairman of Watergate Committee.
- Bittman, William O. - Attorney for E. Howard Hunt. Allegedly coordinated effort to keep Watergate defendants from testifying, reportedly passed on offers of executive clemency.
- Colson, Charles W. - Former special counsel to the President, implicated in alleged CRP espionage plot.
- Dash, Samuel - Chief counsel and staff director of Watergate committee.
- Dean, III, John W. - Counsel to the President, helped to coordinate the cover-up, subsequently forced to resign, testified that President Nixon knew of the cover-up.
- Ehrlichman, John D. - Advisor to the President on domestic affairs, implicated in Watergate cover-up, tied to break-in of office of Daniel Ellsberg's psychiatrist.
- Ellsberg, Daniel - Defendant in Pentagon Papers trial, released because of government misconduct by White House "Plumbers" group.
- Ervin Jr., Senator Sam J. - Chairman of Senate Select Committee on Presidential Campaign Activities, the "Watergate" committee. Senator from North Carolina.
- Gurney, Senator Edward J. - Senate Committee member from Florida.
- Haldeman, H. R. - White House Chief of Staff, implicated in Watergate cover-up, accused of organizing GOP espionage operations, subsequently resigned from office.
- Hunt Jr., E. Howard - Former White House consultant, pled guilty to role in Watergate conspiracy, later linked to cover-up and "Plumbers" operations. His wife, Dorothy, who was killed in a December 1972 plane crash, was a channel for money from CRP to the defendants.
- Inouye, Senator Daniel K. - Senator from Hawaii, member of the Watergate committee.

- Kalmbach, Herbert L. - Former personal attorney to President Nixon and a major GOP fund raiser, implicated in the cover-up and payoffs to Watergate defendants.
- Krogh Jr., Egil - Former White House aide, resigned as Under-secretary of Transportation following implication in "Ellsberg" burglary. Co-head of "Plumbers."
- Liddy, G. Gordon - Former presidential assistant, counsel to Finance Committee to Re-Elect the President at time of Watergate arrests, tried and convicted for involvement in Watergate conspiracy, member of "Plumbers."
- McCord Jr., James W. - Former CIA agent and, at time of arrest at Watergate break-in, Security coordinator for CRP, tried and convicted for Watergate role, implicated John Mitchell, Jeb Magruder, and John Dean in testimony before the committee.
- Mitchell, John N. - Former U. S. Attorney General, director of CRP, allegedly approved the Watergate break-in budget and ordered evidence destroyed.
- Montoya, Senator Joseph M. - Senator from New Mexico, member of Watergate committee.
- Talmadge, Senator Herman E. - Georgia Senator, member of Watergate committee.
- Thompson, Fred D. - Minority counsel of the Watergate committee.
- Weicker, Senator Lowell P. - Senator from Connecticut, member of Watergate committee.
- Wilson, John J. - Attorney for John Ehrlichman.
- Young Jr., David R. - National Security Council member, resigned following reports of involvement in burglary of Ellsberg's psychiatrist's office, co-head of "Plumbers."

ILLEGIBLE DOCUMENT

**THE FOLLOWING
DOCUMENT(S) IS OF
POOR LEGIBILITY IN
THE ORIGINAL**

**THIS IS THE BEST
COPY AVAILABLE**

2644

2645

THE WHITE HOUSE

WASHINGTON

August 11, 1971

MEMORANDUM FOR JOHN D. FURLICHMAN

FROM:

DUD KROCH AND DAVID YOUNG

SUBJECT:

PENTAGON PAPERS PROJECT - STATUS
REPORT AS OF AUGUST 11, 1971

(1) Where things stand in the Grand Jury investigations.

The Los Angeles Grand Jury last week subpoenaed six people. Messrs. Burt Wallrich, Arne Guilfoile, Spencer Marx and Jackie Barnett all appeared and took the Fifth Amendment. Albert Appleby and Jane Youman are presently outside of California on vacation and will be subpoenaed when they can be served. Ellsberg's old telephone records were also subpoenaed but were not available since the records were not kept back that far. His Danhamortard records have also been subpoenaed but have not yet been received.

The Boston Grand Jury will meet next week. Justice has not made a final decision but is considering subpoenaing the following individuals:

- Mrs. Louis Marx (mother of Mrs. Ellsberg)
- Samuel Popkin (Harvard)
- Richard Falk (Princeton)
- Ralph Stavins (IPS)
- Richard Barnett (IPS)
- Marcus Ruskin
- K. Dunn Gifford (A friend of Sheehan and Ellsberg who stayed at Treadway Motor House March 20th, when Sheehan was there.)
- Richard Stedman

It seems unlikely that Barnett, Rawlin and Gifford will be called because they have been overheard.

(2) We have received the CIA preliminary psychological study (copy attached at Tab A) which I must say I am disappointed in and consider very superficial. We will meet tomorrow with the head psychiatrist, Mr. Bernard Malloy, to impress upon him the detail and depth that we expect. We will also make available to him some of the other information

We have received from the FBI on Ellsberg. In this connection we would recommend that a covert operation be undertaken to examine all the medical files still held by Ellsberg's psychiatrist covering the two-year period in which he was undergoing analysis.

Approve 6 Disapprove

if done under your assurance that it is not traceable.

(3) We have received a letter from Director Hoover confirming that the Ellsberg case and related matters will be handled on a "Bureau Special" basis.

(4) We have tasked CIA with doing a leak assessment on all leaks since January, 1969, along the lines of the attached memorandum at Tab B.

(6) We are continuing to press the FBI to determine whether the report of a foot locker containing film magazines stored for Ellsberg with Dickins Van and Storage Company in California is indeed accurate, and what the content of the films is. The foot locker was apparently picked up by a friend of Ellsberg, a reporter for Dispatch News Service, David Obst, who indicated that the contents of the foot locker were needed for a book to be published in New York.

(7) Attached at Tab C is a memorandum from Richard Smyser on impact of (a) Ellsberg case, (b) an expose of the 1963 coup, and (c) the drug situation in South Vietnam, on (a) South Vietnamese election, (b) the U. S. election, and (c) on peace negotiations.

**THIS BOOK CONTAINS
NUMEROUS PAGES
WITH THE PAGE
NUMBERS CUT OFF**

**THIS IS AS RECEIVED
FROM THE
CUSTOMER**

2646

EXHIBIT NO. 91

THE WHITE HOUSE

WASHINGTON

August 26, 1971

MEMORANDUM FOR: JOHN EHRLICHMAN

FROM: DAVID R. YOUNG

SUBJECT: STATUS OF INFORMATION WHICH CAN BE
FED INTO CONGRESSIONAL INVESTIGATION
ON PENTAGON PAPERS AFFAIR

Initial Situation

On July 20, 1971, after a meeting with Congressmen Liebert and Areeda, Marsden, Macomber and Duzhardt reported that the Congressmen

-- were willing to pursue the idea of an investigation;
Galloni;

-- would begin the investigation in a low key under a Subcommittee of the House Armed Services Committee. Beginning with the questions of security clearance, classification and declassification, they would then move into the more specific case of the Pentagon Study;

-- agreed that Marsden, Macomber and Duzhardt would set the format, supply the substantive data and develop the scenario.

At that time it was also believed that the principal person involved in the whole publication of the Pentagon Study was Ellsberg. On this basis it was estimated that it would take a little over 30 days to develop sufficient information for a Congressional investigation.

The plan then was to slowly develop a very negative picture around the whole Pentagon Study affair (preparation to publication) and then to identify Ellsberg's associates and supporters on the new left with this negative image. The end result would be to show (1) how they were

intent on undermining the policy of the Government they were supposedly serving, and (2) how they have sought to put themselves above the law.

Present Situation

The above assumption that Ellsberg was the principal person responsible for the publication in the Times is no longer valid. In fact, it appears that those in Justice and Defense most familiar with this whole enterprise believe that substantial evidence is being developed for the criminal prosecution of individuals other than Ellsberg; namely, Gelb, Halperin, Warnke and Rand executives. Duzhardt states that only the FBI is disposed to thinking that Ellsberg is the sole prime mover.

In addition, the investigations have uncovered a proliferation of drafts involved in the 38, 43 and 47 volume sets and the number of copies of the sets has expanded far beyond what was initially estimated on the basis of distribution lists, etc.

It may well be that although Ellsberg is guilty of the crimes with which he is charged, he did not in fact turn the papers over to the New York Times. The Defense Department's analysis of the printed material may even show that Ellsberg did not have some of the papers which the New York Times printed.

Furthermore, the whole distribution network may be the work of still another and even larger network.

Examples of the types of problems which are presently being examined are as follows:

(1) The likelihood that a good portion of the four volumes were prepared in final during the spring of 1969 while Gelb was still at Defense, and Halperin at the NSC.

(2) The curious discovery that Bill Bundy received his 47-volume set two months before anyone else.

Status of Actions

-Over 30 people (some a number of times) have been interviewed by Defense and Justice, and this week investigative teams have been

2648

dispatched to Europe and Vietnam.

- Buzhardt will be interviewing Clark Clifford this Friday.

- Buzhardt will interview William Kaufman shortly and this could be quite helpful in that Kaufman was one of the few people that apparently quit the project after protesting to Gelb that it was biased. Buzhardt has reason to believe that Kaufman will name names and identify those who were using the Study as a brief.

- An interview with McNamara will be conducted by Buzhardt as soon as McNamara returns from vacation in early September.

- An all-out adversary interrogation of Halperin, Gelb, Warnke, Rand executives and any other prime targets developed by that time is to be undertaken by Buzhardt's team shortly.

Comment

My own impression of Buzhardt (and most of the above is based on his investigations, since Mardian's boys are concentrating on Ellsberg) is that, although he is not moving as fast as we'd like, he should get us what we want. He believes that within 14 days, when he has been able to reach some reasonably certain preliminary conclusions, we will have a good basis for setting a Congressional strategy. He is convinced that at least Gelb and the Rand executives are lying in a very grave manner, and if he can prove this I think we'll have a good idea of where we want to go and how to get there.

Recommendation

That we give Defense and Justice a little more time to develop their cases and that we set up a strategy meeting for September 9, 1971, to determine an overall game plan.

Issues to be addressed would include the following:

(1) If there is enough to bring criminal actions against Gelb, the Rand executives, etc., do we want to prosecute or do we want

-3-

2649

to bring such material out through the Congressional investigation?

(2) If criminal prosecution is decided against for all except Ellsberg, when would it be most desirable to undertake the Congressional investigation?

(3) What strategy should be followed in the actual committee investigation (a) if only Ellsberg is to be prosecuted, or (b) if all the key persons are to be prosecuted?

(4) Do we want the Congressional investigation to also get into the substance of the Pentagon Study? If so, a game plan must be devised for determining what, when and how information should be fed to the committee.

(5) If the decision is made to move ahead in these substantive areas, careful consideration should be given to the effect of the credibility fall-out on us. For this reason it might be best to stick with specific blunders such as the 1963 coup, the miscalculation on the need of forces, etc.

[NOTE: I am sending you a separate Hunt to Colson memorandum which attempts to select the politically damaging material involving the Democratic hierarchy. I personally believe a good deal more material could be developed along these lines. To begin with, we have Concin, Lansdale, Harkins and Nolting who could possibly be called upon to testify.]

(6) To what extent should we try to show the lack of objectivity and the intent of the participants in the Pentagon Study to distort and mislead. (Note that exploitation of this theme undercuts points (4) and (5).)

(7) Effect of South Vietnamese election on timing of investigation.

(8) Effect of Ellsberg trial which will now not come up before March of 1972 on timing of investigation.

(9) How quickly do we want to try to bring about a change in Ellsberg's image?

-4-

2650

Action

That you schedule a strategy meeting on September 9th with Macomber, Mardian, Duzhards, Krogh and Young. (I have discussed this approach with Dad and he is in agreement).

Approve

E

Disapprove

Other

In connection with issue (9), it is important to point out that with the recent article on Ellsberg's lawyer, Boudin, we have already started on a negative press image for Ellsberg. If the present Hunt/Liddy Project #1 is successful, it will be absolutely essential to have an overall game plan developed for its use in conjunction with the Congressional investigation. In this connection, I believe that the point of Buchanan's memorandum on attacking Ellsberg through the press should be borne in mind; namely that the situation being attacked is too big to be undermined by planted leaks among the friendly press.

If there is to be any damaging of Ellsberg's image and those associated with him, it will therefore be necessary to fold in the press planting with the Congressional investigation. I mentioned these points to Colson earlier this week, and his reply was that we should just leave it to him and he would take care of getting the information out. I believe, however, that in order to orchestrate this whole operation we have to be aware of precisely what Colson wants to do.

Recommendation: That you sign the memorandum to Colson asking him to draw up a game plan (Tab A).

7/11/74
4/11

APPENDIX E

2651

August 27, 1971

MEMORANDUM FOR CHARLES COLSON
FROM JOHN EHRLICHMAN
SUBJECT HUNT/LIDDY SPECIAL PROJECT #1

On the assumption that the proposed undertaking by Hunt and Liddy would be carried out and would be successful, I would appreciate receiving from you by next Wednesday a game plan as to how and when you believe the materials should be used.

A TRUE COPY

EXHIBIT No. 77

Conversation with Herb Kalmbach—April 19, 1973, 4:50 p.m.

E Ehrlichman

K Kalmbach

E Hi, how are you?

K I'm pretty good. I'm scheduled for 2 tomorrow afternoon.

E Where—at the jury or the U.S. Attorney?

K At the jury and I'm scheduled at 5:30 this afternoon with Silver.

E Oh, are you?

K Yeah. I just wanted to run through quickly several things, John, in line with our conversation. I got in here last night and there was a telephone call from O'Brien. I returned it, went over there today and he said the reason for the call is LaRue has told him to ask him to call me to say that he had to identify me in connection with this and he wanted me to know that and so on.

E Did he tell you about Dean?

K Nope.

E Well Dean has totally cooperated with the U.S. Attorney in the hopes of getting immunity. Now what he says or how he says nobody seems to be able to decide but he

K The whole enchilada?

E He's throwing off on Bob and me heavily.

K He is?

E Yep.

K He is.

E And taking the position that he was a mere agent. Now on your episode he told me before he left, so to speak, he, Dean, told me that really my transaction with him involving you was virtually my only area of liability in this thing, well I said, well, John, what in the world are you talking about? He said, well I came to you from Mitchell and I said Mitchell needs money could we call Herb Kalmbach and ask him to raise some. And I said, and Dean says to me, and you said yes. And I said yes, that's right. And he said well that does it. And I said well that's hard for me to believe. I don't understand the law but I don't think Herb entered into this with any guilty intent and I certainly didn't and so I said I just find that hard to imagine. Now since then I've retained counsel.

E Oh, you have?

K Very good and who agrees with me that it is the remotest kind of nonsense but the point that I think has to be clarified, that I'm going to clarify if I get a chance, is that the reason that Dean had to come to me and to Bob where you were concerned is that we had promised you that you would not be run pillar to post by Maurice Stans.

K And also that you knew I was your friend and you knew I was the President's attorney

E Sure

K Never do anything improper, illegal, unethical or whatever.

E Right.

K And

E But the point is that rather than Mitchell calling you direct Mitchell knew damn well that you were no longer available.

K Yep

E Now this was post April 6, was it not?

K Yep, April 7.

E So that Mitchell and Stans both knew that there wasn't any point in calling you direct because we had gotten you out of that on the pretext that you were going to do things for us.

K That's right.

E And so it was necessary for Dean to come to me and then in turn to Bob and plead a very urgent case without really getting into any specifics except to say you had to trust me, this is very important, and Mitchell is up his tree or, you know, I mean is really worried; he didn't use that phrase, but he is

K You know, when you and I talked and it was after John had given me that word, and I came in to ask you, John is this an assignment I have to take on? You said, yes it is period and move forward. Then that was all that I needed to be assured that I wasn't putting my family in jeopardy.

E Sure.

K And I would just understand that you and I are absolutely together on that. No question about it, Herb, that I would never knowingly have put you in any kind of a spot.

K Yeah. Well and when we talked you knew what I was about to do, you know, to go out and get the dough for this purpose; it was humanitarian.

E It was a defense fund.

K ... to support the family. Now the thing that was disquieting about this thing with O'Brien was that he said that there is a massive campaign evidently under way to indict all the lawyers including you, Herb, and I was a little shocked and I guess what I need to get from you, John, is assurance that this is not true.

E Well I don't know of any attempt to target you at all. My hunch is that they're trying to get at me, they're trying to corroborate. See what they said to Dean is that he gets no consideration from them unless they can corroborate Haldeman and my liability.

K God, if I can just make it plain that it was humanitarian and nothing else.

E Yeah, and the point that I undoubtedly never expressed to you that I continually operated on the basis of Dean's representations to me.

Yep. It was not improper.

E Right.

K And there was nothing illegal about it.

E See, he's the house lawyer.

K Yep, exactly and I just couldn't believe that you and Bob and the President just too good friends to ever put me in the position where I'd be putting my family on the line.

K And it's just unbelievable, unthinkable. Now shall I just—I'll just if I'm asked by Silver I'll just lay it out just exactly that way.

E Yeah, I wouldn't hand the President into it if you can help it.

K Oh, no, I will not.

E But I think the point that which I will make in the future if I'm given the chance that you were not under our control in any sort of a slavery sense but that we had agreed that you would not be at the beck and call of the committee.

K And, of course, too, that I act only on orders and, you know, on direction and if this is something that you felt sufficiently important and that you were assured it was altogether proper, then I would take it on because I always do it and always have. And you and Bob and the President know that. Yeah, well, as far as propriety is concerned I think we both were relying entirely on Dean.

E Yep.

K I made no independent judgment.

E Yep, Yep.

K And I'm sure Bob didn't either.

E Nope and I'm just, I just have the feeling, John, that I don't know if this is a weak reed, is it?

E Who, Dean?

K No, I mean are they still going to say well Herb you should have known.

E I don't know how you could've. You didn't make any inquiries.

K Never. And the only inquiries I made, John, was to you after I talked to John Dean.

E And you found that I didn't know just a whole helluva lot.

K You said this is something I have to do and—

E Yeah, and the reason that I said that, as you know, was not from any personal inquiry but was on the basis of what had been represented to me. Yeah, and then on—to provide the defense fund and to take care of the families of these fellows who were then

**THIS BOOK
CONTAINS
NUMEROUS
PAGES WITH
THE ORIGINAL
PRINTING ON
THE PAGE BEING
CROOKED.**

**THIS IS THE
BEST IMAGE
AVAILABLE.**

2217

E And the point being here without attempting to induce them to do a damn thing.

K Absolutely not and that was never, that was exactly right.

K OK.

K Now, can I get into see you tomorrow before I go in there at 2?

K If you want to. They'll ask you.

K Will they?

E Yep.

K Well, maybe I shouldn't.

E They'll ask you to whom you've spoken about your testimony and I would appreciate it if you would say you've talked to me in California because at that time I was investigating this thing for the President.

K And not now?

E Well, I wouldn't ask you to lie.

K No, I know.

E But the point is

K But the testimony was in California

E The point is. Well, no your recollection of facts and so forth.

K Yes, I agree.

E Sec, I don't think we were ever seen together out there but at some point I'm going to have to say that I talked to O'Brien and Dean and Magruder and Mitchell and you and a whole lot of people about this case.

K Yeah

E And so it would be consistent.

K Do you feel, John, that calling it straight shot here, do you feel assured as you did when we were out there that there's no culpability here?

E Yes.

K And nothing to worry about?

E And Herb from everything I hear they're not after you.

K Yes, sir.

E From everything I hear

K Barbara, you know

E They're out to get me and they're out to get Bob.

K My god. Alright, well, John, it'll be absolutely clear that there was nothing looking towards any cover-up or anything. It was strictly for the humanitarian and I just want, when I talked to you I just want you to advise me that it was alright on that basis.

E On that basis.

K To go forward

E That it was necessary

K And that'll be precisely the way it is.

E Yeah, OK.

E Thanks, Herb. Bye

APPENDIX G

TITLE 18 U.S.C. 2511

§ 2511. INTERCEPTION AND DISCLOSURE OF WIRE OR ORAL COMMUNICATIONS PROHIBITED

(1) Except as otherwise specifically provided in this chapter any person who—
(a) Willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire or oral communication;

(b) Willfully uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when—

(i) Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

(ii) Such device transmits communications by radio, or interferes with the transmission of such communication; or

(iii) Such person knows, or has reason to know, that such device or any component thereof has been sent through the mail or transported in interstate or foreign commerce; or

(iv) Such use or endeavor to use (A) takes place on the premises of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or (B) obtains or is for the purpose of obtaining information relating to the operations of any business or other commercial establishment the operations of which affect interstate or foreign commerce; or

(v) Such person acts in the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States;

(c) Willfully discloses, or endeavors to disclose, to any other person the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection; or

(d) Willfully uses, or endeavors to use, the contents of any wire or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication in violation of this subsection;

shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(2) (a) It shall not be unlawful under this chapter for an operator of a switchboard, or an officer, employee, or agent of any communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of his employment while engaged in any activity which is a necessary incident to the rendition of his service or to the protection of the rights or property of the carrier of such communication: *Provided*, That said communication common carriers shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

(b) It shall not be unlawful under this chapter for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of chapter 5 of title 47 of the United States Code, to intercept a wire communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.

(c) It shall not be unlawful under this chapter for a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception.

(d) It shall not be unlawful under this chapter for a person not acting under color of law to intercept a wire or oral communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State or for the purpose of committing any other injurious act.

(3) Nothing contained in this chapter or in section 605 of the Communications Act of 1934 (48 Stat. 1144; 47 U.S.C. 605) shall limit the constitutional power of the President to take such measures as he deems necessary to protect the Nation against actual or potential attack or other hostile acts of a foreign power, to obtain foreign intelligence information deemed essential to the security of the United States, or to protect national security information against foreign intelligence activities. Nor shall anything contained in this chapter be deemed to limit the constitutional power of the President to take such measures as he deems necessary to protect the United States against the overthrow of the Government by force or other unlawful means, or against any other clear and present danger to the structure or existence of the Government. The contents of any wire or oral communication intercepted by authority of the President in the exercise of the foregoing powers may be received in evidence in any trial hearing, or other proceeding only where such interception was reasonable, and shall not be otherwise used or disclosed except as is necessary to implement that power.

BIBLIOGRAPHY

Books

- Aristotle. Rhetoric and Poetics. Translated by W. Rhys Roberts. New York: The Modern Library, 1954.
- Bailey, Dudley, ed. Essays on Rhetoric. New York: Oxford University Press, 1965.
- Burke, Kenneth. A Grammar of Motives. Berkeley: University of California Press, 1969.
- _____. Language as Symbolic Action. Berkeley: University of California Press, 1966.
- Chester, Lewis, et al. Watergate. New York: Ballantine Books, 1973.
- Dixon, Peter. Rhetoric. London: Methuen and Co. Ltd., 1971.
- Kennedy, George. The Art of Rhetoric in the Roman World. Princeton: Princeton University Press, 1971.
- Knappman, Edward W., ed. Editorials on File, 1973. New York: Facts on File, Inc., 1973.
- _____. Watergate and the White House. New York: Facts on File, Inc., 1973.
- Nichols, Marie H. Rhetoric and Criticism. Baton Rouge: Louisiana State University Press, 1963.
- Postman, Neil, et al, ed. Language in America. New York: Pegasus, 1969.
- Scott, Robert L. and Brock, Bernard L. Methods of Rhetorical Criticism. New York: Harper and Row, 1972.
- Winterowd, W. Ross. Rhetoric: A Synthesis. New York: Holt, Rinehart and Winston, Inc., 1968.

Transcripts

- U.S. Congress. Senate. Select Committee on Presidential Campaign Activities. Watergate and Related Activities, Books 1 through 6. Washington, D.C.: U.S. Government Printing Office, 1973.

Periodicals

Congressional Quarterly. Vol. XXXI, No. 30. July 28, 1973.

A RHETORICAL ANALYSIS OF
JOHN EHRLICHMAN'S WATERGATE TESTIMONY

by

DAVID W. BENEDICT

B. A., Manhattan Christian College, 1961
M. Div., Christian Theological Seminary, 1967

AN ABSTRACT OF A MASTER'S REPORT

submitted in partial fulfillment of the

requirements for the degree

MASTER OF ARTS

Department of Speech

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1974

From July 24 through July 30, 1973, John D. Ehrlichman testified in public hearings before the Select Committee on Presidential Campaign Activities of the United States Senate. Ehrlichman, who had been the top advisor on domestic affairs for President Richard M. Nixon, had been implicated in the scandal surrounding a break-in at the Democratic National Committee Headquarters in the Watergate Building in Washington, D. C. The break-in, on June 17, 1972, had led to a series of disclosures of alleged involvement by a number of White House officials, and members of the Committee to Re-Elect the President, in illegal political intelligence gathering, and in a massive effort to cover-up this involvement following the break-in.

John Ehrlichman was widely suspected of complicity in "The Watergate Affair" when he appeared before the committee, chaired by Senator Sam Ervin of North Carolina. He had the task of trying to convince the senators on the committee, as well as a large segment of the American public viewing the hearings via television, that he was innocent of any wrongdoing.

The purpose of this study was to examine some of the persuasive devices Ehrlichman used in his attempt to convince his "audience." The basic analytical tools used were (1) the Dramatistic Pentad discussed by Kenneth Burke, and (2) some of Aristotle's descriptions of rhetorical devices. Four of Ehrlichman's major areas of argument were examined. They were:

1. Why he was unaware of the Watergate cover-up.
2. His responsibility in the burglary of the office of Daniel Ellsberg's psychiatrist.
3. His alleged reassurances to Herbert Kalmbach about "hush-money" for Watergate defendants.
4. His attempt to shift responsibility to John Dean.

The conclusion of this study, based on public responses to Ehrlichman's testimony, was that Ehrlichman failed to persuade his audience that he was not guilty of wrongdoing.