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Examining the Intentional Use of Rhetoric in Legal Argumentation to Advocate for Foster Care Reform

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An Undergraduate Honors Thesis
Submitted to the Faculty of
Mississippi State University
in Partial Fulfillment of the Requirements
for the *Cursus Honorum*
in the Shackouls Honors College

Mississippi State, Mississippi

May, 2020

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Introduction

Traditionally, legal practitioners have been taught to present arguments in a straightforward manner devoid of emotion or unnecessary details, especially when submitting written pleadings (Farber & Sherry 1996, Lawshelf Educational Media n.d.). However, this is not the strategy one sees deployed when reading the following excerpts: "Kenny A. is a two-year-old boy who is in foster care...because of neglect" (Children's Rights 2003, "Amended Complaint" 52-3); Maya C., a sixteen-year-old girl in foster care due to physical abuse, lives in "a dimly-lit cubicle...[with] inadequate light, space and privacy for her to study or read...has no place to secure her property and, as a result, many of her possessions have been stolen...[She] is regularly exposed to dangerous, unsanitary and unhealthy conditions...and often sees roaches" (Children's Rights 2003, "Amended Complaint" 61); Phelicia D., a twelve-year-old girl in foster care, was "abused and neglected and was a victim of child prostitution" (Children's Rights 2003, "Amended Complaint" 65).

These are sentences one normally expects to find in a news story or novel; and yet, they are direct quotations taken from Children's Rights' 125-page legal complaint which led to the class action lawsuit *Kenny A v. Deal*, brought against the state of Georgia for the atrocities taking place in its foster care system. This complaint is not an outlier among Children's Rights' work. Rather, this approach to legal advocacy is consistently used by Children's Rights across the 21cases it has brought over the last 40 years. This style of complaint writing is salient for both rhetorical and legal scholars for two main reasons. First, when one thinks of legal arguments, one normally pictures compelling claims backed with facts and logic. Emotional appeals are often considered to have no place in legal advocacy, especially in the pleadings that initiate the litigation. Typically,

complaints are presented in a matter-of-fact manner that simply states facts without including distracting, emotionally evocative details that are irrelevant to the substance of the argument (Lawshelf Educational Media n.d., Legal Writing Center n.d.). However, Children's Rights' complaints strategically use facts combined with specific heartbreaking stories of children abused in the various state foster care system to build its cases. This goes against what is traditionally expected in a legal pleading. Second, when one thinks of advocacy, one usually pictures marches and protests – actions that are outside of or against "the system" (the government/those in power). However, Children's Rights is advocating for reform using already existing legal channels *within* the system to bring about change *within* the system. Both the unconventional use of rhetoric in legal pleadings, and the fact that this advocacy movement is taking place within the system instead of outside it, make Children's Rights' legal complaints salient rhetorical artifacts worth studying.

I argue that Children's Rights innovates an effective rhetorical structure for bringing about change through legal advocacy by strategically combining unconventional rhetorical strategies within written legal pleadings to successfully appeal to audiences both within and beyond the legal system. In this paper I will examine the use of pathos (emotional appeals) and logos (appeals based on reason) in legal rhetoric, as represented by five Children's Rights' complaints, to identify ways these types of rhetorical appeals can be combined with traditional legal argumentation to make a successful, appealing case. First, I will provide background information about Children's Rights' work and the way its advocacy strategy has evolved over the decades. Second, I will review the existing scholarship on the relationship between rhetoric and legal argumentation to contextualize Children's Rights' innovative advocacy style. Third, I analyze five representative legal artifacts from the online archive maintained by Children's Rights to determine (1) the components of the rhetorical situation within which the artifacts are situated, paying particular attention to audience;

and (2) the ways pathos, ethos, and logos appear in each artifact. I conclude by discussing the implications of my analysis and its importance for our understanding of legal rhetoric more broadly.

History of Children's Rights' Legal Advocacy

The group I am studying is Children's Rights, a nonprofit organization formed in 1995 out of the New York Civil Liberties Union to advocate for reform in state foster care systems through, as their website explains, "relentless strategic advocacy and legal action [to] hold governments accountable for keeping kids safe and healthy." Children's Rights uses a variety of advocacy methods to focus on both state-wide foster care reform and the special focus areas of LGBTQ rights, psychotropics, and unaccompanied minors. The most interesting advocacy method used by Children's Rights is the legal pleadings it writes to initiate both class action and individual lawsuits. It is through these documents that we see Children's Rights employ a nontraditional legal-writing style that breaks conventional legal advocacy norms.

Children's Rights is composed of senior and regular staff, a board of directors, an advisory council, a southern steering committee, and a young professional leadership council (Children's Rights 2020, "Children's Rights"). In addition to its staff and legal teams, Children's Rights hosts events to raise awareness of its work and provides the opportunity for people to give donations to help fund its campaigns. It has an extensive, up-to-date website that it uses to disseminate information about its advocacy efforts and has active social media accounts on Twitter, Facebook, and Instagram.

On its website, Children's Rights has detailed records of its press releases, publications, fact sheets regarding aging out of the foster care system, finding permanent families, child abuse and neglect, and foster care, and detailed records of all its legal cases, with an overview of each case, all legal documents related to the case (including the original case complaint), and all recorded media coverage. Each of Children's Rights' twenty-one class action lawsuits is named after a child and uses personal stories of children abused in state foster care systems, combined with facts and statistics about violations of these systems' laws, to make a compelling argument through the courts partially directed at state foster care providers calling for necessary changes in child welfare systems across the United States. Children's Rights' website serves a secondary function as well, helping Children's Rights also address a broader public audience to raise awareness of its work in a way that enables the organization to combine traditional and legal advocacy methods. Without its online presence, the majority of Children's Rights' advocacy work would be restricted to the legal sphere. However, having a website and social media accounts enable it to make its work more widely accessible and publish regular updates about its successes. This allows Children's Rights to share its efforts with an external, non-legal audience, thereby addressing the dilemma faced by many advocacy organizations – having to decide whether to focus one's efforts primarily toward audiences within or beyond the legal arena.

The primary source for my rhetorical artifacts is Children's Rights' online legal archive cataloging each class action lawsuit with its accompanying documents. Utilizing the materials available there, I will be analyzing the following five legal complaints filed by Children's Rights over the past four decades: *G.L. v. Sherman* (1977 – the first complaint recorded on file on Children's Rights' website), *Juan F. v. Malloy* (1989), *Charlie & Nadine H. v. Christie* (1999), *D.G. v. Yarbrough* (2008), and *H.G. v. Carroll* (2018). I chose these complaints because, after

conducting a precursory analysis of each and comparing them closely, I determined that they serve as a representative sample of Children's Rights' rhetorical legal advocacy strategy. These cases illustrate the general rhetorical approach Children's Rights has embraced relatively consistently, as well as the ways its particular rhetorical strategies have evolved over the years. These complaints are representative not only of the stylistic evolution of Children's Rights' work but also are spaced out over relatively even intervals (ten-year periods) since the organization's inception.

Children's Rights 1977 *G. L. v. Sherman* complaint marks the first use of Children's Rights' broader rhetorical approach to legal advocacy. This complaint was filed in Jackson County, Missouri, on behalf of five plaintiffs and the class at large. It is twenty-three pages long and structured like a traditional legal pleading, relying primarily on facts and statistics rather than emotional appeals. It has no narrative quality; rather, it focuses on stating facts and concisely articulating what laws and rules have been violated to justify the plea for the state to step in and reform Missouri's foster care system. There does not appear to be any attempt to personalize the complaint to tug at the audience's heartstrings. Rather, only an average of one to two pages is spent sharing the story of each child, and each detailed description of abuse is presented in a matter-of-fact, concise way.

The second complaint, *Juan F. v. Malloy* (1989), takes place in Connecticut on behalf of nine named plaintiffs, all other present and future children in the Connecticut child welfare system, and any child not in the system at risk of maltreatment. Although this complaint is similar to *G.L. v. Sherman* in the way it begins by presenting each plaintiff's name in a matter-of-fact manner rather than giving detailed narratives of each child as they are introduced, we begin to see Children's Rights introduce pathos in this complaint. Starting on page sixteen, it spends the next

twenty-two pages detailing each child's story, bringing an important emotional aspect to an otherwise logos-heavy complaint. *Juan F. v. Malloy* is also significantly longer than *G.L. v. Sherman* (eighty-six pages as compared to twenty-three).

Fast-forwarding another decade, the *Charlie & Nadine H. v. Christie* 1999 complaint takes place in New Jersey on behalf of seven named plaintiffs, the more than 9,000 children in the New Jersey child welfare system, and the tens of thousands of other children across the state at risk of maltreatment. In this complaint we again see a shift in the rhetorical strategy deployed by Children's Rights. Rather than having an introduction, this complaint goes straight into naming the plaintiffs. After providing this information, it *then* goes into its introduction where it details the reasons for the complaint and sets the stage for more in-depth renditions of the plaintiffs' stories. Each story is relayed in extensive detail that, while heartbreaking and memorable, is not necessary for the legal aspect of the complaint, since at the end of each plaintiff's story there is a summary paragraph that details the legal violations outlined above. As my analysis will suggest, the specific details of each plaintiff's story potentially function more to capture the reader's attention and pull at their heartstrings than to establish legal precedent or make a legal argument, since that could be accomplished by merely sharing the final paragraph of each plaintiff's section. This complaint is fifty-two pages long and spends about two to four pages on each child/sibling group's story. This is twice as many pages as Children's Rights used to share its plaintiff's stories in its first case in 1977. In total, two-fifths (twenty-two pages) of the *Charlie & Nadine H. v. Christie* complaint is spent conveying emotion-driven narratives about the plaintiffs' abuses. Similar to *Juan F. v. Malloy*, it uses pathos more significantly than the 1977 complaint but ultimately still relies heavily on logical appeals and traditional legal argumentation based on facts, data, and previous legal precedent.

The 2008 complaint *D.G. v. Yarbrough* takes place in Oklahoma on behalf of nine named plaintiffs and over 10,000 children in the Oklahoma child welfare system. In this complaint we see a much stronger emotional appeal employed from the very beginning. Within the first page of its introduction, the pleading tells a short, detailed, heartbreaking story about the abuses suffered by a small girl called C.S. Including the story at the very beginning of the complaint is unnecessary to establish the legality of the plaintiffs' argument, since the complaint later spends thirty-two and one-half pages detailing the abuses of each plaintiff further down in the document; however, sharing C.S.'s story on the first page serves as a way to captivate the reader's attention and emotions. This rhetorical strategy relies more heavily on emotional appeals than logical arguments when compared to the previous three complaints.

Finally, Children's Rights' most recent complaint I am analyzing is the 2018 *H.G. v. Carroll* complaint, which takes place in the southern region of Florida on behalf of seven named plaintiffs, the 2,000 children in the region's foster care system, and all youths likely to soon be in the system. In this complaint we see the greatest amount of emotional appeals incorporated out of the five complaints under consideration. Especially when compared to Children's Rights' first case from 1977, the contrast is stark. In its opening statement, *H.G. v. Carroll* tells the story of two girls abused in the Florida foster care system who committed suicide. There is a specific footnote at the end of page 3 stating, "Neither of these deceased Minors nor their estates are plaintiffs herein," and yet, Children's Rights still decided to include these girls' stories in its complaint. This information is not necessary to build the case, but it definitely attracts the reader's attention and invites an emotional reaction. The section detailing each plaintiff's unique story stretches from page 5 to page 30, spending up to nine pages on each child. This is a stark contrast to the consistent one to two pages spent on each child in the *G.L. v. Sherman* complaint. Something else interesting

to note about the 2018 complaint is that there are several sentences and phrases throughout where Children's Rights has bolded and italicized the text to draw the reader's attention to these sections. This is unnecessary from the legal standpoint of crafting one's case, as the information is the same whether it is visually emphasized or not. However, accentuating the text has an effect on the reader's interaction with the complaint and causes greater attention to be placed on these sections – sections that lend themselves to inciting emotional responses from the reader.

The progressive increased reliance on emotional appeals throughout Children's Rights' complaints over the past forty years should intrigue scholars of legal rhetoric because it falls so far outside of the rhetorical conventions of legal arguments in traditional complaints. As will be explained in the literature review section, within the legal system, there is rarely anything to gain from writing extensive complaints. Rather, crafting long complaints can actually serve as a disservice since it could appear that the complaint writer does not understand how to adhere to the conventions of this rhetorical genre, and the reader could be less likely to read the document in its entirety. In the rhetorical analysis of these artifacts, I will examine the points of similarity and difference within and among the complaints to identify ways that the Children's Rights rhetorical legal advocacy approach can be generalized and applied to other similar advocacy campaigns. However, this analysis requires first understanding how the intentional incorporation of rhetoric in legal argumentation has been viewed among both the rhetorical and legal scholarly communities.

Theorizing the Rhetorical Dimensions of Legal Argument

In order to understand how Children's Rights' legal advocacy method is innovative, thereby identifying ways similar organizations can replicate this strategy and scholars can further explore rhetoric as a part of legal argumentation, we must establish three things. First, what is the rhetorical context and lens through which these complaints will be analyzed? Second, what is the relationship and history both rhetoricians and legal scholars have with combining rhetoric and legal argumentation, specifically with regard to the use of logos, pathos, and ethos? Third, how is the structure of a legal complaint different from that of legal cases, which are what is commonly thought of when one considers legal argumentation? These three points are important to establish so we can better understand how the larger scholarly conversation regarding the relationship between rhetoric and the law helps explain some of the innovative ways Children's Rights approaches conducting advocacy work through the legal system.

Lloyd Bitzer's (1968) theory of the rhetorical situation provides the foundation on which my analysis is built because it equips us to understand the interplay between rhetorical context and discourse. Bitzer (1968) defines a rhetorical situation as "a complex of persons, events, objects, and relations presenting an actual or potential exigence which can be completely or partially removed if discourse, introduced into the situation, can so constrain human decision or action as to bring about the significant modification of the exigence" (6). The term *exigence* refers to "an imperfection marked by urgency ... a defect, an obstacle, something waiting to be done, a thing which is other than it should be" (Bitzer 1968, 6). A *rhetorical* exigence is one in which the problem can only be improved or solved through discourse (Bitzer 1968, 6). If a problem exists,

but discourse cannot help resolve it, it does not qualify as being a rhetorical exigence (Bitzer 1968, 6).

Within a rhetorical situation, there are three main components: (1) the *exigence* that led to the situation in the first place, (2) "the *audience* to be constrained in decision and action, and [(3)] the *constraints* which influence the rhetor and can be brought to bear upon the audience" (Bitzer 1968, 6). Bitzer (1968) theorizes the audience as those individuals who can be "distinguished from a body of mere hearers or readers: properly speaking, a rhetorical audience consists only of those persons who are capable of being influenced by discourse and of being mediators of change" (7). Understanding the rhetorical exigence, audience, and constraints within which Children's Rights is operating will be important when analyzing their complaints. As we will see in my close analysis of Children's Rights' work, Bitzer's perspective helps us make sense of the unexpected rhetorical choices of Children's Rights' legal advocacy. When examining Children's Rights' complaints, one can see that the rhetorical exigence arises from the thousands of children being abused and overlooked in the different state foster care systems. Rhetorical discourse is necessary to raise awareness of this problem and lead the federal government to step in and resolve this issue.

In addition to the broader theoretical perspective Bitzer offers, which is a sort of global view that takes all features of a rhetorical situation into account, we also need a micro view that demonstrates how individual rhetorical strategies operate in a broader rhetorical situation. One aspect of this micro view is the three artistic proofs (*pisteis*) which I will examine specifically in Children's Rights' legal complaints. These pisteis are pathos, ethos, and logos. Pathos can be explained as efforts to influence an audience's emotions, or, as Aristotle (1991) states, "[persuasion] through the hearers when they are led to feel emotion by the speech" (1356a). Ethos can be described as performing the character of the speaker. Logos refers to forming arguments

from reason, which is what is typically thought of when referring to legal argumentation. This can be done in several ways, including paradigmatic arguments, which Aristotle (1991) explains as "show[ing] on the basis of many similar instances that something is so" (1356b), and syllogistic arguments, which are formed through deductive reasoning. I will be focusing primarily on the use of paradigmatic and syllogistic arguments within Children's Rights' complaints.

In addition to understanding the rhetorical situation and the individual concepts of logos, pathos, and ethos, it is also important to understand the relationship and history both rhetors and legal scholars have with rhetoric and the law. Recognizing that legal proceedings are themselves a rhetorical situation, one that has markedly different exigence, audiences, and constraints than the court of public opinion, can help legal practitioners more effectively convey their arguments. Unfortunately, legal scholars have not always been willing to acknowledge this connection between rhetoric and the law.

According to Anapol (1970), the original reason rhetoric emerged as a civic practice and field of study was for legal purposes: "[T]he need to present cases in court was a basic reason for the development of rhetoric in classical Greece" (1). However, ancient rhetoricians disagreed on what rhetorical artifacts should be included in legal reasoning. For example, Aristotle believed forensic arguments should be based on facts alone and emotions should be left out of legal argument whenever possible (Anapol 1970, 1) while Cicero argued in favor of using emotional appeals in legal rhetoric since people respond more to feeling than logic, and the best way to fight feeling is with other feelings (Anapol 1970, 3).

Once the Greek and Roman empires fell, attitudes toward using any form of rhetoric in legal reasoning, emotional or otherwise, changed. In response to the "pagan ways" of the Greeks and Romans, the Catholic Church attempted to purify Europe by shunning the use of rhetoric in

legal practices during the Middle Ages. Under the feudal system, brute strength was valued over legal argumentation. According to Anapol (1970), "Such rhetoric as existed was practiced mainly in the sermons of the priests and in the work of the professional writers of letters … It was under these conditions that men almost completely lost sight of the once intimate connection between law and rhetoric" (4-5). Due to the challenges of hostility from the church, and the overall decline of literacy and education during the medieval period, the concept of rhetoric that survived this period was distinctly different from that of the Greco-Roman period (Anapol 1970, 5). This change in the relationship between rhetoric and legal argumentation lingered long after the Middle Ages.

As law and rhetoric continued to develop separately, the problem arose in the early American legal system that "the law student was trained almost exclusively in the searching out and the interpretation of legal cases bearing upon the subject he was considering, [which] produced a lawyer who was more at home in the law library than in the courtroom" (Anapol 1970, 6). Chief Justice Arthur T. Vanderbilt complained that this led to fewer lawyers being able to actually communicate ("General Education and Law Training in the Making of a Great Lawyer" as cited in Anapol 1970, 6). This dilemma prompted a push for increased incorporation of the study and effective use of rhetoric in legal argumentation, and eventually rhetorical practice became more widely accepted in the modern American legal system. However, this history of shunning rhetoric in the early American legal system still lingers today. While most lawyers accept certain forms of rhetoric in legal argumentation, they are more hesitant of others, especially the use of emotional appeals (Farber & Sherry 1996; Greene 2013).

According Levine and Saunders (1993), modern lawyers deploy logos, ethos, and pathos in both oral arguments and written briefs since arguments based on logic rely primarily on deductively applying rules to facts and "the analogizing of precedents"; emotional appeals rely on

"a court's sense of fairness, sympathies, or desire to avoid a harsh result"; and ethical arguments establish a sense of "credibility, accuracy, and good faith on the part of lawyer and client" (Levine & Saunders 1993, 4). Frost (1988) echoes this sentiment by arguing that modern lawyers "employ classical rhetorical devices even at the paragraph and sentence level to make arguments more effective. Antithesis and parallelism are especially favored as means of juxtaposing and contrasting rulings, facts, and policies" (412).

However, consistent with Anapol's (1970) writings, Levine and Saunders (1993) go on to explain that "[c]onceptual frameworks for understanding the relationship between rhetoric and the law are not currently represented in law school curricula" (Levine & Saunders 1993, 10). Berger (2010) reinforces this, stating that most second- or third-year law students focus their legal analysis on "what they regard as the only relevant questions: What's the rule? What facts are relevant under the rule? Given the rule and the facts, what arguments could you make? What's the right answer?" without giving thought to the rhetorical situation, which "might be considered wholly irrelevant in legal analysis" (15).

Rather than studying legal arguments through a rhetorical lens, Levi (1948) explains that most law students are taught to argue case law and the interpretation of statutes and the Constitution by reasoning from example or comparing facts from case to case (501). He explains it as a "three-step process described by the doctrine of precedent in which a proposition descriptive of the first case is made into a rule of law and then applied to a next similar situation. The steps are these: similarity is seen between cases; next the rule of law inherent in the first case is announced; then the rule of law is made applicable to the second case" (Levi 1948, 501-2). Farber and Sherry (1996) explain further that rhetorical strategies such as storytelling or emotional appeals are often especially frowned upon in legal circles, because "storytelling has been the object

of resistance in the legal academy ... Law, too, has often been seen as the province – whether in reality or only in aspiration – of reason rather than emotion" (50). This is due to the belief that reason is superior to rhetoric, which leads legal scholars to favor "the rational aspects of language over the emotive" (Farber & Sherry 1996, 50).

Keeping in line with Farber and Sherry's (1996) claim that storytelling and emotional appeals are especially unfavorable in constitutional arguments, Greene (2013) explains that some scholars who study constitutional law "typically ignore or dismiss emotional appeal as a standard mode of persuasion" (3). Philip Bobbitt, a taxonomist of constitutional argument, states that pathetic argument "has to do with the idiosyncratic, personal traits and thus reflects one feature of illegitimate judicial opinions which is often confounded with [ethical argument]" (quoted in Greene 2013, 3).

However, Greene disagrees with this viewpoint, claiming that "appeals to pathos are an important element of constitutional practice" (Greene 2013, 5) since "pathetic argument is essential to lawmaking because emotion is integral to public morality" (Greene 2013, 7). Greene (2013) argues that the use of pathos is inevitable because it is impossible to live in a world devoid of emotion; therefore, instead of denying that pathos exists in legal rhetoric, Greene contends it is better to "develop and support a set of best pathetic practices. Treating emotional appeals as forbidden allows them to proceed when unnoticed" (71).

Greene's (2013) point of view is supported by the American Bar Association, which states in its 2001 handbook, *The Winning Argument*, that a lawyers should "associate [their] case with [their] listener's values … frame issues in emotionally compelling terms … recognize that judges are subject to emotion … [and be] sensitive to your listeners' feelings" (quoted in Greene 2013, 17). Based on this, Greene argues that "an American lawyer's professional duties at least permit

and may require him to offer a pathetic argument whenever he believes such an argument is more likely than not to advance his client's interests" (Greene 2013, 18). However, when pathetic appeals are made, the moral implications of appealing to the audience's emotions must be taken into consideration.

According to Greene, emotional appeals are accepted, and often welcomed, in legal rhetoric when dealing with criminal law. Examples of how pathos can be used include "[p]leas for mercy based on childhood trauma, dependent partners and children, good deeds, amicability, or other factors" (Greene 2013, 14). In this case, pathos is used to incite feelings of pity and mercy in the judge and jury by drawing attention to the external circumstances that affected the *defendant's* behavior to show that the defendant is actually a victim him- or herself. Of course, Children's Rights is not engaging in rhetorical messaging to defend an individual. Rather, it is using pathetic appeals in a different way. First, its pathetic appeals are used in legal pleadings rather than case or criminal law. Second, its emotional appeals are meant to direct the judge's attention toward the suffering of the *plaintiffs* by telling stories of childhood trauma and other external factors exercised against the plaintiff, rather than the defendant. Understanding how rhetoric and legal argumentation have traditionally worked together helps highlight the many ways Children's Rights' advocacy work through the legal system is presented in an innovative, nontraditional, but successful, manner that can potentially be used as a model for other advocacy groups attempting to conduct similar work.

As mentioned above, Children's Rights is not arguing a legal case but rather a legal complaint. The way it structures its complaints is unconventional from the traditional way a complaint is written. According to the Legal Writing Center at the CUNY School of Law, "The legal function of the Complaint is primary: it alleges facts necessary to state all elements of a legal

claim … the language should be clear and precise." Law Shelf Educational Media, a project of the National Paralegal College, explains that a complaint should be a "concise and plain statement of the factual allegations" with "the purpose of a complaint [being] to set forth, in a concise, straightforward, and logical manner, the relevant facts that support particular legal claims and that entitle you to specific relief, such as damages or an injunction." Considering that a precursory examination of the five Children's Rights' complaints I am analyzing shows that they are extremely long documents with numerous narrative renditions of children's suffering in the foster care system, it appears already that Children's Rights does not employ the traditional structure for legal complaints and instead strays away from legal argumentation focused mainly on precedent and facts to intentionally include pathetic appeals and narrative storytelling.

With this in mind, I believe rhetorical and legal scholars should ask themselves the following two questions when examining artifacts similar to mine. First: *What is the rhetorical situation within which this artifact is situated and who is (are) the audience(s) being appealed to?* Second: *How are pathos, ethos, and logos used in this artifact?* In the analysis that follows, I use these lines of rhetorical inquiry to interrogate the five representative complaints from the Children's Rights online archive.

The Rhetorical Situation and Pisteis in Children's Rights' Complaints

Recall that Bitzer theorizes a rhetorical situation as composed of three parts: the exigence, audience, and constraints. I begin my analysis by identifying these constituent elements of the

rhetorical situation in which Children's Rights' legal advocacy operates. First, the exigence that produced the need for legal advocacy was the fact that every day, tens of thousands of children languish unnoticed in state foster care systems across the United States. These children are under the guardianship of state governments that are responsible for caring for and protecting them, and these systems are failing. However, very little (if any) awareness is being raised about these appalling conditions, and no significant actions are being taken on the part of the state governments to improve their foster care systems. This situation is clearly articulated on page 3 of Children's Rights' 2018 annual report where it draws attention to the fact that half a million children are under the protection of governments that are actually harming the children they are meant to protect. Since these children are "powerless to defend themselves within systems that function out of public view" (3), Children's Rights must step in and use rhetoric through legal advocacy to expose these systems and bring about positive change for all foster youth in the United States.

In each complaint I am analyzing, we find support justifying the claim that this rhetorical situation's exigence results from thousands of children languishing in state foster care systems. The first complaint, *G. L. v. Sherman*, gestures towards the fact that this is a class of children put at a disadvantage by saying, "The plaintiffs, on their own behalf, *and on behalf of the class which they seek to represent*, seek permanent injunctive and declaratory relief to remedy the conditions of their foster homes" (1977, 2, emphasis added). They later indicate a more specific number, stating: "The class is so numerous that joinder of all members is impractical in that, as of this date, there are over 100 children in the class" (*G. L. v. Sherman* 1977, 5-6). *Juan F. v. Malloy* opens by saying, "This is a civil rights class action brought by and on behalf of Connecticut's most vulnerable citizens – all abused, neglected, and at risk children who are in the custody, care, or supervision of the defendant … as well as all other children who have been abused, neglected, or

abandoned or are at risk of such maltreatment" (1989, 1). This includes not only the children specified by name but also "many thousands of children at any one time" (*Juan F. v. Malloy* 1989, 10). In 1989, the number of cases served each month by the Connecticut Department of Children and Youth Services had "increased to more than 14,000" (*Juan F. v. Malloy* 1989, 39) and specific cases involving physical and/or sexual abuse, neglect, abandonment, or being at risk of these dangers had risen in the past year to "13,090 cases involving 20,233 children" (*Juan F. v. Malloy* 1989, 40). The number of children who were in out-of-home placements in January 1989 was 3,612 (*Juan F. v. Malloy* 1989, 41).

In *Charlie & Nadine H. v. Christie*, the class included "all children who are or will be in the custody of the Division" of Child Protective Services (1999, 3). A specific number of approximately 9,250 children is given as the size of the plaintiff class (*Charlie & Nadine H. v. Christie* 1999, 5). *D. G. v. Yarbrough* begins by saying its case is "brought by the Named Plaintiffs, nine children in foster care, on behalf of themselves and the more than 10,000 children in Oklahoma who have been removed from their home by the state … DHS [the Oklahoma Department of Human Services] …have failed in their basic and fundamental duty to provide for the safety and care of these Oklahoma citizens" (2008, 1). The final complaint, *H.G. v. Carroll*, declares approximately 3,500 children are in foster care custody under the Florida Department of Children and Families (DCF), and these children are enduring "ongoing harms, and risks of harm, to themselves and other foster children in DCF custody" (2018, 4). Taken together, all these quotations show that Children's Rights views the exigence as being the failure of state governments to protect the tens of thousands of children under their custody. Because this can only be remedied through the legal system, a rhetorical response is needed.

Regarding this rhetorical situation's audience, Children's Rights' work is directed at two main groups: those within the legal system and those outside it. On the surface, it appears as though Children's Rights' complaints are solely focused on a legal audience. This is supported in two ways. First, Children's Rights specifically names government officials in each complaint. The *G. L. v. Sherman* (1977, 4-5) case calls out the state directors of the Missouri Division of Family Services, county office directors, and the social service supervisor of the Missouri Divisions of Family Services. *Juan F. v. Malloy* (1989, 9) charges the governor of Connecticut and commissioner of the Connecticut Department of Children and Youth Services with having failed the children under their care. *Charles & Nadine H. v. Christie* (1999, 2-3) name its case's defendants as the governor of New Jersey, the New Jersey commissioner of the Department of Human Services, and the director of the Division of Youth and Family Services. In *D. G. v. Yarbrough* (2008, page 10-12), charges are leveled against the governor of Oklahoma and various other state officials directly employed through the Oklahoma Commission for Human Services. Lastly, in *H. G. v. Carroll* (2018, 30-1), Mike Carroll, Secretary of the Florida Department of Children and Families, is the named defendant. Along with these government officials, each complaint is also directed toward a second legal audience – a judge and jury in a federal court (rather than state court).

In addition to the two above-mentioned legal audiences, the fact that Children's Rights' complaints do not follow the traditional structure of a legal pleading but instead are far longer and more emotion-laden raises questions about the fittingness of its rhetorical response. It would not seem to be expedient to break traditional complaint-writing norms when directing one's argument solely at a legal audience. If anything, veering away from "proper" formatting might frustrate or annoy a legal audience. However, including long detailed stories of specific children in each

complaint makes sense if one considers Children's Rights' secondary audience as being those outside the legal system. The availability of the complaints and accompanying documentation and resources on the Children's Rights' website suggests its rhetorical appeals are designed to circulate far beyond the formal institutions of the legal system. Not only does Children's Rights make each full complaint available online so anyone can access it, it also has an entire "In the News" section dedicated to media coverage related to its cases. This shows how Children's Rights' arguments generated in a legal context are being disseminated beyond the courtroom and the initial legal audience through journalists covering these cases (Ballentine, 2019; Langford, 2014; O'Donnell, 2018). Even while directing its arguments at a legal audience, Children's Rights is also crafting its messages in a way that potentially appeals to and is accessible for those outside the legal system.

The fact that the rhetorical situation Children's Rights is facing has two audiences means its response has to speak to both. I argue that the choice to include detailed stories of specific children, even though that information is unnecessary for crafting a strong legal argument, actually represents a prudent rhetorical choice. While non-legal readers may not understand the argument of precedent or the various laws or rules that have been violated, they can understand the suffering of a specific child. In a brochure available on its website, Children's Rights clarifies that its legal advocacy is directed at an external, non-legal audience by stating, "We build cases that expose pervasive failures" (2015, 5). Obviously, the failing state governments are already aware of the flaws in their systems. It is the everyday citizenry that are oblivious to what is occurring and to whom state governments need to be exposed. Understanding the duality of the audiences to whom Children's Rights' legal advocacy is directed can help explain the efficacy of its decisions regarding how to structure, and break, conventional legal complaint-writing norms.

The final component of the rhetorical situation is the constraints under which Children's Rights is operating. While advocating for statewide foster care reform through the legal system may be a successful, effective way to accomplish its work, Children's Rights is still limited in how it can craft and distribute its arguments based on the legal framework in which it has chosen to operate. Although its complaints do deviate somewhat from the "traditional" complaint structure, Children's Rights can only stray so far from "acceptable" legal practices before it is not taken seriously, and its work is dismissed. Not only does this affect the way its advocacy work is presented, but it also limits how much reform Children's Rights can push for. Once its cases have been ruled on, Children's Rights must abide by the decision of the judge and jury. The legal system moves very slowly, and it often takes years for any case to be closed. Since Children's Rights is operating within this system, it is limited in how quickly it can bring about change. Additionally, since Children's Rights does direct its work at two very different audiences, it must strive twice as hard to disseminate its work through multiple channels most appropriate for reaching both groups. Children's Rights can neither *only* advocate through the legal system nor *only* in the public eye. It must find the balance that effectively spreads its message to both groups. This is demonstrated through its website. Accompanying each lawsuit is an "overview" page that explains in lay terms what the case is about and what progress has been made so far. Children's Rights is constrained to intentionally provide information appropriate for both audiences in order to be as effective as possible in its advocacy efforts to reach both groups.

Navigating this challenging and unconventional rhetorical situation requires Children's Rights to get inventive with its deployment of traditional rhetorical appeals. In the analysis that follows, I investigate how the rhetorical pisteis of logos, pathos, and ethos are used throughout each complaint to address the factors identified in the rhetorical situation. The first pisteis we will

examine at-length is logos: arguments created from reason. Children's Rights' use of logos employs a combination of inductive and deductive rhetorical reasoning as manifested through two forms: (1) paradigmatic arguments, which " show on the basis of many similar instances that something is so" (Aristotle 1991, 1365b), and (2) syllogistic arguments, which are arguments formed through deductive reasoning.

Since Children's Rights is disputing its cases as class action lawsuits in federal court, arguing not for one child but on behalf of thousands whom it claims have all had their constitutional rights violated, they must first provide support to demonstrate that the violations they are claiming occurred are not one-off events but rather display a consistent pattern of abuse. This in turn will help support Children's Rights' overall argument that the Constitution protects certain rights, and these rights are clearly, repeatedly being violated by failing state governments' child welfare systems. Understanding the legal constraints within which Children's Rights is operating and the legal audience it is appealing to helps explain why each legal complaint presents numerous detailed renditions of individual children's stories, repeatedly using almost identical wording to express the legal violations occurring in each complaint to demonstrate that the violations are similar and, when combined, form a larger history of sustained abuse. Because paradigmatic argument relies on the demonstration of similarity between discrete cases, the rhetorical strategy of repeating similar factual statements of grievances multiple times for different cases creates a strong argument. Evidence of the way Children's Rights strategically uses logos through paradigmatic arguments can be found in each complaint under review and is best illustrated by the following example pulled from the *Juan F. v. Malloy* complaint:

> Defendants have violated Juan's federal and statutory constitutional rights, including: by failing to make reasonable efforts to avoid the need for foster care placement, by failing to timely develop and implement written treatment plans which contain the requisite elements, by failing to provide timely and appropriate services or make other efforts to

> implement DCYS' plan of adoption, by failing to provide him with proper care and adequate services, by separating him from his siblings, and by failing to protect him from harm. As a result of these violations of his rights, Juan has been deprived of the opportunity for healthy development and a normal childhood, and has been, and continues to be, irreparably harmed. (1989, 19)

This quotation illustrates the general paradigmatic form used repeatedly in Children's Rights' legal rhetoric. Each of the individual children's stories (nine in total) presented in *Juan F. v. Malloy* begin with the same phrase: "Defendants have *violated* [the child's] *federal and statutory constitutional rights*," (1989, 19; 26; 30; 33; 37) creating a sense of similarity across cases. However, the specific detailed violations, such as failing to make reasonable efforts to avoid the need for foster care placement and failing to provide proper care and adequate services, are unique to each child or sibling-group and provide support for the inference of one general conclusion: the state foster care systems are negligent in meeting their legal duties and have violated the children's legal rights.

This same paradigmatic style of argumentation is used throughout the other four complaints being analyzed. In *G. L. v. Sherman*, each child's individual narrative (five in total) ends with almost identical wording: "The injuries and suffering and inadequate care described above was and is *the proximate result of defendants' violations of their duties under the Missouri and United States Constitutions and federal and state statutes and regulations*" (1977, 12; 13; 14; 15, emphasis added). *Charlie & Nadine H. v. Christie* ends each individual claim (seven in total) with the following phrases: "*As a result of the defendants' actions and inactions*, Charlie and Nadine *have been and continue to be irreparably harmed … Defendants have violated* [children's names] *constitutional and statutory rights ... all of which are required by law and by reasonable professional standards*" (1999, 13-14; 15;17; 23; 25; 26; 31, emphasis added).

D. G. v. Yarbrough (2008) formats its complaint differently from the others. Rather than sharing the individual children's stories first and then stating the complaints' main, overarching charges, this complaint first states its charges, supported with facts and statistics, and then provides the individual children's stories as supporting evidence for its argument. However, even though *D. G. v. Yarbrough* (2008) formats itself differently from the others, the ending of its section detailing each child's story is still consistent with what has been seen previously. Each child's story ends with a long paragraph, summarizing the violations enumerated in greater detail in the complaint's preceding paragraphs. All claims of violations are formatted identically, simply citing differences in the charges depending on each child's unique case. No matter the different particulars of each child's situation, every concluding paragraph begins with the phrase "*DHS's policies and practices have caused irreparable harm and continue to subject [the child] to the imminent risk of irreparable harm"* (2008, 45; 49; 52; 53; 58; 61; 66; 71; 76, emphasis added). The repetition of an identical inference at the end of the list of violations encourages the audience to reason paradigmatically across each individual unit of argument making up the larger complaint.

In the final complaint under analysis, *H. G. v. Carroll* (2018), Children's Rights again uses paradigmatic arguments to provide evidence for its overarching claim that the plaintiffs' Constitutional rights have been violated. To support the argument that all children within the class experience similar violations, the final paragraph in each plaintiffs' individual section begins and ends with this identical verbiage (only the name changes each time): "Defendant's actions and inactions, policies, patterns, customs, and/or practices have violated and continue to violate H.G. and M.G.'s substantive due process and federal statutory rights … H.G. and M.G. continue to be at risk of harm as a result of Defendant's actions and inactions, policies, patterns, customs, and/or practices" (2018, 6-7; 8; 16-17; 20-21; 25; 30). This wording does not vary across the seven

plaintiffs specifically named in this complaint. The examples of paradigmatic arguments deployed in each of Children's Rights' complaints demonstrate one way that logos is used in Children's Rights' legal argumentation strategy. It is evident that logos is relied on heavily in the rhetorical approach used for these legal arguments.

Once Children's Rights has used paradigmatic arguments to support its claim that the grievances occurring are frequent and common to those in the legal class, thereby showing its claim must be true based on the inference from the evidence that so many similar violations are occurring, Children's Rights is then positioned to make syllogistic arguments citing a particular state or federal law and/or regulation/section of the United State Constitution as its major premise, referencing as its minor premise the evidence provided through the individual stories, in order to deduce that the plaintiff has violated the children's constitutional rights. In this way, the paradigmatic and syllogistic arguments work hand in hand to advance the overall argumentative case being presented in the complaint. Evidence of this syllogistic supplement to the paradigmatic arguments can be seen in each complaint being studied. We will now closely examine a representative example from the *D. G. v. Yarbrough* complaint:

> A state assumes an affirmative duty under the Fourteenth Amendment to the United States Constitution to protect a child from harm when it takes that child into its foster care custody. The foregoing policies and practices of Defendants...constitute a failure to meet the affirmative duty to protect from harm and to keep reasonably free from harm all Named Plaintiffs and Plaintiff Children... As a result, all Named Plaintiffs and Plaintiff Children have been harmed and are at continuing and imminent risk of harm, and have been deprived of the substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution. (2008, 77-8)

This example is structured syllogistically because it presents a major premise and a minor premise, and then reasons deductively to reach its claim. In the above example, the major premise is that the state has a duty under the Fourteenth Amendment of the United States Constitution to protect the children under its care from harm. The minor premise concerns the specific complaint being

presented and argues that the policies and practices of defendants, demonstrated through the aforementioned paradigmatic arguments, have failed to protect children from harm. Therefore, the audience can deduce that the state is violating the plaintiffs' Constitutional rights as defined by the Fourteenth Amendment. This exact argument structure is portrayed in both the *Juan F. v. Malloy* (1989, 78) and *H. G. v. Carroll* (2018, 58-9) complaints.

Some variations to this structure of arguments are seen in two of the cases: *G. L. v. Sherman* (1977) and *Charlie & Nadine H. v. Christie* (1999). In *G. L. v. Sherman*, there is a much more detailed syllogistic argument with four minor premises to accompany the major premise (1977, 19). A much more significant variation can be seen in the *Charlie & Nadine H. v. Christie* (1999) complaint. In this example, rather than laying out its paradigmatic argument first, Children's Rights states the major premises of its syllogistic argument on pages nine through ten and then utilizes each individual child's story to support its minor premise (for illustration, see pages 13, 23, 25, and 27). It is not until after each of these mini-syllogistic arguments have been made that this complaint then concludes its paradigmatic argument from the aforementioned syllogistic arguments (*Charlie & Nadine H. v. Christie* 1999, 46). This is a reversal of the specific method syllogism and paradigm are intertwined in the other complaints. However, in general, each of the included examples from the various complaints demonstrate how Children's Rights consistently uses syllogistic arguments to strategically incorporate logos into its legal rhetoric.

After examining the above sections, it is easy to see that logos is the dominant rhetorical pisteis used throughout Children's Rights' complaints. However, this in and of itself is not especially noteworthy, since one expects legal arguments to be logos heavy. What is notable is the way each complaint incorporates pathos into its logical appeals. As we saw earlier in the scholarship on legal rhetoric, storytelling and emotional appeals have been resisted in the legal

profession, giving preference to rational arguments rather than emotive ones (Farber & Sherry 1996, 50). Interestingly enough, Children's Rights freely deploys both storytelling *and* emotional appeals in its complaints. This is most evident in the sections using paradigmatic arguments sharing individual children's stories. These passages rely heavily on pathos, which helps humanize the plaintiffs and makes the complaint come alive in a way that transforms the victims into relatable and compelling individuals worth remembering and advocating for. This strategy helps these complaints appeal to Children's Rights' external, non-legal audiences.

Pathos is incorporated into the paradigmatic arguments in multiple ways. One primary strategy is through detailed, narrative, heart-rending stories like the following example:

> Anna currently suffers from *severe feelings of rejection and abandonment*. She continues to act out her *frustration and anxiety* and frequently inquires *anxiously* about whether she can remain in her current placement, or if she again will have to move. (*Juan F. v. Malloy* 1989, 29-30, emphasis added)

Providing descriptions of Anna's emotions allows the audience to better relate to her and experience a compassionate, empathetic response. In the next example, pathos is employed in a way that emphasizes the unnatural abuses these children have endured, inviting a response of righteous indignation and desire to justly punish the foster parent:

> When [the children] were removed by DYFS from their mother's custody because of abuse and neglect, they were placed by DYFS in a foster home where they were again neglected and abused, *including being beaten with broomsticks and curtain rods*. (*Charlie & Nadine H. v. Christie* 1999, 10, emphasis added)

Intentionally stating the children were beaten with broomsticks and curtain rods transforms benign household items into weapons of violence against children instead of serving as symbols of a safe domestic home. This use of pathos creates an emotional appeal that invests the audience in assigning blame to the parents.

Pathos is also used in Children's Rights' complaints to emphasize the horrors of the harms visited on the plaintiffs by forcing the reader to envision what the outcome of such abuse looks like:

> It was not until October of 2007, when J.P. was brought to the hospital *with bruises all over his body caused by his foster mother whipping him with a belt*, that DHS finally removed him from this home. (*D.G. v. Yarbrough* 2008, 60, emphasis added)

Graphically describing J.P.'s wounds paints a vivid picture for the audience that is not easily dismissed and can be related to by most individuals who have experienced a less-severe version of corporal punishment before. This invests the audience more personally in the experience of these children and makes it possible for them to feel deeply about what these children are enduring. In the next example of pathos, rather than employing a narrative style that helps the audience relate to the child's experience, the shared details serve to help the reader grasp the magnitude of horrific experiences the child must have endured to end up exhibiting such self-harming behavior:

> While living in his aunt's home under DYFS supervision, Ricardo's behavior became increasingly disturbed, making clear his need for immediate treatment and help. He attempted to drink Clorox, stuck his fingers in electrical sockets, tried to throw himself in front of a moving car, and ran away from his aunt's home, hitchhiking on the New Jersey Turnpike. He said that he heard voices telling him to do things and also saw monsters. (*Charlie & Nadine H. v. Christie* 1999, 22)

The described behavior is not that typically exhibited by a child raised in a supportive, healthy household. Through the inclusion of this excerpt, Children's Rights is able to more fully convey to its audience the extent of the plaintiff's trauma. The final example of pathos inspires a future-looking emotion in the audience by investing them in the child's story and leaving them with concern for what may happen to the plaintiff if her situation is not remedied:

> On the way to the school, the foster mother ***told L.T. to get out of the car and left her on the street*** with loose change and instructions to take the bus. L.T. did not

> know the bus route – she did not even know the destination with any certainty. (*H.G. v. Carroll* 2018, 14, emphasis in original)

Upon reading this, the audience is not able to simply dismiss L.T.'s situation. The short narrative provides an ending but no closure, leaving the reader wondering whether L.T. arrives safely at school, and inviting the reader to act on their concern. It prompts the audience to consider what its role is in protecting such abandoned children. Ultimately, the excerpts above serve as representative samples to demonstrate one way pathos is employed in Children's Rights' legal rhetoric through narratively structured, detailed descriptions of the individual children's stories.

Children's Rights also utilizes pathos through the incorporation of powerful, emotionally charged wording to make the text come alive to the reader. One example of this is the following passage from *G.L. v. Sherman*: the plaintiffs "have been subjected to *deplorable* conditions" (1977, 2-3, emphasis added). The use of the word "deplorable" rather than "less than ideal," "unsanitary," or some other milder verbiage more strongly conveys to the reader the vileness of the plaintiff's circumstances and emphasizes the extreme horror of the children's living conditions.

In *Juan F. v. Malloy*, pathos is used repeatedly in ways similar to the following example: "Services and placements to assist adolescents in DCYS care to make the transition to independent living … are *woefully* inadequate in the state" (1989, 61, emphasis added). The intentional incorporation of the word "woefully" reminds the reader than the violations being discussed in this complaint should cause the audience grief and outrage. If "woefully" had been excluded, the sentence would have still been structurally sound for a legal argument. However, the incorporation of such an emotionally charged word makes the phrase more memorable and compelling in this context where we would typically expect more clinical phrasing.

In *Charlie & Nadine H. v. Christie*, pathos-laden sentences like the following are common: "Plaintiffs Charlie and Nadine H … *desperately* want to be adopted" (1999, 10, emphasis added).

Children's Rights could have simply said the plaintiffs want to be adopted without including the word "desperately." However, choosing to add this one adverb helps convey the children's feeling of desperation to the audience and makes them sympathize more with the children's situation.

Another example of emotionally-charged verbiage can be found in *H.G. v. Carroll* where it says, "S.A. *languished* for nearly three more months in the restrictive SIPP facility" (2018, 22-23, emphasis added). Instead of merely saying S.A. "spent" three months in the facility, Children's Rights chose to say "languished," conveying a vivid image of a child wasting away in deplorable conditions rather than simply passing time in a temporary home. All of the above quotations provide details for the complaints that are unnecessary from a legal standpoint but increase the emotional appeal of these cases, thereby making them more relatable and memorable for all audiences, and especially those outside the legal system.

The final rhetorical pisteis to be examined in these complaints is ethos. Upon reviewing each complaint, it is evident that while ethos is by no means a dominant rhetorical tool used, excluding the 1977 *G. L. v. Sherman* complaint, every single other complaint intentionally includes a short section demonstrating the rhetor's (in this case Children's Rights') credibility and competency as a legal practitioner. The following excerpt serves as a general representative sample of the way ethos is employed in each of Children's Rights' complaints:

> [The plaintiffs] are represented by attorneys employed by Children's Rights, Inc., a privately funded, non-profit organization with extensive experience in complex class action litigation involving child welfare systems, and by attorneys associated with the law firm of Lowenstein Sandler P.C. who have extensive experience in child welfare and civil rights litigation. Plaintiffs' counsel have the resources, expertise and experience to prosecute this action. (*Charlie & Nadine H. v. Christie* 1999, 6)

Additional examples are easily found in these complaints with slight differences in the specific law firms named. However, the way that these complaints establish the ethos of the litigators is fairly typical of legal rhetoric more generally; unlike the innovations seen in the use of logical and

pathetic appeals, Children's Rights sticks to the conventions of the genre when it comes to ethos. Establishing its ethos, even briefly, is a necessity for Children's Rights, precisely because its legal argumentation style related to logos and pathos is nonconventional. Therefore, it is vital that it establishes early on in each complaint that it is expertly qualified to defend abused children in state foster care systems so its cases are taken seriously and not disregarded by both legal and nonlegal audiences.

Rhetorical Innovations for Future Legal Advocacy

Children's Rights faces a dauting rhetorical challenge in advocating for children neglected and harmed by the state-run foster care systems across the United States. While no one supports the idea of children suffering or opposes the idea of improving the foster care system, it is still difficult to mobilize individuals to take action to fix the system. This is due to several factors. Not only are these children's stories not often featured in the mainstream media, resulting in few people actually knowing how broken the system is, but the abuses faced by these youths are heartbreaking and difficult to deal with emotionally. It is easier for most people to just ignore what is happening and tell themselves someone else with more training and experience will step up to do something to fix it. Convincing everyday citizens that the foster care system is something they should care about and have the responsibility to try to repair is an uphill battle.

Children's Rights' rhetorical challenge is exacerbated even further when operating in a legal system that imagines its argumentation to be arhetorical, and discourages its practitioners

from fully understanding and examining the rhetorical appeals at the heart of their practice. As we saw earlier, legal scholars downplay or actively reject the intentional use of pathos in legal argumentation, but my analysis suggests that Children's Rights' approach exemplifies an innovative advocacy method that strategically combines a full range of rhetorical appeals to reach multiple audiences. The question at hand now is whether or not its strategy effectively conveys to both audiences the magnitude of the social injustice it is trying to rectify and is successful at bringing about the desired positive social change. Is Children's Rights' method something to be emulated by other advocacy organizations or is it unnecessarily long-winded and ineffective? I believe my analysis suggests several lessons for both legal rhetoric scholars and future advocates. First, Children's Rights' innovative advocacy approach offers a compelling alternative to traditional legal rhetoric that can be adopted by other activism groups to bring about lasting, positive social change. Second, the comparative analysis of complaints in this study demonstrates the importance of maintaining a consistent advocacy model across individual cases. Finally, this analysis identifies the need for expanded discussion between legal and rhetorical scholars to further elucidate the rhetorical nature of legal argumentation.

First, regarding the overall success of Children's Rights' legal advocacy strategy, this study has demonstrated that Children's Rights employs an innovative approach that incorporates the rhetorical appeal of pathos into more traditional logos-oriented legal argumentation. I contend that the deployment of both in written pleadings allows Children's Rights expanded opportunities to bring about lasting, positive change in the U.S. child welfare system. The unique rhetorical situation that compels Children's Rights to appeal to two distinct audiences – those within and beyond the legal system – forces Children's Rights to bend the traditional confines of legal complaint writing in order to effectively convey its message to both audiences. Although its

nonconventional complaint writing style and atypical advocacy methods push the boundary of (legal) advocacy norms, Children's Rights' rhetorical strategy appears to be successful. At the time of writing this thesis, 11 of the 17 cases Children's Rights had closed resolved in a consent decree or settlement agreement. Its work has led to fewer Connecticut children being placed in institutions, more children in Georgia receiving regular visits from their case workers, a reduction in the number of children in Michigan growing up as permanent wards of the state, more sibling-groups being kept together in Tennessee, and numerous other successes (Children's Rights 2020, "Foster Care Reform"). By studying the ways Children's Rights strategically employs the rhetorical pisteis of logos and pathos in its legal advocacy, other advocacy groups can replicate this model in hopes of achieving similar successful results.

However, this rhetorical model is not without limitations. First, it relies heavily on extremely shocking stories to use emotional appeals to back up its logical arguments. This means that an advocacy group attempting to bring about similar change through legal channels may not be able to use this same rhetorical model if they are limited with fewer or less extreme stories that will not resonate as powerfully with the audience. Additionally, Children's Rights' advocacy relies heavily on logical arguments that appeal to relatively uncontested norms (e.g., that children should not be harmed). If a similar advocacy movement was trying to make a case for change through the legal system but was trying to argue for something less commonly agreed upon, they may find it harder to construct as effective an argument using this method if their claims cannot be supported by hegemonic ideals.

Second, regarding the specific way Children's Rights' employs logos within its legal complaints, my analysis shows that consist repetition is a strength of the Children's Rights rhetorical approach. As such, I would contend that the deviation seen in *Charlie & Nadine H. v.*

Christie is not very effective. Instead of using its typical deployment of paradigmatic arguments first to later support syllogistic arguments, *Charlie & Nadine H. v. Christie* begins with syllogistic arguments, stating the major premises early in the complaint and then restating the minor premises multiple times before concluding with paradigmatic arguments. Reversing the order in which Children's Rights deploys its syllogistic and paradigmatic arguments in this one complaint makes it harder for the reader to follow Children's Rights' chain of logic and can confuse the audience regarding exactly what argument Children's Rights is making. Comparing the format of the other four complaints that follow a consistent argumentation structure with the divergent structure used in *Charlie & Nadine H. v. Christie*, and seeing how much easier it is to follow the logical arguments in the four complaints rather than that of *Charlie & Nadine H. v. Christie*, I conclude that it is more effective for an advocacy organization to establish a uniform argumentation style and apply it consistently rather than deviating from it and making it more difficult for the audience to know what to expect and follow.

Finally, this study suggests that the broader scholarly conversation about the rhetorical nature of legal argument would benefit from increased integration of legal and rhetorical scholarship. As my survey of the existing literature made clear, legal scholars tend to downplay or completely disregard the importance of rhetoric in legal argumentation. However, rhetoric is still a key component of legal complaints, whether acknowledged or not, and Children's Rights' work demonstrates that incorporating rhetorical pisteis into legal arguments in a more intentional, strategic, and informed way can serve to strengthen one's claims and more fully captivate one's audience, thereby strengthening one's overall legal argument and advocacy efforts.

Finally, this limited examination of representative complaints from Children's Rights' advocacy does not exhaust all insight to be gleaned from analyzing the potential of innovative

legal rhetoric. As such, future scholars interested in legal argumentation as a mode of rhetorical advocacy aiming to bring about positive social change should next investigate how Children's Rights' work and advocacy methods compare to strategies used by other activists working on behalf of disadvantaged children domestically and globally. Work done by groups such as the American Civil Liberties Union (ACLU) and the American Bar Association Center on Children and the Law should be examined to identify both the ways their advocacy methods and rhetorical strategies are similar to and different from Children's Rights' approach. This analysis can help expand on the work done in this thesis to continue refining advocacy strategies and ultimately improve the lives of thousands of members of one of the United States' most vulnerable populations.

Conclusion

Studying Children's Rights' unconventional activism practices has revealed a new form of advocacy that has the potential to ensure experiences like Kenny A's from the opening complaint are far less common and fewer children ever have to suffer again at the hands of those trusted to protect them. Examining the use of pathos and logos in legal rhetoric, as expressed in five different Children's Rights' complaints, has enabled us to identify rhetorical strategies that could create new avenues within tradition legal pleadings to craft successful cases. This advocacy approach could be expanded in the future by other activist groups working on a variety of social issues to protect and improve other lives harmed in different broken systems outside state child welfare programs.

This thesis has demonstrated this by (1) providing background information about Children's Rights' work, (2) examining existing scholarship about the relationship between rhetoric and legal argumentation, (3) closely analyzing five Children's Rights' complaints from the past forty years to answer the rhetorical lines of inquiry identified in the literature review, and (4) explaining the implications and limitations of its findings, both for rhetorical and legal scholars and future advocacy movements.

Ultimately, I argue that Children's Rights innovates an effective rhetorical strategy for bringing about positive, lasting change through legal advocacy. The numerous successes of Children's Rights' work are evidence of this claim. This analysis indicates that Children's Rights' advocacy model of intentionally combining rhetoric with legal argumentation within written pleadings is invaluable, not only for future similar advocacy efforts, but also for saving and improving the lives of thousands of children in the U.S. foster care system. Children's Rights' activism strategy has also provided a solution to the false choice many advocates sometimes fall victim to, believing they must choose between advocating to either a legal audience *or* a public audience, instead of realizing they can do both at the same time, as Children's Rights has modeled.

Given how much is at stake for members of persecuted groups, such as the abused children defended by Children's Rights, we cannot overestimate the importance of crafting effective, powerful rhetorical arguments for improving the world we live in. Children's Rights' model is a compelling innovation since it has so much potential to be a force for good in the world. It is essential to focus greater scholarly attention on the type of work Children's Rights is doing and the unique way it approaches the combination of rhetoric and legal argumentation, specifically in written complaints. Ultimately, rhetorical scholarship is vital so we can continue to hone and refine advocacy strategies to make the world a safer, better place.

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