

## WORLD WAR II ALIEN ENEMY CONTROL PROGRAM CURRICULUM GUIDE AND LESSON PLANS

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LESSON PLAN TEN: *“Raids and Arrests of Enemy Aliens”*

APPROPRIATE GRADES/COURSES:

8-14, U.S. History; Civics, American Government, Political Science

TOPIC BACKGROUND SUMMARY:

Even before the United States formally entered World War II on December 7, 1941, government officials had been thinking about what measures to take on the home front when and if war broke out. Unnaturalized immigrants from all three potential enemy nations lived in the United States, and the question became how best to deal with them. Should their loyalty be questioned? Should restrictions be imposed upon them? Should they be allowed to remain at large? Congressional debate on the issue resulted in laws such as the Hobbs Act of 1939. The Hobbs Act made it possible to arrest and detain individuals who had not committed any crime, but who were considered “security risks.” President Roosevelt’s 1939 Emergency Detention Program reinforced this act, ordering the Department of Justice to make plans to “arrest and detain those persons deemed dangerous in the event of war, invasion, or insurrection.”

Still, not everyone agreed that it was necessary to suspend the protections guaranteed by the Constitution to “all persons,” including aliens. Particularly in the Justice Department, officials were mindful of mistakes made in WWI, when thousands of innocent German immigrants were attacked by mobs, arrested, and interned. The Attorney General, Francis Biddle, wanted his Justice Department, which had the authority for executing regulations concerning enemy aliens throughout the United States, to avoid such actions if possible. So even before war was declared, Earl Harrison, head of the Immigration and Naturalization Service (INS), wrote in September 1941 about the unique situation of the “American alien”:

*The American alien is neither a refugee nor an enemy alien; he is an immigrant, a product of American history.*

Harrison was pointing out that unlike a temporary foreign resident--a diplomat, or a student, or a visitor--the “American alien” had made a choice to leave his home country and live in the United States. As a permanent resident his loyalty need not be automatically suspect. Like other Americans, he was an immigrant to, not an enemy of his adopted country.

This view entered the struggle between the Department of Justice and the War Department over who should control the 1,000,000 enemy aliens within the nation, and how. Eventually, officials agreed that the Department of Justice, including the FBI, would take charge of arresting and then detaining in INS facilities all enemy aliens who

were considered “potentially dangerous.” If a hearing board agreed that the person might be a danger, he would be ordered into the custody of the War Department—to be interned at camps on Army bases run by the military. If the person was judged *not* dangerous, he could be either held in detention for a longer period, or paroled, or released outright. The Department of Justice also took charge of issuing regulations for enemy aliens--like those limiting their movement, and the one ordering enemy aliens to turn in all “contraband” such as short-wave radios or signaling devices--and arresting those who violated them.

For the first month of the war, the War Department seemed satisfied with this arrangement. Soon, however, army officials grew impatient with what they considered the Justice Department’s leniency. General John DeWitt, head of the Western Defense Command, began to argue that enemy aliens presented a clear danger to coastal defenses. Despite evidence to the contrary from the FBI, he insisted that enemy aliens were sending signals to submarines about the location of American ships off the Pacific coast. With the approval of Provost Marshal General Allen Gullion, DeWitt began demanding that the Justice Department impose stricter controls on these “dangerous aliens.” Arguing that enemy aliens were hiding “contraband” like signaling devices, DeWitt urged measures that would approach martial law--absolute control by the military--over large sections of the West Coast. This eventually led the Attorney General to send his assistant, James Rowe, to San Francisco to work out the disagreements.

When Rowe arrived in early January, he found that General DeWitt had prepared three basic demands: 1) force all enemy aliens to carry identity cards; 2) declare zones from which all enemy aliens could be evicted; and 3) provide authority to raid all alien homes and “search and seize immediately without waiting for the normal processes of law.” (p. 33, Irons: *Justice at War*). Though he was stunned by the scope of these demands, and had to wait for the approval of the Attorney General, Rowe and the Justice Department eventually agreed to two: requiring identity cards and setting up prohibited zones.

Concerning the third, however, the Justice Department hesitated. The procedures for mass raids on homes without a warrant, Rowe knew, would violate the Fourth Amendment. That amendment guaranteed that every American could be secure at home: if the authorities wished to conduct a search, they had to go to a judge and obtain a search warrant. And in order to get a warrant, they had to offer evidence of “probable cause”—that is, the likelihood that the person had committed, or was about to commit a crime. What General DeWitt was demanding, by contrast, was the authority to enter any home, indeed, *all* enemy aliens homes, *without a warrant*, and more, “to stop every car on the highway and search it--every portable moving thing there is.” The Justice Department had already authorized and conducted raids on homes *with* warrants, but DeWitt insisted that warrants were too limiting. “To go to court, you have to show your reason,” he said. “We don’t want to go to court.”

In the end, Attorney General Biddle refused to allow mass raids on the homes of all enemy aliens. If the military wanted that, he maintained, they would have to ask the President for martial law. The Attorney General offered a compromise instead. He wrote that the Justice Department would still require warrants to conduct searches of homes, but obtaining one would be easier. Now, “the question of probable cause will be met only by the statement that an alien enemy is resident in such premises.”

Unfortunately for enemy aliens, this “capitulation,” as it has come to be called,

meant that the Fourth Amendment protections the Department of Justice had been maintaining for them could now be violated. If simply being an “enemy alien” was now considered “probable cause” of a crime, it meant that whole groups of people were automatically suspect. Birth in Italy, or Japan, or Germany had become an official signal of suspicion, of disloyalty, of likely criminal activity. And even those homeowners who had been born in the United States, but whose live-in parents or relatives were not yet U.S. citizens, would now have to submit to searches of their homes and possessions.

Beginning in January, arrests and searches of enemy alien homes followed this procedure. Sometimes arrests were based on government records--failure to register, for example. But many arrests were based on rumors, or on information from informants who had seen or heard something they considered suspicious, or who simply carried a grudge. Whatever the cause, the FBI began to raid homes where enemy aliens lived, searching for “contraband” or any other evidence of violations. These violations included not carrying identity cards, traveling without permits, not abiding by the 8:00 p.m. to 6:00 a.m. curfew for enemy aliens in California, and enemy aliens setting foot in West Coast prohibited zones. As a consequence of these alleged violations, arrests soared.

Aristide Bertolini, of Santa Rosa, California, was delivering a load of tomatoes to a customer. It was evening, but he thought he could make the delivery before curfew. Someone observed him arriving home a few minutes after 8:00 p.m., and reported it to the police. Bertolini was arrested, and detained at the INS detention center in Sharp Park, California, for two months. Salvatore Rossetti was a seventy-two-year-old laborer who had lived in the United States for fifty-one years when his home was raided. Police found a revolver but “no other evidence of dangerousness.” Still, he was “held for several weeks while his case was put through the machinery devised for dangerous aliens.” Antonio Orsini was seventy years old, a laborer who could not read or write in any language, when he was arrested by the FBI. Living with his American-born son and daughter-in-law, Orsini was arrested because he had “access to a radio and a gun.” But the radio belonged to his son, and the gun had belonged to his daughter-in-law’s father, who had died in 1931. Since the father’s widow had threatened to commit suicide, the gun was hidden to keep her from using it. It had remained there until the FBI agents discovered it, with no evidence Orsini even knew about it.

FBI files are filled with cases like these, cases of enemy aliens whose homes were entered and searched, and who were sometimes arrested for contraband of which they had no knowledge, or which belonged to their U.S. citizen children. Some of those children became so worried about such raids that they tried to surrender items they were actually allowed to keep. Mary Ferrante, for example, a U.S. citizen, visited the U.S. Attorney in Portland, Maine, to surrender a radio. She feared arrest for possession of contraband, because she was living with her parents, both of whom were enemy aliens. Perhaps she was right to be fearful. Annie Messina, age sixty, was arrested for possessing a pistol, a camera, three cartridges, a broken revolver and field glasses. All were found in parts of the house occupied by her daughter and son-in-law, both U.S. citizens. Messina, who said she had never even heard of the regulations for enemy aliens, was eventually released. (all above from Hyde Park documents).

Stockton, California, was the location of an enemy alien raid that made the front page of the *Stockton Record* on January 7, 1942: “Jackpot Hit as Police Investigate

Alien.” The article described how two detectives:

*went to the home of Matteo Gosso, 45, of 338 W. Market St to investigate a shotgun owned by another resident of the home. Although Gosso is a naturalized citizen, Pete Darunga, 58, alleged owner of a shotgun, is registered as an alien.*

Both were employed as gardeners. The police found Gosso trying to hide a pistol and a box of shells, even though, as a citizen, he was allowed to have those items. They also found a shotgun, previously owned by Darunga, in Gosso’s bedroom. They also found 300 gallons of home-made wine in Gosso’s basement, which he admitted he owned without a license. And in another room, occupied by another enemy alien, Giuseppe Cardoni, they found barber equipment. Having entered the home of a United States citizen, the police then confiscated the shotgun, charged Gosso with illegal possession of wine, and charged Cardoni with operating an unlicensed barber shop. Darunga was arrested for failing to surrender his contraband shotgun, and later released. This was the “jackpot” referred to in the newspaper.

FBI records are filled with additional arrests for violations of curfew, travel restrictions, and movement restrictions. Barbara Lena Linda, of San Francisco, was visiting her sister one night when the police came to check her home. Linda was arrested and booked at City Jail for being out after curfew. Carlo Simontacchi of South San Francisco was arrested for changing his place of employment without permission. It turned out he had left his job at a meat market in San Francisco because the market “was declared a prohibited area.” Simontacchi, in other words, was trying to comply with the law. So was Arthur Pecchia, also of San Francisco. Working at New Joe’s restaurant on Broadway, he changed jobs and his place of residence because, with the curfew, he could no longer work at night. He went to work at the New Lucca Lunch, changing his hours to comply with the curfew. This got him arrested.

Whether arrests like these and thousands of others helped to keep the United States safe is an open question. At one point, Attorney General Biddle commented that out of the thousands of arrests, not a single case of sabotage or espionage had been discovered. Regardless of whether the arrests were justified, the larger question remains: Should the normal processes of law and individual rights be suspended in times of crisis? It is a question that applies even today, in post-9/11 America.

#### ESTIMATED TIME OF COMPLETION:

Flexible: three to four class periods (one to read background; two-three for discussions and assignments.)

#### STUDENT OBJECTIVES:

Learn how World War II restrictions on enemy aliens were enforced, and how that enforcement relates to the U.S. Constitution.

## PERIOD ONE--CLASSROOM ACTIVITIES:

### For the teacher and students

#### Checking the Facts:

Have students read the **Topic Background Summary** in class. Make sure they are familiar with key terms, as noted below. Help them focus on the main issue in the debate over control of enemy aliens: how much control did the government require to keep the nation safe from possible sabotage and espionage--so-called Fifth Column Activity? The spectrum runs from martial law (as pertained in Hawaii--see Lesson Plan Six) to full constitutional protections for all, regardless of birthplace or citizenship. Have them discuss the likely differences in attitude between government officials in the Justice Department, most of whom are lawyers, and officials in the War Department, many of whom are military officers. Point out that while both are involved in maintaining order and safety, Justice Department officials are ever mindful of protecting individuals and their rights, while military officials must be more concerned with protecting and defending the nation from foreign invasion. Conflict between the two agencies is not inevitable, but it is likely.

#### Questions for discussion:

Why did the military think the normal procedures for search and seizure, requiring a warrant, were too limited? (They required officers to go to court for a warrant; the army did not want to go to court and explain its "probable cause.")

What was the position of the Attorney General regarding search and seizure? (Even though it was not required—i.e. enemy aliens could be arrested, and their possessions seized, with no other authority—Biddle wanted to maintain constitutionally-sanctioned procedures to the extent that he could.)

What was the compromise that was reached? (Authorities could get a warrant to search a home as long as an enemy alien lived there.)

What was the purpose for regulating the movement and possessions of enemy aliens? (To control enemy alien possessions and movement in order to prevent attempts at sabotage or espionage).

Many of those arrested were turned in by informants. Should enforcement agencies pay attention to tips by citizens? What might be benefits involved? the dangers?

## PERIOD TWO--CLASSROOM ACTIVITIES

### For the teacher and students

#### Individual or group research:

Direct students to look up all they can about the principle of "probable cause." To use this as a group activity, let one group focus on the term's history, including specifically why the framers of the U.S. Constitution felt it was necessary to add the Fourth Amendment to the Constitution. Another group can consider how probable cause has been used by law enforcement on one side and by defense attorneys on the other, including the importance of legal definitions such as "reasonable suspicion," "reasonable doubt," "exclusionary rule," "hearsay evidence," and "circumstantial evidence." A third

group can look into related concepts like “due process” and the clauses in the Constitution and Bill of Rights which specifically govern due process. A fourth group can investigate the slippery nature of terms such as “reasonable,” “probable” and “evidence”. Have students discuss their findings in class.

As a further activity, an advanced group might investigate changes to the standard of probable cause such as those embodied in the Federal Wiretap Act of 1968 (expanded in 1986), the FISA Act of 1978, the Material Witness Statute of 1984, and the Patriot Act of 2001. This investigation should look into the rules concerning the government’s authority to search a suspect’s home, person, office, car, possessions, computer, as well as conversations or other communications subject to electronic surveillance or wiretapping. In this regard, students should find out what is meant legally by the concept of “necessity.”

(For these activities, students can Google terms like “probable cause” and “material witness statute” to get sufficient information for writing and discussion. Also note the recent Brandon Mayfield case—see reference below, *Washington Post*, 11/30/06—which directly concerns “probable cause”.)

### PERIOD THREE--CLASSROOM ACTIVITIES

#### For the teacher and students

Conduct a debate on whether the Constitution should or should not be interpreted as protecting “enemy aliens.” During World War II, Attorney General Francis Biddle tried to maintain at least some of those protections. The military was more eager to ignore all such protections. The same controversy pertains today. In his book, *Enemy Aliens*, Prof. David Cole of Georgetown University Law School argues that protecting the civil liberties of aliens may well be of *greater* importance than protecting the rights of citizens. While citizens have recourse to voting as a way of obtaining rights denied them, aliens have no recourse but the due process protections provided for them in the U.S. Constitution. Also relevant to such a debate is the remark about the special nature of American immigrants made by INS Director Earl Harrison quoted above.

Students can consider these and other questions in the debate:

Should aliens be given equal protection of the law, as they are embodied in the “due process” clauses of the Constitution? Should enemy aliens? Explain.

Should enemy aliens be given the Constitutional presumption that they are innocent until proven guilty or, as in World War II, should they be *presumed guilty until they can prove their innocence*?

Should such rules apply to all aliens or some aliens? (Note the difference between “permanent resident aliens”--usually immigrants--and aliens who are visitors or students).

Which agency of government, the Department of Justice or the Department of Defense, the Congress or the President or the Supreme Court, should make these decisions?

## KEY TERMS/CONCEPTS:

See Lesson Plan One for a general list of **Key Terms/Concepts**. For this lesson Plan, the following terms/concepts are important:

**Unnaturalized:** an immigrant who is not naturalized, i.e., one who has not completed the process by which immigrants become citizens. Such unnaturalized immigrants are also referred to as “aliens.”

**Detain:** to confine a person temporarily, usually while legal authorities decide whether to hold that person permanently, charge him with a crime, or release him. During WWII, people could be detained for months and even years without being charged with any violation of the law.

**Regulations:** rules and procedures issued by government authorities. During WWII, the Department of Justice issued regulations specifying the behavior of enemy aliens.

**Custody:** care or control of a thing or person according to legal or judicial rules. Custody often involves restraints of some kind, such as bars or fences or handcuffs.

**Detention:** a period of temporary custody before legal authorities make more permanent decisions.

**Contraband:** material or items whose possession is forbidden. During WWII, enemy aliens were forbidden to have contraband such as shortwave radios and weapons, and had to turn them in at local police stations.

**Provost Marshal General:** the chief police officer in the military. During war, the Provost Marshal General makes military decisions affecting the homefront.

**Martial law:** military rule by a nation over its citizens where they are not enemies, but where an emergency justifies such measures. Normally, the U.S. military is prevented by law from exercising authority or control over non-military personnel.

**Search warrant:** a document issued by a judge or magistrate authorizing an officer to make a search of a home or property and seize evidence.

**Probable:** something that can reasonably and fairly be accepted as true or possible. “Probable cause” is a legal term referring to facts or evidence that would lead a reasonable person to believe that a specific crime has been, is being, or will be committed by a given individual. A judge requires “probable cause” before issuing a warrant to search that individual, his home, or his possessions.

**Capitulation:** a ceasing of resistance or argument. Act of surrender, or giving in.

**Evidence:** something that provides, or tends to provide proof.

SPECIFIC READING MATERIAL FOR THIS LESSON PLAN:

(See Lesson Plan One for a general reading list on the topic of the Enemy Alien Control Program.)

DiStasi, Lawrence, *Una Storia Segreta: The Secret History of Italian American Evacuation and Internment During World War II*, (Heyday Books: 2001).

Fox, Stephen, *Uncivil Liberties: Italian Americans Under Siege during World War II*, (Universal Publishers: 2000)

\_\_\_\_\_, *Fear Itself: Inside the FBI Roundup of German Americans during World War II*, (iUniverse, Inc., 2005)

Krammer, Arnold, *Undue Process: The Untold Story of America's German Alien Internees*, (Rowman & Littlefield: 1997)

*Report to the Congress of the United States: A Review of the Restrictions on Persons of Italian Ancestry During World War II*, (U.S. Department of Justice, November 2001.) [http://www.usdoj.gov/crt/Italian\\_Report.pdf](http://www.usdoj.gov/crt/Italian_Report.pdf)

*The Constitution of the United States, including Amendments.*

ONLINE/MEDIA RESOURCES FOR THIS LESSON PLAN:

(See Lesson Plan One for a general list of online/media resources)

[www.segreta.org](http://www.segreta.org)

[http://www.cdt.org/wiretap/wiretap\\_overview.html](http://www.cdt.org/wiretap/wiretap_overview.html)

<http://www.cdt.org/security/usapatriot/021118fisa.pdf>

<http://www.rcfp.org/secretjustice/terrorism/materialwitness.html>

SUPPLEMENTAL READING LIST FOR STUDENTS:

*Here, In America? Immigrants as "the Enemy" During WWII and Today: Report of the Assembly on Wartime Relocation and Internment of Civilians*, April 8-9, 2005, (San Francisco: 2006)

*Washington Post*: November 24, 2002; Page A01, "Material Witness Law Has Many In Limbo," Steve Fainaru and Margot Williams



*Washington Post*: Tuesday, December 20, 2005; Page A31; "Vital Presidential Power," William Kristol and Gary Schmitt.

*Washington Post*, Thursday 30 November 2006; "US Settles Suit Filed by Oregon Lawyer," Dan Eggen