



YALE NATIONAL INITIATIVE

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Curriculum Units by Fellows of the National Initiative
2005 Volume III: War and Civil Liberties

Introduction

by Rogers M. Smith, Professor of Political Science

On September 12, 2001, as I waited for my son to board the school bus, there was only one topic of discussion. A neighbor remarked, "Now everything will be different."

Perhaps not everything became different after the terrible events of September 11th, but for those concerned with American constitutional law and American politics, a whole set of long-moribund issues instantly sprung back to life. The Constitution empowers the national government to provide for the common defense; but it also gives that government only limited powers and subjects it to a long list of restrictions on how it can use coercive force. From September 11th to the present, the United States has undeniably faced substantial and in some respects novel dangers of terrorist attacks. Vigilant against these threats, the U.S. government has adopted a wide range of measures, including the increased surveillance and detention powers provided in the 2001 USA Patriot Act and the President's Executive Order authorizing closed military trials of suspected terrorists issued that same fall. Civil libertarians in *both* parties have expressed concerns that these measures go beyond what the Constitution authorizes or permits. But many patriotic Americans in both parties fear that they actually do not go far enough to enable the nation to meet the challenges it faces. As in the case of all novel questions, no one can know for sure who is correct. From the standpoint of those who believe in the U.S. Constitution, the most haunting of all possibilities is that both groups may be right. Might it prove simply impossible to comply with the Constitution and still protect against terrorism?

Though these issues are in some respects new, they are also in some respects ones that have arisen in every national security crisis in American history, stretching back through Vietnam, the Cold War, World War II, World War I, the Civil War, all the way to the Revolutionary War itself. In preparing for the 2005 National Intensive Seminars conducted by the Yale-New Haven Teachers Institute, teachers from cities throughout the country expressed interest in exploring how issues of civil liberties in wartime had been dealt with in America's past, as a prelude to examining how America is dealing with them today, during what is sometimes called the "war on terrorism."

This is a topic which obviously concerns all adults very deeply, and it also has good prospects of interesting students. Many are likely to experience restrictions on their civil liberties due to national security measures. Some may indeed soon face the choice to help wage the nation's battles. It is also a topic on which, perhaps surprisingly, there are excellent, accessible materials available for a wide variety of students. We began the National Intensive Seminar by reading a short, remarkably engaging book by Chief Justice William Rehnquist, *All the Laws but One*, which provides rich descriptions and a balanced overview of civil liberties issues under Lincoln during the Civil War, including two landmark cases involving military detentions and trials, *Ex parte Merryman* and *Ex parte Milligan*. The fact that the author was currently presiding over major cases raising the

same issues today made discussion of his analyses all the more intriguing. Then, using Rehnquist as well as other sources, we proceeded to explore issues of free speech during W.W I; the Japanese-American internments and the secret military trial of German saboteurs during W.W. II, both upheld by the U.S. Supreme Court in the decisions of *Korematsu v. United States* and *Ex parte Quirin*. Next we studied the prosecution of Communists during the Cold War (as in *Dennis v. United States*), efforts to curb student protestors during the Vietnam years (as in *Tinker v. Des Moines School District*). Finally we turned to controversies over the USA Patriot Act, the Guantanamo detentions, and military trials today, including the recent cases of *Rasul v. Bush* and *Hamdi v. Rumsfeld*.

Seminar members found they often differed strongly from each other in their views on how these issues should be resolved and even more strikingly, we sometimes found disagreements within our own thoughts. Should we permit students to wear symbols protesting the Iraq War? If so, must we also let white students wear Confederate flags to classes with African American students? For our classrooms and for our country, self-evident answers are not always apparent. But all agreed the chance to learn about different views on these issues represents one of the great strengths of a free society.

As always with Institute seminars, much discussion was devoted to the impressive variety of ways in which Fellows have adapted themes of the seminar for their students in their curriculum units. A Houston high school English teacher focuses on the example of a man challenging the policies his community thinks necessary for its survival in Henrik Ibsen's classic *Enemy of the People*. Another in Jacksonville, Florida examines how security issues can be used to justify book-burning, using Ray Bradbury's gripping *Fahrenheit 411*. A third in Pittsburgh instead features Arthur Miller's McCarthy-era masterpiece, *The Crucible*. Another in Philadelphia finds examples of the tensions between claims for security and personal liberties throughout the American literature curriculum and in the example of her school's namesake, the great African American labor leader A. Philip Randolph. One high school history teacher richly describes striking historical examples of military trials. One focuses on how Bill of Rights guarantees have fared during past wars and would fare in imaginative hypothetical crises. One from Charlotte, North Carolina draws on postmodernist perspectives to dramatize the historically contextual and politically contested nature of civil liberties protections. One New Haven high school social studies teacher explores the conflicting solutions of the great English philosophers Thomas Hobbes and John Locke to the challenge of curbing violence while protecting freedoms. Taking advantage of her historic location, a fourth grade social studies teacher in Richmond, Virginia highlights how African-Americans there won rights at the end of the Civil War, only to lose them later during the Jim Crow era. A Philadelphia middle school social studies and special education teacher uses the film *Glory* and related readings to dramatize how African-American soldiers had to fight for equal treatment in the Union Army even as they fought valiantly against the slaveholding South. A Pittsburgh health teacher uses his own experiences and those of his students to examine the grim issue of racial profiling, how to cope with it, and how to combat it. A computer teacher uses the study of civil liberty issues to hone computer skills and familiarize her students with website research methods as they prepare to participate in the school's Law Day activities. And perhaps most creatively, a high school science teacher uses the threat of terrorism via biological weapons, particularly anthrax, to bring home the importance of science to her students, dramatizing its threats and benefits while encouraging students to debate how society should respond to both.

If there is a common denominator to all these excellent units, it is the same message that came through in our seminar discussions. Issues of how we can protect our safety while also protecting civil liberties during national security crises are profoundly difficult, and no one has easy, perfect solutions. But we can all benefit from thinking through the challenges that, today more than ever, we cannot afford to ignore.

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