Media Argumentation

\textit{Dialectic, Persuasion, and Rhetoric}

DOUGLAS WALTON

\textit{University of Winnipeg}
Ad Hominem Arguments in Political Discourse

The *ad hominem*, or personal attack, argument is now highly familiar in politics, especially in the use of negative campaign tactics in elections. This form of argument has been studied previously in the argumentation literature, but it has some special features of interest as a mass media argument strategy. In this chapter it is shown how it has some features comparable to appeals to fear and pity when it is used in mass media as a device of persuasion. This chapter brings out the multi-agent structure of the *ad hominem* argument as used in rhetorical argumentation, by showing how the proponent mounts a successful strategy in this form of argumentation. It is shown how he or she must use prolepsis by probing into the commitments of the respondent and configuring them in a certain way prior to the attack. These insights into the multi-agent structure of the *ad hominem* reveal how the proponent must collect evidence proactively, and then use this evidence to attribute a plan to the respondent. The aim is not just to reveal how to use such a tactic of personal attack in the mass media. The analysis is meant to be helpful to both voters and political campaigners, giving them a better understanding of how to deal with rhetorical *ad hominem* arguments by identifying, analyzing, and critically evaluating them.

The *ad hominem* argument is not a new phenomenon in American political discourse. A pamphlet was circulated telling of Andrew Jackson’s “youthful indiscretions.” In the 1860s, Northern newspapers attacked Lincoln’s policies by attacking his character, using the terms “drunk,” “baboon,” “too slow,” “foolish,” and “dishonest.” Steadily on the increase in political argumentation since then, the *argumentum ad hominem* has
been carefully refined as an instrument of “oppo tactics” and “going negative” by the public relations experts who now craft political campaigns at the national level. It has been so prominently used in the major political campaigns, debates, and ads of the past few years that there has even been a reaction against it – a feeling that we have gone too far in this direction and that some kind of restraint is needed. But there has been no evidence of such restraint in the argumentation used in recent campaigns. The norm is even more visible use of negative campaign tactics, and the acceptance of the character issue as relevant. Personal matters that were once “off limits” for media reporting are now probed into, using opposition research, and routinely drawn on in attack ads. The abundance of these \textit{ad hominem} arguments in current political discourse provides much interesting material for studying how to evaluate the strengths and weaknesses of this type of argument. In this chapter, two specimens that pose some interesting problems have been selected for study. How does the \textit{ad hominem} argument really work as a way of molding public opinion, why is it so often so effective, and how can it be defended against? How can it be evaluated as a clearly identifiable type of argument, with some kind of objective standards, in a way that can be applied to particular cases?

The best way to approach this problem is to study some actual cases in a detailed analysis. The problem posed by one case studied in this chapter is that the argument looks like an \textit{ad hominem} argument, but on closer inspection, it is arguable that it is not an \textit{ad hominem} argument at all. The case in question is a fairly short and relatively self-contained segment of dialogue from the televised impeachment trial of President Bill Clinton in February 1999. The other case is even more typical of so many \textit{ad hominem} arguments currently in use in political discourse. It is an \textit{ad hominem} attack on Al Gore in the “Election Notebook” article in \textit{Time} magazine in 1996. It also has some special features that turn out to be quite interesting in advancing our knowledge of how the \textit{ad hominem} type of argument works in political argumentation in a democratic system where mass media reporting is a big factor. The Gore case is simpler, and more nicely illustrates key features of the circumstantial \textit{ad hominem} argument. So it is presented first.

\footnote{A range of cases, from ancient times to the present, is studied in Walton (1998a).}
Classifying the Types of Ad Hominem Argument

1. Classifying the Types of Ad Hominem Argument

The *ad hominem* argument has a long history of being treated as a fallacy in logic textbooks. Hardly anyone questioned the general assumption that this type of argument can be routinely dismissed as fallacious until Johnstone (1952, 1959) pointed out that many famous philosophical arguments are *ad hominem* arguments of a kind that do not appear to be fallacious. Johnstone was the first to seriously question what had become a generally accepted tradition in logic of taking for granted that *ad hominem* arguments are fallacious. The assumption was that not much care was needed in evaluating individual cases of the *argumentum ad hominem*, because all instances of it are fallacious. Johnstone put this assumption sharply into question by citing cases of what not only appear to be *ad hominem* arguments in philosophical discussions, but that also appear to be, on the whole, quite reasonable arguments. Certainly, these cases could not any longer be brushed aside as fallacious just on the grounds that they fit the form of argument described as *ad hominem* in the logic textbooks. By showing that the *ad hominem* argument could be reasonable in some cases, Johnstone opened up the real problem to be solved: how can we tell on the basis of evidence in a given case whether a specific *ad hominem* argument is reasonable or fallacious? This question poses the problem of evaluation.

Prior to the evaluation problem in dealing with *ad hominem* arguments, there is an identification or classification problem. The textbook accounts indicated that there are different types of *ad hominem* arguments. The problem was how to classify these different subtypes, and generally how to define the *ad hominem* as a distinctive and identifiable form of argument. Many subtypes of *ad hominem* argument have been shown to have distinctively different forms as arguments. In Walton (1998a), five main types of *ad hominem* argument are defined. These subtypes are the abusive (direct) *ad hominem*, the circumstantial *ad hominem*, the bias *ad hominem*, the poisoning the well subtype, and the *tu quoque* subtype. Each subtype has a well-defined form as a recognizable type of argument. There are also many other kinds of arguments associated with *ad hominem* arguments that are not themselves *ad hominem* arguments. These arguments are easily confused with or misclassified as *ad hominem* arguments. The previous lack of any standard system of classifying all these various forms of arguments has stood in the way of any serious study of the *ad hominem* argument. Now that problem, at least to some encouraging extent, has been
solved. But the problem of refining and extending the systems of classification (Lagerspetz 1995; Walton 1998a) still exists. Other resources for identifying and evaluating personal attack (ad hominem) arguments have been developed by Johnstone (1952), van Emeren and Grootendorst (1984, 1995), Brinton (1985, 1995), Walton (1989a, chap. 6), and van Eemeren, Grootendorst, and Snoeck Henkemans (1996), Krabbe and Walton (1993). The method for identifying and evaluating ad hominem arguments worked out in Walton (1998a) uses a set of argumentation schemes (forms of argument) for each distinctive subtype of ad hominem argument recognized, and a set of appropriate critical questions matching each scheme. Because each different type of ad hominem argument needs to be evaluated differently, the question of how to identify the type used, when confronting an argument in a given case, is highly significant. But reality being what it is, there are borderline cases where it is very difficult or even impossible to tell whether a given argument presented in a text of discourse is one type of ad hominem argument or another. Or it may even be hard to tell whether it is an ad hominem argument or not. This is the problem Hamblin (1970) called “pinning down” the fallacy in a given case.

In the direct, or so-called abusive, type of ad hominem argument, the proponent argues that the respondent is a bad person and that therefore his argument should not be accepted as being as plausible as it was before. There are several background presumptions. One is that there are two parties, called the proponent and the respondent. Another is that the respondent has put forward some particular argument, that has some initial degree of plausibility. Another is that the respondent is assumed to have some ethical qualities of character, like honesty and integrity. When the proponent says that the respondent is a bad person, he means that the respondent has displayed some negative ethical quality of character, like dishonesty or hypocrisy. At any rate, these are all the properties of the direct ad hominem as a type of argument. The following is the argumentation scheme for the direct, or so-called abusive, form of the ad hominem argument – called the ethotic type of ad hominem argument in Brinton (1985) and Walton (1998a). The variable $a$ stands for an arguer, and the variable $\alpha$ stands for an argument.

**Ethotic (Direct, Abusive) Ad Hominem Argument**

$a$ is a person of bad character.

Therefore, $a$’s argument $\alpha$ should not be accepted.
An *ad hominem* argument in a particular case is evaluated in relation to, in the first place, whether it meets the requirements for the scheme and, in the second place, how it manages critical questions. The fallacious cases are the ones where critical questioning in a further dialogue exchange is suppressed. But in principle, both types of *ad hominem* arguments can sometimes be reasonable.

The *ad hominem* argument can be a reasonable way of questioning an arguer’s credibility by throwing doubt on his character (for veracity, in particular), and using that allegation to throw doubt on whether his argument has much weight in supporting its conclusion. But this type of argument can be used wrongly if the claim is that the arguer’s conclusion is absolutely wrong (or indefensible), as opposed to the weaker claim that it is open to critical questioning. In other words, the *ad hominem* argument is a relative one, but runs into difficulty as soon as it becomes an absolute claim that the proposition advocated by the arguer is false. In evaluating cases, the critical thinker must watch out for words such as “certainly” and “must,” which rule out the possibility that a claim is true (or false).

2. The Circumstantial and Other Types

What is important to notice when initially approaching any particular case study is that the circumstantial type is different from, but also related to the direct, or so-called abusive type. The circumstantial type essentially involves an allegation that the party being attacked has committed a practical inconsistency, of a kind that can be characterized by the expression, “You do not practice what you preach.” Then this allegation of inconsistency is used as the basis for launching a direct, or personal, *ad hominem* type of attack to the effect that the person attacked has a bad character and that therefore her argument is bad or should not be taken seriously. So the distinction is that the direct *ad hominem* does not require an allegation of circumstantial inconsistency of the kind that the circumstantial type does. The circumstantial *ad hominem* argument, unlike the direct one, is always based on an allegation of inconsistency. The proponent alleges that the respondent is committed to some kind of inconsistency, and then uses that allegation as a springboard to argue that the respondent’s argument is not plausible. Typically, as just noted, the allegation of inconsistency takes the form of an argument to the effect that the respondent “does not practice what he preaches.” The classic case is the smoking
example. In this case, the parent argues to her child that he should not smoke, because smoking is unhealthy. The child replies, “What about you? You smoke. So much for your argument against smoking!” What is going on in this case is that the child observes an inconsistency – the parent argues against smoking, but the parent herself smokes. Citing this pragmatic inconsistency the child rejects the parent’s argument. The smoking case is tricky to evaluate. On the one hand, the child is right to note the pragmatic inconsistency, and to question the parent’s credibility as a spokesperson for an anti-smoking argument. On the other hand, the child may be over-reacting by rejecting what may be a good argument against smoking.

The form of the circumstantial ad hominem argument has been presented as follows in Walton (1998a, p. 219). As above, the lowercase $a$ stands for an arguer, and the Greek $\alpha$ stands for an argument; the uppercase $A$ stands for a proposition.

_Circumstantial Ad Hominem Argument_

1. $a$ advocates argument $\alpha$, which has proposition $A$ as its conclusion.
2. $a$ has carried out an action or set of actions that imply that $a$ is personally committed to not-$A$ (the opposite of $A$).
3. Therefore, $a$ is a bad person.
4. Therefore, $a$’s argument $\alpha$ should not be accepted.

When this form is applied to the smoking case, it may not seem that the subconclusion 3 really applies to the case. After all, is the child really claiming or asserting that the parent is a bad person, as part of the argument? Although no such assertion is explicitly made by the child, it can be inferred as a non-explicit part of the argument. For, presumably, the reason that the child is rejecting the parent’s argument against smoking is that the child sees the parent is a smoker, and then draws the inference that the parent is not sincere in what she advocates, based on the perception of the inconsistency. For the argument to make sense, there needs to be an implicit conclusion drawn by the child that the parent lacks some kind of personal ethical quality, such as sincerity or integrity. Whatever we might call it, the quality of character involves a consistency between a person’s principles and her personal actions. At any rate, assuming that the child’s argument in the smoking case has this component, it can be classified as an instance of the circumstantial ad hominem type of argument. If it lacks this component, it would be classified in Walton (1998a, p. 251) as an argument from pragmatic...
inconsistency, but one that is not a genuine type of *ad hominem* argument (in the narrower sense in which *ad hominem* is a personal attack argument).

The example below is a summary of a newspaper article that appeared in the *National Post* (October 14, 2005, p. A10).

*The Sealers Example*

Rocco DiSpirito, a New York chef and best-selling food author, made famous as the star of the NBC reality show *The Restaurant*, wrote a public letter supporting a campaign by the U.S. Humane Society to end the Canadian seal hunt. The article quoted Mr. DiSpirito as saying, “Most of the seal clubbers [in Canada] are also snow crabbers. By refusing to use Canadian or Canadian-sourced snow crab in our restaurants, we can make a very vocal statement against the seal hunt.”

The Humane Society had been lobbying for an American boycott of Canadian seafood, especially snow crab from Atlantic Canada, advocating the boycott as an economic tactic to stop the seal hunt. Many American restaurants and seafood wholesalers had joined the boycott, pledging not to buy Canadian seafood. Newfoundland fishermen in the sealing industry replied by arguing that DiSpirito was a hypocrite for calling the seal hunt inhumane while serving *foie gras* made from the engorged livers of force-fed geese in his restaurant. This practice was officially banned in some European countries and California, where the humane society condemned it. Frank Pinhorn, managing director of the Newfoundland-based Canadian Sealers Association, was quoted as saying, “He’s an absolute hypocrite, a man of double standards.” Earl McCurdy, president of the Fish, Food and Allied Workers Union in St. John’s was quoted as saying, “I think somebody who lives in a glass house shouldn’t throw stones. It shows the hypocrisy of these celebrities, who know nothing about the seal hunt. . . . if he wants to serve *foie gras* in his restaurants, that’s fine with me, but he shouldn’t pass judgment on us.” John Grandy, senior vice-president of the Humane Society, defended the chef. He was quoted as saying, “Absolutely the society is opposed to *foie gras*, but this issue is about seals, and a man of his distinction and abilities, who is simply appalled at the brutal destruction of these seals, well, if we can use him on the seals issue, we’re happy to do so.”

The argument in this case is partly based on an implicit use of appeal to popular opinion, because it argues that the practice of serving Canadian snow crab should be condemned for the reason that several states have already banned it. But the central argument in the example is a circumstantial *ad hominem* attack. The sealers argue that the chef is a hypocrite for condemning sealing as inhumane, while his personal activities as a chef support practices, that are just as inhumane. They argue that he does not practice what he preaches. The basis of their argument is the cited practical inconsistency between the position that the chef advocates and his own actions. They use this argument as an attack on the chef’s
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credibility as an arguer whose arguments should not be taken seriously on the issue of humane treatment of animals. The argument suggests that the chef is hypocrite when he is more interested in publicity, and perhaps in promoting his career, than in the ethical issue.

The bias type of ad hominem argument is also an attack on an opponent’s credibility. In this type of attack, the proponent argues that the respondent is biased, or has shown some sort of bias, and argues that the respondent’s argument should therefore not be taken to be as plausible as it might have appeared before. Bias of this sort can be shown by a number of indicators, such as having something to gain or being strongly committed to a viewpoint (Kienpointner and Kindt 1997). Bias is not always a bad thing in argumentation. How bad a bias is, in a given case, depends on the type of conversational context the argument was used in. The same argument if used in an editorial column might be quite okay, but when used in a news report could exhibit a kind of bias that rightly opens it to criticism. At any rate, the bias type of ad hominem is different from the direct and circumstantial types. It focuses not on character or on an inconsistency but on the bias an arguer is alleged to have shown in her argument.

The fourth type of ad hominem argument is the poisoning the well type. In this type of attack, the proponent alleges that the opponent is strongly committed to some position in a rigid and dogmatic way. It is concluded that he can never be trusted to judge an argument on its merits, in an open-minded way, and will always push instead for the side of his preferred position. The classic case (Walton 1998a, p. 15) is the attack on Cardinal Newman, in which it was alleged that as a Catholic, he always reverted to the Catholic position on any political dispute on any subject, and therefore could never be trusted to take an open-minded view of a matter. Newman replied that such an attack, if taken seriously, meant that he as a practicing Catholic could never really take part in any political debate on any issue with any credibility.

The fifth type is the tu quoque, in which one party replies to an ad hominem attack by attacking the attacker, using another ad hominem argument. There are strong elements of the tu quoque in the ad hominem attack in the sealhunt example. However, there are general problems classifying the tu quoque as a type of argument. There is much confusion in the textbooks sorting out this type of argumentation from other types, such as the two wrongs argument and the guilt by association argument (Walton 1998a, pp. 233–240). There are also other subtypes of ad hominem argumentation, such as the situationally disqualifying subtype, that are hard
to classify (Krabbe and Walton 1993). These problems can be bypassed in the cases that follow, for the main concern will be with the ethotic and circumstantial subtypes.

All five subtypes of *ad hominem* arguments are personal attack arguments in which one party, called the proponent, attacks the person of the second party (the respondent) in a dialogue in which both parties are arguing about something. The basis of the argument is that the proponent is attacking the credibility of the respondent, and then using this proposed lowering of credibility to argue that the latter’s argument should be reduced in plausibility value. One assumption is that the respondent has put forward an argument and that this argument has only a certain degree of plausibility or worth of acceptance as an argument. Another assumption is that this plausibility value can be raised or lowered by consideration of the person, or personal characteristics of the respondent, as a participant in argumentation. Yet another assumption is that both parties have something that could be called personal credibility that also can be raised or lowered in the course of argumentation. The final assumption is that a lowering of the personal credibility of an arguer can result in a lowering of the plausibility value of the argument that the arguer has put forward. All these interconnected assumptions are parts of the structure needed to evaluate *ad hominem* arguments. So it is not difficult to see that the *ad hominem* is a complex form of argument in its own right, with many components that require an analysis that goes well beyond the traditional structures of deductive and inductive logic.

What consideration of the *ad hominem* argument does is to bring the notion of the person, or the arguer as person, into logic. Of course, this intrusion has traditionally been resisted. Logic is seen as an abstract and formal science of propositions and truth values. But to get any kind of useful and workable way of analyzing and evaluating *ad hominem* arguments, the notion of the arguer as a person, or as an entity with credibility and properties of character, must be taken into account. Many in traditional logic might be reluctant to take such a step, because it would broaden the subject of logic into the whole area of persons, seeming to make logic subjective in way that is inappropriate and even dangerous.

3. **Argument from Commitment**

*Ad hominem* arguments have become a special subject of concern in media reporting political argumentation, as noted in the introductory section of this chapter. One example is the revealing case study of an election
campaign in which the *ad hominem* argument was the decisive instrument of victory for an underdog candidate (Cragan and Cutbirth 1984). But since that time, *ad hominem* has been used even more effectively and commonly by politicians, raising much concern about negative campaigning and attack ads. Although *ad hominem* arguments have been around for a long time and are now used more than ever, the problem of how to deal with them in a critically balanced way is a matter of concern for public discourse in a democracy. What is needed is a method or normative framework that a consumer of political rhetoric can use to critically evaluate these arguments.

In the case described and analyzed by Cragan and Cutbirth, Adlai Stevenson, the son of the presidential candidate Adlai Stevenson, was criticized in an election campaign for the governorship of Illinois on the grounds that he belonged to an all-male Chicago club. Stevenson overreacted to the criticism by complaining that he had been treated as “some kind of a wimp.” Once this comment appeared in print, his opponent, who at that point was behind in the race, made much use of the so-called wimp factor. He portrayed Stevenson as a kind of fussy patrician who had claimed he only belonged to this club because he couldn’t find any other decent place to eat lunch. Stevenson lost, and the perception was, according to Cragan and Cutbirth, that the *ad hominem* “wimp factor” argument was the instrument of his defeat.

The historical origin of the *ad hominem* argument has been something of a mystery, and its beginning as a clearly identified type of argument has generally been attributed to Locke or Galileo (Finocchiaro 1980). However, recent historical research has traced its roots back through the treatises of the middle ages to Aristotle. One root passage (Nuchelmans, 1993, p. 37) is the reference to *peirastikoi logoi*, or arguments designed to test out or probe a respondent’s knowledge, by examining views held by that respondent (*On Sophistical Refutations*, 165a37). Another root of the historical development of the “argument against the person” is the more often cited passage 178b17, in which Aristotle contrasts directing a refutation at an argument with directing a refutation against the person who has put forward that argument. Because there are two roots, however, the textbook treatments of the *ad hominem* have been ambiguous and confusing.

The type of *ad hominem* argument that is the concern of this case study is the personal attack type, defined above. The other type is portrayed by Locke in his *Essay*, in a neglected passage fully quoted in Hamblin (1970, p. 160). Locke describes this type of argument as pressing “a man with
Argument from Commitment

consequences drawn from his own principles or concessions.” This type of argumentation is called “argument from commitment” (Walton 1998a). Barth and Martens (1977) see the ad hominem fallacy as best analyzed on this Lockean model, as being basically the same as argument from commitment. But I have argued (1998a) that these are two distinct types of arguments and that although argument from commitment is a subpart of the personal attack type of ad hominem argument, it is not the whole argument. At any rate, the reader should be aware that terminological confusion about the ad hominem is, and continues to be, a serious problem. The circumstantial ad hominem argument is a subspecies of a more general form of argument called argument from commitment. It is vitally important to distinguish between the two. However, the whole history of the subject has been terminologically clouded, especially since Locke’s influential remarks (Hamblin 1970, p. 160), by the fact that ad hominem argument has prominently been taken to be equivalent to argument from commitment.

Argument from commitment has the following form, where \( a \) is an arguer and \( A \) is a proposition (Walton 1996, p. 56).

\[
\text{Argument from Commitment} \\
\text{\( a \) is committed to proposition \( A \) (generally, or in virtue of what she said in the past).} \\
\text{Therefore, in this case, \( a \) should support \( A \).}
\]

This is illustrated by the following example (Walton 1996, p. 55).

\[\text{Bob: Ed, you are a communist, aren’t you?} \]
\[\text{Ed: Of course. You know that.} \]
\[\text{Bob: Well, then you should be on the side of the union in this recent labor dispute.} \]

In this particular case, it may be that Ed is on the management side. But if so, he will have to offer some explanation why he is. Otherwise, given his commitment to communism generally, there is a presumption that he would normally tend to side with the union on labor disputes. So we see that argument from commitment is defeasible. It creates a presumption in favor of drawing a certain inference. But the inference is subject to default in the face of new information that might come in regarding the particulars of the case.

Now the big issue is whether the circumstantial ad hominem (or possibly the other forms as well) is the same thing as argument from
commitment, or whether they are two different types of argument. I have argued at length (Walton 1998a) that the two types of argument are different, basically for two reasons. One is that all *ad hominem* arguments are personal attack arguments, but because it is not the case that all arguments from commitment are personal attack arguments, it follows that some arguments from commitment are not *ad hominem* arguments. To really understand the *ad hominem*, as a clearly defined type of argument with a distinctive structure, you have to begin with analysis of character as a moral concept that has a role to play in the dialogue structure of argumentation. In any genuine *ad hominem* argument, including the circumstantial subtype, one party makes a personal attack on the moral character of another in order to criticize the other party’s argument. The other reason is that circumstantial *ad hominem* arguments are always based on an allegation of inconsistency, as indicated above. It is this alleged inconsistency that is the central characteristic separating them from the other subtypes of *ad hominem* arguments. But not all cases of argument from commitment make an allegation of inconsistency, as shown by the Bob and Ed case above.

From a viewpoint of argumentation theory, it is vital to be clear about the distinction between the circumstantial *ad hominem* argument and argument from commitment. But it is very easy to confuse the two, from a practical point of view. One reason is that the circumstantial *ad hominem* is a subspecies of argument from commitment. Another is that argument from commitment is very often a lead-in or prior argument to the use of the circumstantial *ad hominem* argument. In individual cases, it may be hard to tell exactly where the one form of argument changed into the other. Before argumentation theory can advance much further as a field, these problems of argument classification need to be sorted out. One of the reasons there has been so little advance for so long must surely be the conflicting definitions of the *ad hominem* argument and its various subtypes in the logic textbooks.

As noted above, the *argumentum ad hominem*, or personal attack argument, has been traditionally treated as a fallacy in logic. But recent research in argumentation cited above shows that, in many cases, as used in conversational arguments – including ones in political

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2 The best analysis we have of the role that character plays in reasoning goes back to the account of Aristotle, through the concept of practical reasoning or practical wisdom (*phronesis*), as shown in Garver (1994). So, in more ways than one, the genesis of the *ad hominem* is to be found in Aristotle.
argumentation – ad hominem arguments are not fallacious. This research has shown that while some personal attack arguments can definitely be judged fallacious, many others are quite reasonable (when evaluated in the appropriate context), while still others should be evaluated as weak (insufficiently supported) but not fallacious. As shown in this case study, the real function of an ad hominem argument (when properly used) is to attack an arguer’s credibility in order to criticize the argument she advocates.

Before going any further, it is necessary to remind ourselves of some considerations on multi-agent argumentation from chapters 1 and 2. A multi-agent structure of argumentation always involves two parties (in the minimum case) in a dialogue. An ad hominem argument is the use of personal attack in a dialogue exchange between two parties, where the one party attacks the character of the other party as bad in some respect, and then uses this attack as a basis for criticizing the other party’s argument. An argument is fallacious if it is a special baptizable (Johnson 1987) type of argument that is used in such a way by one party in a dialogue exchange that it blocks or interferes with the collaborative realization of the goal of the type of dialogue that the two participants are supposed to be engaged in (Walton 1995). Thus, there is a difference between a weak argument that is open to critical questioning and a fallacious argument. The general point is that a fallacious argument has to be worse than just weak, or unsuccessful in fulfilling a burden of proof. A fallacious argument is a tricky, deceptive sophistical tactic, used to try to get the best of a speech partner in a way that is inappropriate as a collaborative contribution to the dialogue exchange. At any rate, let us now go on to examine two cases. The first one is a classic case of the use of the circumstantial ad hominem argument in political discourse. The second appears to be somewhere on the borderline between argument from commitment and circumstantial ad hominem argument.

4. The Gore Case

This case comes from Time magazine’s “Election Notebook” of November 18, 1996 (p. 16), where Time gave out “Campaign 96 Awards” to “recognize outstanding achievements by politicians, their relatives and their hecklers.” Two of the awards are directly quoted below.

THE SLIGHT-INCONSISTENCY MEDAL: To Al Gore, who left not a dry eye in the house at the Democratic Convention as he described his sister’s death from
smoking-induced lung cancer. Gore failed to mention that for some years following her death, his family continued to grow tobacco and that he continued to accept campaign money from tobacco interests.

The most nauseating spin: Gore explained the above by saying, “I felt the numbness that prevented me from integrating into all aspects of my life the implications of what that tragedy really meant.”

No author of the “Election Notebook” was given. The page simply appears as an editorial column, with accompanying pictures (including one of Gore, in a speech-making pose).

To classify the type of dialogue that the argument of this case belongs to, one would have to say that it is an editorial page of a sort, as opposed to a news story. The intent of the entries on the page could be described as ironic and satirical in nature, but each of the entries definitely has political content, in the sense that it is an argument expressing a particular political viewpoint. Each entry is an editorial comment with a particular “spin,” or opinion, expressed. So the function of the discourse can be classified as one of political commentary, which is partisan in nature, as opposed to an information-seeking or news-reporting type of dialogue. In the case above, for example, a point of view is expressed in an argument for only one side of an issue. It is different in type from a newspaper report on politics, where there would be an expectation that the views of both sides would be represented or, at any rate, that the reporting would not be exclusively one-sided.

The argument used in this case is an instance of the argumentation scheme for the circumstantial type of ad hominem argument, as can be shown by examining its components and how they are put together to support the conclusion. First, Gore’s speech about the death of his sister from lung cancer is cited as showing that he has advocated the proposition that smoking is a very bad thing—something he is strongly against—in a way that expresses his emotional stand against it in the strongest possible terms. But then the argument goes on to say that Gore “failed to mention” two key facts. One is that his family continued to grow tobacco after the death of his sister. The other is that he continued to accept money from “tobacco interests.” The actions cited in these two statements clash with what Gore is reported to have said in his speech. This clash takes the form of a pragmatic inconsistency, from which the reader draws the conclusion by implicature that Gore could not have sincerely meant what he (so tearfully) said in his speech. The conclusion suggested is that he must be a hypocrite, in the sense that he does not really mean what he says. He passionately pours out his personal emotions against something, but then, in his actions (which he “failed to mention” in his speech), he
The Gore Case

actually supports and contributes to the production of this very thing he condemned so strongly.

Could there be an explanation for such a contradiction? The editorial actually gives one, but it makes Gore sound even more insincere. So the third part of the argumentation scheme for the circumstantial *ad hominem* is set into place. The reader draws the conclusion that Gore must be a “bad person” – that is, in this case, a hypocrite who recommends values and policies in his political speeches that are the direct opposite of his personal policies, as revealed by his own actions. This kind of inconsistency can be explained away, in many cases. But in this case, the implied argument seems to be air-tight. To seal it up even further, Gore’s (presumed) reply offers even further evidence of his insincerity. The ultimate conclusion, the fourth stage indicated in the argumentation scheme for the circumstantial *ad hominem*, can then be drawn by the reader of the editorial. What is suggested is that Gore’s tearful speech was a mere rhetorical flourish and that, because he is such an insincere man, you can’t really trust or accept anything he says in politics.

To analyze the argument in this case, the first step is to confirm the classification above of the argument in the case as an instance of the circumstantial type of *ad hominem*. The allegation made is that Gore’s actions and his arguments are pragmatically inconsistent – the two things clash, one being the opposite of the other. Also suggested by Gricean implicature from this inconsistency, as noted above, is that Gore’s arguments against the use of tobacco products are not sincerely meant. The idea is that he says one thing but does another, so “actions speak louder than words.” The personal attack element of the argument is the suggestion that Gore is hypocritical – that his argument is only political posturing and is not expressing a conclusion he really accepts personally. In this sense the circumstantial *ad hominem* leads into, and is built on, a personal attack of the ethotic type.

But exactly how is the personal attack drawn by Gricean implicature from the circumstantial contradiction that is posed by the argument? The alleged practical inconsistency arises from the clash between the following two propositions.

1. Gore, in a speech, tearfully described his sister’s death from smoking-induced lung cancer.
2. For some years following his sister’s death, Gore’s family continued to grow tobacco and he continued to accept money from tobacco interests.
From proposition 1, the implication is drawn that Gore is strongly against smoking. The fact that his tearful description of his sister’s death was part of a political speech implies that this description was relevant politically. In other words, presumably Gore included it in such a public speech because he was sending a message to the American public that smoking is a bad habit, that he is against smoking, and that the public generally ought to be against smoking. But then proposition 2 says that Gore, after his sister died of smoking-induced lung cancer (and the timing is very important to the *ad hominem* argument), personally accepted money from tobacco interests and his family profited from growing tobacco. But how exactly does this connection imply a contradiction that reveals hypocrisy?

Now there is, of course, a well-known connection between the growing of tobacco and the habit of smoking. Growing tobacco is a necessary means for smoking. We all know that cigarettes are produced from tobacco and that the normal way of manufacturing cigarettes has the growing of tobacco as one of its most important parts. So if anyone is sincerely against smoking, it would be highly questionable for that person not to be against the growing of tobacco. The close connection between smoking and tobacco makes the advocating of both propositions 1 and 2 by the same person highly questionable. It cries out for an explanation. And in the absence of one, the conclusion implied (by implicature) is that this person is the worst sort of hypocrite, even going so far as to exploit the death of his sister to move an audience for political gain. The implications of the inconsistency make Gore out to be not only a scoundrel, but ridiculous as well. So as an *ad hominem* attack, the argument is a powerful one indeed.

The picture presented of Gore, where he appears in a rhetorical pose with a visibly caring and passionate look on his face, adds to the ridicule invited by the argument. The idea of a speaker looking this sincere and acting in such a hypocritical way, suggesting a scurrilous opportunism and absurdly insincere posturing, is an irony that is funny, in just the way that the ironies satirized by Voltaire and Molière were funny. They depict a rogue who can sell things to gullible and unsuspecting buyers of his products or ideas by saying all sorts of ridiculous things that he does not believe at all. And yet he says them with the greatest apparent sincerity. It is somehow very ironic and hence comical to people that the respondent pays rapt attention to this absurd performance. The sincerity apparently expressed by both parties makes for a highly amusing dialogue. Whatever is at the bottom of it, the humor in this sort of *ad hominem* attack is a powerful part of its effectiveness.
The Battalino Case

5. The Battalino Case

The Battalino case occurred on February 6, 1999, day 16 of the senate impeachment trial of Bill Clinton, a day in which several important witnesses were interviewed, including Monica Lewinsky and Vernon Jordan. In the late stages of the hearing, manager Jim Rogan, with little time left, made one last point, in response to two previous arguments that had been used by the Democrats. One is a case of the idea of proportionality of punishment. The other is the argument that everybody lies about sex, therefore perjury should be minimized in a case of this sort. To counter these arguments, Rogan cited a case in which attorney and Veterans Administration doctor Linda Battalino admitted having sex with a patient, Ed Arthur, in her office in June of 1991. Dr. Battalino had asked Arthur – a veteran who had served two tours of duty in Vietnam and was suffering from post-traumatic stress disorder – to come to her office. She announced that she had “feelings” for him, and then performed oral sex on him. She then began a four-month intimate relationship with him. In 1992, Arthur sued her for sexual harassment, and Battalino denied in court that anything of a sexual nature had taken place in her office. But Arthur had tape-recorded about twenty-five hours of conversations with her that proved she had lied under oath. Jonathan F. Mitchell, the lawyer for the fraud section of the Justice Department’s Criminal Division, prosecuted the case against Dr. Battalino. She lost her medical and legal rights to practice, resigned her position, was fined, and was sentenced to six months of imprisonment under electronic monitoring. The case had been reported in The Boise Weekly in 1991, but was not widely known until it was discovered by the media in 1998 in response to the question of perjury in the Lewinsky case.

In questioning Battalino, Rogan drew explicit comparisons to the case of Bill Clinton and Monica Lewinsky. In the following sequence of questions and replies, quoted from the CNN.com transcript, he showed that the two cases are alike in central respects. The key difference he drew out is that Battalino was not treated with leniency by the Clinton Justice Department.

**ROGAN:** Dr. Battalino.

**BATTALINO:** Battalino.

**ROGAN:** Battalino. Your case intrigues me. I want to make sure I understand the factual circumstances. You lied about a one-time act of consensual sex with someone on federal property.

**BATTALINO:** Yes.
ROGAN: Is that correct?
BATTALINO: Absolutely correct.
ROGAN: And this act of perjury was in a civil lawsuit, not in a criminal case.
BATTALINO: That’s also correct. And that –
ROGAN: In fact, the civil case eventually was dismissed.
BATTALINO: Correct.
ROGAN: Yet, despite the dismissal, you were prosecuted by the Clinton Justice Department for this act of perjury, is that correct?
BATTALINO: That’s correct.
ROGAN: What I want to know, Dr. Battalino, during your ordeal, during your prosecution, did anybody from the White House, from the Justice Department, did any members of Congress, did any academics from respected universities, ever show up at your trial and suggest that you should be treated with leniency because everybody lies about sex?
BATTALINO: No sir.
ROGAN: Did anybody ever come forward from the White House or from the Justice Department and urge leniency for you because your perjury was only in a civil case?
BATTALINO: No.
ROGAN: Did they argue for leniency because the civil case, at which you committed perjury, was ultimately dismissed?
BATTALINO: No.
ROGAN: Did anybody from the White House ever say that leniency should be granted to you because you otherwise did your job very well?
BATTALINO: No.
ROGAN: Did anybody ever come forward from Congress to suggest that you were the victim of an overzealous, sex-obsessed prosecutor?
BATTALINO: No.
ROGAN: Now, according to the New York Times they report that you lied when your lawyer asked you at a deposition whether “Anything of a sexual nature” occurred. Is that correct?
BATTALINO: Yes, that’s correct.
ROGAN: Did anybody from Congress or from the White House come forward to defend you saying that that phrase was ambiguous or it all depended what the word “anything” meant?
BATTALINO: No sir. May I just – I’m not sure if it was my lawyer that asked the question, but that is the exact question that I was asked.
ROGAN: The question that you were asked that caused your prosecution for perjury?
BATTALINO: That’s correct.
ROGAN: No one ever asked if that phrase itself was ambiguous, did they?
BATTALINO: No.
UNIDENTIFIED JUDGE: Does the gentleman yield?
ROGAN: Regrettably, my time is limited and I will not yield for that purpose. Now, Doctor, you lost two licenses, you lost a law license . . .
BATTALINO: Well I have a law degree, I was not a member of any bar.
ROGAN: Your conviction precludes you from practicing law?
The Battalino Case

battalino: That’s correct, sir.
rogan: You also had a medical degree?
battalino: That’s correct.
rogan: You lost your medical degree?
battalino: Yes. I am no longer permitted to practice medicine either.
rogan: Did anybody from the White House or from Congress come forward during your prosecution or during your sentencing and suggest that rather than you suffer the incredibly difficult punishment of no longer being able to practice your profession, perhaps you should simply just receive some sort of rebuke or censure?
battalino: No one came to my aid or defense, no.
rogan: Nobody from the Justice Department suggested that during your sentencing hearing?
battalino: No.
rogan: Has anybody come forward from the White House to suggest to you that in light of circumstances as we now appear to see them unfolding, you should be pardoned for your offense?
battalino: Nobody has come, no.

(END VIDEO CLIP)

rogan: That’s how the Clinton administration defines proportionality and punishment. Mr. Chief Justice, we reserve the balance of our time.

Toward the end of the sequence of dialogue quoted above, Battalino replied, in answer to Rogan’s questions, that because of her conviction, she was no longer allowed to practice either medicine or law. Driving his point home, Rogan also had her admit that nobody from the White House or Congress came forward to suggest that she should only “receive some sort of rebuke or censure” instead of the harsher punishment she received. The intended parallel to the Lewinsky case is highly evident at this point.

Rogan’s argument is clearly an argument from analogy. He is comparing the earlier case of Battalino’s perjury about an act of consensual sex on federal property with the Lewinsky case. But the argument is more than just an argument from analogy. It would appear that it can also be classified as an instance of the circumstantial ad hominem argument. What has been shown above is that it is characteristic of this form of argument that one party attacks another party by arguing that the first party “does not practice what he preaches,” and then uses this allegation of inconsistency to undermine the first party’s prior argument. Rogan’s argument can be so classified, provided it can be analyzed as putting forward the following premises and conclusions.

Premise 1: Clinton lied under oath about an act of consensual sex in his workplace, but argued that he ought to be treated with leniency.
Premise 2: In an earlier case where a woman lied under oath about an act of consensual sex in her workplace, Clinton [in the form of his justice department] prosecuted the case, and did not treat the woman with leniency.

Conclusion: Clinton did not practice (in the earlier case) what he now preaches (in this case).

The secondary conclusion Rogan’s argument leads to, based on the first conclusion above, is that Clinton’s argument for leniency in his own case is not worth much. Clinton, according to Rogan, has argued that he ought to be treated with leniency on various grounds. One is the idea of proportionality. The other is that everybody lies about sex, and that minimizes the perjury. But the fact is that the Clinton Justice Department, when faced with a similar case, did not show leniency when prosecuting the case. The ultimate conclusion that Rogan’s argument implies is that Clinton’s own actions belie the sincerity of his argument. He wants leniency for himself, but did not give it to someone else in the same situation. It would seem then that, at least on the basis of this brief outline of what is taken to be its main structure, Rogan’s argument fits into the form of argument identified above as that of the circumstantial ad hominem. But is this circumstantial ad hominem argument really the one that Rogan is putting forward in the impeachment trial? The first problem is to identify the argument, before going on to attempt to analyze or evaluate it.

6. Classifying the Argument in the Battalino Case

In attempting to identify, analyze, or evaluate any real argument, there are always many uncertainties, questions of interpretation, and rough edges. And so it is with this case. Some may be inclined to doubt, for example, that Rogan really meant to make a circumstantial ad hominem type of argument. There are four interrelated grounds for doubt that call for discussion. These are all based on considerations that have a basis in the text and context of discourse of the case.

The first consideration is that Rogan is arguing against prior arguments for leniency and for the principle of proportionality. Citing the Battalino case could be directed just at attacking these arguments rather than at attacking Clinton personally. After all, Rogan was only citing a precedent—a similar case. Citing of precedent is not an ad hominem form of argument, at least not necessarily. And the case was from a trial that took place six years before Clinton’s impeachment trial. It’s not like the smoking
Classifying the Argument in the Battalino Case

case, where the problem was a conflict between what was argued and what was presently being done. Maybe Rogan was just arguing that there was no leniency in this other case. And if the ruling in that case can be defended as reasonable, there should be no leniency in this case. This argument is not an *ad hominem* argument, but just an argument from precedent.

Another ground for doubt concerns the person who is the subject of the argument. The point is that the Battalino case was prosecuted by “the Clinton Justice Department,” to use Rogan’s terms. It was not prosecuted by Clinton himself, as the prosecuting attorney in the case. Nor is it Clinton himself who is making the plea for leniency in the impeachment trial. It is his attorneys who are pleading for leniency on his behalf. So it is not the same person who put forward the arguments in the two allegedly similar cases. So Rogan’s argument is therefore not really a circumstantial *ad hominem* after all. The main problem here is that Clinton was governor at the time, so it was “his” justice system that prosecuted the Battalino case. But he may have had nothing to do with it, directly. He may even have strongly disagreed with the judgment in the case, but may not have been able to intervene, or thought it inappropriate to do so. Maybe he didn’t even know about the case.

The third ground for doubt is that if Rogan’s argument is a personal attack (*ad hominem*) argument on Clinton, this aspect of it is not stated explicitly. On the surface, the argument seems to be an argument from commitment of the following form.

Premise 1: Nobody from the White House, the Congress, or the Clinton Justice Department argued for leniency in the Battalino case.
Premise 2: The Battalino case was an instance of perjury relating to an act of consensual sex in the workplace.
Conclusion: All those indicated are committed to non-leniency in cases of perjury relating to acts of consensual sex in the workplace.

The upshot of this argument from commitment is that these people should be committed to non-leniency in this case too. Therefore, they should prosecute Clinton without leniency – they should be on the side of impeachment. But this argument from commitment is not, by itself, an *ad hominem* argument. The doubt then is whether Rogan is making an *ad hominem* attack on Clinton at all. Maybe he is just putting forward an argument from commitment, and we are just reading into the text that there is an *ad hominem* argument there.
There is a form of argument called argument from pragmatic inconsistency (or say one thing, do another) identified in Walton (1998a, p. 218).

**Argument from Pragmatic Inconsistency**

*a* advocates argument *α*, which has proposition *A* as its conclusion.

*a* has carried out an action or set of actions that imply that *a* is personally committed to not-*A* (the opposite, or negation of *A*).

Therefore *a*’s argument *α* should not be accepted.

I argue that this type of argument should not be classified as a species of *ad hominem* argument. The reason is that it lacks the premise to the effect that *a* is a bad person. But if the implication that *a* is bad person is there, the argument then becomes an *ad hominem* argument. For example, if in using argument from pragmatic inconsistency, the arguer says that *a*’s actions represent his true commitments, and the conclusion is drawn that *a* is deceiving us, or that *a* is a hypocrite, or something of that sort, then the argument is a genuine *ad hominem*. In short, the general problem posed by the third ground for doubt is whether Rogan’s argument is really an *ad hominem*, or whether it is only an argument from pragmatic inconsistency (but not one of the *ad hominem* type).

The fourth ground for doubt relates to Rogan’s intentions. We, as critics in this case, do not really know what Rogan’s intentions were in citing the prior Battalino case. Rogan never uses the expression *ad hominem*, or any equivalent expression. And he does not appear to come right out anywhere and claim that Clinton is bad person, or that Clinton is a hypocrite, or anything of that sort. Maybe, then, he didn’t really intend to attack Clinton with an *ad hominem* argument at all. Maybe he merely meant to cite the difference between the two cases, and leave it at that. Or maybe, as suggested above, he was only using argumentation from commitment, but stopping short of a full *ad hominem* argument of the kind that essentially involves personal attack. After all, if Rogan didn’t really intend to attack Clinton personally, how can we fairly classify his argument as a circumstantial *ad hominem*, a personal attack argument?

I believe that each of these four grounds for doubt has some evidence to support it and that each argument merits discussion. But I also think that all four can be adequately replied to, based on the textual and contextual evidence given in the Battalino case text of discourse quoted above. Let’s start with the fourth one. The basic point to be made here is that when we evaluate an argument in a given case, we don’t need to prove
what the arguer’s intentions really were in that case. For example, it has been held that because a fallacy is an intentional deception, in order to prove that fallacy was committed in a particular case, it has to be shown that the arguer had an intent to deceive. But Govier (1987) has rejected this view as a form of psychologism. To show that an argument is fallacious in a given case, according to Govier, you do not need to prove intent. But you do have to show that a kind of strategy was involved. What you need to prove is that it is an instance of one of the types of argument that can be used fallaciously and that in this case it has been used in a way that falls into a certain pattern as an argumentation strategy. Carrying out such a task of evaluation does not require proof that the arguer actually had guilty motives or an intent to deceive.

7. Evaluating the Argument in the Battalino Case

After the passage quoted above, the impeachment hearing went on to discuss Monica Lewinsky’s prior testimony. No reply to Rogan’s argument on the Battalino case was made, nor was the case discussed any further. So we don’t really know what impact it had on the trial, if any. Nor do we know how Clinton’s defenders replied to it. Rather than speculate on such matters, the more interesting dialectical task is to try to analyze and evaluate the Battalino case as an argument. In particular, it is interesting to try to evaluate the *ad hominem* argument that is apparently contained in it. Should it be judged to be a reasonable *ad hominem* argument or a fallacious one? Or does it lie somewhere between these extremes?

One reply to the argument is that it is not relevant, because the Battalino case took place over twenty years before the impeachment trial. Clinton could have changed his views since then. And anyway, he was only remotely related to the case and was not himself the prosecutor. Therefore, it could be argued, the relevance of the Battalino case to the impeachment case is tangential and minimal. Against this argument is the argument for relevance. The two cases are quite similar. Both involve prosecution of a case of consensual sexual relations in a federal government workplace between a powerful person and someone who was dependent on or in a subordinate position to the offender. The Clinton policy has been strongly against sexual harassment in all forms, both then and now, and presumably this policy has not changed. So the Battalino case would seem to be quite relevant to the one under consideration in the impeachment trial. It seems to be possible at least to make a strong case for relevance.
An *ad hominem* argument should be evaluated in light of how it can respond to critical questioning in the type of dialogue to which it was put forward as a contribution. I have presented (1998a, pp. 224–225) six critical questions corresponding to the circumstantial type of *ad hominem* argument.

1. What are the propositions alleged to be practically inconsistent, and are they practically inconsistent?
2. If the identified propositions are not practically inconsistent as things stand, are there at least some grounds for a claim of practical inconsistency in the textual evidence of the discourse?
3. Even if there is not an explicit practical inconsistency, what is the connection between the pair of propositions alleged to be inconsistent?
4. If there is a practical inconsistency that can be identified as the focus of the attack, how serious a flaw is it? Could the apparent conflict be resolved or explained without destroying the consistency of the commitment in the dialogue?
5. Does it follow from *a*'s inconsistent commitment that *a* is a bad person?
6. Should the conclusion be the weaker claim, that *a*'s credibility is open to question, or the stronger claim, that the conclusion of *a* is false?

The analysis above shows which two propositions are alleged to be practically inconsistent. So the first critical question, and with it the second and third, can be answered. Of all six critical questions, the one that is hardest to answer affirmatively is question 5. The main problem in this case is that Rogan never explicitly states, in so many words, that Clinton is a bad person or that the Clinton administration is unethical – for example, that they are liars. The best we can say is that the implication that the Clinton administration has been less than forthright is suggested by what Rogan says. The best evidence that the latter is drawing such a conclusion, or trying to get the audience to draw it, is his last statement: “That’s how the Clinton administration defines proportionality and punishment.” This remark has an edge of irony to it, suggesting that the Clinton administration has not been forthright about how they define proportionality and punishment. Hence there is evidence that Rogan’s argument is *ad hominem*, but it is not conclusive. So here we are back to the classification problem again. Evaluation of the argument as weak or strong must depend on how it should be classified. Is it *ad hominem* or merely an argument from pragmatic inconsistency?
Implicature and Innuendo

Judged as an argument from pragmatic inconsistency, Rogan’s argument is reasonable, and not fallacious. It is quite a strong argument, because of the close similarity of the two cases. But it is subject to critical questioning. If the opposing side had wished to reply to it, it could have found several weak points in it to question. It could have shown, for example, that the people who prosecuted that case may be people different from those who now argue for leniency. They could have argued that the earlier case took place twenty years ago, and used that to question its relevance or to argue that the situation has somehow changed. There are various avenues of critical questioning open. But as things stand, Rogan’s argument looks persuasive. It simply asserts that the Clinton administration prosecuted without leniency then, but is all for leniency now. This apparent inconsistency by itself, even without using it as the basis of an *ad hominem* attack, is a fairly persuasive. It indicates that the Clinton administration’s argument for leniency is somehow dubious, because it conflicts with what was advocated in a previous case, where the administration prosecuted without leniency. This argument by itself is sufficient to sow legitimate doubts in the minds of an audience.

8. Implicature and Innuendo

Rogan’s argument, when judged to be *ad hominem* argument, is a gentle and indirect one. He does not come right out and call the Clinton administration names, saying they are liars or hypocrites. His pointing out the inconsistency on how they have treated the two cases is used only to suggest that the administration’s argument for leniency and proportionality is not very credible. With respect to critical question 6, then, the answer is that Rogan is claiming only that the credibility of the Clinton administration is open to question. He is not making the stronger claim that the conclusion of the Clinton administration’s argument is false. He is arguing that the administration’s stance on prosecuting for perjury in the Battalino case has shifted to the opposite in the Lewinsky case. What he is saying is that they may argue for leniency now, but when their interests were not at stake, in the earlier case, they did not prosecute with leniency. This argument suggests that the Clinton administration is just arguing this way because it is in their interests to do so. They are not arguing that way because they really believe the argument or are committed to it.

But now notice we have come to the point where we are discussing an argument that was only suggested by the text of discourse in the Battalino case, not explicitly stated. We are getting into the area of suggestion,
implicature, and innuendo. Is that legitimate? Can we attribute arguments on the basis of what was suggested in a case, as opposed to what was explicitly stated? The answer is yes. If we are to understand and evaluate fallacies, we must deal with innuendo and suggestion. For it is the very factor of innuendo that makes many an ad hominem argument so powerful and so difficult to refute.

To analyze arguments based on implicature, innuendo, and indirect speech acts, contextual assumptions about collaborative conversation in the form of so-called conversational postulates or ethical rules of polite discourse (Grice 1975; Johnstone 1981) are very important. In many cases of rhetorical arguments of the kind studied in this book, the speaker or writer sets up suggestions in the form of inferences that will be drawn by a mass audience when the message is broadcast to them. In the most persuasive kind of commercial ad or political message, the speaker does not come right out and say what he means. Instead, he draws a picture in the form of a sketch with missing parts and lets the audience fill in the missing parts. This way, the members of the audience have a creative role. They use their own initiative to draw the invited conclusion. And the speaker has plausible deniability. If confronted with having made a damaging or controversial allegation, he can deny that he meant to say anything like that at all. Plausible deniability works because the speaker does not state the conclusion himself. The audience generally draws this conclusion not by deductive or inductive reasoning but by a process of suggestion or innuendo.

Dascal and Gross (1999) have shown how the Aristotelian framework of rhetoric in Perelman and Olbrechts-Tyteca (1969) and the Gricean pragmatic theory of conversational interaction can work together well as tools to study forms of argumentation, such as ad misericordiam and ad hominem. They showed how such forms of argument, even though traditionally viewed as fallacies, can be modeled as reasonable forms of rhetorical persuasion based on pathos and ethos. When such arguments are used, typically a speaker suggests a conclusion that the hearer then draws by implicature within the Gricean framework of a collaborative talk exchange. A Gricean conversational implicature is an inference drawn by one party in a conversation based on what another party has previously said in the conversation, using rules governing how both parties should contribute collaboratively to the conversation.

Grice (1975, p. 65) used the following example to illustrate how a conversational implicature is drawn. The participants in the conversation are represented by variables, A, B, and C, after Grice’s notation.
Implicature and Innuendo

Suppose that $A$ and $B$ are talking about a mutual friend $C$, who is now working in a bank. $A$ asks $B$ how $C$ is getting on in his job, and $B$ replies, “Oh quite well, I think; he likes his colleagues, and he hasn’t been to prison yet.” At this point $A$ might well inquire what $B$ was implying, what he was suggesting, or even what he meant by saying that $C$ had not yet been to prison. The answer might be any one of such things as that $C$ is the sort of person likely to yield to the temptation provided by his occupation, that $C$’s colleagues are really very unpleasant and treacherous people, and so forth.

In this case, $A$ draws the conclusion that $C$ is not a very honest or trustworthy person. By what process does the speaker set up the message so that $A$ draws this inference? Grice’s explanation is that when the speaker is seen to violate a conversational rule, the hearer will recognize that the violation is intentional. The hearer will then draw an inference that the speaker is indirectly trying to convey a message. Of course, the message has been conveyed covertly without the speaker actually asserting that $C$ is dishonest. Thus, as Grice noted, the hearer may actually ask the speaker what he was suggesting.

How is the conclusion communicated by the speaker drawn by the hearer in cases of Gricean implicature? As noted above, it is not by deductive reasoning or by inductive reasoning based on probability and statistics. It is based on expectations set in place by the speaker’s actual message and by the conversational context in which the speaker put forward the message and the hearer received and understood it. Calling on a term used in artificial intelligence, the process of reasoning could be described as an inference to the best explanation. The best explanation the hearer could give of what the speaker said, and why he said it (his goals or intentions), is that he was intentionally violating a conversational rule. Thus, to grasp how implicatures work, we need to understand more about conversational rules. Grice calls these rules conversational maxims, formulating the following four conversational maxims (1975, p. 68).

Maxim of Quantity: Make your contribution as informative as is required for the current purposes of the talk exchange.
Maxim of Quality: Try to make your contribution one that is true.
Maxim of Relation: Be relevant.
Maxim of Manner: Be perspicuous.

The first two maxims are self-explanatory, but the other two need to be explained a bit. The maxim of manner, although about clarity, may
not seem clear at first. Grice explained this maxim by means of four injunctions: (1) avoid obscurity of expression, (2) avoid ambiguity, (3) be brief, and (4) be orderly. He explained relevance by stating the rule that one should expect a speech partner’s contribution to be appropriate to immediate needs at each stage of a conversation (p. 68). Thus, for example, if a question has been asked by one speech partner at the last move in a conversation, the next move made by the other speech partner should be relevant. It should be a reply to the question, or at least a response that addresses the question. Making an unrelated remark, like “It’s a nice day,” would be irrelevant. Thus relevance has to do with fitting into the connected sequence of proper moves in a dialogue. The maxims all need to be understood in light of a more general principle that governs all conversations or collaborative goal-directed dialogues: “Make your conversational contribution such as is required, at the stage at which it occurs, by the accepted purpose of the talk exchange in which you are engaged” (p. 67). Grice called this principle the cooperative principle (CP).

Grice (p. 69) showed how the CP is used, along with conversational maxims, in explaining how the implicature is drawn in the case about A, B, and C above. First, it is apparent to A that B’s statement that C hasn’t been to prison yet is not relevant to the rest of the conversation. What could explain this irrelevance? A plausible explanation is that B may be intentionally violating the CP by “flouting” (Grice’s term) the maxim of relevance. Does this mean that B is opting out of the conversation by being intentionally uncooperative? That is one explanation, but A has no further evidence that B is really opting out of the conversation, as B appears to be cooperative in other respects. An alternative explanation of what has occurred, A can try to make what B says relevant. How could A do that? Well, the fact known to both speech partners is that C is working at a bank. The expected or normal outcome of some dishonest practice in that situation would be C’s going to jail. From B’s remark that C has not gone to jail yet, A can draw the conclusion that what B is suggesting is that C is not entirely honest or trustworthy. One can see already how imputations of this sort are the standard tools of innuendo and so-called smear tactics of the kind used in negative campaign tactics.

Another example from Grice (p. 71) can be cited. Asked to write a letter of reference for a student who is applying for a job in philosophy, a professor writes, “Dear Sir, Mr. X’s command of English is excellent, and his attendance at tutorials has been regular, Yours, etc.” As we all know, this kind of letter would be interpreted by the reader as conveying the message that Mr X is not a strong candidate. The writer of the letter
Implicature and Innuendo has not gone on record as saying so explicitly, but that message can be inferred indirectly from what he wrote. Grice explains this phenomenon by appeal to a conversational postulate he calls the Maxim of Quantity (p. 68), which states that a contribution to a conversation should be neither more nor less than is required. Because the writer of the letter is saying too little, we search around for an explanation. He knows that more information is wanted, and because X is his student, he must have that information. The only plausible explanation that seems to be left is that he thinks that Mr. X is not a strong candidate.

What this case shows is that when a message is conveyed indirectly by innuendo, the receiver gets the message because of background assumptions that are not stated but are known to the speaker and hearer. In this case, the two parties are engaged in an information-seeking dialogue, and both understand that there are conversational postulates governing this collaborative kind of dialogue. What is not said, taken together with the conversational postulate, suggests a particular conclusion or message that the receiver draws by inference.

Many of the most powerfully effective ad hominem arguments are cases where the proponent does not come right out and assert that the respondent has done something bad or has exhibited some character flaw. Instead, the proponent only says that she has heard rumors to this effect and that although she does not believe these rumors herself, nevertheless that is the word going around. Another way of mounting the attack is to say that the allegations were “leaked” by a source who is close to the proponent but who does not want to be identified. These ways of putting forward an ad hominem argument remove the requirement of burden of proof and leave room for plausible deniability. This type of ad hominem argument is often much more effective, because it can raise suspicions and doubts that can be highly damaging, and impossible or extremely hard to disprove. It does not really need to be proved in order to be effective. For example, if put forward just before an election, the respondent may have no time to effectively rebut this form of argument.

Rogan’s argument is one of these tricky ones used as a tactic to evade burden of proof. It is an ad hominem argument, but one based on suggestion. That should not be taken as meaning that it is a bad argument or a fallacious one. For many of the most persuasive arguments work that way. For example, some facts may be cited, or a story told, or an inconsistency pointed out, but the ultimate conclusion to be drawn may never be explicitly stated. Even so, the audience may be quite capable of drawing it themselves. And when they do so, they may find it acceptable.
9. Evaluating the Argument in the Gore Case

Having given an analysis of the *ad hominem* argument used in the Gore case above, and having revealed why and how the argument is persuasive, the next step is to evaluate the argument as weak or strong, from a critical point of view. The weakest part of the argument relates to one aspect of proposition 2. This proposition is a conjunction of two propositions. One of them is the allegation that Gore’s family continued to grow tobacco for some years following his sister’s death. What has to be questioned here is why Gore is being held responsible for things done by his family. For example, it could be possible that Gore didn’t like other people in his family growing tobacco, or that he protested about it, or even that he didn’t know about it. Personal control over what one’s family members do may be very minimal or even non-existent. Who were these family members, and how were they related to Gore? What economic stake did Gore have in the family tobacco-growing enterprise? Until these questions are answered, we don’t know what sort of connection Gore had with tobacco growing, and whether such connections can be taken to indicate that he somehow supported or advocated tobacco growing.

So this particular subpart of the *ad hominem* is very weak, at best, and, as it stands, could be misleading and fallacious. Allied to the other part of the conjunction in proposition 2, that Gore accepted campaign money from tobacco interests, this allegation about his family does give the *ad hominem* argument an additional push, because it cites another connection between Gore and tobacco. But on closer examination, it is a weak part of the overall argument that should be scrutinized and questioned carefully.

What about the allegation that Gore accepted campaign funds from tobacco interests? Here the connection is firmer, because these days we expect politicians to at least make reasonable efforts to know whether their campaign funds are coming from special interests. The big question is whether Gore knew that these funds came from tobacco interests. If he did, then it does seem questionable that he accepted the funds, without further inquiry into their source, in light of his passionate speech on the evils of smoking. The presumption arising from this apparent conflict is that Gore did not really mean what he said in his speech. And the implicature suggested by this presumption is that he is a “phony” or hypocrite, who exploited his family tragedy to add pathos to a political speech, no doubt with great effect. So the circumstantial *ad hominem* argument is the vehicle used to pose direct (abusive) *ad hominem* argument,
by implication, to the effect that Gore is not a sincere person who can be trusted to “speak from the heart” and tell us what he truly believes in his political speeches. As is characteristically the case with the circumstantial attack, the allegation of pragmatic inconsistency leads to the implication that the arguer attacked is a person of bad character. By attacking a person’s credibility, his argument is attacked.

A circumstantial *ad hominem* argument works in a dialogue by shifting a weight of presumption onto the respondent, by denying the allegation or by otherwise appropriately replying to the argument. In the absence of such a reply, or in the absence of critical questions raised about the *ad hominem* argument, it has a sticking power in virtue of the weight of presumption in favor of it. But if an inadequate, failed, or implausible reply is given, that will make the *ad hominem* argument much stronger. One interesting feature of this case is that the *Time* editorial actually printed a reply attributed to Gore, which was described in the editorial as “the most nauseating spin.” But the reply, expressed in a kind of political psychobabble that is all too familiar to readers, and widely felt to be ridiculous, is a kind of clincher that has the effect of adding weight to the *ad hominem* argument, rather than disarming it. The effect of the reply is to give more support to the original *ad hominem* allegations that Gore is carried away by his own emotional rhetoric and that he is not only dishonest but deeply confused, and cannot be trusted to give a straight answer. Instead of replying to the *ad hominem* argument by questioning it, the quote seals the argument in place, making any further reply to it much more difficult and much less plausible. The trendiness of the phrasing of the speech makes it seem insincere. And this evidence of insincerity gives just that much more support to the original *ad hominem* argument.

Another interesting aspect of this particular case is its compactness. Very little is said in the given text of discourse, but a lot is implied. Repeated use of Gricean implicature to suggest propositions is a clever aspect of the argument, showing how easy it can be to mount an *ad hominem* argument on the basis of very little evidence, and yet how the attack can have a powerful “smearing” effect. Thus it is extremely difficult to defend oneself against this type of argument. If the victim attacks the argument too vigorously, he appears guilty. But if no reply at all is made, or only a weak one, damage can be just as bad or worse. The usual strategy of challenging the support of the premise seems to be of limited use in such a case.
The tricky, and therefore especially interesting, tactic exhibited by this case is the conjunction of the two propositions used as a dual basis for supporting the one side of the alleged pragmatic inconsistency. The conjunction is composed of the following two propositions.

P1: For some years following his sister’s death, Gore’s family continued to grow tobacco.

P2: Gore continued to accept money from tobacco interests.

As shown above, the allegation made in P1 is quite a weak and questionable basis for an *ad hominem* argument. We don’t blame people for things that members of their families do. So unless there is some further link to be established here, P1 is not much of a basis for an *ad hominem* argument that shows that Gore is a bad person. The real basis of the *ad hominem* argument is P2. While a lot of other politicians probably also accepted money from “tobacco interests” at the time Gore was alleged to have done so, still, his having done this does clash with his speech about his sister in a way that strongly supports the *ad hominem* argument used against him.

So the trick in this case is to combine a weak but persuasive basis for an *ad hominem* argument with a stronger basis. The stronger basis, by itself, does not seem all that impressive (probably because all politicians were engaged in pretty much the same practice at the time). But when combined with the weaker one (that somehow looks more impressive when combined with the stronger one), the effect is considerable. The argument, as a whole, succeeds in making Gore look quite ridiculous. This *ad hominem* argument is revealed as quite weak from a critical point of view, once it is analyzed as above. But it is highly persuasive when you first encounter it, without really thinking about it too much. At least, it would certainly be persuasive to those who are cynical about politicians to begin with or to those who already suspect that Gore is selling a kind of superficial rhetoric to support his own interests and those of his allies. To the extent that a reader has these cynical attitudes, she is likely to find the *ad hominem* argument used in this case easy to accept.

10. **Evaluating the Arguments Rhetorically and Dialectically**

In the Battalino case, there was a question about whether the argument really was *ad hominem* as opposed to a mere attempt to smear a person by attacking his character, instead of his argument. The same question also needs to be raised in the Gore case. Is the argument really *ad hominem*, or is it just a slur against Gore’s character? For it is a requirement of
an argument being an *ad hominem* argument that it be a personal attack used to detract from the argument of the party being attacked (Walton 1998a). Calling someone a bad name, for example, is not necessarily an *ad hominem* argument. An *ad hominem* is not just any slur on someone’s character. It must be one used to try to refute or attack that person’s argument by attacking the credibility of the arguer for that purpose. It is a matter not of the actual intention of the attacker but of how the argument is being used in a given case.

In this case, then, we need to ask what argument of Gore’s was the attack on his character, by way of the alleged circumstantial conflict, being used to refute? Presumably, it was his passionate speech. This speech, if relevant to politics at all, was a message to people against smoking. Was the *Time* segment (as quoted above) then meant to be an attack against smoking? Could you say it sent a kind of pro-smoking message? Presumably not. That does not seem to be what the editorial was about. And if not, the question is whether the editorial really contains an *ad hominem* argument at all.

I believe there is something more in this question than many commentators might initially be inclined to think. In a way, the editorial is, I believe, a kind of pseudo *ad hominem* argument that is being played as much for its entertainment value as for its serious political content as an argument. But on the other hand, there is enough of an element of counter-argument there to serve as a basis for classifying the editorial as containing a circumstantial *ad hominem* argument. The basis for this classification is that Gore’s speech as a whole is being attacked by the argument in the editorial, even though no details of the speech are given in the editorial itself. But the speech is recent news, and readers of the editorial are presumably aware of the contents of the speech. And therefore there is some basis for classifying the *Time* segment as an *ad hominem* argument. Yet that basis only allows such a classification as conditional and partial. A subtler analysis of the argument would be that it is used to attack Gore’s personal ethos in a way that makes amusing material for an editorial comment, while posing as an *ad hominem* argument, and thereby making the editorial seem more legitimate as political commentary. So the interesting point is that the argument is a borderline *ad hominem*, one that has all the elements of this type of argument except (arguably) one. In this respect it is comparable to the Battalino case.

The Gore case looks like a pretty typical example of the circumstantial *ad hominem* argument as used in political discourse. And in certain respects it is. The allegation of pragmatic inconsistency is there, and use is
made of it to mount a personal attack on the character of a politician. But some factors of the context of dialogue in which the argument was used need to be observed. It is not the more typical kind of case of one politician attacking the policy or argument of another in a political debate, for example, with a negative ad in an election campaign, of the kind studied by Pfau and Burgoon (1989). Instead, the argument in this case is an ironic commentary on an editorial page of a major national news magazine by an anonymous author. The purpose is somewhat unclear. It may be more of an attempt to stir up controversy or to amuse readers who are cynical about politicians, than it is an attempt to attack Gore’s political position or some specific argument he has advanced. But it very definitely has a strong *ad hominem* component. It has been argued above that this case should, on balance, be classified as an instance of a circumstantial *ad hominem* argument.

Looking at the Battalino case as a media message, it is hard to judge what real impact it had on the impeachment proceedings or on the television audience that it also reached. There appeared to be no further discussion of this particular argument in the subsequent proceedings of the impeachment trial. Searching through *Newspaper Abstracts* on March 1, 1999, I could not find any further media commentary on the case. However, there was media commentary before the impeachment trial on how the Battalino case had originally come to public attention. Clinton’s lawyers had complained that nobody had ever been criminally investigated for perjury in a civil case about sexual conduct. Monica Lewinsky’s lawyer had said on *NBC Today* in February 1998, “I challenge you or any of the pundits on the air to find me a case of civil perjury that has been pursued criminally at the federal level in the last 100 years.” A search for legal cases then turned up the Battalino case, among others. So by February 1999 when the impeachment trial was under way, the Battalino case was known to the public. Rogan simply took advantage of it as the basis for one of the arguments he used in the trial.

Looking at the argument dialectically, in the context of the impeachment proceedings, what thrust did it appear to have in the debate? From a narrow perspective, its thrust seems to be against leniency. If the Clinton justice system was not lenient in the Battalino case, then on the basis of argument from commitment, that would seem to be a good reason to be against leniency in this case.

But maybe the argument had a much broader import. The Clinton position, on the whole, is open to circumstantial *ad hominem* attack, because of the strong stand taken in the past by the Clinton
administration on a case of a sexual relationship between someone in a position of power and someone in a position of dependency on that power. They have tended, in general, to support the strong prosecution of such cases. Citing the Battalino case not only reminds us of that commitment, but also excludes possible ways out by stressing the similarity between the Battalino and the Lewinsky cases. Both were consensual, both took place in a government workplace, and both involved a subordinate relationship in the hierarchy. By citing the Battalino case, therefore, Rogan mounted quite a broad sort of attack on the whole Clinton administration, as well as on the president in particular. Rogan argued that, on fundamental principles, the Clinton administration had always been strongly in favor of prosecuting such cases. But then, when it affected one of their own, they turned around and used arguments like the principle of proportionality to argue against prosecuting the case strongly. This argument, then, is a form of circumstantial ad hominem argument that has a broad sweep. It attacked Clinton, his administration, and even the Democratic party as a whole, arguing that they don’t follow their own principles. This was an attack on alleged hypocrisy that was potentially very powerful, not only in the impeachment trial, but as addressed to public opinion by way of television.

One way to evaluate Rogan’s argument is as an argument from analogy between the situation of Battalino and that of Clinton. The comparison between the two cases holds up persuasively in many relevant respects, as argued by Rogan. You could counter this argument by pointing out other relevant respects in which the two are dissimilar. For example, Battalino was a physician and Arthur was a patient in her care, whereas Clinton was president and Monica Lewinsky was an intern in his office. Using this kind of comparison, you could argue that Rogan’s argument from commitment is weak. So just because the Clinton administration was not in favor of leniency in the Battalino case, it does not follow (according to this way of evaluating the argument) that they have to be against leniency in the present case. This is one way to evaluate the argument, but it misses the point, in certain important respects, because its real thrust is not just an argument from commitment. The real thrust is found in Rogan’s closing remark, “That’s how the Clinton administration defines proportionality and punishment.” The thrust of the argument is that the Clinton administration’s real view of proportionality and punishment in a case of perjury to conceal an improper sexual relationship is revealed or defined by its actions in the Battalino case. Contrasting their actions in that case with their argument for proportionality and leniency in this case
suggests that their argument is not sincerely meant. What is suggested is that they do not really believe or support his argument themselves and that they use it not because they really accept it, but only because it supports their interests.

So the real thrust of Rogan’s argument is missed if it is just seen as an argument from analogy or an argument from commitment. It is both, but its strongest impact is as a circumstantial ad hominem argument that is used to suggest that the supporters of the argument do not themselves sincerely believe it, as is revealed by their own actions. Assuming that Rogan has gotten the details of the Battalino case right, this circumstantial ad hominem argument is a reasonable one. Its weak points have already been noted. The weakest part of the ad hominem argument is that “the Clinton administration” is treated as a single stable group that is the arguer in both cases. But on the whole, as a circumstantial ad hominem argument, Rogan’s argument is a reasonably good one. It is weak in certain respects, but it is not one that should be judged fallacious.

From a dialectical and rhetorical perspective, comparing the two cases is interesting. In the Battalino case, there was an actual dialogue between the two leading participants. In the Gore case, there was little real dialogue. Although Gore’s reply to the argument was printed, the way it was done made his case look even worse. The Gore case was typical of what we so often see in argumentation in political and commercial ads. The argument is a short message in the print or broadcast media with some visual material. What is visible is mainly the proponent’s side of the argument in the form of an ad hominem or other type of argument, such as an appeal to fear or pity. The problem, as noted in chapter 2, is that we don’t see the dialogue because we see little evidence of the respondent’s argument or point of view. The ad seems to be a one-shot message sent out by the proponent or presenter to the mass audience. Where is the dialogue? But if you compare the Battalino and Gore cases, it is evident that there is the same kind of multi-agent dialogue implicit in the Gore case that was more visible in the Battalino case. In both cases, the same type of circumstantial ad hominem was used. The structural and dialectical similarities are highly evident, once both cases have been analyzed. Thus these cases bring out very well how even the short political or commercial ad of the kind so typically used in rhetorical persuasion attempts has a multi-agent dialectical structure. The key is to be found in the proponent’s argument strategy. The strategy builds on the anticipated reaction of the mass audience, and the argument is directed to this reaction. Such an argument is thus devised as a response to anticipated
critical questioning by a respondent. Or at least an argument in an ad

can be analyzed in this dialectical fashion. And when it is so analyzed, a

lot of interesting features come out. One can get a much better idea of

how the rhetorical argumentation works as a persuasion attempt. One

can also get a good idea of how to react to such an argument or counter

it in a reply. Of course, each case is unique. But in this chapter it has

been shown how the *ad hominem* argument has a distinctive dialectical

structure.