Fall 2006  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 or four credits. Students enrolled may satisfy the Law School’s “A paper” requirement by writing a paper on a topic related to children and the law. This may be done in two ways. Students who wish to receive three credits and also satisfy the A paper writing requirement are permitted to submit the paper in lieu of a final exam. Students who wish to receive four credits are required to take the final exam and also to complete the A paper requirement. Those students should enroll in the additional one-credit course offered in connection with the seminar.

An important goal in this course is to create an open space for class discussion. Students will be expected to attend class regularly and to participate in the seminar discussions. Class participation may be used as a factor in the final grade. There will be a take-home examination at the end of the term.
TENTATIVE CLASS SCHEDULE AND READINGS

Week 1 (September 6) (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 11)

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)
Barbara Bennett Woodhouse, “Who Owns the Child?": Meyer and Pierce and the Child As Property, 33 Wm. & Mary L. Rev. 993, 1068-1100 (1992)
Week 3 (September 18)

Parental Power to Decide Medical-Related Care

Readings:

Textbook: pages 519-530; 630-667; 671-685

(In textbook)
In re Dubreuil, 629 So.2d 819 (Fla. 1993) (if not discussed in Class 1)
Matter of Hofbauer, 47 N.Y.2d 648, 419 N.Y.S.2d 936 (N.Y. 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 25)

History of the Juvenile Court

Readings:

Textbook: pages 857-886

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

(Handout)
People ex rel. O’Connell v. Turner, 55 Ill. 280 (1870)
Douglas R. Rendelman, Paruns Patriae: From Chancery to the Juvenile Court, 23 S.C. L. Rev. 205 (1971)
Week 5 (October 6) (Friday: Note this is a Make-Up Class for October 2 - Yom Kippur)

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)
United States v. Tighe, 266 F.3d 1187 (9th Cir. 2001)
Roper v. Simmons, 543 U.S. 551 (2005)

(Suggested Reading)
U.S. ex rel. Martin v. Strasburg, 689 F.2d 365 (2d Cir. 1982)

Week 6 (October 9)

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 7 (October 16)

Constitutional Rights of Adolescents: First Amendment (Outside of School)

Readings:

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

(In textbook)
Ginsberg v. New York, 390 U.S. 629 (1968)
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 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 8 (October 23)

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 30)

Adoption, Custody and Visitation

Textbook: pages 391-401; 425-431; 67-84; 88-94;

(In textbook)
Bennett v. Marrow, 59 A.D.2d 492, 399 N.Y.S.2d 697 (2d Dept. 1977)
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)

(Handout)

Week 10 (November 6)

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)
In re Jeanette S., 156 Cal.Rptr. 262 (Cal. App. 1979)

(Handout)

(Suggested Reading)
Valmonte v. Bane, 18 F.3d 992 (2nd Cir. 1994)
Juvenile Justice Standards Project, STANDARDS ON ABUSE AND NEGLECT (excerpts)

Week 11 (November 13)

Foster Care

Readings:

Textbook: pages 686-727; 401-411

(In textbook)
Smith v. Organization of Foster Families, 431 U.S. 816 (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 20)

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 13 (November 27)

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 4)

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)