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SPEAKER AND GAVEL

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THE SOCIAL IMPLICATIONS OF GENRE: A BURKEAN INTERPRETATION OF ARISTOTLE

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Students of rhetoric have long recognized that the identification of genres enables critics to describe not only the characteristic features of a particular family of messages but also the life situations that bring such discourses into existence.¹ The solemnity of hymns reflects the solemnity of the occasions for which they are written. The defensive character of apologia has to be measured against the climate of accusation that brings such speeches into being. Eulogies are commemorative because they mark the passing of a human life, and so forth.

When these messages are considered within the body of understandings brought to rhetorical studies by Kenneth Burke, it becomes evident that genres may also reflect the kind of human identification that was called for in the particular situation which gave rise to them.² To the extent that we share Burke's view of rhetoric as an activity devoted to bringing about cooperation, it is also necessary to recognize that such messages create bonds of identity among their audiences. Thus, for instance, while the primary goal of a national political convention is the nomination of a candidate—a task requiring persuasion—convention rhetoric must also accomplish the goals of identification. Although political speech couches such goals in the language of party “unity,” they clearly fall under the heading of rhetorical “identification.” If the members of each party are going to cooperate in promoting their candidate, they must be united around a common set of goals. To the extent that they are so united, it would be fair to say that those involved have “a common identity.” When a person is under the spell of such political rhetoric he or she ceases, at least for the moment, to be an “I” and becomes a “we” instead. The person is no longer “Sharon McNally, real estate agent from Pittsburgh;” she is now a member of what is symbolically represented within convention rhetoric as the “Republican Party.” Her individual identity is caught up in some collective self through the mediation of symbols.

In the more traditional language of Aristotelian rhetoric we would say that such a person has been “persuaded” to accept the platform of the Republican party. Burke's way of describing the same outcome would be to say that the person has entered into an identity that is coextensive with that platform. Burke's approach does not deny or contradict the Aristotelian understanding of rhetoric; it merely offers a different take on it.³ It draws more

¹ This is implicit in Lloyd Bitzer's notion of rhetorical situations. “The Rhetorical Situation,” *Philosophy and Rhetoric*, 1 (1968): 1–14; For a more detailed discussion of situational determinants of genre see Kathleen M. Hall Jamieson, “Generic Constraints and the Rhetorical Situation,” *Philosophy and Rhetoric* 6 (1973): 162–70.

² Kenneth Burke, *A Grammar of Motives and A Rhetoric of Motives* (Cleveland: Meridian Books, 1962) 544–47.

³ Burke 522; 579–589.

attention to the fact that persuasive outcomes are always social outcomes. To be persuaded is to accept an identity, and identities never occur in a vacuum but always in some larger context of other identities. Moreover, if rhetoric is a study of the ways in which language brings about such states of identification, it may be assumed that the linguistic features of a rhetorical genre reflect some situation of needed identification.

This is how I would like to think about rhetorical genres at the moment. Rhetorical artifacts are studied because, as surviving registers of human action, they afford the critic important insights into the events of human history. In particular, rhetorical artifacts reveal something about how social identities take form, how they are maintained, and how they are perpetuated. In light of this an examination will be undertaken of the ways in which the notion of genre itself may offer insight into the formation and maintenance of human identities. To do so I would like to examine how this might occur in the three rhetorical genres identified by Aristotle—his tripartite division of rhetoric into deliberative, forensic, and epideictic genres. I will show how each of these three classes of rhetoric represents a distinct kind of identification. To the extent that these three genres are associated in their Aristotelian formulation with particular oratorical forums and temporal foci, they have been demarcated traditionally according to the persuasive goals that they accomplish. Deliberative rhetoric occurs in legislative bodies and is oriented to the future because of its concern with persuading political actors to follow policy directives. Forensic rhetoric occurs in courtrooms and is oriented to the past because of its concern with bringing judgment to pass upon some event that has already transpired. The ceremonial situations in which epideictic occurs orient listeners to the present because of this genre's devotion to affirming the values that currently bond the community together.⁴

Rather than throwing out this traditional Aristotelian association between rhetoric and persuasion, Kenneth Burke merely added "identification" to the mix as an "accessory to the standard lore."⁵ In light of this alteration of the traditional view, the critic may now want to consider what the identification of a message's generic form discloses about the public selves that are articulated in such instances of rhetoric.

In a Burkean mode of conceptualizing such rhetorical outcomes, we would ask ourselves what forms or experiences of consubstantiality are likely to arise from a message belonging to one of these three classes. Since Burke denotes by the term "identification" the social bonds that are enacted within speech,⁶ the application of this concept to genre theory requires some determination of the ways that each particular family of discourse accomplishes such outcomes of social construction. In other words the critic must determine what manner of identification is exhibited in a given message and how a particular category of identification fits traditional understandings of the Aristotelian genres.

The table below considers how Burke's notion of rhetoric might be sub-

⁴ George A. Kennedy trans., *Aristotle On Rhetoric: A Theory of Civic Discourse* (New York: Oxford UP, 1991) 40–87.

⁵ Burke 522.

⁶ Burke 543–7.

divided into three categories of identification—each corresponding to one of the three Aristotelian genres. The left column specifies three types of identification that are likely to occur through discourse. The right hand identifies the Aristotelian counterpart to each of these types.

<u>Burke</u>	<u>Aristotle</u>
1. Identity of action	Deliberative
2. Identity of context	Forensic
3. Identity of being	Epideictic

Just as there are different substances of persuasion that comprise the traditional Aristotelian genres, we can also find within these generic categories, three distinct substances of identification. In the next several pages, I will explicate these categories of identification and then illustrate them through an examination of three of Abraham Lincoln's speeches—each representing one of the Aristotelian genres.

Deliberation's most conspicuous feature, as Aristotle recognized, is its concern with the future. Deliberation is about policy, that which needs to occur in the future. As such it would not seem to be concerned with identity, at least not on the surface. Its focal question is "where are we going?" rather than "who are we?" But to the extent that individuals share a common view of the future, they are also drawn together as a community acting to realize that vision. Through such rhetoric they become a community that is defined by its action. Deliberative rhetoric causes audiences to share not only a way of seeing the world but also a way of seeing themselves as actors within that world. Policy is action, and any characterization of action such as is given in deliberative rhetoric always implies many things about the character of its agents.

This can be shown to occur in the familiar debates of Congressional legislators about how to deal with the budget deficit. Such speakers typically envision at least two views of the future. One is of a future shaped by inaction, in which the escalating deficit is not arrested and leads to some sort of economic catastrophe. The other view is likely to be of economic salvation assured by the adoption of more propitious fiscal practices.

So far as the identity-shaping power of these visions is concerned, it matters not which view is taken. To participate in either is to accept a certain identity as an actor. Each particular concept of the future is a vision of that into which the audience enters when it gives its assent to what is said in a discourse. To take such an imagined future to heart is to accept a definition not only of these acts but of the agent that is implied by them. The audience that assents to such proposed actions of "belt-tightening" is also accepting itself as the agent of such actions. Thus when called upon to name themselves, they will identify themselves as "economically responsible," or "fiscally conservative." In doing so audiences are taking their substance as a community from the actions described in discourse.

Something quite different turns up in forensic discourse. Aristotle identifies forensics with the past and with the rhetorical environment of the courtroom. Judicial tribunals, which are the most familiar arenas of forensic discourse, have as their appointed duty the application of the law to particular events.

To do this a court has to determine two things generally, the precise nature of the events that are being examined according to the law, and the nature or meaning of the law itself.

Although it is difficult enough to establish the truth of the particular facts of a case, the work of establishing the reality of legal proscriptions, which heretofore may have existed only on paper, is truly a daunting problem for courts. Communities generally agree that human behavior must be regulated by law, and yet the reality of the law is something that is characteristically abstract, seemingly transitory, and subject to variable interpretations. One would be hard pressed to find any person who does not value law, (at least insofar as it is in his or her own interest), but to agree about what the basis of law is or about how it should be applied is another matter.

For a democratic government the law becomes real in an official sense when it is authorized by a deliberative body, but it is actualized in forensic discourse. This is to say that it achieves its reality for those subject to it through its enforcement in the courts. Forensic rhetoric brings what legislative bodies have created into the real world of human affairs.

This goal is accomplished as a *persuasive* outcome of forensics in the judgments that a court passes down. A court responds to forensic discourses by deciding how the particular events it must consider should be interpreted under the law. The *identification* that coincides with this is a common vision of the reality of the law as the *context* in which the audience exists and acts. This is to say that the acts which are judged in the courtroom are situated within the law. In agreeing upon the relationship of the law to these events, the audience for such messages comes to the conscious recognition that the law is the shared context of their lives. Concrete experiences of ordinary life are united in this fashion with the abstract reality of legal statutes, enabling people to see themselves as living within a common environment of law.

Courtroom rhetoric is only the most technical variant of rhetoric that accomplishes this identity of context. What judicial speech shares in common with these other varieties of forensic discourse is an historical consciousness—identified by Aristotle as forensic's concern with the past.⁷

Common to all rhetorics relying upon an historical consciousness is the effort to associate intangible things, such as ideas or policies, with tangible events of the past. In the courtroom this occurs when abstract considerations of law and justice are identified with human actions as they are woven into narrative constructions of a case. In the political arena forensics is likewise employed when an administration or party identifies its policies with the seemingly indubitable reality of historical events. The Reagan and Bush administrations, for instance, identified the collapse of communism in Eastern Europe with the foreign policies enunciated during their tenure in Washington. In this case it was not so much causal reasoning that gave the Reagan and Bush administrations credit for the demise of communism as it was the sense of "presence" that their policies achieve by being associated with such momentous events.⁸ The causal reasoning at work in such arguments would

⁷ Kennedy 47–118.

⁸ Chaim Perelman, *The Realm of Rhetoric*, trans. William Kluback (Notredame, IN: U of Notredame P 1982) 33–40.

not withstand close scrutiny, but it is made powerful by its ability to unite the tangible fact of communism's demise in Eastern Europe with the abstract political ideology of the Reagan administration. The audience which is persuaded of this causal argument comes to share a common allegiance to the context of political ideology that such arguments visualize.

To round out Aristotle's three genres, we come finally to epideictic or ceremonial rhetoric. While deliberation is forward looking and forensics backward looking, epideictic looks at the present. It might be better to say—though this is certainly not how Aristotle puts it—that epideictic is “inward” looking. To focus upon the present is to take stock of oneself, and that is precisely what seems to go on when people speak on ceremonial occasions.

This human focus is evidenced in what Aristotle identifies as the end or aim of epideictic, which is “praise or blame.”⁹ The most familiar instances of epideictic discourse in antiquity were encomia, speeches originally given in praise of the gods and latter in praise of exemplary citizens.¹⁰ What the religious and secular variants of the genre share in common is a tendency to praise traits in their human or divine subjects which are identified with the speaker's society as a whole.

As a form of persuasion epideictic succeeds when it manages to arouse these evaluations of praise and blame. But as a form of identification it succeeds when some desired understanding of the community's being is realized within these evaluations. Aristotle regarded the present as the locus of this genre, but he acknowledged the involvement of the other temporal perspectives as well. He observed that “all speakers praise or blame in regard to existing qualities,” but they also make “use of other things, both reminding [the audience] of the past and projecting the course of the future.”¹¹ Epideictic discourse situates the particular event that is its subject within a larger stream of human occurrences, as if to make its audience see the past flowing into the present and out again into the future. By looking at the full panorama of time in this fashion, epideictic speeches attain a kind of timelessness. A speech that sees some whole of time cannot be relativised in the same fashion as one that looks at only one dimension of time. It is for this reason that epideictic speeches may remain relevant long after the events which inspired them have passed. Thus while the Gettysburg Address is specifically about the American Civil War, Lincoln situates this conflict within the full spectrum of American history, both past and future. The readers of this speech always find themselves in it. The contest described in his speech becomes the struggle for democracy that is occurring at every moment.

The identification which occurs in such messages complies with Burke's notion of identification in the fullest sense. The focus of deliberation is upon the action of policy, and thus the identification that arises from this genre is centered outwardly in proposed actions. In forensics the focus is upon the human environment, the common scene of community life. But the focus of

⁹ Kennedy 48–9.

¹⁰ T. C. Burgess, *Epideictic Literature* (New York: Garland Publishing, 1987; [1902 U of Chicago P]) 113–27.

¹¹ Kennedy 48.

epideictic, which is upon praise and blame, turns an audience's attention inward to contemplate the contours of some collective self.

This is not to say that epideictic is often about the corporate self in any explicit sense. The attention of such rhetoric is more likely to be upon something more specific, a particular person, place, or event. But these specifics are always emblems of some shared identity.

A Critical Illustration: Three Speeches of Abraham Lincoln

The relationship between the Aristotelian genres and the three categories of identification outlined above will become more evident if examined in specific instances of rhetorical discourse. As examples, three messages of Abraham Lincoln may be considered. The first is his message to a special session of Congress made on July 4 of 1861. I will treat this as an example of deliberative rhetoric, since it is the speech in which Lincoln lays out his policy of using military force to sustain the Union. The second speech, which illustrates the features of forensic rhetoric, is the Cooper Union Address of the previous year. Finally, I will examine his Second Inaugural Address as epideictic.

Deliberation: Identity of Action

Lincoln's fourth-of-July speech of 1861 is a policy speech aimed at securing resources and political support for the execution of war against the insurrectionist states. In it Lincoln summarizes the events leading up to the bombardment of Fort Sumter, outlines the response of the federal government, and asks Congress for authorization to raise an army. Seeing the Union caught in a dilemma that forces it to choose between "immediate dissolution or blood," Lincoln proclaims the necessity of arms.

Consistent with those features that Aristotle associates with the deliberative genre, Lincoln's speech is addressed to a legislative body whose cooperation he needed in order to execute the war. In similar accordance with the Aristotelian genre is its temporal orientation to the future. Although there are moments of reflection and judgment upon the past which might be suggestive of a forensic orientation, the general aim of the speech is the justification of Lincoln's policy of war.

This argument is developed along several fronts. In a fashion that Franklin Roosevelt would later emulate in his own declaration of war, Lincoln sets the stage for his policy proposals by reviewing the Southern acts of aggression that justify his proposed military response. As Lincoln constructs the situation, by seeking to actualize secession through military action, the Southern states had crossed a line that the President had drawn in his Inaugural Address of four months earlier.

Turning from this introductory narrative, Lincoln then makes the argument, more familiar to us in his Gettysburg oration, that the conflict has a greater global significance as a test of the durability of democratic governments. Thus for Lincoln, the question of whether a "constitutional republic, or democracy . . . can or cannot maintain its territorial integrity against its own

domestic foes," turned upon the outcome of this war.¹² This larger purpose of determining whether a democracy was not "too weak to maintain its own existence," left the nation with no choice "but to call out the war power of the Government; and so to resist force employed for its destruction, by force for its own preservation."¹³

The global significance that Lincoln attributes to this conflict is acknowledged at two junctures in the speech, at the end of his introductory remarks concerning happenings at Fort Sumter¹⁴ and again at the beginning of his peroration.¹⁵ This sweeping claim encompasses the controversial policies that are advanced in the speech and makes them appear as a much smaller matter than they would have seemed in isolation. Lincoln's proposals to suspend *habeas corpus* for insurrectionists, to mobilize a standing army of 400,000, and to raise the debt ceiling to \$600,000,000 are subsumed beneath the more general purpose of preserving the Union.

Thus while the July, 1861 message dwells upon a number of issues pertaining to the execution of the war, these matters are drawn together into a unified vision of the future of democracy. This future is described by Lincoln as the outcome of what the audience is being asked to enact. In the language used by Burke to describe rhetorical events, we would say that the locus of this speech is an act. This means that those who find themselves within the message as its subjects, also find themselves described as subjects who are doing something in defense of global democracy. The thing described in the speech with which they are compelled to identify is an act, a demonstration before the world of the feasibility of democracy that is enacted through war.

This "identity of action," is suggestive of the other two dimensions of identification, (those of context and being), but the focus of the speech is upon action—a military venture that will preserve American democracy and ensure the future of democratic government globally. The persons who enter into the speech by assenting to its proposals find themselves sharing in this symbolic act. By agreeing with Lincoln's assessment of what this war means as an act, they accept as their own those actions which are capable of bringing this future into being.

Forensics: Identity of Context

If we examine a forensic speech, we will see something different, namely the construction of an identity that is formulated through reference to some context of reality with which the audience is asked to associate itself. An example of this can be found in Lincoln's address of 1860 at the Cooper Union in New York, a speech which established the justice of Republican opposition to the extension of slavery by situating this policy within a framework of Constitutional interpretation. In this case the "identity of context" is a shared understanding of the Constitution's legal jurisdiction.

Aristotle recognized that forensic discourses are concerned with the past, with "what has been done," or more specifically with what has been done

¹² Stanley Appelbaum, *Great Speeches: Abraham Lincoln* (New York: Dover, 1991) 65.

¹³ Appelbaum 66.

¹⁴ Appelbaum 65–6.

¹⁵ Appelbaum 74.

in violation of the law.¹⁶ In such situations of rhetoric, the legal principles which are at issue are inseparable from the act under judgment; they constitute the context of reality from which an action gains its legal status. Since these legal realities also belong to the past, it is the task of forensic discourse to exhume them. To put this differently we might say that courtroom discourse is as strongly compelled to examine legal history as it is to examine the history of a particular case. The specific deeds that a court is called upon to consider cannot be judged unless there is also some consideration of the governing principles around which the community has elected to organize its existence. This is the message's context of identity.

Like more conventional instances of courtroom forensics, Lincoln's Cooper Union speech addresses specific actions and the legal context in which they occur. The legal question that lies at the heart of the speech is the constitutionality of federal efforts to regulate the expansion of slavery within the western territories. The actions at issue are the voting patterns of elected officials who had formerly been signers of the Constitution. By showing that the same men who framed the Constitution have subsequently acted in accordance with the assumption that the federal government has the authority to regulate slavery in the territories, Lincoln upholds the constitutionality of such actions. Lincoln shows that these framers have acted in accordance with the assumption that the Constitution grants such regulatory powers to the federal government.

In Lincoln's judgment, the authoritative answer to this general question will be found in the voting behavior of the Constitution's framers. By asking his audience to pass judgment upon the intentions of the founders, Lincoln also invites them to place themselves within the constitutional context in which the founders lived. He invites them to identify the Constitution as the scene of their own actions and to see themselves as actors whose work is performed within the historical and judicial setting that was created for them by the authors of the Constitution. They enter into an historical consciousness that requires that they view their present resistance to the extension of slavery as fitting within the Constitutional context that was formulated seventy years earlier.¹⁷

Ultimately Lincoln's speech serves the interests of partisan politics. His examination of the voting patterns of the nation's founders is put to use as a demonstration of the fact that the policies of his own Republican party are consistent with those endorsed, as Lincoln repeatedly states, by "our fathers, who framed the Government under which we live." This puts the Republicans inside the same sphere of political action in which the framers moved, and it puts Stephen Douglas and his Democratic following on the outside. Accepting this understanding of their situation, Lincoln's Republican audi-

¹⁶ Kennedy 48.

¹⁷ It is certainly correct to say, as Leff and Mohrmann do, that "Lincoln associates himself and Republicans with the founding fathers and Constitutional principle, and he dissociates rival candidates and factions from those fathers and that principle," but this is not the most significant identity in the speech. Rather it is one that sets the stage for a Constitutional understanding that forms the context of Republican action. Michael C. Leff and Gerald P. Mohrmann, "Lincoln at Cooper Union: A Rhetorical Analysis of the Text," *Quarterly Journal of Speech* 60 (1974): 348-9.

ence would believe itself to be safely situated within the context of political understanding in which the nation was created.

Epideictic: Identity of Being

As noted already, Aristotle recognized that epideictic speakers concern themselves with praise and blame. In accordance with Burke's theory of rhetoric, the audiences for such speeches would identify with the persons described in such discourses and with the ideals they represent. Through this identification they take some share in the attributes that are celebrated therein. Thus when Daniel Webster praises the valor of those aged veterans of the Revolutionary War who were present at his Bunker Hill oration, he is not strictly talking about this segment of the hearing audience. Rather he is praising the American people through this segment, by making the virtues of these aged heros stand in for those virtues which he would like to attribute to the whole. In other cases of epideictic, it may be the virtues of a larger segment of the American public with which an audience is asked to identify, such as the younger generation of Americans that stands in for the whole in John Kennedy's Inaugural Address. While the most familiar instances of epideictic that come readily to mind involve praise rather than blame, the negative instances are no less capable of defining the character of a people. Lincoln's Second Inaugural of March, 1865 is perhaps the most familiar example of this. The occurrence of this address immediately prior to the Union's victory in the field, required that Lincoln consider the repercussions of the war's termination for the forthcoming period of reconstruction. Lincoln had to consider the state of the Union in its imminent restoration rather than in its more immediate state of conflict. These circumstances made a speech of praise inappropriate, since it would invite identification from only those states faithful to the Union. A speech of blame, on the other hand, could encompass both the victors and the vanquished, and so in this most prodigious of rhetorical moments, Lincoln chose to depict the conflict not from a human perspective but from the perspective of the God "who gives to both North and South, this terrible war" ¹⁸ Lincoln openly declares that it is slavery which has brought this judgment upon the nation, but he does not insist that the South should bear the full weight of blame for this institution. The mutual suffering that the war has brought upon both North and South is taken as evidence of national rather than regional responsibility for this evil. Loyal citizens and insurgents alike find themselves standing beneath a common canopy of divine judgment.

Lincoln does not explain why this is the case. It would be more accurate to say that he enacts this meaning by putting on the cloak of a biblical prophet. In doing so Lincoln speaks to the religious identity of his audience rather than to the events of the war. This enables the speech to transcend the ordinary logic of political deliberation, (in which actions are conceptualized in terms of their outcomes), and to favor instead those judgments which are based on the religious understanding of self that such a prophetic posture would evoke. In short, Lincoln draws upon a theology of original sin

¹⁸ Appelbaum 107.

which universalizes human evil in such a way as to relativise all merely human judgments. This enables Lincoln to then assign that magnanimous attribute of being to his auditors that is expressed in the most famous line of the speech: "with malice toward none; with charity for all; with firmness in the right as God gives us to see the right, let us strive on to finish the work we are in. . . ." ¹⁹ The mode of identification that is at work in this address is clearly theological. After the fashion of the Hebrew prophets, Lincoln invites his auditors to enter into a concept of the human identity that is understood in terms of its relationship with a righteous Creator. The effect of this is a leveling of moral differences among human beings, and in particular between the North and South. To go back to the language of the Aristotelian genre, we might say that in inviting his audience to take the Creator's perspective on the war, Lincoln also invites them to acknowledge that, theologically speaking, responsibility for the conflagration cannot be fixed upon North or South. Lincoln remains unambiguous in identifying slavery as the evil that brought war upon the nation, but by shining a celestial light upon human nature, Lincoln makes vindictiveness an untenable state of being for the victors.

Conclusion

This brief examination of some of Lincoln's oratory was designed not to summarize the rhetorical significance of these works, but to illustrate the patterned way in which Aristotelian notions of genre translate into a Burkean generic scheme. Aristotle's concept of the genre is founded upon what we would now call an instrumental conception of rhetorical discourses. The features that Aristotle associates with each of the three genres define the persuasive outcomes that a discourse is predisposed to achieve. An examination of these genres from the vantage point that Kenneth Burke provides is not at odds with such an understanding. It simply requires that we consider the generic outcomes of being as well as instrumental effects. A Burkean take on the Aristotelian genres would have us understand that human identities and relationships are forged in several different ways within the public sphere. By recognizing that identification is divisible into various species which occur in coincidence with the genre of rhetoric that is in use, the critic is provided with a useful critical tool. The ability of the critic to identify a genre may coincide with the ability to predict what kind of constitutive exigence is at stake in a rhetorical situation. This would be an especially important consideration when generic expectations are violated or in situations when they are not dictated by custom. In such cases especially, we should expect to find that the choice of genre will be driven by the identity needs of the community that has authorized a rhetorical discourse.

¹⁹ Appelbaum 107–8.

SUPREME COURT DECISIONS AS RHETORICAL HYBRIDS

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The field of rhetorical criticism has become an academic enterprise that is, in many ways, mature in its practice, advanced in its outlook, and broad in its scope. The last several decades have seen grand exposition and criticism of rhetorical texts from throughout the history of human interaction, and the tools used in those pieces of criticism have developed to a complex and useful set of methods that can be rummaged through until the critic finds the method that works best for the piece s/he is about to study. However, despite the advances made in the art of rhetorical criticism, there is still much work to be done. What to do when the critic wants to analyze a piece, and cannot find the tool that is crafted in the way the critic wants it to be? What to do if the critic wants to analyze a piece that demands the use of a method that is yet to be developed? When faced with such a dilemma, the critic can use the text to develop a new tool, or to refine a tool that is already out there. That is the case with this critic, and the piece that I wish to analyze. I am interested in analyzing the 1993 Supreme Court decision for *Daubert v. Merrell Dow*, the case that redefined the procedures federal courts are to use in admitting scientific and expert testimony and evidence. Wanting to use generic criticism to analyze this decision, I found that the genres available to me were not capable of capably dealing with the unique demands of a Supreme Court decision. Supreme Court decisions involve elements of both the forensic and deliberative genres, as outlined by Aristotle, but in unique ways in each and every case. In this paper I look at the *Daubert* decision as an example of a hybrid of forensic and deliberative genres, and argue that the *Daubert* decision is successful in that it involves elements of both genres in its statement, and in so doing, satisfies the expectations of the audience, including the litigants, the federal courts, and the public. It is my argument that Supreme Court decisions are a fusion of the deliberative and forensic genres discussed by Aristotle, and the result is a rhetorical hybrid that involves both descriptive and prescriptive action. I will provide the background of the *Daubert* case, discuss the use of rhetorical hybrids in generic criticism, the Supreme Court decision as a rhetorical hybrid, provide an analysis of the *Daubert v. Merrell Dow* decision to demonstrate how the elements of deliberative and forensics genres are evidenced in a Supreme Court decision, and outline some of the benefits of using the rhetorical hybrid in the rhetorical analysis of Supreme Court decisions. I begin with the case.

Dauber v. Merrell Dow: Background of the Case

On June 28, 1993, the United States Supreme Court was close to finishing its term for the year, when it presented its decision in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* The case begins twenty years earlier, however, with the birth of Jason Daubert. His mother, Joyce, had taken the drug Ben-

dectin, manufactured by Merrell Dow Pharmaceuticals, in order to alleviate the morning sickness associated with her pregnancy. Jason was born with birth defects—his right arm ended at his elbow, and his right hand had only two fingers on it—the type of birth defect that affects 1 in 2,000 American infants each year (Angier, Jan. 2, 1). However, it was claimed by the Dauberts that Jason's birth defects were caused by his mother's use of Bendectin. Joyce Daubert was one of an estimated 33 million women that had used Bendectin, and Jason's case was one of more than 1,000 cases brought against Merrell Dow in which Bendectin was claimed to have teratogenic effects.

Merrell Dow discontinued its production of the anti-nausea drug in the late 1970s as a result of the court costs associated with the over one thousand lawsuits brought against it by women who claimed that Bendectin had caused birth defects—even though scientific data overwhelmingly proved Bendectin safe, none of the lawsuits were found in favor of the plaintiffs, and the FDA still considered Bendectin safe for production and distribution (Angier, Jan. 2, 1). Joyce and Jason Daubert brought their suit against Merrell Dow in the 1984 armed with animal-cell studies, live-animal studies, chemical-structure analyses, and epidemiological analyses, based upon recalculations of the data used in the 30 studies involving 130,000 women that had concluded that Bendectin was safe. The Daubert's case was thrown out in 1989 by the District Court, however, who decided that the scientific studies provided overwhelming proof that the drug was safe (Blackmun, 2791-2). This decision was upheld in 1991 by the United States Court of Appeals for the Ninth Circuit, who cited the 1923 *Frye v. United States* case, stating that expert opinion based on a scientific technique is inadmissible unless the technique is generally accepted as reliable in the scientific community (Blackmun, 2792).

The Supreme Court's decision on June 28, 1993 on *Daubert* was not to decide whether Bendectin caused birth defects, or if Merrell Dow should be held responsible; it was a decision of whether the expert testimony that was to be supplied by the Daubert legal team was to be admissible or not. The basis for the *Daubert* case came from a seventy year old court decision that produced what is referred to as the Frye test. In 1923, James Frye was charged with first degree murder in the District of Columbia. His lawyer asked that the results of a new test be admitted as evidence of his clients innocence, or that his client should be allowed to have the test conducted in front of the jury. The test referred to by Frye's defense was the polygraph, or lie detector, test. The polygraph had only been used for a short while, and many scientific and technical experts were not sure of its reliability (only because many of them had not yet used it or seen it used). Frye was being tried on circumstantial evidence, and claimed that the polygraph test would prove that he was indeed innocent.

The judge in the Frye case handed down a short, nine paragraph decision that ruled that the results of the polygraph test, whether conducted inside or outside the courtroom, were not admissible as the test did not meet the "general acceptance" test. The "general acceptance" test, as first outlined by the judge in the Frye murder trial, simply stated that a scientific or technical method, or mechanism, or the testimony concerning that method or mechanism, was not admissible as evidence or testimony unless that tech-

nique or mechanism was recognized as reliable by a consensus of the relevant scientific community (Jasanoff, 80–81).¹ The Frye test became the recognized standard for the admissibility of scientific and expert testimony and evidence.

In filing for a grant of certiorari (the right to try the case in front of the high Court), Daubert provided two questions to the Court: is the *Frye* test of “general acceptance” superseded by the 1975 Federal Rules of Evidence that provides a more liberal criteria for the admission of expert testimony, and, if *Frye* is still valid, whether or not scientific data must be subjected to peer review in order to conclude general acceptance (Rehnquist, 2799). The Court decided that the Federal Rules of Evidence did supersede the *Frye* test, meaning that the second question was moot. What the Court did not do was to decide whether the expert testimony provided by the Daubert team was admissible—only that the lower courts should use the more liberal Rules to decide. I now turn to generic criticism.

Generic Criticism and Rhetorical Hybrids

Karlyn Kohrs Campbell and Kathleen Hall Jamieson have done much to explicate and develop the use of generic criticism. Through their books, *Form and Genre: Shaping Rhetorical Action*, and *Deeds Done in Words*, as well as articles such as “Rhetorical Hybrids: Fusions of Generic Elements,” from the *Quarterly Journal of Speech*, they have helped bring together different views on generic criticism from throughout our field, and redefine, by explicating the useful elements of others’ work, the role and purpose of generic criticism. As they note in the introduction to *Form and Genre*, certain constants exist in the study of genre:

1) Classification is justified only by the critical illumination it produces, not by the neatness of a classificatory schema; 2) Generic criticism is taken as a means toward systematic, close textual analysis; 3) A genre is a complex, an amalgam, a constellation of substantive, situational, and stylistic elements; 4) Generic analysis reveals both the conventions and affinities that a work shares with others; it uncovers the unique elements in the rhetorical act, the particular means by which a genre is individuated in a given case. (333)

Generic criticism is a means for scholars to analyze a text closely, and to use the standard elements of that genre to determine how well the text being studied meets the standards of a particular genre. What is so useful about the standards of a particular genre? As Campbell and Jamieson note, the rhetorical elements of a genre are “stylistic and substantive responses to perceived situational demands.” (Form, 334). Elements of the genre are used by the rhetor because of the expectations of the audience and situation in which they are speaking. What is distinctive about the genre is that the rhetorical forms, the rhetorical standards for that particular genre, are not simply found in isolation—these same elements are found in any number of rhetorical transactions. It is the fact that these same forms and standards are

¹ James Frye was convicted of first degree murder, and had been in prison for over four years when another person confessed to the crime (Jasanoff, 80).

found together in very similar ways that provides the outline of the genre (Campbell and Jamieson, "Forms," 335).

Because the genre is given its unique character as a result of there being a number of rhetorical forms or standards present together, the fact that some of those forms can be found in other genres is not a critical problem. This means that even though Aristotle outlined three basic genres (forensic, deliberative, and epideictic), the presence of epideictic rhetorical forms in forensic oratory is not a problem (Campbell and Jamieson, "Forms," 336). The genres, therefore, can be visualized in the form of a Venn diagram: they are not distinct categories for rhetorical forms that are not allowed to intersect. In fact, there is much intersection, with the borrowing of rhetorical forms from one genre to the other. Even more interesting is the development of new genres—genres that find themselves at the intersections of Aristotle's basic three genres. Campbell and Jamieson call such generic blends "rhetorical hybrids," and in so doing use a biological metaphor to "emphasize the productive but transitory character of these combinations" (Campbell and Jamieson, "Hybrid," 147). The danger of visualizing rhetorical hybrids as Venn diagrams is that one might simply think of the hybrid as a list of elements—certain elements from one genre, mixed with certain elements from another genre produce the hybrid. The rhetorical hybrid is more complex and, I would argue, richer in its possible applications and analysis than simply a list of elements. The real usefulness, as pointed out by Campbell and Jamieson, of identifying and analyzing these rhetorical hybrids is that it helps to understand the coherence of complex rhetorical forms, as well as providing a normative standard for judgment of the rhetorical piece.

The reader might think of the hybrid as a constellation of elements from different genres, or of the overlap between genres as a continuum. Along this continuum, each point represents a different mixture of elements from the two basic genres. A different type of rhetorical transaction could be found at each point, each with different situational demands. If we were to look at the rhetorical hybrid found between the epideictic and forensic genres, different rhetorical transactions would exact different situational demands that would require a different mixture of epideictic and forensic elements. In some instances, the epideictic would be the dominant genre, and in others the forensic would be. In most cases the mixture of elements (and the dominance of a particular genre) cannot be determined by the critic until after each transaction is analyzed. This is certainly the case for eulogies given by political leaders, as analyzed by Jamieson and Campbell, as the hybrid occurs infrequently and under variable circumstances. (Jamieson and Campbell, "Hybrids", 154) The rhetorical transactions analyzed by Jamieson and Campbell are infrequent enough that public expectations have not been developed concerning these types of politicized eulogies.

Jamieson and Campbell do provide for rhetorical hybrids that occur with some regularity and create formal expectations in the knowledgeable audience. (Jamieson and Campbell, "Hybrids", 154) These hybrids are either the result of recurrent events, such as Presidential inaugurals that combine epideictic elements with deliberative elements, or are sustained by an institution, such as the papacy and its encyclicals that fuse elements of the apostolic letter with those of the Roman imperial decree (Jamieson and Campbell,

"Hybrids, 154–5). In such cases the longevity of the hybrid may make it difficult for us to perceive elements borrowed from different genres. (Jamieson and Campbell, "Hybrids", 156) There are hybrids, however, that are both the result of recurrent events, and that are sustained by an institution. An example of a rhetorical hybrid that fits both of these exceptions is that of Supreme Court decisions, in which the institution sustains the fusion of deliberative and forensic elements in recurring situations. Each rhetorical transaction, each Supreme Court decision, is unique in the way that it uses deliberative and forensic elements, so that the longevity of this rhetorical hybrid does not result in the difficulty Jamieson and Campbell describe. I turn to this rhetorical hybrid.

Supreme Court Decisions as a Rhetorical Hybrid

In *The Art of Rhetoric*, Aristotle provides a framework for analyzing different forms of rhetoric. Aristotle provides three genres of rhetoric: deliberative, forensic and display. The objective of the deliberative orator is advantage or harm, as to exhort is to urge as being more advantageous, to deter to dissuade as being more harmful (Aristotle, 1358b22–24). The deliberative is the political realm—and it includes five subjects: revenue, war and peace, the defense of the realm, imports and exports and legislation (Aristotle, 1359b21–22). The deliberative orator is concerned with the happiness of the people (Aristotle, 1360b4–1362a18), and the issues discussed by the deliberative orator, the subjects of deliberation, are decided by us (the orator and the people) (Aristotle, 1359b1–3). An important characteristic of the role of the deliberative orator is that of expediency—as Aristotle says, for debates are not about the end but about the means to it, which are the measures that are practically expedient, expediency being a good thing (1362a22–24). Similarly, expediency is the good for the individual, in the presence of which he is well disposed and self-sufficient. (Aristotle, 1362a32–33) For Aristotle, the deliberative orator should be concerned with the issues designated as important by the community, and they should deal with those issues with expediency, the happiness of the community, and self-sufficiency in mind.

Aristotle also discusses the genre of forensic oratory—concerned with justice and injustice (1358b26). Forensic oratory consists of oratory for either the prosecution or the defense. For each of these, the orator must deal with either particular or general law, and whether or not certain acts are criminal in nature. For all of forensic oratory, however, the oratory always discusses, and is centered, around an act that has already occurred, and whether that act violates a particular or general law (whether it was just or unjust). This genre fails to provide a method of analysis for modern day court decisions, as this genre assumes the advocacy used by the prosecution or defense, and not the oratory used by the judge in adjudicating the case. The judge is not speaking as advocate of either side (at least they are not supposed to). The judge is instead supposed to discuss the outcome of the case.

Another problem with the forensic genre, as outlined by Aristotle, is that it assumes that the oratory will act only on a descriptive level—it is supposed to be concerned with the specifics of the case on trial, exclusively. Court decisions do more than decide the specifics of the case, however. The Amer-

ican legal educational system was patterned after the case method developed by Christopher Columbus Langdell at Harvard Law School (Matlon, 188). Within this framework, legal students study past court decisions in order to understand the way that legal logic works in particular instances. Court decisions are also used by the courts to decide cases—termed *precedence*—which means that in deciding a case, the court judge will not only analyze the legislation that might be applicable, but they will also analyze past court decisions, believing that those decisions will offer guidance in interpreting the legislation as well as the specifics of the case. As a result of the case study method and *precedence*, court decisions are not merely descriptive of the specifics of the case heard by the court, they are also prescriptive of how legislation, or legal problem areas, should be interpreted in the future. Given the prescriptive nature of court decisions, a more helpful analysis of these decisions might include them in the deliberative genre. However, for most court decisions (i.e., any U.S. court decision not coming from the Supreme Court), the forensic genre is still dominant as the prescriptive nature of the decision is subordinate to the fact that the decision is a judgment of the specifics of the case. In fact, the lower the court from which the decision is rendered, the more dominant the forensic genre, as the decision is less likely to be looked at as precedent in future cases. After all, if the decision is made on an issue that is particularly new, or uncharted (i.e., there have been few decisions rendered on that issue), then the case will likely make its way up to higher courts (and eventually the Supreme Court). For the Supreme Court, however, the rhetorical hybrid can have either the forensic or deliberative as the dominant genre. In each case in which the Court decides, there are two actions taken: 1) a decision over the specific issues raised by the litigants, in much the same way that any court in the United States is assigned to do, and 2) a decision to be used by all federal courts (and state courts in most instances) in their future deliberations. In this way, the Supreme Court takes both descriptive and prescriptive action, and as a result, I would argue, acts as both court and legislature. The Supreme Courts' decisions are not simply based upon past Court precedent. After all, in the *Daubert* case, each lower court decided that the Frye test would exclude the evidence. This means that each lower decision implicitly decided that the Frye test was the true standard for the admissibility of scientific evidence and testimony. However, the Supreme Court decided that each lower decision was flawed, as the Federal Rules of Evidence superseded the Frye test. In this way, the Courts' decision was not simply a decision of the specifics of the *Daubert* case (the specifics were never approached by the Court), and the Court did not rely upon past precedent to make its decision. The hierarchy of reference for the Supreme Court is the following: it first looks to the Constitution, then to legislation, then to past Supreme Court decisions, and then to other courts' decisions, in order to make its decision. The true template for the Supreme Court, however, is the Constitution, and in its decisions it must decide whether or not a piece of legislation, or a past court decision, violated the Constitutional rights of the plaintiff.

The *Daubert* decision, however, was not concerned with the Constitutional rights of the plaintiff, but was instead concerned about whether a piece of legislation superseded a previous court decision. This means that the Courts'

decision that the Federal Rules of Evidence superseded the Frye test was an instance in which the Court decided that a legislative action (the Federal Rules of Evidence) was of more importance than a judicial action (the Frye test). Of course, this is the way that the Court is supposed to deal with such an instance: recognizing the primacy of legislative action, right behind the Constitution.

There is a minimum threshold for the presence of both deliberative and forensic elements in this rhetorical hybrid. What is interesting is that at each end of the continuum (i.e. the minimum thresholds for the presence of deliberative and forensic elements), there may be no *explicit* presence of the genre at its minimum threshold. For instance, in a Supreme Court decision in which the forensic genre is by far the dominant genre, it is possible that the Court would only discuss the specifics of the case, without including any deliberative elements—elements with which the Court prescribes the actions of other courts. However, because it is the Supreme Court, there are situational demands resulting from its past decisions, as well as resulting from the institutional establishment and continuation of the Supreme Court. This means that even when the Courts' decision does not explicitly say that it must be heeded by lower courts or legislatures, that it will be received by those lower courts and legislatures as an edict from above. There is also the possible influence of another genre or ceremonial context at work in a legal decision. Given the rhetorical and social nature of the courtroom, each decision will likely find itself inextricably intertwined in a current political or ethical social debate. This rhetorical characteristic of the courtroom necessitates consideration of the decisions' social context by the rhetorical critic, and whether or not that context is relevant to their study.

The same is true when the Courts' decision is dominated by elements from the deliberative genre. The specifics of the case might not be discussed in the decision, but the decision still decides upon an issue that has obvious implications for the specific case. The *Daubert* decision is an instance of this. In its decision, the Court never discusses whether or not the expert's testimony provided by Daubert should be admitted as evidence. Instead, the bulk of the decision, as well as the actions taken by the Court within the decision, deal with how future courts should use the Federal Rules of Evidence in determining the admissibility of expert and scientific testimony and evidence. Certainly the specifics of the *Daubert* case are discussed, but only in such a way as to frame the larger issues in the case. Of course, the fact that the Court does not decide upon the admissibility of the testimony in the *Daubert* case is by the plaintiff's design—in asking for its case to be heard, the plaintiff only presented the Court with questions concerning the larger issues of the case. If nothing else, this provides evidence for the expectations of the litigants, and that those expectations fall in line with those that would be expected with this rhetorical hybrid.

The Supreme Court, I would contend, must act in a political nature with every case. Part of the reason why this is true is because of the role the Court plays in today's legal structure. The Supreme Court is the last arbiter of legal problems—if two parties cannot accept the decision of a lower court, they can continue to appeal the decision until it reaches the Supreme Court, at which time a final decision is made. As such, there is a great call for assis-

tance from the Supreme Court. Thousands of litigants file for a grant of certiorari (a right to be heard by the Court) each year, but only a small percentage of them are granted that right. The Court must only accept cases that represent an entire class of cases—the issues involved in the case must address a problem that is being felt across the legal system. For instance, in the case of *Daubert*, the Supreme Court granted certiorari in light of sharp divisions among the courts regarding the proper standard for the admission of expert testimony. (Blackmun, 2792) Given the fact that the Court is unlikely to accept a case unless it represents a problem faced in a number of cases (and a number of courts), it seems likely that the decision would have to be written in such a way as to offer guidance in those other cases—in other words, it is prescriptive in the way legislation, or problem areas, are dealt with.

The Supreme Court might present a decision that is dominated by deliberative elements that do not simply instruct lower courts how to use a legal procedure, but that tell society how to deal with a politicized social problem. There are, of course, extreme instances in which this would seem most appropriate. As Lempereur notes, issues involving difficult societal problems, such as abortion, raises the deep structure of certain legal problems. The question is of political nature [for the Supreme Court]; and when it is raised, the solution is political, hiding the existing conflict and its expression which is rhetorical, through the appearance of a purely technical solution: law becomes the substitute of politics, as logic was of rhetoric.(291) There are two types of political action for the Court to take. The first is that of the deliberative within the confines of the Constitution. As with the example above, when the Supreme Court discusses procedural issues, or decides that a piece of legislation is not Constitutional, then it is acting in a political mode, but one that is defined for it. The United States Constitution defines the establishment of three branches of government: the executive, the legislative, and the judicial. The legislative is to create legislation—the rules for us to live by, and the judicial is to act as the forum in which the rules are used as the template to judge the actions of an individual. The judicial branch is to use the rules provided by the legislature to judge possible offenders of the rules. The Supreme Court also decides whether or not those pieces of legislation are allowed by the Constitution.

There are also instances, however, when the Court must decide upon issues that are not clearly defined within the Constitution. The Court has also taken political action that is not within the confines of the Constitution, and when it does so, it is forced to base its decisions upon fragments of past decisions, along with fragments of the Constitution and the Bill of Rights that might support parts of its decision. Critics of such policy refer to this as judicial activism, and claim that these are instances in which the Court is making policy, when it should be constrained by the Constitution—it should not decide on issues that are not made clear by the Constitution. However, as noted above by Lempereur, these instances are ones in which the Court is deciding upon cases representing social problems. These types of cases are important for the rhetorical critic to recognize, as they are instances in which the rhetorical hybrid of Supreme Court decisions is taken in another

direction, with different, more politically charged, deliberative elements being included within the hybrid.

Supreme Court decisions routinely involve elements of both forensic and deliberative genres. Aristotle recognizes that “there is the same method for political and forensic oratory” (1354b23–24). The Supreme Court not only employs the same oratory as that would be used for political forums, it also presents decisions that act in a political nature, as they do not simply decide on whether a case is just or unjust. There are also some similarities in the way the Court decides cases, and the way Aristotle describes the role of the deliberative orator. He said that in deliberative discussions, “debates are not about the end but about the means to it, which are the measures that are practically expedient, expediency being a good thing” (1362a22–24). The deliberative orator must be concerned with the good of the community, and in delivering that good with all due expediency. There are, however, two phases in the decision-making process for the Court. The first is the time that it takes for a case to make its way to the Court. There are many years that usually elapse before the case can make its way to the Supreme Court for possible admission. The case must first, in most instances, be tried on the local level, then by the Appeals Court, then through the federal courts, and then it may finally be sent to the Supreme Court for consideration. The reason why this is not a serious problem for the expediency Aristotle is concerned with is that the Supreme Court is not the only deliberative forum in the country. In its prescriptive actions, it is not taking over the job of the legislature; it is, instead, refining or adding to legislative action. Furthermore, Aristotle’s concern with expediency is rooted in the desire for *actio*—he did not want the legislature to debate endlessly about something before making a decision. Even though it might take a number of years before a case can be heard by the Supreme Court, it has, in the meantime, been heard by several other courts. Each court makes its decision, and the only reason the case may continue to the next level is that one of the parties is not happy with the outcome of that decision, and has the legal and economic resources to take the dispute to the next level. There is a form of expediency here, it is just not one of finalized results.

The second phase is the most recognizable—the time taken for the Court to make a decision about a case. The Court recognizes the need for expediency in its decision-making. As Linda Greenhouse explains, “[t]he Justices are . . . accountable. They explain themselves. Congress and the White House can put off decisions indefinitely; entire agendas sink without a trace. But the Court publicly disposes of everything on its docket, every petition, every motion. Every case argued in a term gets some resolution that term.” (84) Similarly, as Aristotle describes the agenda of the deliberative orator being determined by society, Lempereur states that *A Law is made of the resolution of social problems . . . law always means the expression of the transition (1) from a social problem, which comes from a difference . . . (2) to its solution, which must reestablish the social peace, the social identity between people*” (291—emphasis in original). The forensic and deliberative spheres are actually very close in this way—the only differences come in how specific instances in each sphere look towards resolution.

The rhetorical hybrid of Supreme Court decisions, and the unique qualities

of Supreme Court decision, is also able to account for Aristotle's concern about the court's limited scope for review. Aristotle preferred the deliberative forums because in the creation of laws, the way the law would work could be looked at over time and in different situations, while in the courtroom, the judge is only able to look at a single moment—the instance in question (1354b1–10). The concern, then, is that if the Court is only looking at one instance of the law, then should they be able to provide prescriptive instructions? As mentioned above, the Supreme Court is not taking over for the legislature, so this concern is mitigated by the fact that there will continue to be someone looking at the diachronic aspects of the law. Furthermore, the laws written by Congress are inevitably too broad, with need of refining. The Court is able to not only make sure that the laws are constitutional, but also that they are sufficiently explained for use in the lower courts in the future. The concern that their prescriptive action may be too limited is important; however, the Court recognizes that it cannot hear every case that is sent to it, and, as a result, picks one case to represent a class of cases. Then the Court, after deciding upon the specifics of the case, often discusses the prescriptive elements of the decision with sufficient generality that they can be used in many instances. The Supreme Court is not only looking at a single moment, but at as much as they can.

While recent work has been done in analyzing the types of rhetoric used in civil-rights and economic regulations cases (see Makau and Lawrence), the *Daubert* case does not fit into either class of cases, and as such, it can only be analyzed by looking at some of the characteristics of a hybrid of the forensic and deliberative styles as stated.

Daubert v. Merrell Dow: Analysis of the Decision

The decision consisted of three parts: the unanimous decision of the Court in Parts I and II-A, the opinion of the Court in Parts II-B, II-C, III, and IV², and the dissent filed by Chief Justice Rehnquist and Justice Stevens. Justice Blackmun delivered the decision of the Court (the first two parts). In Part I, Justice Blackmun lays out the facts in the case, and describes the history of litigation for the case. It is in Part II-A that the Court offers a substantive decision— that the Federal Rules of Evidence supersedes the previously used *Frye* test. An important aspect of Part I is in the Court's deference to legislation, much in line with Makau and Lawrence's analysis of the Court's language of deference. Makau and Lawrence state that the Court, since the early 1980s, has "an increased tendency to adopt the language of deference in cases involving civil liberties . . . reflect[ing] a shift . . . to a view of democracy as a political process in which decision by an elected legislature and elected executive officials is the only legitimate means for making fundamental moral choices." (193) While the *Daubert* decision does not deal with making "fundamental moral choices", the language of deference is employed. Justice Blackmun states that "[t]he merits of the *Frye* test have been much debated . . . [p]etitioners' primary attack is not on the content but on the continuing

² The second section of the decision, as I have described it, was supported by 7 of the 9 Justices.

authority of the rule" (2793), followed in the next paragraph with A[w]e interpret the legislatively-enacted Federal Rules of Evidence as we would any statute ... Rule 402 provides the baseline"(2793). Blackmun then uses the rest of Part II-A discussing not why the legislatively-enacted Rules should be used over the judicially derived *Frye* test, but why the two are incompatible. It is important to note that in deferring to the Rules, the Court does not discuss the merits of the Rules in relation to the *Frye* test—instead it is simply assumed that the Rules must be used, whether or not they are beneficial³.

The second section of the decision (Parts II-B, II-C, III, and IV) is devoted to discussing how the Rules would be used by future courts to determine the admissibility of expert testimony. Again, let me note that in this discussion, the Court underscores its deference to the legislature by not judging the efficacy of the Rules, but simply as interpreters for future courts.

The third section of the decision is that of the dissent, as presented by Chief Justice Rehnquist on behalf of himself and Justice Stevens. This section of the decision acts as a critique of the first two, in that it discusses some of the anticipated problems resulting from the decision. Rehnquist and Stevens agree with the rest of the Court in the first section of the decision—that the *Frye* test does not survive the Federal Rules of Evidence. The cause for dissent is in the Court's use of the second section to offer some "general observations" about the use of the Rules. Rehnquist argues that these observations suffer from the flaw common to most such observations—they are not applied to deciding whether or not particular testimony was or was not admissible, and therefore they tend to be not only general, but vague and abstract. (2799) Instead, the Court would be far better advised in this case to decide only the questions presented, and to leave the further development of this important area of the law to future cases (Rehnquist, 2800).

Upon examination of the decision, the reader would likely notice that the question posed to the Court is very different from the types of questions that one would expect to hear a court decide. Instead of asking the Court whether or not the testimony of their experts was admissible, the Daubert legal team simply asked the Supreme Court whether or not the Federal Rules of Evidence superseded the *Frye* test. This has two implications: 1) I would argue that the question is determined by the nature of the venue. In other words, the question is limited to a very basic procedural one because it was submitted to the Supreme Court. As mentioned above, there are usually a number of similar cases that are submitted to the Supreme Court, and the Court must decide which of that group they should hear (if any at all). By only asking a procedural question, it is possible that the Daubert legal team increased its chances of being heard instead of another case dealing with Bendectin. A limited question left the Court with a lot of freedom—the Court could decide how far it would go in both its descriptive and prescriptive roles. This, however, results in 2) the fact that the Court, according to Rehn-

³ I realize that it could be argued that this is not a rhetorical move, but simply recognition that the Court is supposed to look first to the Constitution, then to legislation, then to court interpretations of the first two; however, it is important, I believe, that the Court does not even entertain the notion that the reason why they should defer to the Rules is that they are beneficial.

quist, did not go far enough in its prescriptive action. The Court did decide upon the matter—that the Frye test was superseded, and then offered “General observations” that “Acustomarily carry great weight with lower courts”(Rehnquist, 2799). These observations, however, were “not applied to deciding whether or not particular testimony was or was not admissible, and therefore they tend to be not only general, but vague and abstract.”(Rehnquist, 2799) This means that because the Court remained vague, in that it did not decide whether or not Daubert’s expert testimony was admissible, it made it difficult for lower courts to know how to use the Federal Rules of Evidence—the prescriptive action taken by the Court was too vague. In the case of *Daubert*, the very nature of the rhetorical hybrid of Supreme Court decisions may have resulted in the plaintiff’s limiting their question, which then partly resulted in the Court failing, according to Rehnquist, to explicate adequately the prescriptive actions they were discussing. With this example, the rhetorical critic can analyze not only the rhetorical hybrid, but the way that the hybrid, the expectations of the institution and the setting, may have prevented the orator (the Supreme Court) from satisfying the rhetorical forms of this genre. This paradoxical result is not the norm, and it is not another of the rhetorical forms of this genre. However, it certainly is an interesting example of how this rhetorical hybrid works, and can fail to work.

The deliberative genre was dominant within the *Daubert* decision, as the decision did little to decide the specifics of the case, but instead was concerned with prescribing the use of the Federal Rules of Evidence for future courts. In prescribing the use of the Federal Rules of Evidence in determining the admissibility of expert and scientific testimony and evidence, the Court did little to explicate methods for the courts to use. The reason that there has been much debate among legal theorists about the admissibility of highly technical testimony and evidence is that most lawyers and judges do not know how to effectively deal with such highly technical data. The Court says that Rule 403 of the Federal Rules provides the baseline for admissibility of evidence, as it states that “all relevant evidence is admissible.” (Blackmun, 2793) However, if the judge in a case is not able to understand the evidence, how is she to determine whether or not it is relevant to the case? Similarly, it is difficult for lawyers to contest the relevancy of their opponent’s admitted evidence if they do not understand it, and do not know how to deal with it. There are two ways that the Court could have provided the courts with the methods: 1) it could have demonstrated how to use the Federal Rules of Evidence, by determining, itself, whether or not the testimony provided by Daubert was admissible, or 2) it could have provided the courts with the explicit methods, or a set of tools, that could be used to analyze and decide whether or not highly technical evidence and testimony were admissible. However, the Court did neither, as it did not demonstrate the methods using the specifics of the *Daubert* case, and did little to outline the methods for future use. There are some methods discussed by the Court, including suggestions to look at the methodology used, whether or not it has been tested, and whether it has been subjected to peer review (Blackmun, 2796–7). It also mentions the use of “vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof” as traditional and appropriate means of attacking shaky but admissible evidence (Black-

mun, 2798). The Court, therefore, discusses methods from the scientific community, as well as methods from the legal community. However, it completely overlooks methods developed by rhetoricians and sociologists of science, which analyze the sociological, rhetorical, and political contexts in which scientific work is conducted. Furthermore, these methods have been developed with a keen eye towards the special needs of studies of science (unlike the general legal methods discussed by the Court), while being developed outside of the context they have been developed to study, decreasing the chance that they are biased in favor of the context they are studying (unlike some of the scientific methods provided by the Court).

In using the rhetorical hybrid as a normative framework for judgment of the decision, the *Daubert* decision could be deemed moderately effective at meeting the situational demands placed upon it. The expectations of the litigants have been met, as the questions asked of the Court were answered. However, the expectations of the lower courts, as well as the rest of the legal community, were not met, as the Court failed to provide a complete framework for the determination of technical evidence and testimony admissibility. While a few methods were provided for the use of future courts, the Court did not demonstrate how to use the Federal Rules of Evidence, which they state must be used over the easy and oft-used Frye test. Rehnquist is correct when he claims that the Court's "General observations" were "not only general, but vague and abstract" (Rehnquist, 2799). Rehnquist concludes by stating that he believes that "the Court would be far better advised in this case to decide only the questions presented, and to leave the further development of this important area of the law to future cases" (Rehnquist, 2800). However, he also concedes that "Rule 702 confides to the judge some gate-keeping responsibility in deciding questions of the admissibility of proffered expert testimony, "which means that the judges will have to know how to determine the admissibility of technical evidence and testimony (Rehnquist, 2800). Why would Rehnquist want to opt for not offering judges any guidance in determining evidence admissibility, instead of offering them a set of incomplete, and general observations? While Rehnquist is correct about the limited utility of the "general observations" provided by the Court, the Court would completely fail to meet the expectations of the legal community if it were to follow Rehnquist's lead.

The benefit of using the rhetorical hybrid in analyzing a Supreme Court decision is that the critic can begin her analysis by looking for which genre (deliberative or forensic) is dominant, and then analyzing the use of elements from each genre in the decision, before using the framework to decide upon the effectiveness of the Court in meeting the expectations of the litigants, the legal community, as well as the public. As long as the critic recognizes that the elements will be found in different concentrations and configurations in each decision, she will be able to use the rhetorical hybrid to critically study and comment on the complex nature of Supreme Court decisions as rhetorical transactions.

Conclusion

Campbell and Jamieson do a good job of not only demonstrating the usefulness of generic criticism, but also of their analysis of rhetorical hybrids.

Rhetorical hybrids enable the rhetorical critic to analyze increasingly complex, and common, rhetorical acts. Supreme Court decisions, as rhetorical hybrids, are good examples of how complex these rhetorical acts have become. The Supreme Court and its decisions is a useful location for the rhetorical critic interested in rhetorical hybrids, in that its decisions are the result of both recurring situations, as well as the result of its being sustained as an institution. However, while the decisions are recurrent, they are always very different from one another, as the Court, ever mindful of its limited docket space, must only accept cases that are representative of a class of cases. This means that while the decisions are recurrent, the nature of the cases is not, resulting in each case dealing with unique issues, and, as a result, with a very different mixture of deliberative and forensic elements.

The decision in *Daubert v. Merrell Dow* provides an example of how this hybrid is constructed, developed, and responded to. The paradoxical result in this case, constructed by the fact that the questions posed by the litigants might have prevented the Court from satisfying the expectations of the Court's audience, offers the rhetorical critic some insight into the workings of the hybrid that might not be possible were the paradox not to exist. For instance, both the expectations of the litigants and the ways that the Court meets (and fails to meet) those expectations are highlighted with the discussion of the paradox, and it illustrates the components of the rhetorical transaction, as well as elements of the rhetorical hybrid for the critics and the reader. The paradox also helps the critic do their own prescriptive work in defining how the hybrid can be used more effectively in the future.

There is still work to be done in the area of rhetorical hybrids. However, instead of merely documenting and cataloguing the different types of rhetorical hybrids, a more useful approach might be to outline different approaches a critic might take towards a hybrid, as well as to outline other possible benefits. It seems certain that the use of the rhetorical hybrid is a useful, and beneficial method for the rhetorical critic to add to her repertoire.

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CONTEMPORARY WOMEN AT THE PUBLIC PODIUM: MEDIA INFLUENCE AND THE CONTINUED DEVALUING OF WOMEN AS SPEAKERS

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On July 4, 1828, Frances Wright delivered the first recorded public speech by a woman in the United States. Since that time, the number of women stepping up to the podium has increased substantially. Scholars, although slow to begin examining and appreciating these works of oratory, were spurred to do so by the contemporary women's movement. The resulting attention to women's speaking has taken a variety of forms. Led by Karlyn Kohrs Campbell (1989), a number of scholars have worked to reclaim and critique the outstanding oratory of the first women speakers (Anderson, 1984; DuBois, 1981; Green, 1980; Linkugel, 1963). A second body of scholarship has focused on contemporary women orators (Blankenship et al., 1986; Dow & Tonn, 1993; Merron & Gaddy, 1986; Reynolds, 1973; Thompson, 1979). These works have provided rhetorical analyses of women's texts, and in the process legitimated both the positions and the rhetoric of these women. In both of these streams of research, a major focus has been to explore the way gender norms have influenced women's approach to oratory.

There is, however, another aspect to the gendering of public speech. In a mass mediated society, the media serve substantial functions of gate keeping and framing. They may constitute or reconstitute gender norms by silencing or reshaping the speech of female political orators. Because women are working to gain equal access to both the podium and political offices, it is important to consider the role the national media plays in the success of these women in the political arena. This essay explores the media's re-presentation of women's oratory by examining press coverage of the 1992 Democratic and Republican national conventions.

Coverage of Women's Speaking

A substantial body of work has explored the multiple ways gender roles and expectations influence women's experiences at the podium, particularly in the political arena (Jamieson, 1988; Procter, Aden, & Japp, 1988; Trent & Friedenberg, 1991). The majority of this work considers constraints that women face when approaching the podium. Gender stereotypes suggest that women should be supportive, caring, and polite. Thus, when at the podium speaking to influence the public vote, women are put in a double bind. If they speak assertively, they are critiqued for not meeting female expectations;

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if they speak to meet the gendered stereotype, they are not taken seriously as political players. Thus, there is little room for women speakers to explore ways women combine stereotypes (Procter, Aden, & Japp, 1988) and use different mediums (Jamieson, 1988) to overcome the double bind.

Even if women are able to navigate gender norms successfully in their speaking, media attention may subvert their efforts. The simplest way to sand-bag the efforts of women is to silence them by failing to give them equal coverage with their male counterparts. In addition, however, the media may contextualize women differently or provide inappropriate commentary, inequitable valuing, and disparate presentation through photographs. Some scholars have examined media attention to women speakers on the local level and within party papers (Silver, 1986; List, 1985). There remains, however, a need to examine press coverage on a national level. Looking at the national media coverage given to speakers at the 1992 conventions will illuminate how women and men are portrayed as public speakers. According to Dennis McQuail, the media have several purposes in society including providing information about events and support for established authority and norms (1987, p. 71). Popular media have the power to influence public perceptions by reflecting and supporting certain established societal norms and perceptions. Thus, the coverage of these conventions will seek to answer the question: Do increased women's public speaking opportunities lead to increased public value of those speech acts?

This study focuses on three national newspapers that gave full coverage to both the 1992 Democratic and Republican national conventions. The *Chicago Tribune*, *The Washington Post*, and *The New York Times* were selected because they represent full coverage in prominent papers. While three sources certainly are not the maximum number of newspapers that covered the conventions, all three papers have large national circulations and are nationally indexed.

Methodology

The coverage of women and men speakers in all three papers is examined through content analysis. According to Robert Weber, "the best content-analytic studies use both qualitative and quantitative operations of texts" (1990, p. 10). This research uses both methods by evaluating: 1) the inches of coverage given to women and men speakers, 2) the language used to describe women speakers and men speakers, and 3) the number of times women and men were covered when talking about "traditional women's issues" as well as other general political topics. The analysis focuses on the coverage beginning the day before and ending the day after each convention.

From the examination of space, language, and topics this study explores the structures and processes of representation, the (re)production of patriarchal ideologies, and the assumptions of women's place in culture. The goal here is specific attention to the valuation of women's oratory by the media. Although the meaning and signs of "value" differ widely across fields and contexts, this study considers "value" as an attribute which is created through visibility, discussion, and evaluation of public speeches. Hence for rhetoric to be valuable it must be recognized, explained, and visible.

In addition, value is defined in relation to discussion and critique. Those things are valuable which are "useful," "rated," and held in "respect and estimation." Therefore value is accorded through the act of rating, determining the usefulness and rank of a work, regardless of the results of the evaluation. Value is also accorded in the results of that critique when the critic provides a positive evaluation, indicating esteem.

Campbell's discussion of rhetoric and social value also indicates the usefulness of visibility and critique as important measure of value. Women's visibility in the role of public speaking is a sign of importance, "a significant matter" (1989, p.1), because of the relationship between public speaking and citizenship. The appearance of a woman at the podium makes the audience see her enacting the valued role of citizen. In addition, seeing women as public speakers connects them to the "symbolic power of persuasion" valued in Western Culture's humanistic tradition (1989, p. 2).

Visibility, discussion, and critique do not occur in a vacuum. Orators compete for space in the public arena, continually struggling to attain visibility and evaluation of their public speaking efforts. Since men have long held control of public forums and standards of oratorical efforts, this study looks at how media attention distributes inclusion and discussion between women and men public speakers in an attempt to determine the value accorded to contemporary women speakers. It is important to note that the valuation of women speakers at the conventions is not a simple linear cause and effect reaction. This study seeks to isolate one of several complex social factors operating in the dynamic valuation process.

Coverage of Women at the Podium

The coverage of the 1992 political convention by the *Chicago Tribune*, the *New York Times*, and *The Washington Post* treated men and women speakers differently in four areas: 1) The GOP female nominating speaker received less media coverage than did her Democratic counterpart. 2) Media evaluated prominent men speakers more positively than prominent women speakers. 3) Women were grouped and compared in media coverage while men were treated as individuals. 4) A disproportionate amount of coverage was given to women who spoke on "women's topics." This essay examines these differences in coverage, their valuative implications for contemporary women speakers, and suggests implications for future work, especially in light of the notion that for rhetors to be considered significant, they have to be seen as individuals (Foss & Foss, 1991, p. 5).

Taken individually, any single difference in the treatment of women and men speakers might not indicate inequality between them. One might explain Cuomo's greater coverage on the basis of his position as New York Governor, or his reputation as a great contemporary orator or as a potential presidential candidate. One might also explain the portrayal of women as "letting down" their audience on the grounds that they really did. However, when there is a consistent pattern of negative and exclusive coverage, these reasons come to look like post hoc excuses, rather than underlying patterns. The repeated patterns that will be identified here indicate that the media still devalues women as public speakers. This argument is based on two broad

findings: women are not considered serious players in the political arena and they are highlighted as dependent. These arguments are supported by the evidence that females are infrequently evaluated as speakers and they are grouped and compared.

Nominating Speakers

On the basis of amount of coverage, women and men receive nearly equal attention. A consideration of several variables reveals discrepancies in the treatment within newspaper coverage that otherwise may appear equal if one looks only at amount of coverage. Some of the most striking differences emerge from a comparison between treatment of the nomination speakers, Republican Lynn Martin and her male counterpart Democrat Mario Cuomo. Lynn Martin nominated George Bush at the Republican National Convention and Mario Cuomo nominated Bill Clinton at the Democratic National Convention. Media treatment of Cuomo and Martin provides an important focus for comparing the treatment of female and male speakers. A clear parallel case exists. Both speakers gave presidential nominating speeches, both spoke the night before the presidential acceptance speech, and both are major players within their parties. Martin is the highest ranking GOP woman. Cuomo is the Governor of New York and was almost a Presidential contender.

Media coverage of Martin and Cuomo reveal major inequities in treatment. One major difference between the ways they were covered is the attribution of authorship in the headlines. The Republican nominating speech received six headlines. Martin's name was printed in two out of the six. In one of those headlines, she is subordinated to Marilyn Quayle: "Bush Nominated for 'Fight of Our Life': Marilyn Quayle, Martin Paint Clinton as Unfit for Presidency" (Broder & Marcus, 1992, p. A1). A third headline referred to Martin's role as a stand-in for Geraldine Ferraro when George Bush was preparing for his 1984 Vice-Presidential debate. That headline reads: "Lynn Martin: No Yes Woman" (Trueheart, 1992, p. B1). Conversely, the Democratic nominating speech was mentioned in eleven headlines. Cuomo was mentioned in all eleven headlines. His name is not subordinated to another speaker.

In addition, photographs play an important role. Cuomo is more visible than Martin. Martin's photograph is printed a total of six times. Four of the six are half-inch head shots. These appear on the first day of convention coverage along with photographs of other key speakers. The other two feature Martin at the microphone. One shows Martin at the podium with a man, "getting assistance during a microphone check" (Daley, 1992, p. A1). The second appears along with the article explaining her role playing Geraldine Ferraro several years earlier in a practice debate. Thus, one third of the photographs show Martin in a subordinate position: helping the Vice-President and receiving assistance. Cuomo's photo appears a total of eight times. Seven of the eight are large photos of Cuomo speaking at the podium. The smallest is 1.5 inches in width by 2.5 inches in length and the largest is six inches in width and 4.5 inches in length. The eighth photo is a half inch head shot where he is mentioned in a list of excellent orators. Unlike Martin, Cuomo

is consistently a primary figure. Martin received one third of the photo space Cuomo did.

Measuring the number of inches of coverage that the speakers received in the newspapers during the conventions provides yet another way to determine if the speakers received equal treatment. Newspapers dedicated a total of approximately forty four inches to Lynn Martin in the three papers combined. However, eight inches came from the story in *The Washington Post* about her pretending to be Ferraro. Coverage of her speech equaled only thirty six inches. Nine inches were excerpts of her speech printed in *The New York Times*. The headline for these excerpts read: "Excerpts from Speech Nominating Bush" (1992, p. A22). Martin is not identified in the headline as the author or presenter of the speech. Cuomo's speech received three times more coverage, 120 inches in the three papers. His name, unlike Martin's, was always associated with the coverage of the nominating speech.

A comparison between the differences in the valuative commentary also reveals disparities. Cuomo received much more attention. The *Chicago Tribune* is the only paper of the three that made any comment about Martin's performance as a speaker. Both she and Cuomo are praised as giving "ringing" speeches and commentary is made about the positive responses the crowds gave each speaker (Madigan, 1992c, Section 1, p. 1; Madigan, 1992e, Section 1, p. 1).

The *New York Times* gave no evaluation of Martin's speech, her performance, or the crowd's reaction. On the other hand, the *Times* did predict that Cuomo might be the most compelling TV event of the convention and when referring to his performance asserted that he, "made an impassioned case" (Toner, 1992b, p. A1). Cuomo was worthy of both pre- and post speech coverage in the *Times*, yet Martin received none. If, according to the *Tribune*, both received positive responses from their audiences, why was Martin excluded from post-speech coverage in the *Times*? Some of the coverage given to Cuomo by the *Times* can be explained for two reasons: Cuomo was the governor of New York and the Democratic convention was held in New York City. Certainly the *Times* reported Cuomo's performance because of regional interest. While Cuomo may have been of particular interest to those in New York, the *Times* does have a national circulation. Both Cuomo and Martin gave nominating speeches, a central role at each convention. Both are major players within their party. The *Times* awarded enough importance to Martin's speech to print excerpts from it. However, no connection was made between the excerpts and Martin as a speaker. The lack of coverage given to Martin seems inappropriate at best.

The *Washington Post* only evaluated Martin when linking her speech performance with that of Marilyn Quayle's. They "did their best" (Broder & Marcus, 1992, P. A1), according to the Post, to show the problems with Clinton, and both women had "toughly worded speeches" (Broder & Marcus, 1992, p. A35). These comments may have a complimentary focus. The speakers did the best they could to attack Bill Clinton. However a comparison with Cuomo indicates that these comments are also a minimal compliment on the one hand and potentially patronizing on the other. Cuomo's oratory, on the other hand was individually praised by the Post, "The Words Were Cuomo's But The Moment Was Clinton's" (Dionne, 1992b, P. A10).

Cuomo's "widely anticipated" (Walsh, 1992, P. A9) speech "brought down the house" (Dionne, 1992b, A10) and was described as "fiery" providing a "new level of excitement" (Walsh, 1992, p. A9). It was a "rousing nomination speech" (Walsh, 1992, p. A9). While Martin and Cuomo were to perform the same roles, they were treated differently in early convention coverage and this treatment continued as the conventions unfolded.

Differences in headlines, the printed photograph space, and the evaluative commentary each speaker received displays a clear contrast between the ways Martin and Cuomo are treated in the newspapers. Martin is less visible and less praised than Cuomo. A larger newspaper sample over a longer time frame may point to other individual, social, and cultural factors that also explain these dramatic differences in coverage. However, it is important to note that the comparison identifies a difference between coverage given to women and men speakers.

Unequal Evaluation of Prominent Women and Men

Another critical difference in media coverage of women and men speakers can be seen in how expectations were raised about their speaking and then how the speeches were evaluated. Several speakers were advertised as great communicators. Presentations by Mario Cuomo, Jesse Jackson, Barbara Jordan, Ann Richards, and Ronald Reagan were previewed in the Newspapers as greatly anticipated: The *Chicago Tribune* called Jordan a "powerful speaker" (Madigan, 1992a, Section 1, p. 12), the *New York Times* called Ann Richards, "fiery" (Berke, 1992, p. B2) and referred to her 1988 speech when she, "stole the show" (Toner, 1992a, p. A13), and the *Times* also spoke of the "eloquent" Cuomo and predicted he would live up to his image (Berke, 1992, p. B2). The *Times* asserted that Jackson's speaking was so powerful that he often, "stole the show" (Berke, 1992, p. B2), and the *Tribune* believed that Reagan would live up to his "great communicator" reputation (Madigan, 1992d, Section 1, p. 1). With such wonderful previews, all speakers were expected to be the emotional and rhetorical high points of the conventions. As analysis of the language used when talking about these speakers reveals that three speakers performed as well as, if not better than expected. According to the papers, the three men, Cuomo, Jackson, and Reagan were successful.

The *Washington Post* reported that Reagan's "fiery speech" (Kutz, 1992, p. A15) was an "emotional high point" (Balz, 1992, P. A 18) on the floor of the convention. The *New York Times* argued he was "eloquent still at 81" (Apple, 1992, p. A13) and the *Chicago Tribune* spent several inches focusing on the "brilliance" of his speech, which they believed "set the tone" for the addresses that would follow (Madigan, 1992d, Section 1, p. 1).

Jackson also succeeded. The *Times* reported that his speech was "stronger than anything yet" (Goodman, 1992, p. A8) and the *Tribune* said that it was a "masterpiece . . . full of eloquence and vivid images" (Madigan, 1992b, Section 1, p. 1). Jackson's effort was labeled the "most powerful speech at the last two conventions" (Madigan, 1992b, Section 1, p. 5). The *Post* considered it to be one of the most "emotional" speeches of the convention (Dionne, 1992a, p. A1).

Cuomo also lived up to his reputation. The *Post* judged his speech "fiery" and determined that his "provided a new level of excitement" and was a "rousing nomination speech" (Walsh, 1992, p. A9). The *Tribune* spoke of his "ringing" (Madigan, 1992, Section 1 p. 1) nomination, and the *Times* felt he "made an impassioned case" (Toner, 1992b, p. A1). All three males were praised as eloquent speakers before their convention addresses and were praised for their convention performances. They were represented as newsworthy.

Conversely, the two women did not perform as well as they were expected to. Analyzing the language used when talking about Jordan and Richards shows that neither women seemed to please their critics. Richards, who was frequently described as the woman who broke the "glass ceiling," did not match her fiery reputation. The *Washington Post* asserted that her remarks were, "a far cry from her crowd pleasing key note speech in Atlanta" (Broder & Edsall, 1992, p. A1). They claimed she "disappointed her fans" (Broder & Edsall, 1992, p. A17). The *New York Times* also pointed to her past performance in Atlanta.

Jordan, who was the subject of a major story in the *Post* the day before her speech, was criticized for a disappointing address. She "left thousands with even fewer opportunities to cheer" (Broder & Edsall, 1992, p. A1). Both women, unlike their male counterparts, did not achieve the excellence expected from their performance.

Evaluation of women speakers was not only more negative than for men, it was also less visible. Jordan and Richards received fewer reviews than Cuomo, Jackson, and Reagan. While Jordan and Richards received five and two reviews respectively, Cuomo, Jackson, and Reagan received nine, six, and eleven. The women speakers failed to meet the expectations of previous success and were evidently considered less worthy of evaluation. Indeed, Jordan and Richards had less political and social prominence than these three male speakers. However, it is significant to note that all five received almost equal pre-speaking attention.

The Grouping and Comparison of Women

The third critical difference is that women were treated together while men received individual attention. Both Barbara Bush and Marilyn Quayle received praise and significant attention for their speeches. They were featured players. Yet, they were also set against one another when being evaluated. The *New York Times* reported that "the audiences' applause was supportive and enthusiastic, but Mrs. Quayle did not elicit anything like the frenzy that greeted Barbara Bush's appearance" (Stanley, 1992a, p. A20). The day after their speeches, the *Times* and *The Washington Post* ran stories asking women around America for their opinions of both Bush's and Quayle's speeches. These stories focused on which speaker had the better message for women and the family values debate. The comparison is interesting and unusual. Bush and Quayle are members of the same party. In addition, they were speaking to the same audience on the same evening with a similar message. Yet, when covered in the newspapers, they became competitors.

In addition to being treated as competitors, women were often grouped as

a collective instead of being given individual attention. *The Washington Post* commentary linked Lynn Martin and Marilyn Quayle, instead of giving them separate coverage. In fact, the *Post* only referred to Martin when linking her speech performance with that of Marilyn Quayle's. The comparison is unique in the newspaper coverage of the conventions. Male speakers were not placed in competition or compared with one another.

Discussing Women's Topics

Barbara Bush and Marilyn Quayle received more coverage than any other women convention speakers. Women who talked about traditional political topics received far less coverage. For example, Republican nomination speaker Lynn Martin received about one half of the space accorded to either Bush or Quayle.

While focusing most on Bush and Quayle, the media emphasized their marital connections and their traditional political policy issues: child raising, motherhood, and family values. Even though these women are considered important and worthy of news coverage, they are not portrayed in ways that show them exercising political power as speakers.

The *Chicago Times* anticipated that Bush's speech would be, "lively, fun, family oriented, and nonconfrontative" (Povich, 1992, Section 1, p. 18). *The Washington Post* explained that Bush gave a "conversation" and not a speech, which had the theme of, "mom's apple pie—or to be non sexist—dad's apple pie" (Shales, 1992, p. C10). It had "very little content and virtually zero controversy" and was "warm and cozy" (Shales, 1992, p. C1). Quayle's topics were rarely mentioned. What was more important to the *Times* was that she was "unHillary" (Stanley, 1992b, p. A7).

Women are clearly present in news coverage of the political conventions. Yet, four main differences appear in the ways the media treated women and men speakers. An obvious discrepancy exists between how women and men speakers were covered. The female nomination speaker was less visible than her male counterpart, women were praised for their oratory less often than were men, and women were grouped while men were treated individually. Those women who received significant media attention were not represented as serious political spokespersons.

Valuative Implications for Contemporary Women Speakers

The results explained above indicate two different ways in which women are highlighted as dependent: the disproportionate amount of coverage given to women who are identified as spouses of important men and the photo of Lynn Martin "getting assistance" at the podium (Daley, 1992, p. A1). In both of these situations, women are portrayed with a need to rely upon men in order to receive attention and accomplish tasks.

Barbara Bush and Marilyn Quayle receive a good deal of coverage. They are visible, newsworthy, and significant. Yet media coverage focuses on the fact that they have powerful spouses rather than focusing on their individual experiences and accomplishments, which make them credible speakers. Because of the lack of focus on women as individuals, the message seems to be that Bush and Quayle have no important qualifications aside from being

the wives of the President and Vice-President. Bush and Quayle's presence at the convention is not portrayed because of their individual accomplishment and powerful oratory. Indeed, the speech of the President's spouse does have a different purpose than a keynote or nominating speech. In the context of the coverage of other women speakers, those who are not spouses, the coverage given to these two women as spouses is significant.

Lynn Martin, on the other hand, did not speak at the convention because of her spouse. She was present because of her accomplishments in the GOP. However, Martin still did not escape the newspaper focus on dependency. She was portrayed as dependent when at the podium. The first photograph of Martin at the Republican convention coverage appears in the *Chicago Tribune*. She is at the podium "getting assistance" with the microphone (Daley, 1992, p. A1). No other photograph calls attention to any other speaker receiving assistance in any of the papers during either of the conventions. Other photographs show speakers practicing at the convention, but none explain the situation in terms of getting assistance. One implication is that Lynn Martin may be presenting a key speech at the convention, but she is unable to do it alone. She is dependent on others to ensure that she is able to perform. Of course, one photo of one speaker receiving technical assistance is not a significant enough event to assert that all women are devalued. However, in the larger context of the coverage women receive, it is not an all together insignificant photo.

In addition, the most visible women speakers are not portrayed as serious political players. The women at the conventions who received the most coverage were those who talked about family values and traditional "women's" topics. They are visible, but not granted a role as a public persuader on issues important to performance of citizenship nor of wielding power in the act (Campbell, 1989, p. 1–2). The women who spoke about the same topics as their male counterparts—the economy, foreign policy, and national vision—received substantially less coverage than the men or Barbara Bush and Marilyn Quayle did. Yet Bush and Quayle were not highlighted as serious players, but as "fun and noncontroversial" (Povich, 1992, Section 1, p. 18). Media offers little coverage of women in the role of public citizen whose words wield political power.

A paradox exists in the newspapers' coverage. If women speak about the same political issues as their male counterparts, they are less visible than the men. If women speak about "traditional women's issues" they receive coverage, but they are trivialized in terms of their importance in the political arena. Women seem to have no viable options in which they can receive public attention as serious and important public speakers.

Preservation of a speaker's words and a record of her or his oratory is another sign of value. Campbell (1989) explains that nineteenth-century women's oratory was not recorded or preserved because it was not considered valuable. At that time most women were not perceived as serious speakers and their words were not preserved as significant. The experience of nineteenth-century women provides an important context for understanding the evaluation of these convention speakers. If contemporary women speakers are considered valuable, unlike their fore Sisters, their speeches should be

recorded and presented in public media, particularly newspapers because they are recorded, preserved, and easily accessible for viewing.

The newspaper coverage studied here leaves the impression that women speakers are not important enough to evaluate, or if they are it is only because they have failed to live up to expectations. The valuing acts of appraisal and post-speech discussion are generally absent. This in spite of the fact that a host of exciting and effective women speakers such as Carol Mosley Brown, Diane Feinstein, Elizabeth Glaser, and Barbara Boxer participated at the podium at the conventions. They did not receive coverage in the papers reviewed.

Carole Spitzack and Kathryn Carter explain that when a few women excel as public speakers they are considered exceptional and beyond the norm of abilities of their sex (1987, p. 405). This analysis reveals an additional social assumption: the few women who achieve prominence that parallels their male counterparts' cannot maintain it for long. Richards and Jordan provide excellent examples of the exceptional women who failed to maintain excellence.

Finally, the grouping and comparing of women speakers signifies a lack of social value. A speaker who is powerful has always been the individual, single agent. Karen Foss and Sonja Foss argue that the traditional criteria for rhetorical importance focuses on single speakers "significant communication is produced by individuals" (1991, p. 2). A prevailing assumption in the communication discipline has been that individual speakers are responsible for the texts they create. Clumping speakers together for analysis and evaluation diminishes the perception of the individual qualities and talents of each speaker, thereby diminishing the speakers' significance.

Conclusion

This study of women speakers at the 1992 conventions provides evidence that after almost two centuries of American women orators women are, in many ways, still devalued. One implication that this study and its findings have for scholars and women is that women speakers still have few role models.

It is true that women speakers were covered on live television and thus did provide lively and admirable role models for women. However, while the majority of Americans turn to television for daily, public information (Allen, 1992), *The New York Times* reported that for the 1992 conventions, network television coverage would be at an all time low (Kolbert, 1992, p. B1). Coupled with the fact that the 1992 election year was termed the "Year of the Woman" this makes the newspaper coverage given to women speakers at both conventions extremely important. Newspapers became a primary site covering the women speakers at the conventions. Thus, the medium provides an important avenue for developing role models for women as public speakers.

We can conclude that newspapers provide a limited image of contemporary women speakers. Little positive commentary is given to women speakers as individuals. The newspaper coverage, which devalues contemporary women speakers leaves us with few if any role models of women

orators who speak on political issues. It is important to note, however, that the value of women speakers had greatly improved since the efforts of women who spoke in the 19th century.

The media coverage of the 1992 conventions suggests the conclusion that women are unable to speak as well as men: they do not do it well consistently, they have to compete with other women for attention, we do not see them do it as frequently as men, they need assistance when they speak, or they do it only because of their husbands. Thus, we lack examples of women speakers who speak well in public and receive individual positive coverage.

The absence of strong female role models for public speaking has important social consequences. Paula Kamen (1991) argues that strong female role models are important in a society dominated by patriarchy, especially for young women. Women currently have more lifestyle choices than ever before, including political careers. Women who have succeeded in traditional male domains serve as role models for "alternative" careers for women. Because public speaking has primarily been a male domain, women who have entered into the public speaking arena are important potential role models (Spitzack & Carter, 1987, Foss & Foss, 1991). However, no positive role models emerge from newspaper coverage of the 1992 Democratic and Republican conventions for individual women who desire to speak on the same issues as men.

An implication of this study is that dominant social attitudes toward contemporary women speakers are influenced by the media's attitudes toward and assessment of women speakers. Analyzing the media's portrayal of women speakers is important because, as stated earlier, television coverage was reduced and citizens may have been likely to look to newspapers for convention coverage. The readers of the newspapers may be influenced by the media's attitudes. Thus, if the newspapers devalue contemporary women speakers, it is plausible that readers in the larger mass society will adopt and/or reinforce this attitude. It is important to note, however, that the devaluing of contemporary women speakers is not a simple linear cause and effect reaction. A combination of social factors, historical assumptions, speaker reputations, and economic realities converge within the pages of our popular media. Because society has historically devalued women's speech, the media devaluation of 1992 female convention speakers simply reflects, and at the same time reinforces, society's denigrative tradition. Thus, this study shows how the long history of devaluing women speakers is continuing even though more women are speaking today than ever before.

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COMPARING DEBATE JUDGES AND SUPREME COURT JUSTICES: AN ATTEMPT TO EXPLAIN JUDICIAL DECISION-MAKING

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Law is a fascinating argument field and certainly one of the best worked-out systems of argument. In fact, legal communication may be the most prominent of all the objects of inquiry that have attracted the attention of argument scholars (e.g., Dunbar & Cooper, 1981; Henket, 1987; Rohrer, 1981; Snedaker & Schuetz, 1985). In addition to the attention that it has received from argument scholars law is, of course, a field in its own right (e.g., Toulmin, 1958) that is prone to self-reflection and has thus developed an impressive literature base of its own. Despite all this scholarly interest, however, some of the most basic questions about the functions of law remain unanswered. The most basic question of all may be "What makes judges decide the way that they do?" and its answer has proven to be maddeningly elusive. The thesis of this paper is that at least part of the elusiveness of the question may be traced to a failure to integrate the communicative with the contextual aspects of legal events.

Communication scholars have been interested in the study of law for some time but modern approaches to law have been located, not surprisingly, in the law schools. It is these legal theories that have been taken up by social scientists of all persuasions. Early in this century the "mechanical" view of the law held that the law was a self contained system, that the answer to any particular case could be found in the extant law, and that the task of the judge was to merely discover the correct legal principles and in an automatic fashion apply those principles to the case at hand (Murphy & Tanenhaus, 1972). The legal realist movement rejected the traditional model beginning as early as the 1920's (Cardozo, 1921/1964) and did so in such convincing fashion that the inadequacy of the traditional model is no longer in serious dispute (Schubert, 1964) even if it continues to find life in legal classrooms. In general, most thinkers have come to believe that the task of judgment was largely interpretive and thus subject to the normal range of human error (Frank, 1930/1964).

With the mechanistic view so conclusively defeated, scholars turned their efforts to attempts to explain how decisions were made if they were not wholly grounded in the law. One approach, that may usefully be called "behaviorist" or "functional" (see Cohen, 1935/1964, Lawlor, 1963/1964; Loevinger, 1949/1964; Pritchett, 1948), sought to identify empirical regular-

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ities in decisional behavior that were hoped to be capable of producing useful predictions about how a given case was likely to be decided. While legal theories certainly continued to abound, the attempts to explain judicial behavior quickly passed to the social scientists, and the most prolific researchers were found in the fields of psychology, sociology, and political science. A few attempts to study judicial "personalities," defined in classical Freudian or psychological terms (e.g., Lasswell, 1948/1964) quickly died out, perhaps for no better reason than not very many judges were willing to submit themselves to psychological testing. The behaviorists then focused their efforts on variables such as judicial attitudes, backgrounds, and role orientations (e.g., Grossman, 1966; Goldman, 1971; Schmidhauser, 1964; Ulmer, 1970).

Attention was expansively directed at a host of variables, ranging from a judge's political affiliation or attitudes (Adamany, 1969; Allen, 1992; Barber, 1969; Beiser & Silberman, 1971; DuBois, 1988; Feeley, 1971; Goldman, 1966, 1979; Epstein, Walker, & Dixon, 1989; Hall, 1992; Nagel, 1963, 1973; Tate, 1981; Tate & Sittiwong, 1989; Ulmer 1962/1964; Vines, 1964; Walker, 1972), length of time on the bench (Dorff & Brenner, 1992; Drechsel, 1987; Gaudet, 1964; Tate, 1991; Tate & Sittiwong, 1992), prior political activities such as standing for office (Drechsel, 1987; Goldman, 1979; Ulmer, 1970; Vines, 1964), occupation prior to becoming a judge (Baum, 1977; Goldman, 1979; Nagel, 1962; Tate, 1981), the region of the country in which the judge was working (Aubert, 1963; Songer, 1992; Tate, 1981; Tate & Sittiwong, 1989), the judge's religion (Goldman, 1966; Nagel, 1962, 1986; Ulmer, 1970; Vines, 1964), the prestige of the judge's law school (Nagel, 1986, chpt 6; Tate, 1981), and even a judge's ABA rating (Nagel, 1962, 1973), age (Goldman, 1966, 1969; Schubert, 1977) and ancestry (Nagel, 1962/1964). Even this list is not exhaustive (see Bruschke, 1994). Taken together, all these judicial factors could account for only about 30 percent of the variance in decisional behavior (Grossman, 1967). (While more optimistic assessments have placed the value at around 60 to 80 percent [Tate, 1981] the figure has been criticized [Bruschke, 1994].) Other work has focused on institutional factors such as the presence of intermediate courts, the residency of the court, and deliberation procedures (e.g., Adamany, 1969; Baum, 1977; Hall, 1985; Hall & Brace, 1989; Murphy, 1966), or speaking most generally how external factors such as socioeconomic situation, public opinion, or racial composition of a state influence judicial behavior (e.g., Barnum, 1985; Epstein, Walker, & Dixon, 1989; George & Epstein, 1992; Hall, 1992; Link, 1995; Vines, 1964). More contemporary approaches in the behavioral tradition have shifted to decision theories (e.g., Benoit, 1989) or artificial intelligence models (Ragupathi, Schkade, Bapi, & Levine, 1991) in an attempt to improve predictions. One of the more elaborate attempts to integrate all these factors has been conducted by Brace and Hall (1995), who were able to correctly predict between 64 and 70 percent of their cases.

Communication scholars, in the meantime, have similarly attempted to understand legal behavior but their efforts have been somewhat more limited although possibly more promising. Rather than seeking to continually refine psychological and sociological models of legal decision-making communication scholars have, by and large, focused on an entirely different *class* of

factors that influence decision making. While background, psychological, and sociological models all have powerful theoretical bases for their predictions, very few such models focus on the central object of legal behavior: Argument making and evaluating. It is far too early to form any firm conclusions, but the early results suggest that there is a great deal to be learned by focusing on argument variables. As will be reviewed in more depth shortly, Bruschke's (1994) admittedly embryonic study of argument variables discovered that argument factors could predict judges' votes with 65 percent accuracy. This is almost exactly the same predictive power that non-argument variables were able to obtain after a half-century of refinement. Before attempting to compare and integrate the two traditions, however, a quick review of the argument research is in order.

Argument has been problematic to define but its study includes, at a minimum, the definition and analysis of a text's logical structure and logical or narrative content. The argument-based research on the law to date generally falls into two classes. One set of research draws on the rhetorical tradition and tends to offer qualitative or critical assessments of arguments in law (e.g., Benoit & France, 1979; Feteris, 1987, 1993; Hample, 1979; Hasian & Croasman, 1992; Kienpointer, 1987; Klinger, 1981; Ling, 1981; Madsen, 1991; Parker, 1981, 1987; Seibert, 1987; Schafer, 1981; Weithoff, 1985). A few examples may clarify the direction of the work. Writing more as a legal scholar than an argument critic, Alexy (1978/1989) has laid out an impressively broad theory of how legal argument functions including, for example, the proposition that arguments must be answered. Feteris (1990, 1991) is a more traditional argument scholar who falls very much into Alexy's abstract genre. Soeteman (1987) similarly discusses broad precepts of interpretation and legal usage. More focused efforts have studied the development of arguments over relatively long time periods in limited areas of case law such as free expression and sex discrimination (Rieke, 1987; Newell & Rieke, 1986; Werling & Rieke, 1985). Still more limited efforts have applied argument models to specific legal cases (Rabin, 1978; Snedaker, VanCott, Cornwall, & McCarthy, 1987) or hearings (Wallinger, 1985).

This theoretical work, taken together, is all useful for the purposes of the authors who wrote them. However, the sum of this work is not very practical when trying to assess the overall contribution of argument factors in legal decisions. Either the work is so broad, as is Alexy's, that it is very difficult to operationalize or apply to specific cases, or it is so particular, as is Rabin's work with the *Griswold* case, that it is difficult to generalize. Rieke's work with free expression cases highlights both problems. On the one hand it is particular to free expression cases and is thus difficult to generalize from. On the other hand, the theoretical conclusions that Rieke draws—that the court's behavior over the past century can be conceived of as a "reach test" similar to the processes in a small group—is so broad that it is difficult to apply to any specific case.

The second type of argument scholarship has been quantitative or quasi-quantitative in nature (e.g., Parkinson, Geisler, & Pelias, 1983; Hollihan, Riley, & Freadhoff, 1986; Lake & Keough, 1985). Riley, Hollihan, and Freadhoff (1987), for example, have studied in rather particular terms the arguments offered in small claims courts, Benoit (1981) has tried to link warrant

usage's to case outcomes, Sheppard and Rieke (1983) have analyzed in detail the closing arguments in civil trials, and Hiday (1983), who is not an argument scholar, has done some excellent research on traditional argument variables such as evidence use and presumption. Brusckie (1994) has been the only attempt to date to compare a range of argument factor across a broad range of cases. Even in that instance, however, many of the operationalizations (such as the simple counting of the number of references listed) are charitably described as primitive.

This second set of argument studies have similarly been illuminating for their purposes but are limited in that their foci have been narrow. Thus, the central question, "Do judges make their decisions based on argument variables?" has only been approached and certainly not answered with any clarity in a way that can be said to generalize beyond a particular area of case law. To summarize the current state of knowledge, the traditional view of the law has been roundly rejected and behaviorist attempts to replace it with an alternative body of knowledge about legal decision-making have been modestly successful at best. An alternative approach is to empirically study argument rather than psychological, political, or sociological factors, but current efforts have been limited although promising. An important next step is to find a way to test the argument model in a way that might have more generalizability than current efforts.

Conception of Operations

Perhaps the largest barrier in argument research thus far has been the difficulty in operationalizing what is meant by "argument quality." While it is one thing to say that higher quality arguments will win more often than arguments of lesser quality (and that argument quality might be a more determinant factor than, say, the judge's religion) it is quite another to put forward a defensible definition of what makes a good argument. The problem is that on the one hand, as Fritch and Leeper (1993) describe, argument scholars are almost universally interested in "discover[ing] truth as a product of the valid form" (p. 186), while on the other hand scholars in general have had great difficulty generating an epistemology identifying truth in any form (Roth, 1987). A recent post-modern twist is that any claim to truth may inadvertently serve dominant interests. Cox (1993) summarizes the dilemma well: "(1) we may fail to mediate difference or achieve a shared rationale for action; or (2) we may in fact succeed but at the cost of being complicitous with the dominant reason or common sense of a culture" (p. 11). There are a host of solutions to these dilemmas, perhaps as voluminous as the list of scholars who advance them, but the trend seems to be to seek methods that fuse the logical components of arguments with their ethical, emotional, and poetic features (see e.g., Fritch & Leeper, 1993; Klumpp, 1990, 1993; McKerrow, 1993; Nelson, 1991). As a result, any contemporary scholar would be hard pressed to put forward a definitive definition of a "good" argument, much less operationalize one into a coding scheme.

One possible solution to this dilemma is to have argument experts evaluate court cases using the same materials that actual judges do and then see if the decisions correlate at all. If, for example, argument specialists are given

the same appellate briefs that the Supreme Court uses and then asked to render decisions based on those materials it is reasonably clear that the argument specialists would base their opinions on argument factors rather than field-specific legal technicalities. The argument scholars, after all, would have no special legal training. They *would*, however, be likely to base their decisions on an argument specialists' definition of a better argument. If the decisions of the argument specialists correspond to the decisions of the Supreme Court the finding could be taken as evidence that the Supreme Court is basing its decisions on argument factors. In more particular terms, the correlation would be necessary but not sufficient evidence that argument factors contribute to judges' decision making processes. This approach has the further advantage of relying on naturally occurring behavior, which tends to enhance external validity (Anderson, 1987). This study, then, will attempt to correlate the decisions of the United States Supreme Court with the decisions of argument specialists.

Methods

NDT debate judges were selected as the argument specialists. Essentially, debate judges attend intercollegiate debate tournaments and render decisions in a series of debate rounds. In addition to these responsibilities, most NDT judges also work as coaches for some collegiate team. Most of the debates are highly sophisticated and technical and often involve legal topics. The 1994–1995 NDT debate topic, for example, concerned criminal procedure. It is typical that debate judges base their decisions exclusively on the arguments advanced and the strategic choices and technical prowess of the teams in the round and try to render a decision based on the better arguing rather than Platonic notions of the "correct" legal argument. (NDT judges were utilized for the sake of convenience; there is no reason to assume that NDT as opposed to CEDA judges are more appropriate as "argument specialists." Either group, in our opinion, would have adequately tested the opinion of argument specialists against those of legal specialists.)

Four NDT debate judges served as the coders for this study. All four are currently affiliated with the same university. One coder held a Ph.D. and all coders had earned an undergraduate degree and were at least pursuing a master's degree. All coders had been NDT debaters with at least four years of undergraduate experience and all had advanced to elimination rounds at the national championship tournament. Including the 1994–1995 debate season, the coders averaged roughly 2.75 years of NDT judging experience. By almost all standards the coders were highly qualified NDT judges.

The coders were all instructed to obtain their own copies of appellate briefs of the United States Supreme Court cases. While this sampling procedure was not optimal, there is little reason to assume that the cases selected would systematically include or exclude a certain type of case in a meaningful way and thus the canons of random selection do not appear to have been violated. The coders were instructed to avoid discovering the final decision of the Supreme Court before rendering their own decision and were instructed not to read the *amicus curae* briefs that often accompany Supreme Court decisions. As a result, the coders were exposed to the appellant brief,

the respondent brief, and the appellant reply brief. The coders were instructed to resolve the court decisions in the same manner that they would resolve a debate round, which might include keeping a flowsheet of the arguments.

The task of coding the cases proved to be more time-consuming than initially estimated. The final sample included 25 Supreme Court cases. Each coder processed roughly the same number of cases, around seven. One case was inadvertently coded by two coders; both coding decisions corresponded to the Supreme Court decision. The case was scored as an agreement between the Supreme Court and the argument specialists and was counted only once in the final analysis.

Results

Of the 24 cases, the argument specialists agreed with the Supreme Court in 13 cases and disagreed in 11.

Discussion

The results did not support the thesis that the decisions of argument specialists correspond with the decisions of legal experts; although the NDT and Supreme Court judges agreed more often than they disagreed the differences were far too slight to justify any conclusion that the decisions are similar. In fact, although no statistical test was conducted, the results are only one decision different from perfect random chance. At least three explanations can make sense of this finding. First, argument quality might not influence decisions of the Supreme Court judges. Second, the correlation might exist but NDT judges might focus on criteria other than "argument quality." Third, the decisions of the Supreme Court might be so unique that they do not mirror the patterns of court decision-making in general.

The first possibility is that argument quality does not influence the decision-making of judges. It would seem premature to accept this conclusion. The present study was based on only 24 court decisions and the opinions of only four argument experts. While the evidence does not confirm the hypothesis it also seems inadequate to dismiss it entirely. In addition, the differences were not significant but were in the correct direction: The Supreme Court and the argument specialists agreed more often than they disagreed. Finally, the Bruschke (1994) study, which was based on a much larger number of cases, was able to find significance for argument factors. Perhaps the best course is to define more clearly what is meant by a quality argument. The present study attempted to approach the issue indirectly by assuming argument specialists would rely on an implicit definition when rendering an opinion but the attempt was unsuccessful. Rather than reject the approach entirely it seems more prudent to seek more refined operationalizations of what it is that constitutes a good argument. The conclusion that can be based on the data in this study is that, whatever the extent of the influence that argument has on legal decision-making, it cannot be measured when operationalized only as the decisions of NDT judges.

The second possibility is that argument factors might indeed influence legal decisions but that the decisions of NDT judges are too peculiar to that activity to operationalize adequately a "good argument." There are many

reasons that the decisions of NDT judges might not measure argument quality. Collegiate debaters tend to speak at incredibly rapid rates that are common to no other activity. This might mean that the best NDT judges are those with the best verbal information processing abilities, not necessarily those best able to sort out volumes of written legal arguments.

In fact, the oral orientation of intercollegiate debate might make it very different from the analysis of written arguments. While NDT debates are predominantly oral with some reliance on written materials (a judge might examine a debater's evidence after the round has concluded), Supreme Court decisions are weighted in exactly the opposite direction with written materials forming the bulk of the argument and verbal communication extremely limited. Advocates are allowed only roughly 10 minutes to argue orally before the Supreme Court while their briefs might encompass thousands of pages. In short, the absence of a correlation might indicate that decisions are based primarily on oral communication tend to be quite different from those based on written communication.

Another difference might be that NDT judges are more prone to base their decisions on technical or purely strategic issues than are Supreme Court judges. For example, it would be unheard of for an NDT judge to vote on evidence not offered in a debate round while a Supreme Court judge would be expected to discover and apply the relevant case law even if it was never mentioned in legal briefs. Intervention is expected of court judges but scorned in NDT circles. In addition, debate judges typically focus on strategic issues, such as "dropped" arguments in rebuttal speeches, while a Supreme Court judge might hold a legal brief to a lower standard of the coverage of the issues if the point had been conclusively argued. In fact, post-coding discussions among the coders revealed that it was difficult for the NDT judges to make decisions because the briefs were "all too good" and no brief contained a technical error that made the decision easy. This is to be expected; lawyers arguing before the Supreme Court have months to work and staffs to prepare briefs while debaters have fewer than ten minutes to prepare their speeches.

In sum, the debate judges might very well have been basing their decisions on argument quality while the Supreme Court judges were doing the same, but the factors that make an argument a quality argument might have been weighted differently for the two groups. While "coverage" is certainly a standard of argument quality (Alexy, 1978/1989), it might be much more important to NDT judges than Supreme Court justices. Alternatively, while the standards of argument quality might remain constant for oral and written arguments, style might be much more important for oral than written communication. All told, argument quality might very well influence legal judges but in different ways than are attended to by NDT debate judges.

The third possibility is that Supreme Court decisions are different from those of most other courts, and thus it may be the case that most courts are basing their decisions on the argument factors of a case while the Supreme Court is not. Most legal decisions are made by lower courts, state courts, small claims courts, tax and patent courts, and other sorts of courts that handle the vast majority of legal work that is done in the United States. The United State Supreme Court is a relatively unique body. It has the discretion

to select the cases that it wants to hear while most courts do not. In addition, it is the only court that renders decisions that will bind all other courts. This gives it a unique responsibility in forming good law. Thus, the Supreme Court might be less concerned with argument quality than other courts. For example, the Supreme Court might decide to hear a case because it wants to over-rule the decision of an earlier Supreme Court. In that instance the respondent would have a better argument, grounded in the precedent of the very court that is hearing the case, while the Court is hearing the case precisely in order to ignore those arguments and find for the plaintiffs. Thus, while *most* courts may be persuaded by the better argument, the *Supreme Court* may have its collective mind made up before it ever reads the legal briefs.

An alternative explanation is that the Supreme Court has a clerical staff and research resources that other courts do not possess. It might therefore be better able to find its own precedents and thus rely less on the legal briefs than other courts. Finally, only the very best paid lawyers are likely to appear before the Supreme Court and thus the arguments are always likely to be very close. Indeed, the Supreme Court may choose to hear a case because the arguments are so good for each side. This may contrast with the cases that most other courts hear where the argument quality might be more lopsided. The Supreme Court, therefore, might be more likely to make difficult value choices where neither side enjoys a clear argumentative advantage whereas other courts are more prone to decide cases based solely on the arguments.

There are many limitations to this project. The sample size was very small and many of the key terms of argument quality were left un-defined. In addition, no attempt was made to assess the reliability of the NDT judges' decisions; it thus remains possible that NDT and Supreme Court judges do make similar decisions but the particular group of NDT judges selected for this project do not produce reliable decisions. In the end, it is best to view the results here as the provocative products of a very exploratory endeavor.

This paper does not have the data or the space to identify conclusively which of these three possibilities (or others) accurately describe the reasons that NDT judges' decisions do not correspond to those of the Supreme Court judges. All appear to have merit and should be explored in future research. What can be said is that this paper represents one of the first attempts by argument scholars to explore the relative importance of argument, broadly defined, on particular case outcomes. After nearly a century of efforts that have focused on psychological, political, or sociological explanations for court behavior, research that focuses on the primary function of courts—evaluating arguments—is long overdue. This paper has not been able to demonstrate a correlation between the decisions of argument and legal experts; however, it has refined the discussion and suggested fruitful future directions.

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MAKING SENSE OF THE 1994 RIGHT-WING REVOLUTION IN THE UNITED STATES: HOW THE CHRISTIAN RIGHT, THE GRAND OLD POLITICAL ACTION COMMITTEE (GOPAC), AND TALK RADIO COLLABORATED

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Political campaigns are designedly made into emotional orgies which endeavor to distract attention from the real issues involved, and they actually paralyze what slight powers of cerebration man can normally muster.

James Harvey Robinson
The Human Comedy [1937]

The overwhelming GOP victory in the 1994 midterm elections represents a seismic shift in the American political structure. Tacit House passage of the Contract with America is evidence enough, alone. After gaining eight seats in the Senate and fifty-one seats in the House in midterm elections (Staff, 1994), Republicans positioned themselves to dominate political discourse through the 1996 elections. Indeed, in spite of President Clinton's lopsided victory over his GOP challenger, Republicans have managed to maintain their control over the House and Senate and dictate much of the legislative agenda. No longer considered the majority party, Democrats now struggle to make sense of the frightening, chaotic, and bleak political landscape. To date, most analyses of the 1994 elections found in the popular press have focused exclusively on Newt Gingrich and his much-celebrated Contract (Rosenthal, 1995a; Feldmann, 1995). However, our article seeks to provide a more panoramic investigation into the GOP's successful campaign to retake Capitol Hill. Withstanding Gingrich's obvious draw as a media caricature, it is our position that he could not have independently fomented such a massive shift.¹

While an explication of every trend that contributed to the Republican victory—including the swelling anti-incumbency sentiment, concerns over immigration and crime, and theories of complacency within the Democratic party—is beyond the scope of this article, we examine three significant rhetorical forces that merged to shape the November 1994 elections: the Chris-

¹ It may be argued that the era of the so-called "therapeutic speakership" (Peters, 1990) may be over. While House Speaker New Gingrich promised during his inauguration to conduct a dialogue with Democrats, the partisanship that has divided the post-reform House grows unabated (Rohde, 1992; Sinclair, 1983). This phenomenon is reelected by the "guerilla warfare" employed by Gingrich to destabilize the Democratic majority of the eighties and secure his rise to power (Rohde, 1991).

tian Right, the Grand Old Political Action Committee (GOPAC), and talk radio. We do not seek to personify these factors as Ralph Reed,² Newt Gingrich, and Rush Limbaugh, however. We instead regard them as co-dependent and ultimately convergent forces that will influence a generation of America's political, economic, and cultural life. In short, we feel that the sum of many rhetorical efforts is greater than its representative parts. Thus, we introduce the concept of propaganda convergence.

What is Propaganda Convergence Theory?

To explain and demonstrate propaganda convergence theory, it is necessary to first review the trends in propaganda research preceding this article. Our general critique addresses the tendency towards an overly narrow focus in many of these essays. A specific example of this issue emerges in a theme, suggesting that domestic propaganda is an oxymoron. We find, however, that a certain international impulse historically guides propaganda research in speech communication. For example, the Nazi Party's uses of propaganda during World War II have received attention in various textbooks and publications (Bytwerk, 1978; Dower, 1986; Rhodes, 1987; Nagy, 1990). Numerous scholars have dissected the Kremlin's use of "mind-control" propaganda, especially during the Reagan years (Orwant, 1972; Symms and Snow, 1981; Leventhal, 1984; Marlin, 1987; Bugajski, 1987; Kampf, 1987; Wozniuk, 1989). Speech communication scholars have also analyzed propagandistic appeals in: China (Wang, 1972); Europe (Bytwerk, 1988; Gross, 1989; Jakubowicz, 1992); Iraq (Jowett, 1993); Latin America (Ignasias, 1971; Kieh, 1990); North and South Vietnam (Hoffer, 1974); and South Africa (Washburn, 1989). Our international tendencies are also evidenced not only by artifact, but also by method. Lindahl (1983) and Drescher (1987), for instance, provide detailed procedures for academicians interested in international propaganda analysis. Perhaps this emphasis may be attributed to an assumption on the part of United States (US) speech communication scholars, and therefore their journals, that international events are somehow more intriguing than domestic phenomena. Indeed, some might argue that international propaganda provides a more stimulating site of analysis. We hold that an increase in domestic study and discipline-specific publication must counterbalance this bias.

Of course, some studies on domestic propaganda activities do exist. However, most of these works are either timeworn (Weatherly, 1971; Rogers and Clevenger, 1971; Wolvin, 1971; Clark, 1975; Gunter and Taylor, 1973), or while being recent, reflect an overly historical perspective (Sproule, 1989). Our communication journals of late provide little insight into the domestic propaganda perspective. Accordingly, this article repeats the enthusiastic call to domestic propaganda research previously expressed by Jowett (1991), McKerrow (1991), and Jowett (1987). Propaganda is a pervasive form of communication that does not exist solely in countries undergoing political turmoil.

² Since the completion of this essay, Ralph Reed has left his leadership position in the Christian Coalition.

While scholars must fill this domestic void, we must avoid the common flaw of artifactual unidimensionality. None of these works evaluate propaganda from the multi-perspective of a convergence or unity of efforts. Cutting against this habitual convention apparent in the literature, we argue that propaganda, generically defined as "the propagation of ideas and actions" (Combs and Nimmo, 1993, 12), can be a collective effort. We believe that the intrinsic criteria used to evaluate a singular entity's propagandistic rhetoric can be exploded to include the rhetorics of several organizations acting consciously or unconsciously in tandem.³ In other words, we believe that more than just one agency or rhetor may participate in a synthesized campaign of propaganda.

The Propaganda Convergence Thesis

Because the propaganda convergence theory is without a formal precedent, we faced the challenge of reviewing the various literatures on propaganda to detect what elements were common in speech communication definitions of propaganda. As a result of this inquiry, three basic elements which define propaganda clearly emerged: the intentional use of information to promote a cause (criterion A); the intentional use of information to injure an oppositional cause (criterion B); and controlling or attempting to gain control over the medium through which these two strategies are propagated (criterion C). Our propaganda convergence thesis holds: that one or more agencies must fulfill all of the above elements of propaganda for true propaganda to exist. A synthesis of efforts would, indeed, satisfy these specific criteria. Accordingly, we next detail the propagandistic convergence of the Christian Right, GOPAC, and Rush Limbaugh's paralleling political agendas in the 1994 elections.⁴

Explaining the Republican Revolution: The Christian Right, GOPAC, and Talk Radio

To honor criterion A of propaganda convergence theory, at least one of the agencies taking part in a co-mingled propaganda campaign must frame information so that it promotes a positive agenda or cause. Voters must have something virtuous or altruistic to which they can gravitate. The positive agenda, ethically referred to as the highroad approach, is an essential component of political propaganda; without it, propaganda cannot exist. One cannot distinguish the negative without the positive; good and evil are propagandistic counterparts and necessities.

³ This effort is informed by Baxter's (1992) dialogic understanding of communication which rejects monological approaches towards communication research. Drawing from Bakhtin, Baxter proposes a perspective that "is comprised of both fusion with and differentiation from, both centripetal and centrifugal forces" (p. 335). Rather than dissect agents as isolated factors to be studied and manipulated by traditional methodologies, we attempt to unpack the convergence of forces created by their multi-dimensional interactions.

⁴ Recalling that Connelly and Pitney (1994) predicted that "the right constellation of forces" would be necessary for the GOP to win an outright majority in November 1994, the authors believe this application of the propaganda convergence theory to be appropriate.

The Christian Right, GOPAC, and talk radio all offered their versions of the Truth. All of these groups used positive appeals and negative attacks to operationalize these visions of Truth. However, of the three primary rhetorical agencies actively participating in the 1994 Republican campaign to take the House and Senate, none were as pronounced with their proactive appeals to the electorate than the Christian Right.

The Christian Right: Foot Soldiers for God and the Republican Party

The 1992 presidential election represented a mini-epiphany for the Christian Right—a powerful force in US politics that had been growing since the Reagan Revolution of the early eighties. The race provided this group the opportunity to make explicit a good versus evil dichotomy and, in the process, define themselves in broad strokes as a mainstream alternative. Later in this article, the unique nature of that concept will be further addressed. Because of their fundraising prowess, get-out-the-vote drives, and middle class demographics, local, state, and regional candidates joined them to stand on a solid pro-life, pro-“family values” platform. Admittedly, they had little choice in the matter—the Christian Right had become the most creative, organized, and dependable source of votes in the Republican party. Despite conjecture that a small group of ideological Christian extremists rhetorically “hijacked” the 1992 Houston convention and consequently derailed the Bush campaign’s bid for the presidency, their influence only grew (Daley, 1994; Feldmann, 1994; Shogan, 1994). During their September 1994 strategy conference, members of the Christian Coalition (the most vocal and well organized force in the Christian Right) pledged to move into mainstream politics without losing voters over divisive issues like abortion. At the convention, a flock of Republican presidential hopefuls attended to increase their visibility with this segment of the party “because its members are among the most loyal Republican voters and foot-soldiers” (Keeping the faith, 1994).

Their efforts translated into an extraordinary campaign. In its “most ambitious voter outreach ever for a midterm election,” the Chesapeake, Virginia, based Christian Coalition distributed thirty-three million voter guides covering each Senate and gubernatorial race and 350 House races and phoned two million homes in their election day drive to get out the vote (Goodstein, 1994, A1). On the state level, the Texas Christian Coalition deluged their state during the 1994 season with more than two million brochures called the “pro-family voting guide” (Ratcliffe, 1994). These guides predominantly focused on secular issues like taxation and term limits. The national campaign to distribute voters’ guides and maintain phone banks cost the Christian Coalition approximately two million dollars (Fulwood, 1994). However, the strategy of issue-rather-than-candidate advocacy gave the Coalition remarkable flexibility and was essential for the group to avoid certain federal campaign restrictions.

Though there was little evidence of the kind of stealth-campaigns that the Coalition ran in 1992, its methods—particularly its voters’ guides—continued to garner controversy. Rather than explicitly support candidates, the Coalition’s “guides and get-out-the-vote campaigns are ostensibly nonpartisan, meaning the amount spent does not have to be disclosed to the Federal

Election Commission" (Carney & Barrett, 1995, 32). While Coalition representatives compared their campaign with strategies practiced by the League of Women Voters, Democrats claimed that they were misleading and illegally partisan (Foskett, 1994; Christian Coalition runs into flak, 1994). And for the first time, the coalition faced an organized religious opposition from another clergy group, the Interfaith Alliance (Goodstein, 1994).

Any doubts about the effectiveness of the Christian Right's campaign methods were dispelled as election results poured in. Ralph Reed, executive director of the Coalition, was quick to claim credit for much of the Republican Party's stunning performance in the November elections (Stevens, 1994). Indeed, a Coalition survey found that "religious conservatives accounted for one third of the national vote, overwhelmingly for Republicans" (Keeping the faith, 1994). Additionally, the Christian Coalition claims that forty-four House electoral victories could be attributed to "pro-family, pro-life" groups (Washington, 1994). McGraw (1995) cites a University of Akron study which found that the Christian Right "played a significant role in 120 congressional districts" (p. 54).⁵ While the actual impact may be smaller, there is little reservation that the GOP and the religious right have discovered common ground in accusing Democrats of ignoring the economic and spiritual needs of the middle class. Here the larger theme of this article gains support. By employing nontraditional, issue-oriented methods, the GOP's campaign outflanked the Democratic Party through the construction of a proactive platform and gained a commanding lead in shaping the national agenda. This platform meets the primary criteria required for propaganda synthesis.

Criterion B of the propaganda convergence theory states that an agency must also use information in a strategically detrimental fashion against an opposing cause. In order to distinguish the propagandistic agency's advocated truth from other competing, lesser truths, political organizations frequently employ negative attacks. Argumentum ad hominem, argumentum ad populum, the intentional use of disinformation, and demonization are just a few of the derogatory methods employed by the propagandist. As with criterion A (positive appeals), each of the rhetorical agencies possessed their own arsenal of injurious rhetoric. Yet, none were as naked with their verbal aggression as GOPAC.

GOPAC: An Intellectual and Financial Armory

GOPAC played a significant role in the 94 elections by recruiting, educating, and funding Republican candidates at the local, state, and federal level. Gingrich began using the political action committee as a platform to advance his vision of a GOP revolution after its founder, former Delaware governor Pierre "Pete" DuPont, left it to launch his 1988 bid for the presi-

⁵ Dr. John Green, the researcher responsible for this study, reminded us in personal correspondence that "quantifying Christian Right involvement in campaigns is very difficult because so much of it is at the grassroots, highly informal, and information about it is closely held" (1995, p. 1).

dency.⁶ Before the explosion of press coverage concerning Gingrich and his Contract With America, GOPAC sponsored seminars and mailed thousands of text and tape-based lessons to aspiring candidates "instructing them on how to do in liberal opponents" (Barrett, Carney, & Tumulty 1995, 31). Using his organization to funnel nearly \$8 million since 1991 to Republicans who preach his kind of conservatism, Gingrich has called GOPAC "the Bell Labs of GOP politics" (Balz and Kovaleski, 1995, 13). Using all manner of media, Gingrich has created a virtual cult of personality—not with the general electorate—but within his own party's farm of contenders. We hold that Gingrich's strategy of providing support to potential GOP candidates was essential for his successful run for the Speakership at the beginning of 1997. Indeed, one can argue that his beltway support is more important than that support found in his home district.

As polling data suggests, Gingrich's rapid ascendance (Russakoff, 1995) and consolidation of power (Hook, 1995; Staff, 1995) are due less to his mercurial rhetoric and confrontational style than to his work behind-the-scenes as a conduit to power for Republican hopefuls. Borger (1995) illustrates the results of Gingrich's efforts by noting that "of the 75 new GOP members, 33 have been fed talking points by Gingrich's GOPAC" (29). Since Gingrich was elected Speaker of the House, the impact of his political action committee has been felt even more. After directing more lines of power through his offices and promoting GOPAC allies to powerful positions in the House, "congressional scholars believe that Mr. Gingrich has arrogated more power to himself than any speaker since Joseph Cannon" in the first years of this century (Staff, 1995, 24). Cannon served between Nov. 9, 1903 and March 3, 1911. Rather than being shaped by the institutional setting of the House of Representatives (Peters, 1990, 287), Gingrich has used GOPAC to reshape the institution.

As a means to power for Republican hopefuls, GOPAC bypassed both traditional financial requirements and rhetorical guidelines. Despite repeated pleas from House colleagues, Gingrich refused for years to reveal the PAC's financial backers (Cummings, 1994a). He argued that the unique nature of the organization precludes the need for public accounting: "Mr. Gingrich's aides argue that federal campaign laws do not require GOPAC to disclose anything but the spending it undertakes on behalf of candidates for federal office—about 10 percent of its outlays" (Mr. Gingrich's stealth PAC, 1994, A20).⁷ GOPAC represents the future of political fundraising—it coordinates local, state, and regional elections along a national agenda, making the most junior candidate a standard bearer for the party's larger agenda.

⁶ It must be recalled that GOPAC is the culmination of efforts by the so-called new right which experienced its first zenith with the nomination of Barry Goldwater in 1964 (Rae, 1989). From Goldwater to Reagan to Gingrich, this movement has leveled sharp criticism towards moderate Republicans.

⁷ Even though GOPAC eventually relented to releasing the names of their contributors, they did so with unique provisos. The list only included individuals who contributed from November 17 1994 through the end of that year. Adding to this limitation, GOPAC "required those wishing to inspect the list to come to the group's Washington headquarters and refused to allow them to make photocopies" (Gingrich group, 1995).

Similarly, GOPAC has served as a training ground for the rhetorical methods of a new generation of Republicans. Rather than emulate the low-key, collaborative style of former House minority leader Bob Michel, GOPAC has taught its beneficiaries to define themselves in stark dichotomy against Democrats by using ad hominem attacks and divisive language (Adams, 1990; Oreskes, 1990). In fact, "a 1990 document entitled 'Language, a Key Mechanism of Control,' offered a list of . . . negative words 'to define our opponents.' The first word was decay" (Balz and Kovaleski, 1995, 13). A St. Louis Post-Dispatch editorial (A sling it yourself manual, 1990) printed another quotation from the document that noted, "the words and phrases are powerful . . . Read them. Memorize as many as possible" (C2). GOPAC designed this strategic use of emotion-laden language to strengthen the resistance of the faithful against the allegedly "liberal media" (Adams, 1990, 56–58). In advocating this tactic, GOPAC advocates a rhetorical trait common to the three forces examined in this essay: it bypassed traditional media and methods to reach an alienated audience. Further, the group satisfies the second component of our propaganda convergence theory by promoting an injurious means of rhetoric.

Criterion C of the propaganda convergence theory holds that rhetorical agencies create, possess, or will attempt to gain control over the mediums through which their positive and negative messages travel. This ensures propagandists that their message is being transmitted purely, without competing interference. While "feeding soundbites" to independent reporting agencies was an effective strategy (Adams, 1990), many preferred the direct route to mass exposure offered by talk radio.

Talk Radio: The Mouth that Roared

Talk radio was the medium that amplified the collective message in 1994, and its biggest mouth was Rush Limbaugh (O Neil, 1994; Kurtz, 1994). A self-styled entertainer who states, "my success is not determined by who wins elections, my success is determined by how many listeners I have" (1992, 22), Limbaugh was, in that election year, a significant player in national politics. Former Congressman Vin Weber says that Rush "is as responsible as anyone else for the GOP victory" (Corliss, 1995, 22) while during a December 1994 dinner for new Republicans coming to Congress, Limbaugh was hailed as "the Majority Maker" (Seelye, 1994). While he is not the only conservative talk show host with national influence, Limbaugh represents the convergence of forces this article seeks to examine. His close connection to GOP heavyweights translates into considerable political power. For example, after Limbaugh warned on his syndicated radio show that Republican resolve [to pass a balanced-budget amendment that required a three-fifths supermajority to raise taxes] was waning, Gingrich called him privately to reassure him—and his fifteen million listeners—that the Contract With America would be honored (Rosenstiel, 1995b).

However, as stated above, Limbaugh is only a metaphor for the larger theme, an alternative to traditional media that addresses a large and angry segment of the electorate. David Nyhan notes that "radio talk show hosts tend to draw callers who are male, frustrated and angry at blacks, immi-

grants, liberals, welfare mothers and Hillary Clinton among other things" (1994, 19). Culver adds that Christian radio broadcasting has entered the arena to represent people frustrated with "big government, President Clinton and public education" (1994, 12). Though Ralph Reed ties Republican success to his Christian Coalition, he is quick to state that "talk radio was one of the reasons for a power surge . . . by white evangelical born-again Christians" (Lambrecht, 1994, B5). Beyond political classifications, the influence of this medium is immense. According to a 1993 poll by the Times Mirror Center for the People and the Press, 44% of Americans named talk radio as their chief source of political information (Corliss, 1995).

The empowering influence of talk radio flows both ways. As listeners use the medium for political education and edification, Republican strategists strive to harness the collective anger of millions of middle class Americans. Newt Gingrich, in particular, routinely rejects overtures by mainstream television news programs and even his hometown newspaper while "turning to talk radio, cable TV and proven conservative allies whom he trusts to faithfully convey his message" (Cummings, 1994b, 5b). Since assuming the Speakership, Gingrich has extended credentials and even floor space in the Capitol building for talk radio hosts to broadcast their programs (Dowd, 1995a). The symbiotic relationship between Gingrich and what he calls the 'alternative media' was sealed in September 1994 when the Republican National Committee organized 300 talk-radio interviews for Contract with America signatories and "many hosts read [pro-Contract statements provided by the GOP] verbatim on the air" (Corliss, 1995). Here again, the Republican Party bypassed traditional methods by appealing directly to the voters, using the emotional language, spiritual values, and high technology.

GOD, GOPAC, and GAB—The Postmodern Trinity?

By now it is well known that Newt Gingrich considers himself a futurist. He has taught the principles of Peter Drucker, extolled the optimism of John Naisbitt, and even developed "policy" with Alvin and Heidi Toffler. Thus, it is no surprise that he has recently turned to the much-touted bypasser of bureaucracy, the internet, to reach his voters of the 21st century (Dowd, 1995b). Fineman argues that "Newt propounds a world in which blast faxes, modems, satellite feeds and talk radio are the dedicated lines to the voters they wants to reach" (1994, 41). His vision for America is illustrated by the concept of hyperdemocracy—an information-driven society that risks confusing knowledge, wisdom, and passion in the blender of cyberspace discourse (Cole, Dickens & Reingold, 1995). However, the lessons of 1994 center on power and how the GOP benefited from a convergence of forces to gain it.

The Christian Right, GOPAC, and talk radio played essential and complimentary roles in the Republican Congressional victory. This is not to suggest that some grand overarching strategy was responsible for the outcome in 1994. Indeed, the independent nature of these parties would render such a conclusion most suspect. The question emerges: how shall we understand this convergence? We note that several dimensions provide common ground among the three elements of this propagandistic convergence: interpersonal

relationships that inspired collaboration, shared need that inspired logistical coordination, and a sense of cultural conflict that inspired philosophical alliance. Yet, no single political agent could expect to create such a convergence, only to exploit one for limited aims. Claims otherwise merely serve the purpose of simplification. We propose, instead, that propaganda convergence is made possible by the overlap of rhetorical spaces—unique senses of marginality experienced by specific groups—that form a brief center. Various individuals may claim ownership of the center, as they did in the 1994 Republican victory, but none could maintain it. Part of the power of this convergence is the sense of alienation felt by each group. The Christian Right defined itself as distinct from a cultural wilderness. GOPAC sought to revitalize a relatively weakened party. Talk radio provided a voice to individuals who felt disenfranchised.

The sense of alienation that provided common ground to these elements provided a space in which individual voices received validation in a shared context. However, victory in the midterm elections eliminated much of what motivated that context. The struggles experienced by each of these groups is a testament to the ephemeral nature of the propagandistic center. Speaker Gingrich, to be sure, is aware of the limited power of immunity provided by the temporary nature of his popular acclaim. While discussing the separate agendas of Ralph Reed, Newt Gingrich, and Rush Limbaugh was necessary, this article has argued that the unique convergence of their collective efforts required closer scrutiny than the individual accomplishments of these people. As GOPAC drew strength from disenfranchised Christian voters who gained inspiration from talk radio that has earned the respect of Beltway insiders, the cycle that has led to a revolution is vicious or virtuous—depending on the reader's political persuasion. Partisanship aside, powerful forces and individual voices clearly found a shared space of discourse in 1994. And while the vote counters have defined the political ramifications, we are only now discovering the social implications of this powershift.

From this effort, a clear implication emerges. Unpacking this powershift, along with similar shifts, demands a macro-level, broad approach that is sensitive to the interconnected nature of agents which contribute to movements. A clear limitation to this study is that it was, perhaps, too comprehensive in scope; missing critical details which, on the whole, were as influential as the proposed rhetorical totality. In response, we note the difficulty that follows an attempt to develop guiding themes in a complicated phenomenon such as a political campaign. Theoretical attempts to pull strands from the fabric risk unraveling any sense of coherence, often resulting in conclusions which lack utility. While we sought to ground our meta-approach in the exigencies and strategies of the campaign, we take responsibility for the necessarily interpretative nature of our conclusions. Surely, other uses of this approach will address this methodological quandary more directly. A fruitful direction for inquiry might examine the use of propaganda in literature and media to perpetuate dominant positions or resist them. Either way, we suggest that further research into the nature and application of propaganda convergence take these questions as challenges: Can we view propaganda as the organic result of multi-layered structure and connection, or must persuasive messages be assumed to emit from explicitly individual

sources? Must the selection of elements studied in propaganda convergence research emerge from a deductive method, or can the selection emerge from a grounded reading? Finally, should the interpretations which follow this kind of analysis attempt a process of prediction and control, or can we find value in their ability to make sense of divergent purposes? By now, we have made our intention clear; rather than assume a managerial approach towards the explication of propaganda, we believe that communication scholars view this phenomena as a process defined by co-creation and transcendence.

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THE TRUMAN ADMINISTRATION: RHETORICALLY TRAPPED BY ANTI- COMMUNIST POPULAR PRESS

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The entire cold war era has evoked much scholarly interest, but the main focus of cold war research is on what historians term the “origins of the cold war.” They seek to understand who or what caused the cooperative wartime relationship between the United States and the Soviet Union to collapse. The largest body of research falls into two major areas: the orthodox position and the revisionist position. The orthodox position places “blame” for the deterioration on the Soviets, while the revisionists view the places “blame” on the Truman administration. James V. Compton summarizes the orthodox position in *America and the Origins of the Cold War*:

In brief, Orthodox historians see the cold war as an American response to an objective condition in postwar international affairs—the expansionist tendencies in the Soviet foreign policy which threatened the survival of liberal institutions and of American security interests in Europe.¹

Compton also summarizes the revisionist position: “The revisionists . . . view the situation as an American provocation of the Soviet Union caused by either a gross misreading of the Soviet policy or an insensitivity to legitimate Soviet anxieties and security interests.”²

Two revisionist studies deal with anti-communist attitudes directly. Athan Theoharis in *Seeds of Repression* and Richard Freeland in *The Truman Doctrine and the Origins of McCarthyism* charge that Truman created anti-communist attitudes in the public mind because he used a divisive polarizing style of language to frighten the public into accepting the Truman Doctrine and the Marshall Plan. Freeland argues:

The essential energies of postwar anti-Communism were fully developed by early 1948. . . . These emotions were aroused and these patterns of belief developed . . . as a result of the deliberate and highly organized effort by the Truman administration in 1947–1948 to mobilize support for the program of economic assistance to Europe . . . or the Marshall Plan.³

Athan Theoharis also focuses on the Truman administration as being the creator of anti-communist rhetoric in the postwar period:

This change in national opinion [anti-communist attitudes] was in great part shaped by the rhetoric of the Truman administration. In the period of 1945–1949—that is, before Senator McCarthy’s Wheeling speech—the Truman ad-

¹ James V. Compton, Ed., *America and the Origins of the Cold War* (Boston: Houghton Mifflin Co., 1972), p. xiii.

² Compton, p. xiii.

³ Richard Freeland, *The Truman Doctrine and the Origins of McCarthyism* (New York: Knopf, 1972), p. 5.

ministration conducted foreign policy debate along narrowly anti-communist lines. To secure support for its containment policy from 1947 through 1949, administration rhetoric vastly oversimplified the choices confronting the nation.⁴

This paper arrives at conclusions quite different from the revisionists. While Freeland and Theoharis find Truman to be the creator of the simplistic cold war approach, my research indicates that before the oversimplified rhetorical style was adopted by the Truman administration, this same oversimplified style was presented by an anti-communist popular press. The anti-communist popular press included many popular right wing periodicals. In this study the anti-communist popular press sources surveyed were: William Randolph Hearst and his newspaper group, Col. Robert McCormick and the *Chicago Tribune* empire, Henry Luce and *Time-Life Inc.*, and Dewitt Wallace and the *Readers Digest*.

Current studies of anti-communist attitudes suffer from one major weakness—the focus on the presidency to the exclusion of all other possible influencing factors, such as an anti-communist popular press. This exclusive presidential focus is consistent with prevailing assumptions about how foreign policy is formed and disseminated to the general public. These assumptions are best exemplified by James Rosenau's work, *Public Opinion and Foreign Policy*. Rosenau's first assumption concerns the president's exclusive power to control public opinion on foreign policy questions and the second concerns the "mass public's" effect on foreign policy decisions.⁵

The first assumption focuses on the president as the primary source of the mass public's information about foreign policy. While there are many groups that have access to specific information about domestic matters there is much less expertise in foreign policy. As Ralph Levering states in his book *American Opinion and the Russian Alliance*: "... few people have personal knowledge of other nations and their foreign policies. . . . Only those at the highest levels of government expect to have access to state secrets; thus, almost everyone is dependent upon public officials and other 'experts' for information about foreign affairs."⁶

The second assumption focuses on the mass public's relationship to the decision making process. Rosenau describes the mass public as responding to emotional tones, as setting outside boundaries for the president: "Thus their response to foreign-policy matters is less one of intellect and more one of emotion; less one of opinion and more one of mood, generalized, superficial, and undisciplined feelings which easily fluctuate from one to another."⁷

⁴ Athan Theoharis, *of Repres Seeds sion, Harry Truman and the Origins of McCarthyism* (Chicago: Quadrangle Books, 1971), p. 8.

⁵ The "mass public" is a term developed by James Rosenau, in *Public Opinion and Foreign Policy*. (New York: Random House, 1961). He differentiates between the mass public, those who are unconcerned and uninformed about foreign policy, and from the "attentive public," those who are well informed about foreign policy. The mass public is seventy to ninety percent of the population. Anti-communist popular press publications are aimed at the mass public.

⁶ Ralph B. Levering, *American Opinion and the Russian Alliance, 1939-1945* (Chapel Hill: The University of North Carolina Press, 1976), p. 11.

⁷ Rosenau, p. 36.

The Rosenau assumptions about the president's role in the formation of public opinion and foreign policy are frequently applied successfully when the president is the major source of information about an issue. This paper has found, however, that on the anti-communist issue the two Rosenau assumptions are only partially applicable.

Assumption 1: The president is the major supplier of information about foreign policy issues.⁸

In this case, the Truman administration was the major supplier of information about specific issues related to the Soviet Union; at the same time, an anti-communist popular press was supplying a highly emotional rhetorical view of the Soviet Union. This view was continuously presented to the mass public from 1944, when the Soviet Union moved into the countries of Eastern Europe, through the end of the war in 1945, through the period when the Truman administration adopted the anti-communist rhetoric in the Truman Doctrine Address in March 1947.

Assumption 2: Since the mass public responds to emotional tones, their views on foreign policy issues fluctuate easily from one extreme to another.⁹

This assumption did not prove to be accurate when applied to anti-communist attitudes in the postwar era. Although the anti-communist press' presentation was emotionally based, not based on substantive issues, the attitudes did not fluctuate easily from one extreme to another but remained stable.¹⁰ Furthermore, the anti-communist press' presentation was well suited to the mass public's behavior patterns.

This paper reveals that the mass public's continuous and unchanging acceptance of anti-communist rhetoric had serious consequences for the Truman administration. The Truman administration found that it could not control anti-communist issues in the same way that it could control other issues. The President found himself in a type of "rhetorical trap." The mass public still was not concerned about specific issues, but the mass public firmly believed the rhetorical framework of the Soviet "evil." While the President was still free to choose policy specifics, he found that it was necessary to present these programs to the mass public through the already accepted rhetorical structure of anti-communist devil theory. The anti-communist press' continual presentation had the consequence of limiting the rhetorical options available to the Truman administration on all issues related to communism.

This paper contends that the mass public's influence has been underestimated because the mass public's anti-communist views were only "rhetorically" limiting. Since the mass public's anti-communist views were not limiting the Truman administrations options on the specifics of postwar policies, the influence has been seen to be insignificant. This paper will examine three areas: 1) The anti-communist popular press presented a highly emotional and restricted view of communism that was continuous and appropriate to the mass public's behavior patterns. 2) The Truman administration was forced

⁸ Rosenau, p. 35.

⁹ Rosenau, p. 36.

¹⁰ Levering's research based on anti-communist attitudes during World War II finds that the mass public's attitudes did not fluctuate, but remained stable.

to adopt the anti-communist press' rhetorical structure to gain passage of the Truman Doctrine and the Marshall Plan. 3) Once the rhetorical structure was adopted, the Truman administration's foreign policy had to be conducted from within the restrictions of the anti-communist rhetorical structure, a limitation which had negative long term consequences.

Anti-communist Presentation is Continuous and Has Mass Appeal

An examination of the anti-communist press' presentation reveals a highly oversimplified and frequently inaccurate presentation, with the Soviet Union shown to be barbaric and capable of destroying family, religious, and personal freedoms. Both the right wing popular press and the Catholic Church viewed their anti-communist crusades as a mission. Both groups believed it was their duty to use their publications to inform the mass public about the evils of communism.

The mission of the right wing popular press was based on several definite ideals. One of the main ideals was the value the publishers placed on patriotism and the ways they chose to define a "patriotic American." All four publishers, Hearst, Luce, McCormack and Wallace, were outspoken supporters of the "American" free enterprise system.

An important aspect of these publishers' definition of patriotism can be traced to the influence of the Protestant work ethic. The acceptance of the belief that the "good man in God's eyes was the successful man" can be seen in all four men. Luce and Wallace were both the sons of Presbyterian ministers; Hearst and McCormick's families also provided a strong Scotch-Irish Protestant influence. William Swanberg discussed the effect Calvinism had on the formation of Luce's attitudes in his book, *Luce and His Empire*: "Hence the man of God should be a successful man, whatever his undertakings. Luce made free enterprise and world success into a religious creed. The good man was a successful man."¹¹

Even though Hearst and McCormick came from wealthier families, they, like Luce and Wallace, viewed themselves as self-made men, men who single-handedly created enormous empires. As a part of their definitions of patriotism, these publishers had a great fascination with the hero figure. Their "hero" was the epitome of the frontier man. In *The Foreign Policy of Col. McCormick's Tribune*, Edwards speaks of McCormick's equation of heroes with the American experience: "McCormick's greatest heroes in American history were those who, like Lincoln and Grant, rose from a lowly station in life thus demonstrating the opportunities inherent in the free enterprise system."¹²

These men viewed the United States as the center of the world, with all other governments revolving around it. McCormick "insisted that the American Revolution had a greater meaning than being a mere struggle for independence . . . the single most important event in world history."¹³ Luce

¹¹ William A. Swanberg, *Luce and His Empire* (New York: Dell Publishing Company, 1972), p. 154.

¹² Jerome Edwards, *The Foreign Policy of Col. McCormick's Tribune, 1929-1941* (Reno, Nevada: University of Nevada Press, 1991), p. 16.

¹³ Edwards, p. 16.

reflected this view of the United States as the center of power in his essay, "The American Century," where he called for the United States to take its rightful place in world affairs.¹⁴

Another important aspect of their personalities was their rigidity on political issues. While they had strong opinions about the importance of patriotism, these strong opinions led them to narrow definitions of patriotism. Therefore, all those who disagreed with them were viewed as unpatriotic. As Edwards described McCormick: "McCormick was a sternly patriotic man who denied patriotism to those who disagreed with him, an important reason he made so many enemies."¹⁵ These men could not consider any differing opinions as reasonable. This made their view of communism predictable. Communism was clearly antithetical to their restricted definitions of American patriotism; therefore, communism was not only wrong, it was evil. Anyone who did not agree that communism was evil was also wrong, probably sympathetic to communism and evil as well. As Edwards said of McCormick's strict definitions: "McCormick sincerely believed that almost everybody who was not conservative republican was tinged with communism."¹⁶

Given the personalities of these publishers, their aristocratic beliefs, their confidence in the correctness of their opinions, coupled with the potential power wielded by their publishing empires, it is understandable that they would use their influence to defeat their perceived enemy. For these men, fighting communism was not just a convenient tool to gain public attention or to increase the circulation of their publications. To them anti-communism was a true crusade, and they cast themselves as the type of heroic figures they believed should carry out this crusade. Their strong belief in this mission made the unmasking of the evils of communism a major priority in their publications. This sometimes meant that accuracy was sacrificed to present their point of view.

The anti-communist press' definition of communism unveiled a type of devil theory. In religious terms, the supreme evil is the devil. The Christian connotation of the devil is a powerful one. The devil is believed to be the enemy of God with powers to inflict bodily harm and spiritual corruption on man. By equating communism with the religious connotations of the devil, the anti-communist press developed a rhetorically powerful association. In "The Devil and Soviet Russia," Harold J. Berman stated: "There is a strong strain of Puritanism which tends to turn opponents into enemies, enemies into devils and devils into ugly monsters."¹⁷ The anti-communist press was successful at making their devil, communism, a "monster."

This devil became vivid and tangible through the use of standard techniques of sensationalized journalism. One approach was the use of exaggerated and oversimplified language; another was the use of reoccurring article formats, like the exposé, convert testimony, or an insider report. An-

¹⁴ Henry Luce, "The American Century," *Life* 10 17 February, 1941, p. 65.

¹⁵ Edwards, p. 14.

¹⁶ Edwards, p. 106.

¹⁷ Harold J. Berman, "The Devil and Soviet Russia," *The American Scholar* 27 Spring 1958, p. 147.

other technique was the heavy reliance on political cartoons. While many of these techniques could be used to sensationalize any subject, when used to present the devil theory of communism, the techniques became rhetorically powerful.

For maximum effect, the anti-communist press used rhetorical symbols to strengthen its position. When an audience immediately understands that a single word embodies specific meanings, the user needed only utter that word to evoke the desired response. The rhetorical symbols chosen by the anti-communist press helped to strengthen the idea that communism was evil. Richard Weaver, in *Ethics of Rhetoric*, called these symbols with negative connotations devil terms, terms which could be depended upon to produce the hate response:

A singular truth about these terms is that . . . they defy any real analysis. That is to say, one cannot explain how they generate their peculiar force of repudiation. One only recognized them as publicly agreed-upon devil terms. . . . However one might like to reject such usage as mere ignorance, to do so would only evade a very important problem.¹⁸

The word "communism" itself became a powerful devil term in the United States at the time of the Russian revolution and remained such in the postwar period. Other devil terms, such as "red," "red fascist," "Yalta," "appeasement," "fellow traveler," "Stalin," and "iron curtain" were also synonymous with the communist evil. When the anti-communist press described someone as a communist, the entire meaning of the devil theory accompanied the description.

To a mass public susceptible to the techniques of sensationalist journalism, the view of communism had a strong impact for two reasons. First, the publications of the anti-communist press were able to reach a large audience at a time when a strong view of the Soviets was not being presented by any other source. And more importantly, the emotional nature of the devil theory message was appropriate to the way the mass public responded to issues.

To begin, the anti-communist press' interpretation became more influential by the fact that it was able to reach large audiences. Their publications had the largest popular circulations of that era. At the same time, there were no other publications presenting a more moderate view of the Soviets with enough circulation to effectively challenge the devil theory impact on the mass public.¹⁹ At the end of the war, the Truman administration had not yet

¹⁸ Richard Weaver, *The Ethics of Rhetoric* (Chicago: Henry Regnery Co., 1953), p. 223.

¹⁹ The *Reader's Digest*, with a circulation of 8,000,000 and *Life* magazine, with a circulation of 5,352,868, had the two largest circulations of popular periodicals. There were seven magazines presenting devil theory in the top fifty listed magazines. The other magazines with large circulations were women's magazines, comic groups. The Hearst Press was the largest newspaper chain at that time, with a daily circulation of 5,344,201 and a Sunday circulation of 8,783,213. The two daily papers with the largest individual circulation were the *New York Daily News* with a daily circulation of 2,343,484 and a Sunday circulation of 4,765,721 and the *Chicago Tribune* with a daily circulation of 1,058,627 and a Sunday circulation of 1,582,656. Both of these papers were Patterson-McCormick papers. The *Chicago-Tribune* was the most influential paper in the midwest.

adopted devil theory rhetoric. In the immediate postwar period, the Truman administration publicly maintained a rhetoric of friendship with the Soviets, which implied continued cooperation between the two countries. With the death of Franklin Roosevelt, there was no other prominent person with enough credibility to present a moderate public position.

In addition to being the only major public interpretation of postwar events, the anti-communist press' presentation was continuous, which gave the anti-Communist press the ability to shape the mass public's anti-communist attitudes. The events of postwar Europe, especially the Soviet occupation of Eastern Europe, resulted in a large number of news events which could be interpreted through the devil theory biases [List of events which triggered the devil theory response is included in the Appendix].

The continuous presentation was an important factor that helped the anti-communist press control the mass public's view of communism. An even more significant factor, however, was the nature of the presentation itself. The devil theory could easily be absorbed without study. It was not necessary for the mass public to become informed about the specific foreign policy issues to receive the full meaning and power of the anti-communist press' presentation. The anti-communist press' use of the presentational methods previously discussed, especially methods which oversimplified events, meant that the reader did not have to be dedicated to extensive study of the periodical to be receptive to the intended message. The anti-communist press' use of the headline, the political cartoon, and the appropriately placed article title could immediately establish the devil theory message when no articles had been read or understood. The anti-communist press' use of the devil term in the article title or headline, for example, could quickly achieve the desired response. Notice the headlines which appeared in the Hearst press at the time of the Iranian crisis in January–March 1946: "REDS ENGULFING IRAN." and "TURKS-REDS NEAR BORDER."²⁰ As Swanberg said of *Time* and *Readers Digest's* approach, "They catered to the intellectual laziness of people seeking quick and easy wisdom rather than informed discussion."²¹ Not only was the anti-communist press the mass public's only major source of information about communism during this time, it presented the message so efficiently that the mass public could receive the emotional message without exerting much effort.

Finally, the anti-communist press was able to have a great influence on the mass public because the type of information presented by the devil theory had a personalized appeal. The vivid images of the destruction of family, church, and personal freedoms seemed more relevant to a family than did many of the specific postwar issues. It was difficult for a person to easily identify with the administrations' daily wrangling over issues, such as war reparations or territorial disputes. However, it was easy to identify with the emotional images of pain presented by the anti-communist press. Any of the postwar pieces of evidence which included actual characters in danger produced great public empathy for these characters. The mass public could feel

²⁰ "Reds Engulfing Iran," Headline, *Pittsburgh Sun Telegraph* 13 March 1946, p. 1; "Turks-Reds Near Border," Headline, *Pittsburgh Sun Telegraph* 14 March, 1946, p. 1.

²¹ Swanberg, p. 162.

an identification with these characters on a personal, emotional level, without ever having to know about or understand the complexities of the postwar politics they represented.

The anti-communist message was so successful because its presentation made the fear of communism a tangible fear; the devil theory presentation transcended the level of government squabbles to the personal level. The success of this message also forced the Truman administration to conduct its foreign policy from within the context of this anti-communist framework.

Truman Administration is Forced to Adopt Devil Theory Rhetoric

By the end of the war the Truman administration, as well as other influential government officials, like Arthur Vandenberg, had come to realize that a return to pre-war isolationist policies was impossible.²² The United States and the Soviet Union had emerged from World War II as the two major surviving powers. With the British and French economies in shambles, the United States inherited the position of anti-communist world power. Europe was virtually destroyed. The Truman administration realized it would take tremendous financial and military commitment to rebuild Europe to a position of strength. There were few within the administration who questioned the importance of a rebuilt Europe, for a strong Europe was important to the United States for economic as well as military reasons. The difficult questions were how and when could the Truman administration persuade the mass public and Congress that aid was necessary. The Truman administration could not hope to pass any type of European aid program without public support.

Not only did the Truman administration have the problem of persuading the mass public that aid to Europe was necessary, it first had to cope with a history of isolationist tradition. Although the Truman administration realized that the United States must assume a new role in world affairs, the mass public was not ready to accept expanded responsibility.

The anti-communist press' rhetorical presentation did not help prepare the mass public to accept any new postwar responsibility since the anti-communist position fit perfectly with overall support for isolationist policy. At a rhetorical level, the anti-communist press had taught the mass public that the Soviets were evil. However, the anti-communist press did not prepare the mass public to accept any type of material commitment to support their rhetorical position. In fact, just the opposite was true. The anti-communist press taught the mass public to oppose commitment. Therefore, the Truman administration had to deal with a public making loud rhetorical demands that Truman "get tough" with the Soviets, but still so isolationist that it could not see the necessity of any financial or military commitment abroad. As John Gaddis noted in his book, *The United States and the Origins of the Cold War*: "Getting tough with Russia involved responsibility as well as rhet-

²² Senator Arthur Vandenberg was ranking Republican on the Senate Foreign Relations Committee and the most influential Republican on foreign affairs.

oric, and government leaders could not hope to accomplish their objectives without educating the public to that fact."²³

The Truman administration came to accept the difficult educational task before them. As Joseph Jones, public relations director for the Truman administration stated:

I think we must admit the conclusion that Congress and the people of this country are not sufficiently aware of the character and dimensions of the crisis that impends, and of the measures that must be taken in terms of relief, gifts, constructive development programs and liberal trade policies—all of these on a scale hitherto unimagined—if disaster is to be avoided. ...²⁴

Although it is not unusual for a president to have to educate a mass public on the specifics of foreign policy issues, the Truman administration discovered that on all issues related to communism the problem was complex. When explanations of the economic issues of postwar aid were explained in economic or humanitarian terms, the mass public ignored the arguments. The Truman administration soon learned that when the specific information was presented in the already—accepted rhetorical structure used by the anti-communist press, the mass public and Congress were more supportive.

The Truman administration learned of the significance of the devil theory rhetorical style through several early “tests” when Winston Churchill was asked to give the commencement address at Westminster College in Fulton, Missouri. The speech became known as the “Iron Curtain” speech. The Churchill speech can be viewed as having two levels, a policy level and a rhetorical level. On the policy level Churchill asked for a type of military alliance of non-communist countries to guard against the Soviet threat. [NATO eventually fulfilled this need.] On the rhetorical level Churchill depicted the Soviets in the same simplistic terms used by the anti-communist popular press during this time. He popularized the term “iron curtain” as symbolic of Soviet evil, a term which was adopted by the anti-communist press: “From Stettin in the Baltic to Trieste in the Adriatic, an iron curtain has descended across the continent. Behind that line lie all the capitals of the ancient states of central and eastern Europe.”²⁵ While there was a strong applause for the rhetorical tone of the speech, the alliance aspect was strongly rejected. The trial balloon informed the Truman administration that the mass public was not yet ready to make a military commitment to Europe.

However, at the same time in early 1946, the Truman administration was faced with a second test, a request from the British for a financial commitment in the form of a three quarter billion dollar postwar loan. The Truman administration began its campaign to gain support for the British loan with logical arguments. Under Secretary of State Dean Acheson reported on the strong economic reasons which made the British loan necessary. He noted

²³ John Lewis Gaddis, *The United States and the Origins of the Cold War* (New York: Columbia University Press, 1972), p. 317.

²⁴ Jones’ conversation to Assistant Secretary of State Benton, February 26, 1947, as reported in Gaddis, p. 346.

²⁵ “Mr. Churchill’s Address Calling for United Effort for World Peace,” *The New York Times*, 6 March 1946 p. 4.

the United States needed foreign markets, and the British loan would help to insure this, but as Gaddis stated:

In a series of speeches Under Secretary of State Dean Acheson repeatedly tried to picture the loan as part of a larger situation—the necessity to revive world trade—but without much success. In the end Congress approved the loan chiefly because the administration said it was necessary to fight Communism.²⁶

The fact that the Truman administration had little success in selling the British loan by using economic arguments is important. The British Loan fight set a precedent for the Truman administration and also taught them that anti-communism, or the rhetoric of devil theory, was the one approach that caused fear in the Congress as well as in the mass public.

The Truman administration had not used devil theory language in a major speech in public; but as the crisis in Greece and Turkey approached in early 1947, Truman himself would be forced to use devil theory language to assure passage of the Truman Doctrine. It is at this point that this paper differs from the other research in this area. Freeland and Theoharis claim that Truman artificially created the rhetorical crisis by choosing to create divisive anti-communistic rhetoric.²⁷ This paper contends that Truman did not create this rhetorical structure; Truman was forced to adopt the rhetorical structure that had proved to be so successful for the anti-communist popular press. The mass public's belief in the evil of the Soviets dictated the rhetorical form Truman would have to use to gain passage of legislation requiring any kind of commitment to Europe.

By early 1947, the Truman administration had only been able to achieve a small financial commitment, the loan to the British. However, conditions in Europe were deteriorating. There was special concern about the future of Greece and Turkey. From the end of the war, the British had primary responsibility for these two countries. However, rumors were numerous that the British intended to pull out of the area. It was assumed by most western powers that if the British pulled out, Greece would "go communist."²⁸ On February 21, 1947, a British message reached the State Department declaring that the British could no longer financially carry the responsibility of Greece and Turkey and that they would end all their responsibility by March 31, 1947. The British hoped that the United States would assume the task.

The State Department immediately began calculating estimates and plans for this assumption of responsibility. They compiled reports estimating costs, as well as forming strategy proposals, in considering how to approach the Congress and the public. By February 24th, preliminary reports were given to Secretary of State Marshall. On February 26th, the President, the Secretary of State, and the military Chiefs of Staff all agreed that the situation was

²⁶ Gaddis, p. 343.

²⁷ Freeland, *The Truman Doctrine and the Origins of McCarthyism*, and Theoharis, *Seeds of Repression, Harry Truman and the Origins of McCarthyism*.

²⁸ It was assumed by all major decisions maker in 1947 that the communist threat in Greece was a real one. While more recent research has strongly questions this assumption, the cold war atmosphere of 1947 did not allow for any doubt about the overwhelming communist influence in Greece.

highly serious, and that the United States must fill the vacuum created by the British withdrawal or it would be filled by the Soviets. On February 27th, Truman invited a bipartisan group of Congressional leaders to the White House to discuss the Greek crisis. Again, at this meeting, Truman learned that only the devil theory rhetoric had a chance at success.²⁹

Secretary of State Marshall was assigned the task of educating the congressional delegation about the significance of the United States' new responsibility and the financial package that would be needed to assume this responsibility. Marshall began by discussing economic conditions in Europe, but as Gaddis reported: "Marshall's dry, laconic presentation failed to impress the suspicious Congressmen."³⁰

At this point, Under Secretary of State Dean Acheson asked to speak. Just as Acheson had vividly presented the British Loan arguments in devil theory terms, he framed the current crisis in the same rhetorical terms. According to Gaddis: "The Undersecretary of State painted a vivid picture of a world divided between irreconcilable ideologies. . . ." ³¹ Acheson described the presentation in his memoir, *Present at the Creation*:

I said, Soviet pressure on the Straits, on Iran, and on northern Greece had brought the Balkans to the point where a highly possible Soviet breakthrough might open three continents to Soviet penetration. Like apples in a barrel infected by one rotten one, the corruption of Greece would infect Iran to all the east. It would also carry infection to Africa through Asia Minor and Egypt, and to Europe through Italy and France, already threatened by the strongest domestic Communist parties in Western Europe. The Soviet Union was playing one of the greatest gambles in history at minimal cost. It did not need to win all the possibilities. Even one or two offered immense gains. We and we alone were in a position to break up the plan.³²

All first-hand accounts of this meeting acknowledge the impact of the ideological presentation. After a few moments of silence Senator Vandenberg replied: "Mr. President, if you will say that to the Congress and the country, I will support you and I believe most of its members will do the same."³³ Therefore, the administration set itself to the task of writing a speech which would accomplish three goals:

1. prove that the Soviet threat was serious;
2. demonstrate that only the United States could handle the threat; and
3. establish that it would become basic U.S. policy to accept the responsibility for this type of Soviet threat.

In addition to these points, the Truman administration also determined that

²⁹ This perspective is reported by Joseph Jones, *Fifteen Weeks* (New York: Viking Press, 1955) and Dean Acheson, *Present at the Creation* (New York: W. W. Norton and Company, Inc., 1969).

³⁰ Gaddis, p. 349.

³¹ Gaddis p. 349.

³² Acheson, p. 219.

³³ Acheson, p. 219. Eric Goldman in *The Crucial Decade*, p. 59, reports a more dramatic response, "Mr. President, if that's what you want, there's only one way to get it, that is to make a personal appeal before Congress and scare the hell out of the country."

the speech would be phrased in the ideological terms of good and evil.³⁴ In other words, the Truman administration planned to use basic devil theory language.

President Truman presented the Truman Doctrine before a joint session of Congress on March 12, 1947. The speech focused on all three stated goals and was phrased in the ideological terms of good and evil. The speech first demonstrated that the threat was serious: "The very existence of the Greek state is today threatened by the terrorist activities of several thousand armed men led by the communists, who defy the government's authority."³⁵

The speech also demonstrated that only the United States could give Greece the necessary aid: "The United States must supply that assistance. We have already extended to Greece certain types of relief and economic aid but these are inadequate. There is no other country to which democratic Greece can turn. No other nation is willing and able to provide the necessary support for a democratic Greek government."³⁶

The speech also articulated the new general policy which became known as the Truman Doctrine, the policy which committed the United States to assist any country fighting communist domination:

I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressure. I believe that we must assist free peoples to work out their own destinies in their own way. I believe that our help should be primarily through economic and financial aid which is essential to economic stability and orderly political processes.³⁷

Not only was the Truman speech successful in including the new foreign policy goals, the speech was also clearly based on the anti-communist press's general assumptions about the Soviet Union: Soviet communism was monolithic, expansionistic, and barbaric. It was the use of these general assumptions that gave the speech its power over the mass public and Congress, not the articulation of the new policy direction. The speech held more power over the mass public precisely because it did not present new forms of belief, but instead, served to reinforce already established beliefs.

The beliefs that the Soviet Union was the center of communism, and that communism was monolithic, were never stated directly, but the underlying assumptions were implicit in the content. When Truman noted the terrorist activities along the Greek borders, he assumed that these activities were directed from Moscow. The speech also articulated the assumption that Soviet communism was expansionistic, i.e., the Soviet Union would move into any spot, Greece in this instance, because the Soviet goal was world domination. Just as Dean Acheson explained the "rotten apple" position to the congressional leaders, Truman explained the importance of the Greek location in the speech:

It is necessary only to glance at a map to realize that the survival and integrity of the Greek nation is of grave importance in a much wider situation. If

³⁴ Jones, p. 146.

³⁵ "The Truman Doctrine," p. 177.

³⁶ "The Truman Doctrine," p. 177.

³⁷ "The Truman Doctrine," p. 178.

Greece should fall under the control of an armed minority, the effect upon its neighbor, Turkey, would be immediate and serious. Confusion and disorder might well spread throughout the entire Middle East.³⁸

The speech also exhibits the position that the Soviet system is barbaric, and seeks to destroy family, church, and personal freedoms. It is this portion of the speech that most successfully illustrates the goal of presenting the situation in ideological terms, the "good" United States versus the "evil" Soviets:

At the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one. One way of life is based upon the will of the majority and is distinguished by free institutions, representative governments, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression. The second way of life is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections, and the suppression of personal freedoms.³⁹

After establishing that the Greek-Turkish situation was a real crisis, a crisis that could only be solved by the United States, as the representatives of "good," Truman asked congress to make a financial and military commitment: "I therefore ask the congress to provide authority for assistance for Greece and Turkey in the amount of \$400,000,000 for the period ending June 30, 1947."⁴⁰

At first, administration insiders like Joseph Jones were shocked at the quick success achieved: "It has all gone like clockwork. . . . Two months later, the measure had passed both houses of Congress by resounding majorities and was awaiting the President's signature. Considering the political situation at the time the action appears not amazing, but unbelievable."⁴¹

While the mass public could not accept an expanded United States' role in world affairs for economic or even humanitarian reasons, when the role was explained in the language of devil theory, a belief system already accepted, the response was positive.

The Adoption of Devil Theory Rhetoric has Negative Consequences

While it may have been necessary for the Truman administration to adopt the anti-communist press' rhetorical position to gain passage of the Truman Doctrine legislation, this adoption was to have short term as well as long consequences.

From the strong public support for the Truman Doctrine policy, it would appear at first that the President's choice was a wise one since the choice of the ideological position insured public support for the expanded Truman administration commitments. It also assured public support for the Marshall Plan. Once the mass public began to view the European situation in terms of the commitment necessary to stop the evils of communism, it became easier to pursue commitment on a larger scale. If the Soviets were such a

³⁸ "The Truman Doctrine," p. 179.

³⁹ "The Truman Doctrine," p. 178.

⁴⁰ "The Truman Doctrine," p. 179.

⁴¹ Jones, p. 146.

threat to Greece and Turkey, then it stood to reason that the Soviets would be a proven threat in all of war-devastated Europe.

The passage of the Marshall Plan was a major victory for the Truman administration, and the Presidential endorsement of devil theory language had helped lead to the initial success. It was only a year and a half earlier that sixty percent of the American public had opposed the four billion dollar loan to the British, but by July 1947, fifty-seven percent of the mass public supported the concept of the Marshall Plan.⁴² The American public believed in the evils of communism and accepted the Truman administration's interpretation that financial resources were required to stop the communist evil in Europe. While the language, phrased in the rhetoric of devil theory, had indeed been successful in this instance, the Truman administration's acceptance of oversimplified rhetoric would prove to have significant consequences.

One major disadvantage was that the devil theory language forced the Truman administration's rhetorical commitments to be too broad. Once the Truman administration was forced to publicly use the language of the devil theory to gain acceptance of its programs, it also had to accept the assumptions that underlay the use of the rhetorical structure. Given the limitations of the rhetorical position, policy would have to be adapted to comply with the limitations. This acceptance would lead the Truman administration into a broad, oversimplified policy statement which in specific terms could not be easily understood or enacted and could not be financially supported. The Truman administration could not just be concerned about the evils of communism in Greece and Turkey to comply with these assumptions. Greece and Turkey must be seen as two examples of the Soviet threat. Truman had to state that the United States would be committed to this immediate threat to and all others as well.

George Kennan was one of the first administration insiders to be concerned about the scope of the United States commitment. As Gaddis said of Kennan's attitude: "Although Kennan supported aid to Greece and Turkey, he objected to placing it in the framework of a universal policy rather than in that of a specific decision addressed to a set of specific circumstances."⁴³ The Truman administration had rhetorically committed the United States to an impossible situation. Realistically the United States could not possibly send troops or financial support to every geographic location threatened by communism because it did not have the financial or military resources for such a commitment. This broad rhetorical commitment doomed all United States policy relating to the Soviet Union to failure. Since the United States was committed to preventing the spread of communism anywhere in the world, the spread of communism anywhere in the world was interpreted as failure of United States foreign policy. While the generality was rhetorically based, the political punishment for failure to achieve the level of rhetorical generality was real. It became impossible for Truman to achieve the far-

⁴² The Gallup Poll, September 30, 1945, Question, "Loan to England," and July 23, 1947, Question, "Marshall Plan."

⁴³ Gaddis, p. 350.

reaching scope of the commitment. The stigma of "losing a country to communism" would come to haunt the Truman administration.

The Truman administration was first punished for failure to achieve the goals defined by this broad rhetorical commitment in 1949 when the Chinese communists gained control of mainland China. Truman had pledged the United States would "save" any country from communism anywhere on the globe; therefore, Truman's failure to save China was indeed a failure of large proportions, a failure with attached political punishment, resulting from the rhetorical oversimplifications. The Truman administration was put in a defensive position and was never able to recover.

After the "loss of China," the Truman administration had to be ready to react quickly at the next possible communist encroachment which came from the North Korean Army. In 1950, when the North Korea Army crossed the 38th parallel, Truman had to commit United States' prestige and military power to stop the communist aggression or face the same type of political punishment connected with the "loss of China."

While the short-term consequences of the Truman administration's acceptance of the devil theory made passage of the Truman Doctrine and the Marshall Plan possible, the long-term consequences were negative.

Another important factor to consider are the implications for the Truman administration or any other presidential administration that accepts a rhetorical structure created by a source outside of the presidency. If a president creates a rhetorical structure to "sell" a certain position to the mass public, s/he must live within the restrictions of that rhetorical structure. However, if the president created the structure s/he has greater control of the rhetorical limitations. When a president is forced to adopt a rhetorical structure created by an outside source, the limitations of that structure are not of his or her creation, and therefore, can be more confining.

The important lesson to be learned here is that it is possible in some situations for a rhetorical structure to limit policy options by limiting the rhetorical choices that sell that policy. These limiting rhetorical structures can become a type of "rhetorical trap," as the anti-communist press' devil theory presentation became a "rhetorical trap" for the Truman administration.

Appendix

1. Arrest of Polish underground leaders Summer 1945
2. Papal Message to Women Fall 1945
3. Reports from Estonian, Latvian and Lithuanian Refugees Fall 1945
4. Mass Suicides of Estonian, Latvian and Lithuanian Soldiers Fall 1945
5. Chinese Factories Looted Fall 1945
6. Catholic Bishops' Report Fall 1945
7. Communists Attack General MacArthur January 1946
8. Communists Attack the Catholic Church January 1946
9. Papal Encyclical on Ruthenian Catholic Church January 1946
10. Stalin Announces Five Year Plan February 1946
11. Canadian Spies Caught February 1946
12. Canadian Spy Reports Continue March 1946
13. Manchuria Looted March 1946
14. Soviet Absorption of the Ruthenian Catholic Church March 1946
15. Mihailovich Arrested April 1946
16. Vatican Charges Cruelty in Russian Zone April 1946
17. Publication of *I Chose Freedom* May 1946
18. Mihailovic Trial and Execution June-July 1946
19. Publication of Brooks Atkinsons's Russian Series June-July 1946

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| 20. Five American Fliers Shot Down Over Yugoslavia | August 1946 |
| 21. Soviet Purge Trials in the Ukraine | September 1946 |
| 22. <i>Animal Farm</i> is Published | September 1946 |
| 23. Arrest of Archbishop Stepinac | October 1946 |
| 24. Conversion of Louis Budenz | October 1946 |
| 25. C.I.O. Convention | November 1946 |
| 26. Coal Strike | November–December 1946 |
| 27. HUAC Investigates Hollywood | November–December 1946 |
| 28. Kiril Alexiev Defects | January 1946 |
| 29. Polish Elections | January–February 1946 |

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