

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

LESSON PLAN FOUR: *“Alien Enemy Hearing Boards: Due Process Or Kangaroo Courts?”*

APPROPRIATE GRADES/COURSES: 8-14 U.S. History, Civics, American Government, Political Science

TOPIC BACKGROUND SUMMARY:

(See “Lesson Plan One” for an overview of the Enemy Alien Control Program.)

In 1798, Congress passed the Alien Enemies Act, (50 USC21-24). The Act was used during World War I to intern German immigrants residing in the U.S. After the attack on Pearl Harbor on December 7, 1941, the government again used the Act to control Japanese, German, and Italian immigrants. The Act is still in effect, though few have heard of it. The Act specifies that by proclamation, the President can deem all citizens of enemy nations age fourteen and up in the U.S. “enemy aliens.” These so-called “enemy aliens” can then be “apprehended, restrained, secured and removed” if there is a declared war or an actual, attempted, or threatened invasion.

Immediately after Pearl Harbor, President Roosevelt issued three identical Presidential Proclamations--2525, 2526, 2527. As a result of the Proclamations, thousands of German, Italian, and Japanese who were considered “dangerous enemy aliens” were arrested and detained under the authority of the Alien Enemies Act. After their arrest and detention, the enemy aliens were given a brief hearing before an Enemy Alien Hearing Board, not as a right guaranteed under the provisions of the Alien Enemies Act, but as a gesture of what the government considered “fairness“. But the detainees could not have attorneys, and they could not know or challenge the evidence against them. The detainees were allowed to request the presence of character witnesses, but it was “within the discretion of the Hearing Board” whether or not those witnesses would be allowed to appear. Detainees who did not intend to offer witnesses were given hearing priorities.

At the hearings, the U.S. Attorney from the federal judicial district in which the detainee was held acted as prosecutor and presented the evidence against the aliens collected by the FBI. Much of the evidence in the FBI files was based on rumor and hearsay that would have been admissible in a civil court. An FBI agent was often in attendance. A three-person Hearing Board sat as the jury for the detainee. The three people were supposed to be selected from among prominent citizens living in the detainee’s community, but more often than not they knew nothing about the alien except the secret evidence that was in his FBI file.

The Hearing Board was allowed to meet in secret, without the detainee present, to consider and discuss evidence against him. Typically, the actual hearings with the detainee present lasted from fifteen minutes to half an hour. After each session of hearings, the Hearing Board met secretly and adopted its recommendation for the detainee: outright release, parole with restriction, or internment for the duration of the war. Each Hearing Board's recommendations were forwarded for approval to the Alien Enemy Control Unit of the Justice Department. If approved, it was forwarded to the Attorney General of the United States. Once the Attorney General signed the order, the action was considered final.

Approximately half of the detainees were sentenced to internment, with no right of appeal. With the sentence of internment, the aliens were taken from the temporary detention center to an internment camp. Their assets were often frozen by the Alien Enemy Custodian, leaving their families destitute. Many internees were transferred from camp to camp at the whim of the government without regard to their residence.

Internees had the opportunity for a rehearing only if they could present new evidence. But that proved difficult because they knew little of the evidence used to intern them in the first place, and while under lock and key they had no opportunity to gather new evidence in their defense.

The original Hearing Board or the Alien Enemy Control Unit determined whether or not an internee's case could be reheard. Few cases were reheard, and in the event the Board held that the internee should be released, the Alien Enemy Control Unit was not bound to follow the Board's recommendation. If a rehearing resulted in an internee's parole, the internee had to report weekly to a parole officer and obey the terms of parole or risk re-internment.

ESTIMATED TIME OF COMPLETION OF LESSON PLAN:

Flexible: one or two class periods, depending on the interest of students and the depth to which the teacher wishes to pursue the issues.

STUDENT OBJECTIVES:

Review and understand the history and language of the Alien Enemies Act and related laws, as well as the Constitutional challenges it presents.

Review and understand the World War II Alien Enemy Control Program and the Alien Enemy Hearing Board process.

Review and understand due process of law and related Constitutional provisions.

Analyze and discuss whether enemy aliens should have the same rights as citizens during times of war.

Analyze and discuss whether an alien from an enemy nation who has lived in the U.S. legally for years should have the same rights as citizens.

Analyze the psychological, sociological, and emotional ramifications of the denial of Constitutional rights and develop an appreciation for the significance of those rights.

Understand the potential conflicts between national security measures and Constitutional protections and discuss how they should be balanced

MATERIALS:

Printed copies of the **Topic Background Summary** (see above)
Printed copies of the **Fourth, Fifth, Sixth, and Fourteenth Amendments** to the Constitution (see below)
Printed copies of Presidential Proclamation 2526 www.gaic.info/history.html
Printed copies of the **Alien Enemies Act** (see below)
Printed copies of **Instructions to Alien Enemy Hearing Boards** (see below)

TEACHER PREPARATION

Before the unit begins:
Distribute above materials and instruct students to read the material as homework.
For classroom activity, **Instructions to Alien Enemy Hearing Boards** should be required reading.
Prepare a list of discussion questions surrounding the Alien Enemy Control process. Suggested questions:
What should a government consider when deciding how to handle enemy aliens?
Is a person automatically dangerous if he/she is a citizen of a country which has declared war on the United States?
What do you think of the term “enemy alien”? How does a term affect opinions and decisions?
Do you think the Alien Enemies Act is a “good” law, or should it be repealed? Amended? How?
Should the Alien Enemies Act have been used during World War II? Why? Why not?
Should an enemy alien have the same rights as a citizen? What if the alien is a permanent resident? What if the alien is here only on a temporary visa? What if the alien is here illegally? What if the alien has an American-born family?
Should a person be interned with no automatic right to a rehearing?
Can the U.S. government continue to intern alien enemies after hostilities have ended? If so, for how long? If not, why not?

PRE-UNIT STUDENT HOMEWORK:

Read the materials distributed by the teacher.
Review case studies of internees on the www.gaic.info website at http://www.gaic.info/real_people.html, especially the story of Eberhard Fuhr, a high school student who read of his internment as he waited for his hearing and who was

interned for five years, including a time at Ellis Island. Also read the case history of Gunther Greis.

(Optional) Find a current news article discussing the clash of national security measures and civil rights today.

(Optional) Review www.itvs.org/facetoface which presents verbal case histories drawn from the Japanese American and Muslim/Arab communities.

PERIOD ONE: CLASSROOM ACTIVITIES

For the teacher and students (first half of period)

Discuss and define the following terms: due process, enemy alien, civil liberties, national security, citizenship, internment, Department of Justice.

Classroom discussion: see suggested discussion questions above.

For the students (second half of period)

Draft an alien profile including personal characteristics and actions that could be viewed suspiciously by the FBI and the public during a time of national emergency. Be prepared to defend the characteristics you select.

The profile will be used by working groups during next class period.

Reviewing case studies online may be useful. See Pre Unit Student Homework above.

Student homework

Review case studies of internees on the www.gaic.info website at www.gaic.info/real_people.html

PERIOD TWO: CLASSROOM ACITIVITES

For the teacher and students (first half of the period)

Divide the class into four or five working groups, six-to-seven students per group.

Instruct group members to review the enemy alien profiles and select one (or two, if the teacher wishes to extend the Lesson Plan to three days) distinct profile from each group.

Instruct each group to select individuals to act as the alien, the U.S. Attorney, an FBI agent, a member of the Board, and a character witness. The Group Leader should be designated in advance to report back to the class.

Instruct each group to hold a twenty minute hearing following the **Instructions to Alien Enemy Hearing Boards** and determine whether the person should be released, paroled, or interned.

For teacher and students (second half of period)

Each Group Leader presents to the class his/her Group's alien profile, and the recommendation the Group made sitting as a Hearing Board. In each case, the class

should now act as a second Hearing Board, and make a decision on whether to release, parole or intern.

In each case, the class should also discuss how full due process rights might have changed the outcome and whether the facts presented were trustworthy, as well as other observations.

KEY TERMS/CONCEPTS:

See Lesson Plan One for a glossary of key Enemy Alien terms and concepts.

THE FOURTH AMENDMENT

The right of the people to be secure in their persons, houses, papers, and effect, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

THE FIFTH AMENDMENT

No person . . . shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

THE SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . [The accused shall have the right to] be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defense.

THE FOURTEENTH AMENDMENT

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

ALIEN ENEMIES ACT

Title 50, Section 21, the United States Code:

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety."

INSTRUCTIONS TO ALIEN ENEMY HEARING BOARDS, January 8, 1942

A board, consisting of representative members of the community, has been appointed in each judicial district in which alien enemies have been apprehended, comprising a chairman and two or more members to hear and recommend to the Attorney General the disposition which should be made in each case.

Three members of a Board shall consider each case.

The Attorney General has appointed to the Boards men prominently associated with the life of the community in which they live, and in whose understanding and judgment he has complete confidence.

The Board should be appointed for the district of [the alien's] residence, or the district in which he was apprehended.

All alien enemies are subject to detention and internment for the duration of the war, without hearing, which hearing has however been provided, not as a matter of right, but in order to permit [alien enemies] to present facts in their behalf.

The Board may consider the evidence or reports presented by the United States Attorney before the alien is brought before it.

If the Board desires to question the alien, care should be taken to observe so far as necessary, the public policy against revealing confidential information or confidence sources of information.

Evidence on behalf of the alien may be presented by affidavits or by affidavits or by oral testimony.

The Board should determine . . . how many witnesses should be heard.

The alien may be accompanied at the hearing by a relative (or other advisor) who will not be permitted to object to questions or make any argument concerning any evidence or any phase concerning any evidence, or any phase of the proceeding, or otherwise to act as an attorney.

It is not necessary to make a complete stenographic report of all hearings or all the testimony of all the witnesses or the testimony of any witness.

The paroled alien will also be required to report weekly or at such intervals as may be directed . . . to the District Parole Officer.

The Attorney General [shall] review each recommendation of the Hearing Boards and enter the final order.