et al.: Complete Volume 20(1-4)

FALL 1982/WINTER 1983
SPRING 1983/SUMMER 1983
Vol. 20, Nos. 1, 2, 3 and 4

Quarterly Journal of
DELTA SIGMA RHO-TAU KAPPA ALPHA

Published by Cornerstone: A Collection of Scholarly and Creative Works for Minnesota State University, Mankato, 1983
DELTA SIGMA RHO—TAU KAPPA ALPHA
National Honorary Forensic Society

NATIONAL OFFICERS:
President Jack L. Rhodes, University of Utah
Vice President Robert O. Weiss, DePauw University
Secretary James F. Weaver, Iowa State University
Treasurer Elaine F. Bruggemeier, Loyola University
Trustee Annabelle Dunham Hagood, University of Alabama
Historian John A. Lynch, St. Anselm's College

NATIONAL COUNCIL MEMBERS:
At Large Jack Howe, California State University-Long Beach
At Large David Waite, Butler University
At Large Michael Pfau, Augustana College, South Dakota

REGIONAL GOVERNORS:
Region I Richard Roth, University of Rhode Island
Region II James J. Hall, St. John's University
Region III William R. Coulter, Roanoke College
Region IV Larry M. Caillouet, Western Kentucky University
Region V George Ziegelmueller, Wayne State University
Region VI Vernon R. McGuire, Texas Tech University
Region VII Donn Parson, University of Kansas
Region VIII Larry Schnoor, Mankato State University

https://cornerstone.lib.mnsu.edu/speaker-gavel/vol20/iss1/1
TABLE OF CONTENTS

Ronald Reagan and the Presidential Imperative to Stylize: A − E < GC ........................................ Ronald H. Carpenter 1

General William Tecumseh Sherman Precedes Henry W. Grady...................................................... Nicholas M. Cripe 7

The Courts of Reason and Law: A Comparative Model ................................................................. Dean Fadely 13

Debate Among the Croppers ............................................................. Keith H. Griffin 21

DSR-TKA As An Honor Society ...................................................... James McBath 26

A Functional Analysis of Judicial Argumentation: Implications to Argumentation Theory ................ J. M. Makau 29

Good Talkers and the Four Commandments ........................................ Craig Pinkus 43

Dialectic Inquiry: The Need for the Forensic Community’s Involvement .......................................... William M. Strickland 48
The editorial policy of *Speaker and Gavel* is to publish refereed articles dealing with *the theory, practice or criticism of public argument*, and it welcomes contributions from established scholars and especially encourages submissions by those who are making their early efforts to achieve publication. We will give preference to topics drawn from the contemporary period, i.e., since 1960, and to manuscripts in the 1500–3500 word range. *Speaker and Gavel* will also publish survey articles, mostly commissioned, about major society projects.

Manuscripts should be typed double-spaced, documented with endnotes beginning on a new page at the conclusion of the text, and conform to the *MLA Style Sheet* (2nd edition). Manuscripts and correspondence should be directed to the editor at the address given above.
RONALD REAGAN AND THE PRESIDENTIAL IMPERATIVE TO STYLIZE: A – E = <GC*

Ronald H. Carpenter

As depicted in a recent editorial cartoon, someone said “It looks like Jimmy Carter is maneuvering himself to become spokesman for the Democratic Party”; and another person retorted, “That’s funny—that’s something he could never do as President.” Mr. Carter had a problem: although we elected him after Watergate mainly because of his promise “I will never lie to you,” we were not as eager to reelect Mr. Carter, in part, because as President he could not say well what Americans wanted said well. Coming to the presidency with communication liabilities such as unnatural pause patterns (which he overcame to a large extent) and tendencies toward slips of the tongue (embarrassingly near “live” microphones), Mr. Carter also was not eloquent in statements to fulfill what I call for the latter twentieth-century “the presidential imperative to stylize.” And as the 1980 presidential campaign evolved, Jimmy Carter stood in contrast to Ronald Reagan who evinced potential to be our great communicator.

For all of his poised and polished delivery (actio), however, Mr. Reagan likely will be deemed our less-than-great communicator after all; and I base that prediction upon my critical reading of style (elocutio) in his Inaugural Address. Before the inauguration, though, Americans knew Mr. Reagan delivered lines well. Recall an actor’s timing in his Acceptance Address peroration at the Republican Convention: “I’ll confess that I’ve been a little afraid to suggest what I’m going to suggest, [beat] I’m more afraid not to. [beat] Can we begin our crusade joined together in a moment of silent prayer?” But in inaugural addresses, Americans expect more than mere finesse in delivery; and President Reagan was unable to achieve therein that eloquence in statement to place him among predecessors accorded acclaim and political power because, as our surrogate spokespersons, their style said well what we wanted said well.

As bases for understanding that stylistic imperative of recent presidents, consider briefly how a vocal if not oratorical people in the nineteenth century became a nation of more passive readers and listeners in the latter twentieth-century, often accepting proudly membership in a “great silent majority.” Yesterday, we participated and spoke in varied assemblies, from town meeting to Grange hall, knowing that in these vital forums our discourse influenced others. Today, we more likely read from 1,750 daily news-

Ronald H. Carpenter is Associate Professor of English at the University of Florida. This essay was presented at the Fourth Annual Conference on Discourse Analysis, “Form and Genre in Political Discourse,” Temple University, March 17–19, 1983.

* The poise and polish of delivery (Actio) minus the ability to stylize (Elocutio) equal a Less-Than-Great Communicator.

1 Gainesville Sun, 30 August 1981, p. 4A.


Published by Cornerstone: A Collection of Scholarly and Creative Works for Minnesota State University, Mankato, 1983
papers printing over 63,000,000 copies per day or still more likely listen to
6,500 radio stations reaching us through 300,000,000 radio sets (or 3 radios
for every 2 Americans) or view television sets now present in more than
98% of American homes. And many Americans now say with complete
conviction "Unaccustomed as I am to public speaking . . . ." Our reticence
also is compounded by a paucity of compositional skills, an inability with
language and literacy approaching a national crisis. Recall how after Sputnik
in 1957 our educational system was reoriented. To catch up to Russia's
presumed technological superiority, our schools stressed math and sci-
ences—often at the expense of writing skills which are foundations of an
articulate citizenry. But if we ourselves are not eloquent, our impulse is to
support political leaders who are. Consider as Everyman Archie Bunker,
surely a member in good standing of Richard Nixon's "great silent majority."
In one episode of "All in the Family," Archie opposed gun-control; a tele-
vision editorial caused him to visit the station and complain; but when given
equal air time and a platform to voice his position, Archie was inarticulate.
Imagine a reticent Archie Bunker, though, hearing approvingly Vice-President
Agnew's seemingly clever alliterations about "pussilanimous pussy-
footers" or "nattering nabobs of negativism" and responding to Edith from
his armchair with a resounding, Middle America counterpart of "Right on
Spiro."

In America's recent, collective consciousness, a sense of style resides at
several levels. Through electronic mass media, we heard—and learned—
Franklin Roosevelt's traductio "We have nothing to fear but fear itself" or
the auxes/s "To some generations much is given; of other generations much
is expected; this generation of Americans has a rendezvous with destiny."
Yes, sometimes we overlook a lack of presidential style in discourse. As the
strongest nation emerging from World War Two, America was content with
tough talk in the mode of "give 'em hell Harry" Truman. We also forgave
Dwight Eisenhower's stylistic ineptness (and parodied how he might have
written the Gettysburg Address, beginning "I haven't checked the figures
but eighty-seven years ago, I think it was . . ."). From the architect of D-Day
and Victory in Europe, publicized in 1952 as "General" Eisenhower, the
campaign slogan "I shall go to Korea" was enough for a nation weary of war
in Asia. Moreover, a military man of deeds was an appropriate counterpoint
to Adlai Stevenson, a man of words seemingly preoccupied with stylistic
overkill. As depicted in an editorial cartoon of that time, Stevenson stood
pencil and paper in hand requesting of an aide with Webster's Unabridged
Dictionary "Pick me ten big words that have four synonyms each. I must
make a speech and I do not wish to be understood." A paramessage in
Stevenson's style said "egghead."

After Eisenhower, John Kennedy's eloquence reassured us; presidents still
could be surrogate spokespersons articulating well our hopes and fears for
the future. And if Richard Nixon's subsequent, blatant attempts to copy

\[2\] For the broader statement of my position, see Ronald H. Carpenter, "The Sym-
bolic Substance of Style in Presidential Discourse," Style, 16 (Winter 1982), 38-49.
\[3\] Reprinted in Marcus Cuniiffe, The American Heritage History of the Presidency
Kennedy style were not obtrusive to us, credit our recognition that the man of humble origins, modest circumstances and "Checkers" at least knew what model to imitate, as in "If we are to have respect for law in America we must have laws that deserve respect" or "Let each of us ask not just what will government do for me but what can I do for myself." President Carter, though, neither imitated eloquent style in discourse nor originated it. So Ronald Reagan's imperative to stylize should have been all the stronger to fill the void, but his Inaugural Address portended presidential style equally inept.

Mr. Reagan favored anaphora, beginning successive clauses or sentences with the same word or phrase (as in Lincoln's "With malice toward none, with charity for all, with firmness in the right . . ."). The efficacy of repetition for emphasis is axiomatic. People do learn and remember what is repeated—particularly in stylized statements. We quoted easily Martin Luther King's "I have a dream" because seven consecutive sentences began with that phrase; we believed that England would fight on in the dark days after Dunkirk because Churchill repeated "we shall fight on the beaches, we shall fight on the landing grounds, we shall fight in the fields and in the streets, we shall fight in the hills . . ." Those repeated words deserve being remembered. In speaking of "the will and moral courage of free men and women," however, Mr. Reagan says "It is a weapon our adversaries in today's world do not have. It is a weapon that we as Americans do have." Discounting grammar by which the plural "will and moral courage" become the singular "it," the phrase "it is"—despite repetition—is unworthy of memorability. Mr. Reagan also squanders stylized repetition elsewhere on the same inept phrase, "It is no coincidence that our present troubles parallel . . . It is time for us to realize . . ."; or he repeats in parallel a neutral word as in "it distorts our economic decisions . . . it threatens to shatter the lives of millions," when the more emotionally charged phrase is his referent, "one of the worst sustained inflations in our national history." Even for more potent words reminiscent of Kennedy constructions, Mr. Reagan "buries" repeated phrases which could have been bases for more salient parallelism: "So, with all the creative energy at our command let us begin an era of national renewal. Let us renew our determination, our courage, and our strength. And let us renew our faith and hope."

Of course any stylistic comparison of Reagan to Kennedy must appraise antitheses. People still recall easily those particularly epigrammatic lines such as "Let us never negotiate out of fear, but let us never fear to negotiate" or the more ubiquitous "Ask not what your country can do for you—ask what you can do for your country." President Reagan's attempt at this stylistic form (often called urbanitas in traditional theory but what I teach as an AB/BA reversal) is not as well balanced: "All of us—all of us need to be reminded that the Federal Government did not create the states; the states created the Federal Government." Although not many Americans know the line is from Lucius Q. Lamar, the statement's greater problem is that to be meaningful—and hence quotable—listeners are forced to recall (if they can) our
historical progression from Articles of Confederation to United States Constitution. Similarly, to epitomize what "makes us special among the nations of the earth," Mr. Reagan says "We are a nation that has a government—not the other way around." People are not likely to quote lines which they themselves must reword mentally to gain their import. But Kennedy's antitheses are meaningful, instantly, standing alone.

President Reagan's antitheses pose another problem stylistically. An axiom for making many antitheses resides in lyrics for Johnny Mercer's song recommending "you gotta accentuate the positive." Adlai Stevenson said of Eleanor Roosevelt, "When other people cursed the darkness she lit a candle." Ending on the upbeat, the line emphasizes by position the positive (and recency may have advantage over primacy). Suppose he had said "She lit a candle when other people cursed the darkness." The admirable action is not emphasized by position, as in Kennedy's most quoted lines or even his other antitheses such as "not a victory of party but a celebration of freedom" or "not from the generosity of the state but from the hand of God." Mr. Reagan ignores possibilities in placement, though, when he says "We must act today in order to preserve tomorrow." To emphasize urgency, the better line might be "To preserve tomorrow we must act today." Or consider this sequence about "government": "It is rather to make it work—work with us, not over us; to stand by our side, not ride our back." Why not "government which works not over us but with us; not riding our backs but standing by our side"?

In a classical treatise, Demetrius posited a desideratum of style, "Length dissolves vehemence." Or, to convey emotion and depth of feeling, use more terse forms, such as asyndeton (omitting conjunctions as in "I came; I saw; I conquered"). Mr. Reagan asks, "Can we solve the problems confronting us? Well the answer is an unequivocal and emphatic yes." Actually, the emphatic and unequivocal answer would have been the most terse statement possible: standing alone, the simple "Yes." But Mr. Reagan is fond of adding words, particularly an introductory and stylistically inept "well" to his sentences: "Well, our concern must be for a special interest group . . ."; or "Well, this administration's objective will be a healthy . . . economy . . ."; or "Well I believe we the Americans of today are ready to act . . ." From the standpoint of delivery, interjecting "well" provides Mr. Reagan with verbal filler to accompany his oft rehearsed nod of the head with clenched teeth and pursed lips—typically to stage right. Stylistically, though, a colloquial "well" reduces what might have been lofty, elevated expression to friendly advice offered in a "B" motion picture. The same is true for contractions in "it's not my intention," "we're in a time . . . they just don't know," "they're on both sides," or "I've just taken."

From an academician, a consideration of presidential style ought at least raise this question: can discourse be eloquent when it does not rely on complete sentences? Mr. Reagan's Inaugural Address too often embodies clusters of words between two periods but without predicates, passing off as sentences "This breed called Americans," "A man of humility who came to greatness reluctantly," "Off to one side, the stately memorial to Thomas Jefferson," or "And then beyond the Reflecting Pool, the dignified columns of the Lincoln Memorial." Perhaps a question about formal grammar is too
academic, however, when analyzing pragmatic functions of style in discourse. So this final consideration is in order.

Americans often learn catchphrases which epitomize a presidency. Yes, Lyndon Johnson’s “Great Society” deteriorated to a “Credibility Gap,” but Franklin Roosevelt’s metaphor of a “New Deal” likely holds a record for longevity as presidential style in usage. And John Kennedy’s metaphorical “New Frontier” caught the imagination of a generation of erstwhile westerners who, before becoming urban cowboys, would emulate their pioneer forebears and “meet any hardships . . . . explore the stars, conquer the deserts” and engage in other atavistically appealing social endeavors, albeit wielding textbooks and stethoscopes in lieu of axes and muskets. But poor Mr. Reagan. If the quotation marks are an index of intentions, he had hopes for a “new beginning.” We were not impressed, for nothing unique was expressed. Any beginning has some newness. Put simply, tautology does not conduce to catchphrases. And as America ended 1983, no stylized statement epitomized favorably what President Reagan has done or will do. (Obviously, I exclude the controversial word “Reagonomics.”)

By the time Mr. Reagan was ready to announce formally his bid for reelection, these preferences for presidential style in discourse were established firmly. Consider his State of the Union Address of 25 January 1984, virtually three years to the day after his inauguration. In both its televised delivery and the official published text, the speech admittedly evinces strong likelihood that portions were extemporized—or that the President’s customary efficacy in handling a script did not manifest itself fully. But stylistic tendencies characteristic of 1981 persist.

The President still retained hopes for a tautological catchphrase, “Americans were ready to make a new beginning, and together we have done it” (although he has not gained as much advantage out of “new” as Gary Hart did during the primaries). The address also relied extensively on the repeated contractions, “we’re,” “it’s,” and “we’ll,” which reduce elevated expression to colloquial conversation. Hints of a developing sense of style appear, however, with an auxesis about “the heritage of one person, party, or even generation” or these anaphoras: “We have no territorial ambitions. We occupy no countries. We build no walls to lock people in” or “We can insure steady economic growth. We can develop America’s next frontier. We can strengthen our traditional values.” Nevertheless, eloquence does not evolve from the continued conversational fillers, “Well, I think . . . .” or “Now, I believe there is . . . .”—despite any visual impact of an accompanying facial pose to stage right. Nor can rhetorical advantage likely accrue from impotent words in lieu of their connotative counterparts: “Nowhere is this more important” rather than “sparkling economy” or “It demands international attention” rather than “state-sponsored terrorism.” And Mr. Reagan continues to ignore paramessage possibilities in brevitas. “Sooth our

---

3 See the transcript published in Weekly Compilation of Presidential Documents, 20 (30 January 1984), 87–94.
4 President Reagan also evinced his affection for these words in his announcement of a bid for reelection: “We have made a new beginning.” See WCPD, 20 (6 February 1984), 114–115.
sorrow, heal our wounds, calm our fears, and share our joy” could be articulated with *asyneton*; and any erstwhile critic of style might ruminate profitably about other options for this line: “We are first; we are best; and we are so because we’re free.”

The absence of a mature sense of style is most evident, however, in Mr. Reagan’s continued abuse of antitheses. These still emphasize the negative by position: “You inspire us as a force for freedom, not for despotism; and, yes, for peace, not conquest.” Similarly, “The future is best decided by ballots, not bullets” would accentuate the positive more effectively as “The future is decided best not by bullets but ballots” (in this context consider as well other possibilities for Mr. Reagan’s “so personal tax rates could come down, not go up” or “protecting victims is just as important as safeguarding the rights of defendants”). Of course the ultimate in effectiveness for antitheses is the quotable catchphrase. To epitomize that “spirit of enterprise” which presumably characterizes his administration, the President makes an antithesis about “small businesspeople with big ideas”—and buries it in a sentence of 56 words in length. Who could quote it? So for all his strengths in delivering a line (actio), Ronald Reagan is deficient in deciding upon its style (*elocutio*).

In conclusion, I offer an observation about presidential speechwriters. Any suasive impact of Mr. Reagan’s style—or lack thereof—is as that language is heard, read, and repeated in the mass media—regardless of whose pen it flowed from originally. As President of the United States, Mr. Reagan has sufficient “star” quality to exercise “artistic approval” for any “script” from which he delivers lines. Assume my prediction is accurate, that he will be deemed our less-than-great communicator after all because of deficiencies in style. The imperative to stylize was his to fulfill as he chose.
On the evening of December 22, 1886, the New England Society of New York held its eighty-first annual dinner at Delmonico's, one of New York City's finest restaurants. That this was no ordinary occasion is testified to by the front page coverage given the event the following morning by three of the city's leading newspapers, the New York Tribune, the New York Times, and the New York World. All three went into great detail describing the facilities, the audience, and the events of the evening.

The Times describing the large attendance, said: "They turned out in large numbers and filled Delmonico's big dining room until it was absolutely uncomfortable."1

Robert Oliver describes the New England Society of New York as "ultra-conservative" and the audience that evening as being composed of "three hundred top-flight financiers and business leaders."2

This December 22 meeting was and is unique. For the first time in its eighty-one years, the society had invited a Southerner, Henry W. Grady, thirty-six year old editor of the Atlanta Constitution, to be its principal speaker. The title of his speech, "The New South."3

That Henry W. Grady gave a noteworthy speech at Delmonico's that evening has long been testified to by rhetorical scholars.4 But what long has been ignored by scholars is the fact that another excellent speaker spoke immediately preceding Grady. The tenor of his remarks and the audience's response to them could have only created a difficult speaking situation for a speaker from Atlanta, Georgia. The speaker was General William Tecumseh Sherman and says the New York World of the audience's response to his speech: "There was plenty of cheering when the General got through, which came to a climax when all the old and young New Englanders got up and lustily sang, 'Marching Through Georgia.'"5

This writer thinks it odd that though generations of American Public Address students have studied Grady's famous speech, none have analyzed Sherman as a speaker or the speech he delivered preceding Grady that
December evening in New York. This paper will attempt to remedy that oversight by assessing Sherman's speaking generally and his New England Society speech specifically.

General William Tecumseh Sherman was, from the capture of Vicksburg in 1863 until his death in 1891, one of this country's greatest heroes and most popular citizens. Sherman's continued popularity as a military hero following the Civil War led to numerous invitations to speak, many of which he accepted. His resultant popularity as a speaker grew to such an extent that by 1885 Sherman was receiving an average of one definite invitation a day as solicitations came from all over the North and West.\(^5\) Lloyd Lewis, in what is considered the definitive biography of Sherman, says, "Sherman, during the 1870's and 80's, was seen and heard by more people than any other American of his time."\(^6\)

Some idea of the popularity of Sherman as a person and as a speaker can be seen in the many newspaper reports on Sherman speeches. In report after report we find comments about the spontaneous and rousing reception of Sherman by the audience, before, during, and at the conclusion of his speeches. For instance, at the New England Society dinner, the Tribune, reporting on Sherman's speech, headed that section "General Sherman Heartily Received" and went on to report, "General Sherman was visibly affected by the enthusiastic greeting which saluted him when he rose to respond."

Nor were the cheers for Sherman only before he spoke. We have already described the response the audience gave Sherman when he concluded his little talk at the New England Society dinner. This response was the rule and not the exception, a conclusion arrived at from studying some thirty other Sherman speech presentations.

Not only did audiences respond to Sherman prior to and upon concluding his speeches, they responded to him frequently during the speech. Again, using the New England Society talk as a typical example, the New York Tribune has some twenty indications of (applause), (laughter), (laughter and applause) interspersed through the transcript of the speech. A situation typical of transcriptions of other Sherman speeches read by this writer.

Several things contributed to Sherman's long success as a public speaker and popular public figure. First, and foremost, was the high concept the American public had of this man. At a time when many former military leaders were lending their names to all sorts of ventures and seeking political offices of all degrees, Sherman was not. The public knew, for instance, that when several leaders at the 1884 Republican National Convention were trying to pressure Sherman to let his name be put into nomination, and his knowing that if it would be he would probably be nominated by acclamation, Sherman responded to these appeals with his famous telegram, "I will not accept if nominated, and will not serve if elected . . . ."\(^7\)

\(^6\) Lewis, pp. 631–632.
\(^7\) New York Tribune, December 23, 1886, p. 2.
Hart says of Sherman during the middle and late 1880's, "His untarnished Laurels had . . . given him a unique position in the affections of his countrymen, and the distinction of being the most revered and best beloved man of his time . . ."\(^9\)

Sherman's appearance probably added to the people's belief in and their great liking for this man. The *New York Times* presented the General this way: "... He stood as straight as an arrow . . . his personality is one that commands respect and reverence. The very wrinkles in his fine old face add to its power. In repose, his countenance is severe, with its crown of disheveled, thin and dead brown hair and its fringe of short, stubby, gray whiskers cut into imposing grimness. But when he smiles, the face lights up wonderfully and there comes a twinkle in his eyes that is delightfully inviting to confidence . . ."\(^10\)

As to the delivery of his speeches, Sherman was not the typical orator of his day. Writing his fiancee shortly before their marriage in 1850, he stated he was "not naturally fitted for public speaking" as then practiced, that he had, in fact, acquired "A contempt for the bombast and stuff that form the chief constituents of Modern Oratory."\(^11\) But just as he was to develop his own style of fighting a war which differed from that practiced by other warriors of his day, so he developed his own concept of a public speaker and practiced it with great success.

Very early Sherman seems to have decided that the purpose of speaking was to be understood by the audience. Just prior to the Civil War, Sherman was the first superintendent of the Louisiana Seminary of Learning and Military Academy (now Louisiana State University). Sherman had no patience with faculty members who seemed unwilling or unable to bring their lectures down to the plane of comprehension of their students. After listening to one of his professors talk to the student body "as he might have talked to the faculty and seniors of Harvard," Sherman said of the talk, "Every damned shot went clear over their heads."\(^12\) On the other hand, Sherman's students remembered his lectures as "clear, instructive, and often original presentations."\(^13\)

In the conclusion to Sherman's *Memoirs*, the editors had this comment on Sherman as a public speaker: "... he developed remarkable power as an after-dinner speaker, and when asked the secret of this success simply said, 'Never speak long, go straight to the point; talk, do not make a speech; never be sarcastic.'"\(^14\)

W. Fletcher Johnson, an early biographer of Sherman, says: "His speeches were always brisk, spicy, and enlivened by anecdotes and reminiscence."\(^15\)

Chauncey DePew, commenting on Sherman as a speaker, said: "I don't

---


\(^10\) *New York Times*, February 9, 1890, p. 5.

\(^11\) Hart, p. 16.

\(^12\) Hart, p. 53.

\(^13\) Hart, p. 53.

\(^14\) Sherman, p. 471.

believe that he ever made the slightest preparation, but absorbed, apparently while thinking and while carrying on a miscellaneous conversation with those about him, the spirit of the occasion . . . .”\(^{16}\)

As correct as DePew seems to have been about Sherman’s adapting to the spirit of the occasion, he was not correct about Sherman never preparing his speech prior to the occasion. Though many of his speeches were obviously impromptu, others were delivered extemporaneously after some prior thought, and there are several reports of his using a manuscript.

The *Indianapolis News* for June 3, 1886, reports: “He read from manuscript, prefacing it with a few extemporaneous remarks . . . .”\(^{17}\)

According to the *Indianapolis Journal*, reporting on the same address, Sherman, in his opening remarks to the audience, said: “I would infinitely prefer to speak to you fresh from my heart, but I am so apt to repeat the same old story as I am called upon so often, that in my office I sit down that which seem to me are appropriate.”\(^{18}\) Similar comments were found in several other Sherman speeches.

Obviously though Sherman preferred to speak from the heart, he did frequently give prior thought to the speech, even to the extent of preparing manuscripts.

As to the delivery of these speeches, while there are numerous reports of Sherman speeches, there are very few clues given as to the quality of Sherman’s speaking voice or his use of gestures. We find that in a Louisville, Kentucky, speech “his voice was low but carried far.”\(^{19}\) At West Point, “The remarks of the old warrior were few, but every word he uttered was eagerly caught by his hearers.”\(^{20}\) We are told that he expressed his words with “directness and vigor.”\(^{21}\)

As to his platform gestures, they “were those of the conversationalist—not graceful and polished but quick, ungraceful, even odd at times.”\(^{22}\) At other times the gestures were noticeable by their absence: “General Sherman then rose, thrust his hands deep into his pockets, and made a speech to the boys which was interrupted at almost every sentence with demonstrations of applause.”\(^{23}\)

Sherman’s delivery was obviously well adapted to capture for Sherman, the speaker, the respect and admiration the audience had for Sherman, the man and hero. There are just too many instances reported of the response he would receive from his audience to believe otherwise.

Having familiarized ourselves with the occasion, the audience, and the speaker, let us now examine Sherman’s speech at the eighty-first annual dinner of the New England Society of New York.

There are variations in the four texts of the speech available to the writer,
but none so serious as to create any major questions as to the overall gist and effect of the speech. For instance, that this particular speech was definitely not delivered from manuscript is substantiated in all four texts, though three differ as to exactly what the speaker did say in this regard.

The New York Times has him saying: "I hope that the words I am about to utter may be received in a kindly spirit, be they what they may. The call was a sudden one. I have no reply to the toast prepared. I am a rover and will not be tied down to text or formula . . . ."24 The New York Tribune text has him saying, "... and I hope the words I now say will be received in the kindly spirit they are made in, be they what they may, for the call upon me is sudden and somewhat unexpected. I have no toast. I am a loafer. I can choose to say what I may—not tied by any text or formula."25 Interestingly, the text in Modern Eloquence has but two deviations from the Tribune text, one being, instead of "I am a loafer," it says, as does the Times, "I am a rover."26 However, the prior language, the words following, and the manner in which they are structured and punctuated are as those of the Tribune. We can conclude that the speech Sherman delivered that evening was not read from a manuscript.

The speech, being about 2,000 words in length, followed Sherman's frequently expressed prescript that speeches should be short. Taking into consideration that Sherman was noted as a quick thinker and rapid speaker, and even allowing for the numerous bursts of laughter and applause, the speech probably did not run over fifteen minutes.

This speech is typical of many of Sherman's speeches in that it has a definite opening section adapted to the audience and occasion that creates good will for the speaker. The body, consisting of about half the speech, is built around an entertaining little narrative drawn from the war, following which he concludes the speech on an inspirational note while again relating directly to the audience. As seemed frequently to be the case in a Sherman speech, the purpose of this talk was to create good will and entertain while at the same time appeal to the loyalty and pride of country of the audience.

Sherman opened his remarks with the formal salutation, "Mr. President and Gentlemen of the New England Society of New York," immediately complimented the preceding speaker, Reverend Dr. Talmidge, on having "drawn a glorious picture of war in language stronger than even I or my friend, General Schofield, could dare to use," then quickly established rapport with the audience and drew laughter and applause saying, "But looking over the Society tonight—so many young faces here, so many old and loved ones gone—I feel almost as one of your Forefathers." He commented on his two decades close relationship and warm feelings for the society, drew a few more laughs commenting on events of the previous evening with which many in the audience were familiar, stated, as we have already noted, that the toast to which he had been called upon to respond was unexpected and moved into the body of the speech with these words:

My friends, I have had many, many experiences, and it always seems to me easier to recur to some of them when I am on my feet, for they come back to me like the memory of a dream, pleasant to think of. And now, tonight, I know the Civil War is uppermost in your minds, although I would banish it as a thing of trade, something too common of my calling; yet I know it pleases the audience to refer to little incidents here and there of the great Civil War, in which I took a humble part. (Applause is here inserted in the transcripts).

Then followed a narrative of an incident during the war that took place on a plantation near Milledgeville, Georgia, between Sherman and the slave-holding plantation owner. Sherman was an excellent story-teller, the audience enjoyed the telling thoroughly, frequently laughing during the reciting of the incident. Sherman concluded the narrative to laughter and applause with these words: “And so I saw one reconstructed man in the good State of Georgia, before I left it.”

His talk then took on a sombre note as he justified the participation of the North in a terrible war it did not want, a war, he told his audience, forced upon “kindly men . . . who did not want to kill . . . by men influenced by a bad ambition; not by men who owned the slaves, but by politicians who used that as a pretext, and forced you and your fathers and me and others who sit near me to take up arms and settle the controversy once and forever.” Following cries of “good” and loud applause, General Sherman quickly concluded his presentation by once again relating to the audience and occasion and himself to them.

He began by saying: “Now, my friends of New England, we all know what your ancestors are recorded to have been; mine were of the same stock.” A few words followed about his Connecticut forebears, his New England inspired education prior to his entering West Point and then these concluding words, language that ended the speech on a high note of emotional appeal: “. . . I hope that you, sons of New England, will ever stand by your country and its flag, glory in the achievements of your ancestors, and forever—and to a day beyond forever, if necessary, giving you time to make the journey to your last resting place—honor your blood, honor your forefathers, honor yourselves, and treasure the memories of those who have gone before you.”

The response to this speech was prolonged applause, the orchestra in the balcony spontaneously struck up “Marching Through Georgia,” and the audience came to its feet and enthusiastically joined in singing this emotionally charged tune.

General Sherman must have enjoyed delivering speeches, he gave so many “his friends accused him of keeping a carpetbag packed so he could leave at an instant’s notice upon invitation to address an audience.”27 It seems obvious also that what he said in those speeches and how he said it was well adapted to and heartily approved of by his audiences. A fact that would be testified to by Henry W. Grady of Atlanta, Georgia, who arose to speak at that historic eighty-first annual dinner of the New England Society of New York with “Marching Through Georgia” still ringing in his ears.

THE COURTS OF REASON AND LAW: 
A COMPARATIVE MODEL

Dean Fadely

Publications within the fields of law and speech communication are replete with information, advice, and opinions extolling the virtues of speech communication courses in general, and experience in the area of argumentation and debate in specific, as excellent training for the potential attorney. While I believe that most of this material is fundamentally sound, it is obvious that many students who attend law school are dissatisfied with their learning experiences. This is frequently true of one particular group of individuals—intercollegiate debaters. Upon their arrival at law school they often find that the debating done there (moot court activities, mock trial work, trial advocacy courses, etc.) bears little resemblance, beyond some superficial similarities of form, to the debating which they did at the undergraduate level. To some, this finding comes as a relief. To others, who attend law school because they like the challenge, clash, and competition of intercollegiate debate, and see law school as its logical continuation, it is a disappointment.

There are vast and fundamental differences between the processes which take place in the court of reason and the process which takes place in the

Dean Fadely is Associate Professor of Speech and chairperson of the pre-law program at the University of North Carolina at Greensboro.


2 American intercollegiate academic debates are structured very similarly to legal debates. There are two sides, the affirmative, whose basic duty is to uphold or affirm the resolution being debated, and the negative, whose basic duty is to deny or negate the resolution being debated. Thus, at the outset of an academic debate, the burden of proof normally rests with the affirmative; presumption normally rests with the negative. In order to fulfill its burden of proof, the affirmative team has to overturn presumption through the presentation of a prima facie case. The similarities between this structure and both civil and criminal litigation are obvious. Somewhat less obvious, especially to the layperson, are the similarities between academic debate and administrative law. Here too, however, the structure is highly analogous. For example, in discussing the case of Hall v. Harris Stan Allen writes: “A claimant for social security disability insurance benefits bears the burden of proving a disability. Once the claimant makes a prima facie showing of a physical impairment which effectively precludes him from returning to his past work, the burden of going forward shifts to the Secretary of Health and Human Services. From: Stan Allen, “Bench to Bar,” Campbell Law Observer (October 30, 1981), p. 12. For a more complete discussion of administrative law the reader is referred to: Bernard Schwartz, Administrative Law (Boston: Little, Brown and Company, 1976). For a general discussion of the comparison between academic debate and legal debate see: Patrick O. Marsh, “Is Debate Merely a Game for Conservative Players?” Speaker and Gavel, I (January, 1964), 46-53.
court of law, and it is toward a consideration of these major differences that this essay is addressed. To better reveal these differences the following model can be postulated:

**THE COURT OF REASON**

<table>
<thead>
<tr>
<th>EVIDENTIAL INPUTS</th>
<th>CHANNELED</th>
<th>RECEIVERS</th>
<th>EVALUATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deliberative Judgments</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**THE COURT OF LAW**

<table>
<thead>
<tr>
<th>EVIDENTIAL INPUTS</th>
<th>CHANNELED</th>
<th>RECEIVERS</th>
<th>EVALUATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Forensic and/or Deliberative Judgments</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

While the labels for the components of each model are almost identical, the functions of the components are often quite disparate. In order to more easily understand these differences each component of the model will be examined separately beginning with the first, and perhaps most important, aspect of the process: evidence.

The intrinsic relationship of evidence to argumentation is axiomatic. It is indicated in that long standing dictum "he who asserts must prove" as well as in the literature. It is a virtual given that evidence and the theories which govern the evaluation of evidence are some of the most important aspects of argumentation and debate. For example, in that area of the court of reason known as academic debate, the participants are urged to gather evidence, to evaluate it, to organize it, to employ it, and, during the course of a debate, to argue about it. Normally, in an academic debate the participants present the evidence directly to the receivers (the judge(s)), the participants argue about the evidence through evidential attacks, and ultimate-

---


4 Ibid.
ly the judge(s) render a decision (hopefully in accordance with the evidential inputs). The procedure is different in the court of law. In both the courts of reason and law, evidential inputs normally begin the decision-making process. However, the types of evidence employed vary: the court of reason relies, in the main, on authoritative testimony, the court of law—direct evidence.

In the court of reason, we normally know what we know through authoritative testimony. When our automobile does not run well we take it to a mechanic. When the mechanic, after examination, says: "It looks to me like a blown head gasket and if it is, it'll cost you around $175.00 or so for me to fix it," few of us have the necessary expertise to verify or challenge his conclusion. Instead, most of us pretend that we understand him and that we know what he is talking about. As lay persons, we have essentially two choices: believe him and let him fix the car or disbelieve him and try to take the car elsewhere. Few of us have the time, money, or inclination to become mechanics in order to repair the vehicle ourselves. Similarly, when we are sick we consult a physician. We can either believe what our doctor tells us or see another doctor. Few of us are going to attend medical school in order to acquire the expertise needed to verify or challenge our physician's conclusions. Very few intercollegiate debaters know the throw weight of an MX, Minuteman, or Titan missile through first-hand experience or direct evidence. Yet, during the 1980-81 academic year many, if not most, intercollegiate debaters were well aware of that data. They knew what they knew because someone told them—not because they crawled through missile silos counting and weighing warheads, calculating thrust capacity, and figuring throw weight. In short, they knew what they knew because of "authoritative" testimony. This is the way of the court of reason. We know most of what we know, not through first-hand experience or direct evidence, but because someone has told us.

In contrast, the court of law relies heavily, if not primarily, on direct evidence. To wit: the prosecutor brings in a gun and a body. The prosecutor supplies evidence, registrations and the like, to prove that this is Ralph's gun. The prosecutor supplies evidence which establishes that Ralph's fingerprints, and only Ralph's fingerprints, are on the gun. The prosecutor supplies evidence which proves that Ralph's gun was the weapon used to kill Sam. The prosecutor supplies evidence which proves that the body is (a) dead and (b) Sam's. At this juncture, the state is well along the way toward establishing a prima facie case that Ralph killed Sam. The lynch pins in this case are direct evidence.

Not only is direct evidence emphasized in the court of law, but much of the "authoritative" testimony used in the court of reason would not be admitted into the court of law. It would be rendered inadmissible—excluded as hearsay. Depending on the facts of the case, for instance, you cannot

---

5 The National Debate Resolution for that year was, "Resolved: That the United States should significantly increase its foreign policy commitments.

tell the court that your automobile has a blown head gasket (objection—
conclusion), or that your mechanic told you that your car’s engine has a
blown head gasket (objection—hearsay). Under the proper circumstances,
the mechanic could be brought into court, sworn in, and asked if he told
you that the engine has a blown head gasket. However, depending once
again on the fact situation, his statement would not necessarily be allowed
to evidence the point that the car’s engine has a blown head gasket—only
that he told you that it did. Evidential inputs, then, in the court of law are
very different from those in the court of reason.

Compounding these differences are the channels through which the evi-
dence is directed toward its receivers. In the court of reason, the evidence
may be presented directly to the receivers or it may be mediated. Thus the
channels are either unmediated (direct) or mediated. Much of the evidence
we receive in the court of reason is, at least largely, unmediated. Our com-
communications with our lawyers, doctors, and automobile mechanics as well
as with our butchers, teachers, bankers, pharmacists, and others of a similar
nature are reasonably direct. Thus, the evidence which we receive from
them in form of “authoritative” testimony is unmediated. Not so in the
court of law. Here all of the evidence is mediated—mediated by the court
and through the court under the auspices of the court, i.e., the judge(s).7
No evidence is admissible into the court of law unless and until the judge(s)
allow it to be admitted. Judge(s) can and do exclude evidence for a variety
of reasons.8 Whereas in the court of reason the receivers are reasonably
open to virtually all forms of evidential input, indeed the receivers are free
to seek out evidence on their own, in the court of law the receivers are
dependent upon the judge(s) for the evidence which they will receive.
Furthermore, not only can judge(s) exclude evidence, they can, by such
procedures as the taking of judicial notice,9 include evidence and/or give
greater probity to evidence which they may chose to admit. The judge(s) in
the court of law then function as gate keepers, systematically admitting and
excluding evidence from the consideration of the receivers.

Channel differences account for the major epistemological disparities in
evidential theory in the courts of reason and law. In the court of reason,
receivers are exposed to vast inputs of information. As consumers of rhet-

7 For example, see: Michael W. Patrick, “Toward a Codification of the Law of Evi-
8 For example, see: 1981 Edition Federal Rules Criminal Procedure Evidence Appellee
Procedure (St. Paul, Minn.: West Publishing Company, 1981), p. 169. (Hereinafter re-
ferred to as Federal Rules). It states in part: “Although relevant, evidence may be
excluded if its probative value is substantially outweighed by the danger of unfair
prejudice, confusion of the issues, or misleading the jury, or by considerations of
undue delay, waste of time, or needless presentation of cumulative evidence.” It is
up to the judge(s) to do the excluding and to make the value judgments pertaining
thereunto.
9 For example, see: Federal Rules, pp. 161–162. Melinda Beck, “Footnote to the
Holocaust,” Newsweek (October 19, 1981), 73.
oric, they are frequently bombarded by evidence. The major factors which limit their evidential inputs can be viewed as being psychological in nature, for example, selective attention, selective perception, selective retention, and selective evaluation. Thus, in the court of reason, almost all evidence is admissible, therefore, the receiver must be capable of evaluating it. Unlike receivers in the court of law, receivers in the court of reason do not have the judge(s) to guide them. In the court of law, the judge(s) govern the admission of evidence, in the court of reason, it is the receivers who do so. Thus, evidential theory in the court of law involves, in the main, issues of admissibility, whereas evidential theory in the court of reason calls on the receivers to evaluate the evidence themselves and is not therefore fundamentally concerned with admissibility (as basically all evidence can, theoretically at least, be admitted into the court of reason) but rather with the ability and willingness of the evidence to tell the truth, thereby mooting the issue of admissibility.

Receivers in the courts of reason and law serve essentially similar functions. Their role is to process and evaluate the evidence with a view toward decision making judgments. Receivers in both arenas are thus engaged in what could be loosely termed hypothesis formulation, testing, adoption, or rejection. The differences are in how the receivers came to be in the

---

10 The catalogs of law schools are especially revealing regarding this point. For example, in describing the course in legal evidence, the Bulletin of the Wake Forest University School of Law 1981–1982 states: “The rules and standards by which the admission of proof at trial is regulated” (p. 35). Similarly, the University of San Diego School of Law 1981–1983 Bulletin reads: “This course is concerned with the rules which limit the facts, opinions, and things that may be used in proof, and also, with the rules which govern how they may be evidenced” (p. 40). The University of Notre Dame Law School Bulletin of Information 1982–1983 states that the evidence course: “Studies the legal principles governing the admissibility of controversial facts in judicial proceedings . . .” (p. 18). The 1981–82 Catalog of Vermont Law School informs the reader that: “The course will consider the rules governing the admissibility of testimonial, physical, documentary, and demonstrative evidence in trials and other formal legal proceedings” (p. 29). The Western New England College School of Law Bulletin 1982–1983 describes the legal evidence course as: “An introduction to the basic rules of the exclusionary system of evidence which govern the proof of disputed propositions of fact in criminal and civil trials” (p. 60).

11 For a case study which applies the historiographical criteria of the ability and willingness of a witness to tell the truth to some of the major sources of evidence used in the court of reason see: Robert P. Newman, “The Weekly Fiction Magazines,” The Central States Speech Journal XVII (May, 1966), 118–124.


14 For an analysis of the process of hypothesis treatment as it applies to academic debate specifically see: Lee, Harris, and Dudczak, pp. 251–271.
courts and the degree of rigor involved in the evidential evaluation and decision making present in each court.

Receivers come into the court of reason on a self-selecting or ad hoc basis. Some, such as the intercollegiate debater, are there because they decide to be. Some, such as the professional policy analyst/decision maker, know where they are and what is expected of them. Others, such as Sam and Samantha Spacecadet, may only occasionally enter the court of reason and, upon arrival, have little knowledge of where they are or what their role is.

In contrast, receivers enter the court of law because they are summoned. Few individuals like to wile away the hours watching courtroom proceedings. Indeed, many of those called for jury duty try to get excused—some successfully. Those who remain, however, are there because they were called, not because they volunteered. Whereas almost anyone can enter and participate in the court of reason, only those called and selected can enter and participate in the court of law. The selection process excuses many of the jurors who are called. Officers of the court will dismiss, either for cause or preemption, jurors whom they think will render an unfavorable judgment. Thus, unlike the receivers in the court of reason who are self-selected or are selected on an ad hoc basis, the receivers in the court of law are examined, evaluated, and theoretically, at least, carefully selected.¹⁵

Just as the selection process which determines the receivers of each court varies, so to does the mental rigor with which each group of receivers is expected to perform.

In the court of reason, performance expectations vary as to the situations and circumstances. Normally, for example, more ability should be expected of a varsity debater on the first circuit than a novice debater on the third. Greater mental wherewithal regarding the on-going Middle East crisis should be expected from a policy analyst/decision maker employed by the Rand Corporation than from an instructor in political science 101 at somewhere community college. More sophisticated consumer decision making should be expected of the researcher employed by Consumer’s Union than by Harry and Harriet Homemaker. Not withstanding this variance, however, receivers in the court of reason are all engaged in essentially the same task: evidential evaluations involving hypothesis formulation, testing, adoption, or rejection, i.e., decision making. The differences among receivers in the court of reason lie not in their tasks but in the ability and willingness with which they perform their tasks.

In the court of law, performance expectations of receivers are high and, unlike the court of reason, continued on-going efforts are made in order that these high standards of expectations can be met. The receivers are

¹⁵ One particular aspect of the court of reason merits the special attention of a footnote—the judge(s) at debate tournaments. Tournament practices vary, at some the judge(s) are assigned on a random basis, at others the judge(s) are carefully screened. In some instances judging selection falls into the middle of the above continuum. For additional information see: Peggy H. Gibson and L. Dean Fadely, “Debate Judging: A Perspective,” Debate Issues 11 (December, 1976), 5–7. John T. Morello, “Intercollegiate Debate: Proposals for a Struggling Activity,” Speaker and Gavel 17 (Winter, 1980), 103–107.
carefully selected, a situation which is not always possible in the court of reason. Throughout the trial, the receivers are instructed by the judge, thereby supplying them with a known reference frame into which the evidence they are receiving can be fitted. Before the jury retires to deliberate, they receive additional instructions from the judge designed to focus the evidence and clarify the issues which have been presented. During their deliberations, the jury can ask the judge for further instructions or clarifications. Only after, and in light of, all of the above procedures does the jury make its judgment and render its verdict. Furthermore, there are instances where the court of law holds that the matters under consideration are too weighty, too complicated, too complex, even for jurors assembled under the best of the foregoing circumstances. In such situations, the court of law can choose to utilize a bench trial—a situation which might best be described to the layperson as a sort of jury of judge(s).

The final difference to be considered lies in the nature of the judgment which the receivers of the courts of reason and law render. Typically, it is the role of receivers in the court of reason to evaluate the evidence and make a deliberative judgment. They must decide on the efficacy of a future course of action; they render a policy decision. In contrast, receivers in the court of law may be called upon to make either a deliberative or forensic judgment. In the latter, of course, the jurors decide the guilt or innocence of the accused, i.e., whether or not the defendant(s) committed a particular act or particular acts in the past. In the former, the court is frequently engaging in appellate advocacy and their decisions have the effect of producing policy; relatively recent examples include: Brown v. Board of Education,17 Mapp v. Ohio,18 Baker v. Carr,19 Gideon v. Wainwright,20 Escobedo v. Illinois,21 Katzenbach v. McClung,22 Griswold v. Connecticut,23 Miranda v. Arizona,24 New York Times Co. v. U.S.,25 Roe v. Wade,26 Doe v. Bolton,27 and U.S. v. Nixon.28 The policy decisions thus produced can have effects equal to, or greater than, the policy decisions promulgated by the court of reason.29

For an analysis of a criminal trial in which the jurors were called upon to render both deliberative and forensic judgments, see: Vivian I. Dicks, "Courtroom Rhetorical Strategies: Forensic and Deliberative Perspectives," The Quarterly Journal of Speech 67 (May, 1981), 178–192. The article examines the Angela Davis trial in which Ms. Davis was charged with kidnapping, murder, and conspiracy.30

23 381 U.S. 479 (1965).
This essay has sought to identify some of the major differences in the processes which occur within the courts of reason and law with a view toward explaining these differences. While this essay has not sought to argue the overall superiority of one arena over the other, I would agree with the observations of sociologist and philosopher C. Wright Mills:

... when there are values so firmly and consistently held by genuinely conflicting interests that the conflict can not be resolved by logical analysis and factual investigation, then the role of reason in that human affair seems at an end .... In the end, if the end comes, we just have to beat those who disagree with us over the head; let us hope that the end comes seldom. In the meantime, being as reasonable as we are able to be, we ought all to argue.30

When arguing ceases and beating begins, the court of reason gives way to the court of law, a court which, in our litigious society, frequently becomes the ultimate arbiter. Those who wish to successfully make the transfer from the court of reason to the court of law, especially those with a background in the field of intercollegiate debate competition, need to recognize the fundamental differences between the processes which occur in both arenas.

DEBATE AMONG THE CROPPERS

Keith H. Griffin

The Southern Tenant Farmers' Union was perhaps the first group ever to unite blacks and whites to fight for their common interests. By 1937, the STFU boasted of over 30,000 members in 328 locals across seven states. This figure may be deceptively low because many croppers "could not afford to pay the due of ten cents a month."1

Unlike cash tenants who essentially remain independent of the landlord, renting only the land for a fixed payment, and share tenants who provide their own seed and equipment for two-third's to three-fourth's the cash value of the crop, sharecroppers supply only their labor and receive one-half the crop. The landlord keeps all the records and handles all sales. The cropper only makes what is left of his share of the profits after deductions for all items advanced by the landlord. During the Depression, croppers were forced to live in squalid conditions. Delapidated shacks, unsanitary water supplies, improper diet, poor clothing, sporadic medical care and educational opportunities, and "can to can't" working hours combined to create living conditions which "would make an eskimo rejoice he did not live in cotton growing country."2

The STFU championed a program which today appears mild. They sought access to woodlands to secure fuel, land for gardens, free schools with books and hot lunches, decent contracts, higher wages, better hours, the right to sell their cotton at market prices to whomever they chose, and an end to evictions. While some small landowners acceded to the demands, the STFU accomplished little. The Union was eventually overwhelmed by a combination of obstacles: croppers found it difficult to attend meetings, landowner-backed violence, the indifference of the Roosevelt administration, a weak financial base, and, ultimately, the mechanization of cotton farming. The fact that poor uneducated people overcame a century-old legacy of racism to challenge the planters represents a unique triumph in public debate. The purpose of this monograph is to examine the rhetorical strategies of identification utilized by STFU organizers to unite black and white croppers.

A Rhetoric of Identification

The STFU was the brainchild of H. L. Mitchell and Clay East of Tyronza, Arkansas. Mitchell, a former tenant farmer, and East sought a way by which the croppers could protect themselves. As Mitchell recalls, "We had no intention of establishing an interracial union. None of us had ever belonged

------------------------------------------

Keith H. Griffin is Associate Professor of Speech Communication at Win- 

gate College.

1 Arkansas Gazette (Little Rock), April 15, 1982.


Published by Cornerstone: A Collection of Scholarly and Creative Works for Minnesota State University, Mankato, 1983
to a union, and we didn't know anything about it. All we wanted to do was ... help the sharecroppers." Mitchell and East soon realized an integrated union was essential and that the odds against this occurring were formidable.

Howard Kester notes that after the Civil War "sharecropping as a system of producing cotton (was) as fundamental to the southern economy as banks and currency. Following the Civil War, the southern aristocracy turned to sharecropping as a means for continuing its existence." Considerable effort was exerted to keep the former slaves in their place—the fields. W. J. Cash wrote of the "vastly ego-warming and ego-expanding distinction, even the most common white man, by nature of his race, enjoyed in comparison with Negro." However, the post-bellum economy and subsequent depressions of the late nineteenth and early twentieth century forced many white families from land ownership into farm tenancy. The long-standing antag-onism of whites and blacks was intensified by their competition for jobs. When whites laid off from the factories returned to the country, landowners tended to replace Negro tenants with them. By 1935, nearly two-thirds of all farm tenants were white, and in North Carolina "between 8,000 and 12,000 families ... had been displaced and had no crops at all."6

The initial success of the STFU was due primarily to the commitment of influential men who, motivated by a sense of justice, initiated their work in an arena where white and black croppers knew each other well. On the night of July 11, 1934, twenty-seven croppers, almost evenly divided among whites and blacks, gathered at the Sunnyside School on the Norcross plantation near Tyronza. Some of the whites were former Klan members. Some of the blacks were former members of a Negro union wiped out at the Elaine, Arkansas massacre in 1919. An old Negro, a survivor of that massacre, addressed the question of whether one union could serve the interests of both white and black croppers:

> We colored people can't organize without you, and you white folks can't organize without us. Aren't we all brothers and ain't God the Father of us all? We live under the same sun, eat the same food, wear the same kind of clothing, work on the same land, raise the same crop for the same landlord who oppresses and cheats us both. For a long time now the white folks and the colored folk have been fighting each other and both of us has been getting whipped all the time. We don't have nothing against one another, but we got plenty against the landlord. The same chain that holds my people holds your people too. If we're chained together on the outside, we ought to stay chained together in the union. It won't do no good for us to divide because there's where the trouble has been all the time. The landlord is always betwixt us, beatin' us and starvin' us and making us fight each other. There ain't but one way, that's for us to get together and stay together.

Those present chose to lay aside their racial animosities and work together. Alvin Nunnally, a white cropper, was elected chairman, C. H. Smith, a black

---

3 The Commercial Appeal (Memphis), March 3, 1982.
6 Johnson et al., The Collapse of Cotton Tenancy, p. 63.
7 Kester, Revolt Among the Sharecroppers, p. 56.
preacher, was elected vice-chairman, and another black preacher was elected chaplin.

Building upon this initial “common-ground” appeal, STFU organizers subsequently developed and employed four additional identification strategies.

Religion

The only institution with which sharecroppers were familiar was the country church. Hence, STFU enlisted the aid of the clergy and meetings were patterned after church services. Members sang “We Shall Not Be Moved” and recited the Lord’s Prayer before Union business was discussed.

Identification of the planter with Pharoah was traditional with southern black men; Scripture could be used to support organizing speeches as well as sermons; and churches were commonly the only buildings available for meetings of any kind. Even Norman Thomas, when he came to the Delta, fell into the shout-and-respond pattern of rural southern preaching: ‘The only approach is for the workers to organize (ORGANIZE the congregation repeats without breaking the rhythm) and stick together (STICK TOGETHER/ YES SIR/ HALLELUJAH). Stick together the white man and the black man (PRAISE GOD) and seek justice in our union (UNION/ YOU’RE RIGHT, BROTHER THOMAS/ AMEN).’

Through the appealing values of fundamentalist religion and the familiar conventions of the church meeting, the STFU found an effective vehicle to reach the tenant farmers.

Music and Poetry

Enthusiastic singing helped strengthen identification with the Union. Favorite hymns like “Give Me That Old Time Religion” became “It’s a Wonderful Union,” and “Jesus Is My Captain,” a camp meeting favorite, became the folk classic “We Shall Not Be Moved.”

\[
\text{The Union is a Marching} \\
\text{We shall not be moved.} \\
\text{The Union is a Marching} \\
\text{We shall not be moved.} \\
\text{Just like a tree that’s planted by the water,} \\
\text{We shall not be moved.}
\]

John Handcox, the black sharecropper troubadour, wrote “We’re Gonna Roll the Union On” and “Raggedy, Raggedy Are We”;

\[
\text{The poor man raise all the rich man can eat} \\
\text{And then gets trampled down under the rich man’s feet.} \\
\text{Raggedy, raggedy are we} \\
\text{Just as raggedy as raggedy can be,} \\
\text{We don’t get nothin’ from our labor} \\
\text{So raggedy, raggedy are we.}\]

The STFU also dramatized the conflict between the croppers and the

* The Commercial Appeal (Memphis), April 17, 1982.
landlord in poetry. In "The Death of the Union Man," Sterling Brown tells
of an unidentified tenant farmer who, beaten by his landlord, the sheriff
"and some well-armed riffraff," refuses to divulge information about the
local Union. With his dying words, he gives up one secret:

We gonna clean out this brushwood round here soon,
Plant the White Oak and the Black Oak side by side.10

The Two-Local System

In creating a movement where race was unimportant, the STFU devel-
oped the two-local system. In communities too large for whites and blacks
to know each other well, STFU leaders decided to organize segregated
locals. "As membership increased in these locals and the tenants realized
they were engaged in the same fight, it became increasingly difficult for
members of one race to refuse invitations to attend the other's meetings."11

White Commitment

White organizers who literally risked their lives for the STFU became
powerful symbols with which both races could identify. William Thomas
Brown, son of a cropper and a student at Shaw University in Raleigh, started
the first and only STFU local in North Carolina. Brown learned of the Union
when Howard Kester, a Methodist minister and social activist, spoke at Shaw.
Brown recalls that

the secretary of the YMCA at North Carolina State University ... always
shared his speakers with Shaw ... and I heard Howard Kester speak and
that's when Howard told about the Union and what it was going through
out in Memphis and how he spoke one afternoon ... and how he had to
get out the window because the landlords were after him ... . Let me say
one thing about a white man like Howard. See, he's called a nigger-lover,
and he's worse off, they'll treat him worse than a black man. He was out
there organizing these blacks and whites, he was integrating in those days.
Man, that was a crime! ... And so he was speaking in a church somewhere,
and these landlords broke into the church and beat him up ... when I heard
Howard say this . . . . I got angry ... and I said I'm going to do something
about this . . . ."12

Local #200 had a short life, but Brown suggests that had a white organizer
like Mitchell or Kester become involved, the white tenants "probably would
have listened to them."13 H. L. Mitchell also is confident that had white and
black organizers worked together in North Carolina—"It was 800 or more
miles from Memphis to Raleigh and the STFU had no money to pay travel
expenses for such distances" in those days14—the Union could have met
better success.

11 Grubbs, Cry From Cotton, p. 67.
13 Interview, William Thomas Brown.
Conclusion

The achievement of the STFU was "to focus attention on the plight of the sharecropper." As Mitchell says, "We met violent opposition everywhere. We had access to newspapers, and radio, and made use of these and the few liberal people in Memphis and Little Rock." The STFU's reliance on agitational rhetoric was typical of a protest and reform movement. Reminiscent of populist Mary "Yellin" Lease of Kansas, The Sharecropper's Voice instructed Union members to "Raise plenty of Hell, and you will get somewhere."

The reality of an integrated union threw the planters into a frenzy of anger and fear. They responded with traditional appeals to white supremacy and a plethora of terrorist tactics. Armed hoodlums menaced STFU meetings, members were beaten, their families were threatened, evictions increased, and some men were killed. It is likely that a repeat of Elaine massacre was averted only because of the presence of white men in most locals. Unlike any prior institutions in the South, the STFU joined poor whites and blacks together through a common goal. The Union's success was due in large part to the ability of its spokesmen in developing a rhetoric of identification capable of winning the internal debate over the formation of an interracial organization. The significance of this debate was that the Southern Tenant Farmers Union existed at all.

17 Sharecropper's Voice, November 1, 1936, STFU Manuscript Collection, North Carolina State University.
DSR-TKA AS AN HONOR SOCIETY

James McBath

Honor societies have had a place in American higher education ever since Phi Beta Kappa was organized as a literary and debating society in 1776. This first undergraduate society was open to all qualified students since there were no fields of specialization. All colleges then in existence were for the purpose of training men for "the service of the church and state." A half century later, with the expansion of education into new fields, Phi Beta Kappa elected to remain with the liberal arts and sciences. Disciplinary or specialized honor societies then were formed as were learned societies in the parent disciplines. The 1880's saw establishment of Tau Beta Phi in engineering and Sigma Xi in scientific research. Most of our present honor societies were formed in the early years of the 20th century. Delta Sigma Rho (founded in 1906) and Tau Kappa Alpha (organized in 1908) were part of this new movement in higher education.

DSR-TKA is a long-time member of the Association of College Honor Societies. TKA was admitted in 1937; DSR became a member in 1955. ACHS is a coordinating and consulting agency for national and international honor societies. The association cooperatively develops standards and definitions, considers substantive and administrative practices, and distributes information interpreting the honor society movement. Formed in 1925 by leaders of six long-established honor societies, ACHS facilitates the common interests of honor societies in colleges and universities. Its growth at first was slow; only six additional societies were admitted during the 20 years following its founding. Some of these were approved only after extended debate. The period of greatest growth in ACHS came during the late 1940's and 1950's when prominent societies in specialized academic areas were encouraged to apply for admission. Membership in ACHS always has been as selective as is membership in an honor society itself. Only a half dozen societies have been admitted in the last decade. The organization now includes about 50 honor societies in its membership. Some groups, like Mortar Board and Phi Kappa Phi, represent all academic fields, while others, like Psi Chi (psychology), Kappa Tau Alpha (journalism), and Phi Sigma Alpha (political science) represent specific fields. All of them share a requirement that scholarship and academic achievement are prime conditions of membership. In this standard, the honor societies differ from the scores of recognition societies that do not have a requirement of academic accomplishment.

Membership in ACHS has several conspicuous benefits for student members and to DSR-TKA itself. First, affiliation with ACHS links forensics with the academic component of university life. It underscores the intellectual dimensions of forensics. Administrators and educational decision makers are familiar with the "honor society" concept and regard honor society status

James McBath is Professor of Communication Arts and Sciences at the University of Southern California.

as a stamp of substantive quality. Nearly all academic administrators belong to general or disciplinary honor societies; some of them are national honor society officers.

Second, honor society affiliation is professionally advantageous because it certifies the goals and character of one’s educational activity. Dossiers, vitae, biographical directories, employment documents, all record honor society membership. Employment interview forms for major corporations typically request this information. Since 1963 the U.S. Civil Service Commission has permitted honor society members to enter Federal service at the GS-7 level (instead of GS-5) with a correspondingly higher salary. Honor society membership is viewed widely as a validation of educational achievement.

It was noted earlier that ACHS also serves a consultative function. At the 1982 meeting in New Orleans, Maurice Moore of Alpha Epsilon Delta (pre-medicine) summarized the advice his society had gained from ACHS: membership records, insignia, convention planning, publications, member services, ideas for financial support, organization development, and the like. Honor societies share common problems and have developed a variety of strategies for coping with them. My report of March 15, 1982, to the DSR-TKA National Council reviewed a number of suggestions that emerged during the New Orleans meeting:

1. Societies should review their dues structures periodically. Dues of all ACHS members range from $5.00 to $30.50. About 75% of the societies have dues that are $15.00 or above. The most frequently reported induction fee was $20.00.

2. Societies should compare products and services of the jewelry manufacturers. Balfour was at the meeting as well as J. O. Pollack and Company and Burr, Patterson, and Auld Company. These three firms compete nationally for the business of ACHS members.

3. Some of the older societies augment their income through bequests and charitable gifts from alumni. Tau Beta Pi, for example, distributes a small brochure that describes tax-deductible gift opportunities.

4. Several societies use an award for chapter-of-the-year and/or sponsor-of-the-year to motivate chapters. Part of the reward is notification by the society national president to the institution’s president.

5. A number of societies make a practice of announcing election of officers and annual conferences in the Chronicle of Higher Education. CHE will print this information in its “Gazette” section.

6. Some societies encourage local chapters to send letters of congratulation to the parents and high school principals of initiates.

7. Societies are looking for ways to recognize sponsors. Some of them schedule a social event for chapter sponsors at the convention of their national professional association. One society distributes a pocket appointment book embossed with the sponsor’s name.

8. A number of societies have developed guidelines or criteria for “chapters in good standing.” They feel that the set of affirmative standards is more effective than a set of negatively stated requirements.

9. Some societies follow the practice of sending a letter to the institution’s president expressing appreciation for the honor society on the campus. They also thought their most effective “last resort” action on problem
chapters was a letter to the dean or academic vice-president with a copy to the sponsor.

10. Other societies periodically send a letter to the president of member institutions, with card enclosed, requesting confirmation of the name of the official sponsor on campus.

11. ACHS societies should be sure that their names appear in the printed commencement program and in bulletins of the institution.

The great national honor societies take vigorous interest in their ACHS affiliation and exploit its prestige on their campuses. They believe that university administrators know about (and belong to) honor societies and that to them ACHS membership symbolizes academic quality. Affiliation with ACHS does not guarantee endorsement by the academic community, but it does identify DSR-TKA with a distinguished scholarly company. It makes a clear statement about the purposes and standards of our society.
A FUNCTIONAL ANALYSIS OF JUDICIAL ARGUMENTATION: IMPLICATIONS TO ARGUMENTATION THEORY

J. M. Makau

In response to the reductionist concept of argumentative validity offered by contemporary western analytic philosophy, students of practical reasoning have developed significantly enriched theories of argumentation. These theories account for audience and take as given the view that argumentation can only be fully understood as part of a complete rhetorical context. Along these lines, one school of thought has come to view judicial reasoning as a useful replacement for the a-rhetorical, tautological model provided by mathematical logic. Stephen Toulmin and Chaim Perelman have highlighted the resulting "new rhetoric" theory of practical reasoning which holds that argumentation conforms to the judicial model of argument.

Toulmin and Perelman have gone a long way toward showing how judicial reasoning informs argumentation theory. For example, Perelman has explicated the general nature of juridical proof to show that legal interpretation is based on argumentation that must convince the judge and not on an impersonal and conclusive demonstration. Perelman has described the general nature of justification in legal settings and highlighted the important relationship between legal ontologies and legal reasoning. Yet perhaps the most practical expression of Perelman's study appears in the treatise he co-authored with Olbrechts-Tyteca. Here the authors provide detailed discussions of discursive techniques available to the rhetorical practitioner.

Unlike Perelman, Toulmin is not a trained legal advocate. Nonetheless, his study of legal reasoning has led him to develop a theory of argumentation which conforms to many of the general principles of judicial reasoning.

Ms. J. M. Makau is Assistant Professor of Communication at The Ohio State University.

1 In his seminal treatise on argumentation, Uses of Argument, for example, Stephen Toulmin urges that we "take as our model the discipline of jurisprudence." (Cambridge: Cambridge University Press, 1958), p. 7. Similarly, Chaim Perelman frequently refers to the special nature of judicial reasoning. These frequent references led E. Griffin-Collart to observe in the preface to a volume dedicated to Perelman's work that Perelman holds judicial reasoning as the best model for argumentation theory. See, the Preface to the Revue Internationale de Philosophie, La Nouvelle Rhetorique: Essais en Hommage a Chaim Perelman, p. 127-128 (1979), p. 3.


3 For example, in his public lecture at the University of California, Berkeley in 1979, Perelman discussed the topic, "Justification of Norms in the Law." This topic is also covered to some degree in his collection of essays, The New Rhetoric and the Humanities (Boston: D. Reidel and Co., 1979).


On Toulmin’s view, warrants replace major premises and argumentative links are probable, rather than certain. Like Perelman, Toulmin emphasizes the value of further detailed study of judicial reasoning as practiced. Indeed Toulmin joins Perelman in encouraging others to continue in this difficult task.6

This paper addresses one important aspect of this task. Specifically, it addresses the function judicial reasoning plays in the context of the highest judicial tribunal in the United States.7 This study illustrates how a functional analysis of judicial reasoning may inform theories of argument. In particular, this paper uses a functional analysis of judicial reasoning as practiced by Supreme Court Justices in their judicial opinions to show the following:

I. Supreme Court argumentation is best understood as serving a set of institutional functions not fully considered by the “new rhetorical” theory of practical reasoning developed by Perelman and Toulmin and;

II. The functional component of the “rhetoric-as-process” perspective may be usefully added to the “new rhetorical” theory to better accommodate the needs of Supreme Court critics;

III. Yet, other important components of the “rhetoric-as-process” perspective limits this perspective’s applicability in the Supreme Court context.

The Functions of Judicial Opinions

The expression “functional analysis” will be used in this paper to refer to evaluation in terms of a document’s institutional purposes. A study of the purposes played by judicial opinions reveals that in the context of the Supreme Court, five levels of “function” generate the essence of the judicial opinion’s institutional purposes:

A. Justices function within an institutional context;
B. This context generates its own norms;
C. The composite audience derives legitimate expectations from these norms;
D. Judicial argumentation is directed toward fulfillment of these expectations and;
E. Justices seek thereby to reinforce the Court’s image.8

6 Many others have joined in encouraging such work. William Benoit notes, for example, that “Our judicial system offers an important and unique laboratory for studying the functions of argument in society. The fact that its influence is both profound and pervasive provides ample justification for its significance as the object of scholarly inquiry.” William Lyon Benoit, “An Empirical Investigation of Argumentative Strategies Employed in Supreme Court Opinions,” in Dimensions of Argument: Proceedings of the Second Summer Conference on Argumentation. (Speech Communication Association and Amerian Forensics Association, 1981), 179.

7 Richard Rieke offers the following justification for focusing upon these judicial opinions: “Since most law schools orient their instruction around examination of cases, which means judicial opinions, this form of legal argument is influential on other legal forums. Many would say that here is the essence of legal argument and it is here that the search for a law field should be concentrated.” Richard D. Rieke, “Investigating Legal Argument as a Field,” in Dimensions, p. 153.

8 At first reading it may seem that this concept of “function” is synonymous with
The most obvious institutional purpose served by the judicial opinion is instructional in nature. First, judicial opinions provide vital administrative instructions. Unless Justices clarify their decisions through coherent opinions, legal administrators will be unable to enforce the Justices' decisions. Second, only clearly written judicial opinions can serve as useful warrants (in the form of precedents) for future rulings. Finally as Joseph Tussman observes, people find "in the tribunal context significant clues to conduct." Judicial opinions which detail the reasoning behind judicial decisions provide essential information to the citizenry regarding likely consequences of their behavior.9

A second well known purpose served by the judicial opinion is its protective role in relation to arbitrary or capricious rulings. Just as the Court serves as a bulwark against unreasonable executive and legislative behavior, the criticism of judicial opinions and the rigorous demands imposed upon the authors of judicial opinions provide important checks on judicial capriciousness.10 This second function plays a major role in the generation of norms and resulting expectations, as well as in the judicial effort to fulfill these audience expectations.11

Related to this second function of the judicial opinion is the need to legitimize governmental behavior. The carefully written judicial opinion serves to create the image that there are viable institutional checks against capricious governmental behavior. Montesquieu argued accordingly that "political liberty in relation to the subject . . . consists in security, or in the opinion people have of their security."12

Toulmin's notion of "field." However, Toulmin's notion of a field is less focused on the social-political-economic contextual considerations essential to the notion of institutional function central to this paper. Furthermore, as this study of the functions played by the judicial opinion illustrates, the notion of "function" used in this paper encompasses both field-variant and field-invariant features.

9 See Joseph Tussman, Obligation and the Body Politic (Oxford: University Press, 1974). Political theorist Montesquieu held, "The object of law in society is . . . uniformity of action, so that one member of society may know how, in certain circumstances, another is likely to behave, this being the essence of security." Spirit of the Laws, trans., Thomas Nugent (New York: Hafner Publishing Co., 1959), Bk. XII, Sect. 4.

10 Herbert Wechsler noted in his seminal piece on constitutional adjudication, for example, "ad hoc evaluation [of the Court's decisions] is, as it had always been, the deepest problem of our constitutionalism." "Toward Neutral Principles of Constitutional Law." Harvard Law Review, 73:1 (November, 1959), 17.


12 My italics. Spirit of the Laws, p. 183. Roscoe Pound used a citation from Lord Herschel's correspondence to Sir George Jessel to illustrate the historical basis of this important aspect of the legal system, "As important as it was that people should get justice, it was even more important that they should be made to feel and see that they were getting it." Roscoe Pound, "Mechanical Jurisprudence." 8 Columbia Law Review, 605 (1908), 606.
The first three functions served by the judicial opinion are widely accepted as constituting the foundation for the invention and evaluation of judicial argumentation. However, the Court's history reveals yet another function of the opinion; judicial opinions serve to maintain and improve the Court's authoritative image. This final function has often been overlooked in analyses of judicial opinions, yet, as the following discussion will demonstrate, the fourth function of the judicial opinion plays a significant role in shaping judicial rhetorical invention.\(^3\)

We may best determine the role the image-generating function of the judicial opinion plays in judicial rhetorical invention by enlisting the aid of history. The brief historical discussion to follow provides a glimpse of the complex rhetorical context in which Supreme Court opinions are written.

The Historic Roots of the Judicial Opinion

Before accepting the Court as part of their constitutional government, those who formed the government over two hundred years ago disputed the need for and questioned the prudence of creating a potentially powerful judicial tribunal. To placate opponents of the original Supreme Court, Alexander Hamilton wrote that because the Court would lack both purse and sword to enforce its rulings, the Court would be "... beyond comparison the weakest department of power."\(^4\)

The lack of noteworthiness characteristic of the Court's opening terms seemed to reenforce Hamilton's position. This early lack of importance was reflected, for example, by rejections of nominations to the Court. Indeed, not only did respected individuals refuse to sit on the Court, several, including Chief Justice John Jay and Justice John Rutledge left the Court to take more attractive positions in government. Furthermore, in 1801, Congress eliminated the Court's entire term.

The Court's reputation quickly changed, however, with the arrival of Chief Justice John Marshall. Indisputably a skilled rhetorician, Justice Marshall wrote eloquently of the Court's authority to overturn state and federal statutes on constitutional grounds. Marshall's majority opinion in Marbury v. Madison, 1803, held that the Court had proper jurisdiction over any legislation which the Court found "repugnant to the constitution." Marshall added that because the constitution is the "fundamental and paramount law of the nation," "an act of the legislature, repugnant to the constitution, is void."[^5]

[^3]: Kenneth Salter observes in his study of pre-trial advocacy in jury trials that such study requires an understanding of the "often complex cultural, social or religious context in which the jury trial will be employed by both the government and its antagonists to resolve important societal issues outside of the normal legislative and political channels." Similarly, criticism of the judicial opinion requires a comprehensive understanding about the complex cultural, social, and political context in which the judicial opinion will be employed by the Court's friends and antagonists. It is imperative, therefore, to fully understand the nature and scope of the fourth function served by the judicial opinion. Kenneth Salter, "The Functions of Legal Argumentation in Pre-Trial Advocacy," in Dimensions, p. 268.


[^5]: Kenneth Salter observes in his study of pre-trial advocacy in jury trials that such study requires an understanding of the "often complex cultural, social or religious context in which the jury trial will be employed by both the government and its antagonists to resolve important societal issues outside of the normal legislative and political channels." Similarly, criticism of the judicial opinion requires a comprehensive understanding about the complex cultural, social, and political context in which the judicial opinion will be employed by the Court's friends and antagonists. It is imperative, therefore, to fully understand the nature and scope of the fourth function served by the judicial opinion. Kenneth Salter, "The Functions of Legal Argumentation in Pre-Trial Advocacy," in Dimensions, p. 268.
Finally, "it is emphatically the province and duty of the judicial department to say what the law is."

This ruling, so eloquently set forth by Justice Marshall, significantly strengthened the Court's power. Though in 1857 the North vilified the Court following the *Dred Scott* decision, the Supreme Court's impact since *Marbury v. Madison* has been considerable.

Yet even today the Court remains vulnerable to social and political climates. Political scientist Philip Kurland notes, for example, that,

> It was the weakened confidence in the Court that made possible the Fortas affair. It was the popular mistrust of the Supreme Court that allowed impeachment and removal of a Justice by methods other than those provided by the Constitution . . . . The sword of Damocles hangs over the Court by the thin thread, of public confidence in the integrity of the Judiciary.\(^\text{15}\)

Recent challenges of judicial authority include ten years of unenforced rulings in the area of racial desegregation. Despite a unanimous decision in *Brown v. Board of Education* in 1954, for example, many lower courts failed to enforce this ruling until 1964.\(^\text{16}\) More recently, Congress has seriously considered legislation intended to restrict judicial power to adjudicate such issues as abortion, school prayer, and school segregation. In this context, such books as *The Brethren*, which necessarily "demystify" the Court's image, further threaten the Court's ultimate authority.\(^\text{17}\) These serious challenges to the Court's authority attest to the need to strengthen the basis of the Court's power.

Institutionally, the Court's only source of political power is, as Hamilton observed in *The Federalist Papers*, the Court's authoritative image. This need to establish and maintain the Court's authoritative image thus greatly influences judicial rhetorical invention. Through carefully tailored arguments Supreme Court Justices demonstrate that their decisions are reasonable, fair, and consistent with the Court's procedural rules. Indeed, of the four steps characteristic of judicial reasoning, the final three—analysis of audience needs and expectations; invention of relevant arguments; and justification of the decision—focus on the degree to which judicial decision-making and consequent argumentation conform to the image appropriate to the Supreme Court.\(^\text{18}\) The following look at the operation of rhetorical invention in a decision regarding the constitutionality of a Connecticut statute banning the sale of contraceptives\(^\text{19}\) will illustrate the impressive role that the judicial opinion's fourth function plays in judicial rhetorical invention.

---


\(^{18}\) For a detailed discussion of the four steps characteristic of judicial reasoning, see Golden and Makau.

The majority opinion in this case is particularly revealing because the Court's sixteen-paragraph opinion justifies a decision not to adjudicate. The majority concluded that there was inadequate evidence to show demonstrable harm to any justiciable interests. This decision called for no administration or enforcement. Nor did this opinion address itself to instructing civilian behavior. Finally, the opinion did not directly serve to legitimize governmental behavior. In short, this opinion was written to fulfill a purpose or purposes not reducible to the first three functions of judicial opinions. Yet the majority Justices crafted argumentation to carefully justify their decision.

This opinion is also particularly relevant to a functional study of judicial reasoning because it was written during a period of concern for the Court's ultimate authority; the opinion was written only seven years after Brown.

The majority opinion begins predictably with a characterization of the relevant facts. The Plaintiffs claimed that they had solicited contraceptive advice from the physician in the case, who had not given it for fear of prosecution. The statute reads as follows:

Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be fined and imprisoned.

There are no substantive provisions in this law dealing with the sale or distribution of contraceptive devices, nor are there explicit provisions prohibiting the giving of information concerning the use of contraceptive devices. These activities are deemed to be involved legally only because of Connecticut's general accessory enactment which holds:

Any person who assists, abets, counsels, hires, or commands another to commit any offense may be prosecuted and punished as if he were the principal offender.

The Plaintiffs sought a Superior Court judgment declaring the Connecticut ban unconstitutional. The Defendant, Connecticut's State Attorney, claimed that he intended to prosecute any offenses against Connecticut law. He added that the use of and giving of advice concerning contraceptives would constitute such offenses. However, no one in Connecticut had been prosecuted under the relevant statute.

The Superior Court admitted the matters of fact raised by the Plaintiffs but found these facts insufficient for the Plaintiffs to proceed upon. The Plaintiffs appealed to the Supreme Court of Errors which sustained the Superior Court's demurrer by rendering a judgment of affirmance. The Plaintiffs then appealed to the United States Supreme Court. Justice Frankfurter wrote the plurality opinion which dismissed the Plaintiffs' appeals.

The majority recognized that in this, as in every controversial case, the audience's view of the relevant facts would influence the audience's evaluation of the Court's satisfaction of Equity Law requirements. Given the

20 Supreme Court of Errors, 147 Conn. 48, 166, A. 2D. 508.
majority's ultimate decision not to decide this case, their characterization of the facts would also serve to predispose audiences for or against the belief that the decision was made with appropriate disinterest. Finally, fact characterization in this, as in every Supreme Court opinion, helps predispose audiences for the belief that the Court has ruled in accordance with its four-step model.

Accordingly, the majority opinion's opening narration is marked with emphasis. For example, the majority use antithesis in paragraph one to emphasize their view that the Plaintiffs' case lacks immediacy.

In proceedings seeking declarations of law, not on review of convictions for violation of the statutes, a court has ruled that these statutes would be applicable in the case of married couples.

Of course, no one familiar with the law need be told that these cases involve declaratory judgments rather than criminal proceedings. The use of antithesis here—"in proceedings seeking declarations of law, not on review of convictions for violations of statutes"—is exclusively argumentative; the majority wish to emphasize the lack of serious harm to the Plaintiffs.

The Court follows this antithesis with expressions of compassion for the "losing" side. In paragraph two, the majority note,

In view of the great emotional stress already suffered by the plaintiffs, the probable consequence of another pregnancy is psychological strain extremely disturbing to the physical and mental health of both husband and wife.

This turn in the narration helps the majority credential themselves; though they are aware of and concerned about the Plaintiffs' suffering, they are bound by the lack of legal immediacy to rule against these litigants.

The majority next complete their summary narration of the relevant facts with a redefinition of the Plaintiffs' interest.

Alleging irreparable harm and a substantial uncertainty of legal relations (a local procedural requisite for a declaration), Plaintiffs ask a declaratory judgment that sections 53-32 and 54-196 are unconstitutional, in that they deprive the Plaintiff's of life and liberty without due process of law.

The majority follow this narration of facts with two notably less detailed paragraphs summarizing the facts relevant to the more emotionally charged Doe and Buxton cases. In this narration, the majority show a stark awareness of these Plaintiffs' suffering—Mrs. Doe became severely ill during her only pregnancy—while focusing on the lack of legal force behind the Plaintiffs' claims.

Mrs. Doe, it is alleged, lives with her husband, they have no children; Mrs. Doe recently underwent a pregnancy which induced in her a critical physical illness—two weeks' unconsciousness and a total of nine weeks' acute sickness which left her with partial paralysis, marked impairment of speech, and

---

21 It is important to keep in mind that the Court is expected to rule with disinterest, but not with a lack of interest. These radically different concepts are sometimes taken as synonymous, thereby generating confusion among novice students of judicial practice.

22 For a detailed discussion of this model, see Golden and Makau.

Published by Cornerstone: A Collection of Scholarly and Creative Works for Minnesota State University, Mankato, 1983.
emotional instability. Another pregnancy would be exceedingly perilous to her life. She, too, has consulted Dr. Buxton, who believes that the best and safest treatment for her is contraceptive advice.

These paragraphs establish the majority’s awareness of and concern for the problems facing the Plaintiffs. These paragraphs also illustrate the Court’s focus on the component of reasonableness, thus helping to create an image of a majority appropriately driven by components of the judicial function. The Court’s audience have been directed in these paragraphs to perceive the majority as compassionate but disinterested. This predisposition will play an important role in preparing the readers for the majority’s empirical arguments. This predisposition also plays an important role in counteracting the possible effects resulting from the passionate minority opinions accompanying the Court’s opinion.23

In paragraphs eight through sixteen, the majority use theoretical arguments regarding the judicial function and empirical arguments regarding Connecticut law enforcement to explicate and to justify their conclusion that the Court should not adjudicate this case on its merits. Preceding these arguments, however, the majority include a redefinition of the lower court’s ruling. Here the majority replace their focus on the case’s failure to meet equity standards with an argument for the claim that the Plaintiffs in fact face no threat of prosecution. According to the majority, there is a “tacit agreement” between state officials and Connecticut citizens not to enforce the relevant statute.

Following this empirical argument, the majority introduce the audience to the major premise of the first of the opinion’s overriding syllogisms.

If the appellants’ claims to imminent threat of harm ‘collide with plausibility,’ then these claims lack justificability.

Predictably, the majority present an argument for affirmation of the antecedent and draw the consequent. Then, in paragraph nine of their opinion, the majority introduce the major premise of the second syllogism, that the Court must limit its decision making to those cases involving clearly justifiable claims. Now the majority have predisposed the audience to accept the decision as obligatory; the majority cannot but decide not to adjudicate this case on its merits.

To assure this audience response, the majority carefully argue that the appellants’ claims are “unrealistic.” Thus, the majority opinion provides persuasive support for the claim that the Court has ruled in accordance with the dictates of the judicial function. The Justices have considered the facts in relation to precedent; the Justices have demonstrated concern for principles of Justice and Fairness; the Justices have tempered their compassion with adherence to principles of reason.

To further emphasize the degree to which they are ruling in accordance with the dictates of good reason and fairness, the majority use paragraph twelve to place their adversaries on the side of recklessness.

---

23 For a comparison of the majority and minority narrations in this case, see Josina M. Makau, “The Judicial Opinion as a Rhetorical Performance.” (Doctoral Dissertation, University of California, Berkeley, 1979.)
Whenever in pursuance of an honest and actual antagonistic assertion of rights by one individual against another, there is presented a question involving the validity of any act of any legislature, State or Federal, and the decision necessarily rests on the competency of the legislature to so enact, the court must, in the exercise of its solemn duties, determine whether the act be constitutional or not; but such an exercise of power is the ultimate and supreme function of courts. It is legitimate only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals.

Hence, the audience is asked to perceive the majority as painfully aware of their "solemn" duties and diligently protective of the limits of their "legitimate" powers. The audience is led to associate the majority with a sense of responsibility, integrity, and vigilance against irresponsibility. These ethical appeals strike directly at the challenge that the Court's previous rulings (such as those characterizing the desegregation cases) were the product of a reckless, activist Court, unworthy of the Court's great authority. In short, the Poe majority used carefully tailored argumentation to satisfy the most important function served by their opinion; they fulfilled the expectations of their composite audience with the goal of maintaining or increasing the Court's authoritative image.24

This interpretation of the Court's argumentation in Poe is supported by the fact that the Poe majority's carefully tailored argument for self-restraint was offered to an audience flooded with publicity regarding the Court's alleged "overassertiveness" in cases involving desegregation and other controversial social issues.25

This look at the operation of rhetorical invention in the Poe majority opinion revealed that the Court's reasoning did much more than meet the minimal justificatory demands posed by the Court's decision not to adjudicate. Furthermore, this look at the language selected by the majority to defend their decision went beyond even the minimal expectations of the Court's composite audience in this case. Indeed, this case graphically illustrates a more significant dimension of judicial reasoning as practiced by Supreme Court Justices placed in a vulnerable institutional context. The primary function served by the Poe majority opinion is best understood in terms of the opinion's fourth function. In Poe the Justices used their argumentation to maintain and enhance the Court's authoritative image; that is, to protect the Court's only "real" institutional power.26

---

24 For a discussion of the composite audience's expectations, see Golden and Makau. See also, Josina M. Makau, "The Supreme Court's Composite Audience: Norms for Ethical Argumentation," presented at the 1982 Speech Communication Association National Convention, Louisville, KY.

25 At this point, even legal scholars began to question the Court's assertiveness. See, for example, Arthur Miller and Ronald Howell, "The Myth of Neutrality in Constitutional Adjudication," 27 University of Chicago Law Review, 1960. Miller and Howell argue that all Supreme Court decisions are made by fiat rather than by standards of reasonableness or other principles appropriate to the judicial function.

26 For a fascinating look at how Justices translate this concern for the Court's image into majority and minority opinions, see Walter Murphy, Elements of Judicial Strategy (Chicago: University of Chicago Press, 1964). Murphy reconstructs dialogues between would-be dissenters, concursers and their colleagues to demonstrate considerable intra-tribunal concern for the Court's image.
Now that we have completed our task of characterizing the four institutional functions which govern the invention and evaluation of Supreme Court majority opinions, we may evaluate the usefulness of the "new rhetoric" theory of practical reasoning developed by Toulmin and Perelman in the Supreme Court context. Specifically, we may attempt to apply the "new rhetoric's" concept of argumentative intention to the institutional context described above.

The "New Rhetoric's" Concept of Argumentative Intention

Both Perelman and Toulman distinguish between field-variant and field-invariant features of argumentation. In his recent essay, "Logic and the Criticism of Arguments," Toulmin notes, for example,

Practical argumentation has both field invariant and field dependent features. Some topic terms (e.g., 'grounds' and 'warrants') have a use in most fields of argument; more specialized terms (e.g., numerical 'probability') are relevant only in very few fields. In between, a middle category of terms of topical analysis—'kind' and 'degree,' 'fallacy' and 'analogy,' 'cause' and 'definition'—apply in varying ways as we move from one field to another. 27

Similarly, Perelman distinguishes between argumentation strategies appropriate for what he calls the "universal audience" and those appropriate to given particular audiences. He notes that,

The nature of the audience to which arguments can be successfully presented will determine to a great extent both the direction the arguments will take and the character, the significance that will be attributed to them. 28

Perelman admonishes the critic accordingly,

A general rhetoric cannot be fixed by precepts and rules laid down, once for all. But it must be able to adapt itself to the most varied circumstances, matters and audiences. 29

Despite this admonition, however, Perelman repeatedly asserts the precept that the goal of all argumentation is to gain or increase the adherence of minds to a thesis or theses. In The New Rhetoric, he writes,

The goal of all argumentation, as we have said before, is to create or increase the adherence of minds to the theses presented for their assent. 30

Similarly, in "The Specific Nature of Juridical Proof," Perelman writes,

The object of this theory is the study of the discursive techniques that allow one to bring about or increase the adherence of minds to the thesis that one proposes for their assent. 31

Though Toulmin uses the term "functional" to discuss a critical perspec-

30 The New Rhetoric, p. 45.
tive which incorporates the rhetorical dimension of given documents, his concept of function conforms more to the thesis model of intention described above than to the broader institutional sense discussed in this paper. Toumin writes, for example,

The theory and techniques of rational criticism must be approached from two complementary directions, formal and functional.32 Yet in explicating his use of the term “functional” Toumin is careful to focus on questions regarding the “right of relevant” argument for the “substantive demands of the problem and situation.” True to his training, Toumin uses the term “function” primarily to discuss the rhetorical dimensions relevant to intra-textual criticism. He does not extend the sense to include the broader extra-textual institutional purposes served by the given discourse. As does Perelman, Toumin focuses primarily on the coherence of and relevance of each step of a text leading finally to a claim or a set of claims. Toumin’s adoption of the thesis model of argumentative intention is even more readily apparent in his discussion of the “layout” of arguments. Here, the claim is the end product of argumentation; it is the claim or set of claims to which audience adherence is ultimately addressed.33

The consequent “new rhetoric” precept that the goal of all argumentation is to gain or increase adherence of minds to a thesis or theses has been widely accepted by contemporary argumentation theorists. Indeed, outside the circle of scholars associated with the “rhetoric-as-process” perspective, the “thesis” model has been accepted as a commonplace.

This wide acceptance is most understandable in that the notion of thesis, when translated loosely to mean theme or general conclusion, does seem to allow enough flexibility to accommodate the goals of argumentation in most settings.

However, Leff and Mohrmann show in their analysis of Lincoln’s “Cooper Union Address” that the objective of campaign orations is best understood in terms of “ingratiation,” rather than thesis-adherence.34 Paul I. Rosenthal demonstrates further in his essay on ethos and persuasion that different contexts may help speakers achieve a variety of personal and non-personal goals, not included in the “thesis” view of discourse.35 Because these authors were concerned primarily with discourse not traditionally valued as “sophisticated” or exemplary of the principles associated with reasonable argument, theorists have heretofore assumed that these findings are inappropriate to a discussion of “higher” forms of argumentation, or to the understanding of argument paradigms.

However, a look at the operation of rhetorical operation in the Poe majority opinion showed that the argumentation in at least one Supreme Court majority opinion—written in response to the expectations of a highly so-

32 “Logic and the Criticism of Arguments,” in press.
33 See, Uses of Argument, pp. 94–146.
phisticated composite audience—was written primarily to improve the Court’s ethos. Thus, our functional analysis of judicial reasoning as practiced shows that Leff, Mohrmann, and Rosenthal’s findings are applicable in a context as sophisticated as the Supreme Court context. This discovery leads to the affirmation of our first claim, that the “new rhetoric” concept of argumentative intention unnecessarily limits the applicability of this theory in the judicial context.

This limitation may be overcome by incorporating the functional component discussed in this paper into the “new rhetoric” theory of argumentation. Addition of this component maintains the integrity of the “new rhetoric” theory, yet it permits the theory to better accommodate the needs of the Supreme Court critic.

One argumentation perspective which currently includes such a functional conception of argumentative intention is the newly emerging “rhetoric-as-process” perspective. However, as the following discussion will show, other important components of the “rhetoric-as-process” perspective prevent this perspective’s applicability in the Supreme Court context.

The “Rhetoric-as-Process” Perspective

Because this perspective has itself generated debate, it is difficult to succinctly characterize its varied components. However, there are several essential concepts characteristic of this perspective. Whether defined normatively or descriptively, the “rhetoric-as-process” perspective applies the name “argument or arguing to the phenomena of one or more social actors addressing symbolic appeals to others in an effort to win adherence.” This perspective focuses on “arguing” as a “persuasive process.”

Consistent with this perception of argument as process is the perspective’s concern with the social-political context in which argumentation occurs. Considerable attention is paid to the “natural rhetorical settings” in which discourse occurs. This concern generates a highly useful conception of institutional function. Indeed, as was suggested earlier, the “new rhetoric” theory of argumentation would better accommodate the needs of Supreme Court critics with the addition of the “rhetoric-as-process” conception of argumentative function and goal.

Unlike the “new rhetoric” perspective, however, the “rhetoric-as-process” perspective offers no place for the kinds of field-invariant rules characteristic of judicial reasoning. Furthermore, in its stress on “naturalistic”

34 For example, the functional component described here is no way incompatible with any aspect of the “new rhetoric” save the precept that the goal of all argumentation is reducible to a thesis or theses.

https://cornerstone.lib.mnsu.edu/speaker-gavel/vol20/iss1/1
argument, the "rhetoric-as-process" view holds rhetorical effectiveness (in relation to a particular audience) as the singular appropriate evaluation criterion. As such, proponents of this theory do not leave room for norms which may be institutionally generated, yet more rigorous than the "effectiveness" standard allows (such as those shared by members of the Supreme Court's composite audience).

Interestingly, some adherents of the "rhetoric-as-process" perspective are careful to reject the "new rhetoric" view that judicial reasoning may serve as a useful model for practical argumentation. Yet even rejection of the analogy between jurisprudential and other argumentation does not mitigate against the fact that judicial argumentation, no matter how special, is, at bottom, a legitimate form of argument. Hence, theories of argumentation which fail to be generalizable to the judicial context fail, in a significant way, to serve our overall understanding of practical argumentation.

Perhaps the area of the "rhetoric-as-process" view most vulnerable to this charge of non-generalizability is the perspective's attempt to make clear distinctions between rhetoric, dialectic, and logic. In this view, rhetoric, dialectic, and logic are categorized as focusing on process, procedure, and product respectively. The "universal audience" is placed under the domain of logic, while "explicit procedural rules" are placed under dialectic. "Impersonal explicators" are limited to the domain of logic, as are "explicit inferential rules." Our discussion of judicial strategies directly challenges these distinctions between dialectic, rhetoric, and logic. For example, discussion of judicial invention demonstrated that judicial argumentation is addressed to an audience having much in common with the "universal audience." This composite audience is not adequately understood as a "typical" particular audience whose adherence will be gained through strategies usually associated with "naturalistic" argument. Yet, as Golden and Makau show, "each step of the judicial reasoning process—from characterization of the facts to justification of the decision—rests squarely in the domain of rhetoric." The "rhetoric-as-process" fails to allow for this overlap.

Furthermore, this paper has shown that the "effectiveness" standard in the judicial context must include close attention to adherence to "explicit procedural rules," "explicit inferential rules," and at least the impression of an "impersonal explicator." Yet the "rhetoric-as-process" theory restricts these argumentative components to the domain of dialectic, rather than
rhetoric. On this view, judicial argumentation would simply not fit into the domain of rhetoric. Thus, the “rhetoric-as-process” view runs counter to the finding of previous studies that every step of the judicial reasoning process falls well within the domain of rhetoric.

In short, though the “rhetoric-as-process” theory’s attention to the social context in which argumentation occurs offers an important functional component absent in the “new rhetoric” perspective, other precepts of the “rhetoric-as-process” perspective limit the overall applicability of this perspective in the Supreme Court context.

In contrast, when accompanied by the functional component described in this essay, the “new rhetoric” perspective effectively accommodates the needs of the critic faced with Supreme Court argumentation. As such this expanded version of the “new rhetoric” theory of argumentation promises to enrich our understanding of the nature and scope of all argumentation.
GOOD TALKERS AND THE FOUR COMMANDMENTS
Craig Pinkus

"The time has come," the Walrus said,
"to talk of many things..."
Lewis Carroll (Charles Lutwidge Dodgson)
The Walrus and the Carpenter, St. 11

I found myself at the ripe old age of thirty-one seated in a room of marble columns and maroon colored heavy drapery. A pair of crossed quill pens were on the mahogany desk in front of me, and I was watching a person standing behind a lectern which had red and white lights attached to it. The red light had been turned on. That meant that in a couple of minutes, after the people in front of me cleared away their papers and walked out of the room, I would be moving up one row of benches where I would be seated a mere two feet from the face of a still athletic looking man who was once called "Whizzer."

It was the first time I found myself in this particular situation, and I was going to try to persuade the nine people sitting in front of me that the First Amendment to the Constitution of the United States was a legal provision that extended all the way down to the comparatively lowly status of high school students. Since I had won at the Seventh Circuit Court of Appeals, I was spared the difficulty of having to make what we used to call the first affirmative speech.

The lady who was giving the first affirmative was so nervous that she dropped her diamond encrusted wristwatch in a tumbler of water as she was trying to sit down after her argument. She had removed the wristwatch to better keep track of time during the argument, but the maneuver failed. After the watch hit the water, some of the water hit me.

Rising from my chair, I moved the few inches to the left necessary to be directly in front of the lectern. Following time honored custom I began "Mr. Chief Justice and members of the Court." So far so good. Then, since I had just been sprayed with water and the situation seemed somewhat amusing, I said "It seems that this subject is somewhat less dry than precedent would suggest."

No one smiled.

Not even Justice Douglas. It dawned on me that I was in trouble. Fortunately, however, I had been through this sort of reaction before. Standing

Craig Pinkus is a member of the Mitchell Hurst Pinkus Jacobs & Dick law firm, Indianapolis, Indiana. This paper was presented to Nicholas McKinney Cripe on the occasion of his retirement from teaching at the annual convention of the Central States Speech Communication Association, Lincoln, Nebraska, April 9, 1983. Copyright 1983 Craig Pinkus. Citation for scholarly purposes must refer to the occasion of this essay's public presentation.

Published by Cornerstone: A Collection of Scholarly and Creative Works for Minnesota State University, Mankato, 1983.
here now I can recall many a day when Mike McGee and I thought that one of us had just said something terribly clever, but were forced to notice that the other four people in the room were not smiling. Our opponents naturally would not think anything we said was worthy of positive response. That left a student timekeeper who was dutifully watching the sweepsecond hand on a Timex and flipping over cards with numbers on them—often upside down. And, of course, a person called a judge. Something about the word "judge" seems to transform an otherwise ordinary or even amiable human being into a dour faced, impatient sufferer.

At any rate, there I was. It actually was the Supreme Court of the United States, and I had to say something. Like a boxer who had just found out how good Sugar Ray Leonard really was, I got back on my feet by reflex—not volition. The reflex was in the nature of a mantra which I call in this paper the Four Commandments. They popped into my head, it cleared, and before I knew it things were going pretty well.

As you can guess, I picked up the Four Commandments while going through the boot camp known as Mac Cripe’s intercollegiate debate team. For four years I heard the Four Commandments, and I’m glad that I did. If you don’t know what they are, this talk may have some small value. If you do know what they are, you may enjoy it anyway.

One of the rules of the United States Supreme Court provides as follows:

Oral argument should undertake to emphasize and clarify the written argument appearing in the briefs theretofore filed. Counsel should assume that all Members of the Court have read the briefs in advance of argument. The Court looks with disfavor on any oral argument that is read from a prepared text.\(^1\)

They take this business very seriously, and, of course, they should. Mr. Justice Brennan once explained what I was doing in front of that lectern as follows:

... Oral argument is the absolutely indispensable ingredient of appellate advocacy ... Often my whole notion of what a case is about crystallizes at oral argument. This happens even though I read the briefs before oral argument; indeed, that is the practice now of all the members of the Supreme Court... often my idea of how a case shapes up is changed by oral argument... oral argument with us is a Socratic dialogue between justices and counsel.\(^2\)

No matter what you may have heard about the importance of precedent in our legal system, the Supreme Court is a branch of government, not just a court. The Justices want reasoning, not authority, as the basis of the arguments presented to them. They want to find the correct decision as a matter of principle, not solely as a matter of precedent.\(^3\)

And, no matter what you may have heard about lawyers, Supreme Court Justices ask questions in straightforward English. They want advocates standing before them who use the same language, and my impression is that the

\(^1\) Rules of the Supreme Court of the United States, Rule 38.1.


The educational system does not contribute much toward the production of such advocates.

Although there is no shortage of lawyers, I believe there is a shortage of people who know what to do in front of courts. I am not alone. Consider the following remarks:

Use plain English. You know, do not speak that bastard dialect of the language spoken only by lawyers. If you mean “before” say “before,” not “prior.” And if you mean “after” say “after,” not “subsequent.” And if you mean “car” say “car,” not “motor vehicle.” Got it?

Now, everybody has heard that and everybody has written it down innumerable times in notes, but all of us offend on that score from time to time for the simple reason that all of us have been to law school, and law school is three years of intensive practice at distorting the English language. You have got to learn to speak and think like a lawyer and that’s not the way to try cases.*

Law school undoubtedly deserves part of the blame, but there was once a wonderful training ground that helped to insulate law students from the contagion. I fear that the training ground has now been lost. It’s what used to be intercollegiate debate. You remember, the place where I learned the Four Commandments.

When McGee, Bill Neher, Priscilla Thomas, Carl Flaningam and I were all slugging it out on the debate circuit during our respective years at Butler, we were taught to talk to people. We all had the jaunty example of an enthusiastic advocate who relished something called “clash,” and deplored events characterized as “two ships passing in the night.” You know what I’m talking about. Two debate teams in the same room at the same time but oblivious to the others’ presence. And, we were all taught the Four Commandments.

We weren’t taught the only possible way to communicate by speaking. Mike McGee’s paper has reminded us of the “silent whisper” which I suspect would be very hard to learn. Carl Flaningam has reminded us of the beginnings of political soapsuds—a technique which we probably could, but not necessarily would want, to emulate. Because of the remoteness from my own experience, the portrait painted by Bill Neher is less vivid, and yet I feel I know the unsuccessful campaigner he described for us. Any of us might make use of Mr. Gichuchi’s appeals.

Each paper tells us about an attempt to persuade people by talking to them. In today’s world of corporate merchandising, the label on Mr. Gichuchi’s package would say “War Hero.” And as happens even to corporate merchandisers, it didn’t sell.

Ex-president Nixon, sans sweat and stubble, was marketing himself under the trademark “Good Guy Politics.” With the “Checkers” speech, he had at least one successful season. And FDR, of course, had an almost unending string of successful seasons as he headed up the longest running series in his business, the original “Father Knows Best.”

Those people are the kind of people McGee and I used to call “good talkers.” We’d be between rounds, or talking over dinner at night, about.

this team or that team, and every once in a while one of them would receive
the accolade. Yup, they were good talkers. And that’s what we wanted to
be, too.

Somehow it has changed. In my last couple of years of debate, I came
across a few teams whose speakers talked so rapidly I found it difficult to
understand them. I left college thinking that such teams were only occa-
sional aberrations. When I got to law school, I found it full of people I had
debated against in college. And they were all good talkers. But I also had
the experience of judging a few debate tournaments at Harvard, and I began
to grow uneasy.

More and more teams were talking faster and faster. In my critique, I
would tell them that such rapid speech failed to communicate, failed to
persuade, and left me tired and confused. I always held up the next round
because I was so busy lecturing the people I had just judged. They seemed
to take my words seriously, but I think they were only concerned about not
offending me so that their chances for a winning score would not be harmed.

After I started practicing law, I had the experience of judging moot court
competition teams. That’s when I started thinking it was all over. Moot court
teams are usually judged by lawyers and people who are real life judges,
and they want people to talk to them, not at them. They want to understand
the reasoning, they want to know the facts. They want a cogent and per-
suasive explanation about why one side or the other should prevail. They
want to hear good talkers. Instead, they are assaulted by a form of noise
pollution that seems to emanate from 3 by 5 cards.

I found myself wondering if the Vietnam experience had led debaters to
believe that card counts were somehow like body counts. I wondered if the
moot court competitors in law school were former debaters. They were. I
suddenly realized that what I was witnessing was a video game of the mouth.
As far as I could tell, it was an exercise which would provide good training
for only two occupations: becoming an auctioneer and making Federal Ex-
press commercials. And that’s all.

I admit to viewing intercollegiate debate, and virtually all speech training
and competition, from a consumer’s point of view. I must tell you that from
that standpoint, debate today is a consumer fraud. Rightly or wrongly, I
grew up viewing debate as vocational education for future politicians, dip-
ломats, lawyers, and the like. It took me years to accept the fact that what
is going on is actually happening.

At a Butler Homecoming a few years ago, I cornered Mac and demanded
to know what had happened to intercollegiate debate. That conversation
was the last time I posed the question, but I resolved to find some oppor-
tunity to talk about it. I can think of no better occasion than one which
honors so excellent a teacher and model. I would like to appeal to those of
you who have the opportunity to do something about what happens in this
field, and my appeal is that you honor the contributions of my debate coach
by finding a way of preserving the kind of training for young people that
he taught so well.

I am not qualified to give proper respect to all of the things Mac Cripe
has accomplished. I know that I must be neglecting quite a bit. But his career
as a teacher and coach of young people trying to learn how to speak and
reason on their feet met one of the great needs of our society. We must have people who understand and make use of the simple fundamentals of good communication such as what I call Mac's Four Commandments.

Before sitting down I suppose I should mention what they are, obvious as they are. A thousand times or more Mac Cripe said to me "Pinkus, you know what you did wrong don't you?" "No, Mac, I don't." "You didn't name it. Then explain it. Then prove it. And conclude it."

And even though I knew I hadn't done it, I often argued that I did. When I was standing there before the Supreme Court, and in the years since that time, however, I've always been glad I knew the difference.

Thanks, Mac.
DIALECTIC INQUIRY: THE NEED FOR THE FORENSIC COMMUNITY'S INVOLVEMENT

William M. Strickland

The disciplinary nature of American education has produced somewhat parochial thought, with individual fields of study developing their own jargon and rarely communicating with others even when significant areas of common interest exist. Business, much to its credit, has recently turned to philosophy for a "new" method in solving problems. This new method, Dialectic Inquiry (D.I.), is supposedly "the application of debate strategies and techniques to managerial decision making."^{1}

In the development of the D.I. system, business educators did not turn to the group with the most experience and training in the clash of ideas. It appears that the forensic community has had no impact on the shaping of this process. Without the guidance of debate coaches, the business community has reinvented an inferior wheel. Of course, the concept of debate as a decision-making tool is an excellent one; it does, however, need significant changes from the present D.I. approach.

Debate in the corporate boardroom is an area in which speech communication professionals should be involved. The involvement could be in the areas of theory, research, and consulting. This essay is designed to facilitate that involvement by 1) examining Dialectic Inquiry, 2) offering a modified intercollegiate debate format for business decision making (Structured Cross-Examination Policy Debate), 3) comparing SCEPD to D.I., and 4) discussing the ultimate role of the forensic expert.

Dialectic Inquiry

There is presently a small core of articles dealing with D.I.^{2} All of the studies (field as well as laboratory) come from the same philosophical base.^{3} Richard O. Mason explains this common view:

In this dialectical design we are following a scheme suggested by Churchman's interpretation of Hegel. Here the plan (thesis) is opposed by the coun-

William M. Strickland is Assistant Professor of Speech at the University of South Carolina.


The available literature persuasively presents the philosophical reasons for the value of D.I. as a tool; however, the empirical evidence is inconsistent in proving the real-world advantages of the method. The inconsistency of results comes from the very limited agreement as to what type of problems are best suited for D.I. and what format should be used.

Primarily, D.I. has generally been viewed as an appropriate tool for solving ill-structured problems. Mitroff and Kilmann believe, "Ill-structured problems . . . are (a) hard to define, (b) conflict producing, and (c) not generally amenable to standardized solution techniques." Thus, ill-defined problems "tend not to be independent of either the personality or the background of the particular decision maker" and "analysts of different persuasion and background will tend to define the same problem in very different ways." Obviously, problems will be more or less ill-structured and not clearly ill- or well-structured. Therefore, the type of problem used in a study will affect results. The less than glowing results of D.I. reported by Cosier have been criticized for applying "both the criteria and the method developed for and appropriate to well-structured problems to a method that was expressly developed for treating ill-structured problems." The criticism goes on to say, "it is not a test of the value of dialectical inquiry to give two or more already formulated world views, plans, or policies to a set of judges for their subsequent evaluation." Guidelines for what type of problems are best suited for debate are clearly needed.

Lyle Sussman in "Dialectic Problem Solving and Management Decisions: The State of the Literature" identifies another difficulty in judging results. He writes, "One argument that can be leveled against all twelve studies reviewed is that the procedures followed in constructing the DA [Devil's Advocate] and DI [Dialectic Inquiry] treatment are somewhat vague." The lack of details in the description of the format and procedures used does make comparisons difficult. But even more important is the inconsistency in presentational methods and structure. Various studies have used written presentations, others oral; some have examined structured debates, others unstructured. The real harm of this procedural variety is that the value of debate is being questioned as a decision-making tool.

In understanding how D.I. is practiced, one should remember that while there are considerable differences in specific approaches, all D.I. studies...
revolve around thesis, antithesis, and synthesis. One set of assumptions is challenged by an opposite set of assumptions in order to reach a new view. D.I. decisions are usually then tested against an expert (E.) presenting only one side of an issue and a devil's advocate (D.A.) who argues against the expert but does not defend a position. In other words, three groups make decisions using D.I., D.A., and E. methods of investigation. Thus far, the D.A. method appears to be the most effective.

Structured Cross-Examination Policy Debate

A modified intercollegiate debate format should prove more useful in making business decisions than any of the present Dialectic Inquiry approaches. This format, Structured Cross-Examination Policy Debate (SCEPD), will be familiar to the debate community and, thus, give the business community a large number of qualified individuals to call for assistance. An effective format would be:

**Introduction**

**Aff:** States Resolution Presents Plan  
**Neg:** CX Aff.

**Round I**

**Topic:** Needs  
**Inadequacy of Present System**

**Aff:** Presents—10  
**Neg:** CX Aff  
**Neg:** Refutes—15  
**Aff:** CX Neg

**Judges:** Question Aff & Neg Discuss

**Aff:** Rebuilds—10  
**Neg:** CX Aff  
**Neg:** Refutes—15  
**Aff:** CX Neg  
**Aff:** Rebuilds/Summary 10

**Vote:** Aff—Continue  
**Neg—Stop**

**Round II**

**Topic:** Feasibility  
**Plan Meet Need**

**Aff:** Presents—10  
**Neg:** CX Aff  
**Neg:** Refutes—15  
**Aff:** CX Neg

**Judges:** Question Aff & Neg Discuss

**Aff:** Rebuilds—10  
**Neg:** CX Aff  
**Neg:** Refutes—15  
**Aff:** CX Neg  
**Aff:** Rebuilds/Summary 10

**Vote:** Aff—Continue  
**Neg—Stop**

**Round III**

**Topic:** Disadvantages

**Neg:** Presents—10  
**Aff:** CX Neg  
**Aff:** Refutes—15  
**Neg:** CX Aff

**Judges:** Question Aff and Neg Discuss

**Neg:** Rebuilds—10  
**Aff:** CX Neg  
**Aff:** Refutes—15  
**Neg:** CX Aff  
**Neg:** Rebuilds/Summary 10

**Vote:** Neg—Stop  
**Aff—Continue**
Summary

Topic: Overview

Aff: Presents—10  
Neg: CX Aff  
Aff: CX Neg  
Aff: Presents—10  
Neg: Presents—20

Judges: Questions Aff & Neg

Discuss

Vote: Adopt  
Reject  
Modify

Such a procedure should prove to be a forward step in using debate in the corporate boardroom.

Comparison

The following comparison of D.I. and SCEPD is not designed to refute the Hegelian approach, for it has the potential of adding a valuable tool to business decision making. The essay is intended to extend, apply, alter, and structure the method in order to clarify and gain additional advantages. The first step in this effort is to examine the process in terms of the differences implied by their titles.

The word dialectic is dropped from SCEPD because of fear of confusion between classical dialectic (as presented by Plato and explained by Aristotle) and the Hegelian view of dialectic. The term cross-examination is substituted for dialectic because it is generally known as the dialectic procedure used in our legal system. In addition, cross-examination is an excellent tool not used in the recent Hegel/Churchman approach. True, classical dialectic is a process of questioning the opposition and serves as an immediate and direct check. Dialectic Inquiry (note the capital letters) really is an uninterrupted non-direct check. The devil’s advocate system (often presented as an alternative to D.I.) also does not call for immediate and direct questions and answers. Thus, the D.I./D.A. approaches lose the fundamental principle “for the solution of all disputed problems.” That is, “Both premises and inferences of each side must at all times be subject to the scrutiny of the opposition. Continuous, uninterrupted discourse is not favorable to this.” 11

The highly respected jurist, Henry Wigmore, indicated the value of cross-examination: “it is beyond doubt the greatest legal machine ever invented for the discovery of truth.” 12

Debate is used as a substitute for inquiry because it implies the dual-sided nature of the search; additionally, it is more descriptive of the process. Debate also gives the impression of uninterrupted oral presentations of conflicting contentions, assumptions, and issues. Further, the word debate brings to mind the need for rhetorical skill. The D.I. advocates have thus far basically ignored rhetorical skills (written or oral) necessary to present the most effective case.

By calling our procedure debate instead of dialectic, we remove the He-

The burden of countering every thesis with its opposite or counter thesis. This small step gives those opposed to the thesis a great deal more flexibility in argumentation strategy. This can be seen clearly by viewing a military general's decision to attack. The advocates of D.I. might have the counter thesis: "we should retreat." They would counter the assumptions that the enemy is weak with the argument that the enemy is strong, the assumption that we are strong with one asserting we are weak, and the assumption that the weather will be sunny with a strong prediction of rain. The truth of the argument could be that the forces are equal in strength, that the weather will be cloudy, and that the general's forces should not attack. By forcing the defense of the counter thesis, the opposition must argue rhetorically inferior arguments and appear as unreliable as those arguing for the attack thesis. In a debate the opposition can argue the counter thesis, but it has the flexibility to advance any position which will defeat the thesis. Those advocating D.I. limit the contentions, issues, arguments, and, thus, limit the search for truth.

Further, the word policy has been added because policy questions (what should we do) are the most important area of business decisions. Questions of fact and value have relevance only in relationship to how they affect action and with such relevance become issues of a policy debate. In other words, someone advocating a plan to increase profits can have issues of fact (cost, distribution, personnel, etc.) presented against him as well as having to contend with the value question of the desirability of increased profits. Limiting business debates to policy topics does not preclude the introduction of arguments of fact and value because such issues often have significant bearing on matters of policy.

The most basic change from D.I. to Structured Cross-Examination Policy Debate is the adding of "structure." Thus far, D.I. advocates have been very vague as to what procedures are followed in their methodology and have offered only limited guidelines for conducting a D.I. While we offer a highly structured debate procedure, we are not offering the procedure. SCEPD could and often should be adapted to the individual policy problem, but an overall structure is essential.

The need for a structure comes from the recognition (something D.I. advocates appear not to realize when testing E./D.I./D.A. approaches) that business decision makers use dialectic inquiry (lower case), cross-examination, debate, argumentation, and rhetoric now. It is indeed naive to believe that the strategic planners in American business do not have and do not use these skills. The advantage then must come from increased effectiveness and a guarantee that they will be more widely utilized. The structure of the debate does just that. A debate structure also has the advantage of giving structure to an ill-defined problem and, thus, a structure for decision making.

While the comparison of Dialectic Inquiry and Structured Cross-Examination Policy Debate clearly indicates major differences, those familiar with academic debate can see additional procedural advantages. The first and most obvious is the structuring of the format around decision issues. Round I, for example, focuses the debate on need and inherency issues and requires a decision before the discussion can continue. The three-round ap-
proach forces business decision makers to think in terms of policy making criteria. The format also incorporates debate concepts, such as resolution, plan, presumptions, burden of proof, feasibility, workability, and disadvantages, which are all important in policy decisions.

The danger of SCEPD is that it could be viewed as a game. It is not. Millions of dollars and careers of individuals could easily be affected by a debate in a corporate boardroom. To try and teach business managers to be academic debaters could only produce frustration and ultimate rejection of SCEPD, for debate procedures are of no interest to business unless they help produce better decisions. The debate should be approached as a process which gives a clearer picture of truth and not a win/lose situation for the affirmative and negative.

Role of the Forensic Expert

The first and most obvious role of a forensic expert in the development of SCEPD for business decision making would be as a consultant. Inherent in the suggested format is debate theory not known by the business community. The forensic consultant may need to explain concepts such as resolution, plan, development of need, presumption, inherency, plan attacks, extension of arguments, cross-examination, and overall debate strategy. The consultant could easily be responsible for coaching both the affirmative and negative in order to have the best debate possible.

A consultant might even be hired to be the debater for both sides. This situation would require affirmative and negative speeches by the consultant and cross-examination by another consultant or the business’ management.

Another area of involvement for the forensic expert would be in the development of theory. This could involve an expansion or modification of SCEPD. Questions, such as whether a debate should be stopped after Round I if a need is not demonstrated, whether plan spikes are appropriate for business debate, whether debaters should be selected on the basis of involvement with a topic, and whether time limits should be set, need to be examined. A clear theoretical base for debate in the corporate boardroom could be a major contribution to the making of business decisions.

The forensic expert might also find rewarding the empirical testing of SCEPD, D.I., or D.A. Thus far, as indicated earlier, results have been inconsistent. Also there are numerous areas in which no studies have been conducted. Herden emphasized this point in his paper “Argument and Management Decision—What We Need to Know.” He writes,

Table 1 summarizes the 14 research questions posed in this paper. These questions are by no means exhaustive yet they dramatically indicate the narrow focus of past research. What is needed is both a broader focus which encompasses more elements of the process as well as more in-depth analysis of each element. This is only possible if a number of disciplines collaborate to contribute their own unique knowledge and world views to the understanding of such a complex system.13

---

Conclusion

The business community is now interested in developing a system which will generate opposite world views in order to make better decisions. Di- alectic Inquiry is a step in that direction, but it does not appear to incor- porate many of the advantages of true dialectic or scholastic debate. The forensic expert's involvement is needed if debate in the corporate board- room is to reach its full potential.
SUBSCRIPTION INFORMATION

The Delta Sigma Rho–Tau Kappa Alpha National Council has established a standard subscription rate of $5.00 per year for Speaker and Gavel.

Present policy provides that new members, upon election, are provided with two years of Speaker and Gavel free of charge. Life members, furthermore, who have paid a Life Patron alumni membership fee of $100, likewise regularly receive Speaker and Gavel. Also receiving each issue are the current chapter sponsors and the libraries of institutions holding a charter in the organization.

Other individuals and libraries are welcome to subscribe to Speaker and Gavel. Subscription orders should be sent to Allen Press, P. O. Box 368, Lawrence, Kansas 66044.

TO SPONSORS AND MEMBERS

Please send all communications relating to initiation, certificates of membership, key orders, and names of members to the National Secretary. All requests for authority to initiate and for emblems should be sent to the National Secretary and should be accompanied by check or money order. Inasmuch as all checks and money orders are forwarded by the Secretary to the National Treasurer, please make them to: "The Treasurer of Delta Sigma Rho–Tau Kappa Alpha."

The membership fee is $15.00. The official key (size shown in cut on this page) is $15.00, or the official key-pin is $17.00. Prices include Federal Tax. The names of new members, those elected between September of one year and September of the following year, appear in the Fall issue of Speaker and Gavel. According to present regulations of the society, new members receive Speaker and Gavel for two years following their initiation if they return the record form supplied them at the time their application is approved by the Executive Secretary and certified to the sponsor. Following this time all members who wish to receive Speaker and Gavel may subscribe at the standard rate of $5.00 per year.