

LOCAL HUMAN RIGHTS LAWYERING

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INTRODUCTION

International human rights offer a powerful set of norms that have helped domestic advocates to successfully secure additional civil, political, economic, and social rights for those living in poverty in the U.S.¹ Legal aid attorneys, public defenders, and other public interest advocates have recognized human rights as an additional advocacy tool and are increasingly using human rights arguments² in U.S. courts.³ This Article examines three cases in which legal aid attorneys and public defenders successfully used human rights arguments in

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U.S. courts, and discusses emerging best practices for using human rights in litigation in the United States.⁴

A strong foundation has been laid for legal aid attorneys and public defenders to use human rights arguments in U.S. courts. Many scholars and practitioners have offered persuasive arguments as to why human rights arguments should be made in U.S. courts.⁵ Some of these arguments have even focused on legal aid attorneys and public defenders who set foot in the courtroom almost every day.⁶ In addition, specific types of cases that might be appropriate for human rights have been identified, as well as what human rights strategies might be considered.⁷ Others have reported on successful human rights advocacy in U.S. courts and before U.S. policymakers, including notable victories using human rights arguments.⁸

4. This Article discusses three particular cases in which public defenders and legal aid attorneys used human rights arguments: *Ps:cular can,can.5 (4 (u)-14.1 ,s)2.6 (,can)16.77 (r)-122a.5 .s,E4 (A)-.6 (u3a)-13.d7 (d)Argh.7 (s)*

Both attorneys and decision makers are increasingly more familiar with human rights norms than ever before.⁹ In addition, more and more cities and counties in the United States are passing resolutions and ordinances that endorse or incorporate human rights law.¹⁰ These local human rights resolutions and ordinances can be cited in briefs and oral arguments.¹¹ Moreover, choice of legal precedent to point to in U.S. courts increases with each new decision citing to human rights law.¹²

Efforts to support and train U.S. lawyers to use human rights in U.S. courts are numerous. Groups such as the U.S. Human Rights Network,¹³ the Bringing Human Rights Home Lawyers' Network,¹⁴ Human Rights Institute at Columbia Law School,¹⁵ Program on Human Rights and Global Economy at Northeastern University School of Law,¹⁶ Local Human Rights Lawyering Project at

9. Law schools are increasingly offering international law courses, and international human rights law clinics are flourishing across the United States. *See, e.g.,* Farida Ali, *Globalizing the U.S. Law School Curriculum: How Should Legal Educators Respond?*, 41 INT

American University Washington College of Law,¹⁷ and the Pillar Project at Human Rights First,¹⁸ 18

A. *Case Example One: People v. Antonio House*²⁰

Recent developments in state and federal law, including limits on sentencing juveniles to life without parole and ending the juvenile death penalty, make cases involving young adults in the criminal justice system ripe for human rights arguments.²¹ The *People v. House* case offers a great example of public defenders using a human rights argument successfully in a state court.

Defendant Antonio House was 19 years old in 1993 when he was alleged to be part of a group that kidnapped two members of a rival gang, took them to a vacant lot, and shot them both.²² Mr. House was not present at the scene of the murder, but was alleged to have acted as a lookout nearby.²³ There was no evidence that Mr. House helped plan the crime.²⁴ Instead, he was alleged to have taken orders from higher-ranking gang members.²⁵ Despite a vigorous defense, the jury found Mr. House guilty of two counts each of first degree murder and aggravated kidnapping.²⁶ The Court subsequently sentenced Mr. House to two consecutive life sentences for the murder convictions and two consecutive 60-year sentences for the aggravated kidnapping convictions.²⁷

In 2014, an appeal was brought by appellate defenders Michael Pelletier, Jessica Fortier, and Alan Goldberg.²⁸ Among other arguments the appellate defenders offered, was that the mandatory natural life sentence violated the Eighth Amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution.²⁹ The defenders argued that the life sentence is mandated for all offenders convicted of murder of more than one individual without consideration of age or level of culpability.³⁰ They stated that the life sentence was invalid as applied to Mr. House because of his young age and minimal involvement in the commission of the crimes.³¹ The defenders cited to recent U.S. Supreme Court decisions *Roper v. Simmons*, *Graham v. Florida*,

20. *People v. House*, 72 N.E.3d 357, 357–38 (Ill. App. Ct. 2015).

21. See NAT'L JUV. DEFENDER CTR., *supra* note 7. For example, while the U.S. Supreme Court did not rely on human rights law to invalidate the juvenile death penalty, it did recognize international law as a "respected and significant" influence. *Roper v. Simmons*, 543 U.S. 551, 578 (2005). In addition, in *Graham v. Florida*, the U.S. Supreme Court discussed international law and the U.N. Convention on the Rights of the Child, in its decision to overturn juvenile life without parole for non-homicide crimes. 560 U.S. 48, 80–82 (2010).

22. *House*, 72 N.E.3d at 368.

23. *Id.* at 384.

24. *Id.*

25. *Id.*

26. *Id.* at 364.

27. *House*, 72 N.E.3d at 369.

28. *Id.* at 363.

29. Brief for Petitioner at 58–59, *People v. House*, 72 N.E.3d 357 (Ill. App. Ct. 2015) (No. 11–0580).

30. *Id.*

31. *Id.* at 64.

and *Miller v. Alabama*, all of which included international comparative discussions of criminal justice practices for child defendants.³² The defenders also cited to articles that included discussion of international sentencing practices for juveniles and young adults.³³

The Illinois appellate court took these human rights arguments and ran with them. In its decision, the Court discussed the U.S. Supreme Court decisions in depth.³⁴ The Court noted that Illinois had raised the age from 17 to 18 in 2014, and recognized that several other U.S. states had recently raised the age for mandatory sentencing as well.³⁵ And, notably, the Court spent a whole paragraph of its decision discussing the juvenile sentencing practices of several European countries, including Germany, Sweden and the Netherlands.³⁶

Accordingly, the Court held that “we find that defendant’s mandatory sentence of natural life shocks the moral sense of the community... We vacate defendant’s sentence of natural life and remand for a new sentencing hearing.”³⁷

The appellate defenders in this case made good use of human rights arguments. The defenders cited to articles and cases that emphasized international sentencing practices as ideal, and compared U.S. practices to the international practices. This is an example of a “human rights argument,”³⁸ which includes referencing another country’s prac/MCID 37 >>BDC 10.56-00 1(i)5.2 (nr)3.8 (f)3.5 (0.56-0 nD

mandatory sentencing practices look “backward” or at least out of line with the international practices.

This type of comparative international argument, where U.S. practices are compared with international practices, seems to work well with decision makers in the United States. Maybe this type of argument works because it begins to reveal the fallacy of the deeply ingrained belief in American exceptionalism.⁴¹ Arguments that compare and contrast U.S. and international practices, and lump the United States together with countries whose practices the U.S. general public does not generally like or think of as advanced, such as North Korea, Sudan, Iran, also resonate strongly with judges.⁴² It is particularly striking for a country that thinks of itself as exceptional to be portrayed as unexceptional.

The comparative international argument may also work because it has been heard by decision makers before and so much in our modern society is transnational. What we do for work, where we travel, what we buy, what we eat, all involves transnational practices. The comparison of hot house tomatoes from the United States and Mexico⁴³ is the norm, something we do in grocery stores every day, and it should not be surprising these international comparative arguments resonate with judges.

*B. Case Example Two: Rivero v. Montgomery County, Maryland*⁴⁴

Migrant farmworker attorneys across the United States struggle to get access to their clients, who often live and work on farm property.⁴⁵ Attorneys and outreach workers across the United States have faced trespassing charges when trying to get access to their clients and conduct outreach on farm property.⁴⁶ This case, *Rivero v. Montgomery County*, involves trespassing charges issued against a Maryland Legal Aid Bureau, Inc. (“Maryland Legal Aid”)⁴⁷ farmworker

Can't the US?, CNN, Aug. 29, 2017, <https://www.cnn.com/2017/08/29/opinions/dutch-america-storms-opinion-ghitis/index.html> [<https://perma.cc/XWH7-H9GP>].

41. See, e.g., GODFREY HODGSON, *THE MYTH OF AMERICAN EXCEPTIONALISM* 128-129 (2009); Harold Hongju Koh, *On American Exceptionalism*, 55 *STAN. L. REV.* 1479, 1484-85 (2003); Resnik, *supra* note 5, at 1575.

42. See, e.g., *Roper*, 543 U.S. at 577.

43. See Dan Charles, *The Search for Tastier Supermarket Tomatoes: A Tale in Three Acts*, NAT'L PUB. RADIO, INC. (Jun. 3, 2016, 4:58 AM), <https://www.npr.org/sections/thesalt/2016/06/03/479632322/the-search-for-tastier-supermarket-tomatoes-a-tale-in-three-acts> [<https://perma.cc/BV96-DCQH>].

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outreach worker and a legal intern who were attempting to visit potential clients on farm property.⁴⁸ Maryland Legal Aid, along with others, brought this case and successfully used human rights arguments in their complaint.

In *Rivero*, the owners of a farm called the police after finding Ms. Rivero, a farmworker outreach worker for Maryland Legal Aid, and her colleague, a legal intern, on their property.⁴⁹ The Montgomery County police officer who responded issued trespassing tickets against Ms. Rivero and the legal intern.⁵⁰

Maryland Legal Aid's complaint was filed in federal court against both the

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or federal court judge does not normally see international documents cited to in a brief. This can help a case stand out.

This use of human rights reports in litigation in a U.S. court by Maryland Legal Aid demonstrates how advocacy before international forums and international mechanisms can help prove facts in state and local courts, especially when seeking to survive a motion to dismiss.

C. *Case Example Three: Belanger v. Mulholland*⁶⁹

In the *Belanger* case, the Supreme Court of Maine held that the implied warranty of habitability includes running water and a functioning toilet.⁷⁰ The legal aid attorney who brought and argued this case, Judy Plano of Pine Tree Legal Assistance (“Attorney Plano”),⁷¹ offered a terrific example of structure for a human rights argument.

The facts of this case stand out as p535f8 (t)5.(n r)3. (nd)3p (o04 Tm w)C.l -0.0535f8 (t)(5)0.8 (re)-2.ru

Then, in March 2009, the toilet would not flush.⁸⁰ The landlord, again, refused to make repairs.⁸¹ The Belangers then resorted to hauling their human waste in a bucket outside to the septic tank.⁸² This continued for five months.⁸³

In May 2009, with help from Attorney Plano, the Belangers sued their landlord for breach of the implied warranty of habitability.⁸⁴ The trial court found for the Belangers, but found the combination of both the lack of water and sanitation were “together sufficient” to constitute a breach of the implied warranty of habitability, and awarded the Belangers \$2,500 in damages for the five months of rent they were without a functioning toilet.⁸⁵ The Belangers moved to amend to include damages for the four months that they were without water.⁸⁶ The court denied that motion.⁸⁷

The Belangers appealed, and in the brief on appeal Attorney Plano argued that the lack of running water was in and of il 25 (i)-66.6 (2 (l)5.3846.1 (a)044 (gue)0.9p/05 (or)3.4 (t)5.3

world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.⁹³

She cited to U.S. cases that support and restate this proposition,⁹⁴ including the *Roper v. Simmons* case,⁹⁵ from which the quote is taken.

Attorney Plano then went on to argue that “[u]nder international human rights norms, the mere fact that the Belangers had a roof over their heads fails to satisfy applicable legal standards.”⁹⁶ She cited to the International Covenant on Economic Social and Cultural Rights,⁹⁷ the U.N. Committee on Economic, Social and Cultural Rights,⁹⁸ the U.N. Special Rapporteur on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation,⁹⁹ the U.N. Secretary General,¹⁰⁰ and the U.N. High Commissioner for Human Rights,¹⁰¹ all interpreting the right to adequate housing.

Attorney Plano continued by arguing that “[t]he right to water is an essential cornerstone for realizing the right to an adequate standard of living as well as the right to health.”¹⁰² She also cited to the Universal Declaration of Human Rights,¹⁰³ reminded the Maine Supreme Court that the United States helped draft the Universal Declaration, and quoted the Universal Declaration: “Everyone has the right to a standard of living adequate for the health and well-being of himself

93. Brief for Appellants at 16, *Belanger v. Mulholland*, 30 A.3d 836 (Me. 2011) (No. KEN-11-132).

94. *Id.* Specifically, Plano cited to a former Maine Supreme Court case where the court had looked to European common law to support finding parents had a fundamental right to control the upbringing of their children. *State v. Wilder*, 748 A.2d 444, 449 n.6 (Me. 2000).

95. *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

96. Brief for Appellants, *Belanger v. Mulholland*, 30 A.3d 836, at 16.

97. International Covenant on Economic, Social and Cultural Rights art. 11, ¶1, Dec. 16, 1966, 993 U.N.T.S. 3.

98. U.N. Office of the High Comm’r for Hum. Rts., *Committee on Economic, Social and Cultural Rights General Comment No. 4: The Right to Adequate Housing (Art. 11(1) of the Covenant)*, ¶1, U.N. Doc. E/1992/23 (Dec. 13, 1991).

99. Special Rapporteur El Hadji Guissé to the U.N. Comm’n on Human Rts., *Economic, Social, and Cultural Rights: Relationship between the enjoyment of economic, social and (‘)Tjuilttsal*

ended with an argument for interpretation of the local warranty of habitability statute in line with international human rights standards.¹¹²

Here is a roadmap for making a human rights argument, modeled after the well-structured argument that was used by Attorney Plano in *Belanger*:

1. Make arguments based in local, state, and federal law
2. Explain why human rights law is relevant to this court and this decision maker
3. Introduce your “hook” to human rights law
4. Introduce the human rights law itself
5. Analyze your facts using human rights law
6. End by arguing for an expansion or reinterpretation of U.S. law based on the human rights standards.

This roadmap offers an effective structure for including a human rights argument in a state court brief, and can be replicated by other legal aid attorneys and public defenders considering the inclusion of an international human rights argument in a state or local brief.

II. PRACTICAL ADVICE FOR USING HUMAN RIGHTS ARGUMENTS IN U.S. COURTS: TAKEAWAYS AND CAUTIONARY NOTES

The case examples discussed in this Article are meant to demonstrate how, practically-speaking, human rights documents, reports, and human rights treaties, can be used in domestic litigation. A few of the takeaways that can be drawn from these cases include the following.

First, consider using human rights reports and other human rights documentation as evidence to help you build your case. This is what Maryland Legal Aid did in the *Rivero* case.¹¹³

Second, when the facts of a case are so shocking and so outside of international human rights standards or norms, consider using human rights arguments and citing to international human rights documents to get the judge or decision maker’s attention. Using human rights can help emphasize that this is not just another case among thousands. Attorney Plano successfully used human rights in this way to help highlight the egregious facts of the *Belanger* case.¹¹⁴

Third, structure and build your human rights argument carefully. Begin by comparing local law and practices to statewide law and practices, and then look at federal law and nationwide practices. Top off those local, state, and federal arguments, with the international human rights perspective on these same

112. *Id.* at 16–18.

113. See *supra* Part I.B.

114. See *supra* Part II.C.

practices. This is the argument structure that the appellate defenders used in the

