



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
1982 Volume III: The Constitution in American History

Child Custody

Curriculum Unit 82.03.02
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The scene is all too familiar. A beautiful little child, bright eyed and smiling, being held by a proud teenage mother. Her beaming mother looks on, but no where to be seen is the child's father. There can be many reasons for his non-appearance, but among urban teenagers, the main reason is that the child's mother and father are not married and do not live together. In most cases the unwed parents can take care of themselves, but what about the child? Who is looking after the best interests of the child? Who should have custody, the mother, the father, the grandparents or the State?

This situation and its ramifications lead to many problems and will serve as the basis for the unit I plan to teach on the Law and Child Custody and how it effects teenage unwed parents, their children, their grandparents and all concerned. It is a far reaching problem, one that deals with child custody laws, rights of the individuals involved, moral and physical welfare and the best interests of the child.

This unit is designed for a junior/senior English class. Past experience has shown that the class will be made up of about ten percent unwed mothers and about twenty percent unwed fathers, all with very little knowledge of their rights and responsibilities, both moral and legal. They also know very little about their responsibilities toward the best interest of their child or children. Since this is an English class, one aim will be the development of reading, writing and listening skills.

I have three major objectives for the class. They can be accomplished with a unit on The Law and Child Custody which will serve as a basis for the students to develop their ability to make wise decisions for themselves and to secure the decisions they want from others. The first objective would be to teach the students a rational means of decision making, based on evidence and valid reasoning.

The students will learn the essentials of rational decision making. In this process they will learn how to state problems, how to analyze simple and complex problems, how to explore problem areas. They will examine different kinds of evidence and they will learn the nature of reasoning. They will study the process of group discussion, and they will learn the method of overcoming objections which is called refutation. The students will study the basis of debate and how to make individual decisions. They will study the theory and practice of group discussion and group decisions. They will learn the meaning and use of coercion, and they will study a combination of methods used in making rational decisions.

The second objective of the unit is for the students to study the problems of child custody for unwed teenage parents and the rights and responsibilities of parenthood. The best interests of the child will be the major

discussion point covered. The class will do research on these subjects and the better students will be assigned extra credit independent study projects to look up cases and laws that pertain to the subject. They will present these cases to the class for general discussion. The class will be given a set of legal terms and vocabulary words to be used in the unit and they will be used as a study guide to help understand the terminology of the law. They will be tested on the words which would be geared to their predetermined reading levels. The class will use the study of the process of law to become familiar with its rudiments, and to better understand its process and finally to learn why judges make the kinds of decisions they do.

The last objective of the unit will be to show the class how our court system works. The class will stage a moot court trial and all the roles will be played by students. The case will concern an unwed, teenage father who wants the custody of his child, but who is denied the privilege of seeing his child and is denied visitation rights by his teenage girlfriend. The court will have to decide who gets custody of the child. An interesting aspect of this moot court could be five different outcomes, since most English teachers have five different sections to teach and each section could come up with a different outcome. This mini unit would come at the close of the curriculum and would call on all of the skills that will be taught to the class. In the moot court case, the students will take the major roles, acting as plaintiff, defendants, attorneys, witnesses, school personnel and social workers. Even the students who do not articulate well will have a role, as part of the jury or as a member of the court staff.

To prepare for this court case, the class will hear from different members of the legal and social work professions. They would hear guest lectures from lawyers, social workers, hopefully a court judge and other court personnel. The class will be exposed to different points of view concerning the law and how it is interpreted by professional, semi-professional staff. The class will also visit a court in session in New Haven. This live presentation should prove to be an "on the job training" source for the students. I would try to arrange a question and answer period after the day's session, so that the students could get answers to their questions about the day's proceedings.

The class will also participate in a series of group discussions and debates on the subjects of child custody and what constitutes the best interest of a child. They will also study the responsibilities and rights of unwed teenage parents. These discussions and debates will go according to the rules which the class will help to set-up. The class will learn the use of briefs, how to build the affirmative and negative cases, and how to present arguments. All of the debates will be judged by the students.

This unit will sharpen the oral, writing and listening skills of the students. The unit will attempt to stimulate their thinking process and will help the students make rational decisions based on truth, facts and good judgement. The unit will help the class to think before they act, so that they will be able to take their places as young adults.

The unit will begin with an overview of child custody in the eyes of the law. The class will study the Webster Dictionary definition of the word custody which is "keeping guardianship; care" (in the custody of her mother). Since many of the students in the class are unwed mothers and fathers, we will briefly discuss the problem of illegitimacy. The class will learn that according to early English Common Law an illegitimate child had no rights and was usually either given to the mother or the State. Starting early in this century the law has tended more and more to give legal effect to the natural rights and duties which the relationship creates, and the State of Connecticut gives the same rights to both legitimate and illegitimate children. The main point the students will remember is that the most important legal standard in any case is that the best interest of the child must be upheld at all times.

What then constitutes the best interest of the child? We will discuss what the class thinks the best interests of the child are. We will take a look at A Children's Bill of Rights as adapted from a decision of the Wisconsin Supreme Court.

Children's Bill of Rights

1. The right to be treated as an interested and affected person and not as a pawn, possession, or chattel of either or both parents.
2. The right to grow to maturity in that home environment that will best guarantee an opportunity for the child to grow to mature and responsible citizenship.
3. The right to the day-by-day love, care, discipline, and protection of the parent having custody of the child.
4. The right to know the noncustodial parent and to have the benefit of such parent's love and guidance through adequate visitations.
5. The right to a positive and constructive relationship with both parents, with neither parent permitted to degrade or downgrade the other in the mind of the child.
6. The right to have moral and ethical values developed by precept and practice and to have limits set for the behavior so that the child early in life may develop self-discipline and self-control.
7. The right to the most adequate level of economic support that can be provided by the best efforts of both parents.
8. The rights to the same opportunities for education that the child would have had if the family unit had not been broken.
9. The right to periodic review of custodial arrangements and child-support orders as the circumstances of the parents and the benefit of the child may require.
10. The right to the recognition that children involved in single parent situations are always disadvantaged parties and that the law must take affirmative steps to protect their welfare, including, where indicated, a social investigation to determine, and the appointment of a guardian ad litem to protect, their interests. ¹

The class will take an in depth look at some of the factors mentioned above that would concern them. Home environment, financial ability to maintain the child, ability to care for the child, child parent relationships, steps for safeguarding the child's growth and development plus safeguarding the child's need for continuity of relationships. All of these factors enter into the law's determination of what parent or agency can serve in the

best interest of the child.

The class will also look at factors that the law sees as not in the best interest of the child, the major one being parental misconduct. We will discuss the fact that misconduct on the part of any parent may result in a characterization of that parent as “unfit”, and custody may be denied. Unfitness may be of two types: Physical unfitness which would be a situation where the parent may be mentally or physically unable to care for the child’s needs. The parent could have lost interest in seeing to the child’s cleanliness. The child may be permitted to roam the streets, where it may be exposed to danger by oncoming traffic. The child may be left alone in the house.

Finally we will look at what could happen if both parents are unfit. When both parties are found to be unfit, custody could be given to a grandparent, or even a stranger or public agency. ³ A home with constant bickering, arguments, violence, coldness, and indifference is not an appropriate place to rear a child. Their inquisitive minds will absorb all this conduct, and in all probability it will be reflected in the treatment of their own future spouses. They are, in effect, being conditioned for bickering arguments, violence, coldness, and indifference as a way of life. ⁴

The second main objective for the class is to teach them rational thinking and how it is accomplished. The students of today—who will be mature adults will be called upon to face problems that they cannot even imagine yet, and to reach decisions based on rational thinking. This unit will start them along this road.

The mini-unit on rational thinking, debate and group discussion will use the second edition of *Argumentation and Debate* by Austin J. Freely as the text. We will use the following definition. “Argumentation is the art and science of using primarily logical appeals to secure decisions.” ⁵ The class will look at debate as a method of rational decision making. A discussion will point out that our free society is so structured that many of its decisions are reached through debate. It will be pointed out that our law courts and legislative bodies are specifically designed to create and perpetuate debate as a method of reaching decisions. We will begin with a list of definitions of words associated with debate. They will include: proposition; affirmative; negative; brief; evidence; rebuttal; refutation and premise.

The class will learn the essentials of debate, including, 1. Stating the problem. They will be told that problems to be considered intelligently must be defined. 2. They will learn about phrasing the debate proposition so that it is clear to all. 3. They will learn that the proposition must be controversial, that it involves only one central idea, that it is stated in neutral terms, that it provides a clear and precise statement of the decision desired by the affirmative, and that it places the presumption and burden of proof correctly.

The class will learn about analyzing the problem set before them. This involves defining terms either by giving examples, citing common usage, quoting an authority or explanation and forming the issues to be debated. Once the problem has been analyzed the class will learn to explore the problem. The class will learn where to turn for sources of material. They will be told that the library should be the first place to turn. Both school and city libraries can be utilized plus the college libraries found in the greater New Haven area. Other sources could include current periodicals and newspapers, their own personal experience, interviews and correspondence.

Once the class has learned about sources of material, they will be given a general outline on how to organize their research. The outline comes from the Ohio Speech Journal Vol. 2 and contains the following:

1. Introduction—a few paragraphs giving background.
2. Definitions.
3. Criteria questions should be developed that will probe in detail all relevant details.
4. Need—each potential need issue should be explored thoroughly.
5. Plan—specific detailed questions should be raised about every significant feature of any possible plan consistent with the proposition.
6. Alternate Solutions—all possible counter plans should be fully questioned.
7. Benefits—questions should be raised probing both benefits and disadvantages which could come from adopting the resolution.
8. Selected Bibliography.

We will next examine evidence, which is the raw material of argumentation. The class will be told that it consists of facts, opinions and objects that are used to generate proof. The class will discuss both direct and presumptive evidence. We will discuss sources of evidence such as judicial notice, public records, public writings, private writings, testimony of witnesses and personal inspection. The class will be introduced to various tests of evidence for the following reasons: to test the credibility of their own findings; to test the credibility of someone else's findings and most importantly to test the credibility of evidence advanced for a decision. It is very true that the students may participate in a formal debate only in the classroom, but there are many occasions when they will be called upon to make decisions. They will have to evaluate the evidence on the merits of a product or a candidate. To do this correctly will increase the student's opportunities for making valid decisions and gaining the benefits that come with sound judgements and decisions.

Following in logical order we will continue our mini-unit with a lecture on reasoning. This is a difficult concept to get across to the students but they will learn that reasoning is the process of inferring conclusions from a given premise. From the facts and evidence already presented we will learn that by a process of reasoning a conclusion can be reached which would be favorable to their line of thinking. We will discuss the different types of reasoning beginning with reasoning by example. The class will be asked the following questions. Is the example relevant? Are there a reasonable number of examples? Are the examples typical? We will also look at reasoning by analogy, making comparisons of two cases and inferring that what is true in one case is true in the other.

We will conclude this unit with a series of debates using child custody as the main theme. All of the class will take part. The class will receive an outline for making briefs and we will begin by building the affirmative case. The class will be informed that the essential elements of the affirmative case are need, plan and benefits. The class will learn that every affirmative case must be a prima facie case—it must in itself present good and sufficient reason for adopting the proposition. The class will receive an outline of a typical affirmative case including 1. Introduction which would include the proposition, definition of terms, what the affirmative plans to prove. 2. Body—stating the needs. 3. Conclusion—summarizing, repeating the issues and concluding with a

strong persuasive appeal for adoption of the resolution.

The same process will be used for the negative. We will use the same type of outline to refute the affirmative case. The main difference being the conclusion where the negative summarizes the rebuttal of the affirmative case, does its own rebuttal showing the advantage of the negative position and concluding with a strong appeal for the rejection of the resolution.

We will also introduce Group Discussion as a means of decision making. The class will be divided up into small groups of five or six to discuss child custody cases. Certain criteria will be followed. The group must agree that a problem exists, they must have compatible standards of value, they must have compatible purposes, they must be willing to accept the consensus of the group and they must remain few in number. The members of each group will be given individual assignments to research and they will have class time to assemble and prepare for their discussion. It is hoped that they will learn to work together in order to reach a rational decision on the case they will be given to discuss.

The last objective of the unit will be to show the class how our court system works. Many of the students have seen the law from a criminal point of view only and have a dim view of justice, some students have no point of view at all. This mini unit could equip the student with the ability to deal with the legal issues as they occur in everyday life.

We will use the Scholastic Book Service *Law, The Police and Justice* as a text. We will discuss the various court systems starting with Small Claims court and going up to the Supreme Court. We will visit a court room in New Haven and observe the law in action. This courtroom visit would show the students how the law is treated with respect and how powerful justice can be.

We will stage a moot court trial and all the roles will be played by the students. The case will concern a child-custody suit brought by the father, involving unmarried parents which was discussed earlier. The class will receive the particulars on the case. They will study the roles played by the unwed father, unwed mother, his mother and father, her mother and father, if there is one in the home, a state social worker, visiting nurse, a school social worker and a school guidance counselor, the unwed fathers ex-employer and brothers and—sisters of both young parents. The students who are to play these roles will be given background material on each character and they will add what ever they wish to the role.

The class will analyze the case, decide which laws apply, which questions should be asked to establish facts to support the use of those laws. The unit on argumentation which will precede this unit should help them in this exercise.

The class will pick the participants in the court case. A judge, the defendant, the plaintiff, the lawyers, the witnesses and the jury. The lawyer for the unwed father will present his case for the custody of the child. He will try to show why it is in the best interest of the child that the father be given custody. He will call the father, his parents, his ex-employer and members of the father's family for direct testimony. They will try to show why the father should have custody. They will try to prove that between the father and his family the best interests of the child would be taken care of. They would try to show stability of the home, financial ability to care for the child and love of the child. The defendants lawyer will then cross examine as long as he uses the subject matter already discussed. The defendant's lawyer will than take over to prove that the best interests of the child are being taken care of by the mother. He will call the mother, her parents, social workers and school personnel who will all help in establishing the case for the mother. The plaintiff's lawyer will cross examine the witnesses and both lawyers will give final arguments and the judge will sum up, and the

case would go to the jury.

This unit will contain elements of English, Social Studies, History and Civics. It is hoped that when completed it would give the students skills that will aid them in becoming well informed citizens who can make sound judgements and mature decisions in a very complex world.

Lesson Plan I

Objectives

1. To study the form and procedure for debate competition.
2. To develop and improve students listening and verbal skills.
3. To develop students ability to make rational decisions.

Explanation

This mini unit will help the student to better understand the various principles of argumentation. It will provide experience in the application of these principles which the students may apply in both formal and informal situations.

Text: Argumentation and Debate Second Edition Austin J. Freeley.

Week 1: We will discuss the debate process showing the class the steps in preparing for a debate. The class will discuss questions they would like to debate. They will be given sample subjects including: Resolved: Child Custody Laws in Connecticut Should Favor the Mother; Resolved: Child Custody Laws Should Favor the Father; Resolved: That Trial By Jury Be Abolished.

Once the subjects have been picked the class will be divided into groups of four, two affirmative team members and two negative team members. We will have a series of four debates based on the rules of high school debate.

The class will be given sample debates to study. These samples will be used only to show form and content and they will be used only as a study guide to aid the students in preparing their debates. An example of this will be the final round debate of the nineteenth National Debate Tournament, which debated the question Resolved: That the Federal Government Should Establish A National Program of Public Work for the Unemployed. ⁶

The class will study the role of the first affirmative—to define the terms used and to give the affirmative contentions, in this case five of them. The class will see the continuity of the affirmative case. We will then look at the first negative. The class will see how the negative rejects each of the five contentions and states its own case, ending with a plea for rejection of the affirmative resolution. The class will follow as the second team members restate the contentions and add new issues and finally we will review the rebuttal of both teams.

Homework : The class will answer the following study guide questions based on the sample debate.

1. Evaluate each of the speeches from the point of view of speech composition. Which speech was structured best? Which was easiest to follow?
2. Did the first affirmative speaker use sufficient evidence? Prove your answer by giving examples.
3. Did the affirmative present a prima facie case?
4. Was the rebuttal adequate? State examples.
5. Who won the debate and why?

Week 2 : The class will research their questions in the school library and present their debates to the class.

Lesson Plan II

Objectives

1. To study problems concerning child custody for teenage parents.
2. To determine the best interests of the child.
3. To develop students skills in expository writing.

Explanation:

This mini-unit will help the student get a comprehensive overview of the law as it pertains to child custody for teenage parents. The class will review and discuss child custody laws in Connecticut. They will research articles concerned with different viewpoints on the best interest of the child as seen by the law, mental health professionals, social workers and child psychologists. The class will write research papers on their findings, to help them in their expository writing development.

Text : Lectures taken from *Family Evaluation In Child Custody Litigation* , Gardner

Beyond the Best Interests of the Child , Goldstein, Freud, Solnit

Surviving Divorce , Braun

Week 1 : The class will have a general discussion on their feelings about child custody. They will discuss the types of custodial arrangements the court allows including: sole custody; split custody, if there is more than one child involved, shared custody; outside agency custody; and joint custody. An independent study unit will research Connecticut Child Custody Laws and report to the class. The students will write short papers on changes they feel should be made in these laws.

The class will be given copies of the Children’s Bill of Rights. They will discuss and evaluate them and brainstorm other ideas about the best interest of the child. They will write their own bill of rights as a homework assignment.

Week 2 : We will have guest lecturers from the Connecticut Mental Health Association, the Child Support division of the Connecticut Department of Human Resources and a staff member from the Family Relations division of the Connecticut Judicial Department. They will all speak on the best interest of the child as interpreted by their organization. The class will write reviews of these lectures as a homework projects.

To conclude this unit, the class will survey itself and write their conclusions as to what they think are the best interests of the child. They will be given a study guide of the State of Michigan’s Progressive Child Custody Act of 1970, which provides specific criteria for determining just what a child’s best interests are. They include “consideration” which they define as the “love, affection and other emotional ties existing between the competing parties and the child,” and the moral fitness of the competing parties. The class will choose the best criteria and it will be displayed on the classroom bulletin board.

Teacher Bibliography

Articles

Anderson, Norman H. and Shanteau, James C. *Information Integration in Risky Decision Making* . Journal of Experimental Psychology, 1970, pp. 441-451. An article on the usefulness of a decision theory for making judgements about uncertain events.

Epstein, Fanny. *Beyond Determinism and Irrationalism* , Philosophy Today, Spring, 1967, pp. 38-46. An article on the role of motives in decision making.

Fisher, Aubry B. *The Process of Decision Modification in Small Discussion Groups* . Journal of Communication, Vol. 20, 1978, pp. 51-64. Discusses patterns by which small groups make decisions.

Lundsteen, Sara. *Listening, Reading and Qualitative Levels of Thinking in Problem Solving*, California Journal of Educational Resource, Nov. 1968, pp. 219-230. Tells of the relative importance of listening and reading in problem solving.

Books

Bauer, Otto F. *Fundamentals of Debate Theory and Practice* , Chicago: Scott, 1966. A basic textbook for teaching debate.

Braun, Julius. *Surviving Divorce* , A Primer of Marital Dissolution. New York: Exposition Press 1975. How children are effected by divorce.

Bromley, P. M. *Family Law* . London, Butterworth & Co., 1957. A study of family law concerned with husband

and wife, parent and child and family property.

Brown, C. W. C. *Complete Debaters Manual* . Chicago: Drake University, 1942. Somewhat outdated but gives terms and procedures still used in debate.

Freeley, Austin T. *Argumentation and Debate Rational Decision Making* Second Edition California: 1961. An excellent text book for argumentation, using classic and modern principles for rational decision making.

Freud, Anna Goldstein, Joseph Solnit, Albert. *Beyond the Best Interests of the Child* , New York: Free Press 1973. A study of the existing laws governing the disposal of children and an attempt to formulate a revised code.

Gardner, Richard A. M.D. *Family Evaluation in Child Custody Litigation* Creative Therapeutics New Jersey, 1982. Concerns the roles as impartial rather than advocates played by mental health experts in child custody cases.

Handbook

American Law Student Association. *Trial Moot Court Handbook* , Chicago, 1955. Outlines procedures for Moot Trial.

Reading List for Students

The following books have trial sequences which can serve as background material for the unit.

Adams, S. *Favorite Trial Stories* , New York: Dodd Mead, 1966. American Law Student Association. *Trial Moot Court Handbook* , Chicago, 1955.

Dostoevsky, F. *Crime and Punishment* , New York: Norton, 1964.

Camus, Albert. *The Stranger* , New York: Putnam, 1958.

Jackson, Shirley, *The Lottery* , New York: The Magic of Shirley Jackson Farrar, 1966.

Kafka, Franz. *The Trial* , New York: Modern Library, 1956.

Lee, Harper. *To Kill A Mocking Bird* , New York: Lippencott 1960.

Parks, Gordon. *The Learning Tree* , New York: Harper, 1966.

Wright, Richard. *Native Son* , New York: Harper Row, 1940.

Wright, Richard. *Black Boy* , New York: Harper Row, 1943, Logbook.

Scholastic Book Services. *Law, You the Police and Justice* , New York: 1968.

Canopy, Williard. *Debates for High Schools and Clubs* , Chicago: Denison, 1962.

Kraus, Sidney. *The Kennedy Nixon Debates* , Indiana: Bloomington, 1962.

Frank, Jerome. *Law and the Modern Mind* , New York: Brentano's, 1970.

Handbook

American Law Student Association. *Trial Moot Court Handbook* , Chicago, 1955. Outlines procedure for Moot Trial.

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