Despite its control over neither "the sword or the purse," the United States Supreme Court wields a great deal of power. Through its opinions -- its use of language -- the Court has affected areas ranging from the fate of snail darters to the power of the executive branch. Judicial scholars, relying on textual exegesis to understand the judicial process, are recognizing increasingly the value of rhetorical criticism. Marc Gold, for example, has argued; "When conjoined with more traditional forms of analysis, a rhetorical perspective should significantly enhance our understanding of the judicial process." The goal of this paper is to respond to Gold's challenge by illustrating how rhetorical criticism can unlock legal texts. In particular, the critical objects of this analysis are direct reversals by the Supreme Court. However, before beginning this critique, we must first establish what is meant by "rhetoric," and suggest the value of rhetorical criticism. Next we shall demonstrate that judicial opinions are in fact rhetorical texts and direct reversals uniquely rhetorical moments. Evaluation of West Coast Hotel v. Parrish, an instance in which the Court maintained its legitimacy as "the" interpreter of our law while reversing its own prior decision, closes this analysis.

Here, rhetoric is understood in the Aristotelian sense as the discovery of available means of persuasion. The term "rhetoric" has many connotations, ranging from the pejorative "mere" rhetoric to the study of composition or tropology. Classical texts on rhetoric, such as Aristotle's Rhetoric, Isocrates'
Antidosis, Cicero's De Oratore, and Quintilian's Institutes sought to train citizens in the art of public speaking. These works, among others, focused on subjects such as the discovery and arrangement of arguments and commonplaces, stylistic considerations, and the proper education for an orator. Falling in the nineteenth century from its position of prominence in the academy, the study of classical rhetoric experienced a rebirth in the 1920s in American Departments of Speech Communication. Today, rhetorical criticism relies upon classical authors and modern speech communication scholars; together, they help us unlock the public, persuasive character of judicial texts.

Judicial opinions seemingly differ from conventional rhetorical forms i.e., campaign speeches, congressional debates, political ads, etc. However, as public, persuasive discourse, they fall within the classical definition of a rhetorical act. Since space does not permit discussion of all facets of rhetorical theory, examination of a few tenets will help establish the rhetorical character of judicial opinions and the value of rhetorical criticism. As established in classical theory, an integral relationships exists between the public and rhetorical discourse. Aristotle, for example, characterized the three genres of rhetorical discourse -- deliberative, forensic, epideictic -- by their public nature; that is, each genre was defined by the type of audience to which the discourse was addressed. For some theorists, however, the relationship between rhetoric and the public was even more essential. Isocrates in the Antidosis argued that culture itself was enhanced and preserved through the study of rhetoric. Similarly, for Cicero, the great Roman rhetor and statesman, the good citizen was the orator. The relationship between judicial opinions, as rhetorical discourse, and the public is evident at two levels. Not only are judicial opinions proclaimed in a public arena (in addition to being published, Supreme Court decisions are presented orally), many actually define the public space and legitimate public force. Through its interpretation of the First Amendment, for example, the Supreme Court determines what discourse shall be sacrosanct, proclaimed in the public arena unfettered. In addition, the Court, as interpreter of our fundamental laws, can either sanction or deny the very power of government through its ability to declare state laws as well as executive and legislative acts unconstitutional. The value of rhetorical criticism in understanding this function is explained by Peter Goodrich, who notes, "The rhetorical analysis of legal texts attempts to break down the closure of legal knowledge and to open the monologue of legal textual practice to the material economy of discourse and what might be termed the politics of legal signification." Thus, attention to the linguistic techniques used in Supreme Court opinions reveals the rhetorical, political character of judicial decisions.

In addition to their public character, judicial opinions are rhetorical in that they rely upon persuasion for effectiveness. As Alexander Hamilton noted in the Federalist Papers, the Supreme Court is "the weakest of the three departments of power . . . [having] no influence over either the sword or the purse; no direction either of the strength or the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment." Possessing no coercive powers, the Court, therefore, must rely on its suasive abilities to enact its mandates, convincing the legislative and executive