



To what extent is the application of family law in the best interests of children?

Curriculum Unit 94.01.05

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The landscape

Students at the elementary school level in New Haven bring to the classroom a myriad of problems that reflect the intricacies and complexity of life in the inner-city in the United States. The setting is New Haven, and because the environment seems to be so powerful in the lives of school children, we are compelled to speak about this stage where the drama of our students takes place. In short, to be a student in the classroom in New Haven, as well as in countless of cities in the United States, is to be at a disadvantage in terms of the resources and opportunities that students in suburban schools have at their disposition. We propose a curriculum unit dealing with the language of the law as a means to increase the understanding of the problems of the every-day life of the student. Our question is whether the laws enacted and the milieu are in the best interests of the children.

The core of students of the inner city are Hispanic and African American constituting in this way a chronic segregation from the suburban population. Twenty five years ago or so, students from high schools in the inner-city, Hillhouse, Wilbur Cross, would speak proudly in the hallways of universities in Connecticut and elsewhere about their alma mater. These were white urban young men and women who knew New Haven in a different light. At present, these high schools offer great programs and many opportunities to students, but there is a schism in society. This historical situation is not in the best interests of the children. This is an indication that socially and economically, these two ethnic groups, if things remain the way they are, face a very uncertain future for their children, in a world continually specialized and complex. If any gains are to be shown in the student body they are in spite of all these adverse circumstances and crude realities. Violence, drugs, teenage pregnancy, lack of opportunity and a sense of isolation are some of the obstacles that youth in New Haven have to overcome in order to get an education.

In the classroom this reality of New Haven is all too familiar. It could be felt directly or indirectly. But the more the student becomes aware of the power of learning, the closer he or she gets to questioning the meaning and power of education and society. It seems that this is only natural. One of the consequences of learning is the creation of aspirations and goals of the highest degree. Another is critical thinking and the ability to articulate and make sense of the world around. Soon the student is going to realize the dynamics of an oppressive situation. It is the beginning of hope and a transformation of the spirit—higher dreams and visions of a possibility of a future. But right here, at this point, where one comes to foresee a possibility for the future is

where the realization of great contradictions in the education in New Haven become evident. Students in the elementary schools come with very few skills and burdened with all kinds of social and economic problems. The city itself is not able to provide science laboratories, media centers, simple libraries, to name a few items, evenly throughout the system. ¹

On the other side of the educational spectrum in New Haven we have Yale University. It seems that the outstanding deeds and achievements of great people have come and gone, passing through this invisible periphery around Yale, into the world. We must stop and think about why we are mentioning this state of affairs. It is our conviction, and it is a sociological fact, that the life of a city is just that: of a city, and not just of a segment of the population of that particular city. In this sense the presence of this polarity in New Haven contributes to exacerbate the social problems of a less fortunate segment of the population: the children of the poor neighborhoods. Because of its unique position, New Haven's population of the Public School System and their problems stand in sharp contrast to the realities of another segment of the population who are attending one of the most prestigious institutions of learning in the world. What goes on with one segment of the population has something to do with the rest of the city. A city is a living organism, and it is not a rational medical practice to chop up a leg in order to cure an infection. As absurd as it might sound the latter seems to be the case in New Haven. The problems of a great part of the population of the city is treated in isolation, as if something inherent in these people would keep them in that state.

Somehow, Yale University has realized this problem and, wisely, has put to work some of its resources in order to change an image and to try to alleviate the burden. ² It is interesting to note that Yale University supports the Yale Child Study Center, a center dedicated to psychological research of children of the inner-city. Lawyers from Yale University School of Law give, through another program, pro bono legal representation to children who cannot afford their own legal protection. ³ This is an example where legal services are intended to be in the benefit of the children. In this sense, all legal services are intended to be in the best interests of the children, no matter who is paying for it. Whether this actually happens in the courts or not is a questionable issue, and one that goes beyond our objectives and purposes. ⁴

It is of utmost importance in this curriculum unit to set certain parameters of thought that would enable students to think critically for the purpose of learning about their rights and, also, to create the channels for students to continue to learn in the future about the possibilities of defending their rights in courts and in the tribulations of daily life. Let's take the example of the 24 elementary school students from Seattle, Washington who participated in a class of government and went to the state capitol to do hands-on work with their legislators. The students were successful in changing the course of history after some hard work, lots of support from teachers and parents and the realization that children could actually have rights of their own. On April 6, 1993, A bill abolishing corporal punishment in public schools was passed. "Governor Mike Lowry signed the bill into law, assuring that by fall 1994, physical punishment would no longer be permitted in Washington's public schools." ⁵

In mathematics we have a concept that permeates the standards for teaching and evaluation. This is called math sense. It indicates a state of mind, a way of thinking, where a student is immersed in mathematical thinking with a sense of direction. ⁶ It is our premise that students who know the language of their rights would grow in the knowledge of respect for themselves and for others. This respect means less violence and more time for positive thinking. To have an understanding and command of language is to have language sense. ⁷ It increases the possibility of an understanding of the world around and, indeed, of oneself. In this context learning the language of the law is a beginning in the exploration of a deeper understanding of language

sense and, even more important, for the student, it is one of the possible first steps in the defense of their rights and in the realization of the inherent responsibilities in society.

When we take a closer look at a sector of the population of New Haven some of these problems stem directly from the dynamics of the nuclear family; other seem to be a result of present economic and social situation affecting particular neighborhoods and ethnic groups. The latter in turn affect the family. Clearly there is a lack of opportunity in the neighborhoods of the city. All of the problems brew in a sense of isolation. The Hispanic and the Black population of the community seems to be riddled with a series of problems stemming from violence in the family to the incarceration of relatively young members of the community. “My brother went to jail yesterday...” is one of the casual lines in the ever present litany uttered by our students. “Mister, come outside, I want to tell you something! I couldn’t see my father this weekend...because the police said that he killed someone...I don’t have the homework!” Words that come out through mouths of pupils whose teeth are still growing, and whose sad and glassy eyes foretell an inexorable chain of events that have been in their making for generations. The social and economic make up of the city is not in the best interests of these children. Being things the way they are, children in general do not have a clear voice under the law, this is a historical fact. ⁸ But the children of the neighborhoods in New Haven are in an even worse position due to the sordid and cruel landscape.

The language of the law and the classroom

Understanding the world in which we live is a basic need that we all have in order to reach our goals and achieve happiness. To understand our world means to have a knowledge of society and to have a basic grasp of what it means to have responsibilities and rights. Empowerment of the members of society is best served when the individual citizen is nurtured in the knowledge of the law from an early age. In this curriculum unit we intend to explore the language of the law, ⁹ with elementary school students, using as a particular focus the idea of the best interests of the child.

In family law, the standard guiding judges when deciding parent-child conflict is “the best interests of the child.” But is the law always interpreted in this way? This curriculum unit will take several themes related to the standard of “best interests of the child” and will discuss whether the interpretation of the law did indeed prove in the best interests of the particular children involved. For this we’ll discuss specific cases where the best interests of the children has seen a standard of a decision. It is also our intention to take some real cases, protecting the source of information, based on real experiences or taken from research, and to formulate a language reflecting the legal issues relevant to the student population. ¹⁰ This language will reflect not only the classroom situation, in the sociological sense, but also the meaning of the law, and the possibilities of finding a deep understanding of the rights of a segment of the population, namely children, who, from time immemorial, have seen left aside by a culture which made them the property of adults, and a language created to protect them in the first place. ¹¹

At the present time a basic knowledge of the language of the law is practically nonexistent at the elementary school level. ¹² Further, language itself—in the context of the daily curriculum, that is, spelling, writing, grammar, speech—encompasses a number of quite complex and laborious tasks difficult for the student to master right away. In a bilingual class this problem becomes more compounded since the task is in two languages. Introducing a specialized language is a great challenge both for the teacher as well as for the

students. But we might think that since English is in itself a specialized language for the student who is beginning to learn it for the first time, then why not teach it also as the language of the law, making sure students master the semantics, the syntax, the lexicon, the phonetics and the cultural context where this language becomes alive and makes sense? The language of science is another example of a specialized language where molecules and atoms, acids and bases are part of a vast discourse designed to make sense of a body of accumulated knowledge based on principles and laws, hypothesis and verifications, method and experimentation. In a way, in the case of the law, we have to invent a language and this is a difficult task, one that is worth taking. What is more, students have great fun making believe they are lawyers and judges. Very few like to take the position of the criminal and the accused. To assume that students cannot take on difficult tasks is self-defeating and unfair. To assume that they would fail before they try is simply violating their rights. ¹³ Yet, there is practically little or no discussion about the rights of children in the classroom. This situation implies that children and early adolescent young people do not understand and do not really participate in the decision making process of the most important aspects of their lives. ¹⁴ It also alludes to the fact that if they become participants, children are at a great disadvantage since the skills and knowledge of the law and its language are at best meager, insignificant and misunderstood. Let's think for a moment what would it be like if students in the elementary school level did not study the language of mathematics. Surely this type of student would not be able to survive in the present world. Since the law covers all aspects of our lives we can imagine how insignificant is our understanding of the legal world around us. There are many instances in our modern life and society where children have to be confronted with experiences demanding their participation directly or indirectly. A separation, a divorce or a custody dispute are some instances of participation where the role of children is still a gray area, and where their views and interests are not being heard properly. ¹⁵ In special education interventions parents, social workers, nurses, teachers and administrators make decisions for students. ¹⁶ Bilingual education has some issues where the participation of the students is not considered at all. ¹⁷ In cases of juvenile delinquency we all feel a sense of loss, and participation of the juvenile is already in the other side of the law. "For many years juveniles accused of crimes were tried in the same courts and sentenced to the same prisons as adults." ¹⁸ At present, it is alleged that "Everything done during the course of a juvenile court proceeding, from arrest to disposition, is ostensibly being done with the best interests of the child in mind." ¹⁹ It stands to reason, then, that students ought to engage in activities that would help them learn the language of their rights and obligations. Society as a whole has much to gain from this learning experience.

It seems to us that the classroom is a natural environment where the concepts and language of the nurturing of the rights and duties of the youngest members of society could be presented in a practical and non-threatening manner and setting. This unit could be used in a bilingual as well as in a mainstream class. ²⁰ As teachers in the New Haven Public School System we find this curriculum unit to be a great opportunity to learn more about this fascinating subject and to be able to focus on a problem relevant to the students, a problem that the students could relate to, and could possibly motivate him or her to go in search of novel solutions.

Although students don't interpret it as a very severe problem of the community or the country, drug trafficking, violence, teenage pregnancy, to name a few problems dealt with on a daily basis in the school situation, are endemic to the environment around the area of the schools serving these children. It seems to make sense to think about the role of language in this state of affairs. Students have adapted a 'new language' that deals with these problems not as items and deeds of social injustice, but rather as happenings to be amused about and things to laugh and make merry. Perhaps this humor is a weapon against a hostile environment. Just about every day we have been confronted by situations where some students speak and describe acts of violence and pain with confidence and theatrics. Perhaps this language, full of flavor and

color, rich in adjectives and onomatopoeia, has come about in order to fill a vacuum left by the absence of a language that speaks of justice and rights. ²¹ And perhaps because of this absence of the language of the rights that every child is entitled to, this language seems to grow and take its own rules. The merriment and theatrics of this young people, in expressing their daily encounters with life in the neighborhood, seem to grow with an echo, a hint, a tint of optimism, in spite of all the pain. It might be in this realization that students in the elementary school level, most of the time, bring into the classroom, mixed with their pain and shortcomings, a sense of hope and a renewal of life on a daily basis. This could prove to be very useful in the classroom. The trick is to be able to identify this renewal of life in language, and then, to use it as motivator in the development of a coherent lesson to attain language sense. In our experience, when these young people open up to an adult, an adult who could be potentially harmful, they are demonstrating very basic human needs: the need to be listened to, and the need to be able to express themselves freely, the need to be able to tell you something and to know that you won't betray them. Their need to communicate indicates a need to know their rights. A need to know their rights could only come about in the presence of self-respect and growth.

In many cases their need to communicate indicates, at the same time, a need to master a language. This is particularly the case with students who want to know and want to have legal solutions to their problems. We might very reasonably argue that this is not the realm of the educator. Critics may very well argue that the posture of the classroom teacher is to teach the abcs, and to go on with his or her business without sparking a situation that might rub the system in the wrong way. ²² Some might say, let the social worker deal with this problem. Nonetheless the language that we are talking about is a language to be learned with discipline and an understanding of its grammar and its consequences. In other words, there is a right to learn this language and a responsibility in speaking it and sending it in a semi-logical chain. There is a linkage between the classroom, the curriculum unit and life in the neighborhood. Students who need to find solutions to problems concerning their rights need, before anything else, to learn a language of their rights. They need to struggle to learn the discourse of their rights. Thus, to understand a problem is to understand a language; a particular way of saying 'this is what is happening to me, and this is the solution to my problem, because these are my rights and these are my limitations.' In the absence of rights, as Judge Gills tells us, we must, we have to elicit a language of freedom. ²³

"Any lawyer will tell you that the "law governs us from womb to tomb," from laws on abortion to laws on matters of inheritance." ²⁴ If this is indeed the case, then, why is it that children are still looked upon as property and not as citizens with rights? As we said before, this is a situation with a historical background with deep roots in tradition. Its path comes from the code of Hammurabi over 4,000 years back, to the present state of affairs where the Constitution of the United States needs an amendment to permanently and officially protect the interests of children. ²⁵ Superior Court Judge Charles D. Gill has been working for years on the creation of an amendment to the United States Constitution. He believes that children don't have any rights in this society and that statutory laws are subject to change at the whim of legislators. ²⁶ Further he adds:

"The best interests of the children," that's the term we spout. But in all of those situations, children come in dead last. It's only talk. It has nothing to do with reality. I've just seen and read too much. I'm very angry. ²⁷

When we think about children we really think about family. Children by definition, in our culture, belong in the family. And the family has been undergoing great transformations. But in the 1980's the nuclear family seemed to have been disappearing. ²⁸ There are many opinions on the cause of this phenomenon. One of them is "a changing ethos on the part of the Americans, whereby adults are starting to give priority to their

own feelings and wishes over those of their children.”²⁹ Another is the hardships of a changing economy. Whatever the outcome of a family dispute is, the children are the ones to suffer the most.

Case number one: In the landscape

A student is bright. Her eyes, her keen understanding and her activities demonstrate that she needs more than what seems to be out there for her. She is also the youngest of the class: she is nine years old. Teacher understands the problem and is able to provide the necessary stimulation for Maria B., this is her name. Maria has achieved several goals without any problem and she is always ready for more. She is the leader of a science project which ends up being televised. She enters in the drama competition of the Yale Dramat and her play is chosen to be first place in the city. Maria is in a bilingual class, and she has been chosen from over one hundred entries in English. Maria manages very successfully with her tasks and obligations. But there comes the time when Maria has to go to the sixth grade and say good bye to her accomplishments. Everyone tells Maria and her family that the schools around the area are not good for her. Her family moves to a close-by town out of New Haven and is able to survive there making the Honor Roll and so on, in spite of resistance by students because she is a Puerto Rican.

At the end of the sixth grade Maria and her family are forced to come back to the city due to limited economic resources. Maria enters a Public School. In the beginning she is getting high grades, but little by little her academic standing goes down, and Maria starts to fail in all subjects. Maria starts to show signs of violence and extreme defiance against all authority and her mother at home. She tries to kill a student and also attempts suicide. She is sent to a psychiatric hospital for treatment. She is usually in a straight jacket and often has to be forcibly restrained. Doctors, DCYS, Yale Child Study Center, social workers, tutors, they all agree that Maria needs a “better” school; they hope that she would be successful again if proper care is given to a specially tailored education. What are the rights of this young student? What is she faced against? Who is to be held responsible for this demise of this otherwise great success story?

Case number two: The best interests of the children and parental kidnapping.

In this case the best interests of the children come into play with a myriad of voices. Teachers could substitute other cases that they know about in order to make similar points.

Gomez v. Gomez

In this case the plaintiff is a Hispanic and is just about to finish his Ph.D. dissertation in New York City. The defendant, a European woman, is pregnant with second child and wants quick changes. She makes, what seems to the plaintiff, unreasonable monetary demands. To make things worse, the family is supposed to go to Latin America in order for the child to be born. They had agreed before marriage to do this whenever a child was to be born because they planned to live in that part of the world permanently, after completion of degree. The marriage is not strong enough to survive this situation. The defendant refuses to go to Latin America and leaves the house and goes to another state. After three days the plaintiff finds her pregnant wife at her mother’s house with her first child. She refuses to let the daughter go with father alleging that he is going to take her away to another country. A battle begins: the plaintiff tries to compromise in order to bring the family

together again. The wife refuses to let father see the child freely.

The father, who has been working part time at her daughter's nursery school, and who has been the primary caretaker of the child, takes wife to court in the new state, giving up jurisdiction in New York, out of deference for pregnant wife. He has two lawyers who encourage him to get legal representation for children. ³⁰ Judge allows plaintiff to take child to New York, from Monday to Wednesday, and weekends, but gives custody to wife. Visitation rights and the court situation get wife very angry and chances for reconciliation fade away. She provokes husband again and again. The first day of school for first child, on a Monday, according to the plaintiff, pregnant wife fakes falling on the sidewalk when plaintiff was taking daughter from her premises for visitation. Family comes out and accuses him of pushing her. Police comes and take father and daughter into custody inside the officers' car. After this mother refused to allow child to go anywhere with father and visitation is imposed by her to premises. By this time plaintiff has stopped working on his degree and is holding two jobs. Sudden changes of visitation force him to maintain two apartments, with two sets of bills, in two separate states. He is not allowed to take her daughter out of the town where she lives.

To summarize all, in ruling of the divorce the plaintiff is not allowed to take her daughter out of the town, the state, or the country. Second daughter has been born already and visitation rights with her are to be only in premises of the mother. The Honorable Judge ruled that plaintiff had to deliver passport every time he went for visitation for more than twenty four hours. At this time, plaintiff is holding five jobs in order to support all expenses. He has to pay all lawyers fees. And is order to pay, what he considers to be, an exorbitant amount of money for alimony, child support, insurance, tuition for school of children. The reason for this is that by virtue of his education he is considered capable of earning more money than what he gets in his five jobs.

Ten years after all this happened, and after several court appearances initiated by ex-wife in search for more money, the children feel that their best interests were not taking into consideration by the court. They want to go to Latin America to visit. They know their father well and think that the system has failed them. They believe that their father will never kidnap them. In one of the appearances judge ordered to allow children to travel in the United States, but they are not allowed to go to Puerto Rico because it is not considered to be the United States in this case.

Lesson one: The Federal Government and the Constitution. ³¹

Goals:

To give students an understanding of the function of the Constitution and the government of the United States.

Objectives:

Students should be able to describe the functions of the three branches of government. Students should be able to talk about the relation of government and the Constitution.

Vocabulary :

Amendment

Congress

Delegates

Judicia

Legislator

The Senate

Articles

Compromise

Executive

The House of Representatives

State Government

Bill of Rights

The Constitution

Federal Government

Legislative

Section

Checks and Balances

Judge

Background Information

In order to understand how and where the laws in the United States are created it is necessary to study the institutions instrumental in the process. Above all other institutions is the Federal Government with its three branches: Legislative, Executive and Judicial. The Constitution is the law of these branches of government. They check and balance each other so as to ensure that not one of them gets stronger than the other. It is a little bit messy but it ensures the stability of the government and the well-being of the people. ³² Each of these branches has powers and they work under the Constitution.

Legislative Branch: ³³

It is composed of a Senate and the House of representatives: the Senate has 100 members, two from each state; the House has 435 members elected from states according to population.

Power:

—Makes the law

—Congress can borrow money -Congress can tax

- Approves Presidents choices for government -Coins money
- Impeachment of officials
- Regulates trade
- Makes war, approves treaties and raise an army
- Vetoes the President

Executive Branch: ³⁴

The President is in charge of the Executive Branch and of its Departments: State, Justice, Education, Energy, Commerce, Treasury, Transportation, Health and Human Services, Housing, Agriculture, Labor, Interior, and Defense.

Powers of the President:

- Appoints officials
- Makes treaties
- Enforces laws
- Pardons people Vetoes laws
- Chief of armed forces

Supreme Court: ³⁵

This branch of government has eleven courts of appeal and 93 district courts.

Powers:

- Explains laws and the Constitution and handles cases involving federal law.
- Can declare the President or a law unconstitutional.

The Constitution of the United States has seven articles and 26 amendments. The first ten amendments are called the Bill of Rights. Final ratification of the Bill of Rights took place in 1791. They were introduced by congressman of Virginia, James Madison in 1789, in order to ensure the harmony within the Union. Some states did not ratify the Constitution on the grounds that it lacked a Bill of Rights. This Bill of rights was ratified in order to protect the liberties of the people.

Procedure:

This information is introduced to the students throughout the school year. Even when we think students have read and written sufficiently, there is never enough. This means that we have to make the material interesting. If possible, teachers should spend a few minutes reading selections from cases, or from the Constitution in a casual way. Students could become experts in certain areas of study. These experts could introduce a lesson, or part of a lesson, on a regular basis. They could deliver essays in their field of knowledge. Gradually all students become experts, and accordingly, the dynamics of the class is set in motion.

In our classroom students have a journal where they write daily on different themes. Some of these themes have to do with the language of the law. Writing about the law will develop language sense. This is only one type of writing exercise. There are several kinds of writing exercises: creative, fictional, theatrical, scientific, letter form, etc. ³⁶

Activity:

Students act as legislators who are discussing the introduction of the Bill of Rights to the Constitution. After reviewing the history of the absence of children's rights in the making of our society, they have chosen to introduce a children's rights amendment." They had highlighted cases such as Brown v. Board of Education of Topeka. ³⁷ They had brought to light the success of the Seattle school children in abolishing corporal punishment from public education in Washington State. ³⁸ But what they really search for is citizenship in the Constitution.

Activity:

Let's think about the rights of children in the Constitution. When the delegates were in the process of writing the Constitution they came with a compromise, in balancing the power among the states, Congress was to have the House of Representatives and the Senate. ³⁹ The House is based on population and in the Senate, all states have the same number of senators.

If this was the case, then, what happened with the vote of the slaves? "In the southern states wanted to count their slaves as people. Of course, the slaves could not vote, but women and children were counted as people, and they couldn't vote, either." ⁴⁰

In this activity we have a number of problems to think about.

—There were 600,000 black Americans in the Country. 10% were in the North. How many were in the South?

—Black Americans could not vote, but if they could, what do you think they would have voted on? Could you actually do things like that with a vote? What do you think children could change if they could vote?

—The delegates reached a compromise. "Slaves would be counted as three-fifths, in other words five slaves would count as three whites." ⁴¹ What do you feel about this situation in history? ⁴² At present, children are counted also, but they don't vote. How do you feel about this? Do you remember what the children in Washington State did with corporal punishment? What would you do in order to achieve the right for children to vote? What would be in the best interests of the children? Let's have a court day and settle the issue!

—In the number of black Americans in the South, how many do you estimate were children?

—If black Americans were 20% of the population, how many people were there in the United States?

—How many black Americans were there in Connecticut? Is there a percentage increase in the country? In the state? How would a graph showing these data look like?

—How would you compare the rights of black American children and white American children then? And now? How about Puerto Rican children? Do they have Representatives or Senators in Congress? What are their rights as children? What do you think the rights of Maria B. are, if any, in light of the fact that Puerto Rico is not an official state, and that Congress does not have delegates from Puerto Rico as the other states do?

—How about Native American children? Anybody...? Do you think that traditional “cowboy” movies are in the best interests of the Native American children?

A last observation on language: the original Constitution did not use the words “slave,” or “slavery.”⁴³ Our Constitution is mostly written in clear and beautiful English.⁴⁴ This passage tells us, among other things, that we could actually have a beautiful language about an ugly reality.

Activity:

In *Gomez v. Gomez*, were the constitutional rights of the plaintiff violated. How would you apply an interpretation of Amendment VIII (1791) of the Constitution? “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” Was the opinion and discretion of the judge in the best interests of the children? Could constitutional law be applied in a case of family law? Cases where family litigations are involved follow rulings based on the discretion of the judge. The judge bases his or her opinion on common law. This means, in the rulings of cases before the case being treated. Judges also listen carefully to the recommendation of family relations, witnesses, and all parties involved. What would you have done if you would have been the judge in *Gomez v. Gomez*?

Assessment:

Students are assessed by their performance during a trial or a court procedure. There could be several components of assessment. Writing is one way of assessment. Reading is another. Also, a performance assessment list should be designed in accordance with the personality of the class, and the particular subject matter. For example:

Task Performance Assessment List: A day in court⁴⁵

Element	%	Student Evaluation	Teacher Evaluation	Total
Argument	10%	_____	_____	_____
Language	25%	_____	_____	_____
Common Sense	25%	_____	_____	_____
Research	10%	_____	_____	_____
Preparation	10%	_____	_____	_____
Clarity	0%	_____	_____	_____
Knowledge of law	10%	_____	_____	_____
Extra Credit	5%	_____	_____	_____

Field Trips:

Students should have a field trip to City Hall. Take students to chat, if possible, with legislators of the State. Some schools arrange for field trips to Washington!

Lesson two: The Language of the Rights of Children

Goals:

To make student aware of the language of the law in relation with the best interests of the children.

Objectives:

Student will be able to identify main standards used to decide custody cases.

Background Information:

Taking the language of the law into the classroom is a task of many surprising complexities. To begin with the acquisition of language is a right that all children must have. This statement is reasonable because we understand, from experience in the classroom, that in order to learn the basic pronouncements of a culture, it is imperative to know and master the medium in which that particular culture is being communicated.

Law is part of a culture, it has a tradition and it has a history. Family law deals with matters pertaining to the family: adults, and children. We are interested in the standard of the best interests of the children. This concept is to be understood as the opinion and interpretation that adults, namely judges, have about what is best for children. Sometimes we come across another standard, in cases of step-parent litigations. The courts in Pennsylvania, in *Spells v. Spells*, granted visitation rights of the stepfather on basis of in loco parentis, noting that “courts must jealousy grant his rights to visitation.”⁴⁶ Traditionally the test in child custody *Paces* has been the parents rights, and not the best interests of the child. It is began to changed in 1881, when Justice Brewer, in *Chapsky v. Wood*, introduced the best interests of the child in his ruling.⁴⁷ Parental preference the standard is also addressed, has been left aside, mostly by language, but not in practice since children don’t really have a voice. Because of this situation it has been proposed in California, in view also of a pluralism in family structure, the standard of “approximation” which “promotes continuity and stability for children.”⁴⁸ This standard “seeks to replicate past parental roles.”⁴⁹

Other rules in the search for solutions of child custody are joint custody, maternal custody, and preference for the primary caretaker. Of the above Elizabeth Scott prefers the approximation standard.

Activity:

Write a letter to the class and tell us what kind of family you have. Don’t write your name, just talk. In your letter think of the following: has any of these standards been applied to your family? Which do you think is the best? Why?

Activity:

Make a drawing of your family and place yourself in it. Let’s talk about it in class if you wish to do so.

Activity:

In *Gomez v. Gomez*, what would have been the best standard?

Assessment: Check lesson one for list. Make changes as necessary.

Lesson three: The pursuit of happiness

The idea and concept of happiness is a building block of rich semantical value, which creates, at the same time, a discourse with a wide scope of cultural possibilities. All children understand the feeling of pain and the feeling of pleasure. All children could very well relate to the idea of life, not only because they are alive, but because they are capable of abstract thought, and because they could relay it, in a cultural twist, to the terrifying idea of the end of life. Death is a fascinating reality for all young people, and this fascination is embedded in the dialectics of pain and pleasure. One does not need to talk about Freud or Mercea Eliade to foresee the ramification of this exposition: Eros, Thanatos, myth are only some of the possible leads to a deeper exploration of the relationships between life and death, law and order, society and the individual.

Pursuing the dynamics of pain and pleasure, life and death, history and myth, the students in the fifth grade were very much entranced in the dynamics of happiness and were ready for further explorations through avid inquiries of these cultural and psychological instruments of thought. The way that they approached this complex cultural linkage was through simple language, common sense, a little bit of fear and amazement, and lots of yells and screams out of sheer shock and the excitement of discovery.. But the subtleties of happiness and all the enveloping language construct sooner or later were to lead us to the vexing questions of morality and the violation of cultural values and norms. ⁵⁰ This is the relevancy of presenting the student with the idea of happiness. Indirectly we built a platform from where we could explore the confines of morality and society. Clearly the law enters in this discussion as a mediator between the individual and society. This step was an intermediary thought between the idea of happiness and the loss of it; freedom and the loss of it. The violation of values could send the violator to jail, for example. For the student happiness was “what is normal.” They also related happiness with the following:

—“Happiness is the family, Mister.”

—“Happiness is life.”

—“Happiness is lots of money.”

A Mexican student, very philosophically said:

—“Happiness is to be alive.”

—“Happiness is my father and my mother.”

—“Happiness is when you’re happy.”

—“Happiness is when everything is good.”

—“Happiness is peace.”

—“Happiness is when there is no evil!”

The discussion in the classroom was led in a philosophical tone and within the framework of the students’ definitions of happiness. We turned the answers given by the students into a dialectical component. If happiness signifies good, then, what signifies bad? What could you tell me about something that is bad? Students gave us a myriad of answers, but the value of it all was the flexibility of the language. Answers

demonstrated a display of free expression exhibiting penetration and an ability for critical thinking. They would postulate that the opposite of happiness was death. Then, they'd go on to argue that happiness was really an elusive subject. That it never really stays around for too long, and that many times we don't even realize that we are happy.

With the introduction of the concept of happiness we have also introduced the possibility of establishing a dialectical framework for students to use in critical thinking: The value of the thesis and its antithesis. Language works in opposites and the ability of students to grasp a synthesis would increase their ability for a better understanding of our cultural realities: a thinking tool capable of elucidating the riddles of rights and responsibilities. People in general need to play games. We need to come across surprises that make us smile and look forward to the next step. Dialectics could very much partake of the form of games. Mathematics are very helpful for this.

The concept of happiness also opens up the way to questions of morality. Through the elaboration of morality, with its polarities of good and evil, pain and pleasure, life and death, students could very well begin to discern relationships between the pain that they experience on a daily basis and the evil of it, the immorality of a pain that is caused, in many instances, by the breaking of the norm. We must remember that many of the pains that students experience come from social and economic realities aforesaid. This realization leads the student in search of solutions and in search of their rights. Students don't like pain, they enjoy pleasure, they love life. So, we ask again, what are the rights of children? The Constitution does not have a language directed to children per se. Not only the landscape, the milieu, is not in best interests of the children, but also the Constitution does not include their needs as human entities.⁵¹ Yet, the language of the law as it pertains to the best interests of the children is written in endless volumes filling stacks in libraries of the land. We talk about family law and about domestic relations. We speak eloquently about statutory law and common law and how judges make their pronouncements, but we know that children really have no rights. Now, to come to such realization is painful. And this is one way of immorality. If we want to end the pain we must act and change the painful situation.⁵²

Activity:

Write a letter to your best friend and talk about happiness. - In many instances, breaking the law is a very unhappy action. Does this mean that in order to be happy one must not break the law? Spanking has been protected by the privacy of the home since time immemorial. And judges and courts are reluctant to interfere with what goes on inside the home.⁵³ The law has protected spanking in the public schools.⁵⁴ Are you happy to follow this rule? How would you change it?

Activity:

Give a speech declaring corporal punishment unconstitutional. Support it with evidence. Is there a precedent. Applying common law, argue against corporal punishment at home and at school. Remember the students in Seattle!

Assessment:

Keep a portfolio with cases that students have done work with. Include letters, drawings, acting and plays. Make a task management assessment list. Refer to lesson one for an example.

Lesson four: A Debate on Puerto Rico

Why is it that Puerto Rico is a state, but it is not a state like the other fifty states in the United States? What is the relevancy of this subject to the present state of affairs of the Puerto Rican population in the United States? Are the rights of children violated by this gray reality?

We stumbled upon this subject by accident. But are there really accidents when we talk about the heart of a young population who dream about a tropical land as home, and who at the same time cannot formulate, at least some of them, with clarity their place of origin? I asked a student where he was from. He answered Puerto Rico, but he added that he was born in the United States.

Activities:

Make a map of Puerto Rico and another of the United States. Compare populations, size, and economy. Discover how Puerto Rico became to be in the political situation at present. What would you do to chance things. Is the present situation in the best interests of the children of Puerto Rican families in the Island? in the United States?

Activity:

Write about a case similar to the one about Maria B. How would the best interests of children like Maria in case number one be better served? Could this be taken to court? Who would you sue? There must be a way to prevent this from happening again. Write about it.

Assessment:

Follow methodology in lesson one adapting material to pertinent subject matter in this lesson.

It is fair to ask whether children should have the power of voting on these issues that affect them directly. But then again we find ourselves back to our original postulation about the language of rights and obligations. A person should be able to vote if that person understands the language and the consequences of the vote. A person must understand the rights and obligations of society and should have a clear idea of the power of voting. Further a student in the elementary school doesn't pay taxes and it seems that it might be difficult to understand the real value of money i.e. the allocation of tax money for a certain program. A person, an adult who advocates the rights of children might find a point of compromise. Perhaps a student might gain access to voting by sheer virtue of his or her grades; access to voting by their leadership in school and the community; by their ability to prevent violence.

Footnotes

1 In the preliminary budget summary for 1993-94, New Haven shows a projected 3.67% decrease in the amount of money spent on education.

2 Yale has created a myriad of programs together and in partnership with New Haven. Cf. *Community Partnership Source Book*, Yale University Office of the Secretary, March 1993.

3 In the Law Dictionary by Steven H. Gifis (Woodbury, New York: Barron's Educational Series, Inc. 1984), p. 368, *PRO BONO PUBLICO* means "for the public good or welfare. When attorneys take on cases without

compensation to advance a social cause, they are said to be representing the party “pro bono publico” or “pro bono.”

4 Away from the *pro bono* representation, when it comes to money and the family in court, as in custody disputes for example, lawyers are the ones who get all the money, at the same time that they predicate the best interests of the children. We all know that legal fees are exorbitant. An impoverished family could never be in the best interests of the children. There is a popular sentiment that says that in a divorce nobody wins except the lawyers.

5 Colleen Foye Bollen, “When children take action,” *Mothering* (Spring 1994), pp. 89-90.

6 See, for example, standards 4 and 5 where mathematical concepts, procedures and connections reveal communication and language as central and pivotal components of the overall growth of the student. See, *Professional Standards for Teaching Mathematics*. National Council of Teachers of Mathematics. Reston Virginia: The National Council of Teachers of Mathematics, 1991, pp. 89-103, et passing

7 In this respect we could also say that a student could develop science sense, but no matter what aspect of learning and perception we are talking about the common denominator is language. So we might say that in order to learn language we really would have to explore all aspects of a civilization; the more we explore, the further we internalize a sense of that civilization.

8 Judge Charles D. Gill, in “We look at children as property,” by Alix Boyle, *The New York Times* (Sunday, November 24, 1991).

9 Language encompasses all fields of knowledge. Although our approach is of a multidisciplinary nature, our essay presents to the student an enrichment in language that hopefully would enable him or her to view those fields of knowledge as interrelated entities. In this curriculum unit we are interested in taking one aspect of the written and spoken language that pertains to that specialized field of the law referred as family law. This aspect is the best interests of the children as viewed in a sample of case studies.

10 By “formulating a language” we mean to set the ground to build a discourse in the classroom that would give the student a vehicle and a reservoir of expressiveness for his or her rights as a human being. In a classroom situation this formulation would give the student language sense. We say that a student has language sense when that person reflects consciously on that language. And for this kind of thinking we need a language that includes flexibility, a specialized lexicon, and a sense of conviction that problems could be solved in many different ways.

11 According to the sociologist Lenore Weitzman the traditional conception of the property of the children and dominance over the wife in the Anglo world could be traced back to the tenth- and eleventh-century common-law doctrine of coverture. Under this doctrine the wife and children took the single legal identity of the husband. See, “Intimate Violence,” by Richard J. Gelles and Murray A. Strauss, *Family Matters: Reading on Family Lives and the Law* (New York: m e New Press, 1993), p. 196. Under Roman law the husband could kill and dispose at will of children and could also put to death an adulterous wife (Ibid). “ The Babylonian, Greek, and Roman Concept that children were economic units to be manipulated by their owners flourished again in nineteenth century England.” Brian G. Fraser “ m e child and his parents: a delicate balance of rights,” *The Family and the Law* (1976), p. 323.

12 It is our understanding that students are introduced to the study of the law at the high school level, namely ninth and tenth grades.

13 Although this is true for all students, when we speak about students at-risk we find this negative attitude is extremely deleterious for their development. In this respect Lewis and Doorlag tells us that “More than 1 out of 5 teachers working with at-risk students in urban schools do not believe that all students are capable of learning; these low expectations can become a self-fulfilling prophecy.” See *Teaching Special Students in the Mainstream* (New York: Macmillan Publishing Company, 1991), p. 432.

14 Before a person could actually vote he or she should have sufficient knowledge of what that person is

voting for. I think that an understanding of the dynamics of an issue is more important than the age of the person. The degree of knowledge of a particular discourse is directly bound to the knowledge of language. Concepts are built with language. Students who have difficulty with academic language will have a greater challenge understanding the language of the law. And then again, we might be in for some surprises since students who are otherwise disinterested in language show great interest in matters that hit close to home.

15 If children participate in giving their personal opinion and desire, generally speaking, it is through the voice of an adult. In New York there is an organization of lawyers called "Lawyers for Children." Through the work of these lawyers, according to our seminar leader, Professor Burt, children are given the opportunity to be heard and be taken seriously. Judges are generally unresponsive, but cases are presented as findings of group.

16 In some cases the teacher might look for ways to involve the student in the process of intervention. "Can they record their own personal data? help to develop contingency contracts? serve as models or recorders for other students?" Lewis and Doorlag, 1991, 296.

17 The State of Connecticut makes the law, and changes in the law, without proper consultation of the segment of the population to whom these changes are going to affect directly. This is a clear example where the law is not created in the best interests of the children since they are not being represented fairly. This concerns Bill NQ 321. This bill contains a number of issues regarding bilingual education. For example, the move for "changes to the current laws on the education of limited English proficient students (LEP) that could potentially jeopardize Bilingual Education Programs in Connecticut." News Alert, from Lisette Bernier-McGowan, Bilingual Education Supervisor at Gateway (New Haven, 1994).

18 Edmund Lindop, *The Bill of Rights and Landmark Cases* (New York: Franklin Watts, 1989), p. 129. "The first juvenile court was established in 1899 in Chicago..." Ibid.

19 John R. Bird, "Juvenile corrections facilities: is there any room for the isolation room?," in *Legal Advocacy for Children and Youth: Reforms, trends, and Contemporary Issues*, Howard Davidson and Robert Horowitz, compilers (Washington D.C.: American Bar association, 1986), p. 176. We must point out that in the structure of language this statement is an irony.

20 There are two kinds of bilingual classes in the school system in New Haven: on the one hand, we have the one way bilingual situation where the student, mainly a Spanish speaking student, is engaged in learning English and the subject matter with the help of Spanish; on the other, we have the two way bilingual class where students both English and Spanish speaking learn each other's languages and the subject matter.

21 A sense of powerlessness left by the absence of language.

22 But let's be honest with ourselves first in order to go on and do our jobs in the best way possible with our students. The challenge is there and it reoccurs every day in the class. What do we do when in a classroom the father of one of the students has been killed by the aunt of another student in the same classroom? What do we do when in the same classroom, day after day, a young lady is announcing to the teacher, all year long, that her mother is finally coming home from jail after wrongfully being accused of murdering a man? What do we do when just about every student has a member of the family or someone close to the family in jail? In spite of all this pain, these students are beautiful people. And they learn as fast as any other child in the world and sometimes faster. We could only say that empowerment begins with a knowledge of the language of the law. This is a proposition as a counterbalance to violence, and an enjoyable one.

23 See below.

24 Ross R. Olney & Patricia J. Olney, *Up Against the Law: Your legal Rights as a Minor* (New York: E.P. Dutton, Inc., 1985), p. 3.

25 On the history of the traditional outlook see Fraser, 1976: 315-425.

26 Boyle, 1991. In an interview Judge Gill said that he did not agree that children had rights. "I first became interested in procuring those rights for children after 25 years in the court system, seeing children being the lost souls of the system, seeing children being abused by the system in the civil courts, in the criminal courts,

in the juvenile courts and most certainly in the family courts” (Ibid). See also pamphlet published by the National Task Force for Children’s Constitutional Rights.

27 Boyle, 1991.

28 William O’Donnell & Jones, *the Law of Marriage and Marital Alternatives* (Lexington, Mass.: Lexington Books, 1982), p. 91.

29 Ibid.

30 Assuming that unborn child will be born by the time of divorce.

31 For adult readers see, Geoffrey R. Stone, Louis M. Seidman, et al., *Constitutional Law* (Boston, Toronto: Little, Brown and Company, 1986), pp. xxxixliv, et passim. For students, Jean Fritz, *Shh! We’re Writing the Constitution* (New York: G.P. Putnam’s Sons, 1987), pp. 49-64. Also, Donald A. Ritchie, *The U.S. Constitution* (New York: Chelsea House Publishers, 1989).

32 “Episode 1: The President Versus Congress: Executive Privileges and Delegation of Powers.” *The Constitution that Delicate Balance* (New York: The John D. & Catherine T. MacArthur Foundation. Library Video Classics Project, 1984).

33 Article I of the Constitution.

34 Article II of the Constitution.

35 Article III of the Constitution.

36 Students love to send letters to their pen pals.

37 Donald A. Ritchie, *The U.S. Constitution* (New York: Chelsea House Publishers, 1989), p. 55. *Brown v. Board of education*, 347 U.S. 483 (1959). Also see, Elaine and Walter Goodman, *The Rights of the People: Major Decisions of the Warren Court* (New York: Farrar, Straus and Giroux, 1971), pp. 15-34.

38 Bollen, 1994: 89-90.

39 Article 1, section 1 of the Constitution.

40 Elizabeth Levy, *If You Were there when They Signed the Constitution* (New York: Scholastic Inc., 1987), pp. 49-51.

41 Levy, 1987: 51

42 Is this what is meant by “a second class citizen?”

43 Levy: 55.

44 Ibid.

45 We have taken this idea from the curriculum presently being developed in the field of science in the New Haven Public School System. Being developed in Region 15 in Connecticut, this method has potential in other fields of academic endeavor. A positive feature is the participatory and inclusive nature of the format: students and teachers are participants in the evaluating process.

46 Susan M. Silverman, “Stepparent visitation rights: toward the best interests of the child,” *Journal of Family Law* (Vol. 30, 91/92), pp. 947-48.

47 “Transracial Adoption: ‘Child-Saving’ or ‘Child-Snatching,’” 13 *National Black Law Journal* (Spring 1993), pp. 154-155.

48 Elizabeth S. Scott, “Pluralism, parental preference, and child custody,” *California Law Review* (Vol. 80, No. 3, May 1992), p. 615-617.

49 Ibid., p. 616

50 Morality should be interpreted here as what is moral and what is immoral. Moral, we say, is what leads to happiness, what gives us pleasure; immoral is what bring us pain.

51 Let’s remember Judge Gill who thinks that children don’t have any rights. He started working as a lawyer in the Hill section of New Haven 25 years ago (Boyle, 1991).

52 Advocating the rights of children and acting on it might be a way to ease the pain.

53 Lee E. Teitelbaum, “Family history and family law,” *Family Law. Volume I: Society and Family* (Aldershot,

Hong Kong: Dartmouth, 1992), p. 96, et passim.

54 Supreme Court of the United States, 1977. 430 U.S. 651. 97 S. Ct. 1401, 51 L.Ed.2d 711. In this case we have many of the 237 schools in Dade County used corporal punishment. "The statute then in effect authorized limited corporal punishment..." Ibid.

55 All videos on the Constitution are available at the New Haven Public Library.

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MATERIALS TO BE USED IN CLASS

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