Fall 2005  Professor Martin Guggenheim

Required Textbook:  CHILDREN IN THE LEGAL SYSTEM, Samuel Davis et al. (3rd Edition 2004)

Selected Handouts

Optional Reading: CHILD, PARENT & STATE, LAW AND POLICY READER,  
(On Reserve)  S. Randall Humm et al., eds. (1994)

WHAT’S WRONG WITH CHILDREN’S RIGHTS  
Martin Guggenheim (2005)

This course will focus on the legal rights, responsibilities and disabilities of parents and children in the American legal system. Particular attention will be given to the interplay and often conflicting interests of children, their parents, and the State. We will examine the historical background and development of the juvenile court, recent decisions involving due process rights of juvenile delinquents, the power of the State to intervene involuntarily into the family to protect children believed to be abused or neglected, the problems and issues involved in children in foster care, the rights of students, the rights of adolescents and “mature minors” in clashes with their parents, the right to sex-related medical treatment and the question of informed consent to medical care.

The course is offered for three credits. Students enrolled may also satisfy the Law School’s “A paper” requirement by writing a paper on a topic related to children and the law and they may, if they wish, receive a fourth credit for the paper. Students will be expected to attend class regularly and to participate in the seminar discussions. There will be a take-home examination at the end of the term.
TENTATIVE CLASS SCHEDULE AND READINGS

Week 1 (September 7) (Legislative Monday)

Introduction

Lecture and discussion on the rights of children.

Readings:

Textbook: pages 384-391; 519-530

In textbook
Painter v. Bannister, 140 N.W.2d 152 (Iowa 1966)
In re Dubreuil, 629 So.2d 819 (Fla. 1993)

Week 2 (September 12)

Judicial Allocation of Power Between Parents and the State - Traditional Cases

Readings:

Textbook: pages 1-39

(In textbook)
Meyer v. Nebraska, 262 U.S. 390 (1923)
Pierce v. Society of Sisters, 268 U.S. 510 (1925)
Prince v. Massachusetts, 321 U.S. 158 (1944)
Wisconsin v. Yoder, 406 U.S. 205 (1972)

(Handout)
Moore v. City of East Cleveland, 431 U.S. 494 (1977)
Week 3 (September 16) (Friday: Note this is a Make-Up Class for October 3 - Rosh Hashanah)

Parental Power to Decide Medical-Related Care

Readings:

Textbook:  pages 630-667; 671-685

(In textbook)
Matter of Hofbauer, 47 N.Y.2d 648, 419 N.Y.S.2d 936 (1979)
Hermanson v. State, 604 So.2d 775 (Fla. 1992)
Newmark v. Williams, 588 A.2d 1108 (Del. 1991)

(Handout)
In re Green, 292 A.2d 387 (Pa. 1972)

(Suggested Reading)
Cruzan v. Director, Missouri Department of Health, 497 U.S. 261 (1990)

Week 4 (September 19)

History of the Juvenile Court

Readings:

Textbook:  pages 857-886

(In textbook)
In re Gault, 387 U.S. 1 (1967)

(Handout)
Robert M. Mennel, Origins of the Juvenile Court: Changing Perspectives on the Legal Rights of Juvenile Delinquents, CRIME AND DELINQUENCY 52-65 (1972)
People ex rel. O’Connell v. Turner, 55 Ill. 280 (1870)
Douglas R. Rendelman, Parens Patriae: From Chancery to the Juvenile Court, 23 S.C. L. REV. 205 (1971)
Week 5 (September 26)

Juvenile Delinquency and Due Process of Law

Readings:

Textbook: pages 888-901; 937-945; 1015-1031; 1130-1142; 1157-1160

(In textbook)
McKeiver v. Pennsylvania, 403 U.S. 528 (1971)
In re J.S., 438 A.2d 1125 (Vt. 1981)

(Handout)
U.S. ex rel. Martin v. Strasburg, 689 F.2d 365 (2d Cir. 1982)
United States v. Tighe, 266 F.3d 1187 (9th Cir. 2001)

Week 6 (October 10)

Constitutional Rights of Adolescents: First Amendment

Readings:

Textbook: pages 130-147; 110-125; 221-228

(In textbook)
Schleifer v. City of Charlottesville, 159 F.3d 843 (4th Cir. 1998)

(Handout)
American Amusement Machine Assoc. v. Kendrick, 244 F.3d 572 (7th Cir. 2000)
Hodgkins by Hodgkins v. Peterson, 355 F.3d 1048 (7th Cir. 2004)

(Suggested Reading)
Action For Children’s Television v. F.C.C., 58 F.3d 654 (D.C. Cir. 1995) (en banc)
Week 7 (October 17)

Constitutional Rights of Children - At School

Readings:

Textbook: pages 245-286; 147-156; 339-355; 1089-1099

(In textbook)
West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)
Bethel School District No. 403 v. Fraser, 478 U.S. 675 (1986)

(Handout)

(Suggested Reading)

Week 8 (October 24)

Constitutional Rights of Adolescents - Privacy and Sex-Related Health Care

Readings:

Textbook: pages 170-221

(In textbook)

(Handout)
Michael M. v. Superior Court of Sonoma County, 450 U.S. 464 (1981)
Week 9 (October 31)

State Authority to Remove Children from Parental Custody

Readings:

Textbook: pages 60-67; 376-384; 509-519; 589-603

(In textbook)
Stanley v. Illinois, 405 U.S. 645 (1972)
Bottoms v. Bottoms, 457 S.E.2d 102 (Va., 1995)
In re Jeanette S., 156 Cal.Rptr. 262 (Cal. App. 1979)

(Handout)

(Suggested Reading)
Juvenile Justice Standards Project, STANDARDS ON ABUSE AND NEGLECT (excerpts)

Week 10 (November 7)

Termination of Parental Rights

Readings:

Textbook: pages 735-750; 760-778; 667-671

(In textbook)
In re M.N.L., 470 S.E.2d 753 (Ga. App. 1996)
In re E.M., 620 A.2d 481 (Pa. 1993)
In re S.R., 599 A.2d 364 (Vt. 1991)
In re A.C., 597 A.2d 920 (D.C. App. 1991)

(Handout)

(Suggested Reading)
Juvenile Justice Standards Project, STANDARDS ON ABUSE AND NEGLECT (excerpts)
Week 11 (November 14)

Foster Care

Readings:

Textbook: pages 686-727; 391-411

(In textbook)
Smith v. Organization of Foster Families, 431 U.S. 816 (1977)
Bennett v. Marrow, 59 A.D.2d 492, 399 N.Y.S.2d 697 (2d Dept. 1977)
Matter of Michael B., 80 N.Y.2d 299, 590 N.Y.S.2d 60 (1992)
Guardianship of Philip B., 188 Cal.Rptr. 781 (Cal. App. 1983)

(Handout)

(Suggested reading)
(Handout)
Juvenile Justice Standards Project, Standards on Abuse and Neglect (excerpts)
Barbara Nelson, Making An Issue of Child Abuse, in Family Matters, Martha Minow, ed. (1993)

Week 12 (November 21)

Adoption

Textbook: pages 67-84; 88-94

(In textbook)
Lehr v. Robertson, 463 U.S. 248 (1983)
In re B.G.C., 496 N.W.2d 239 (Iowa 1992)

(Handout)
(In Chambers)

(Suggested reading)
(In Textbook) pages 781-801
Lofton v. Secretary of Department of Children and Family Services, 358 F.3d 804 (11th Cir. 2004)
Week 13 (November 28)

Miscellaneous Supreme Court Decisions on the Parent-Child Relationship

Textbook: pages 563-576

(In textbook)
Deshaney v. Winnebago County Department of Social Services, 489 U.S. 189 (1989)

(Handout)

(Suggested Reading)

Week 14 (December 5)

Representing Children and the Role of Counsel for Children

Textbook: pages 919-937

(In textbook)

(Handout)
In re Patricia E., 219 Cal. Rptr. 783 (Cal. App.1985)
American Academy of Matrimonial Lawyers, STANDARDS FOR REPRESENTING CHILDREN IN CUSTODY AND VISITATION PROCEEDINGS
Martin Guggenheim, A Paradigm for Determining the Role of Counsel for Children, 64 FORD. L. REV. 1501 (1996)