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Reading and Writing Law and Legal History: Privacy and Reproductive Rights

One-Sentence Summary:

In a series of lessons, taught together or individually, students will gain a greater understanding of the legal history of reproductive rights and privacy while also learning how to read and analyze court decisions and to incorporate law and legal history into future research projects.

Overview:

As the inaugural Judith S. Kaye Teaching Fellow for the Historical Society of the New York Courts, I created and taught a social, political, and legal history college course on civil rights and civil liberties in the United States, and the role of New York and its courts in helping to shape this history (from the American Revolution to the War on Terror). Students explored how the meanings of freedom, equality, and liberty have changed over time and how various groups and individuals have struggled to change society and its structure. They learned how to read and analyze court cases and place them in historical context, while gaining a greater understanding of how the law, as well as how people who have fought for civil rights and liberties, paved the way for the nation's current freedoms, protections, and challenges. Subjects included racial, gender, and LGBTQ discrimination, freedom of expression, reproductive rights, labor, immigration, and how this history connected to the War on Terror, Black Lives Matter, and the Travel Ban.

While teaching this course, I noticed that learning about legal precedent and how to apply it to current controversies helped students to hone their critical thinking and analytical skills. I also found that one of my assigned readings from the Historical Society of New York Courts' publication, *Judicial Notice*, "*People v. Sanger* and the Birth of Family Planning Clinics in America," by Maria T. Vullo was particularly effective. The essay included a legal history of the origins of Planned Parenthood, Margaret Sanger's reproductive rights advocacy, Sanger's prosecution for obscenity under New York law, and how her case before the New York courts led the way to the Supreme Court's affirming the right to privacy under the U.S. Constitution.

Vullo's essay not only provided information about the legal history of reproductive rights and the role of New York law and New York courts, but it also provided a good example of how to write legal history and incorporate the law in a research paper or narrative essay format. In class, I used the content and form of the essay to introduce the right to privacy in *Griswold v. Connecticut* (1965) and *Roe v. Wade* (1973) and to place these Supreme Court decisions in historical context. Students read and examined the Court's analysis and also discussed how they would write a legal history essay or construct a legal research paper similar to Vullo's piece.

The purpose of these lessons is to introduce legal history, legal analysis, and the role of New York law and courts, as well as of federal law and courts, in expanding civil rights and civil liberties protections, to high school/college students. These lessons use reproductive rights as a model for one approach to teaching law and incorporating legal history in secondary education classrooms. They are designed to be flexible to stand on their own, serve as a basis for a unit on a subject or the judicial system, or to fit within an existing unit or history/civics/politics/government course.

Issues Addressed:

- Learn how to read and analyze legal decisions and statutes and to write legal history.
- Learn how civil rights/liberties legal protections and history have changed over time.
- Learn how New Yorkers, as well as New York laws and courts, have shaped this history.

Student Learning Outcomes:

- Skills: Hone, develop, acquire new analytical, reading comprehension, and writing skills.
- Content: Learn legal history and civil rights/liberties law (privacy, reproductive rights).

Signature Pedagogies Employed:

- Critical thinking, reading, analysis; discussion-based, collaborative learning.
- Writing, organization, effective argument development.
- Discovery of new discipline, knowledge: law, to use in/with existing discipline: history.

Lesson Timeline (over one or two weeks):

Lesson 1: Exploring Existing Knowledge/Learning about Courts

- In-class writing and discussion of existing knowledge and understanding of civil rights/liberties (e.g., reproductive rights – *Roe v. Wade*, Right to Privacy, etc.).
- Review of New York and Federal Court System and Appellate Process.

Lesson 2: Close Reading and Analysis of Legal History Article

- Review/discussion of legal history article assignment (e.g., “*People v. Sanger*”).

Lesson 3: Legal Decision Reading and Case Brief Outline – Two Court decisions

- After reading court decision (e.g., *Griswold v. Connecticut*), work in pairs/groups to outline, “brief” the case. Go over court decision briefs together in class.
- Discussion/in-class debate analyzing Court majority and dissenting opinions.
- C-SPAN Landmark Case Assignment – response paper reacting to one source.
- Repeat with next case (e.g., *Roe v. Wade*).

Lesson 4: Legal Precedent and History – Relevancy of Past to Present

- Review court decisions, legal precedent, and discuss aftermath of decisions, including public response, subsequent cases, current laws and controversies.
- In-class writing – like Lesson 1, but examining what students have since learned.

Lesson 5: Researching and Writing Legal History

- Using Lesson 2 article as a model, homework/discussion on writing legal history.
- Intersectionality – discuss origin and applying to legal history research/writing.