Appeal to Pity: A Case Study of the *Argumentum Ad Misericordiam*[1]

DOUGLAS WALTON

Department of Philosophy
University of Winnipeg
Winnipeg, Manitoba
R3B 2E9 Canada

ABSTRACT: The appeal to pity, or *argumentum ad misericordiam*, has traditionally been classified by the logic textbooks as an informal fallacy. The particular case studied in this article is a description of a series of events in 1990–91 during the occupation of Kuwait by Iraqi forces. A fifteen-year-old Kuwaiti girl named Nayirah had a pivotal effect on the U.S. decision to invade Kuwait by testifying to a senate committee (while crying) that Iraqi soldiers had pulled babies out of incubators in a hospital in Kuwait, and left them to die. Subsequent investigations revealed no basis for this claim, and that it was part of a public relations campaign, financed mainly by Kuwaitis, to get support for the invasion. The normative question studied in this case is whether or not the argument in it can correctly be evaluated as a fallacious appeal to pity. Part of the general issue is what is meant by the key word 'fallacious.'

KEY WORDS: argumentation, fallacy, appeal to emotion, conversation analysis, informal logic, bias, dialectical shift

Is the *argumentum ad misericordiam* a fallacy generally, or always, when it is used in a conversation? The answer, as you might expect, depends on how this type of argumentation is precisely defined. Usually, *argumentum ad misericordiam* is translated as 'appeal to pity,' and the word 'pity' has a negative connotation for most people, implying being sorry for someone who is in a bad or painful situation, or even implying an attitude of condescension towards that person. On September 7, 1993, a radio report on the Jerry Lewis Telethon for muscular dystrophy said, 'critics allege he uses pity to raise money.'[2] Kemp (1981) argued that by using 'Jerry's kids' as a 'pity appeal,' the Telethon exploits the 'appealing and huggable child' as a fund-raising tactic. According to Kemp, this 'playing to pity' reinforces the prejudice that the handicapped are pathetic and helpless. This general attitude may suggest that the appeal to pity can be classified generally as an inappropriate or fallacious type of argument, and that, in fact, is the traditional approach of the logic textbooks (Copi and Cohen, 1990).[3]

However, if you define this type of argumentation using a more positive-sounding label, like 'appeal to sympathy,' it is much less likely to be perceived as being generally or always fallacious (Brinton, 1988; Callahan,

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1988). Also, it has been shown in Walton (1992, chapter 4) that many cases of arguments that should be classified under the category of the *argumentum ad misericordiam* are nonfallacious. Considered in the context of conversation in which they were put forward, many such arguments are quite reasonable appeals to emotion, used to shift a weight of presumption to one side in a balance-of-considerations argument, in order to support a course of action being advocated.

Pleas for leniency in sentencing in legal cases are common examples. Hamblin (1970, p. 43) also noted that 'where action is concerned, it is not so clear that pity and other emotions are irrelevant.' The conclusion advocated in Walton (1992, p. 140) is that we should get away from the traditional approach of classifying the appeal to pity as automatically fallacious, and recognize that, in some cases, it can be a reasonable kind of argumentation (in context). But more thought is needed on the exact meaning of *misericordia.*

Indeed, in Walton (1992, p. 140), a more fine-grained approach to evaluation of cases of the *argumentum ad misericordiam* is proposed, whereby they are divided into five categories: (1) reasonable, (2) weak, but not fallacious, (3) irrelevant, (4) not enough information given, and (5) fallacious. Thus the project of evaluating given cases of the *argumentum ad misericordiam* is something more of a case-by-case type of job, requiring careful analysis of the evidence given by the text of discourse in a case, than the traditional approach of the textbooks suggested.

Even so, it was shown in Walton (1992) that there are definite cases where it is appropriate to conclude that a fallacious *argumentum ad misericordiam* has been used. These cases tend to be ones where what is called a *dialectical shift* (Walton and Krabbe, 1995) has occurred – that is the argument in a given case was originally supposed to be part of a particular type of conversation (type of dialogue), but then, as it proceeded, it came to be used as though it was part of a different type of dialogue. The fallacy occurs in such a case because the argument may appear to be reasonable, for example, to advocate a particular course of action in one type of dialogue, like a deliberation, whereas if the dialogue is supposed to be an information-presenting one where both sides are represented, the same argument could be inappropriate and fallacious. At any rate, a wide range of cases is studied in Walton (1992) and Walton and Krabbe (1995), and evaluated by taking into account the conversation context in which the argument was used.

In the present paper, we present one particularly interesting case study as a case of the use of the *argumentum ad misericordian* that should be evaluated as fallacious. This case illustrates how powerful the *argumentum ad misericordiam* can be, as an effective tactic of argumentation. It also involves the concepts of bias and deception, and it raises interesting general questions about how the concept of fallacy should be defined.

We begin by stating the known facts of the case in chronological order,

as reported by the news sources we have collected. Then we proceed to an analysis and evaluation of the case, based on this given information. Finally, we raise some general issues for the study of fallacies posed by the case.

1. FACTS OF THE CASE

The invasion of Kuwait by Iraq took place on August 2, 1990. Not long afterwards, there were rumors of a shocking incident. In a letter circulated at the U.N. on September 6, 1990, Kuwait charged that Iraqi soldiers had removed hospital equipment that resulted in the deaths of many patients, including premature infants, in intensive care (Reuter, 1990, p. A14):

> In a letter to Secretary-General Javier Perez de Cuellar, Kuwait's UN representative, Mohammad Abulhasan, did not say how many deaths have resulted.
>
> 'The delicate medical equipment used in the intensive-care units of many Kuwaiti hospitals has been seized and taken to Baghdad,' he wrote. 'This has led to the death of many patients who were receiving intensive care.'
>
> Mr. Abulhasan said incubators in maternity hospitals used for premature children were removed, 'causing the death of all the children who were under treatment.'

On September 28, 1990, the emir of Kuwait visited George Bush at the White House to discuss ending the Iraqi occupancy and restoration of Kuwait's government. Brent Scowcroft, then National Security Adviser, said (MacKenzie, 1990, p. A10) that Iraqi behavior in Kuwait was 'accelerating the timetable' for considering the 'options' on how to proceed.

> He said the emir outlined Iraq's stripping of Kuwait's assets in graphic detail during his meeting with Mr. Bush. The Iraqis, he said, were removing babies from incubators and patients from life support and shipping the equipment to Iraq. At the same time, Iraqis were being moved into Kuwait, presumably to act as colonists.
>
> 'What I'm saying is that the atrocities, the devastation inside Kuwait merit world attention,' Mr. Scowcroft said.

At this meeting, Mr. Bush pledged to restore the emir to power, but there was no talk of any immediate U.S. military action being planned.

On October 10, 1990, in a hearing before the Congressional Human Rights Caucus, a fifteen-year-old Kuwaiti girl identified only as 'Nayirah' testified, while crying, that Iraqi soldiers had pulled babies from incubators in Kuwait. The quotation below is from *60 Minutes*, but the words in the second paragraph were initially reported in Shepard (1990, p. 4).

> Mr. Chairman and members of the committee, my name is Nayirah, and I just came out of Kuwait.
>
> While I was there, I saw the Iraqi soldiers come into the hospital with guns. They took the babies out of the incubators, took the incubators, and left the children to die on the cold floor. *[crying]* It was horrifying (*60 Minutes*, 1992, p. 8).

After this testimony, it was reported that George Bush repeated the story at least ten times in the following weeks, using the words 'Babies pulled from incubators and scattered like firewood across the floor.' (*60 Minutes*,

1992, p. 8). This story was widely publicized. Portions of a video release featuring Nayirah's testimony eventually reached a total estimated audience of thirty-five million (Rowse, 1992, p. 28).

On November 27, 1990, two days before the U.N. vote on whether to respond with military force if Iraq did not pull out of Kuwait by January 15, there was a presentation at the U.N. that included a videotape showing Iraqi soldiers firing on unarmed demonstrators, and the walls of the U.N. Council chamber were 'covered with oversize color photographs of Kuwaitis of all ages who reportedly had been killed or tortured by Iraqis' (Rowse, 1991, p. 20). In a report in *The Toronto Star* (Ward, 1990, p. A2), a surgeon named Mohammed was quoted as saying that under his supervision 120 newborns were buried and that he himself buried forty 'newborns babies that had been taken from their incubators by the solders.' The mounting evidence of Iraqi atrocities in Kuwait culminated, on December 19, 1990, in the publication of an Amnesty International Report that had a dramatic impact on developments (*60 Minutes*, 1992, p. 8):

> **SAFER**: *[voice-over]* There was plenty of evidence of Iraqi brutality, but the incubator story became almost a rallying cry. It has Presidential confirmation and the confirmation of Amnesty International, which published a report after Nayirah testified, quoting her and claiming 312 babies were killed when Iraqi troops pulled them from their incubators.

According to the Amnesty report (Reuters, 1990a, p. A1), widespread abuses of human rights by Iraqi occupying forces in Kuwait included executions, torture, beatings, castration and rape. According to the report, Iraqi troops 'left 300 premature babies to die after stealing incubators' (p. A1). It said that an Amnesty investigation team talked with several doctors and nurses who 'gave details of the deaths of 300 babies removed from incubators in hospitals by Iraqi troops and left to die on cold floors.' (Reuters, 1990a, p. A2).

On January 10, 1991, the U.S. Senate voted to authorize going to war against Iraq. The measure passed by five votes. Seven senators cited Nayirah's testimony in speeches backing the use of force.

Then in March, 1991, after the invasion of Kuwait, a number of revelations came out that threw doubt on Nayirah's story, summarized by Rowse (1992, p. 16) below. These developments were precipitated by the investigations of John Martin of *ABC*, who interviewed Kuwaiti hospital officials who said that the incubator story was a falsehood. It also came out that the story had been promoted by America's preeminent public relations firm, Hill and Knowlton.

> In March 1991, *ABC News* interviewed Kuwaiti hospital officials who denied that any babies had been dumped out of incubators by Iraqi troops. A month later, Amnesty International, which earlier had reported the figure of 312 dead, said it had 'found no reliable evidence that Iraqi forces had caused the deaths' of any incubator babies. The big bomb-shell, however, was a story by *Harper's* magazine publisher John R. MacArthur, which appeared in January 1992 on *The New York Times* op-ed page, revealing that

> Nayirah was the daughter of the Kuwaiti ambassador to the United States. MacArthur also revealed that Reps. Tom Lantos and John Edward Porter, who sponsored the congressional hearings, had started a group called the Congressional Human Rights Foundation that had received $50,000 from Citizens for a Free Kuwait, as well as free office space in Hill and Knowlton's Washington headquarters.

The Times article by MacArthur revealed in January, 1992, that Nayirah was the daughter of Saud Nasir al-Sabah, and a member of Kuwait's royal family. MacArthur had gotten suspicious, while working on a book on propaganda in the Gulf War, and had found out Nayirah's identity by asking questions at the Kuwait embassy (*60 Minutes*, 1992, p. 9) According to MacArthur, her identity was known to caucus co-chairmen Lantos and Porter at the time of the senate hearings, but they did not disclose it. Both had close political ties to Hill and Knowlton, the firm that had promoted a public relations campaign, including the presentations for the U.N. and the U.S. congress. It turned out that Hill and Knowlton had many close connections to Kuwait, and that the campaign was financed mainly by a group of wealthy Kuwaitis, using a front organization 'Citizens for a Free Kuwait.' According to an estimate of *The Washington Post* (Rowse, 1991, p. 20), the total amount paid to Hill and Knowlton by Citizens for a Free Kuwait was more than eleven million dollars.

According to the *60 Minutes* report (1992, p. 11), Hill and Knowlton is 'by far, the biggest, most influential PR firm in Washington.' John MacAuthur in the *60 Minutes* (p. 11) indicated how Nayirah's story made an enormous difference in their campaign.

> **Mr. MacARTHUR**: When the Kuwaitis hire Hill and Knowlton to represent their interest, to get to argue the case for military intervention, Hill and Knowlton desperately needs a defining moment, a defining atrocity, something that is so emotional that the American people will not be able to ignore the plight of Kuwait. And Nayirah and the baby incubator story provide that defining moment.

Had Americans known that Nayirah was the daughter of the Kuwaiti ambassador, a man desperately trying to find friends to help liberate his occupied country, their reaction to the story would have been quite different.

Subsequent investigations, by John Martin of *ABC*, broadcast in a *20/20* program (1992), confirmed by interviews with Kuwaiti medical officials that there was no evidence of the incubator story (*20/20*, 1992, p. 4).

> We found the incubators that the Iraqis supposedly had taken away here at Maternity Hospital. Doctor Soad Ben-Essa is a pediatrician who stayed behind in the hospital during the war. She said Iraqi soldiers lived in Ward Nine.
>
> *[interviewing]* Did you ever see them take the babies out to take the incubators away?
>
> **Dr. SOAD BEN-ESSA, Pediatrician**: No.
>
> **MARTIN**: [voice-over], Dr. Fawyiza al Qattan was an obstetrician at the Maternity Hospital. When we found her living outside London, she told us there had been atrocities there, a staff doctor had been murdered, but none involving incubators.
>
> *[interviewing]* So between August and November, no Iraqi soldiers came to take incubators from the Maternity Hospital.

Dr. FAWYIZA al QATTAN, Obstetrician: Not from Maternity Hospital.
MARTIN: *[voice-over]* Nayirah, the ambassador's daughter, said atrocities took place at the al-Addan Hospital. The obstetrician Dr. Fahima Khafaji worked there during that period of the occupation.
[interviewing] Did the soldiers come into the hospital and take the incubators away when babies were in the incubators?
Dr. FAHIMA KHAFAJI, Obstetrician: No, I didn't see.
MARTIN: *[voice-over]* Some babies did die. Why?
Dr. FAYEZA YOUSSEF Obstetrician: There was no service, no nurses to take care of these babies, and that's why they died.
MARTIN: *[voice-over]* Dr Muhammad Matar directed Kuwait's primary health care system. His wife, Dr. Fayeza Youssef, ran the obstetrics units at Maternity Hospital. We talked in Cairo, where they fled after the atrocities supposedly took place.
[interviewing] This is very specific. 'Iraqi soldiers took them out of the incubators and put them on the floor to die.'
Dr. MUHAMMAD MATAR: I think this is something just for propaganda.
MARTIN: *[voice-over]* We asked human rights investigators.
ANDREW WHITLEY, Executive Director, Middle East Watch: We haven't found any evidence that any incubators were taken. I do believe that there were some exaggerations, politically inspired exaggerations, of the atrocities that were taking place.

The body of evidence collected on the alleged incident indicated the absence of any verification of the incubator story, and strongly suggested that it was not true.

2. ANALYSIS OF THE CASE

The sequence of argumentation in this case breaks down into two phases – see Table 1.

Table 1. Chronology of events

PHASE ONE	
Aug. 2, 1990:	Iraq's Invasion of Kuwait
Sept. 6, 1990:	Letter to U.N. from Kuwaiti Ambassador
Sept. 28, 1990:	Emir of Kuwait Visits White House
Oct. 10, 1990:	Hearing before Congressional Human Rights Caucus: Testimony of Nayirah
Nov. 27, 1990:	U.N. Presentation on Atrocities
Nov. 29, 1990:	U.N. Vote on Jan. 15 Deadline for Saddam
Dec. 19, 1990:	Amnesty International Report
Jan. 10, 1991:	U.S. Senate Authorizes Use of Force Against Iraq
PHASE TWO	
March, 1991:	John Martin Broadcasts Interviews of Kuwaiti Medical Personnel Denying Incubator Story
April 18, 1991:	Amnesty International Retraction
May, 1991:	Financing of Hill and Knowlton Public Relations Campaign by Kuwaiti Backers Revealed
January, 1992:	Identity of Nayirah Becomes Known

The first phase goes from the initial circulation of rumors about the incubator story, continuing through the events that culminated in Nayirah's testimony, and ending after the senate's vote to approve the invasion of Kuwait. The second phase begins with John Martin's broadcast in March 1991 interviewing the Kuwaiti medical officials, and John MacArthur's article revealing Nayirah's identity. The appeal to pity was a successful argument during the first phase of its deployment, and played a key part in influencing American public opinion and getting action to support the invasion. But then, during the second phase, critical doubts were raised, and it gradually became apparent that the argument had been a deception. The critical point in this turnaround was the revelation of the identity of Nayirah.

The context of argument for the first phase is that of the senate deliberation on whether to back the use of force in Kuwait, and the testimony of Nayirah as a key part of the argumentation in these deliberations. During this first phase, the appeal to pity seemed to be appropriate in context, and played a legitimate (and very important) role in influencing the outcome of the deliberations.

During the second phase of the case however, more came to be known about how the argument making the appeal to pity was being used. It became apparent that it was a key part of a public relations campaign designed for purposes of advocacy, to influence public opinion and the senate towards supporting a particular course of action. Such advocacy argumentation for a 'cause' is not, in itself, fallacious. But viewed in context, in light of the supposed purpose of Nayirah's testimony, a definite contrast between what originally appeared to be the use of argument, and its real underlying use, became apparent. One needs to appreciate the sequence of how the argument was used, in context.

In this case the *argumentum ad misericordiam* was used effectively to shift an important outcome of a deliberative debate in a balance-of-considerations decision to one side, by a narrow margin. Here the situation was in a delicate balance, at one point in the debate, and the emotional appeal to pity functioned as a tie-breaker. It seems that there is a great inertia in public opinion against an action like going to war or undertaking an invasion, and some emotional picture or 'icon' is needed to give a kind of morally compelling reason for taking such an action (what MacArthur, above, called a 'defining moment'). Here, the picture of babies being pulled from incubators and scattered like pieces of firewood on a cold floor is the icon. It is an icon that everyone immediately reacts to as outraging basic human instincts to protect vulnerable children.

Here then there was a powerful appeal to human emotion that was relevant to the context of dialogue, yet it became apparent during the second phase of the case that the intended recipients of the argument had taken it to be something it did not turn out to be.

3. BIAS AND EVIDENCE

One important factor in judging evidence based on the testimony of a witness is the perceived bias of the witness. If the witness is perceived as having something to gain by advocating a particular viewpoint, or if the witness has some connection or involvement with advocating, or with those who advocate one side of the issue, then doubts tend to be raised about the testimony as evidence. Testimony, as evidence, depends on the honesty and sincerity of a witness. In a court setting, the witness takes an oath, and in cross-examination the opposing attorney is allowed to raised questions about the potential bias of a witness (Degnan, 1973; Waller, 1988). This is the bias of a person.

But our concern is narrower than bias *per se* (see Adler, 1993). We want to focus on biased argumentation. Here, Nayirah's plea was part of an argument.

Biased argumentation is hard to measure, or even to define (Walton, 1991). But generally, it is a presumption that a speaker advocating only one side of an issue in a context of dialogue where it is appropriate that both sides should be considered in a balanced way, has argued in a biased way.[4] If an arguer has a lot to gain by advocating one side of an issue in which she is supposed to consider both sides, for example, then there can be a suspicion that her argument is biased.[5]

One key aspect in evaluating the argumentation in this case is the concealment of the identity of Nayirah. The finding that she was the daughter of Kuwait's ambassador to the U.S. threw a new light on the evaluation of her plea as a supposedly neutral witness, by indicating a source of bias. Initially, she was identified only as a fifteen-year-old Kuwaiti girl. But the subsequent revelations that she was a member of the Kuwaiti royal family, the daughter of the ambassador, and also the link with Hill and Knowlton's campaign, financed by the government of Kuwait, raised a presumption of bias that plays a large part in judging her testimony as evidence. These facts suggested a presumption of manipulation and a deliberate public relations campaign to influence U.S. support for an invasion of Kuwait. Hence the element of perceived bias in the case made before the Senate and T.V. viewers is very significant in evaluating the *argumentum ad misericordiam* in this case. Whether the witness, or her backers, had something to gain is a key question in judging the appeal to pity.

One defence against the presumption of bias used by the participants was the claim that Nayirah's identity had been concealed to protect her family against Iraqi reprisals. The two senators who may have known Nayirah's identity, according to John R. MacArthur, the publisher of *Harper's* magazine (Facts on File, 1992, p. 31), responded to the charge that they concealed Nayirah's identity because of their ties to Hill and Knowlton, in different ways.

MacArthur suggested that caucus co-chairmen Reps. Tom Lantos (D. Calif.) and John E. Porter (R. Ill.) might have concealed the girl's identity at the hearings because of their close political ties to Hill and Knowlton, a U.S. public relations firm. One of the firm's clients was Citizens for a Free Kuwait, a Kuwaiti-financed group that had lobbied for U.S. military intervention during the Persian Gulf crisis. The group had helped to organize the atrocity hearings and had also donated $50,000 to a human-rights foundation founded by the two congressmen.

Lantos Jan. 6 admitted that he had known Nayirah's identity at the time of the hearings, but he insisted that her family connections 'did not diminish her credibility.' Lantos said he had withheld her full name in order to protect her family against Iraqi reprisals.

Porter Jan. 6 told reporters that he had not learned of Nayirah's identity until recently, and he said the Human Rights Caucus would investigate her allegations in an effort to restore the group's credibility. Both men denied that their ties to Hill and Knowlton had influenced their handling of Nayirah's testimony.

Lantos admits he knew Nayirah's identity, but uses a dual defence, including the claim that her full name was concealed in order to protect against reprisals.

Another defence used was the argument that Hill and Knowlton were paid by an organization of private citizens, and not by the government of Kuwait (*20/20*, 1992, p. 5):

[interviewing] Who hired Hill and Knowlton to handle this account? Was it the Citizens for a Free Kuwait, or the Kuwaiti government, or the Sabah family?

LAURI FITZ-PEGADO, Senior Vice President, Hill and Knowlton: Our client was Citizens for a Free Kuwait, an organization of private citizens. It was a group that consisted of former government people, opposition members, students, academicians, a broad cross-section of people. And they were our client.

MARTIN: *[voice-over]* Hill and Knowlton kept emphasizing to *20/20* that Citizens for a Free Kuwait was a private organization.

[on camera] But Citizens for a Free Kuwait collected about $12 million in its campaign, and these documents, filed by law with the United States government, show that $11.8 million of the $12 million came from the Kuwaiti government.

As the *20/20* report showed, once the facts about the amounts of funding were revealed, the defence that Hill and Knowlton were paid by a citizens coalition, and not by the Kuwaiti government, was shown to be a deception. This was a ploy that was easily refuted, with investigation of the amounts given by the sources of funding.

Another curious defence against the presumption of bias came from Nayirah's father, as reported in an interview with Morley Safer on *Sixty Minutes* (1992, p. 10):

SAUD NASIR al-SABAH: I think the girl came *[unintelligible]* and spoke, and told them what she actually saw with her own eyes.

SAFER: *[voice-over]* That's Nayirah's father, Kuwait's ambassador to the United States. He didn't respond to our request for an interview with him or his daughter, but he did talk to the Canadian broadcast, *Fifth Estate*.

Amb. al-SABAH: Whether she was my daughter, my friend, or she was somebody else, I could have much more easily – if I wanted to lie, or if we wanted to lie or we wanted to exaggerate, I wouldn't choose my daughter to do so – I could easily buy other people to do it.

Here the defence is used by the ambassador that if he wanted to lie, he would not have chosen his daughter, for he could easily buy other people to do it.

Needless to say, none of these defences was a convincing rebuttal against the presumption that the concealment of Nayirah's identity was an indication that the argument she put forward by testifying in the way she did was biased, and that the use of appeal to pity was open to critical questioning on grounds of personal involvement of the witness. This aspect is an important element in evaluating her appeal, in context, as a fallacious use of the *argumentum ad misericordiam.*

4. EVALUATION OF THE CASE

In the first phase of this case, the appeal to pity seemed like good evidence being furnished in the form of eyewitness testimony. And this testimony was relevant to the deliberations that were taking place on the question of American support for an invasion of Kuwait. But then during the second phase, several developments altered this assessment. First, Nayirah's identity was revealed, throwing into doubt her impartiality as a witness. Second, investigations found the lack of any evidence supporting the incubator story, indicating that it was (likely) false. Third, the revelations about the public relations campaign by Hill and Knowlton threw new light on the purpose and context of how the argument was used to promote the interest of its advocates.

The appeal to pity, it turned out, was not only based on a factually false premise, but it was engineered as part of an elaborate public relations campaign to promote one side of the issue.

There is nothing inherently wrong or fallacious about public relations campaigns, or with trying your best to support the interests of your country by appealing for help and support in a desperate situation. The appeal to pity or sympathy is not, in itself, fallacious. This is our basic point of departure in evaluating this case.

But the fallacy charge comes in when you perceive the shift between what the argument was supposed to be, and how it was (understandably) taken, and what it really was underneath the surface appearance, relative to the information given in phase one of its use. The appeal to pity seemed appropriate and reasonable at first, but then, once more information came in, the evaluation of it changed radically. It was not what it seemed, and in fact was revealed as a deceptive tactic that was successful in achieving its goal of influencing action.

This dynamic aspect is typical of the *argumentum ad misericordiam.* It is a nonmonotonic type of argumentation that is properly used to shift a burden of proof in a balance-of-considerations dispute, but can sometimes be revealed as an incorrect, or even fallacious argument, once further infor-

mation comes into a case. It is a tentative and defeasible type of argument (Walton, 1992a) that is subject to qualification and potential retraction or rebuttal, as an argument unfolds sequentially in a dialogue.

The Nayirah case provides good evidence, however, that the appeal to pity should be evaluated as fallacious in some cases. In this case, the argument not only undergoes a dialectical shift, so that it needs to be re-evaluated in the second phase of its use, but the shift was unilateral in that it involved concealment of relevant information on one side of the dialogue.

5. GENERAL ISSUES

Currently there are questions being raised on how the concept of a fallacy should be understood (Hamblin, 1970; Walton, 1992a; van Eemeren and Grootendorst, 1992). According to longstanding tradition, a fallacy is a deceptive argument that has an appearance of being correct or reasonable, but in reality is not a correct or reasonable argument. To sum up this aspect of the involvement of appearances, one could use the traditional slogan to the effect that a fallacy is not only a bad argument, but one that seems good (Hamblin, 1970).[6]

In the Nayirah case, timing was vitally important in making the argument seem good. Opinion was divided at the time, in the senate debate, and Nayirah's testimony was the kind of tie-breaker needed to swing the weight of presumption in favor of taking action. In context, because of its timing, and its powerful emotional appeal to a particularly devastating form of child abuse, this appeal to pity was just the icon (defining moment) needed to mobilize public opinion in favor of the invasion.

Here the appeal to pity was effective in persuasion because, in phase one, it seemed to be relevant evidence based on eyewitness testimony which, at the time, there appeared to be no reason to doubt. As phase two unfolded however, it became apparent that a deliberate campaign of advocacy by interested parties was behind the testimony, that the witness was a member of this group of interested parties, and that her testimony did not square with that of the leading participants on the scene available for questioning afterwards.

In phase one, the appeal to pity seemed like a reasonable argument, as part of a sequence of argumentation in a context of dialogue. In fact, it was very powerful and moving as an emotional appeal. But then, as phase two unfolded, there was evidence of a dialectical shift. The testimony was revealed as not only being open to questioning on grounds of bias, but it was not corroborated by the body of other evidence, and even showed strong signs of being manufactured by an advocacy group as part of a deliberate campaign of influencing public opinion, and the senate decision in particular.

One might reply: yes, the premise of the witness's appeal to pity turned

out to be false, but that does not make the appeal to pity a fallacy. The suggestion is that more is needed than a false premise to licence the conclusion that an argument is fallacious. A fallacy (Hamblin, 1970) has generally been taken to be a structural failure in an argument (of some sort, i.e. an unlicenced inference) as opposed to merely an argument with a premise that happens to be false.

The question about the nature of the fallaciousness of the *ad misericordiam* in this case can be sharpened by posing a prior hypothetical question – what if Nayirah's story about the incubator babies had been true?[7] As a thought experiment, let us suppose her claim true, keeping all the other known facts in the case, as described above, constant. Suppose, that is, her story about the incubator babies turned out to be supported by the subsequent investigations. Would her *ad misericordiam* appeal still be a fallacy or not? This question could be studied empirically by taking two groups of student respondents who have been told the two versions of the case (one the existing case, and the other where Nayirah's claim is found to be supported by the subsequent investigations), and querying each group to see whether they judge the *ad misericordiam* in their case as fallacious or not.

Without having conducted such a poll, on the basis of experiences of using similar cases in classroom discussions, one would be inclined to predict that it would be easier to convince students that there is definitely a fallacy in the existing case, as opposed to the hypothetical case where Nayirah's claim is verified.

Polls aside, would it be justified and reasonable to describe the *ad misericordiam* appeal as a fallacious argument in this latter (hypothetical) case? There are two sides to this question.

On the one side, the baby incubator story is a relevant consideration, a small but relevant item of evidence among the masses of information collected by the Senate investigation. If the story were true, and is conceded to be relevant evidence on the issue, what grounds are there for classifying it as an *ad misericordiam* fallacy?

On the other side, you have to consider the massive Hill and Knowlton campaign to make Nayirah's testimony on the baby incubator story a big issue, a defining moment, of the public deliberations. Even if the story were true, the use of it as the key part of a public relations tactic to mobilize public opinion and the U.S. Senate at just the right moment to tilt the burden of persuasion, is a strong indicator of a fallacy (in the sense of a sophistical tactic of persuasion cleverly exploiting appeal to emotion).

The timing element is important here, once again, as a factor.[8] Once the deadline for the date of the decision had been set by President Bush, an important practical constraint on the decision was fixed in place. Given the conditions in Kuwait at that time, it was not possible for the U.S. Senate investigation to confirm or refute Nayirah's story by getting direct access to evidence, by the deadline. Hence the deliberation had to be made on

the basis of (partial) ignorance of the facts. And presumably, Hill and Knowlton would have been well aware of this factor in their deliberations, when promoting the Nayirah story as part of their campaign. Thus the factor of whether or not the story turned out to be verified by the facts or not, played no role in its usefulness as an *ad misericordiam* argument to influence the U.S. Senate and U.S. public opinion to support the decision to go ahead with the invasion. So it appears that there are good grounds for evaluating the *argumentum ad misericordiam* in this case as fallacious, even if the premise were true.

6. FALLACIOUSNESS OF THE *AD MISERICORDIAM*

What then does the fallaciousness of the *ad misericordiam* lie in? It is not just the false premise, as argued above. And the *ad misericordiam* argument was relevant. The answer seems to lie in the exploitation of the story, the targeting of the Senate, and the wider audience of viewers, by using such a calculated and exquisitely effective appeal to pity as part of a planned campaign to win public support for the invasion, and to get action by influencing the Senate vote. This was more than just a picturesque, emotional story blown out of proportion by media coverage, as so often happens. It was a key part of a deliberate public relations initiative, carried out by professional public relations experts, and paid for by participants with a clearly defined vested interest.

Moreover, Nayirah herself, as daughter of the Kuwaiti ambassador, had a vested interest that was not made known during the period of the Senate deliberations, and was only finally brought to light by an investigative reporter.

What then, is the proper basis for evaluating the appeal to pity in this case as fallacious? One fact was, of course, the false premise, i.e. the failure of the report to be verified. However, the decisive factors, we propose, are the following. First, in context of its use as part of testimony before a deliberating body, the appeal to pity should meet certain normative requirements, in order to be reasonable as an argument to play its role in shifting the burden of proof in the larger sequence of argumentation of which it was a key part. One of these requirements is that if the person testifying before the deliberating body has a vested interest, or personal connection with the case, then this indicator of potential bias should be identified and made known.

As noted above, the appeal to pity failed to meet this normative requirement, as revealed in phase two. But that, in itself, does not make the appeal to pity in this case a fallacy, as opposed to simply being an inadequate, questionable, or faulty argument. In this case, the bias that was eventually revealed turned out to be part of a deeper concealment. It was the dialectical shift, and also the revealing of the argument's having been used as a

powerful and concealed tactic of deceptive manipulation that marks it characteristically as a fallacy in this case.

Clearly there is much more to be discussed here on the meaning of the concept of fallacy, whether a fallacy is always a deliberate tactic of deception in a dialogue to get the best of a speech partner, and so forth. Suffice it to say that this case is an interesting one in studying these issues in relation to our understanding of the *argumentum ad misericordiam* as a fallacy. This case suggests that the *argumentum ad misericordiam* is well worthy studying as a fallacy, even if the problem of evaluating this type of argumentation is a good deal more subtle and problematic than the traditional textbook treatments indicated.

Most of all, this case illustrates the power of the appeal to pity as a tactic of argumentation, used here successfully as a key part of a public relations campaign to influence public opinion and government decision-making at the national (and international) level to conclude to a specific course of action. This impressive display of the power of the *argumentum ad misericordiam* as a tool of persuasion suggests that this traditional fallacy, once it is more clearly defined and systematically analyzed, is well worth including in the informal logic curriculum.

As part of the context of dialogue of this case, it should be observed that the U.S. Senate inquiry lacked direct access to the facts on what happened in Kuwait, and had to depend on the evaluation of testimony of witnesses. Lantos, as co-chairman of the committee on human rights, was supposed to help that inquiry, yet knowingly and misleadingly portrayed Nayirah as a volunteer health worker in the hospital in Kuwait, or at any rate, someone who was believable as a neutral observer. But MacArthur posed the right critical question: if you knew her (real) identity, was her story likely to be true? Amnesty International was also supposed to be a neutral fact-finder. The concealed bias is the key to understanding the use of the *argumentum ad misericordiam* as a fallacy in this case.

Another part of the context of dialogue of the case was the broad-casting of the lachrymose appeal to such a wide television audience, and the increase in majority support for the invasion after the performance. The audience was presented with a misleading appeal to pity that became the defining moment in the argument that swayed public opinion to one side of the debate. This too is a key factor.

NOTES

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[2] Seneca thought that the wise person should not pity, but simply give help, and Spinoza

also claimed that pity involves some pain, as well as good, and is therefore to be overcome in a life dictated by reason (Runes, 1984, p. 286). See Brinton (1993).

[3] This point is controversial, in the study of fallacies, however, as should be noted. Just because appeal to pity is generally taken in a negative way, as having connotations of some lapse or inappropriateness, it does not follow that appealing to pity is fallacious. To say that a fallacy has been committed is a special type of criticism implying a systematic type of fault in the structure of an argument. Thus not all lapses or improprieties are fallacies.

[4] Walton (1992, pp. 112–116).

[5] Walton (1992, pp. 265–273).

[6] See also Walton (1992a) for discussions. Unfortunately, this slogan has often been interpreted in a misleading and unfavorable way that suggests a type of psychologism that has been criticized (Hamblin, 1970; Walton, 1992; van Eemeren and Grootendorst, 1992).

[7] This question was suggested by Michael Gilbert.

[8] As Alan Brinton noted (in correspondence), the concept of the 'tie-breaker' or 'defining moment' so important to the analysis of this case is related to the classical rhetorical notions of *kairos* (the 'timely') and *to prepon* (the 'fitting' or 'proper'). This case illustrates the importance of these notions for informal logic. Poulakos (1994), who discusses these notions of rhetorical timeliness in the Greek sophists, calls *kairoi* 'opportune rhetorical moments' that an arguer can create or 'capitalize on.'

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