

Real Cases Project: **Law and Social Welfare**

Elizabeth Palley, JD, PhD

Associate Professor

Adelphi University School of Social Work

One South Avenue, Garden City, NY 11530-0701

palley@adelphi.edu

INTRODUCTION

A. Overview of this Course within the Social Work Curriculum

This course, “Law and Social Welfare Policy,” is an elective. It is generally taken after students have completed the foundation curriculum, and are studying in the advanced level of the MSW. The purpose of this course is to provide students with a basic understanding of how law affects social work practice. It begins with a background on basic legal concepts and a social workers’ potential role in the legal process. Then, it reviews the impact of the law on child welfare, domestic violence, adoption practices and policies, treatment of the elderly, public assistance, immigration and mental health. Students are given the opportunity to examine the impact of the law on other areas in which they have an interest for a final paper. Students are not expected to become lawyers, but rather to be able to understand their role or potential roles in the court, to understand generally what is happening and to be able to identify issues about which they should consult an attorney.

This course relies heavily on two primary text books, both of which provide an introduction to Law for Social Work students.

B. Relevance of the Case Studies to the Course

The case studies will be used both to explain key legal concepts and to help students understand the impact of law on child welfare specifically. Specifically, the cases will address the following themes.

- a) The basics of the court processes and the courts’ structure
- b) The social worker’s role in the court process.
- c) The use of evidence in court:

We will discuss the basic rules of evidence especially the exclusion of hearsay and the exceptions to this rule.

Social work investigation and creating evidence for trial: We will discuss the way in which evidence was and may be used and which types of evidence would have been admissible or inadmissible during the each of the three cases. We will also discussion the limitations of these policies for obtaining information to help prove an instance of abuse or neglect.

d) Civil rights of the parents and the child: Freedom from unnecessary government intervention and protection from violence:

We will discuss the cases in light of basic Constitutional rights that grant parents the right to parent their children without unnecessary government intervention. We will also discuss the reasons that this right is limited when parents are found guilty of abusing or neglecting their children.

e) The right to due process:

This is the right to a fair trial before the government can take away basic rights (such as the right to parent). We will discuss the reason for these rights and their affects on child welfare law in light of each of the three cases.

f) The best interests of the child standard:

This standard requires courts to decide child related cases with the child's best interest in mind. We will discuss the implications of this standard for child welfare cases in each of the three cases.

g) State interests in child welfare:

We will discuss a state's interest in protecting children and how it fits with the Constitutional protections afforded to parents and children.

h) We will discuss the basic laws that apply to child welfare cases (e.g.

state and federal law) especially guidelines for investigations and the legal definitions of abuse and neglect (ASFA, etc.), termination of parental rights and foster care options.

i) We will also use the three cases as examples when discussing the

basic legal processes e.g. where the case is filed, by whom and how.

We will discuss agency and worker liability issues

A brief overview of the issues highlighted in each case follows:

Andrea R. Case Study

- Court processes and procedures
- The role of the social worker in court
- Child welfare laws e.g ASFA, Article X report
- The rights of the child, the rights of the parents and the obligation of the state
- Non responsiveness to court mandated treatment
- Potential agency and worker legal responsibility

Anne M. Case Study

- Court processes and procedures
- The role of the social worker in court
- Child welfare laws e.g. ASFA, Article X report, and domestic violence laws e.g. order of protection
- The rights of the child, the rights of the parents and the obligation of the state
- Court jurisdiction
- Potential agency and worker liability

Mary S. Case Study

- Court processes and procedures
- The role of the social worker in court
- Child welfare laws e.g. ASFA, Article X report
- The rights of the child, the rights of the parents and the obligation of the state
- Potential agency and worker liability
- The conflict between parents and custodial grandparents rights

C. Specific Learning Objectives Related to Using Case Studies in this Course

- Students will learn how laws and the practice of law can effects child welfare practice and their potential roles in the legal process
- Students will develop an understanding of the basic rules of evidence and its implications for social work practice.
- Students will learn the basic principles of Constitutional law e.g. the rights to liberty, property, due process, equal protection and the right to privacy as well as the impact of these rights on both social work practice and court decisions.

D. Overview of What is Included in this Guide

This guide will include a description of the issues related to the case studies which will be highlighted. It will provide examples of 3 strategies in which the cases may be included in a semester long elective course on the law and social work. It will explain the teaching methods to be used and the suggested readings. It will provide a tool to evaluate student learning.

TEACHING STRATEGIES

These cases could be used in one session or for a percentage of the class (approximately 1/4th). As this course must cover many areas of law, it would not make sense to use these cases in a course long, integrated manner. If however, the course title and content was changed to Child Welfare and the Law, the cases could be used to integrate a full semester course. This guide will not address that option.

A. Strategy One: The Three Case Studies for Review of US Law

1. Areas/issues of the case studies to be highlighted:

Issues that are addressed in the first 4 sessions of the class will be reviewed. These include the basic structure of the court and basic legal processes, the role of a social worker in court, the use of evidence in court, social work investigation and creating evidence for trial, the civil rights of the parents and the child: freedom from unnecessary government intervention and protection from violence, the right to due process, the best interests of the child standard, the state's interest in child welfare, as well as basic NY and federal laws that apply to child welfare cases.

We will also use each of the three cases as an example when discussing the basic legal processes e.g. where the case is filed, by whom and how.

2. Timing within the semester:

The cases will be introduced in the fifth class session. In the first four classes, the students will be taught to understand how law affects U.S. governance, the role of the courts, the difference between state and federal law, the actual process of filing a court case, and basic Constitutional principles. In this session, those concepts will be reviewed using components of the three cases as examples.

3. Teaching methods:

Students will be assigned to either read these cases at home or read them at the beginning of the class session (depending upon whether the professor has the time in class) and think about it in light of what they learned in the first four sessions. Lecture and class discussion will focus on the highlighted areas (as described in Section B, parts a-h of the introduction to this teaching guide). For example, when discussing the cases generally, we will discuss the types of things that could be used as evidence in court hearings and the basic NY laws for child protection. We will discuss how the parental mental health, domestic violence, and addiction issues may have affected the mother and father's ability to care for the child and the extent to which these factors provide evidence for abuse and/or neglect. We will consider the due process rights of the parents as well as the child's rights and the state's obligations to care for at risk children. We will discuss the mandatory reporting requirements that may lead to an initial investigation. Finally, we will discuss issues of agency liability for failure to protect the child. Lastly, the discussion will be open to other issues that the students raise in relation to the law and the facts of these three cases.

4. Materials:

A copy of each of the three case studies

5. Supporting readings:

Students should review the readings for classes 1-4 which should include:

- a) Salzman, A. and Furman, D (1999). *Law in social welfare practice*. Belmont, CA: Wadsworth Group. Review chapter 1-5 and read chapter 8.
- b) Alexander, R. (2003). *Understanding legal concepts that influence social welfare policy and practice*. Pacific Grove, CA: Thomson, Brooks Cole. Review chapter 1 and 2, read chapters 3 and 4.

Students should read:

- c) Smiles, J. (2003). A Child's due process right to legal counsel in abuse and neglect dependency proceedings. *Family Law Quarterly*, 37, 485.
- d) Foster, S. and Machetto, (1999). Providing safe havens: The challenge to family courts in cases of child abuse and neglect by substance abusing parents. *Journal of Health Care Law*, 3, 44.

6. Evaluation plan

Students will be given an exam, containing both multiple choice and essay questions concerning the highlighted topics (see Appendix).

B. Strategy Two: Starting Point for Introducing Basic Legal Concepts

1. Areas/issues of the case studies to be highlighted:

These include the use of evidence in court, social work investigation and creating evidence for trial, the civil rights of the parents and the child: freedom from unnecessary government intervention and protection from violence, the right to due process, the best interests of the child standard, the state's interest in child welfare, as well as basic NY and federal laws that apply to child welfare cases.

2. Timing within the semester:

Begin the second class with a discussion of the case studies. During the first sessions of this class, refer to each of the three cases when discussing civil liberties, children's rights, parents' rights, due process, the interests of the state, how and why laws are passed and by whom, the creation and presentation of evidence that can be used at trial when working with a child.

3. Teaching methods:

Lecture and discussion

Class 2: Understanding the Courts: How does the legal system play into the governance of the United States?

In the second class, the lecture and discussion will focus on the understanding the influence of the courts in the American political system. We will discuss how the courts work, the differences between duties and privileges, uses of evidence, and the different material that makes up law in the United States. We will also talk about how the courts can be used to change and interpret policy. The development of the Adoption and Safe Families Act will be included in this discussion as an example of a relevant law.

Readings:

Foster, S. and Machetto, (1999). Providing safe havens: The challenge to family courts in cases of child abuse and neglect by substance abusing parents. *Journal of Health Care Law*, 3, 44.

Salzman, A. and Furman, D. (1999). Chapters 1 and 2

Class 3: State v. Federal Law and the Process

In this class, we will discuss the separation of state and federal power as well as some basic Constitutional rights. These rights include equal protection, due process and freedom from unnecessary government intervention. We will also discuss the mechanics of the hearing process and how these rights affect client at hearings. We will discuss how the

hearing processes occurred or may occur in relation to these case studies, and what affect their Constitutional rights had on the process.

Readings:

Salzman, A. and Furman, D. (1999). Chapters 1, 2 and 5

Smiles, J. (2003). A Child's due process right to legal counsel in abuse and neglect dependency proceedings. *Family Law Quarterly*, 37, 485.

The U.S. Constitution

Class 4: Basics of the Law

This class will continue with a discussion of where law comes from as well as the discussion of Constitutional rights. We will highlight court cases and their influence on the development of law and social welfare practice. We will discuss the difference between Constitutional, Administrative, and Statutory laws. We will also discuss basic legal terminology such as parens patrie, privilege, immunity, liberty, property. The three cases will be included in the discussions and used as an example.

Readings:

Alexander, pp. 1-42

Salzman, A. and Furman, D. Chapters 6, 7

Class 5: Child Protection and Adoption

In this class, we will discuss the specific guidelines of the Adoption and Safe Families Act and NY State law regarding child protection. We will include the definitions of abuse, mandatory reporting requirements and the law's description of the time frame for hearings. We will discuss different instances that cause parents to be considered for and/or found guilty of child abuse such as child weight, physical and mental health, parent substance abuse, poor household cleanliness. We will discuss the balance between states', parents', and children's rights and how the decisions in other cases may affect each of the families. We will also discuss issues of children who witness parental abuse as well as how cases guide us to determine the best interests of a child.

Readings:

Alexander, pp. 43-80

Salzman, A. and Furman, D. Chapter 8

Ramsey, S. (2005). Fixing foster care or reducing child poverty: The Pew Commission recommendations and the transracial adoption debate. *Montana Law Review*, 66, 21-49.

4. Materials:

The three case studies

5. Supporting readings:

a) Salzman, A. and Furman, D (1999). *Law in social welfare practice*. Belmont, CA: Wadsworth Group. Chapters 1-5 and 8.

b) Alexander, R. (2003). *Understanding legal concepts that influence social welfare policy and practice*. Pacific Grove, CA: Thomson, Brooks Cole. Chapters 1-4

c) Smiles, J. (2003). A child's due process right to legal counsel in abuse and neglect dependency proceedings. *Family Law Quarterly*, 37, 485.

d) Foster, S. and Machtetto, (1999). Providing safe havens: The challenge to family courts in cases of child abuse and neglect by substance abusing parents. *Journal of Health Care Law*, 3, 44.

e) Ramsey, S. (2005). Fixing foster care or reducing child poverty: The Pew Commission recommendations and the transracial adoption debate. *Montana Law Review*, 66, 21-49.

6. Evaluation plan:

Students will be given an exam at the end of the first 5 sessions which includes multiple choice and essay questions specifically related to the highlighted areas

C. Strategy Three: The Three Cases as Paper Assignment

1. Areas/issues of the case studies to be highlighted:

Students will be expected to highlight issues that are addressed in the first 4 sessions of the class will be reviewed. These include the use of evidence in court, social work investigation and creating evidence for trial, the civil rights of the parents and the child: freedom from unnecessary government intervention and protection from violence, the right to due process, the best interests of the child standard, the state's interest in child welfare, as well as basic NY and federal laws that apply to child welfare cases.

2. Timing within the semester:

These cases will be used in the fifth class session. In the first four classes, the students will be taught to understand how the law affects U.S. governance, to understand the difference between state and federal law, the actual process of passing a law and of filing a court case as well as basic Constitutional principles. In this session, those concepts will be reviewed using these cases as an example.

3. Teaching methods:

Students will be asked to read the cases at home and write an essay in which they find the legal issues that are raised in the cases e.g. what are the parents' rights, the child's rights, the state interests, the laws which govern, the court in which these cases would have been heard, the law which governed, and the role of the attorneys and social workers in these cases.

4. Materials:

The three case studies

5. Supporting readings:

a) Salzman, A. and Furman, D (1999). *Law in social welfare practice*. Belmont, CA: Wadsworth Group. Review chapter 1-5 and 8.

b) Alexander, R. (2003). *Understanding legal concepts that influence social welfare policy and practice*. Pacific Grove, CA: Thomson, Brooks Cole.
Review chapters 1 through 4.

c) Smiles, J. (2003). A child's due process right to legal counsel in abuse and neglect dependency proceedings. *Family Law Quarterly*, 37, 485.

d) Foster, S. and Machetto, (1999). Providing safe havens: The challenge to family courts in cases of child abuse and neglect by substance abusing parents. *Journal of Health Care Law*, 3, 44.

e) Ramsey, S. (2005). Fixing foster care or reducing child poverty: The Pew Commission recommendations and the transracial adoption debate. *Montana Law Review*, 66, 21-49.

6. Evaluation plan:

Students will be asked to write a paper in which they explain how these cases relate to the key concepts that have been discussed in the

previous classes. The papers should be graded based on student ability to identify and present the legal issues as well as their ability to communicate their knowledge in writing. Students will submit papers in class and will be graded on their organization and writing skill as well as the inclusion of the above mentioned content areas including the Constitutional protections available to the family and child, which court would listen to the review each of the I cases, what factors they would consider (using ASFA and NY law), what types of evidence could be used to help determine what happened, how the social worker would be able to contribute to this evidence, and the standards that would be used when making a determination to terminate parental rights or provide additional services to the family.

CONCLUSION

A. Recap

The key themes addressed in this practice guide are 1) Constitutional rights -e.g. privacy, equal protection and due process, 2) children's v. parents' rights, 3) the basics of legal processes, 4) the role of the social worker in collecting and presenting evidence in court, 5) the development and implementation of law, 6) the impact of law on social work practice particularly related to child welfare, 7) ASFA and state guidelines for the protection of children regarding definitions of abuse/neglect, timelines for investigations and guidelines for foster care placements.

B. Suggestions for Future Courses

Future courses could evaluate the practice and policy implications of these cases considering the lack of communication between and within agencies, the way in which agency practices limited the provision of services to the families, and the need for the children in these cases and other similar children to receive clinical interventions. Future courses might provide details about interventions and policy (including court practices) changes that may have changed the outcome of these cases.

APPENDIX TO TEACHING GUIDE FOR LAW AND SOCIAL WELFARE

Exam Questions related to Student Learning in Law and Social Work

Name _____

Essay questions (10 points each)

1. What is the difference between cases which are heard in a civil court and cases which are heard in criminal courts? Who brings which type of case? What are the implications of this for your practice as a social worker?
2. What is hearsay? What are some exceptions to hearsay rules?
3. What must you consider, as a social worker, when you are testifying in court? Does this depend on your role and if so, how?
4. What rights are granted in the 14th Amendment? What are the 2 key constitutional principals are found in the 14th amendment? Describe them.
5. What are the different standards of proof which are used by courts and under what circumstances are they used? What are the implications for social work practice?
6. Explain how the three branches of government work together. How do they work to create and implement new laws? Where does the Department of Health and Human Services fit? What impact does it have on the development of policy?
7. Explain the following terms
 - a. Standing
 - b. Ripeness
 - c. Jurisdiction—subject matter and personal
8. Describe the differences between the perspective on cases taken by lawyers and those taken by social workers. What are the similarities?

Multiple choice questions (2 points each)

1. The Constitution gives all citizens and legal residents of the U.S.A with which of the following rights (circle all that apply):
 - a. The right to raise your own child without undue government intervention

- b. Due process
 - c. The right to a trial when accused of a crime
 - d. The right to vote
2. Due process is
 - a. A procedural right
 - b. A substantive right
 - c. Both a procedural and a substantive right
 3. Federal law mandates that if a child has been placed in foster care for 15 of 22 months, the child welfare agency should:
 - a. Work to reunify the child with their parent
 - b. Begin the process of terminating parental rights
 - c. Place the child in a permanent foster family
 4. A state child welfare agency need not work to reunify a child with his or her parents if: (circle all that apply)
 - a. The parent murdered the child's sibling
 - b. The child does not want to be reunified with his or her parent
 - c. The child has been in care for 12 months
 - d. The parent suffers from mental retardation
 5. When determining whether or not to place a child in foster care, the court should assess which of the following factors (circle all that apply):
 - a. Parents' level of education
 - b. Whether the parent has been a victim of domestic violence
 - c. Current and future threat of the child being harmed
 - d. The quantity and quality of the evidence that social workers present regarding whether the child has been abused or neglected
 6. Substantive due process means that
 - a. You cannot be denied basic rights without a trial
 - b. The government must make reasonable rules
 - c. Different citizens are entitled to different rights based on historic discrimination
 7. Circle the one that is not one of the different standards that courts apply:
 - a. Preponderance of the evidence
 - b. Clear and convincing evidence
 - c. Prima facie evidence
 - d. Beyond a reasonable doubt

Which standard is used in termination of parental rights' cases?
Which standard is used in criminal proceedings against parents for behaviors associated with extreme abuse or neglect?

8. Which piece of evidence would be admissible in court?
 - a. Evidence presented by a child who does not seem to be able to distinguish right from wrong
 - b. Non-hearsay evidence presented by a parent who is developmentally delayed
 - c. A social worker testifying about something she or he learned in a conversation that he or she had with a parent about something that the child had told the parent about something another sibling saw.
 - d. Non-material facts

9. The Supreme law of the land is
 - a. ASFA
 - b. Federal law
 - c. The Constitution
 - d. State law

10. All of the following except one are basic rights and protections that were not specifically addressed by the Constitution but have been interpreted into the Constitution by cases:
 - a. Due process
 - b. Privacy
 - c. The Least Restrictive Alternative
 - d. The right to a hearing before being denied federal benefits