

AN ABSTRACT OF THE THESIS OF

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Abstract approved:

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The purpose of this study is to examine the rhetorical efforts of President George W. Bush in defending his administration's warrantless wiretapping program. Specifically, the study attempts to determine the president's underlying motives when he defended the National Security Agency in a December 2005 radio address by applying Kenneth Burke's dramatistic method of pentadic analysis. Shortly after the terrorist attacks of September 11, 2001, the president authorized the NSA to intercept communication between people inside the United States and suspected terrorists abroad without a court order, despite a 1978 law making warrantless wiretapping of U.S. persons a felony. The study includes a brief history of wiretapping in the United States and security policies adopted by the country both before and after the president's speech. In applying Burke's pentad, the study reveals that President Bush's efforts were intended to shift criticism onto other agents and to argue that legal barriers to presidential power are dangerous luxuries in a time of war. The study concludes that the president's aims, as revealed through rhetorical criticism, pose a threat to long-standing democratic norms like the rule of law.

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For the Purpose of Power:
An Analysis of George W. Bush's Warrantless Wiretapping Address

by

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I understand that my thesis will become part of the permanent collection of Oregon State University libraries. My signature below authorizes release of my thesis to any reader upon request.

Michael V. Owens, Jr., Author

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**For the Purpose of Power:
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CHAPTER I: INTRODUCTION

Politics, the Pentad, and the President

On March 14, 2006, U.S. Senator Russell Feingold introduced a resolution calling for the censure of President George W. Bush. A day earlier, the Wisconsin Democrat justified his call for a formal reprimand of the nation's leader by telling ABC's George Stephanopoulos, "What the president did by consciously and intentionally violating the Constitution and laws of this country with this illegal wiretapping has to be answered" (qtd. in Files A17). The senator was responding to revelations that the president had begun an illegal wiretapping program without court oversight, but his censure resolution did not garner the support of many colleagues. John Kerry and Hillary Rodham Clinton, the junior senators from Massachusetts and New York, respectively, refused to comment on the measure (Milbank A2). The leader of the Democrats in the United States Senate, Harry Reid of Nevada, when asked by reporters where he stood, said, "It's a question that's been asked 33 times in the last few hours ... And so, for the 34th time, I'm going to say the same thing: I'm going to wait..." (Milbank A2).

After *The New York Times* broke the story of the NSA wiretapping program the previous December, many politicians and commentators reached conclusions similar to Feingold's. They agreed the president was acting in contravention of a 1978 law and possibly even the U.S. Constitution. But they did not agree that the

president should be censured. In a press release, the Democratic leader of the U.S. House of Representatives, Nancy Pelosi, said, “Both the House and the Senate must fully investigate the program and assign responsibility for any laws that may have been broken,” but the California congresswoman fell short of endorsing censure (Kellman A5).

Even though commentators like Bruce Fein of the conservative *Washington Times*, a former Justice Department official in the Reagan Administration, had concluded that “President Bush presents a clear and present danger to the rule of law,” Democrats had their own political calculations to make. In the political context of March 2006, which included Vice President Dick Cheney’s statement to a crowd in Feingold’s home state that, “Some Democrats in Congress have decided the president is the enemy” (Kellman A5), most Democrats were unwilling to support the Wisconsin legislator. To find out how the president and his supporters limited the damage from the NSA wiretapping scandal, it is worth examining what the chief executive had to say about the program the day after it was revealed.

Statement of Purpose and Limitations

In the following study, I analyze a specific communication artifact to determine the underlying motives of President Bush when he defended the NSA’s warrantless wiretapping program. Bush gave a live radio address on December 17, 2005, the day after *The New York Times* first revealed the domestic spying program, in which he defended his decision to initiate the warrantless eavesdropping. Because

the speech was given just hours after the publication of the *Times* story, it offers students of rhetoric and human motivation a glimpse into the initial instincts of the president and his administration's most influential members; it offers a chance to see the president's primary arguments when responding to a scandal. The radio address also has significance because of the NSA wiretapping program itself. Although President Bush has claimed in numerous "signing statements" that he has the right to disobey laws he thinks unconstitutionally limit presidential authority (Savage A1), the NSA wiretapping program is one of the few areas in which he is publicly known to have contravened the text of a duly enacted statute.

After applying Kenneth Burke's pentad to Bush's speech, and considering the type of audience that would most likely be persuaded by the president's defense, I conclude that the president's primary motive in the speech was not to defend the legality of the wiretapping but to persuade Americans they should dismiss the importance of presidential lawbreaking altogether, at least in a time of war. President Bush's goal in justifying warrantless wiretapping was not primarily to defend the country from terrorism, but to expand presidential power and maintain executive prerogatives for himself and his successors. Through his reliance on a scene of pervasive terror, President Bush asked Americans to believe that acting legally is less important than acting to defeat terrorists. Civil liberties, the rule of law: these are quaint concepts in a scene dominated by evil actors, themselves unconcerned with the niceties of democratically enacted law.

Though I rely on a number of sources to document these conclusions, the study contains important limitations. The first is that, to some degree, seeking a person's motives is inherently reductionist; President Bush, like any other person, acts for many reasons. Additionally, any type of critical inquiry — especially one with a moral component — is greatly subjective. What I find in Bush's rhetoric may reflect my own political assumptions and preferences as much as it does his. Indeed, it did not take long after the story broke about the NSA program for me to conclude that it was illegal. And even that conclusion is subjective. The legality of an act, in our system, is only determined with finality in a court of law after the act is committed. Finally, a pentadic analysis can help reveal the motives a rhetor when textually applied to a speech, but it cannot illuminate the actual mind of the speaker. Any rhetorical analysis designed to discover motives can only go as far as the text, and cannot tell us what a political actor or other rhetor was actually thinking at the time of a speech. Despite these limitations, I believe rhetorical critics have a responsibility to examine the way powerful people justify their actions with public discourse, especially when they involve matters of life and death, and long-standing democratic values such as the rule of law.

Literature Review: Kenneth Burke's Pentadic Approach

Writing in the mid-twentieth century, Kenneth Burke developed the pentad as part of his dramatistic method to explain human motives. Consisting of five familiar parts, the pentad employed a new twist on an old theme — that all the world's a

stage, to use Shakespeare's formulation. Burke explained the basis of the method thusly:

In a rounded statement about motives, you must have some word that names the *act* (names what took place), and another that names the *scene* (the background of the act, the situation in which it occurred); also, you must indicate what person or kind of person (*agent*) performed the act, what means or instruments he used (*agency*), and the *purpose*" (xvii).

Of course, the "motives" part of his dramatistic approach was the novel part. These five familiar concepts, used to break down a dramatic work, can also be applied to human rhetoric. In so doing, Burke argued, we might better discover the underlying motives of the rhetor.

Scholars have used Burke's pentad to explore human motivations in a variety of contexts. Jeanne Y. Fisher found that a homicidal man named Joseph White had transformed his significance as a person — an agent — by changing the nature of his acts. When he murdered several coworkers and then killed himself, in September of 1970, he "persuaded those who knew him that they had inaccurately assessed his significance" (Fisher 188). Edward C. Appel, applying Burke's pentad to religious rhetoric, found that the Reverend Jerry Falwell had persuaded audiences that supporting his creation of an evangelical university was a noble act by offering himself as an "agent-exemplar" (32). Though these studies illustrate the utility of the pentad in examining motives across many contexts, it is the application of the pentad to political rhetoric that offers the most lessons for the present study.

In 1970, David Ling endeavored to explain how a married politician, Edward M. Kennedy, could hold onto his job despite being responsible for the death of a

young assistant while traveling alone with her late at night. Whatever else history may say about him, Kennedy will likely be remembered as the man who would have been president. After the deaths of his three older brothers, two from assassins' bullets, Kennedy became heir to an enduring American political dynasty. But on July 18, 1969, the U.S. Senator from Massachusetts lost control of his car and plunged it into a channel on Martha's Vineyard. His only passenger, Mary Jo Kopechne, died, even as Kennedy himself swam to safety. As details of the event became clear to the public — and despite his insurgent primary challenge to Jimmy Carter several years later — so, too, was it clear that Kennedy's presidential aspirations had sunk along with his Oldsmobile.

Yet despite the infamy of the Chappaquiddick incident, Kennedy has maintained a long career in public service as the senior senator from the Bay State, and some consider him one of the Democratic Party's most powerful icons. He is the liberal lion of the U.S. Senate. By employing Kenneth Burke's pentad and his theories of human motivation to the speech Kennedy delivered shortly after the incident, Ling concluded that Kennedy had successfully transformed himself into a "victim of the scene" (83). He had therefore absolved himself of responsibility for both endangering, and then failing to save, Kopechne.

To engage in a pentadic analysis of a communication artifact, Burke suggested comparing the ratios between the pentadic elements. Each element, however, is not equally important in determining a speaker's motives. As Burke wrote, "It is the principle of drama that the nature of the acts and agents should be

consistent with the nature of the scene” (3). Regardless of the purpose or agency, a rhetor can be expected to attempt some balance between the act, the agent, and the scene. To establish this balance, a speaker may characterize an act in such a way that it seems to fit within the scene; conversely, she might characterize the scene to fit an act. “The principles of consistency binding scene, act, and agent also lead to reverse applications,” Burke wrote. “That is, the scene-act ratio either calls for acts in keeping with scenes or scenes in keeping with acts—and similarly with the scene-agent ratio” (9).

This Burkean comparison of pentadic ratios has been a frequent method for examining political speeches in the last half century. As Ling explained, the pentadic approach is useful because it allows scholars to understand any number of rhetorical circumstances through the few, reoccurring human experiences. Burke, according to Ling, “maintains that, in a broad sense, history can be viewed as a play, and, just as there are a limited number of basic plots available to the author, so also are there a limited number of situations that occur to man.” Adopting “the language of the stage” to describe those situations can therefore illuminate motives (81). Further, the motives of political actors and speechmakers are hard to obtain through more direct approaches; few people, whether they live in democratic societies or more repressive ones, are likely to trust the explicit explanations offered by politicians. Indeed, Ling’s own analysis showed that even within one speech, the pentad can reveal the dubious nature of a politician’s purported claim of motivation.

Ling quoted Kennedy acknowledging that he did not “seek to escape responsibility” for his role in Kopechne’s death, “by placing blame either on the emotional trauma brought on by the accident or on anyone else” (83). Nonetheless, Ling concluded that Kennedy did seek to escape responsibility by placing himself “in the position of an agent caught in a situation not of his own making” (84). The senator achieved this end by emphasizing scenic elements, such as the “unlit road” on which he was driving, and the “narrow bridge” he encountered, which had “no guard rails and was built on a left angle” over a “deep pond” (84). Kennedy told his constituents that he tried to save the life of his companion but was overcome by the circumstances.

As Ling argued, Kennedy succeeded not only in casting himself the victim of a deadly scene, but also in removing himself altogether as the agent of importance. By the end of the speech, Kennedy had placed the burden of action on the residents of Massachusetts: they could either believe “whispers” and “innuendo” (85) about his conduct that night, or they could believe him; they could choose to fault him for Kopechne’s death and call for his resignation, or they could choose to forgive him for being caught in a situation over which he had no control. This, Ling wrote, Kennedy accomplished by removing the scene as the “controlling” element and placing emphasis on the agents who comprised his audience. As a result, “the positive response of the people of Massachusetts was virtually assured” (85). Kennedy’s motive, it seems, was to shield himself from blame and save his job, not to apologize or to take responsibility for the night’s events.

The rhetorical focus on powerful, controlling scenes has been used by other politicians to avoid similar, potentially career-ending scandals. Colleen E. Kelley, examining the unsuccessful re-election bid of convicted Congressman George Hansen, found a set of tactics similar to Kennedy's. Kelley wrote that in the 1984 election, despite "fighting four felony convictions for filing false financial reports and... facing a five-to-fifteen year prison sentence, pending an appeal, at the time of the election," the Idaho Republican lost to his Democratic opponent by a mere "133 votes—one of the slimmest in Idaho election history" (204). Though Hansen was ultimately unsuccessful in saving his political career, Kelley argued that because of his status as a convicted felon, the fact that the election came down to about "100 votes out of over 200,000 cast," proved that "many Idahoans identified with Hansen's view of reality regarding his conviction and right to be reelected" (213).

Hansen's view of his conviction was, of course, quite distinct from the one adopted by the news media. According to Kelley's analysis, the media constructed a narrative in which Washington, D.C., comprised the scene, Hansen himself played the agent, and deception and dishonesty were the congressman's agency. The act, from the media perspective, was Hansen's "illegal campaign activities resulting in conviction" (206). This conviction drama was not favorable to Hansen. It laid responsibility for the congressman's actions squarely at his feet. So throughout the 1984 campaign, he fought desperately to re-cast the drama, telling a story in which he was a victim of government bureaucracy.

“His strategy,” Kelley wrote, “was to feature an agent-act ratio in which ‘big government’ was a demon, a conspiratorial agent responsible not only for Hansen’s persecution but possibly the persecution of Idahoans in the future” (207). In the convicted Republican’s version of events, the act of importance was not his wrongdoing, but rather his conviction, and it was carried out by the most sinister of agents: the federal government, itself on the verge of becoming a police state, in collusion with the liberal media. “For ten years,” Hansen told a court before his sentencing, “I have been victimized by such ugly and costly activity and it continues to this day” (Kelley 209). Running for Congress in the Mountain West, where voters typically distrust the federal government, often involves casting oneself as an outsider, a threat to the establishment. Hansen’s legal troubles only helped bolster his maverick, anti-government bona fides, and almost won him re-election despite his being a convicted felon.

Burke himself acknowledged the utility of focusing on the scene to protect a rhetor’s reputation. He wrote that, “...one may deflect attention from the criticism of personal motives by deriving an act or attitude not from traits of the agent but from the nature of the situation” (17). It is not uncommon to find people arguing that they had no choice or that their hands were tied. Whenever we hear a speaker argue that he had only bad options to choose from, that he had to pick between the lesser of two evils, we should be on guard for an excuse based on the elements of the scene. In his history of presidential deception, Eric Alterman reported that President Lyndon Baines Johnson felt “trapped by historical and political circumstance” (165) into

escalating the Vietnam War, despite being unconvinced that the U.S. could ever win the conflict. Though tens of thousands of Americans died, fighting the war seemed like the least bad option when compared to the blow U.S. credibility would suffer from disengagement — or at least that was the calculation made by the Johnson Administration. In fact, *When Presidents Lie* documented a series of dishonest public statements from the Oval Office, each justified by the demands of the scene.

This is not to say that there are no difficult situations that require tough choices. Surely circumstances do sometimes dictate human action, or the appeal to the scene would have little rhetorical benefit. Nonetheless, when a political actor has committed a series of wrongs and continues, in case after case, to explain such wrongs through the convergence of external events and actors, we might suspect less than noble motives. Just as seemingly bad acts taken in good faith can be blamed on the scene, so can unquestionably bad acts taken in bad faith be blamed on the scene.

A pentadic analysis of political rhetoric is not only illuminating in the case of avoiding scandal or shielding oneself from criticism, but also for ostensibly more noble endeavors. In several cases, scholars have used a dramatistic inquiry to understand the rhetoric of President Ronald Reagan, often when he was entreating Americans to support a bold new political initiative. Janice Hocker Rushing, examining Ronald Reagan's 1983 speech on his national missile defense program, found the controlling element of the speech to be purpose. "This purpose is 'to prevent the greatest of human tragedies and preserve our free way of life in a

sometimes dangerous world” (418). Rushing reached this conclusion through a different type of pentadic approach: rather than comparing ratios between the elements of scene, act, agent, agency, and purpose, she searched for the transformation within each of these areas.

“Whereas pentadic criticism typically focuses on ratios *among* the terms,” she wrote, “it can also interpret mythic change induced by transformation *within* an element—for example, from a scene of land to one of space” (417). In the speech, Reagan called upon the nation’s scientists to renew their purpose by using the promising tools of technology in a new domain; the country needed to augment its superior land-based weapons program with a parallel effort in space. Rushing noted that because many scientists were opposed to a missile defense system, or at least thought it unworkable, Reagan’s task was a difficult one.

To enlist scientists in this effort, Reagan had to place responsibility on their shoulders for the precarious relationship between the United States and the Soviet Union. Through the development of nuclear weapons, scientists had paved a road with good intentions, but had driven humanity down that road to a dangerous place.

Rushing wrote:

Science as agency-turned-god, goaded by the sacred purpose of putting an end to war, generated from within itself a “representative part.” Science then attended the birth, and, like Rosemary, watched horrified as its own baby turned against its creators and reproduced a whole race of Satanic offspring. (419)

Reagan did not think this tragic outcome of nuclear proliferation could be left unaddressed, though, and through the purpose he offered a solution: “expand the

scene in which science works to encompass its boundless genius rather than to restrict it” (419); unleash the promise of science into space, thus ensuring that the spread of nuclear weapons would not prove fatal to humanity. Rushing argued that Reagan was not the first to blame scientists for developing the destructive potential of the atom, “But it is he who offer[ed] them the chance to assuage their guilt over inventing a race of self-perpetuating demon-gadgets” (425).

In *A Grammar of Motives*, Burke wrote that the pentad will often help illuminate whether a rhetor has a deterministic view of history, where the scene controls the agent, or an individualistic view of history, where the agent controls the scene (13). But in his analysis of another speech given by Ronald Reagan, David S. Birdsell found that a speaker can adopt both approaches, shifting between each one depending on the circumstances. Birdsell wrote that in his October 1983 address, Reagan explained two foreign policy crises, the bombing of an American Marine barracks in Lebanon and the U.S. invasion of Grenada, by focusing on the scene in the former situation and the agent in the latter. This allowed him to absolve his administration of responsibility for American deaths in the Middle East terrorist attack but to take credit for a bold mission in the Caribbean.

In the part of Reagan’s speech that addressed Lebanon, Birdsell wrote, “Much of the description centers on things: the troop encampment, the trucks on the highway, and the road itself” (268). Reagan then described the political situation in Lebanon, but spent little time speaking of agents. The American military was a victim of circumstances; “‘Marine defenders’ [were] portrayed as incapable of

dealing with the scene, or of even recognizing its dangers” (268), and thus the lives of “more than two hundred Marines” (267) were lost. Birdsell argued that Reagan made an important choice by focusing on the scene. Although the president could just as easily have blamed the bombing and the American deaths on an evil agent — terrorists — doing so would have admitted American military inferiority to another actor. Reagan’s motives in the speech, as his Grenada comments showed, were to strengthen American confidence in the military, not weaken it.

To explain U.S. intervention in Grenada, Reagan invoked a set of nefarious agents, including “Maurice Bishop, a protégé of Fidel Castro” (Birdsell 270-71), who sought to turn Grenada into a base for the spread of both communism and terrorism. Although Reagan implicitly conceded that the intervention of a superpower in a tiny Caribbean island’s affairs could seem imbalanced, that intervention was necessary to protect the interests of the agent — the United States — and only served Reagan’s broader conclusion that in a general sense, the country was the dominant power in the world. As Birdsell explained:

The display of American force in Grenada, a dramatic over-reaction to the comparatively small provocation there, makes sense when the provocation in Lebanon is added to the balance. American force *overall* matches the enemies’ provocation *overall*. (271)

By the end of the speech, Reagan had accomplished his goal of rehabilitating the image of a powerful United States.

In addition to evaluating Reagan’s speech, Birdsell’s study provided some important lessons for scholars of the pentadic approach. He noted: “the terms of the pentad are inherently ambiguous; that ambiguity must be incorporated into the act of

criticism to reap the full benefits of pentadic analysis” (268). When approaching a communication artifact one scholar may find a scene where another finds an agent; one person’s dodge of responsibility might be another’s acceptance of culpability. Burke admitted this ambiguity when he wrote of agencies that sometimes become scenes, especially with the development of time. He quoted FDR’s one-time attorney general, Francis Biddle, tracing the journey of “railroad, telegraph, automobile, movie, airplane, [and] radio” as individual agencies that, throughout the twentieth century, collectively became the scene (18). The overlap between pentadic elements is why a rigorous analysis will incorporate the pentad as well as other cues to the true motives of a speaker. Birdsell concluded that the overlap in pentadic terms should lead critics to experiment with “various treatments of the terms” (273), and to rest their final judgments as much on “criteria external to the pentadic vocabulary” (268) as on the pentad itself.

In yet another analysis of Ronald Reagan’s rhetoric, Blankenship, Fine, and Davis demonstrated how one element of the pentad can be transformed into another element. More specifically, the authors showed that during the 1980 presidential campaign, media coverage of the Republican primary debates transformed Reagan from just another candidate — an agent — into the dominating feature of the scene. In their analysis, the critics moved beyond just the words of political speeches and examined the effect of camera angles as well as Reagan’s nonverbal cues. “The scene-actor ratio provides the foundation of this analysis,” they wrote. Each candidate, as an agent, “had the potential to be viewed as scene. Only Reagan, with

his ‘presence,’ had the power to realize that potential and be transformed” (28).

The authors concluded that the media’s fascination with Reagan, combined with his training as an actor and corresponding ability to command television coverage, almost assured him victory in the debates. Moderators asked him questions as though he were more important than any other candidate. He transcended the role of a mere agent, and the voters treated him accordingly.

From this study, there was further indication that some of the pentadic terms could overlap, which should press scholars to explain not only how they arrive at identifying the five elements, but also to explain how each part of the pentad interacts with another. It may be less important to correctly identify each part of the pentad than to explain convincingly what one element of a speech can tell us about another. It is the interaction of the parts that best illuminates the motives of a rhetor.

Though many political speeches, from Kennedy’s Chappaquiddick address to Reagan’s “Star Wars,” have been examined by scholars since Burke first wrote *A Grammar of Motives*, Burke himself provided examples of the pentad in political speechmaking, especially as it related to the scene-act ratio in World War II-era rhetoric. The scene-act ratio, he wrote, can heavily favor the scene, and thus support the inevitability of an act, through “statements that a certain policy *had* to be adopted in a certain situation.” Even if a policy is not inevitable, statements about the scene can make clear “that a certain policy *should be* adopted in conformity with the situation” (13). Burke gave depth to this claim by pointing to the expansion of

executive power that accompanied Franklin Delano Roosevelt's term in office. He wrote:

...the horatory usage was exemplified when a speaker said that President Roosevelt should be granted "unusual powers" because the country was in an "unusual international situation." In a judgment written by Justice Hugo L. Black, the Supreme Court ruled that it was not "beyond the war powers of Congress and the Executive to exclude those of Japanese ancestry from the West Coast area at the time they did." And by implication, the scene-act ratio was invoked to substantiate this judgment: "When under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger." (13)

Burke's illustration of the dominant scene in the 1940s, which led to the infamous *Korematsu* decision from the U.S. Supreme Court, is as relevant to contemporary students of political rhetoric as it was in the mid-twentieth century.

At the time, the United States was waging an unprecedented struggle, World War II, against an enemy of seemingly global reach, the Axis Powers. Just as many people believed then that the scene placed new demands on one important actor, the United States president, people now argue that our struggle against international terrorism must be waged with expanded executive authority. A brief review of the rhetoric of President George W. Bush shows that he has been persistent in describing a scene that is unparalleled in human history. Though Burke wrote that, "Political commentators now generally use the word 'situation' as their synonym for scene, ... without any clear concept of its function as a statement about motives" (12-13), we can begin to see motives from the contemporary situation, at least as Bush constructs it.

The President on the Scene: George W. Bush and the War on Terror

In a review of President Bush's post-9/11 rhetoric, John M. Murphy wrote that Bush spoke of terrorists as "rabid murderers" and not rational political actors. "In Burkean terms, an agent/act ratio crafted the characterization, partly because the who and why questions came first and framed the others" (616). Although Murphy saw an agent-act ratio here, this characterization of terrorists probably sought to transcend the description of mere agents; the terrorists became a part of the scene. Once terrorists were understood as people who could not "be reasoned with or rehabilitated" (616), they ceased to be agents and instead became part of the circumstances for an agent to deal with. Further, even if terrorists can be considered agents in the political rhetoric of George W. Bush, it should be indisputable that the war we are fighting against them has become part of the scene, both for Bush and for the rest of the country.

Placing the United States in the "scene" of war was not inevitable, though, and anyone who wishes to understand Bush's rhetoric and his underlying motives should understand that even the use of the "war" framework is a conscious choice. Though Bush surely does not bear the moral responsibility for the deadly attacks of September 11, 2001, his administration does bear responsibility for how the nation has responded to those attacks, and how it framed those attacks in presidential speeches. Gerd Oberleitner wrote that, "At the heart of understanding the war against terror lies the distinction between the war model and the crime model of how to respond to terrorism" (263). In studying Bush's rhetoric, he argued that the major

implication of framing the struggle as a war is that it precludes treating terrorism as a law enforcement matter. In a war we must use military means, such as standing armies, until the sovereign leader or leaders of a state surrender. But under a law enforcement approach, we would prefer targeted intelligence-gathering, arrests, and the criminal prosecution of offenders. It is in this sense that Bush and his political allies have, over the last several years, insisted on framing the scene through the lens of war.

Accompanying that scene have been the very demands that Burke saw in World War II: demands for the expansion of executive power. David Hoogland Noon argued that Bush's rhetoric has not merely relied on an implicit connection to World War II. Rather, the president and his supporters have made the allusion explicit. Noon wrote:

If September 11, 2001, represented "our" Pearl Harbor, the analogies have been extended (and distended) in every imaginable direction by the administration and its supporters. Thus, the "liberation" of Kabul or Baghdad has been likened (albeit awkwardly) to the liberation of Paris or the capture of Berlin; the accumulating disarray in Iraq and Afghanistan is optimistically compared with the slow postwar reconstruction of Germany and Japan; the unusual bond between Bush and Tony Blair is regularly measured against that gold standard of Anglo-American relations, the Roosevelt-Churchill alliance; and during the buildup to the war in Iraq, critics of the impending war were chastened by forceful warnings about "appeasement," Neville Chamberlain, and the ineffectual League of Nations. (339-340)

It has not only been a conscious choice to create a running scene of war, it has also been a choice by the president and his political allies to re-emphasize that scene at every possible opportunity.

Other scholars, such as Robert L. Ivie, have found a different parallel between the rhetoric of George W. Bush and World War II. Relying on Burke's analysis of Adolph Hitler, Ivie wrote that "Bush is the devil of rhetorical seduction for our time" ("The Rhetoric of Bush's 'War' on Evil"). After examining Bush's speeches on terrorism, he found that the president oversimplified the world and in so doing justified some dangerous views. "Blinded by terministic hubris and determined to make things simple," Ivie wrote, "human societies and their spokespersons are all the more capable of bonding against a convenient scapegoat to the bitter and violent end" ("The Rhetoric of Bush's 'War' on Evil"). Though Ivie did not engage in a pentadic analysis of Bush's rhetoric, he found the president using Christian concepts of good and evil to justify acts inconsistent with "The Bible, with its profound and beautiful exemplifying of the sacrificial principle" (Burke, qtd. in Ivie, "The Rhetoric of Bush's 'War' on Evil").

This analysis of Bush's war on terror rhetoric is consistent with what Ivie has found in the war rhetoric of previous presidents. Before turning his analysis toward Bush, Ivie examined the war speeches of James Madison, James Polk, William McKinley, Woodrow Wilson, Franklin Delano Roosevelt, Harry S Truman, and Lyndon Baines Johnson. He wrote that, "American Presidents consistently perceive a war situation as a moral crisis, a challenge to American ideals" ("Presidential Motives for War" 343), and that presidents frequently shift the emphasis from themselves and their administrations onto foreign agents. "Hostile governments are assigned ultimate responsibility for crisis-producing actions," Ivie argued (343). This

foreshadowed the rhetoric that Bush would employ after the terrorist attacks of September 11, 2001, in which he also focused on other agents and aspects of the scene outside U.S. government control.

Denise M. Bostdorff, examining the president's post-9/11 speeches, did not use Burke's pentadic approach, but made what was essentially a comparison of agents in Bush's rhetoric. Bostdorff identified two historical currents in American political thought: covenant rhetoric and jeremiad rhetoric. The former, she wrote, views humans, and specifically Americans, as essentially good people who live in God's favor, while the latter views humans as evil people who live but for the grace of that God. The scholar argued that Bush relied on the covenant rhetoric to characterize Americans as good, but that he deemed terrorists as unspeakably evil. Nonetheless, Bostdorff, writing in 2003, predicted trouble ahead for the president's verbal appeals. She wrote:

The meagerness of the actions that Bush has requested contrasts sharply with the sacrifices of the greatest generation that the president and the culture continue to venerate, underscoring a rhetorical problem that Bush may find increasingly difficult to negotiate. (314)

Once again, Bostdorff identified parallels between the rhetoric of the forty-third president and the rhetoric used in World War II. But more importantly for this study, she saw the beginning of Bush's efforts to portray a background of American action — a scene — dominated by evil.

When, on December 17, 2005, President Bush took to the airwaves to justify the National Security Agency's warrantless wiretapping program, which had been publicly revealed earlier that week in *The New York Times*, he was able to draw on

the full weight of these rhetorical efforts. Bush was able to draw on the construction of a scene in which the United States was in a perpetual war, under constant threat from maniacal murderers, representing a simplified concept of evil, bent on the destruction of American lives, and, more importantly, the American way of life. And draw on it he did. But before examining Bush's speech from December 17, 2005, and applying the parts of the Pentad to understand his motives, it is worth revisiting the details of the program and the history from which it arose. We need a fuller picture of the scene at large, not just the one Bush seeks to construct in defending the program. Only then can we understand the motives of President George W. Bush.

Statement of Method: Dramatism and the Ideal Audience

In this study, I attempt to illuminate President Bush's underlying motives for authorizing a warrantless wiretapping program by using a dramatistic approach to his live speech addressing the program. As described in the previous review of literature, I identify each of the pentad's five elements; I seek to locate in Bush's words the most prominently featured scene, agent, act, agency, and purpose. After identifying each part, I identify whether there were secondary, less prominent pentadic elements — another agency, act, etc. Just as Colleen Kelley found in George Hansen's campaign rhetoric a displacement of the media's constructed scene with Hansen's preferred one, I examine whether Bush's rhetoric traveled from one domain to another.

Though this study does not contain a mathematical analysis of the ratios between each pentadic element, it does attempt to establish which element — or elements — of the pentad is the controlling term by noting the frequency with which it occurs and the position of prominence it holds. I use this frequency and prominence of pentadic elements to assess whether Bush sought to take responsibility for the program and argue that it is lawful, or sought to displace responsibility for the program and downplay the very importance of legality. In the final piece of pentadic analysis, I compare multiple domains — if Bush identified one agent and scene in the beginning of the speech but another agent and scene at the end — to examine if Bush’s rhetoric was consistent. If, as Burke wrote in *A Grammar of Motives*, the importance of the pentadic elements can be used to find out whether a speaker has a deterministic approach to human action or an individualistic one, then comparing different pentadic sets within a single speech should inform us about a speaker’s consistency. In other words, this study seeks to answer whether the prevailing view of human action is adopted because Bush believes in that view or because advancing it is politically convenient.

Finally, after applying the pentad and attempting to illuminate Bush’s motives, I heed Edwin Black’s admonition that “there is something acutely unsatisfying about criticism that stops short of appraisal” (109) and make a moral evaluation of Bush’s rhetoric and underlying motives. Though Burke also evaluated his objects of study, Black offered a supplemental tool to help critics accomplish that task. Black wrote: “The critic can see in the auditor implied by a discourse a model

of what the rhetor would have his real auditor become” (113). After identifying the audience most likely to be persuaded by a speech, we can identify the moral characteristics of that audience, and so make judgment on the rhetor himself. In the final part of this study, I attempt to make such a judgment on the motives of George W. Bush.

CHAPTER II: CONTEXT

The President on the Line

Any citizen of this United States who is not involved in some illegal activity... has nothing to fear whatsoever.

— Attorney General John Mitchell, defending domestic surveillance, 1969

We reject the view that the traditional American principles of justice and fair play have no place in our struggle against the enemies of freedom. Moreover, our investigation has established that the targets of intelligence activity have ranged far beyond persons who could properly be characterized as enemies of freedom and have extended to a wide array of citizens engaging in lawful activity.

— The U.S. Senate's Select Committee on Intelligence Activities, 1976

A Long December

Early December of 2005 presented George W. Bush with a public scandal his administration would have to address. After having won a close re-election battle just over a year earlier, the president's poll numbers had slowly begun to sink. At the end of 2005, Bush's approval ratings were in the high 30s and low 40s; Americans disapproving of the president's performance outnumbered his supporters anywhere from 10 to 15 percentage points ("PRESIDENT BUSH – Overall Job Rating"). The bad news for the administration only continued when, on December 16, *The New York Times* revealed for the first time a controversial anti-terrorism program. Sometime after September 11, 2001, President Bush had ordered the National Security Agency to begin eavesdropping on Americans' telephone conversations without court authorization (Risen and Lichtblau A1).

Though the *Times*' discussion of the NSA wiretapping program focused largely on the potential for abuse — would Americans' civil liberties be protected? — especially in relation to the controversial USA PATRIOT Act, the key to much of the uproar that greeted the *Times*' disclosure was right in the article's headline: "Bush Lets U.S. Spy on Callers *Without Courts*" (emphasis added). As authors James Risen and Eric Lichtblau noted near the end of the story, under the USA PATRIOT Act, "law enforcement and intelligence officials are still required to seek a F.I.S.A. warrant every time they want to eavesdrop within the United States" (A1). The Foreign Intelligence Surveillance Act of 1978, or FISA, was passed in the wake of a mid-1970s Senate report detailing serious transgressions by the U.S. intelligence community against innocent Americans (Select Committee to Study Governmental Operations with Respect to Intelligence Activities). United States Code, as a result of FISA, makes it a crime, punishable by a fine of \$10,000 and five years in prison, to engage "in electronic surveillance under color of law except as authorized by statute" (50 USC 1809).

Though Risen and Lichtblau wrote that FISA had, "imposed strict limits on intelligence gathering on American soil" and that, "Among other things, the law required search warrants, approved by the secret F.I.S.A. court, for wiretaps in national security cases" (A1), they spoke of the statute in the past tense. In the context of their lengthy reporting on changes in telecommunications technology and the newly developed awareness of terrorism, the law seemed like an anachronism; a bygone relic of a safer time when the nation could afford to be more concerned about

such niceties as civil liberties. But even if that description is true, it is uncontroversial that at the time the NSA wiretapping program began, at the time of *The New York Times*' disclosure of the program, and even to this day, the FISA statute is a duly enacted part of United States law. It is a felony for a U.S. official to engage in surveillance without a court order.

Nonetheless, according to *The New York Times*, that is just what the president and his agents had been doing in response to the terrorist attacks of September 11, 2001. Risen and Lichthblau wrote:

Under a presidential order signed in 2002, the intelligence agency has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years in an effort to track possible "dirty numbers" linked to Al Qaeda ... (A1)

Government officials, under the cover of anonymity, assured the reporters that only calls involving a person outside the United States were targeted by the NSA program. "Warrants are still required for eavesdropping on entirely domestic-to-domestic communications," according to the reporters (A1). Americans should not be worried that they are the targets of the government's vast surveillance apparatus, government sources told the *Times*, because the Department of Justice had developed "a checklist to follow in deciding whether probable cause existed to start monitoring someone's communications" (A1).

The government's assurances that the NSA program has appropriate safeguards, is constantly reviewed for its necessity in the fight against terrorism, and is sensitive to the privacy concerns of ordinary Americans, are reminiscent of similar

claims made by previous presidential administrations. Long before September 11, 2001, and the war on terror, government officials had insisted that only the guilty should be worried about domestic eavesdropping and that the U.S. intelligence community would never use its powers for anything but protecting the country. In 1969, then-Attorney General John Mitchell had assured the public that worries of domestic intelligence abuses were ill-founded; “Any citizen of this United States who is not involved in some illegal activity,” he said, “has nothing to fear whatsoever” (qtd. in Greenwald, *How Would A Patriot Act?* 21).

Despite these assurances, a detailed investigation by a bipartisan group of U.S. senators found reason to believe that promises of safeguards and internal reviews, even in the height of war, do not preclude government misconduct. The senators found that American officials had used intelligence-gathering technology to disrupt constitutionally protected behaviors like political advocacy and to intimidate domestic political opponents (Senate Select Committee). In the past, when presidential administrations were given the unfettered ability to spy on American citizens, without having to justify that spying to an independent judicial auditor, they had abused that authority. Nonetheless, the Bush Administration was arguing in 2005 and has argued since that time that surveillance without court approval is a presidential prerogative in a time of war.

The Church Committee and the Security State

With the advent of the Military-Industrial Complex at the end of World War II, the United States government developed a number of technological abilities it had not previously possessed. Among them was the power to intercept and record the private communications of American citizens. With no controlling statutes or guidelines to limit this power, intercept and record is exactly what the government did, on a broad scale, and often for reasons unrelated to fighting foreign enemies. Government officials used information obtained from domestic surveillance to influence the actions of political opponents. As former majority leader of the U.S. House of Representatives Hale Boggs noted, “Freedom of speech, freedom of thought, freedom of action for men in public life can be compromised quite as effectively by the fear of surveillance as by the fact of surveillance” (qtd. in Senate Select Committee 225).

First Amendment attorney Glenn Greenwald documented the congressional response to that climate of fear in 2006. He wrote:

In 1975, in response to reports of widespread eavesdropping abuses by the Nixon Administration, the United States Senate created the Senate Select Committee to Study Government Operations with Respect to Intelligence Operations. “The Church Committee,” named after Idaho Senator Frank Church, who chaired it, was charged with investigating how presidents had used their eavesdropping powers and with determining the extent and scope of abuse.... Senator Church was stunned by what he learned. (*How Would A Patriot Act?* 17)

In thorough detail, the resulting Church Committee report criticized several presidential administrations for engaging in extortion and even attempted murder;

the U.S. government treated law-abiding citizens in a manner not generally associated with countries governed by the rule of law.

Among the major findings of the Senate committee was that “covert action programs have been used to disrupt... lawful political activities... using dangerous and degrading tactics which are abhorrent in a free and decent society” (Senate Select Committee 211). The committee found that in its efforts to combat adversarial political organizations, the Federal Bureau of Investigation attempted to get teachers fired, cancel news conferences, stop the publication of books, and “interfere with peaceful demonstrations” (215-216). It sent letters to spouses of political enemies with allegations of extramarital affairs to cause personal hardship. “The FBI was not just ‘chilling’ free speech but squarely attacking it,” in a way that “often risked and sometimes caused serious emotional, economic or physical damage” (216), all with the help of illegally obtained recordings of private communication.

Perhaps the most famous and sympathetic person to be targeted by the nation’s intelligence apparatus was Dr. Martin Luther King, Jr. Many of King’s political goals were in direct opposition to the interests of established government powers. The Church Committee found that the government had therefore tried to limit his political effectiveness. They wrote that “in an attempt to destroy Dr. Martin Luther King, Jr., [the FBI] violated the law and fundamental human decency ... [demonstrating] just how far the Government could go in a secret war against one citizen” (219). In one of the most notorious abuses of government power against King, the FBI prepared a tape of bugged conversations with evidence of King’s

marital infidelity. The bureau mailed the tape to King — after removing evidence that would link the tape back to the FBI — and included a letter with a dire warning: “King, there is only one thing left for you to do. You know what it is.... You are done. There is but one way out for you...” Not surprisingly, the civil rights leader “interpreted the message as an effort to induce him to commit suicide” so the tape would not be publicly released (221).

The blackmail of Martin Luther King, Jr., did not happen during the administration of Richard M. Nixon. The FBI threatened King during the tenure of President Lyndon Baines Johnson — the man whom King stood behind as he signed the Civil Rights Act of 1964 into law. The Church Committee noted that despite its focus on King’s treatment, “...it should not be forgotten that the Bureau carried out disruptive activities against hundreds of lesser-known American citizens” (219). Although President Johnson may not have known what J. Edgar Hoover’s FBI was doing to the civil rights leader, or many other American citizens, the troubling episode serves as a warning that government power often needs outside, independent safeguards from another branch of government. Otherwise the government has the ability to use its power for illegal ends.

Providing safeguards is exactly what Congress did in 1978 when it passed the Foreign Intelligence Surveillance Act, which limits government power but also provides flexibility for government officials to monitor national security threats. Greenwald wrote of the act’s major provisions:

Recognizing that emergency situations sometimes require immediate eavesdropping where there is no time to obtain judicial approval, FISA

allows the government to eavesdrop without such approval for up to fifteen days in times of war, and for up to twenty-four hours at all other times (a window which was increased to seventy-two hours in the aftermath of the September 11 attacks). To provide for judicial oversight, the law created a new court, the FISA court, which—unlike any other court in the country—operates in complete secrecy... in order to prevent disclosure of... classified information. (*How Would A Patriot Act?* 24)

Though some have worried in the past that its secrecy, and resulting lack of public accountability, make the FISA court a rubber stamp (Greenwald, *How Would A Patriot Act?* 28), it is the legal expression of a delicate balancing of goals: the need to provide security in a world with complex threats and the need to make sure that no Americans are again treated the way Martin Luther King was.

FISA was not drafted during a time of peace and tranquility. When President Jimmy Carter signed the bill — approved in the United States Senate by a vote of 95-1 — the country was in the midst of fighting the decades-long Cold War. Even if that conflict seems quaint when compared to modern threats, as Greenwald noted, the Bush Administration easily secured passage of FISA amendments after September 11, 2001, to expand the government’s power (*How Would A Patriot Act?* 13). Despite past intelligence abuses, FISA’s enactment reflected Congress’s responsibility to provide for the country’s defense. As Senator Frank Church noted in introducing his committee’s report, the country would still need a way “to monitor potential military threats from the Soviet Union and its allies, to verify compliance with international agreements such as SALT, and to combat espionage and international terrorism” (Senate Select Committee V). Though FISA reflects these

needs, it also reflects something at least as important: the law of the land in a country governed by the rule of law.

Enemies and the Fourth Estate

When General Michael Hayden first became head of the National Security Agency, in 1999, the career military intelligence analyst believed one of his major challenges would be in public relations. As James Risen, the *Times* journalist who co-wrote the story revealing the NSA surveillance program, elaborated in his book *State of War*: “Hollywood had just released a movie about the NSA, and... Mike Hayden couldn’t resist going to see Will Smith and Gene Hackman in *Enemy of the State*” (39). The movie’s portrayal of a malicious agency spying on Americans and even trying to assassinate Smith’s character upset Hayden, and prompted him to alert media outlets such as CNN that the NSA “had learned its lesson from the dark days of the 1970s...” (Risen 41). In a speech at American University in Washington, Hayden told listeners: “Despite what you’ve seen on television, our agency doesn’t do alien autopsies, track the location of your automobile by satellite, nor do we have a squad of assassins” (qtd. in Risen 43).

Notwithstanding protestations at the beginning of his NSA tenure that the agency was more benign than popular portrayals implied, it was Hayden who led the NSA on September 11, 2001, it was Hayden who would help develop and implement the Bush Administration’s new surveillance program, and it was Hayden who would be called on to help defend the wiretapping when it was disclosed by the press. On

December 19, 2005, Hayden, at that point serving as principal deputy director for national intelligence, gave a joint press conference with Attorney General Alberto Gonzales, during which the officials publicly disclosed the two main legal arguments supporting the NSA surveillance program. As Gonzales told members of the press, the wiretapping program was authorized by statute — and therefore did not violate FISA — because Congress had implicitly given President Bush the necessary legal authority by passing the Authorization for the Use of Military Force, or AUMF, in response to the September 11, 2001, terrorist attacks.

“Our position is,” Gonzales said, “that the authorization to use force, which was passed by the Congress in the days following September 11th, constitutes that other authorization, that other statute by Congress, to engage in this kind of signals intelligence” (Gonzales and Hayden). The attorney general conceded that the AUMF had not mentioned surveillance explicitly, nor made any reference to FISA. But he noted that the military authorization also had not mentioned detaining enemy combatants, and the Supreme Court had nonetheless upheld some of the administration’s detention policies as an implied part of military authorization. Reasoning that surveillance was just as important to war efforts as detaining enemy combatants, the administration had read in the AUMF *implicit* authorization to ignore the FISA statute as long as it could find a connection to the September 11 attacks.

There are fundamental differences between surveillance and detention procedures, most notably that there was no statute explicitly prohibiting the

establishment of the Guantanamo Bay detention center or the government's other detention procedures, whereas FISA clearly prevented warrantless wiretapping. Secondly, even in the Supreme Court decision to which Gonzales had referred, *Hamdi v. Rumsfeld*, Justice Sandra Day O'Connor's ruling noted, "We have long since made clear that a state of war is not a blank check for the President when it comes to the rights of the Nation's citizens" (537). The court placed limits on the Bush Administration in that case, even without an explicit statute from which to draw those limits. Though it agreed that the Bush Administration had received implicit authority to detain enemy combatants, Justice O'Connor also wrote that "indefinite detention for the purpose of interrogation is not authorized" (522; emphasis added). The Bush Administration had authority, according to the high court, but that authority would not last forever and was not immune from judicial review.

The fact that the Bush Administration did get Congress to amend explicitly certain provisions of FISA, specifically the amount of time allowed for retroactive authorization of wiretapping, makes it more difficult to believe that Congress had implicitly exempted the Administration from FISA; why adjust the details of a law if the entire statute had been invalidated, at least with regard to fighting terrorism? It is unlikely Congress repealed a statute without knowing it. In *State of War*, Risen wrote that the Bush Administration "did not seek congressional approval for the NSA operation, apparently because the White House recognized that it would be too controversial and would almost certainly be rejected" (47). Any admission that the

program was too controversial for congressional approval effectively refutes the Bush Administration's claims that it actually received congressional approval. Perhaps because of this, the government has focused on the second main argument supporting the president's power, which is much more sweeping.

At that late December press conference, Gonzales succinctly argued one of the most forceful claims the Bush Administration has made with regard to a number of national security issues: "... we also believe the President has the inherent authority under the Constitution, as Commander-in-Chief, to engage in this kind of activity" (Gonzales and Hayden). The argument that the term "commander-in-chief," as applied to the president in the U.S. Constitution, effectively allows the president to do whatever he wants as long as he can find some connection to national security, is at the heart of almost every expansion of executive authority undertaken since the September 11 attacks.

The New York Times ran a story elaborating on this doctrine of presidential power the day after the newspaper revealed the NSA program. As the *Times* article noted:

From the government's detention of Americans as "enemy combatants" to the just-disclosed eavesdropping in the United States without court warrants, the administration has relied on an unusually expansive interpretation of the president's authority.... The bedrock source is Article 2 of the Constitution, which describes the "executive power" of the president, including his authority as commander in chief of the armed forces. Several landmark court decisions have elaborated the extent of the powers. (Scott A1)

As applied to the specifics of the NSA wiretapping program, this argument holds that the president, because he is commander-in-chief of the United States armed forces,

has the sole authority to decide what the armed forces will do in regard to wiretapping; any curtailment by Congress or the courts of the president's authority to collect phone calls and e-mails in fighting a foreign enemy is unconstitutional. As John Yoo, the author of the administration's legal position in a 2002 memo, wrote: "It has long been the view of this Office that the Commander-in-Chief Clause is a substantive grant of authority to the President and that the scope of the President's authority to commit the armed forces to combat is very broad" (1). That authority is so broad to include wiretapping in contravention of statute, according to government lawyers.

If this justification is true, it is difficult to imagine what the president cannot do. If a president decides to imprison members of Congress because national security requires it, no court could stop him. If he decides to round up Americans because of their political views, Congress could not pass a law extinguishing that authority. Though the supporters of the Bush Administration probably would not extend the logic of the "commander in chief" argument that far, Yoo wrote in the memo establishing this justification, that "These decisions, under our Constitution, are for the President alone to make" (1).

In other words, what keeps the president from making the decision to suspend a whole array of legal protections for Americans is merely his determination that national security does not require suspending those protections. If he changes his mind, so changes the law. As Greenwald noted, the president has done this in at least one area:

In response to public outrage over the fact that the United States under the Bush Administration has become a nation that tortures people... the Senate, on October 7, 2005, voted 90 to 9 to approve the [McCain] ban on torture... [and] on December 30, 2005, the president signed the McCain bill into law, even though he opposed it. Traditionally, when Congress passes a bill and the president signs it, it is incontrovertibly the law.” (*How Would A Patriot Act?* 56-57)

But when the president signed this particular law, according to Greenwald, he appended a “signing statement” which said he would interpret it only in a way that did not limit his ability to protect national security. In so doing, the president reserved the right to violate the law if, in his judgment as commander in chief of the United States military, violating the law was necessary for U.S. security.

This approach to the rule of law is not hypothetical. *The Boston Globe’s* Charlie Savage won a 2007 Pulitzer Prize for his work exposing the vast reach of the president’s signing statements that declare his views on inherent executive authority. In the first story detailing those statements, Savage wrote:

President Bush has quietly claimed the authority to disobey more than 750 laws enacted since he took office, asserting that he has the power to set aside any statute passed by Congress when it conflicts with his interpretation of the Constitution. (“Bush Challenges,” A1)

Phillip Cooper of Portland State University’s Hatfield School of Government told Savage: “There is no question that this administration has been involved in a very carefully thought-out, systematic process of expanding presidential power at the expense of the other branches of government” (“Bush Challenges,” A1), though administration officials refused to comment for the story. The broader legality of such signing statements has not been established by the federal courts, but the

judicial branch has asserted one thing: The NSA wiretapping program is both illegal and unconstitutional.

In August of 2006, a federal district court firmly rejected the Bush Administration's arguments that it had the authority to contravene the FISA statute, despite the passage of the Authorization for the Use of Military Force or any inherent presidential authority. Judge Anna Diggs Taylor wrote, "It was never the intent of the Framers to give the president such unfettered control, particularly where his actions blatantly disregard the parameters clearly enumerated in the Bill of Rights... There are no hereditary kings in America" (qtd. in Savage, "Judge's Ruling" A1). Though Taylor showed little respect for the Administration's arguments, in U.S. courts, one ruling is never the end of a case.

Many expected the case to work its way through the courts, but the Bush Administration, after having argued for several years that the program was essential to national security and that working with the FISA court would undermine its flexibility and effectiveness, announced in 2007 that it would place NSA wiretapping back under FISA control. Government officials announced to reporters — on the condition of anonymity — that they had "worked out an 'innovative' arrangement ... that provided the 'necessary speed and agility' to provide court approval to monitor international communications of people inside the United States" (Lichtblau and Johnston A1). The president's advocates in the government have been so secretive about the program that they insisted on their anonymity even when announcing that it had been terminated.

The *New York Times* article announcing the program's end noted that the administration's decision to back down had come in the context of the "new Democratic-led Congress [that had] pledged several investigations" (Lichtblau and Johnston A1). This was not the first time the Bush Administration had relented in pursuing high-profile court cases, defending what it considered a national security power of utmost importance, because the novel legal arguments of government attorneys were failing to persuade legislators and judges (Greenwald, *How Would A Patriot Act?* 46). Because the program was classified, because the Bush Administration has tried to say as little as possible about its details, and because the executive branch unilaterally decided to place official eavesdropping back under the rubric of the law, it is difficult to know for sure that the National Security Agency is once again complying with FISA.

Even though the president has given up defending his prerequisite to spy without warrants in the courtroom, he has not given up making the broader case that as commander in chief, he alone has the right to make decisions on national security matters. It is difficult, however, to find public iterations of this argument — other than in the Yoo memo — because the Bush Administration had been reticent to speak of its national security powers. Indeed, President Bush's radio address defending the NSA wiretapping program is one of the few times when he has spoken of these matters directly. In that speech, the president was not addressing a legal audience, though, but a public one; his claims were not designed to win court approval so much as to receive public approval.

The need to justify executive preeminence, to combat a public scandal, and to keep his poll numbers from sinking even lower were probably all on George W. Bush's mind when he took to the airwaves on the morning of December 17, 2005. His efforts to protect presidential authority are an important subject of study for anyone who cares about the rule of law in the United States, because, as Greenwald wrote, long after the NSA program's end, we will still be determining what portions the Bush Administration's legacy remain. He argued:

The 'war' which is said to justify these extraordinary powers isn't going anywhere any time soon. The Administration itself constantly reminds us that it's a long struggle which could last decades. That means that whatever law-breaking powers we permit to be vested in the President are ones that George Bush, and then subsequent presidents, are going to wield for a long time to come. ("An Ideology of Lawlessness" 1)

Justice O'Connor also recognized the potential length of the War on Terror when she wrote for the Supreme Court in *Hamdi v. Rumsfeld* that the government might "not consider this unconventional war won for two generations" (12). Because of the lasting impact they might have on our nation's political process, it is worth attempting to discover in the president's rhetorical efforts his true motives for initiating the NSA wiretapping program.

CHAPTER III: ANALYSIS

The Pentad and the President's Power

Give me liberty or give me death.

— Patrick Henry, arguing for U.S. independence to the Virginia House of Burgesses, 1775

None of your civil liberties matter much after you're dead.

— U.S. Senator John Cornyn of Texas, defending NSA wiretapping to Congress, 2005

Pentadic Elements and Presidential Motives

Written into the founding documents of the United States is the idea that to some degree, governance will be different in a time of war than it is in a time of peace. Article I, Section 9, of the U.S. Constitution reads: “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” When President George W. Bush went on the air in the morning hours of December 17, 2005, to defend his administration from accusations of violating the law, he understood the deep historical associations Americans made with war. He understood that when public safety requires it, a number of extraordinary acts may be taken. Relying on his authority as the commander in chief of the United States military during a global war on terror, the president gave a speech that shifted responsibility from his actions onto the actions of others, that justified his administration's war decisions because of the context in

which they were made, and that minimized the importance of acting within the confines of the law. The president also addressed the criticism that domestic surveillance violates Americans' civil liberties by arguing that his program both protects freedom in its execution and contains safeguards to curb abuses. All of these arguments can be revealed by applying Burke's pentad to President Bush's remarks.

A textual analysis of the speech reveals the following primary pentadic elements:

Scene: The war on terrorism within the United States.

Agent: The commander in chief.

Act: The collection of intelligence and terrorist communications.

Agency: The expansion of executive power.

Purpose: The protection of Americans' lives and freedoms.

In addition to these primary elements, the president referenced a few secondary ones. There were two other agents of importance: journalists and certain members of Congress. There were two other acts associated with those agents: the disclosure of classified information (by journalists) and attempts to limit presidential power (by certain members of Congress). Finally, there was one other purpose, which was in direct opposition to the president's: endangering American lives. Both of the secondary acts are associated with that purpose.

From these elements, there are four motives that emerge in president Bush's address: 1) President Bush sought to make his act of authorizing the NSA wiretapping program seem inevitable when he emphasized a scene of war and

terrorism, within U.S. borders, that would continue for the foreseeable future; 2) The president sought to justify the expansion of presidential power when he argued that the only recent act to affect the scene and reduce the threat of terrorism was the passage of the USA PATRIOT Act; 3) The president sought to downplay concerns about civil liberties when he attributed two distinct purposes, the protection of Americans' civil liberties and the protection of Americans' lives, to his act of authorizing NSA surveillance; 4) President Bush sought to shift criticism away from himself and onto two other agents, journalists and certain members of Congress, when he argued that their acts were inconsistent with a dangerous scene. In analyzing the interplay between each of the elements and explaining how they illuminate these motives, I note when the president mentioned each element and the importance he gave to each through its placement. The one element that dominated the others throughout the speech, regardless of what act, agent, purpose, or agency was being described, was the scene.

This controlling element heavily informs the first of four conclusions that can be drawn from a pentadic analysis of President Bush's address, which is drawn from an act-scene analysis. The second conclusion is also drawn from a scene-act comparison, but the act involved shifts from authorization of NSA wiretapping to the passage of the USA PATRIOT Act. The third conclusion is drawn from an act-purpose comparison, where the act is NSA wiretapping and the purpose is twofold: the protection of American lives and the preservation of civil liberties. The final conclusion is drawn from an agent-act-scene comparison, where the agents are

members of Congress and journalists and their acts are resisting PATRIOT Act renewal and disclosing the NSA wiretapping program, respectively, and the scene is again one of terrorism and war. Through examining these pentadic ratios, we see that the expansion of executive power is the president's chief aim, as opposed to arguing that NSA wiretapping is legal.

*1. President Bush sought to make his **act** of authorizing the NSA wiretapping program seem inevitable when he emphasized a **scene** of war and terrorism, within U.S. borders, that would continue for the foreseeable future.*

In President Bush's remarks, the scene was the controlling pentadic element. The scene he set was one where United States security and the lives of ordinary Americans were under constant threat from terrorism. He did this through frequent mention of terrorism, war, and the September 11, 2001, terrorist attacks. "On September the Eleventh, 2001, our freedom and way of life came under attack," the president said in the second line of the speech¹, signaling through prominence the importance of the threat. The importance of terrorism and the 9/11 attacks was also signaled by their frequency. In his speech of approximately 950 words, the president mentioned terror, terrorist(s) or terrorism 20 times. He directly referenced the attacks of September 11, 2001, eight times (though one of those was in describing the report of the "9/11 commission") and made several implicit references to the attacks.

This was not simply a scene of terror, but one of war — "the first war of the 21st Century," the president noted — in which the United States is "fighting ...

enemies across the world.” Though Bush described a global “war against the terrorists,” his particular focus was not on faraway conflicts. Instead, the president emphasized at several points that “one of the most critical battlefronts is the home front.” Bush noted that “Since September the Eleventh,” we’ve been battling “terrorists plotting *within our borders*.” Bush referred to anti-terrorism operations against “terrorist cells in New York, Oregon, Virginia, California, Texas, and Ohio.” In this case, he made clear that the threat of terrorism is not limited by geography; it affects populous states (and even smaller ones like Oregon) in every corner of our union. He spoke of “terrorists within the United States,” including the plotters of September 11, who we didn’t know “were *here* until it was too late.” In separate instances, the president also said that terrorists “communicated while they were *in* the United States” and noted the threat from “terrorists *here at home*.”

Just as he argued that the scene of war is not geographically limited, President Bush argued that this scene is not temporally limited; the threat of terrorism is indefinite. It existed before the attacks of September 11 and will continue long after them. Terrorists “*were* communicating” before the nation was attacked, he said, but “they want to attack America again and inflict even greater damage.” The president argued that “The terrorist threat to our country will not expire in two weeks,” contrasting it with the soon-to-expire USA PATRIOT Act, which he argued the country needs to fight the “continuing threat from al Qaeda.”

Although terrorists could be considered agents, and at a few points Bush treated them as agents, terrorism exists in the speech as a general element of the

scene. For the most part, the president did not attribute specific acts to terrorists — with some exception — but instead treated their mere existence as threatening to the United States. He frequently made vague reference to terrorists (“terrorists plotting within our borders”) and even made them part of a “terrorist threat” larger than any specific person or group of people. Though terrorists did figure as agents when he mentioned their specific names and acts (“Nawaf Alhazmi and Khalid al-Midhar, communicated ... to other members of al Qaeda who were overseas”), the frequency of terms like the “terrorist threat” and a “continuing threat from al Qaeda” made terrorism and the war on terror important aspects of the scene. Furthermore, President Bush’s description of a “threat [that] will not expire” indicated a scenic element. Terrorists were not treated as rational agents whose acts might be explained, or at least agents whose might be persuaded to stop their deadly acts, but rather as permanent fixtures of a long war. The terrorist threat, as the president made clear, is all around us, and is not going anywhere soon. In this way, terrorists were contrasted with the other agents in the speech: journalists and members of Congress, who the president did attempt to persuade, as explained in the last motive revealed by the pentadic analysis.

War and other threats to physical safety require certain acts on the part of a government and its citizens. Just as Burke noted that war was used to justify the curtailment of civil liberties in World War II, as well as the expansion of executive power (13), Bush’s emphasis on war and terrorism were meant to justify his act: the “authorization” of domestic wiretapping. The act was made consistent with the very

nature of the scene. Because we are waging a war, we should expect the commander in chief of our military to spy on enemy communications. It is also incumbent upon American citizens to give up liberties they expect in peacetime. That is why the president's reference to his act — "I authorized the National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al Qaeda and related terrorist organizations" — came almost halfway through the speech; he had made great efforts to establish the scene requiring it. Because the war is taking place within the United States, we should expect the interception of communication to be domestic in nature. Because the threat posed by our enemies is indefinite, we should expect that surveillance to go on indefinitely as well.

Finally, war sometimes necessitates acts contrary to laws that might otherwise be obeyed. As historian David Greenberg has written, "Several times during the [Civil] war, Lincoln or his Cabinet officers issued orders suspending the writ" of habeas corpus (1). This commonplace of war — suspending certain legal guarantees and liberties — is especially important to consider with regard to the Civil War because in that case, the war was happening within United States borders, just as Bush argued that the current one is. When the battlefield is domestic, so will be the suspension of certain laws and civil liberties. Unlike the current conflict, though, the Civil War had a much clearer definition of victory, which was obtained through the surrender of the Confederacy. Because the terrorist threat Bush described "will not expire" any time soon, his act will stay consistent with the scene for a long

time to come. Wiretapping, regardless of laws prohibiting it, can be indefinite. A scene of ongoing war, being waged within our borders, by terrorists who seek to end our lives, demands no less an act.

*2. The president sought to justify the expansion of presidential power when he argued that the only recent **act** to affect the **scene** and reduce the threat of terrorism was the passage of the USA PATRIOT Act.*

The president referred to himself in his address as the “commander in chief” only once. Nonetheless, the reference is telling. He did not modify his titular role; he was not referring to himself as the commander in chief of the U.S. armed forces, but merely the commander in chief. He holds the authority of commander in a broader capacity². Not only did this reference reinforce the scene of war, it also reinforced the need for the president to have broad powers in that war. He made clear that he had exercised such power before.

After the September 11 attacks, “One of the first actions” Bush said his administration “took to protect America... was to ask Congress to pass the PATRIOT Act.” Through this act, the president noted that his administration had “been on the offensive” and that “The PATRIOT Act allowed federal investigators to pursue terrorists.” Because the controversial law allowed the president more authority than he previously had, he argued that it made an important change to the scene. “The PATRIOT Act tore down the legal and bureaucratic wall” that separated

domestic law enforcement from foreign intelligence gathering, he argued. “The PATRIOT Act has accomplished exactly what it was designed to do.”

In other words, the scene contained all the threats of terrorism before 9/11, but there was one critical difference: the law prevented the president from battling terrorism. Because of “the legal and bureaucratic wall,” the president could not exercise his powers as commander in chief to protect American lives, and the terrorists were allowed to kill thousands of innocent people. One act — the elimination of legal barriers to the president’s authority — allowed the scene to become much safer than it otherwise would be. Though the president called the NSA wiretapping program “consistent with U.S. law,” he also implied that following restrictive laws in the past led to American deaths on September 11. Bush wanted Americans to associate legal limits on his authority with the possible murder of themselves and their fellow citizens; if the government, and specifically the commander in chief, worries too much about the law, more Americans may die. From this one can conclude that sometimes the only acts consistent with the scene are acts inconsistent with complex, burdensome statutes. They form walls obstructing the president. When making a choice between saving American lives and maintaining legality, it is clear which approach a war leader must take.

The president was not arguing that laws are inherently bad, though. Indeed, he several times praised the PATRIOT Act; it was a “law passed with bipartisan majorities” in Congress and a “critical law to prosecute terrorist operatives.” The president even sounded alarm because “key provisions of this law are set to expire in

two weeks.” The critical distinction to be made is between laws that restrict presidential authority, such as those enacted before the 9/11, and laws that expand presidential authority, such as the PATRIOT Act. Only the latter allow the president to act in a way that is consistent with the scene. Only the latter have changed the scene for the better, “protecting American liberty and [saving] American lives.” If the president was not allowed to keep the power the USA PATRIOT Act provided for even “a single moment,” he argued, more American lives would be lost. By inference then, if the president is not allowed to keep the powers he assigned himself through NSA wiretapping, U.S. security could also be threatened.

As the president himself put it, “I have no greater responsibility than to protect our people, our freedom, and our way of life.” Following the law is not in the top tier of the president’s responsibilities. Indeed, the only agency that will allow the president to fulfill his primary responsibility of protecting Americans is the expansion of his power to allow for greater surveillance and intelligence gathering, even if those things are not consistent with the law.

*3. The president sought to downplay concerns about civil liberties when he attributed two distinct **purposes**, the protection of Americans’ civil liberties and the protection of Americans’ lives, to his single **act** of authorizing NSA surveillance.*

The USA PATRIOT Act and its concomitant expansion of executive power, its dismantling of the legal walls that hampered anti-terrorism efforts, are not the only things that allow the president to save American lives. Again, the act of

authorizing NSA wiretapping, “to intercept the international communications of people with known links to al Qaeda and related terrorist organizations” has also saved lives. But this is not the only purpose the president provided for this act.

Rather, the expansion of presidential power, to allow for more intelligence gathering and surveillance, exists for a second purpose: to protect Americans’ civil liberties.

After his greeting to the press corps, the president voiced his very first line: “As president, I took an oath to defend the Constitution and I have no greater responsibility than to protect our people, *our freedom*, and *our way of life*.” From the outset, the president named protecting freedom as an essential goal of his act.

There were other points in the speech when the president combined the purposes of saving lives and protecting liberties. He praised the USA PATRIOT Act for “protecting American liberty and [saving] American lives” and said he would continue the NSA surveillance program because, as he argued, “The American people expect me to do everything in my power under our laws and Constitution to protect them and their civil liberties.” The president described several secondary acts that ensure consistency between NSA surveillance and civil liberties. The eavesdropping program is “reviewed approximately every forty-five days,” he said, by “the Justice Department,” “top legal officials,” and “the NSA’s general counsel.” “Intelligence officials involved in this [*sic*] activities also receive extensive training” to carry out the wiretapping properly, and “Leaders in Congress have been briefed more than a dozen times” to provide an outside check on the program. The president mentioned all these subsidiary acts to downplay fears that the warrantless

wiretapping is part of a rogue operation without proper safeguards. But he had nonetheless made clear that assurances of civil liberties are gratuitous because protecting those liberties was one of the primary purposes for authorizing the program in the first place.

As Bush reasoned, all presidential acts in this war are essentially acts to protect American civil liberties because they are acts to protect “our way of life.” This war is as much about saving our national identity, and its associated emphasis on rights and freedoms, as it is about saving lives. In a sense, Bush turned on its head Benjamin Franklin’s famous dictum that “those who would give up essential liberty, to purchase a little temporary safety, deserve neither liberty nor safety.” The president made clear his disagreement with the criticism that NSA wiretapping was giving up essential liberty. Instead, he argued, it helps the United States achieve both liberty and safety. Even acts that seem to hinder civil liberties, as long as they are initiated for the purpose of winning the war on terror, are actually helping preserve civil liberties. Terrorists are as much a threat to our civil liberties as they are to our lives, as the president implied.

*4. President Bush sought to shift criticism away from himself and onto two other **agents**, journalists and certain members of Congress, when he argued that their **acts** were inconsistent with a dangerous **scene**.*

When characterizing NSA wiretapping, the president noted that he had authorized a “classified program.” Whereas the purpose of the program itself was to

“detect and prevent terrorist acts,” its disclosure “damages our national security and puts our citizens at risk.” Whereas the president was “using constitutional authority” when he initiated the program, the disclosure of the program to the press and by the press was “unauthorized” and “illegal.” By reporting the very existence of the “secret program,” journalists did the opposite of what president Bush had done: they had “alert[ed] our enemies and endanger[ed] our country.” In this case, the acts of journalists were criticized because they were inconsistent with the scene. Though the president understands the grave threat posed to Americans in the war on terror, journalists apparently do not. “As a result,” the president said, “our enemies have learned information they should not have.”

The president did not explicitly impugn journalists’ intent; he did not state that they intended to hurt U.S. security by disclosing the existence of the NSA wiretapping program. He nonetheless offered no other purpose for their act. Furthermore, it is another commonplace of war that classified information must be kept secret for war efforts to succeed. If lose lips sink ships, then certainly the “media reports” and “news organizations” criticized by the president should not disclose the details of classified domestic surveillance programs.

When he deflected criticism onto another set of agents, certain members of Congress, the president was more explicit in challenging their behavior. He noted that even though “The House of Representatives passed reauthorization of the PATRIOT Act,” some “senators filibustered to block the renewal” of the legislation on the day prior to his speech. “That decision is irresponsible” the president argued,

“and it *endangers* the lives of our citizens.” Given the context of the war on terror, a filibuster of the USA PATRIOT Act could only be done for bad purposes; it was an irresponsible and dangerous act. For that reason, the president called on members of Congress to change the act. “The Senators who are filibustering must stop their delaying tactics and the Senate must vote to reauthorize the PATRIOT Act,” Bush demanded. Again, we can see the argument that the president’s act should not be criticized or changed; rather than question the expansions of presidential power, Americans should question why certain senators would seek to block the continued expansion of the president’s power.

The president further castigated members of Congress when he noted that “Leaders in Congress have been briefed more than a dozen times” on the NSA wiretapping program. Here the president implied that it was not only dangerous to oppose the warrantless eavesdropping, it was also hypocritical to do so when legislators had already been given a chance to voice their concerns. In his efforts to call the motives of other agents into question, the president sought to place strict limits on the public debate over wartime policy. When journalists reported on presidential actions, and when members of Congress criticized those actions, they were not acting in concert with the scene, nor were they acting with good purpose.

These four motives, taken together, reveal that President Bush advanced a deterministic rationale for the NSA’s wiretapping program; the elements of the scene required the president to act as he did. They also required that Americans set aside the independent oversight of the courts, as called for in the FISA statute. They

required that we accept less debate in the press and in the halls of Congress. They required that we accept expanded presidential power and the president's assurances that our civil liberties are safeguarded within the NSA program.

Having established these central motives, we can move toward a moral evaluation of the president's address. Although the pentad can help us understand a person's motives, through his mention of each pentadic element, other tools can help illuminate what kind of audience member would share the motives of the rhetor. In examining the president's speech, this component of analysis is important because of the long-term implications of the president's arguments; if the war on terror will be indefinite, and so will be the president's power to decide how to fight it, we should concern ourselves with what kind of character the president would wish Americans to develop over time.

Presidential Power: The True Believers

In this study, I do not attempt to assess whether President Bush succeeded in persuading Americans that his wiretapping authorization was a justified, inevitable act. Nonetheless, a moral evaluation of the president's radio address can be made. This evaluation relies less on considering whether the president succeeded than on considering what would need to be true in order to guarantee his success. Individuals listening to the speech might be persuaded by the president and yet not agree with all his motives. Some might accept only one or two of President Bush's attempts at defending the NSA wiretapping program and still be persuaded by the speech. In

order to make a moral evaluation of the president's speech, I will consider a different kind of audience member: a listener of the speech who does accept each of the president's justifications. In the mind of this listener, President Bush would achieve every one of the goals revealed by his motives.

There are several things the audience would have to believe in order to be persuaded by each of President Bush's four aims. First, the audience would have to believe that the United States is at war with terrorists within our borders, and that the threat posed by them is a threat of the highest order; a threat at least equal to the one posed by previous wars. The audience would have to believe that domestic spying is critical to stopping those terrorists. The audience would need to accept that civil liberties and the rule of law are less important in a time of war than in a time of peace. Alternatively, they would have to accept that NSA wiretapping, without even minimal review from independent courts, not only provides safeguards for civil liberties, but actually exists to protect civil liberties.

In addition to these views, there are even more important beliefs that an audience member would have to accept to render effective President Bush's rhetorical efforts. The first is that the United States is not just at war, but that the United States itself is a *war zone*. If, as President Bush argued, "one of the most critical battlefronts" in the war on terror "is the home front," a person would need to look outside his window, in the contemporary United States, and see a situation analogous to the U.S. Civil War, the only other major conflict to have taken place on U.S. soil. In that war, it is estimated that more than 600,000 people — about two

percent of the combined Union and Confederate populations — died, while another 200,000 or so were wounded (“American Civil War”). On September 11, 2001, about one-thousandth of one percent of the current U.S. population died. It is true that the United States could still be engaged in a domestic war even though fewer people have died in the last six years than did in the Civil War. However, whether we are engaged in a war or not, a person who would look outside his window and see the same immediate threat to public safety, the economy, and the country’s way of life as was presented by the Civil War, and in so doing believe that the same suspensions of law and liberty is required in contemporary times as was required then, would have an interesting view of the world indeed.

So as not to create a false persona, I admit the unlikely chance that many people are so delusional that they actually *see* this scene when looking outside their windows; I doubt many see a war zone based on the evidence of their everyday lives. Rather, what we see in the ideal auditor of President Bush’s speech is a person so committed to accepting the president’s authority, so committed to believing the president’s description of the world, that they believe the United States is a war zone despite the overwhelming, available evidence to the contrary. The ideal auditor for the president’s speech would so deeply believe in the authority of our chief executive, and his claim to represent the truth, that she would substitute the president’s judgment for her own.

This analysis does not require proving that the threat of terrorism is small in scale or probability. A terrorist attack could kill millions of people tomorrow, but

such a tragedy would not change an important, undeniable fact: no matter how great or imminent the threat from terrorism, terrorist attacks have not so far wreaked enough damage to make the administration of law impossible. The Constitution requires that “habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” In a rebellion or an invasion, the administration of the law under courts, the protection of civil liberties and procedural guarantees of fairness, are literally impossible. Courts simply can’t meet on a battlefield. Whatever else one might say about the war on terror, it is obvious that the functioning of courts and the Congress goes on without much hindrance. Nonetheless, a person most likely to be persuaded by the president’s scene of war, a scene of the United States as central battlefield, would take on the president’s authority that such legal processes must be suspended for our safety. An ideal auditor for the president would see the United States as a country suffering from an invasion of terrorists; he would be in constant paranoia, fearing a threat he cannot actually see.

President Bush revealed quite clearly in his speech how this war on terror should be fought. Laws that restrict the president’s authority must be repealed or ignored, lest they create a “bureaucratic wall” and endanger American lives. As the president reasoned, members of Congress must abandon their “delaying tactics” and filibusters. Journalists must not disclose state secrets, lest “our enemies have information they should not have.” It is worth noting that the senators who voted to block reauthorization of the PATRIOT Act in December of 2005 were not voting to

end the law altogether. Rather, they sought to end a few provisions that Senator Chuck Hagel of Nebraska, a member of the president's own party, said would allow "government fishing expeditions targeting innocent Americans" (Stolberg A1). Furthermore, the journalists who disclosed the NSA program delayed their story for more than a year — at the administration's request — and withheld "a number of technical details," according to *New York Times* Editor Bill Keller, so as not to "expose any intelligence-gathering methods" (1). Despite this, the president argued in his speech that both members of Congress and journalists had "put our citizens at risk;" both agents were criticized by the president in his efforts to limit debate about war on terror policies and shift the focus way from his own actions.

An ideal auditor for President Bush's speech would not only accept the president's description of the United States as a battlefield, but would also accept the indefinite nature of the threat that terrorism poses. The president's scene of war included terrorists who "*were* here" before 9/11 and posed a "continuing threat." An audience member who accepts the president's view that we are in a long war, one that might continue for generations, would be most persuaded by the president's address. But such a person would also accept the president's attempts to stifle criticism from journalists and members of Congress. The auditor most likely to accept the president's defense would accept the need for him to act in contravention of the FISA statute, if he deemed it necessary, without end. Such a person would so fear the scene of terror as to grant the president limitless authority to decide when, if ever, we would return to a time that allows robust debate in Congress; a time when

the law is followed by the president and Americans enjoy the full gamut of their civil liberties. A member of President Bush's ideal audience would accept the formulation of the former White House lawyer John Yoo that "such decisions ... are for the president alone to make" (1).

It is not clear that the people who listened to the president's speech on that December day were afflicted with the paranoid, submissive character that would best allow for the speech's success, nor that the president believed they were. Instead, what emerges from this analysis is that the president both reflected these traits within his speech, and sought to move the country toward sharing them. As Edwin Black noted when arguing for an analysis of the ideal audience, "the auditor implied by a discourse ... though that man may never find actual embodiment" allows the critic to see "what the rhetor would have his real auditor become" (113). A country that fully accepted George W. Bush's goals, and acquiesced to his motives, would also acquiesce to his claim on near-absolute power. It would accept that the United States is a war zone for perpetuity.

Authoritarians in a Democratic World

Though the war on terror seems a novelty — it is "the first war of the 21st Century," as the president noted — the fear of lethal enemies and the submission to authority associated with the president's implied audience are not new characteristics in the American body politic. Though it is the paralyzing fear of terrorists in our midst that justifies presidential lawbreaking today, it was a paralyzing fear of

communism that allowed such lawbreaking in the past. In Black's exemplar of an ideal audience, the type of listeners most likely to accept the frequent right-wing metaphorical frame *communism-as-cancer*, there are some traits that bear great relevance to the present study. "To the Rightist," Black wrote, "communism is not just in Russia or China or North Vietnam. It is also in the local newspaper; ... it is in the television and the movies; it has permeated the government at all levels" (116). For the authoritarian character most likely to accept the President Bush's scene, the threat of terrorism comes not just from Iran or Afghanistan or Saudi Arabia. It has permeated our borders and constitutes a perpetual threat.

Paranoia such as this has been the foundation of a number of movements in United States political history. Writing in *Harper's* in 1964, the Pulitzer Prize-winning historian Richard Hofstadter identified a long-standing "paranoid style in American politics" (1). Hofstadter argued that this strain of thought has existed in certain Americans across the left-right political spectrum. He wrote:

In the history of the United States one finds it, for example, in the anti-Masonic movement, the nativist and anti-Catholic movement, in certain spokesmen of abolitionism who regarded the United States as being in the grip of a slaveholders' conspiracy, in many alarmists about the Mormons, in some Greenback and Populist writers who constructed a great conspiracy of international bankers, in the exposure of a munitions makers' conspiracy of World War I, in the popular left-wing press, in the contemporary American right wing, and on both sides of the race controversy today, among White Citizens' Councils and Black Muslims. (1)

The historian also reached a conclusion similar to Black's: that the rhetoric of anti-communism in the mid-twentieth century was filled with paranoid fears. According to certain members of the political right, he wrote, "the country is infused with a

network of Communist agents” (1). It is this same style that characterizes an ideal auditor of President Bush’s warrantless wiretapping address.

Though there may well be terrorists in the United States, and though they may pose a grave danger to U.S. security, President Bush argued that the threat was so great it justified indefinite expansion of presidential authority; it justified bypassing court oversight for intelligence gathering aimed at people inside the country. Though he maintained that his act was “consistent with U.S. law,” the president also described laws limiting executive power as burdensome, and an ideal audience member would agree. Though there were surely communists living in the United States in the 1950s, only those most paranoid about the threat they posed would have weakened long-standing American traditions like free expression and free association. Similarly, only those most paranoid about the threat posed by terrorism would agree with the president that any laws limiting presidential authority, even if duly enacted through the democratic process, could be cast aside. The fact that there is always a paranoid faction among U.S. citizens, coalescing around some political issue of the day, should give us great pause before allowing the grip of that paranoia to justify fundamental changes to our civic values. The fact that democratic values and the rule of law have lasted this far into our country’s history is only because the paranoid politics of a few have not succeeded in eliminating those traditions.

In the final analysis of President Bush’s ideal audience, we can also turn to psychological data about the type of person most likely to accept President Bush’s

appeals. After completing dozens of studies on a number of population groups, psychologist Bob Altemeyer identified a distinct personality type that comprises a significant portion of most populations. He called this type of person a right-wing authoritarian. For the purposes of our analysis, a few character traits associated with right-wing authoritarians, or RWAs, are worth reviewing. “Authoritarians believe, to a considerable extent, that established authorities have an inherent right to decide for themselves what they may do, including breaking laws they make for the rest of us” (Altemeyer 9). Additionally, RWAs believe that they are most reflective of their countries’ political values, even when their survey responses indicate a deep antipathy toward some of those values. Altemeyer wrote that Americans who score high on the RWA scale usually favor the recitation of the U.S. Pledge of Allegiance in schools, including its conclusion: “with liberty and justice for all.” However, “No matter how many times High [RWA]s say the Pledge of Allegiance, with hands over hearts and heads bowed, they seldom seem to connect those words with the rest of their thinking” (96). RWAs show hostility to a number of freedoms and to equal justice under law, despite their embrace of the Pledge of Allegiance. It is this type of person who would be most sympathetic to presidential law-breaking despite being hostile to law-breaking in general. It is this type of person who would most favor indefinite limits on American freedoms to pursue terrorists, all while believing they were most reflective of our country’s traditions.

Key among the characteristics of right-wing authoritarians is their willingness to substitute the judgment of authorities for their own judgments; alternatively, they

are willing to believe the views of the world offered by authority figures because they have not developed their own views. Altemeyer described this phenomenon:

High RWAs generally have not determined for themselves what is true and false, to the extent others have. Instead they are more likely to absorb the teachings of the authorities in their lives.... All of this explains the conflicting stereotypes of right-wingers' gullibility and right-wingers' paranoia ... You can expect to see *both* behaviors in High RWAs... (111-12)

These characteristics would be central in people most likely to believe the scene set by President Bush, a scene where terrorists have so infiltrated the United States that the normal limits of the law must be suspended. Even if they could not see evidence of widespread terrorist infiltration, they would accept President Bush's view, often without even looking for evidence, because it reflects the view of an important authority figure, and because of their deep paranoia.

Based on this ideal audience, it is not difficult to further analyze the president's address. If Black was correct that "We know how to make appraisals of men," and that "this sort of judgment, when fully ramified, constitutes a definitive act of judicial criticism" (113), an evaluation of the president's ideal audience also shows that his motives are deeply undemocratic and threaten American traditions, such as the notion that no person, regardless of his position, is above the law. Right-wing authoritarians rank equality under the law "a low priority" (Altemeyer 282), but most importantly, they are happy to displace democracy with totalitarianism. Based a vast array of studies, Altemeyer concluded:

I perceive a potential for the acceptance of totalitarian rule in our countries [Canada and the United States], a bedrock authoritarianism that never goes away. High RWAs usually think they are the biggest patriots of all, but it

turns out they care little for democracy. They need only to have their ranks swelled during a crisis to sweep our form of government away, I fear. (282)

Though it is far beyond my analysis to conclude that president Bush attempts to “sweep our form of government away,” such potential exists in the arguments he advanced. The president’s motives, as revealed through this analysis, are most persuasive to the kind of person hostile to democratic values. For that reason, Americans who value our system of government and its attendant rights should be hostile to the president’s motives. Though he argued that his purpose was “to protect our people, our freedom and our way of life,” those who would be most persuaded by the speech would also see the least value in important facets of our way of life.

While the pentad helps illuminate President Bush’s worldview, the ideal audience reveals the worldview of those most likely to allow his aim of expanded executive power. Both components are important for understanding the full implications of any speech, because of the reciprocal nature of communication; every speech needs an audience. Both of these conclusions are especially important for the present study, though, because if the president is to be successful at expanding presidential power, he will likely need to persuade many Americans that such an expansion is necessary.

CHAPTER IV: CONCLUSIONS

The War of Words Within Our Borders

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

— Article 30, Constitution of the Commonwealth of Massachusetts

...the world may know, that so far as we approve as monarchy, that in America THE LAW IS KING. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other.

— Thomas Paine, *Common Sense*, 1776

The application of Burke's pentad and the consideration of President Bush's ideal audience reveal some important findings about what the chief executive sought to do when he gave his December radio address. Though it was ostensibly meant to address the complaints of critics that the NSA wiretapping program was illegal, President Bush's speech made a different point altogether. One would not expect a speech directed at a general audience to contain the jargon of a courtroom. Nonetheless, it is telling that president Bush sought to expand his power by minimizing the role of the law and attempting to extinguish public debate, rather than honestly engage the debate and demonstrate that his actions were legal. His claims, as this study concludes, would be wholly acceptable only to an audience of paranoid people, willing to trust the assurances of a president even if their own daily experiences differed with his view of the world. By emphasizing the scene, the daily

danger of terrorism, the president was attempting to have Americans fear so much for their safety that they would set aside the idea that in the United States, no person is above the law.

The implications of this conclusion are broad. First, it is important to note that the president's rhetorical efforts at limiting discussion on the program's legality have been successful to the degree that others in the public debate over warrantless wiretapping have made similar arguments. Commentators have taken the president's cue to emphasize that we must expand executive power to win the extraordinary war in which we are engaged. While that might be true, it sidesteps the central concern of NSA wiretapping critics: that this particular expansion of presidential power is illegal and that if it is truly necessary to protect American lives, the law should be changed through the democratic process. Additionally, these conclusions are significant because the rhetoric advanced by the president to defend NSA wiretapping is similar to that used in a variety of other contexts by both the chief executive and many of his supporters, and for the same purpose: to expand presidential power. This expansion of power represents a career-spanning effort on the part of many Bush Administration officials; it began long before 9/11 and concerns many areas of public policy beyond domestic surveillance. In concluding this study, it is worth examining how others have attempted to shift the debate away from issues of legality. It is also worth understanding the long-term attempts of some officials to place the chief executive permanently beyond the confines of the law.

Such a discussion highlights the importance of rhetorical study, specifically the study of rhetorical efforts such as the president's.

Democracy and Agents of Debate

One of the NSA wiretapping program's early defenders was an unlikely entrant into the public debate over government actions of questionable legality. As a federal judge on the U.S. Seventh Circuit Court of Appeals, Richard Posner might have been called on to assess the legality of that program. Perhaps that is why Posner's arguments defending NSA wiretapping were based less on its legality and more on its necessity. In fact, Posner explicitly rejected the legal approach. In early February 2006, the sitting federal judge lamented in *The New Republic* that the public debate over NSA wiretapping had been "aridly legal" and noted that, "This legal debate is complex, even esoteric" (15). Despite the fact that Posner's profession requires him to evaluate the legality of government acts on a daily basis, or perhaps because of it — Posner might not have wanted to seem prejudicial if the issue did come before his bench — he argued that a discussion of the wiretapping regime's costs and benefits should precede legal haggling.

The jurist supported a more practical debate about the recently disclosed NSA program by noting:

Not only are these questions more important to most people than the legal questions; they are fundamental to those questions. Lawyers who are busily debating legality without first trying to assess the consequences of the program have put the cart before the horse. Law in the United States is not a Platonic abstraction but a flexible tool of social policy. In analyzing all but the simplest legal questions, one is well advised to begin by asking what

social policies are at stake. Suppose the NSA program is vital to the nation's defense, and its impingements on civil liberties are slight. That would not prove the program's legality, because not every good thing is legal; law and policy are not perfectly aligned. But a conviction that the program had great merit would shape and hone the legal inquiry. (Posner 15)

It is rare to find such a flexible approach to legal interpretation offered in defense of an ostensibly conservative policy, or at least from conservative commentators.

Indeed, Supreme Court Justice Antonin Scalia, whom President Bush famously promised to use as a model for high court appointments due to "the judicial philosophy he defends" (Bush qtd. in Barnes 16), is well-known for his disapprobation of a living Constitution. Scalia has criticized judges who have "the attitude of the common-law judge — the mind-set that asks, 'What is the most desirable resolution of this case, and how can any impediments to the achievement of that result be evaded?'" (qtd. in Rossum 5). Despite this, Posner had a point; the debate about the technical legality of the NSA's warrantless wiretapping issue is not paramount.

Though it is important in our system for the courts to reach a conclusion about the legality of the NSA's warrantless wiretapping program, and one court already has (see Savage, "Judge's Ruling Bars Warrantless Wiretaps"), there is a more important issue. That issue is not the practical benefit of any particular wiretapping law, however, as Posner argued. Posner might have been correct that FISA "does not provide an adequate framework for counterterrorist intelligence" (15). A functioning democracy would have a vigorous debate about the merits and drawbacks of NSA wiretapping, and might well arrive at Posner's conclusion that

substantial changes to current law were needed. But as I noted in the previous chapter, one of President Bush's key aims in defending his administration was to call for the elimination of such a debate. His focus on criticizing other agents, specifically the press and members of Congress who disapproved of unconditionally extending the USA PATRIOT Act, supports this conclusion. Further, the argument that decisions about national security "are for the president alone to make" (Yoo 1) renders moot the very discussion Posner recommended. Americans in general, members of the press, political pundits, judges, and even members of Congress are not the appropriate agents to consider the necessity of wiretapping or the scale of the threat posed by terrorism; by his own rhetoric, the president is the only agent so empowered. That is why even if a court were to rule that the president's wiretapping is technically legal, such a conclusion would still pose a threat to the rule of law as broadly understood. Posner's tactic was similar to that of the president's, though. By focusing on what he perceived as the inadequacy of current laws, Posner was arguing that the scene of terrorism should be our driving concern, as opposed to one of presidential obedience to law.

A democratic country that respects the rule of law should also respect the end result of the legal process. All comers are able to make their case; anyone wishing to argue that warrantless wiretapping is necessary has venue to do so. But once all parties are given a chance to provide such input, a conclusion is reached. One such conclusion is reflected in Congress's passage of the Foreign Intelligence Surveillance Act. A democratic society also allows for changes to be made. If the

result of the lawmaking process appears unwise, or hastily undertaken, a law can be repealed or modified. In 2002, U.S. Senator Mike DeWine of Ohio proposed amending the FISA statute to allow domestic surveillance with lighter scrutiny, but the Bush Administration, consistent with its claims that the president could unilaterally change the law to protect the country from terrorism, refused to support the move. Justice Department official James A. Baker told Congress that “because the proposed change raises both significant legal and practical issues,” might not “pass constitutional muster,” and therefore might “potentially put at risk ongoing investigations and prosecutions” (qtd. in Eggen A4), it was unnecessary. The president had opportunities to air complaints with the FISA law but chose not to do so. Again, this view of the world is consistent with the one found in the president’s radio address. The threat of terrorism is so severe that the president can unilaterally and secretly decide to override a law, all while having his underlings publicly report that such changes might be unconstitutional. It would indeed require firm trust in authority figures to see such behavior as acceptable in our democratic country.

In our adversarial legal system, it is not hard to construct a case favoring the legality of almost any undertaking. Supporters of the president can point to the Supreme Court case of *Youngstown v. Sawyer*, in which the judicial branch recognized that the president does have some inherent powers flowing from the Constitution’s prescription that “The President shall be commander in chief of the Army and Navy of the United States” (Article II, Section 2). In that case, the court ruled that President Truman could not seize a steel mill, despite his determination

that doing so was in the national security interests of the country, because Congress had statutorily prohibited the act. Nonetheless, Justice Robert H. Jackson noted in his *Youngstown* concurring opinion that “Courts can sustain exclusive presidential control” in certain matters if they find that the Constitution prohibits “the Congress from acting upon the subject” (638-39). In 1980, a U.S. Court of Appeals held that the president did have an inherent right to conduct foreign surveillance, but also that “the separation of powers ... forced the executive to recognize a judicial role when the President conducts domestic security surveillance” (*United States v. Truong* 915). The fact that arguments exist in favor of the president’s claims, and the fact that a court might still find wiretapping in contravention of statute to be legal, does not change the threat posed to the rule of law by President Bush’s rhetoric.

If the president’s claims are correct, he is the only person to decide which actions are needed for our security, and thus the only agent to decide which of his actions are legal and which are illegal. The courts and the Congress would have no role to disagree. The resulting scenario would make Americans governed by law, but the president governed only by his own judgment. However well-intentioned that judgment might be, it would allow the president a power over ordinary Americans that is generally reserved for a king or some other authoritarian leader, just as the analysis of the ideal audience indicates. The president would become a stranger to the very laws he is required to execute, and thus turn our government of laws into a government of men, or to be more precise, a government of one man.

The Long War for Power

It might be tempting to set aside the worst-case scenarios that would result if Americans truly accepted the rhetorical efforts of President Bush. It might be tempting to say that because most Americans probably don't fall into the category of the president's ideal audience, and are not paranoid, right-wing authoritarians, we have little cause for concern. When he introduced the pentad as a method for evaluating rhetoric, Kenneth Burke himself argued against this temptation. He wrote in *A Grammar of Motives*:

Many people in Great Britain and the United States think of these nations as "vessels" of democracy. And democracy is felt to reside in us, intrinsically, because we are "a democratic people." Democratic acts are, in this mode of thought, derived from democratic agents, agents who would remain democratic in character even though conditions required the temporary curtailment or abrogation of basic democratic rights. (17)

Burke, however, rejected the comfort of this thought, because he recognized that, "if one employed, instead, the scene-act ratio, one might hold that there are certain 'democratic situations' and certain 'situations favorable to dictatorship, or requiring dictatorship'" (17). Just as Altemeyer feared that a swelling of right-wing authoritarians in a crisis could fundamentally alter our system of government, Burke understood that certain rhetorical efforts could do the same.

Though both NSA wiretapping and the president's defense of it are unlikely to usher in a dictatorship overnight, there is reason to believe that the president's rhetoric in defense of the program is part of a much larger effort aimed principally at the long-term expansion of executive power. In January 2005, before the public

knew of the NSA wiretapping program, Vice President Dick Cheney told *The Washington Post*'s Bob Woodward that the "low point" in presidential power had occurred after the Vietnam War and the Watergate scandal (Woodward A7). "I think, in fact, there has been over time a restoration, if you will, of the power and authority of the president," Cheney told the journalist (A7). The former secretary of defense even admitted that despite the Constitution's unequivocal statement that "The Congress shall have Power... To declare War" (Article I, Section 8), he had advised the elder President Bush to invade Iraq in 1991 without congressional authorization because the Constitution names the president the commander in chief. According to the vice president, the commander in chief has the sole ability to decide when a war starts. Bruce Fein, a deputy attorney general under President Ronald Reagan, reported that Cheney has spent most of his career in public office trying to increase the power of the executive branch. "This preceded 9/11," Fein told journalist Jane Mayer in 2006. "I'm not saying that warrantless wiretapping did. But the idea of reducing Congress to a cipher was already in play. It was Cheney and Addington's political agenda" (47).

David Addington is the vice president's chief of staff and top legal adviser, and Mayer profiled him for *The New Yorker* in July 2006. She wrote that he was behind many of the administration's legal arguments, covering such subjects as warrantless wiretapping, torture, and suspending the right of habeas corpus. Addington's legal positions, according to Fein, would allow the president "to shut down Congress for leaking too much.... His war powers allow him to declare anyone

an illegal combatant. All the world's a battlefield—according to this view, he could kill someone in Lafayette Park if he wants” (qtd. in Mayer 46). Former colleagues of Addington's said he “doesn't care about the Constitution” (46) and one former Pentagon official even emerged from post-September 11 security meetings with the feeling that Addington did not “believe there should be co-equal branches” in the U.S. government (51). Nonetheless, that same Pentagon attorney, Richard Shiffrin, told Mayer that Addington was behind almost all of the president's legal positions and was “an unopposable force” in war policy deliberations (46).

Though there are powerful agents in the Bush Administration fighting to expand presidential power, there has nonetheless been some dissent from within the government. On May 15, 2007, a former deputy attorney general to President Bush, James B. Comey, told the Judiciary Committee of the U.S. Senate that he almost resigned over the NSA wiretapping program. In 2004, Comey testified, White House officials, including then-White House Counsel Alberto Gonzales, had gone to the hospital room of an ailing John Ashcroft and attempted to secure reauthorization of the program, but the attorney general had refused to assent. Despite President Bush's assertions in his radio address that civil liberties have been protected because of frequent reviews by the Justice Department, Comey told the Senate: “The program was reauthorized without us and without a signature from the Department of Justice attesting as to its legality. And I prepared a letter of resignation, intending to resign the next day...” (“The Hospital Room Showdown” 1). In the end, the administration officials who sought to renew the NSA wiretapping program succeeded.

The arguments of these Bush Administration figures offer an important lesson: the pursuit of expanded presidential power is not limited to NSA wiretapping and it did not begin with the scene of terrorism that became apparent after the terrorist attacks of 2001. These facts provide further reason to accept the conclusions of this study, that the president sought to expand his power using the current threat of terrorism as a rhetorical justification, and also reason to find those conclusions troubling. There are clearly people within the United States government who believe that the expansion of presidential power should be a long-term goal; NSA wiretapping is but one example and the 9/11 attacks provided only a pretext. The president turned down offers from Congress to amend the FISA statute, with administration officials claiming that changes in the law were unnecessary. It would not be impossible to conclude that members of the administration preferred to conduct the NSA program without congressional approval just to assert their power to do so.

Though that conclusion is speculative, there are more firmly grounded lessons to draw from the administration's choices, and from the president's radio address. It would be irresponsible to brush off the president's rhetorical attempts to expand his power as just an issue of wiretapping, or merely a temporary surge in executive authority. If George W. Bush's rhetorical tactics were to succeed, they would justify presidential powers far beyond mere wiretapping, and they would greatly outlast the president's tenure. At the core of the president's speech is the idea that only the chief executive can decide when our nation is threatened, and that

having made that determination, he has limitless authority to pursue whatever policies he wishes. That idea cannot honestly be said to reflect the values of democracy or the rule of law.

Resetting the Scene

Regardless of the internecine battles of the Bush Administration, the quest for power on the part of public officials is not new, and is not likely to end any time soon. But because of the scene described by President Bush in his wiretapping address, and because of other rhetorical efforts long before that one, the expansion of executive power has become much more likely. Some might say the response to this is simple: Americans, if they do not like the president's vision of power, should elect someone with a contrasting view. But most members of the president's opposition in the Democratic Party have not found their voice in opposing NSA wiretapping (see Milbank). Furthermore, if the president's view of power is accepted, he could simply suspend elections in the name of national security. Indeed, one of the Republican candidates for president in 2008, Rudolph Giuliani, argued that he could extend his term as New York mayor after the 2001 elections because of the September 11 terrorist attacks (Eakin). Though it seems unlikely that President Bush would attempt a suspension of elections, or that he would succeed if he did, Americans should not count on those who seek the office of the presidency simultaneously to want to limit presidential power.

For those who oppose the president's efforts, regardless of any party affiliation or elected position, there must be some effort to reclaim the scene; there must be a rejection of the idea that terrorism is so threatening to our way of life that we should sacrifice preemptively important aspects of that way of life. Maintaining the rule of the law, and the idea that the president is not above the law, does not require arguing that terrorists pose no threat. Rather, rhetors may stress that it is precisely because of our legal traditions that we have maintained our nation's identity in trying times of the past. Whether it was the threat posed by secessionists or the threat posed by the Soviet Union, the United States has overcome adversity all while providing a model of liberty and democratic governance. Rhetors who stress democratic agents using the agencies of liberty and law could challenge Americans to rise above the scene, rather than appeal to fears and paranoia based on that scene.

Further, there is a role for scholars to play in this debate. Just as the pentad reveals President Bush's desire to squelch debate and expand his prerogatives, it might reveal similar motives in other politicians, regardless of their political affiliations. Such studies are worthy of further pursuit. Rhetorical analysis might also provide further explanation as to why the president's major opponents in this public debate, such as U.S. Senator Russell Feingold, have been unable to succeed in their own efforts. If the United States abandons its commitment to separate branches, checks and balances, civil liberties, and the rule of law, those changes are likely to come through rhetoric. If persuasion can lead us to waver in our commitment to liberty and the rule of law, it can also lead us to renew that commitment. The civic

values at stake demand that scholars examine which rhetorical efforts would allow the renewal of those values, and which efforts might cause their further decline.

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ENDNOTES

¹ All following quotations of the president are from his December 2005 radio address, unless otherwise noted. At the time of this writing, a transcript and video recording of the address are accessible on the White House website, at <http://www.whitehouse.gov/news/releases/2005/12/20051217.html>. In each quotation, any italics are added for emphasis and do not reflect the original speech.

² Supporters of the president sometimes refer to him as “our” commander in chief, though the Constitution regards him as “Commander in Chief of the Army and Navy of the United States” (Article II, Section 2). Unless an American citizen is a member of the armed forces, it seems more appropriate that the president is our servant and not our commander in chief. Though I think this rhetorical choice reflects a conscious decision on the part of the president and his political allies, such a discussion is outside the scope of the present study.