



CONSTITUTIONAL RIGHTS FOUNDATION CHICAGO

2006 Illinois Youth Summit

***THE ROLE OF THE CITIZEN
IN THE 21ST CENTURY***

Resource Guide for Students and Teachers

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Introduction

What is the 2006 Illinois Youth Summit?

Youth have the power to bring about change. Since 1995, the Illinois Youth Summit has been devoted to giving students an informed voice in decisions about current issues that affect them.

On December 6, 2005, representatives from 23 Illinois high schools met and selected three issues—equity in public education funding, voting rights for ex-felons, and restrictions on U.S. citizens during wartime—that they felt were important to learn about and act on locally and nationally. Based on their decisions, the 2006 Summit will focus on these policy questions:

- § Should the following amendment to the Constitution of the United States be adopted: “All persons eighteen years of age or younger shall enjoy the right to a public education of equal high quality. The Congress shall have the power to enforce this article by appropriate legislation.”
- § Should the Illinois General Assembly enact a law committing the State to fund public education before all other state programs?
- § Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?
- § Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?
- § Should the President have the power to seize U.S. citizens in civilian settings whom he identifies as 'enemy combatants' and hold them in military detention without criminal charge or trial until they are brought before a neutral decisionmaker who will determine whether this designation is true?

The 2006 Illinois Youth Summit is an opportunity for you to explore and discuss these issues as participants in our democratic society. During the spring you and your classmates will: study and assess these issues; survey other students about the issues; write a position paper on one or more of the focus issues; and plan and conduct a service project to teach one or more of these issues to other students.

On April 21, 2006, student delegates from each school will meet with state and federal policymakers to share their thoughts and experiences on these issues. Following the Summit, delegates will report back to their classes, and interested classes will present portions of the Summit to students at other schools.

Objectives

The purpose of the 2006 Illinois Youth Summit is to help you and other participating students:

- § Analyze the facts and discuss different viewpoints relating to the focus issues;
- § Practice discussing and deliberating current public policy issues;
- § Design and conduct an educational service project in your community based on a Summit issue;
- § Develop with other students a short position paper on one or more of the focus issues;
- § Become actively involved in the culminating Youth Summit on April 21, either as a delegate or in helping to prepare a class delegation; and
- § Share learning from the Summit with other students.

The Summit, Citizenship, and Democratic Deliberation

Democratic societies draw their power from the consent of the governed. Without the people's support and participation, democracy falters. A critical form of participation is discussion. As civic educator Laurel Singleton has written:

Americans cherish our society's openness and our freedom to discuss and argue the issues of the day. This habit of public inquiry is what the scholar Benjamin Barber calls the talk that is "at the heart of strong democracy." Such talk is never more important than during moments of crisis or controversy when our reason is most likely to be clouded by powerful emotions.

How do we listen to and discuss opinions very different from our own? How do we make decisions fairly? How do we accept outcomes with which we don't necessarily agree? This curriculum is designed to foster these kinds of vibrant and respectful conversations.

What This Curriculum Does

The Role of the Citizen in the 21st Century is designed to help students explore, discuss, and take a position on the Summit issues. It features models for deliberating issues. It introduces public policy—how government responds to problems and gets things done—and offers ways for you to assess a policy's effect and effectiveness. The curriculum is organized as follows:

Unit 1 provides an introduction to citizenship in the United States. It features an activity for thinking about what effective citizenship means and a model for discussing issues. It also includes the 2006 Summit Survey that every class will conduct and report to CRFC.

Units 2, 3, and 4 are each devoted to a different focus issue. Each unit includes readings, classroom activities, discussion strategies, and additional resources to help you develop the skills necessary to share your views and the views of your classmates with policymakers. Summit classes will write and submit a position paper on one of these issues to CRFC.

Unit 5 offers ways to teach about the focus issues through service projects. Every school will plan, conduct, and assess an educational service project and report on their work to CRFC. You can conduct your project with other students in your school, other schools, or your community. Each school that completes a project will be recognized on April 21.

Unit 6 provides information for the culminating Summit and beyond.

Preparing for the Culminating Summit

Your class will send a delegation to the Youth Summit on April 21 at the Dirksen Federal Building in Chicago. CRFC will notify your school regarding the final number of delegates who will represent your school in the weeks before the Summit.

The student delegates are responsible both to speak for themselves and to represent the ideas of everyone in class. Which policies seemed most promising? The least? How did issues look in light of your service project and after reviewing the results from the Summit survey? If you disagree with one or more of the policies, what suggestions for alternatives do you have? Remember that the delegation also needs to be able to explain the class service project.

This curriculum also has an activity for students who remain in school the day of the Summit.

Beyond the Summit

After the Summit, delegates are encouraged to share their experience with their classmates. This curriculum also has ideas for a post-Summit exchange with students at another school.

Unit 1: The Role of The Citizen in 21st Century America

Overview

All of the issues at the 2006 Illinois Youth Summit stem from a fundamental question: What is the role of citizen in the United States in the 21st century?

This unit is an introduction to the 2006 Illinois Youth Summit. It focuses on the meaning of American citizenship: Who is and is not a citizen? How is citizenship defined? What are the responsibilities, if any, of being a citizen? And what rights do all persons in the United States enjoy, and what rights solely belong to citizens?

In addition, this unit introduces a key deliberation strategy called “civil conversations” that will help people discuss – not debate – fundamental texts and ideas. The unit concludes with the 2005 Illinois Youth Summit Survey. Completion and submission of the survey is a requirement for each class participating in the Summit.

Objectives

- < Introduce the 2006 Illinois Youth Summit
- < Present basic information about the history and meaning of citizenship in the United States
- < Offer opportunities to discuss what effective citizens should know, believe, be able to do, and do in American society
- < Conduct, tabulate, and submit the results from the 2006 Illinois Youth Summit Survey

Materials

1A: Reading: Citizenship in the United States

1B: Activity: Effective Citizenship

1C: Source: Preamble to the Constitution of the United States of America

1D: Deliberation Strategy: Civil Conversations

1E: Handout: Civil Conversations Worksheet

1F: Instructions: Conducting the 2006 Illinois Youth Summit Survey

1G: Activity: 2006 Illinois Youth Summit Survey

1A: Reading: Citizenship in the United States

The United States of America was created as a republican government composed of and led by citizens. The English common law, the tradition which forms the basis and the context for the American legal system, dealt quite extensively with citizenship; these understandings clearly guided the ideas of the American colonists. Yet the answer to the basic question "Who is a citizen of the United States?" was not explicitly defined for nearly the first century of America's existence. How that question was answered explains the nature and meaning of citizenship in the United States.

Citizenship and the Constitution of 1787: Undefined Beginnings

The Revolutionary War was waged by thirteen former colonies that had aligned themselves as "the United States of America." Yet in many ways the government of this new country more closely resembled a confederation of sovereign states. After the war, The Articles of Confederation defined the relationship among the states and between them and the national government. Article IV provided the first glimpse into citizenship in the new republic:

The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively, provided that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State, of which the owner is an inhabitant...

Significantly, Article IV identifies "free inhabitants" as "free citizens," in recognition of the fact that slaves were held throughout the former colonies.

At the Constitutional Convention in Philadelphia in 1787, the Framers included several incomplete references to citizens. Members of Congress, as well as the President, had to be "Citizens of the United States," but they included no definition of who a citizen was. In Article IV, the section of the Constitution devoted to relations between the states, they echoed language from the Articles of Confederation by writing that "the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States" (Section 2). But what did this sentence mean? According to the Congressional Research Service, "the clause merely forbids any State to discriminate against citizens of other States in favor of its own. It is this narrow interpretation that has become the settled one," ("Origins and Purpose of State Citizenship," Annotated Constitution, <http://caselaw.lp.findlaw.com/data/constitution/article04/13.html#2>).

The Supreme Court Defines Citizenship: The Case of Dred Scott

In the 1850s, a man of African descent named Dred Scott was held as a slave by a doctor who lived for a time in Missouri. As part of his work for the federal government, the doctor took Scott and Scott's family with him to free states. After the doctor died, the doctor's wife brought Scott and his family back to Missouri. Although Missouri was a slave state, it followed a legal doctrine called "once free, forever free," which meant that a person who had been in a free state or territory could petition for freedom. Scott went to Missouri state court to ask for his freedom. Through a complicated series of events, his petition ended up in federal court and was eventually argued twice before the Supreme Court of the United States. In 1857, the court announced its decision.

Chief Justice Taney wrote for the Court, and central to his decision was the question of citizenship. "The question," wrote Taney, "is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen?" The answer, for Taney, was "no."

The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing.... The question before us is, whether the class of persons described in the plea in abatement [people of African ancestry] compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States....

Taney added that while "it is true, every person, and every class and description of persons, who were at the time of the adoption of the Constitution recognized as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else. And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards by birthright or otherwise become members, according to the provisions of the Constitution and the principles on which it was founded" (*Scott v. Sandford*, 60 U.S. 393, 1857).

Redefining American Citizenship: The Fourteenth Amendment

Citizenship is generally granted under one of two systems. Under the first, called *Jus sanguinis* or "right of blood" in Latin, citizenship depends on who were a person's ancestors. If only white people were recognized as citizens when the Constitution was written, then—as Chief Justice Taney wrote—only white people could ever be American citizens.

The second way that citizenship is generally created is by *Jus soli* or the "right of land" in Latin. This means that where a person is born determines their citizenship. This second definition became law with the passage of the Fourteenth Amendment in 1868, which says

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 to any person within its jurisdiction the equal protection of the laws (Amendment XIV, Section 1).

This amendment effectively overturned the *Dred Scott* decision, and despite some initial resistance, the Supreme Court ultimately affirmed birth as making a person a citizen of the United States. With the Fourteenth Amendment, anyone born in America – white or black, a descendent of the Pilgrims or of foreign parents – was an American citizen.

Persons and Citizens

Even with the passage of the Fourteenth Amendment, the exact nature of American citizenship was still unclear. What were the "privileges and immunities" of American citizenship? The U.S. Supreme Court, in the case of *Cruikshank v. U.S.* (1873), the Supreme Court decides that "the privileges and immunities" of national citizenship guaranteed under the Fourteenth Amendment are restricted solely to those rights that owed their existence to the federal government, such as the right to travel to the national capital, or access to ports and navigable waterways. Even

so, the right of citizenship has been protected by the Court when the government has tried to strip it away from people because of their political activities (*Schneiderman v. United States*, 320 U.S. 118, 1943) or even for military desertion (*Trop v. Dulles*, 356 U.S. 86, 1958).

More significantly, the Fourteenth Amendment extends the rights of persons, whether or not they are citizens, under the Equal Protection and Due Process clauses. Because of these clauses, most of the Bill of Rights applies to citizens and non-citizens alike. Thus, the importance of distinguishing the rights of citizens from non-citizens has decreased over time.

Since the attacks of September 11, 2001, the distinction between the rights of citizens and non-citizens has taken on greater importance. For example, the Bush Administration has instituted military tribunals as part of the Global War on Terror. Most experts seem to agree that military tribunals are constitutional if used against non-citizen terrorists, and the Administration has captured non-citizens and held them as enemy combatants here in the United States. But a task force on military tribunals of the American Bar Association questioned the use of military commissions against non-citizens who are actually in the United States when captured. The task force noted court cases which held that aliens, even those not lawfully within the country, are entitled to due process protections contained in the Fourth, Fifth and Sixth Amendments and argued that such individuals should not be tried by tribunals ("American Bar Association Task Force on Terrorism and the Law Report and Recommendations on Military Tribunals," 2002). While this policy question depends on other important issues involving the war powers of the branches of the federal government and territoriality, the distinction between citizens and other persons remains significant to the debate.

Other privileges and associations with citizenship have also changed over time. In contrast to most democracies, for example, Americans have no constitutional right to an education. In *San Antonio v. Rodriguez* (1973), U.S. Supreme Court held that education is not a fundamental right guaranteed by the federal Constitution; instead, education is the responsibility of the states. Nevertheless, the U.S. Supreme Court later held in *Plyler v. Doe* (1982) that when a state does provide a free public education, it must do so for all children in its jurisdiction—whether they are citizens, legal immigrants, or even undocumented aliens.

As Patrick J. Bruer notes, "the Supreme Court's decisions have tended to reflect the Constitution's own ambivalence about citizenship.... While the Court has upheld birthright citizenship, its equal protection decisions have tended to [emphasize] the Constitution's tendency toward a narrow conception of citizenship closely tied to voting and office holding" ("Citizenship," *Oxford Companion to the Supreme Court of the United States*, 1992). The meaning of American citizenship will continue to evolve.

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1B: Activity: Effective Citizenship

Overview

This introductory activity asks participants to think about and discuss the qualities of an effective citizen in four areas: knowledge, skills, attitudes, and action.

Instructions

1. Begin by writing the word “citizenship” on a piece of flipchart paper or blackboard. Ask participants to suggest words that they associate with citizenship and then *briefly* to explain why. Write each term on the flipchart paper and connect them to citizenship. When this pattern of association or word web has ten to fifteen terms, call for one or two more and then stop.
2. Next, explain that the group will try and brainstorm more concretely what effective citizenship means by looking at four focus areas:
 - § KNOWLEDGE: What does an effective citizen know?
 - § SKILLS: What skills does an effective citizen have?
 - § ATTITUDES: What attitudes (beliefs, dispositions) does an effective citizen have?
 - § ACTIONS: What does an effective citizen do?
3. Have participants count off by fours. Assign each group (1, 2, 3, or 4) to one of four flipchart stations positioned around the room – KNOWLEDGE, SKILLS, ATTITUDES, and ACTIONS. Each group will start at one station and then move clockwise to the other stations.
4. When the groups are in position, give them 3-4 minutes to brainstorm ideas for their station. Review the brainstorming basics: everyone’s ideas are accepted, all suggestions are listed, consensus is not necessary, etc.
5. After not more than 4 minutes, call “time” and ask all the groups to move clockwise to the next station [the direction is not important so long as it is the *same* direction each time]. At their new station, put a check mark next to ideas they agree with, and add their own ideas; ideas they do not share they are to leave on the paper. Have the groups repeat this process at each station until they are back in front of their “home” station.
6. When everyone is back at their original station, ask each group to reach consensus on the three most important things on their list and to select a spokesperson. [Each group is using the time-honored democratic power sharing structure – the committee – to reach its decisions.] When all the groups are ready, have the speakers report out to the rest of the group.
7. Debrief the activity. Use the following questions or develop your own:
 - § What do you think makes an effective citizen? Did you have any new insights about how you understand citizenship from this activity?
 - § Did you find most of what you consider effective citizenship in a specific area? If so, why?
 - § How does your understanding of citizenship compare with what was written at the beginning of the activity? How does it compare with what is taught in schools?

Conclude by noting that the group’s understanding of citizenship represents what they think today and not necessarily what they will think tomorrow. Rather, it is an opportunity to reflect on what it means to be an effective citizen. That understanding may change over time.

Adapted from: *A Facilitators Guide to Effective Citizenship Through AmeriCorps*, Corporation for National Service, 2001.

1C: Source: Preamble to the Constitution of the United States

Below is the Preamble to the Constitution of the United States. "Although the preamble is not a source of power for any department of the Federal Government, the Supreme Court has often referred to it as evidence of the origin, scope, and purpose of the Constitution," ("The Annotated Constitution," <http://www.findlaw.com/casecode/constitution/>). The preamble is thus a good place to start the conversation about the rights and responsibilities of "the people" in the United States.

Using Handout 1D, "Civil Conversations," read and discuss the preamble. In pairs, identify the most important information and questions the reading raises for you. Then as a class discuss the preamble carefully to try and gain a deeper understanding of what it says and what it might suggest about the role of the citizen.

1 We the People of the United States, in Order to form a
2 more perfect Union, establish Justice, insure domestic
3 Tranquility, provide for the common defence, promote the
4 general Welfare, and secure the Blessings of Liberty to
5 ourselves and our Posterity, do ordain and establish this
6 Constitution for the United States of America.

1D: Deliberation Strategy: Civil Conversations

Overview

Our pluralistic democracy is based on common principles—such as justice, equality, and liberty—that often are interpreted quite differently in specific situations by individuals. When controversial legal and policy issues are discussed in the public arena, they often lead to polarization, not understanding. This discussion model offers an alternative. Under the guidance of a facilitator, participants are encouraged to think carefully about a challenging text, gain insight about their own points of view, and strive for a shared understanding of issues.

Duration and Format

Conversations for classroom purposes should have a time limit generally ranging from 15 to 45 minutes and an additional five minutes to reflect on the effectiveness of the conversations. A large-group conversation requires that all students sit in a circle; if the group is too large, pair the students so that there is an inner and outer circle with students able to move back and forth into the inner circle if they have something to add. Small-group conversation can be structured either with a small group discussing in the middle of the class “fish bowl” style or simultaneously with different leaders in each group.

PROCEDURE

Introduction. Briefly review the purpose and rationale of the activity. Distribute a copy of Handout 1E, “Civil Conversation Worksheet,” to every participant. Review the “Rules for Civil Conversation” with the class.

Reading Guide. Disseminate the selected text. The reading should not be long—shorter is better—and it sometimes is helpful if it is a complete reading [such as the Preamble to the Constitution or the Pledge of Allegiance], although self-contained selections work, too. Ask the students to work in pairs and to complete the reading by following the instructions and responding to questions 1 through 5 in the guide.

Conducting the Activity

Step 1. Select a format and time frame and participants accordingly.

Step 2. If selecting the large-group format, the teacher leads the discussion using the procedures from below. If using a small-group format, write the following procedures on the board and review them with the class. Then select co-conversation leaders for each group. Use these instructions for facilitators:

- § Begin the conversation by asking every member of the group to respond to questions 3 and 4 of the Civil Conversation Worksheet. Members should not just repeat what others say.
- § Then ask the entire group to respond to question 5 and jot down the issues raised.
- § Continue the conversation by discussing the questions raised.

Step 3. Debrief the activity by having the class reflect on the effectiveness of the conversation. Ask students to return to the Reading Guide and answer questions 6 and 7. Then begin by asking students who were not active in the conversation to comment:

- § Who said something that gave you a new insight? What did you hear that you agreed with? disagreed with?
- § What did you learn from the Civil Conversation?
- § What common ground did you find with other members of the group?

Step 4. Conclude the debrief by asking all participants to suggest any ways they might improve the conversation. If appropriate, add these suggestions to the conversation rules.

From: *The Challenge of Violence: Teacher’s Guide*. 1997: Constitutional Rights Foundation.

1E: Handout: Civil Conversations Worksheet

Rules for Civil Conversations

- Read the text as if it were written by someone you really respected.
- Everyone in the conversation group should participate in the conversation.
- Listen carefully to what others are saying.
- Ask clarifying questions if you do not understand a point raised.
- Be respectful of what others are saying.
- Refer to the text to support your ideas.
- Focus on ideas, not personalities.

Civil Conversation Reading Guide

Reading: _____

Read through the entire selection without stopping to think about any particular section. Pay attention to your first impression as to what the reading is about. Look for the main points, and then go back and re-read it. Briefly answer the following questions.

1. This selection is about _____

2. The main points are:

3. In the reading, I agree with _____

4. I disagree with _____

5. What are two questions about this reading that you think need to be discussed? (The best questions are ones that have no simple answers and ones that use materials in the text as evidence.)

The next two questions should be answered after you hold your civil conversation.

6. What did you learn from the civil conversation? _____

7. What common ground did you find with other members of the group? _____

From: *The Challenge of Information*, © 1998, Constitutional Rights Foundation

1F: Instructions: Conducting the 2006 Illinois Youth Summit Survey

Pull out Handout 1G, "2006 Illinois Youth Summit Survey." The Survey provides critical information necessary for the Summit itself. It is designed to reveal what you and other Illinois high school students think about the three focus issues in this curriculum. If there is not enough time at the end of the day, the survey should be completed as homework.

In addition to working with Summit classes, please consider the following extension options:

- § Conduct and tabulate the Illinois Youth Summit Survey with other classes at your school.
- § Conduct and tabulate the Illinois Youth Summit Survey with your parents/guardians.

This information will provide very useful comparisons for the Summit. To help you with your work, the survey also can be completed on-line at <http://www.crfc.org/summit2006.html>.

When you have completed the survey, please tabulate the results. If you collect survey data from other classes or from adults, please tabulate and keep that information separate from your class's results. Send all results to the Constitutional Rights Foundation Chicago.

The deadline for reporting the results from your Survey is March 23. CRFC will combine your results with those from all the other schools participating in the Youth Summit. Contact CRFC at 312/663-9057 if you have any questions.

Please remember that conducting and reporting the survey is a required portion of the program.

1G: Activity: 2006 Illinois Youth Summit Survey

This survey is anonymous. Please answer as honestly as you can. Your opinion matters.

YOUR COMMUNITY: Chicago _____ Suburban Chicago _____ Downstate _____
YOUR GENDER: Female _____ Male _____ YOUR AGE: High School Student _____ Adult _____

I. EQUITY IN PUBLIC EDUCATION FUNDING

In *Brown v. Board of Education* (1954), the U.S. Supreme Court said "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." However, the Court later held in *San Antonio v. Rodriguez* (1973) that education is not considered a "fundamental right" protected by the federal constitution. Instead, education is a responsibility of the state governments, who also have the primary responsibility for funding it.

1. Should the following amendment to the Constitution of the United States be adopted? "All persons eighteen years of age or younger shall enjoy the right to a public education of equal high quality. The Congress shall have the power to enforce this article by appropriate legislation."
Yes _____ No _____ Don't Know _____
2. Should the Illinois General Assembly enact a law committing the State to fund public education before all other state programs?
Yes _____ No _____ Don't Know _____

II. VOTING RIGHTS FOR EX-FELONS

In the United States, the right to vote may not be abridged or denied by a state or the federal government because of race, sex, or failure to pay a poll [or head] tax. However, states *can* deny the right to vote to individuals guilty of a crime. Nationally, over four million Americans are denied this right as a result of state laws that prohibit voting by ex-felons. In 11 states, a felony conviction can result in a lifetime voting ban. Even in states where voting is restored, the process is often so difficult that few ex-felons are able to take advantage of it. Under current law, the federal government may not infringe upon a state's authority to grant or deny voting rights to prison inmates and former felons.

3. Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?
Yes _____ No _____ Don't Know _____
4. Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?
Yes _____ No _____ Don't Know _____

III. HOLDING U.S. CITIZENS AS ENEMY COMBATANTS

Following the attacks of September 11, 2001 by al Qaeda, the United States captured hundreds of persons and designated them "enemy combatants." Under this policy, the President determines who is an enemy combatant and places them in military detention without charges or access to an attorney. Most enemy combatants were captured in Afghanistan and are not American citizens. However, U.S. citizen Jose Padilla was detained at O'Hare International Airport in 2002 and subsequently designated by the President as an enemy combatant. Padilla allegedly plotted to detonate a "dirty" nuclear bomb. Recently, Padilla's status was changed without explanation, and he now faces federal felony charges.

5. Should the President have the power to seize U.S. citizens in civilian settings whom he identifies as 'enemy combatants' and hold them in military detention without criminal charge or trial until they are brought before a neutral decisionmaker who will determine whether this designation is true?
Yes _____ No _____ Don't Know _____

Please fax your survey results to CRFC at 312/663-4321 by March 23, 2006. This survey is also at <http://www.crfc.org/summit2006.html>.

Unit 2: Equity in Public Education Funding

Overview

In *Brown v. Board of Education* (1954), the U.S. Supreme Court said “it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.” However, the Court later held in *San Antonio v. Rodriguez* (1973) that education is not considered a “fundamental right” protected by the federal constitution. Instead, education is a responsibility of the state governments, who also have the primary responsibility for funding it. As one result, the quality of public education, and level of funding for public education, varies widely even within a state.

This unit will explore the question of equity in public education funding for K-12 students. It will provide a historical context for public education in America: how equality of education has been understood, and the ways in which states have been permitted to fund it. In addition, it will introduce the idea of public policy—what it is and how to assess its costs and benefits.

Focus Questions

- § Should the following amendment to the Constitution of the United States be adopted? “All persons eighteen years of age or younger shall enjoy the right to a public education of equal high quality. The Congress shall have the power to enforce this article by appropriate legislation.”
- § Should the Illinois General Assembly enact a law committing the State to fund public education before all other state programs?

Objectives

- § Provide a historical and public policy context for equity public education funding
- § Introduce a working definition of public policy
- § Supply policy analysis tools
- § Promote recognition of the impact of public policy and how to affect policy decisions
- § Develop and support a reasoned position on equity in public education funding

Materials

- 2A: Reading: Equity in Public Education Funding
- 2B: Activity: When Does Equal Mean the Same?
- 2C: Sources: Education, State of Illinois
- 2D: Strategy: Looking at Public Policy: GRADE
- 2E: Activity: Legislative Hearings on Equity in Public Education Funding
- 2F: Taking a Stand: Position Paper on Equity in Public Education Funding
- Equity in Public Education Funding: Selected Resources

2A: Reading: Equity in Public Education Funding

Up until the early 1950s, no black children studied with white children in the public schools of the old Confederacy. Public funding for black students, black schools, and black teachers were often drastically less than those for whites in the South, despite the legal doctrine of “separate but equal.” Following the U.S. Supreme Court decision *Plessy v. Ferguson* (1896), Southern states enacted—and the United States permitted—a system of legally sanctioned racial segregation and discrimination against African Americans called Jim Crow. Similar laws and restrictions affected children of Mexican heritage in Texas, California, and other states.

By law or custom, racial segregation in the classroom was the norm in most of America’s classrooms. Non-white children learned in poorer schools with fewer resources than white children. Non-white teachers had less training and were not as well paid as white teachers. Non-white students had fewer resources and fewer opportunities than did white students. These options were shaped by discrimination, but they also were a function of money—specifically, the amount of tax dollars available to students in predominantly non-white schools.

Brown v. Board of Education and the Mandate for Equity in Public Education

In *Brown v. Board of Education* (1954), the Supreme Court redefined the meaning of equality. In a unanimous decision, the Court held that “in the field of public education, the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.” The *Brown* decision—which included five different cases from Kansas, South Carolina, Delaware, Virginia, and the District of Columbia—was based on the Fourteenth Amendment’s “equal protection of the laws.” It sparked the beginning of the end of Jim Crow. It also was a key moment in what became the Civil Rights Movement that resulted in changes in the laws and customs of the entire United States.

The immediate focus of *Brown*, however, was public education. In the words of the Court,

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

While the Court emphasized education’s importance, it left important questions unanswered. What were “equal terms” when it came to education? Was equity to be measured in dollars? What responsibility did the states and the federal government have to ensure that equality? More than 50 years after *Brown*, the answers to these questions are still being debated.

Reaction and Resistance to *Brown*

The Supreme Court’s decision in *Brown* did not in fact desegregate any school. Instead, the Court requested arguments from both sides about how to implement desegregation. A year later, in May 1955, the Court announced a remedy in its second *Brown* decision: instead of calling for immediate desegregation of all schools, the Court called for the admission to public schools “on a racially nondiscriminatory basis with all deliberate speed.” As federal judge and former NAACP lawyer Robert L. Carter notes, this was the first time the Court “ever deferred immediate vindication of a successful litigant’s entitlement to a constitutional right” (“The Long Road to Equality,” *The Nation*, May 3, 2004). This delay would be the first of many in the effort to eliminate segregation in America’s public schools.

The main response to *Brown* among Southern white leadership was non-compliance. Not only state governments, but even judges on the federal courts sought to frustrate the decision. Judge John Parker, who heard the arguments on the *Brown* case that came from South Carolina and who was opposed to desegregation, ruled that so long as schools were "open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools." Parker interpreted *Brown* to mean that the Constitution "does not require integration. It merely forbids discrimination," and that it "forbids the use of governmental power to enforce segregation." (David J. Garrow, "Why Brown Still Matters," *The Nation*, May 3, 2004).

Moreover, Congress and the President—not the Supreme Court—had to take the political steps to make *Brown* a reality. Yet in 1956, the so-called "Southern Manifesto" was signed by 19 Senators and 81 Representatives from 11 states in the old Confederacy:

We regard the decision of the Supreme Court in the school cases as a clear abuse of judicial power.... It is destroying the amicable relations between the white and Negro races that have been created through 90 years of patient effort by the good people of both races.... We commend the motives of those States which have declared the intention to resist forced integration by any lawful means... (102 Cong. Rec. 4515-16)

With opposition in Congress and no explicit endorsement of *Brown* by President Eisenhower, "the South interpreted 'all deliberate speed' to mean 'any conceivable delay' (Richard Kluger, *Simple Justice*, 1975), and the effort to integrate the nation's schools moved very little in the first years after *Brown*. A decade after the decision, only 2.3% of Black students were in majority white schools in the South (Gary Orfield and Chungmei Lee, "Brown At 50: King's Dream or Plessy's Nightmare?" The Civil Rights Project, Harvard University, 2004). Not until Congress passed the Civil Rights Act of 1964, which tied federal school funding to desegregation, did integration begin to significantly increase across the country.

Applying *Brown* in K-12 Public Schools

The Supreme Court continued to rule on public school desegregation cases, but its decisions followed different understandings of *Brown*. In a series of decisions, the Court struck down many Jim Crow barriers in the South and segregation policies throughout the nation.

- § In *Green v. County School Board of New Kent County* (1968) the Court held that segregated "dual" school systems had to be dismantled "root and branch" and that desegregation had to be achieved in all educational activities, including faculty, facilities, sports and other extracurricular activities, and transportation resources.
- § In *Swann v. Charlotte-Mecklenberg Board of Education* (1971) the Court held that "racially neutral" student assignment plans that were based on where people lived and resulted in segregated schools were unconstitutional.
- § In *Keyes v. School District No. 1, Denver, Colorado* (1973), the Court held that school districts in the North and the West which did not have an explicit segregation policy could

"Equal Protection of the Laws" and *Brown*

Ever since the Fourteenth Amendment was ratified, there has been a tension in the courts regarding how the Equal Protection Clause should be interpreted. This tension affects how the U.S. Supreme Court interprets questions of discrimination and equity in public schools.

What did the Court mean when it decided *Brown*? Ohio State University law professor Ruth Colker sees *Brown* as a classic example of "the Constitution means what it says—no person shall be denied the equal protection of the laws"—and it applies to all persons....separate is never equal." University of Chicago law professor Jill Hasday says that in *Brown*, "the Court clearly [assumes] a harm to African Americans due to segregation and in no [way] can imagine white children ever bringing such a claim" (*Odyssey*, WBEZ-FM, May 25, 2004). Both of these theories have influenced how the Court has decided questions of equal protection in the public schools.

still be found responsible for a deliberate plan of segregating Hispanic as well as Black students in specific schools.

Defining Equity in Public Education Funding: *San Antonio v. Rodriguez*

Historically in the United States, local communities have maintained control over public education in K-12 schools. Local, elected school boards are responsible for most of the decisions that affect schools within their communities. Funding for America's public schools usually comes primarily from a combination of local property taxes and state funding, supplemented by some federal dollars. State funds are most often a basic minimum distributed on a per student basis. Local support for public schools depends on how much a community agrees to raise from taxing the residents and businesses within it.

Racial segregation and discrimination was often the primary reason for where people were allowed to live and work for much of the 20th Century. This situation was true for cities across the country. Non-whites faced limits on housing and jobs in Chicago as well as in Selma, in New York as in Norfolk, in Dallas as in Denver. Not surprisingly, segregated housing resulted in segregated schools. But local control over the schools also meant that the tax base for schools in non-white neighborhoods was restricted to property and businesses that were, on average, valued much less than those in white neighborhoods.

In *San Antonio Independent School District v. Rodriguez* (1973), Demetrio Rodriguez and other parents in the Edgewood district of San Antonio brought an equal protection suit in federal court against the city. The community of Edgewood was very poor, and 96% of its residents were non-white. In his book *Savage Inequalities: Children in America's Schools* (1991), Jonathan Kozol explains:

Although Edgewood residents paid one of the highest tax rates in the area, the district could raise only \$37 for each pupil. Even with the 'minimum' provided by the states, Edgewood ended up with only \$231 for each child. In Alamo Heights, the richest section of the city but incorporated as a separate schooling district, was able to raise \$412 for each student from a lower tax rate and, because it also got state aid (and federal aid), was able to spend \$543 on each pupil. Alamo Heights, then as now, was a predominantly white district (p. 214).

This disparity in funding was not even the largest in the State of Texas, where the average amount spent by the ten wealthiest districts was three times that of the four poorest district, even with state support (*Savage Inequalities*, p. 214). The federal district court held that the Texas school funding plan violated the equal protection guarantee of the Fourteenth Amendment, and eventually San Antonio appealed the decision to the U.S. Supreme Court.

Here the Court did not follow its equal protection thinking from earlier cases. Instead, it recognized the tradition of local control in education. In a 5-4 decision that found in favor of the city of San Antonio, the Court held that the Texas funding system did not discriminate against any definable "class" of poor people. In other words, the Court found that poor people affected by this system did not form a class of people eligible for equal protection. "[T]his Court has never heretofore held that wealth discrimination alone provides an adequate basis for invoking strict scrutiny [an equal protection test]" (*San Antonio v. Rodriguez*, p. 29). The Court also held that education was not a "fundamental right or liberty."

Nothing this Court holds today in any way detracts from our historic dedication to public education. We are in complete agreement with the conclusion of the three-judge panel below that 'the grave significance of education both to the individual and to our society' cannot be doubted. But the importance of a service performed by the State does not determine whether it must be regarded as fundamental for purposes of examination under the Equal Protection Clause (*San Antonio v. Rodriguez*, p. 30).

According to the Court, "the key to discovering whether education is 'fundamental' is not to be found in comparisons of the relative societal significance of education.... Rather, the answer lies

in assessing whether there is a right to education explicitly or implicitly guaranteed by the Constitution" (*San Antonio v. Rodriguez*, p. 33). Since it is not, the Court held that education was a responsibility of the state governments, who also had the primary responsibility for funding it. The issue of equalizing education funding was an issue to be decided within each state—using state constitutions and in state courts—not by the federal Constitution.

A Matter of Dollars and Cents? Equity in Public School Funding in Illinois

Today, funding for public education continues to vary significantly within each state. This disparity is even found in the amount of support that the state provides to each district. During 2001-2002 in Illinois, for example, the difference between funds available for the highest- and the lowest-poverty districts was more than \$2,000 per student after cost adjustments ("The Funding Gap 2004"). Different levels of resources among schools in the same district are also very common.

Doing the Numbers

A difference of \$2,000 between wealthy and poor districts translates into \$50,000 per class of 25 students, or \$800,000 for a school of 400 children.

Illinois Funding	
State:	36%
Federal:	10%
Local:	53%

The Illinois school funding formula creates disparities in funds available for schools. In a comparison of two Chicago suburbs for *Catalyst* magazine, Ed Finkel noted that the median household income for Glencoe was over three times that for Midlothian. As a result, although the school tax rate for Glencoe was lower than for Midlothian, Glencoe was able to spend nearly \$11,000 per student, as compared to not quite \$6,600 in Midlothian ("Glencoe, Midlothian Illustrate Funding Gap," April 2004).

Today, "a majority of the state's public schools are facing fiscal deficits and other school funding problems... and 17% of the state's 893 school districts have been listed as being in dire financial trouble" (People for the American Way, "Inequity in Illinois," April 2004).

Like every state, Illinois has an educational provision in its constitution. It says that the State "shall provide for an efficient system of high quality public educational institutions and services....The State has the primary responsibility for financing the system of public education." As has been the case in other states in the decades since *San Antonio v. Rodriguez*, challenges to the Illinois school funding formula have gone through the state courts. In the 1990s, a group of school districts sued the state to challenge the funding formula, and the case reached the Illinois Supreme Court. In *Committee for Educational Rights v. Edgar* (1996), the Court held that, while it neither endorsed the funding system nor meant to discourage reform efforts, it did not find the system unconstitutional. Rather, "the process of reform must be undertaken in a legislative forum rather than in the courts."

Supreme courts in other states, such as Kentucky, Montana, New York, and Texas, have held that their funding systems were unconstitutional and have ordered their legislatures to change them. Most of these orders, however, have gone unfilled. In New York, after a decade-long court battle, the state's highest court ordered the state to compute the cost of providing a "sound basic education," *Campaign for Fiscal Equity v. New York* (NY, 2003). When the deadline passed without state action, the court accepted a special panel's plan to award over \$15 billion in state funds to the New York City public schools. To date, the state has not complied. Similar problems have occurred in Kansas, *Montoy v. Kansas* (KS, 2004), and other states.

Time to Change the System?

Most Americans recognize the importance of education in molding effective citizens and preparing children to compete successfully in a competitive global marketplace. They believe in the vision of *Brown* that holds out an "opportunity of an education... made available to all on equal terms," even as they recognize the continuing disparities in school funding, facilities, and opportunity over 50 years later. What those disparities represent, however, and how to address them, is the subject of wide disagreement.

Some people simply do not accept the idea that equality of opportunity can be measured in dollars and cents. The editors of *The Wall Street Journal* spoke for many when they wrote, "Just as more money has not provided a remedy in the past, it will not miraculously do so in the future" ("More Money?" December 20, 2000). In their view, the state has no obligation to spend beyond a basic minimum level of support—that is the decision of parents and taxpayers in each community. It is not inequality that hurts children in poor schools, it is inefficiency. Money is lost or wasted in bureaucratic structures that fail to help students. As then Governor George W. Bush said in 2000, "We cannot continue to pour money into schools that won't teach" (PBS *Frontline*, "The Battle Over School Choice," May 23, 2000).

Other people worry that efforts to equalize funding for public education would lead to a "zero-sum game," where funds from richer school districts would be taken to support poorer ones. In their view, such a "Robin Hood" program cheats every student and denies communities effective local control over their schools. They also worry that, by equalizing revenues across the state, state legislatures will follow California, which provides relatively equal funding per student for education but at one of the lowest levels of any state.

Yet others doubt that the current systems of public education funding are providing an equal opportunity for all children, particularly those who go to class in poor school districts. U.S. Rep. Jesse Jackson, Jr. [D-IL] recently wrote that "there is no American educational system. We have 50 states, 3,141 counties, 20,000 municipalities, 15,000 school districts, 93,000 public schools for 53 million students—all separate and unequal.... Who, in good conscience, can truthfully say all of these students have an equal opportunity to compete?" ("Amendment Would Ensure Quality Education For All," *Chicago Sun-Times*, January 17, 2006.)

In response, and to overturn the decision in *San Antonio v. Rodriguez*, Jackson has proposed an education amendment to the U.S. Constitution that calls for "a public education of equal high quality." Others continue to try to work through their state courts to force states to fund education more equally. Still other reformers look directly to state legislatures to change how funds are spent on education in the state. For example, a coalition called Students First Illinois is urging additional public school funding by asking the Illinois General Assembly to fund education first and balance the state's budgets with cuts in other, non-essential programs.

The Way Ahead

In 1994, while visiting Topeka, Kansas to commemorate the *Brown* decision, Linda Brown told a reporter, "Sometimes I wonder if we really did the children and the nation a favor by taking this case to the Supreme Court.... I knew it was the right thing for my father and others to do then. But after nearly 40 years, we find the court's ruling remains unfulfilled" (Jeremy Irons, *Jim Crow's Children: The Broken Promise of the Brown Decision*, 2002). Fulfilling *Brown's* promise for every public school in the United States remains a challenge for the 21st century.

Federal Help: Title I

Since 1965, the federal government has provided financial assistance to public schools through a program called Title I. Under Title I, funds go "through state educational agencies to local educational agencies and public schools with high numbers or percentages of poor children to help ensure that all children meet challenging State academic content and student academic achievement standards.

"Local educational agencies target the Title I funds they receive to public schools with the highest percentages of children from low-income families. Unless a participating school is operating a schoolwide program, the school must focus Title I services on children who are failing, or most at risk of failing, to meet State academic standards. Schools enrolling at least 40 percent of students from poor families are eligible to use Title I funds for schoolwide programs that serve all children in the school.

"Title I reaches about 12.5 million students enrolled in both public and private schools. Title I funds may be used for children from preschool age to high school, but most of the students served (65 percent) are in grades 1 through 6; another 12 percent are in preschool and kindergarten programs" (<http://www.ed.gov/programs/titleiparta/index.html>).

2B: Activity: When Does Equal Mean the Same?

Carved above the door of the Supreme Court of the United States are the words, "Equal Justice Under Law." This idea is expressed in the Fourteenth Amendment to the Constitution, which says that no person will be denied the "equal protection of the laws." America has always thought of itself as a place where everyone has a fair shot: here, the government does not—or at least ought not—play favorites.

When the government is asked to treat people equally, the answer usually involves a more basic question: Does treating people equally mean treating them the same? Different treatment of different groups or persons is not automatically a constitutional violation because, as law professor Thomas E. Baker explains, "the Equal Protection Clause does not require government to treat everyone or every group the same. For example, states treat persons convicted of crime differently from law-abiding citizens." Rather, the Equal Protection Clause requires that "similarly situated persons be treated similarly" (Thomas E. Baker, "Can Voters Exclude Homosexuals and Their Interests from the Legislative Process?" *ABA Preview*, 1995).

Making Judgments

Look at the examples below. Mark "D" for situations when you think equal treatment means treating people differently. Mark "S" for situations when you think equal treatment means treating them the same.

- _____ Willowburg High School requires that no male student can wear a hat. In Bill's religion, it is a sign of religious devotion not to uncover his head. How should Bill be treated in comparison to the other students?
- _____ The Springseat Bus Company provides service for the Willowburg public schools. Sally uses a wheelchair to get around and requires a special van. How should Sally be treated in comparison to other student riders?
- _____ Willowburg High School has a medical clinic supported by the taxpayers. Yasmin, a student from a school in another town, is injured during a volleyball game at Willowburg and is brought to the clinic. How should the doctors treat Yasmin in comparison to Willowburg students?
- _____ Willowburg High School is hiring math teachers. Boris, who speaks fluent English with a Russian accent, applies. How should Boris be treated in comparison to the other applicants?
- _____ The state says Willowburg High School must provide an equal education to all children in the district. Tim has dyslexia. How should Tim be taught in comparison to the other students?

Be ready to share your reasoning with your classmates.

Question to Consider

- § Do you see any patterns in circumstances when equal treatment might mean being treated differently? When it means being treated the same?

2C: Sources: Education, State of Illinois

Constitution of the State of Illinois, Article X, Education*

Section 1. Goal - Free Schools

A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

General State Aid**

Fiscal Year 2006 is the eighth year of the new General State Aid formula, which was enacted as Public Act 90-548 in December 1997.

General State Aid Formula

The General State Aid Formula is basically a foundation approach with three separate calculations, depending on the amount of property wealth of the local school district.

(1) The first formula is referred to as the "Foundation" formula. A significant provision of the General State Aid formula is the setting of foundation levels in statute and the guaranteed funding of those levels of support. The foundation level is \$5,164 in 2005-06 and is no longer guaranteed by statute through a continuing appropriation law in case the actual appropriation is insufficient [emphasis added].... Most districts receive General State Aid under this formula. Districts qualifying for this formula have available local resources per pupil less than 93% of the foundation level.

(2) The second formula is the "Alternate" formula. Districts qualifying for this formula have available local resources per pupil at least 93% but less than 175% of the foundation level.

(3) The third formula is the "Flat Grant" formula. Districts qualifying for this formula have available local resources per pupil at least 175% of the foundation level.

* State of Illinois, <http://www.ilga.gov/commission/lrb/con10.htm>

** Illinois State Board of Education, <http://www.isbe.state.il.us/funding/html/gsa.htm>

2D: Strategy: Looking at Public Policy: G R A D E

“Public Policy is a plan of action, adopted by government, to solve a problem or reach a goal.”

In a democracy, you have a say on government policies and proposed policies. It’s important that you take a critical look at them. Use the following GRADE test to analyze public policies.

Goal	What is the policy and what is its goal? If you don’t know what it’s supposed to do, you can’t measure its success or failure. Policies are designed to address problems. What problem or problems is this policy supposed to address?
Rivals	Who supports this policy? Who opposes it? Knowing the rivals can help you understand who the policy might affect and whether the policy favors special interest. Also, rivals are terrific sources for information. Be sure to check their facts though.
Advantages	What are the policy’s benefits? What is good about the policy? Will it achieve (or has it achieved) its goal? Will it achieve the goal efficiently? Is it inexpensive? Does it protect people from harm? Does it ensure people’s liberties?
Disadvantages	What are the policy’s costs? What is bad about the policy? Is it inefficient? Is it expensive? Does it cause harm? Does it intrude on people’s liberties? Are there any potential consequences that may cause damage?
Evaluate the alternatives	One alternative is to do nothing. Most serious problems have various policy proposals. Evaluate them. Look at their goals, advantages, and disadvantages.

Adapted from: *The Challenge of Information*, © 1998, Constitutional Rights Foundation (Los Angeles)

2E: Activity: Legislative Hearings on Equity in Public Education Funding

Legislative hearings are held by committees of the United States Congress and other legislative bodies to gather information upon which to base recommendations regarding subjects regulated by law or for which laws are being considered. These hearings are a basic function of legislative branches of government.

This simulated legislative hearing involves a panel of legislators and fictional groups of citizens – representing a variety of interests – who have come to testify about two proposals for equity in public education funding.

Hearing before the United States Congress on the following proposal:

All persons eighteen years of age or younger shall enjoy the right to a public education of equal high quality. The Congress shall have the power to enforce this article by appropriate legislation.

Hearing before the Illinois General Assembly on the following proposal:

The Illinois General Assembly shall enact a law committing the State to fund public education before all other state programs at funding levels set each year by the Illinois Educational Funding Advisory Board.

You may choose to have a hearing on either or both proposals.

Preparations

§ Assign the following roles (divide the class into groups of 4 to 6):

Legislative Committee. This Committee will review your proposal. Six legislators is a practical number for a committee but this number may be varied to meet class requirements. One legislator is designated as chairperson.

Parents for Excellence in Education. This group opposes “zero-sum” budgeting that takes money from rich school districts and redistributes it to poorer ones. They favor local control over schools and school budgets. They oppose unfunded mandates from state and federal governments. One person should be prepared to testify.

Coalition for Equity in School Funding. This group wants more money for public schools and greater funding equality based on a per student formula. They support a high state funding “foundation” for every school district but do not oppose any local efforts to add to that amount. They are in favor of the legislation. One person should be prepared to testify.

National Association of State School Boards. This organization represents state school boards across the country. They worry about legislative limits on education funding and unfunded mandates from the federal government. They are open to this legislation but have a lot of questions. One person should be prepared to testify.

American Federation for Tax Reform. This group opposes tax increases of any kind. They are opposed to additional public spending on education. They believe that any changes in public funds for education should come from cutting administrative positions, contracting with the private sector for non-educational jobs (cafeteria, janitors, bus drivers), and making teachers pay more for their health care. One person should be prepared to testify.

Recorder. A person or persons selected to keep a record of proceedings and present a review of recommendations.

§ Explain the purpose of the legislative hearing and the procedures to be followed [see below]. Prepare a handout of the student instructions to a legislative hearing if needed.

- § Allow time for participants to prepare for the legislative hearing in accordance with their assigned roles.
- § Arrange to use the hearing or committee room of a local legislative body. Alternatively, set up a table for six legislators, a desk for the recorder, and a desk for the witness in the front of the classroom. Ask for a gavel and prepare nameplates with the students' names and their roles.
- § Conduct the legislative hearing using the outlined procedures.

Student Instructions for a Legislative Hearing

1. Decide whether to conduct a hearing on the state or the federal proposal. If you decide to hold hearings on both proposals, hold each hearing separately.
2. Prior to the hearing, all students should assess the selected proposal using Handout 2C, "GRADE."
3. Before the hearing, student legislators may contact local legislators or other outside resource people to help them understand their role as well as current laws on the topic.
4. Prior to the hearing, student witnesses may contact local groups or local chapters of national organizations that would have an interest in this topic. You should obtain any background information that will help you in presenting that group's position on the topic, including a proposed bill that contains their views.
5. Student witnesses may wish to discuss similarities in positions with other student witnesses. You might wish to explore the possibilities of supporting a common bill proposal.
6. The committee chairperson calls the legislative hearing to order, announces the purpose of the hearing, and announces the order in which the witnesses will testify.
7. Each witness is called and permitted a set amount of time to present an opening statement, followed by questions from members of the committee.
8. The chairperson is the first to question the witness, followed by each of the other members of the committee. However, a committee member may interrupt to ask a question or make a comment at any time during the proceedings.
9. Use these suggested time limits: two to five minutes for a witness' opening statement; and five to ten minutes for questions from the chairperson and other committee members.
10. After the witnesses have been heard, legislators on the committee review testimony, discuss the proposal, and make recommendations on what their next step(s) will be.

Follow Up Questions

- § In what ways is testifying before a committee an effective way for Congress to get information? In what ways is it limited?
- § What was the most compelling thing you learned about the General Guidelines from your preparation? From another participant?
- § Do you agree with the committee's recommendation? Why or why not?
- § What would help you to understand this issue more clearly?

Adapted from: "Legislative Hearings," *Law-Related Education in Juvenile Justice Settings*. 1993, 1999, 2003: Youth for Justice.

2F: Taking a Stand: Position Paper on Equity in Public Education Funding

Policy Questions

- § Should the following amendment to the Constitution of the United States be adopted? "All persons eighteen years of age or younger shall enjoy the right to a public education of equal high quality. The Congress shall have the power to enforce this article by appropriate legislation."
- § Should the Illinois General Assembly enact a law committing the State to fund public education before all other state programs?

Steps for Writing Your Position Paper

1. Choose a position for, against, or as an alternative to one of the policy questions above.
2. Then team up with classmates who take the same position and as a group, write a persuasive paper arguing the benefits associated with your position on this policy.
3. In your essay, be sure to call on the most convincing arguments and specific evidence and examples from:
 - § the curriculum
 - § discussion and other classroom activities
 - § the Summit survey results
 - § your service project experience
 - § people in your community
 - § any other sources available to you
4. Include in your paper the most convincing arguments from the opposing side. List what you think are the best arguments your policy rivals would make. Acknowledge these points, and do your best to refute the importance of these arguments.

Specifications for Your Paper

Length. Your paper should be between 300 and 500 words.

Format. Each paper must have the name of the school in the heading and the policy being addressed in the title. No student names will appear on the position papers.

Deadline. All position papers must be received by the Constitutional Rights Foundation Chicago (CRFC) by April 7, 2006. Turn in your completed paper to your teacher before that date.

Assessment. For a suggested scoring guide to use with position papers, see Handout 6C, "Tool: Final Position Paper Scoring Guide."

Select copies of your position papers will be distributed to policymakers and to students from other schools at the Summit.

Sharing Your Views

You can contribute your views on this policy by writing to your State Representative, State Senator, U.S. Representative in Congress, and/or to U.S. Senators Durbin and Obama. Contact information is listed in the "Supplemental Internet Resources" section on page 69 of this curriculum.

Equity in Pubic Education Funding: Selected Resources

Sources

- Committee for Educational Rights v. Edgar*, Docket No. 78198 (1996)
<http://www.state.il.us/court/Opinions/SupremeCourt/1996/October/Opinions/HTML/78198.txt>
- Constitution of Illinois, Article X, Education
<http://www.ilga.gov/commission/lrb/con10.htm>
- HBO750, "The School District Property Tax Relief Fund Act," 94th General Assembly State of Illinois 2005-2006
<http://www.ilga.gov/legislation/94/HB/09400HB0750lv.htm>
- Brown v. Board of Education*, 347 U.S. 483 (1954)
- San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973)
- Kansas: *Montoy v. State of Kansas*, Case No. 99-C-1738 (2003)
- Massachusetts: *McDuffy v. Sec. of the Executive Office of Education*, 415 Mass. 545 (1993)
- Montana: *Columbia Falls v. Montana*, Case No. BDV-2002-528 (April 15, 2004)
- New Jersey: *Abbott v. Burke*, 710 A.2d 450 (1998)
- New York: *Campaign for Fiscal Equity, Inc. v. New York*, 100 N.E.2d 326 (June 26, 2003)

Resources

- A+ Illinois
<http://www.aplusillinois.org/>
- ACCESS School Funding Info State-by-State,
Campaign for Educational Equity, Teacher's College, Columbia University
<http://www.schoolfunding.info/index.php3>
- Better Funding for Better Schools Coalition
<http://www.betterfundingforbetterschools.com/index.htm>
- Illinois State Board of Education, Funding and Disbursements
<http://www.isbe.state.il.us/funding/html/gsa.htm>
- Students First Illinois
<http://www.austlii.edu.au>

Analysis

- Constitutional Amendment Survey Report,
http://www.betterfundingforbetterschools.com/html/isns_ca_options.htm
- Education Funding Advisory Board. "Illinois Education Funding Recommendations A Report Submitted to the Illinois General Assembly by the Education Funding Advisory Board," April 2005, http://www.isbe.state.il.us/EFAB/pdf/final_report_4-05.pdf
- Jackson, Jesse, Jr. "Amendment would ensure quality education for all," *Chicago Sun-Times*, January 17, 2006, reprinted at <http://www.jessejacksonjr.org/>
- Neighborhood Capital Budget Group "State of the Facilities in Chicago High Schools," <http://www.ncbg.org/schools/2002hscrowd.htm>
- People for the American Way. "Inequality in Illinois: How Illogical School funding has eroded Public Education" (May 2004), <http://www.pfaw.org/pfaw/general/default.aspx?oid=15547>

Unit Three: Voting Rights for Ex-Felons

Overview

In the United States, the right to vote may not be abridged or denied by a state or the federal government because of race, sex, or failure to pay a poll [or head] tax. However, under the Fourteenth Amendment, states *can* deny the right to vote to individuals guilty of "participation in rebellion, or other crime." Nationally, more than four million Americans are denied the right to vote as a result of laws that prohibit voting by felons or ex-felons. Except in Maine and Vermont, prisoners cannot vote, and in 36 states felons on probation or parole are denied the vote. In 11 states, a felony conviction can result in a lifetime ban long after the completion of a sentence.

While each state has developed its own process of restoring voting rights to ex-offenders, these processes are often so cumbersome that few ex-offenders are able to take advantage of them. Under current law, the federal government may not infringe upon a state's authority to grant or rescind voting rights to prison inmates and former felons.

This unit will present positions and arguments on whether ex-felons should be permitted to vote. It will provide background on the right to vote in the United States and the history of denying that right to felons and ex-felons. This unit also will introduce a model for deliberating this policy question, called "philosophical chairs," for talking about this and other controversial issues.

Focus Questions

- § Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?
- § Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?

Objectives

- § Increase understanding about the history of voting in the United States and the restrictions placed on persons convicted of felony crimes
- § Provide a public policy context for the debate about voting rights for ex-felons
- § Introduce "philosophical chairs," a model for deliberating controversial issues

Materials

- 3A: Reading: Voting Rights for Ex-Felons
 - 3B: Activity: Voting Rights for Ex-Felons: A Human Graph
 - 3C: Handout: Voting Rights for Ex-Felons: A Human Graph
 - 3D: Activity: Sorting Out Positions on Voting for Ex-Felons
 - 3E: Deliberation Strategy: Philosophical Chairs on Voting Rights for Ex-Felons
 - 3F: Taking a Stand: Position Paper on Voting Rights for Ex-Felons
- Voting Rights for Ex-Felons: Selected Resources

3A: Reading: Voting Rights for Ex-Felons

The Declaration of Independence states “that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.” In the United States and other representative governments, elections are seen as the will of the people—an expression of their consent. Governments that do not offer their citizens a chance to vote and to vote freely are viewed as not real democracies by most Americans. Voting is considered the premier example and expression of civic participation in a democratic society.

Under various federal laws and amendments to the Constitution of the United States, the right to vote for persons aged eighteen and older may not be abridged or denied by a state or the federal government because of race, sex, or failure to pay a poll [or head] tax. Yet today the states retain broad powers to regulate voting among their citizens, and each state can make its own rules. While poll taxes and literacy tests are no longer legal, states can restrict voting on the basis of residency (how long a person has lived in one place), although states cannot use such restrictions to deny a person’s right to travel. A majority of states also have statutes that bar voting by people who are determined to be emotionally or cognitively disabled. And all states except North Dakota require citizens to register with the state before casting a vote.

Many states also prohibit prisoners and ex-felons (persons who have served time in a prison for a crime) from voting. Under the Fourteenth Amendment, states can deny the right to vote to individuals guilty of “participation in rebellion, or other crime.” Nationally, over four million Americans are denied the right to vote as a result of laws that prohibit voting by felons or ex-felons. Except in Maine and Vermont, prisoners cannot vote, and in 36 states felons on probation or parole are denied the vote. In 11 states, a felony conviction can result in a lifetime ban long after the completion of a sentence. Under current law, the federal government may not infringe upon a state’s authority to grant or rescind voting rights to prison inmates and former felons.

Some state voting laws were created with specific ideas of who should and should not participate in elections. Others reflect customs and practices from another time and now have unintended consequences. In looking at citizen participation in 21st century America, some people are asking whether the time has come to make voting rights an option for all American adults who are not in the nation’s prisons.

A Brief History of Voting in the United States

For all the connections between voting and democratic government, the Constitution of 1787 refers to what modern Americans consider voting only once: “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature” (Article 1, Section 2). Nor was voting mentioned in the Bill of Rights. Instead, the rules and procedures that regulated who could vote and under what circumstances were left to the states.

During the colonial period and immediately after the Revolution, regulations on who was eligible to vote varied from state to state. While most states had a property requirement for male suffrage – a man had to have 40 or 50 English pounds (a unit of money) of wealth or an equal amount of land – this requirement was relatively easy to meet with the open land opportunities of the time. In New Jersey, for example, free blacks and women who met a property requirement were able to vote until 1807. Throughout the pre-Civil War period, white men increasingly came to enjoy the right to vote. By contrast, women and free blacks lost what voting rights they had, and the denial of this right became legalized. With adoption of the state constitution in 1849, for example, the right of suffrage in California was limited to adult, white, male citizens (Schaffer, *California And The Coming Of The Fifteenth Amendment*, 2003). By 1860, white male suffrage was universal in the United States.

With the passage of the Fifteenth Amendment to the Constitution in 1870, the right to vote in the United States began to include more and more groups of people (see table). This expansion had two things in common: voting was limited to U.S. citizens, and citizenship did not automatically include the right to vote.

In *U.S. v. Reese*, 92 U.S. 214 (1876), the Supreme Court of the United States heard a voting rights case of a freed African American who alleged that he was denied the right to vote. In writing for the Court, Chief Justice Waite held that “the Fifteenth Amendment does not confer the right of suffrage upon any one. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done.... Now it is not.” (92 U.S. 214, 217) [emphasis added].

Expansion of Voting Rights in the United States	
1796	Voting in the United States limited mostly to white men who owned property
1820's	Property requirement and most taxpaying requirements for voting are dropped. Virtually all white men can vote
1860	Every southern state permits white male suffrage
1870	15th Amendment gave the vote to African-American men
1920	19th Amendment gave the vote to women
1924	Congress passed the Indian Citizenship Act granting citizenship to American Indians, making them eligible to vote.
1964	24th Amendment made it illegal for states to demand people pay a poll tax
1965	Congress passed the Voting Rights Act making literacy tests illegal in every state and later added that election materials must be bilingual where many voters speak another language
1971	26th Amendment lowered the minimum voting age from 21 to 18

The Origins of the Laws to Disenfranchise Felons

The decision to deny the vote to convicted felons was neither accidental nor gradual. As Northwestern University researcher Jeff Manza and his colleagues explain:

Ballot restrictions for felons and ex-felons were first adopted in the post-Reconstruction South as part of a larger strategy of disfranchising African Americans which included devices such as literacy tests, poll taxes, grandfather clauses, and “understanding clauses.” Criminal disfranchisement was the most indirect of the various devices adopted to keep blacks from voting, but it is the only one that has survived to the present. (“The Truly Disfranchised: Felon Voting Rights and American Politics,” 2001) [internal citations omitted]

As one historian of the late 19th century described it, “Each state became a laboratory for testing one device or another...the cross-fertilization and coordination between the movements to restrict the suffrage in the Southern states amounted to a public conspiracy” (J. Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restrictions and the Establishment of the One-Party South*, 1974, cited in Manza). From this beginning, the limits on felons voting in the United States spread so that, by 1900, most states prohibited felons and ex-felons from voting.

Whatever the original purposes of these policies, the great increase in felony convictions during the 1980s and 1990s has had the effect of greatly increasing the total number of persons who were denied the right to vote. By one estimate, the state of Florida had more than 600,000 ex-felons who could not vote in the federal elections of 2000 (The Sentencing Project, “Felony Disenfranchisement Laws In The United States,” November 2005).

Voting Procedures Today Across the Nation and in Illinois

Following the controversies in Florida surrounding who was on the voter rolls [registration lists], who was eligible to vote, and how votes were counted during the presidential election in 2000, the Congress of the United States enacted and President George W. Bush signed the “Help America Vote Act of 2002.” Called HAVA for short, this law was designed to

establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes.

Title II of the Act explains that the “minimum election administration standards” include ways for voters to ensure that their vote was recorded and counted accurately. They also require each state to create and maintain, “in a uniform and nondiscriminatory manner,

a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (Section 303).

For those states which remove felons from their voting rolls, HAVA requires them to “coordinate the computerized list with State agency records on felony status. States are also forbidden to remove a person from the voting list “solely by reason of a failure to vote.”

Despite these efforts to make voter registration and participation more uniform across the country, HAVA leaves each state responsible for how voting procedures are conducted. “The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State” (Section 305). In short, a state can remove convicted felons from voting rolls or block ex-felons from voting; it simply must do so fairly and consistently.

As a result, there exists today a patchwork set of voting regulations that vary widely from state to state. According to The Sentencing Project, 31 states deny people on probation the right to vote, and 36 deny those on parole (“Felony Disenfranchisement Laws In The United States”). In Alabama, Florida, Iowa, Kentucky, Mississippi, Nebraska, Nevada, Virginia, Washington, and Wyoming, an ex-felon must request and gain a pardon or other extraordinary measure before being allowed to vote (“Voting Rights Restoration Process,” National Conference of State Legislatures, January 2002).

In Illinois, anyone who is not incarcerated (in prison), including people on probation, may vote. However, the only explicit information in the voter qualifications about felons is in the negative:

No person who has been legally convicted, in this or another State or in any federal court, of any crime, and is serving a sentence of confinement in any penal institution, or who has been convicted under any section of this Act and is serving a sentence of confinement in any penal institution, shall vote, offer to vote, attempt to vote or be permitted to vote at any election until his release from confinement. (Illinois Compiled Statutes, Chapter 10 “Elections,” part 5/3, “Qualification of Voters”)

As one result, even though they are eligible to vote as soon as they register, there is some confusion among local election officials and former prisoners alike about whether ex-felons indeed have the right to vote (Alec Ewald, “A ‘Crazy-Quilt’ of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law,” November 2005).

Voting Rights for Ex-Felons: Advocates and Opponents

Today many people believe that the central importance of voting to the democratic experience requires a more uniform and comprehensive system to include as many people as possible. This belief is bi-partisan and finds supporters in many different points on the political spectrum. In February 2002, for example, Senators Harry Reid (Democrat, Nevada) and Arlen Specter (Republican, Pennsylvania) sponsored an amendment to HAVA that would have enabled ex-felons nationwide to regain the right to vote after serving their sentences and completing probation and parole. The amendment was defeated 31-63. Specter and Reid spoke of

supporting the bill in order to “restore fairness” and help ex-felons with their rehabilitation (“U.S. Senate Kills Bill to Restore Voting Rights to Ex-Felons,” *The Razor Wire*, Spring 2002).

Supporters of restoring the right to vote for ex-felons and making the procedures clearly understandable to everyone argue that disenfranchising inmates this way goes against the American tradition of working for the expansion of voting rights for all citizens. They note that, because of racial and economic disparities in the criminal justice system, non-whites and poor people are more dramatically affected when ex-felons cannot vote. Still others note that with the United States fighting to promote electoral democracy in places such as Afghanistan and Iraq, we should also work to expand voting here at home.

Advocates also point to the international community. According to Northwestern University political scientist Brandon Rottinghaus, “The United States has the most restrictive practices” because of the decisions by some states to permanently ban ex-felons from voting. According to his research, only eight countries in the world restrict voting after a prison term is complete, and only three—Armenia, Belgium, and the United States—permanently prohibit certain kinds of ex-felons from voting. “Not many countries reach this level of voting restrictions,” he notes, “but this reflects specific legal and civil society components from each country’s particular history” (“Incarceration and Enfranchisement: International Practices, Impact and Recommendations for Reform,” 2003). Supporters of voting rights for ex-felons argue that all Americans should enjoy a right that is embraced by the great majority of the world’s countries, democratic and non-democratic alike.

Those who oppose any widespread change to voting rights for ex-felons are quick to point out that the United States is a democratic country that is governed under rule of law. They argue that letting ex-felons participate by voting does not send the right message about democracy. In the words of Roger Clegg of the Center for Equal Opportunity, “people who aren’t willing to follow the law shouldn’t have a voice in making law.” Others argue that ex-felons will vote in ways that harm society and may well influence criminal justice policy for the worse. By prohibiting certain offenders for life—such as convicted murderers or people who have perverted the electoral process through intimidation or fraud—a state can ensure the integrity of the electoral process.

Many people are suspicious about making the process of voting too easy for people, whether or not they are ex-felons. They see voting as a privilege, and they worry about the participation of uninformed people in elections simply because going to vote is “the thing to do.” Since felons forfeited some of their rights, these opponents believe it is only fair that ex-felons might have to make an extra effort to become fully reinstated citizens.

Opponents of voting rights for ex-felons also argue that, in the American federal system of government, each state—not Congress—has the right to decide who will vote in its elections. As Roger Clegg of the Center for Equal Opportunity has testified, “Article I, Section 2, of the Constitution... says that electors for the House of Representatives—and, by extension, for all federal elections—‘shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.’ Thus, it gives authority for determining elector qualifications to the states.” While he notes that Article I, Section 4, gives Congress authority to Congress to “make or alter such [state] Regulations” regarding “[t]he Times, Places and Manner of holding Elections for Senators and Representatives,” it is “not about who votes, which is the express focus of Section 2.” And unless Congress makes an alternative claim that criminals are disenfranchised because of their race, he argues, it cannot exercise its authority under the 14th or 15th Amendment to regulate the states. Therefore, Congress has no authority to pass such national legislation (testimony before the U.S. House Judiciary Committee, October 21, 1999).

The United States, along with other democracies, is committed to the idea that everyone participates and is responsible for the common good. The extent to which voting rights for ex-felons is a necessary component of full participation remains an open question.

3B: Activity: Voting Rights for Ex-Felons: A Human Graph

This human graph activity is designed to introduce participants to the different issues raised by the question of whether ex-felons should have their voting rights restored. It is also designed to help participants realize how they feel and where they stand on this issue.

Procedures

- § Explain the purpose of this activity. Then create a line – either by pointing from one end of the room to the other or by drawing one on the board. One end of the line is “Agree Very Much,” the mid-point is “Not Sure/Undecided,” and the other end of the line is “Disagree Very Much.”
- § Ask for five volunteers from the group. Tell them that they will serve as a “human graph.” Explain that you will ask them a series of statements and that they will react to each statement by standing in front of the part of the graph that corresponds to their opinion.
- § Instruct the class that the members of the human graph are not allowed to speak; therefore, the class will have to interpret their thoughts for them.
- § Select a few statements on Handout 2C, “Statements for a Human Graph: Voting Rights for Ex-Felons.” After each statement, allow time for the “human graph” to understand the statement and react by physically moving to a position on the line. Then ask the rest of the group to explain why they think the participants in the human graph are standing where they are. You may choose to let the human graph students explain their position after all of the students have commented.
- § The human graph students should feel free to move about on the line, changing their opinion if an argument seems persuasive to them. Continue with this process until all statements have been evaluated and discussed. Select additional groups of five for other questions.
- § *Note:* This activity can also be done with the entire group along the line. When the whole class is the graph, ask questions of different members about why they chose to stand where they stood.

Follow-Up Questions

After the graph has finished representing the questions, put students into pairs. Have one student in each pair identify the three strongest statements in favor of voting rights for ex-felons; the other student should identify the three strongest statements against voting rights for ex-felons. Allow three minutes for each side to share their ideas.

Debrief as a large group using the following questions:

- § In your pair, what were the three strongest statements in favor of voting rights for ex-felons? The three strongest statements against?
- § What surprised you about the human graph? How did the participants in the graph shape your thinking about voting rights for ex-felons?

3C: Handout: Voting Rights for Ex-Felons: A Human Graph

Statements for a Human Graph

- § Voting is an essential activity in a democratic society.
- § People who aren't willing to follow the laws should not be allowed to help make the laws.
- § People who vote are more likely to feel they have a stake in society.
- § Prohibiting ex-felons from voting for life protects the integrity of the electoral process.
- § Ex-felons have already paid their debt to society and should be allowed to vote.
- § Voting should be a privilege only for law-abiding citizens.

3D: Activity: Sorting Out Positions on Voting Rights for Ex-Felons

Together with a partner, review the list of statements below. For each statement, decide whether each argument is for the voting rights for ex-felons (For), against voting rights for ex-felons (Against), supports both sides (Both), or neither side (Neither). Fill in the blank with your response.

	Under the Fourteenth Amendment, states can deny the right to vote to individuals guilty of "participation in rebellion, or other crime."
	Voting is a fundamental activity in a democracy. Permitting ex-felons to vote is one way to bring them back into the democratic process.
	Voting was never mentioned in the Bill of Rights. The rules and procedures that regulated who could vote and under what circumstances were left to the states.
	Ex-felons have already paid their debt to society. Denying them the right to vote just punishes them further.
	Current voting rates among low-income and minority citizens are significantly lower than among other groups. Denying the vote to ex-felons, who are disproportionately low-income and non-white, makes a bad situation worse.
	Whether convicted persons are "overrepresented" in some groups and "underrepresented" is a law enforcement and prevention problem, not a political problem.
	Prohibiting former felons from voting for life ensures the integrity of the electoral process. There is reason to believe that persons convicted of crimes are less likely to be good and trustworthy citizens.
	Keeping ex-felons from voting doesn't rehabilitate or deter crime.
	Voting means participating in vital decisions about society, not just showing up.
	People who aren't willing to follow the law shouldn't have a voice in making law.
	Ex-felons have special insights about crime and punishment. Like veterans voting on whether to go to war, ex-felons bring unique insights to criminal justice issues.
	Voting is a privilege to be enjoyed by law-abiding citizens. Permitting convicted murderers, perjurers, or tax cheats to vote makes a mockery of democracy.

- § After sorting the statements, select three which you and your partner find most compelling. These statements may be in favor, in opposition, or a combination.
- § Working in a quartet (you, your partner, and another pair), reach consensus on which statement you feel is the most persuasive in favor of each position.
- § Share your choices with the rest of the class. Be ready to explain your reasoning.

3E: Deliberation Strategy: Philosophical Chairs on Voting Rights for Ex-Felons

- o Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?
- o Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?

“Philosophical Chairs” is a deliberation strategy that emphasizes careful listening and mastery of diverse points of view. Discuss one or both of the policy questions above using these rules for “Philosophical Chairs.”

- n Arrange chairs in a “U” formation.
- n Students sit facing each other across the center of the room. One side will argue in favor of the question, and the other will argue in opposition to the question.
- n Students can sit in the neutral zone at one end of the center area (at the bottom of the “U” formation) so that they can see both sides.
- n Students must address each other by their first names.
- n A student must briefly summarize the previous speaker's points to that speaker's satisfaction before he/she begins his/her own comments.
- n Think before you speak. Organize your thoughts. Give verbal clues to your listeners (“I have three points; first...”).
- n After a student speaks, he/she must wait until two students on his/her side have spoken.
- n One speaker at a time; others are listeners.
- n The teacher can call time-out periodically to clarify, reflect on the process or content, or refocus the discussion.
- n Address the ideas, NOT the person.
- n One student from each opposing side will provide a summary of the viewpoints presented during the discussion by his/her side.
- n Each student in the neutral zone must take notes on both sides of the argument. If her/his position changes, s/he must explain why s/he came to a new conclusion; if s/he remains undecided, s/he must explain why neither side has changed her/his mind.

Adopted from the classroom of Dale B. Fountain, Mount Tahoma High School, Tacoma, Washington, based on a model developed by philosophy professor Zahary Seech. Reprinted from: “The American Jury: Bulwark of Democracy,” <http://www.crfc.org/americanjury/CRFCPhilosophicalChairs.html>.

3F: Taking a Stand: Position Paper on Voting Rights for Ex-Felons

Federal Policy

Should Congress create a law to automatically restore voting rights to persons once they have completed a felony prison sentence?

State Policy

Should Illinois formally notify each convicted person of the restoration of their right to vote upon release from confinement and formally notify all state and local election officials of this right?

Steps for writing your Position Paper

1. Choose a position for, against, or as an alternative to the policy above.
2. Then team up with classmates who take the same position and as a group, write a persuasive paper arguing the benefits associated with your position on this policy.
3. In your essay, be sure to call on the most convincing arguments and specific evidence and examples from:
 - § the curriculum
 - § discussion and other classroom activities
 - § the Summit survey results
 - § your service project experience
 - § people in your community
 - § any other sources available to you
4. Include in your paper the most convincing arguments from the opposing side. List what you think are the best arguments your policy rivals would make. Acknowledge these points, and do your best to refute the importance of these arguments.

Specifications for Your Paper

Length. Your paper should be between 300 and 500 words.

Format. Each paper must have the name of the school in the heading and the policy being addressed in the title. No student names will appear on the position papers.

Deadline. All position papers must be received by the Constitutional Rights Foundation Chicago (CRFC) by April 7, 2006. Turn in your completed paper to your teacher before that date.

Assessment. For a suggested scoring guide to use with position papers, see Handout 6C, "Tool: Final Position Paper Scoring Guide."

Select copies of your position papers will be distributed to policymakers and to students from other schools at the Summit.

Sharing Your Views

You can contribute your views on the federal policy by writing to your U.S. Representative in Congress and/or to U.S. Senators Durbin and Obama. You can share your views on the state policy with Attorney General Madigan or your Representative and Senator in the Illinois General Assembly. Contact information is listed in the "Supplemental Internet Resources" section on page 69 of this curriculum.

Voting Rights for Ex-Felons: Selected Resources

Resources

American Civil Liberties Union
Voting Rights: Ex-Offenders
<http://www.aclu.org/votingrights/exoffenders/index.html>

Center for Equal Opportunity
Sterling, VA
<http://www.ceousa.org/>

Illinois State Board of Elections
1020 S. Spring St.
Springfield, IL 62704
217/782-4141
<http://www.elections.state.il.us/VotingInformation/welcome.aspx>

State Election Laws and Procedures
National Conference of State Legislatures
<http://www.ncsl.org/programs/legman/elect/taskfc/data.htm>

The Sentencing Project
Washington, DC
<http://www.sentencingproject.org/>

Documents

Help America Vote Act (HAVA) of 2002, Public Law 107-252, 107th Congress (2002)
http://www.fec.gov/hava/law_ext.txt

Information and Analysis

American Civil Liberties Union. "Purged! How Flawed and Inconsistent Voting Systems Could Deprive Millions of Americans of the Right to Vote," October 19, 2004,
http://www.aclu.org/FilesPDFs/purged%20-voting_report.pdf.

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Ewald, Alec. "A 'Crazy-Quilt' of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," November, 2005,
<http://www.sentencingproject.org/pdfs/crazyquilt.pdf>.

Love, Margaret Colgate. "Table # 7 – Felony Disenfranchisement in the United States," in *Relief from the Collateral Consequences of a Criminal Conviction*, January 2006,
http://www.sentencingproject.org/rights_restoration/table7.html.

Manza, Jeff, Christopher Uggen, and Marcus Britton. "The Truly Disfranchised: Felon Voting Rights and American Politics." *American Sociological Review*, December 2002, <http://www.northwestern.edu/ipr/publications/papers/manza.pdf>

National Conference of State Legislatures. "Voting Rights Restoration Process,"
<http://www.ncsl.org/programs/legman/elect/voterights.htm>

Unit Four: Detaining U.S. Citizens as Enemy Combatants

Overview

Following the attacks of September 11, 2001 by al Qaeda, the United States captured hundreds of persons and designated them “enemy combatants.” Under this policy, the President determines who is an enemy combatant and places them in military detention without charges or access to an attorney. Most enemy combatants were captured in Afghanistan and are not American citizens. However, in 2002, U.S. citizen Jose Padilla was detained at O’Hare International Airport and was subsequently designated by the President as an enemy combatant. Padilla allegedly plotted to detonate a “dirty” nuclear bomb. Recently, Padilla’s status was changed without explanation, and he now faces federal felony charges.

This unit will give an overview of some of the issues relating to enemy combatants. It will review some of the powers of Presidents during wartime, the rights of citizens here in the United States, and the ways the U.S. Supreme Court has tried to balance individual freedoms with national defense. And it will present a discussion model called “structured academic controversy” for exploring the facts, arguments, and options surrounding these issues.

Focus Question

- § Should the President have the power to seize U.S. citizens in civilian settings whom he identifies as ‘enemy combatants’ and hold them in military detention without criminal charge or trial until they are brought before a neutral decisionmaker who will determine whether this designation is true?

Objectives

- § Understand the constitutional background and legal history of *habeas corpus* in the United States and the powers of the President during wartime
- § Learn the facts relating to the treatment of U.S. citizens and foreign nationals identified and detained by the President as enemy combatants since the attacks of September 11, 2001
- § Identify the arguments—constitutional, historical, and political—in favor and in opposition to the President detaining U.S. citizens as enemy combatants
- § Introduce “structured academic controversy,” a model for deliberating controversial issues

Materials

- 4A: Reading: Enemy Combatants
 - 4B: Glossary: Enemy Combatants and Other Terms
 - 4C: Source: Presidential Determination of Jose Padilla as an Enemy Combatant
 - 4D: Activity: Who Is an “Enemy Combatant”?
 - 4E: Handout: Who Is an “Enemy Combatant” Case Files
 - 4F: Worksheet: Determining Who Is an Enemy Combatant
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 - 4H: Handout: Deliberation Guide
 - 4I1: Handout: Arguments Supporting Detention of U.S. Citizens as Enemy Combatants
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4A: Reading: Enemy Combatants

The attacks of September 11, 2001 against the United States by al Qaeda left more than 3,000 people dead and a nation stunned and angry. Within a week, the Congress of the United States voted overwhelmingly to authorize President George W. Bush “to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons” [“Authorization for Use of Military Force,” September 18, 2001].

Shortly afterward, U.S. forces invaded Afghanistan, where al Qaeda maintained training camps and where, it was believed, Osama bin Laden and other key al Qaeda leaders worked. They attacked al Qaeda and the forces of the Taliban, the ruling government of Afghanistan who were allied with al Qaeda. By November 2001, the Taliban government had fallen, al Qaeda forces were on the run, and the United States and its allies were responsible for the country.

The United States also had control of thousands of persons captured during the war. Hundreds of these persons eventually were moved to the U.S. Naval Base at Guantanamo Bay, Cuba, where they were held as “enemy combatants” at the determination of President Bush. Since 2001, other persons, including American citizens on U.S. soil, also have been identified and detained as “enemy combatants” by the President as part of the global war on terrorism.

Who is an “enemy combatant” and by what powers can the President detain them? The answers to these questions reveal much about how the United States attempts to balance the freedom and security of its citizens.

The War Powers of the Federal Government

The Constitution of the United States splits the war making powers between the legislative and executive branches of the federal government. Congress has the power to provide for the common defense, to declare war, raise and support armies, provide and support a navy, and various powers over the militia in times of war or rebellion [Article I, Section 8]. The President serves as the Commander in Chief of the federal army and navy and of the state militias if and when they are called into service by the United States [Article II, Section 2]. Together, Congress and the President share the responsibility for securing and defending the nation.

Significantly, the President—in his role as Commander in Chief—has direct responsibility for the security of the country. If the United States is attacked, he has the authority to respond immediately by using the armed forces. In an age of nuclear weapons, missiles that can strike the United States in minutes, and planes as weapons of mass destruction, this authority has only increased the President’s powers. While Congress authorizes whether or not to engage in war, the President is responsible for deciding *how* the war should be fought: he directs the movements, actions, tactics, and even the targets of the armed forces. In the American system, the military is under civilian control, and the President may fire or appoint generals as he decides. As Commander in Chief, the President’s battlefield decisions are granted great respect by the other branches of government: although he may be criticized for decisions he makes, his *authority* to make those decisions is accepted.

The balance of power between the President and Congress during wartime can be tricky to maintain. Both branches, at different times in American history, have checked each other’s power—sometimes by insisting on their own Constitutional authority to act or, more often, stating that the other branch lacked that authority for its actions. Sometimes these disputes have ended up before the Supreme Court of the United States, which has decided in favor of the President or the Congress depending on the Constitutional question. But perhaps the best description of this balance of power is expressed by New York University law professor Noah Feldman:

The allocation of power within the government is not determined simply by reading the Constitution and figuring out what it says. To the contrary, the balance of powers is established through a game of give and take, a struggle in which each branch fends for itself. ["Our Presidential Era: Who Can Check the President?" *New York Times*, January 8, 2006]

Habeas Corpus and "The Rights of Englishmen"

Of course, the United States operates under a system of limited government: the people have authorized the government with certain powers to act on their behalf, but they have retained their own power and rights. When the American colonists declared independence from the British Crown, they numbered among their claims that Britain had denied them the rights of Englishmen. One of the greatest of these rights was the writ of *habeas corpus*.

Habeas corpus—"have the body" in Latin—is an ancient privilege of English law that predates the Magna Charta and was an early power of English courts [Leonard W. Levy, "Habeas Corpus," *Origins of the Bill of Rights*, 1999]. The writ, or written order of the court, gave judges the power to command the presence of a person before the court. This power worked two ways. First, it was an order for the government and the accused to appear before the court. Second, the privilege of the writ of habeas corpus came to include the requirement of an explanation for why a person was detained by the government. In practice, this meant that the government had to justify why it was detaining a person; if the court was not satisfied by the government's explanations, the judges had the power to free the prisoner.

The "Great Writ," as it is sometimes called, was considered tremendously important in England as a protection against the government holding people as prisoners simply for political or personal reasons. The English jurist William Blackstone described it in his *Commentaries on the Law of England* this way: "Of great importance to the public is the preservation of this personal liberty: for if once it were left in the power of any, the highest, magistrate to imprison arbitrarily whomever he or his officers thought proper... there would soon be an end of all other rights and immunities.... (*Commentaries*, Book I, Chapter 1, 1765-1769)

Although the writ of habeas corpus was not officially extended to the American colonies, the colonists themselves took it as their birthright, and following independence it was included in several state constitutions and the Northwest Ordinance of 1787. It also became one of the few rights incorporated directly into the Constitution itself: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public safety may require it" (Article I, Section 9).

Habeas Corpus during Wartime

The Writ has been suspended at different times in American history. In early 1861 for example, at the start of the Civil War, President Abraham Lincoln suspended it himself, without permission from Congress; later, in a July 4 speech to Congress, he challenged critics in Congress and elsewhere by asking: Should "all the laws, but one, to go unexecuted, and the Government itself go to pieces, lest that one (habeas corpus) be violated?" Lincoln then insisted that, in fact, no law was violated and that "the Constitution itself, is silent" as to whether the President or the Congress can exercise the power. Congress later passed legislation to support his actions.

In 1866, the U.S. Supreme Court held in *Ex Parte Milligan* that the writ could not be suspended in an area where the federal courts remained open and public safety was not endangered by rebellion. Milligan was a citizen of Indiana, which was under martial law. He was arrested, tried, and found guilty by a military tribunal. The federal courts in Indiana remained open, and he filed a writ of habeas corpus claiming he was illegally imprisoned. Justice Chase wrote for the U.S. Supreme Court that "The Constitution of the United States is a law for rulers and people,

equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances." Milligan went free.

In 1946, the Court again held in *Duncan v. Kahanamoku* that a 1941 suspension of the writ by President Franklin Delano Roosevelt in Hawaii that was not supported by an Act of Congress was unconstitutional. Significantly, both *Milligan* and *Duncan* were decided after hostilities had ended.

Out of concern that the internment of persons of Japanese descent during World War II might happen again and to repeal the Emergency Detention Act of 1950, Congress in 1971 passed a federal law making explicit the protections of habeas corpus. The United States Code now says that "[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress" [18 U.S.C. Section 4001(a)].

The Commander in Chief, Enemy Combatants, and the War on Terrorism

Since September 11, President Bush has moved aggressively to combat terrorism and take every available measure to prevent future attacks on American soil. Within six weeks of the attacks, Congress ratified the Administration's USA PATRIOT Act which included dozens of changes to U.S. law that were designed to enhance federal power to investigate and prosecute alleged terrorists. On November 13, 2001, the President issued a military order for "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" that led to the creation of special military tribunals for al Qaeda members and supporters. And the President determined that hundreds of persons were to be held as "enemy combatants."

As an American Bar Association Task Force has noted, "The term "enemy combatant" is not a term of art which has a long established meaning" and appears "nowhere in U.S. criminal law, international law or in the law of war" ("Task Force on Treatment of Enemy Combatants," Revised Report No. 109, February 10, 2003). Instead, the term "actually encompasses two previously-recognized classes of detainees during wartime: lawful and unlawful combatants.

Each is subject to capture and detention for the duration of a conflict. "Lawful combatants," or prisoners of war, are entitled to the substantive and procedural protections set forth in the Third Geneva Convention of 1949, such as the right to the exercise of religion, the ability to correspond with persons outside detention and to keep personal effects, and the entitlement to living conditions equivalent to the soldiers of the detaining power. "Unlawful combatants" do not receive these protections, and may additionally be "subject to trial and punishment by military tribunals for acts which render their belligerency unlawful." *Ex parte Quirin*, 317 U.S. 1, 31 (1942).

In defining "enemy combatant," the government created a category that was different from that of a prisoner of war, an unlawful combatant, or a criminal defendant. Because enemy combatants were something different, the government argued that enemy combatants did not receive any of the protections given to prisoners of war or persons accused of a crime. As a result, the government said that these persons could be held without charges, without outside contact, and without the benefit of legal counsel, for as long as the government determined it was necessary. Moreover, because this was a military decision made by the President acting as Commander in Chief, he alone was responsible for determining who was an enemy combatant.

U.S. Citizens Detained as Enemy Combatants: *Hamdi v. Rumsfeld*

All of the enemy combatants currently held at Guantanamo Bay are foreign nationals. In 2002, however, there was one man at Guantanamo who, it was learned, had been born in 1980 in Louisiana while his parents, who are Saudi Arabian nationals, were living there. By the Fourteenth Amendment to the U.S. Constitution, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States..." This man, Yaser Esam Hamdi, who was captured in Afghanistan in the fall of 2001, was a U.S. citizen.

When the government learned of Hamdi's American citizenship in April 2002, it kept his designation as an enemy combatant but removed him from Guantanamo Bay and placed him in a naval brig in Norfolk, Virginia. The government claimed that Hamdi was an enemy combatant on the basis of a document called the "Mobbs Declaration" (Michael Mobbs who identified himself as Special Advisor to the Under Secretary of Defense for Policy). Mobbs reported that he was familiar with the circumstances of Hamdi's capture. He said that Hamdi had entered Afghanistan in 2001 and that by July or August 2001 he had affiliated with a Taliban military unit, received weapons training, and remained with his Taliban unit following September 11. Mobbs also declared that Hamdi's Taliban unit had surrendered to forces of the Northern Alliance, after which he surrendered his rifle. Since people associated with al Qaeda and the Taliban "were and continue to be enemy combatants," Hamdi was labeled an enemy combatant "[b]ased upon his interviews and in light of his association with the Taliban." *Hamdi v. Rumsfeld*, No. 03-6696, pp. 4-5 (2004).

Two writs of habeas corpus were filed on behalf of Hamdi—one by a public defender and one by a private citizen—that were eventually dismissed in federal court. Independently, Hamdi's father, who claimed that his son had been in Afghanistan to provide humanitarian relief and was caught up in the war, filed a writ of habeas corpus. This also was eventually dismissed. On appeal, however, the Supreme Court of the United States agreed to hear Hamdi's case. During this time, Hamdi was held out of communication with his attorney and his father. No one had heard directly from Hamdi himself during his two years in federal detention.

In June 2004, the Supreme Court reached a decision. Writing for the Court, Justice O'Connor acknowledged that while "the threshold question before us is whether the Executive has the authority to detain citizens who qualify as 'enemy combatants,'" "the Government has never provided any court with the full criteria that it uses in classifying individuals as such.... We therefore answer only the narrow question before us: whether the detention of citizens falling within that definition [that is, captured in a foreign war zone and allegedly fighting against the United States] is authorized." *Hamdi*, p. 9.

The Court accepted the government's position that the "Authorization for Use of Armed Force" gave the President the power to detain enemy combatants. But the Court held that "a citizen-detainee seeking to challenge his classification as an enemy combatant must receive notice of the factual basis for his classification, and a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker." *Hamdi*, p. 26. Hamdi's case had to be heard.

The decision was not unanimous. Justice Souter accepted the majority's decision but not its reasoning. Justice Scalia was joined by Justice Stevens in dissent, writing that "Hamdi is entitled to a habeas decree requiring his release unless (1) criminal proceedings are promptly brought, or (2) Congress has suspended the writ of habeas corpus." *Hamdi*, p. 72. If neither was present, Hamdi had to go free.

Only Justice Thomas accepted the government's position. "This detention falls squarely within the Federal Government's war powers, and we [the Court] lack the expertise and capacity to second-guess that decision." *Hamdi*, p. 79. In dissent, he wrote that "the question whether Hamdi is actually an enemy combatant is 'of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which has long been held to belong in the domain of political power not subject to judicial intrusion or inquiry.' [W]e lack the information and expertise to question whether Hamdi is actually an enemy combatant, a question the resolution of which is committed to other branches."

What happened afterward to Hamdi also was significant. After more than two years as an enemy combatant, held without legal counsel or outside contact, Hamdi was released by the government on the condition that he renounces his American citizenship and return to live in Saudi Arabia. Hamdi was never charged with nor convicted of any crime.

Enemy Combatants at Home: the Case of Jose Padilla

Until recently, there was one other American citizen who was held as an enemy combatant. In May 2002, U.S. citizen Jose Padilla arrived at O'Hare International Airport on an international flight from Pakistan via Switzerland. Padilla, a former Chicago gang member, had been in and out of prison much of his life until he converted to Islam in the late 1990s. He traveled to various Muslim countries, including Pakistan and Afghanistan, where he met with and allegedly was trained by al Qaeda.

Padilla was seized at O'Hare by U.S. Marshals and held as a "material witness" for a grand jury investigation. While Padilla was in custody, the President determined that Padilla was an enemy combatant "engaged in conduct that constituted hostile and war-like acts, including conduct in preparation for acts of international terrorism that had the aim to cause injury or adverse effects on the United States." U.S. Attorney General John Ashcroft alleged that Padilla was plotting to detonate a "dirty" nuclear bomb in an American city. Finding that Padilla "posed a continuing, present, and grave danger to the national security of the United States," the President ordered him transferred to a military brig in Charleston, South Carolina on June 9, 2002.

There were several important differences between the circumstances of Hamdi and Padilla. Unlike Hamdi, Padilla was not seized overseas but in Chicago, where there was no declaration of martial law or other emergency conditions. Padilla appeared to have much stronger connections to al Qaeda than did Hamdi. Although the government alleged that he was part of an organized plot, the government also admitted that Padilla had no bomb-making materials nor had he chosen a target or even made a plan. Like Hamdi, however, Padilla was held without charges, in isolation, and without legal counsel.

Various groups filed habeas corpus petitions on behalf of Padilla, whose case was also argued before the U.S. Supreme Court in 2004. The Court held, however, that their requests had been brought to the wrong court (in New York, where the grand jury was working), and that any appeal needed to come before the court where he was located in South Carolina.

In November 2005, after 42 months in detention, Padilla's status was changed without explanation. His designation as an enemy combatant was dropped, and the government brought felony terrorism charges against him in federal criminal court. Despite this change, the Supreme Court of the United States in January 2005 accepted Padilla's request to hear his case and to decide whether an American citizen can be seized and detained as an enemy combatant. The case, *Padilla v. Hanft*, is expected to be heard and decided sometime in 2006.

4B: Glossary: Enemy Combatants and Other Terms

al Qaeda: "The Base." An international terrorist group founded in approximately 1989 and dedicated to opposing non-Islamic governments with force and violence. One of the principal goals of al Qaeda is to drive the U.S. armed forces from the Saudi Arabian peninsula by violence. Members of al Qaeda were responsible for several terrorist attacks, including the 1998 bombings of the U.S. embassies in Kenya and Tanzania, the attacks of September 11, 2001, and the 2004 bombing of a train station in Madrid, Spain.

Brig: A military jail. Each branch of the U.S. armed services maintains a network of brigades that can hold prisoners and detainees. The brig can hold members of the U.S. armed forces who are charged with violating military regulations or U.S. laws. The brig can also be used to hold prisoners.

"Dirty Bomb": A makeshift nuclear device prepared from an ordinary explosive and radioactive nuclear waste material. While not a nuclear blast, the explosion of a dirty bomb spreads radioactive contamination in the immediate areas as the nuclear waste material is carried into the atmosphere where it is dispersed by the wind.

Enemy Combatant: A term created by President George W. Bush following the attacks of September 11, 2001. Used to describe persons who are neither prisoners of war ("lawful combatants") nor "unlawful combatants" (such as spies) nor criminal defendants. Both U.S. citizens and persons from other countries have been identified as enemy combatants. The exact definition of the term has yet to be determined.

Geneva Conventions: Consists of four treaties formulated in Geneva, Switzerland that set the standards for international law for humanitarian concerns.

Guantanamo Bay: According to the United States Navy, the Naval Base at Guantanamo Bay on the island of Cuba "is the oldest U.S. base outside the continental United States, and the only one in a country that does not enjoy an open political relationship with the United States." The base exists on land leased from Cuba to the United States following a 1934 treaty for a current value of \$4,085 per year. Naval Base Guantanamo Bay is home to Camp X-Ray, where the U.S. Government holds hundreds of "enemy combatants" detained during the "War on Terrorism."

Habeas Corpus: A writ of habeas corpus (Latin for "you have the body") is an order by a judge or court to a prison official ordering that an inmate be brought before the court so the judge can decide whether or not that person is imprisoned lawfully. If the court determines that a person is not held lawfully, then the person can be released from custody.

Internment Camp (also "relocation center"): During World War II, persons of Japanese ancestry along the western coast of the United States were excluded from these areas by military order and removed from their homes "in the interests of national security." Under military guard, they were transported to "relocation centers" in the interior of the Western United States, from where they could not leave without military permission. Toward the end of the war, the internment camps were disbanded, and the evacuees—the majority of whom were U.S. citizens—were permitted to resettle in Chicago and other regions of the Midwest.

Material witness: A witness who possesses relevant and important information in a criminal investigation or trial. Under United States law, material witnesses—which may be victims or eyewitnesses—cannot be detained [held by the government] unless the judge believes the person in question will flee to avoid participating in the investigation.

Martial Law: Military rule or authority imposed on a civilian population when the civil authorities cannot maintain law and order, as in a time of war or during an emergency. For example, parts of Hawaii were put under martial law during World War II, and part of New Orleans was under martial law in 2005 following Hurricane Katrina.

Military Tribunal: A commission made up of military officers who act as both judge and jury. After a hearing, guilt is determined by a vote of the commissioners. On November 13, 2001, President George W. Bush created military tribunals for "Certain Non-Citizens in the War Against Terrorism."

Northern Alliance: A coalition of military and paramilitary groups, backed by the United States, who overthrew the Taliban government of Afghanistan in November 2001. Composed primarily of the Tajik, Uzbek and the Hazara ethnic groups, the Alliance was based in northern Afghanistan before it swept to power following the U.S. invasion of that country.

Taliban: "Students of (Islamic) Knowledge." A group of Islamic fundamentalists, mainly from the Pashtun ethnic group, who seized power in Afghanistan in 1996 on a program of returning Islam to its roots. The Taliban established a strict and often harsh interpretation of Islamic law throughout Afghanistan; their government received diplomatic recognition from only the United Arab Emirates, Pakistan, and Saudi Arabia. The Taliban gave refuge to Osama bin Laden, who in turn gave the Taliban at least \$100 million. The Taliban were toppled from power following the U.S. invasion of Afghanistan in the fall of 2001 by the U.S.-backed Northern Alliance.

Terrorism: There is no international consensus on the definition of terrorism. The United States Code defines terrorism as "any activity that (A) involves an act that (i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and (ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and (B) appears to be intended (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping." (6 U.S.C. §101).

War on Terrorism: A term describing various efforts—covert, diplomatic, economic, legal, and military—for fighting persons and groups who promote terrorism against the United States, its allies, and other democratic governments around the world. Frequently used by the United States Government in its public statements, documents, and web sites, the term does not have a specific definition, nor is there an official U.S. declaration of war on terrorism.

4C: Source: Presidential Determination of Jose Padilla as an Enemy Combatant

**THE WHITE HOUSE
WASHINGTON
FOR OFFICIAL USE ONLY**

TO THE SECRETARY OF DEFENSE:

Based on the information available to me from all sources,

REDACTED

In accordance with the Constitution and consistent with the laws of the United States, including the Authorization for Use of Military Force Joint Resolution (Public Law 107-40);

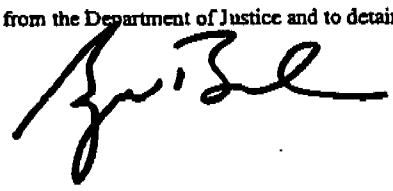
I, **GEORGE W. BUSH**, as President of the United States and Commander in Chief of the U.S. armed forces, hereby **DETERMINE** for the United States of America that:

- (1) Jose Padilla, who is under the control of the Department of Justice and who is a U.S. citizen, is, and at the time he entered the United States in May 2002 was, an enemy combatant;
- (2) Mr. Padilla is closely associated with al Qaeda, an international terrorist organization with which the United States is at war;
- (3) Mr. Padilla engaged in conduct that constituted hostile and war-like acts, including conduct in preparation for acts of international terrorism that had the aim to cause injury to or adverse effects on the United States;
- (4) Mr. Padilla possesses intelligence, including intelligence about personnel and activities of al Qaeda, that, if communicated to the U.S., would aid U.S. efforts to prevent attacks by al Qaeda on the United States or its armed forces, other governmental personnel, or citizens;
- (5) Mr. Padilla represents a continuing, present and grave danger to the national security of the United States, and detention of Mr. Padilla is necessary to prevent him from aiding al Qaeda in its efforts to attack the United States or its armed forces, other governmental personnel, or citizens;
- (6) it is in the interest of the United States that the Secretary of Defense detain Mr. Padilla as an enemy combatant; and
- (7) it is, **REDACTED** consistent with U.S. law and the laws of war for the Secretary of Defense to detain Mr. Padilla as an enemy combatant.

Accordingly, you are directed to receive Mr. Padilla from the Department of Justice and to detain him as an enemy combatant.

DATE: June 9, 2002

White House Office-controlled Document



4D: Activity: Who Is an “Enemy Combatant”?

Since the attacks of September 11, 2001, President George W. Bush has used the term “enemy combatant” to designate and detain Americans and persons of foreign citizenship who are within U.S. custody here in the United States and abroad. There is no specific definition, however, of who is an “enemy combatant.”

The courts of the United States have traditionally been open to nonresident aliens and the due process rights of any person on American soil. Unlike someone arrested for and charged with a crime, persons designated as enemy combatants are held without charges filed against them and without initial access to an attorney; in many cases, they have been held for more than a year. Because the President has determined that enemy combatants are not prisoners of war, they are not protected under the Geneva Conventions.

Handout 4E lists descriptions of six individuals apprehended by the United States following the September 11, 2001 attacks by al-Qaeda. In this exercise, a small group will be assigned to review the case of each of these individuals. Using Worksheet 4F, “Determining Who Is an Enemy Combatant,” review and classify the factors you believe are most important for understanding your case. Based on the evidence and your classification, be ready to report out to the large group whether your person should be classified as an “enemy combatant.”

4E: Handout: Who Is an “Enemy Combatant” Case Files

PERSON A

PERSON A is a citizen of Qatar, a country that is an American ally in the Middle East. He first came to the United States in 1983. He enrolled at Bradley University in Peoria, Illinois in 1987 and graduated from there in 1991. After graduating, he returned to Qatar, with one visit to the United States in the summer of 2000. PERSON A returned to the United States with his wife (who is from Saudi Arabia) and their five children, on September 10, 2001 on a student visa to study for a graduate degree in computer information systems at Bradley.

FBI agents first questioned PERSON A at his West Peoria home in October 2001. The government held him on a material witness warrant, and a search of his laptop computer revealed: a prayer in Arabic asking God to protect Osama Bin Laden; audio files of lectures by Bin Laden and his associates advocating martyrdom and support for the Taliban; other lectures urging opposition to Jewish and Christian control of Palestine, Lebanon and Saudi Arabia, while advising how to train in Bin Laden's Afghanistan camps; photos of the attacks on the World Trade Center and Arab prisoners held in Kabul; links to Web sites on hazardous chemicals and how to buy them, weapons and satellite equipment; and extensive evidence of credit card fraud.

The government charges that PERSON A made false statements about not being in the United States between 1991 and 2001 and about calls to a telephone number overseas that has been linked to the September 11 hijackers. It also charges PERSON A with creating a phony company based in a motel room using a false name and a stolen Social Security card.

Should PERSON A be designated an enemy combatant?

PERSON B

PERSON B is a U.S. citizen who was captured in 2001 with Taliban forces during the U.S. war in Afghanistan. Born and raised in California, PERSON B converted to Islam in late May or June 2001 crossed from Pakistan into Afghanistan for the purpose of taking up arms with the Taliban against the U.S.-backed Northern Alliance. He reported to a Taliban recruiting center, explained that he was an American and that he wanted to go to the front lines to fight. PERSON B traveled to a training camp associated with Osama Bin Laden and there participated fully in its training activities, including courses in weapons, orienteering, navigation, explosives and battlefield combat. He then went to Kabul, Afghanistan to assist the Taliban. PERSON B carried a rifle issued by the Taliban while he traveled, and went to the front line in Takhar, in northeastern Afghanistan, where he fought with Taliban troops until he was captured in November 2001. He was under U.S. military control from December 2001 to January 2002, when he was brought to the United States.

The government charges that PERSON B willingly fought with the Taliban when they were at war with the United States and supported al Qaeda. The government also charges that PERSON B supported both the Taliban and al Qaeda.

Should PERSON B be designated an enemy combatant?

PERSON C

PERSON C is a U.S. citizen who was born in Louisiana in 1980. He was raised in Saudi Arabia and also is a citizen of that country. By 2001 PERSON C lived in Afghanistan. At some point that year, he was seized by members of the U.S.-backed Northern Alliance, and he was eventually turned over to the United States military. He was detained and interrogated in Afghanistan before transferring him to Guantanamo Bay in January 2002. When the government learned in April 2002 that PERSON C was an American citizen, he was transferred to a naval brig in Norfolk, Virginia and then to a brig in Charleston, South Carolina.

The government charges that PERSON C remained with his Taliban unit following the attacks of September 11 and that during the fall of 2001 PERSON C's Taliban unit surrendered to Northern Alliance forces, after which he surrendered his Kalishnikov assault rifle to them. The government charges that at the time of PERSON C's capture, al Qaeda and the Taliban were and are hostile forces engaged in armed conflict with the armed forces of the United States. The father of PERSON C says that his son went to Afghanistan to do relief work, that he had been in that country less than two months before September 11, and could not have received any military training. Rather, because he was traveling on his own for the first time and because of his lack of experience, he was trapped in Afghanistan once that military campaign began.

Should PERSON C be designated an enemy combatant?

PERSON D

PERSON D is a British subject who was born in 1973 and, after serving a number of prison sentences for muggings and petty crime, converted to Islam. By 1998, PERSON D had moved from London to Pakistan, and thereafter he traveled extensively to many countries, including Egypt, Turkey, Israel, France, and possibly Afghanistan. On December 22, 2001, PERSON D boarded in Paris, France an American Airlines flight bound for Miami, Florida. During the flight, he attempted to ignite an explosive charge in his sneaker by lighting a fuse with a match. A flight attendant noticed his attempt, PERSON D was subdued by other passengers, and the plane made an emergency landing in Boston, Massachusetts.

The government charges that PERSON D received training at an al Qaeda camp in Afghanistan and attempted to blow up the plane over the Atlantic Ocean. PERSON D does not deny that he intended to explode the bomb.

Should PERSON D be designated an enemy combatant?

PERSON E

PERSON E is an American citizen who was born in New York in 1970 and was raised in Chicago. A former member of the Latin Kings street gang, he was a juvenile delinquent and later served time in jail in Florida for aggravated assault. In 1994, he converted to Islam, and by 1998 had left the country. While abroad, he traveled to Pakistan and Afghanistan and met with leaders of al Qaeda.

On May 8, 2002, PERSON E flew from Pakistan to Chicago's O'Hare International Airport. As he stepped off the plane, he was apprehended by federal agents on a material witness warrant in connection with a grand jury investigation into the September 11th terrorist attacks. He was then transported to New York and held in federal criminal custody.

The government charges that PERSON E is closely associated with al Qaeda and was preparing to detonate a "dirty bomb"—a conventional bomb that spreads radioactive material and pollutes a large area—in a U.S. city. The government also charges that PERSON E has intelligence about al Qaeda personnel and activities which would U.S. efforts to prevent future attacks. The government admits that PERSON E had neither any radioactive material nor any bomb-making materials and that he had not chosen a target nor had he made a plan. PERSON E has admitted to attending an al Qaeda training camp.

Should PERSON F be designated an enemy combatant?

PERSON F

PERSON F was born in Kashmir in 1969, entered the United States in May 1994, and became a U.S. citizen in December 1999. He has been employed as an independent truck driver for several years. In late 2000, PERSON F traveled from Pakistan to Afghanistan and was introduced to Osama bin Laden at an al Qaeda training camp. PERSON F was asked about "ultralight" airplanes and agreed to get information concerning them [previously he had taken a gyro-copter simulator flight in the U.S.]. Later, he obtained information concerning ultralights from an internet search at an internet café in Karachi, Pakistan, and provided a hard copy of this information for use by al Qaeda. He also ordered 2,000 lightweight sleeping bags that were shipped to Afghanistan for use by Osama bin Laden and al Qaeda.

After the fall of the Taliban in Afghanistan in November 2001, PERSON F bought airline tickets in Pakistan for flights by al Qaeda members to Yemen. In early 2002, PERSON F discussed with an al Qaeda leader his work as a truck driver in the United States and learned that al Qaeda was planning two simultaneous operations in New York City and Washington, D.C. PERSON F was asked to explore the possibility of destroying a bridge in New York City by cutting the suspension cables and to discuss all plans in code. Upon returning to the United States from Pakistan in April 2002, PERSON F researched equipment and traveled to New York City, but concluded that the plot to destroy the bridge by severing the cables was very unlikely to succeed. He surrendered to authorities in March 2003.

The government charges that PERSON F aided al Qaeda and planned to assist in an al Qaeda terrorist attack on the Brooklyn Bridge.

Should PERSON F be designated an enemy combatant?

4F: Worksheet: Determining Who Is an Enemy Combatant

To date, no guidelines exist for deciding whether a person is an “enemy combatant.” As U.S. Supreme Court Justice Sandra Day O’Connor has written, “There is some debate as to the proper scope of this term, and the Government has never provided any court with the full criteria that it uses in classifying individuals as such” (*Hamdi v. Rumsfeld*, 2004). However, there appear to be some criteria that have been used to make this determination.

Below are several different factors that you may want to consider when determining whether the individual in your case should be designated an “enemy combatant.” You do not need to refer to all or even any of these factors when making your decision. Whatever you decide, be prepared to explain your answer to the rest of the class.

Status	Who is the person? A citizen of the United States? A foreign national? A member of al Qaeda or another group hostile to the United States? Was the person fighting against the United States or one of its allies?
Location	Where was the person detained? In a war zone or a civilian setting? Overseas or in the United States?
Threat	What is the perceived threat? Is the person charged with doing something particularly dangerous or suspicious? Does this person have intelligence information that is best kept secret?
Activities	What are the charges against the person? Was the person already involved in an activity? Was the person planning an activity? Is there a clear picture of the person’s plans or activities?
Disparities	Does the person disagree with or deny key facts, allegiances, or affiliations presented by the federal government?
Constitution	Does the person have relevant rights under the U.S. Constitution? Does the President, in his role as Commander in Chief under the U.S. Constitution, have relevant responsibilities to protect the nation?
Other	Are there other factors that you consider significant?

4G: Deliberation Strategy: Structured Academic Controversy on Enemy Combatants

Procedures

1. **INTRODUCTION.** Distribute and discuss Handout 4H, "Deliberation Guide." Review the Rules of Deliberation with everyone and post them in a prominent place in the classroom. Emphasize that the class will deliberate and then debrief their experiences. (1 minute)
2. **READING THE ARTICLE.** Make sure everyone has a copy of Reading 4A, "Enemy Combatants," the deliberation guide, and some note paper. Have students read the article carefully and underline facts and ideas that they think are important and/or interesting. Have them write down the important facts and ideas in the article in their notes. (10 minutes or for homework)
3. **GROUPING.** Divide the class into groups of four or five students. Explain that in each group, students will use their notes to discuss the article. Group members should share their important facts and interesting ideas with each other to develop a common understanding of the article. (10 minutes)
4. **INTRODUCING THE DELIBERATION QUESTION.** Pose the Deliberation Question to the class and openly display it in the classroom:

Should the President have the power to seize U.S. citizens in civilian settings whom he identifies as 'enemy combatants' and hold them in military detention without criminal charge or trial until they are brought before a neutral decisionmaker who will determine whether this designation is true?

Remind the groups of the Rules of Deliberation. (1 minute)
5. **LEARNING THE REASONS.** Divide each group into two teams, Team A (first birthdays in the year) and Team B. Have both teams reread the article. Have Team A find the most compelling reasons to support the Deliberation Question. Have Team B find the most compelling reasons to oppose the Deliberation Question. Use the article and the list of arguments supporting and opposing the deliberation question. Ask students to identify the most compelling arguments and add any additional ones they identified from the reading. Have each team write down its reasons for later reference. Tell students that each team is responsible for selecting the most compelling reasons for its position. Make sure that everyone on the team is prepared to present at least one reason. (5 minutes)
6. **PRESENTING THE MOST COMPELLING REASONS.** Explain that each team is going to present the most compelling reasons in support of or in opposition to the Deliberation Question. Tell teams that they may not believe in or agree with their reasons, but they want to be convincing in presenting them to others.

Have Team A explain the reasons they selected in support of the Deliberation Question. Team B can ask clarifying questions but they are NOT to argue. (3 minutes)

Have Team B explain the reasons they selected in opposition to the Deliberation Question. Team A can ask clarifying questions, but they are NOT to argue. (3 minutes)

In preparation for the next step, Reversing Positions, have each team take notes on the other team's reasons (Reasons to Support—Team B, Reasons to Oppose—Team A).
7. **REVERSING POSITIONS.** Explain that the next step is for each team to summarize the other team's reasons in order to make sure that each side understood the other: Team B summarizes Team A's reasons in support of the Deliberation Question (2 minutes), then Team A summarizes Team B's reasons in opposition to the Deliberation Question (2 minutes).

8. DELIBERATING THE QUESTION. Now have students in each small group work together. Ask students to begin deliberating the issue. Tell them that this means each student can (1) use what he/she has learned about the issue and (2) offer his/her personal experiences and formulate opinions regarding the issue. (7 minutes)

Have students find and record areas of agreement in their group and write them down. (3 minutes)

Have students as individuals express to the group their personal position on the issue and write it down. *Important:* Individual students do NOT have to agree with the group. (1 minute)
9. DEBRIEFING THE DELIBERATION. Reconvene the entire class. Ask students to discuss the following questions: (5 to 10 minutes)
 - § What were the most compelling reasons for each side?
 - § What questions do you still have? Where can you get more information?
 - § What are some reasons why deliberating this issue is important in a democracy?
10. STUDENT POLL/STUDENT REFLECTION. Conclude the class by conducting the following poll with your students: "Do you support, oppose, or are you still undecided about the Deliberation Question?" (1 minute). Have the students write a reflection paragraph about the question. (5 minutes or for homework)

From: *Deliberating in a Democracy*, © 2005 Constitutional Rights Foundation Chicago. Adapted by the Constitutional Rights Foundation Chicago from the structured academic controversy model developed by David W. Johnson & Roger T. Johnson, cf. "Critical Thinking Through Structured Academic Controversy," *Educational Leadership* (May 1988), pp. 58 –64.

4H: Handout: Deliberation Guide

What Is Deliberation?

Deliberation (meaningful discussion) is the focused exchange of ideas and the analysis of arguments with the aim of making a decision.

Why Are We Deliberating?

Citizens must be able and willing to express and exchange ideas among themselves, with community leaders, and with their representatives in government. Citizens and public officials in a democracy need strategies and opportunities to engage in the public discussion of controversial issues in order to make informed decisions.

What Are the Rules for Deliberation?

- § Read the material carefully.
- § Focus on the deliberation question.
- § Listen carefully to what others are saying.
- § Check for understanding.
- § Analyze what others say.
- § Speak and encourage others to speak.
- § Refer to the reading to support your ideas.
- § Use relevant background knowledge, including life-experiences, in a logical way.
- § Use your heart and mind to express ideas and opinions.
- § Remain engaged and respectful when controversy arises.
- § Focus on ideas, not personalities.

From: *Deliberating in a Democracy*, © 2005 Constitutional Rights Foundation Chicago.

411: Handout: Arguments Supporting the Detention of U.S. Citizens as Enemy Combatants

Question

Should the President have the power to seize U.S. citizens in civilian settings whom he identifies as 'enemy combatants' and hold them in military detention without criminal charge or trial until they are brought before a neutral decisionmaker who will determine whether this designation is true?

Arguments Supporting the Detention of U.S. Citizens as Enemy Combatants

1. On September 18, 2001, the Congress authorized the President to use "all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11." If the President determines that citizens were "persons" involved in those attacks or future ones, then he has the authority to detain them as enemy combatants.
2. The President's authority to declare a U.S. citizen an "enemy combatant" is part of his duties as Commander in Chief of the Armed Forces. The Constitution grants war-making powers to the President and to Congress, not to the courts. Since the determination of who is an enemy combatant is a military decision, the courts have no authority to challenge it.
3. The President's highest duty is to defend the security of the United States, and he has the constitutional authority and power necessary to fulfill this responsibility. Detaining citizens as enemy combatants is a legitimate expression of this authority. The decision about who is an enemy combatant—whether citizen or foreigner—rests with him and him alone.
4. The President has the power and the authority to make military decisions in response to changing circumstances. The war against terrorism is a new kind of war. To fight this war, the United States must have the flexibility to respond quickly to events. The power to designate citizens as enemy combatants on a case-by-case basis is critical to protecting the homeland.
5. The United States was attacked on September 11, 2001, on its own soil by members of an international terrorist organization. The distinction between foreign and domestic wars is no longer meaningful. The power to detain even citizens here in America as enemy combatants is a recognition of this changed reality.
6. The United States cannot permit its own institutions and traditions to be used against it in the war on terrorism. Trials of terrorists in open court can reveal critical information to the enemy. Detaining enemy combatants without charge or trial provides the secrecy necessary to protect American soldiers and agents fighting terrorism here and abroad.
7. The President can detain subversive Americans just as he can direct the Armed Forces to capture enemy soldiers. In each case, detention is a way to neutralize them and remove them from the battle. As with an enemy soldier, the government has the right and the power to question enemy combatants in order to learn what they know about current and future threats against our nation.

412: Handout: Arguments Opposing the Detention of U.S. Citizens as Enemy Combatants

Question

Should the President have the power to seize U.S. citizens in civilian settings whom he identifies as 'enemy combatants' and hold them in military detention without criminal charge or trial until they are brought before a neutral decisionmaker who will determine whether this designation is true?

Arguments Opposing the Detention of U.S. Citizens as Enemy Combatants

1. There are no criteria for determining who is an "enemy combatant." If the President is the only person responsible for deciding who is or is not an enemy combatant, then this power is unlimited. Such power is not consistent with our government of checks and balances.
2. If the government can decide who, when, and for how long to designate a citizen as an enemy combatant, then the government can use this power to threaten, silence, or punish citizens for whatever reasons it chooses.
3. An American citizen cannot be seized and detained on our native soil without charges. The country is not in rebellion nor under invasion. Our civilian courts are open. All citizens must be presented with the charges against them before a judge or be released.
4. The writ of habeas corpus protects every citizen in this country from arbitrary arrest and detention. It is written in the very heart of the original Constitution (Article I, Section 9). Absent civil war or a foreign invasion, it simply cannot be set aside for an unlimited time by the President whenever he deems it necessary.
5. Our nation has an arsenal of laws that punish espionage, conspiracy, terrorism, and even treason. There is no reason for a citizen to be held without charges because so many tools are already available to prosecute and punish someone who breaks these laws.
6. Just because the government claims that it does not need to bring charges against enemy combatants because it has no intention of prosecuting them does not make this practice "OK." A citizen cannot refute or deny charges if the government is not required to bring charges against him or her before a court. Detaining a citizen without charges is a violation of the constitutionally protected right to due process of law.
7. The government also claims that detaining citizens as enemy combatants is a way to neutralize dangerous individuals rather than punish them, just as enemy soldiers are taken prisoner on a battlefield. This practice is not legal, however, when its purpose is to interrogate citizens and extract from them all that they may know. That is the practice of a tyranny, not a democracy.

4J: Taking a Stand: Position Paper on Detaining U.S. Citizens as Enemy Combatants

Should the President have the power to seize U.S. citizens in civilian settings whom he identifies as 'enemy combatants' and hold them in military detention without criminal charge or trial until they are brought before a neutral decisionmaker who will determine whether this designation is true?

Steps for Writing Your Position Paper

1. Choose a position for, against, or as an alternative to the policy above.
2. Then team up with classmates who take the same position and as a group, write a persuasive paper arguing the benefits associated with your position on this policy.
3. In your essay, be sure to call on the most convincing arguments and specific evidence and examples from:
 - § the curriculum
 - § discussion and other classroom activities
 - § the Summit survey results
 - § your service project experience
 - § people in your community
 - § any other sources available to you
4. Include in your paper the most convincing arguments from the opposing side. List what you think are the best arguments your policy rivals would make. Acknowledge these points, and do your best to refute the importance of these arguments.

Specifications for Your Paper

Length. Your paper should be between 300 and 500 words.

Format. Each paper must have the name of the school in the heading and the policy being addressed in the title. No student names will appear on the position papers.

Deadline. All position papers must be received by the Constitutional Rights Foundation Chicago (CRFC) by April 7, 2006. Turn in your completed paper to your teacher before that date.

Assessment. For a suggested scoring guide to use with position papers, see Handout 6C, "Tool: Final Position Paper Scoring Guide."

Select copies of your position papers will be distributed to policymakers and to students from other schools at the Summit.

Sharing Your Views on Detaining U.S. Citizens as Enemy Combatants

You can contribute your views on this policy by writing to your U.S. Representative in Congress and/or to U.S. Senators Durbin and Obama. Contact information is listed in the "Supplemental Internet Resources" section on page 69 of this curriculum.

Detaining U.S. Citizens as Enemy Combatants: Selected Resources

Decisions of the Supreme Court of the United States

Ex parte Milligan, 71 U.S. 2 (1866)

Ex Parte Quirin, 317 U.S. 1 (1942)

Youngstown Sheet and Tube Co. v. Sawyer, 343 U.S. 937 (1952)

Hamdi et al. v. Rumsfeld, Secretary of Defense, et al., No. 03–6696 (2004)

Rumsfeld, Secretary of Defense v. Padilla et al., No. 03–1027 (2004)

Other Federal Documents

"Authorization for Use of Military Force," Public Law 107-40 [S. J. RES. 23], September 18, 2001, 107th CONGRESS, <http://news.findlaw.com/wp/docs/terrorism/sjres23.es.html>

"Memorandum of President George W. Bush designating Jose Padilla an 'enemy combatant,'" June 9, 2002, <http://news.findlaw.com/hdocs/docs/padilla/padillabush60902det.pdf>.

Analysis and Commentary

"Ali Saleh Kahlah al-Marri case," <http://collegefreedom.org/marri.htm>

American Bar Association. "Anti-Terrorism and Preservation of Due Process—Enemy Combatants" [last updated June 14, 2005], <http://www.abanet.org/poladv/priorities/enemy.html#links>

American Bar Association. "Policy Statement on Enemy Combatants," February 2003, http://www.abanet.org/leadership/recommendations03/109.pdf.com/sec/socialstudies/street_law/te xtbook_activities/cases_resources/chapter31.php

FindLaw.com. "Special Coverage: War on Terrorism," <http://news.findlaw.com/legalnews/us/terrorism/cases/index.html#padilla>.

Dorf, Michael C. "Hell Hath No Fury Like a Conservative Jurist Scorned: The Government's Overreaching in the Case of Jose Padilla," FindLaw's Writ, January 4, 2006, <http://writ.news.findlaw.com/dorf/20060104.html>.

Rehnquist, William H. "Inter Arma Silent Leges," in *All the Laws but One: Civil Liberties in Wartime*. New York: Vintage Books (1998), pp. 218-226.

Scheffer, David. *Options for Prosecuting International Terrorists*. United States Institute of Peace, Special Report 78, November 2001, <http://www.usip.org/pubs/specialreports/sr78.html>

Unit 5: Conducting a Service Learning Project

Overview

Service learning is a process in which students learn and develop important skills by participating in a service experience that meets the actual needs of others.

One important way to do a service for another is to provide him or her with valuable knowledge and information. The topics that you have chosen for the 2006 Illinois Youth Summit are ones that affect the lives of many young Americans, and through your study of these issues you are gaining essential knowledge. There is a need in your community for people to have knowledge and an understanding of these issues. The tools in this unit will help you to select, plan, and implement a service project in which you educate members of your community on one, two, or all three of the 2006 Summit issues.



Objectives

- < Introduce service learning
- < Provide suggestions for service learning project activities
- < Provide tools for planning and implementing a service learning project

Materials

- 5A: Selecting a Service Learning Project
- 5B: Tool: Action Planning for Service Learning Project
- 5C: Tool: Service Learning Project Planning Form
- 5D: Evaluation: Service Learning Project Reflection Log

5A: Selecting a Service Learning Project

The issues that you have selected and are studying for the 2006 Illinois Youth Summit are important and affect the lives of many young Americans. For your service project, you will select one, two, or all three issues, and then teach others about them.

There are a variety of effective strategies you may use to teach others. When choosing which method to use, consider the age group you are working with, the amount of time you have, the number of people you will be presenting to, your own talents and skills, the type of information you are relating, and what exactly you want to accomplish.

Listed below are some suggested methods for teaching others about any of the Summit issues. You may use one of these, a combination of more than one, or develop a strategy of your own.

Service Projects for the 2006 Youth Summit

- § Develop a presentation for other high school students or younger students at a school in your community to educate them about a focus issue. Involve younger students in role-playing activities from this Guide or interactive games in which you help them learn and understand the issue.
- § Create a website devoted to a focus issue. Publish articles and link to relevant resources. Allow students in your school to submit related facts, poems, stories, and advice.
- § Invite professors, experts in the field and policymakers for a roundtable discussion on a focus issue. Invite students from other classes to participate as well.
- § Create a newsletter or pamphlet devoted to the issue you have selected. Distribute it in your school and community. Share it with others through workshops at other schools.
- § Organize an after-school debate on an issue. Invite experts in the field with opposing views to take part. Allow students and others who attend to ask questions to the experts.
- § Create a live or videotape presentation where students research and portray important current or historical figures, à la "You Are There" or "Meeting of Minds," and share their views on one of the issues.
- § Create and role-play a scene(s) that illustrate and teach others about a focus issue. Perform the scene for other students at your school.
- § Develop a radio or public access television presentation or discussion on a focus issue.
- § Videotape any of the projects suggested above and use it as a teaching tool in your school or other schools.

Internet Resources for Service Learning Project

Chicago Public Schools

<http://www.servicelearning.cps.k12.il.us/>

Corporation for National and Community Service

<http://www.cns.gov>

National Service-Learning Cooperative Clearinghouse

<http://www.nicsl.coled.umn.edu>

National Youth Leadership Council

<http://www.nylc.org>

5B: Tool: Action Planning for Service Learning Project

Keep a planning notebook to help your group stay organized. Use the following questions and the planning form to guide your planning and implementation.

Date project must be completed by: _____

1. What issue(s) will you be teaching/informing others about?
2. Who is your audience? Consider the age and size of your audience.
3. How much time will you have to complete the project?
4. At the completion of this project, what do you want your audience to know and understand about the issue(s)?
5. What strategy will you use to teach your audience about the issue(s)? (See worksheet 5A for suggested teaching methods.)
6. What will you need to do to complete the project successfully? Consider people you will need to contact, and any skills, transportation, materials and money you will need. Where and how will you get these?
7. What obstacles are you likely to face in implementing your project? How do you plan to overcome them?
8. Using the planning form, put the activities in order of completion, determine what resources you need for each, assign a person to be in charge of each activity, and assign a date by which each activity is to be completed.
9. How will you evaluate the success of the project?

5C: Tool: Service Learning Project Planning Form

Task	Date to Be Completed	Resources Needed	How to Get Them	Who Will Work on This Task?

5D: Evaluation: Service Learning Project Reflection Log

Project focus issue(s) _____

Date project was completed _____

Now that you have completed your service learning project, take some time to reflect on your experience.

1. Describe the project you completed:
2. Specifically, what went well?
3. Specifically, what did not go well?
4. What did your audience gain from this experience? How do you know?
5. What would you do differently next time?
6. How did your group work together in the project?
7. What did you learn about yourself from this experience?

Unit Six: Preparing for the Culminating Summit

REQUIRED ACTIVITIES AND REPORTING DEADLINES

Required Activities for Each Class Participating in the Summit

- § Conduct the Illinois Youth Summit Survey
- § Study the focus issues for the Summit
- § Design and Conduct a Service Project
- § Prepare to Share Ideas and Experiences With Policymakers

Reporting Information Deadlines

All materials and information should be submitted to CRFC:

March 23 - Tabulated results from the survey

April 7 - List of Delegates attending the Summit on April 21

April 7 - Written Description of completed service project [preferably with photos and/or art]

April 7 - Position statement [with majority and minority comments] on at least one of the focus issues [See "Handout 6C: Tool: Essay Scoring Guide"]

What to Bring to the Summit

- § 2006 Illinois Youth Summit Resource Guide, *The Role of the Citizen in the 21st Century*
- § Research data, articles, and other information that you believe is relevant to the Summit policies and issues
- § Documents, results and/or pictures from your school service learning project
- § Pen or pencil
- § Notebook or loose leaf paper
- § Prepared questions that you wish to have addressed by policymakers

6A: Delegate Activities for the Summit

Assumptions about Discussing Public Policy

- § No single solution can fix all of our problems. We need to think about a range of responses to problems, not just a “one size fits all” solution.
- § People hold diverse viewpoints and have the right to express them. It is important to see other people’s perspectives and to listen to what they have to say, even if we don’t agree with their position.
- § Knowing how to make your viewpoint known and to hear what others are saying is critical to being an effective citizen.
- § Rarely does everyone agree on what to do or how to do it. It is important to recognize that on most issues there will be a majority and minority viewpoint.
- § Everyone has the right – and the responsibility – to participate in the solution, including young people.

Activities on the Day of the Summit Will Look Something like this...

- 8:30-9:00 Registration: Dirksen Federal Building 25th floor
SAC members distribute nametags and materials to delegates from your school
- 9:00-9:30 Opening Ceremony
- 9:30-10:10 Concurrent Discussions: Delegates are divided into groups based on the focus issues. In small groups, students discuss their feelings, thoughts and positions on the proposed policies. Discussions will take into account the survey results, their class work and service projects.
SAC members will act as discussion leaders
- 10:10-11:00 Prepare for Meetings with Policymakers: Students will regroup based on the position they wish to present in the panel discussions. In these groups, students discuss and finalize their position statements and select representatives to present their positions to the policymakers.
SAC members will act as discussion leaders
- 11:00-1:15 Panel Discussions with Policymakers/Lunch: The Panel Discussions and lunch will be held concurrently. Students remain in focus issue groups throughout this time.
- 1:15-2:15 Town Meeting and Final Public Policy Vote: Students sit with their school delegations where they vote on the issues individually and then tally the delegation results.
SAC members get school signs from CRFC staff to hold during the town meeting. At the end of the town meeting SAC members collect evaluations from your school’s delegates and give them to CRFC staff members.
- 2:15 Departure

6B: Tool: Weigh The Evidence

At the Summit, delegates will be asked to identify what information you find most useful in thinking about an issue. To prepare for your issue, use this form to identify and catalog at least one piece of evidence from each of the following sources: this curriculum, survey data, experiences with service projects, or public policymakers.

Survey Results	Service Projects
Curriculum and Other Sources	Policymakers

6C: Tool: Position Paper Scoring Guide

POSITION PAPER	DOES NOT MEET EXPECTATIONS	MEETS EXPECTATIONS	EXCEEDS EXPECTATIONS
Articulation of position statement	<ul style="list-style-type: none"> Position statement is missing or not clearly defined 	<ul style="list-style-type: none"> Presents a position statement 	<ul style="list-style-type: none"> Clear position statement supported through a well-organized essay
Understanding of how position is related to larger issues in society	<ul style="list-style-type: none"> Does not mention goal of the policy statement 	<ul style="list-style-type: none"> Mentions goal of the policy statement 	<ul style="list-style-type: none"> Mentions both the goal of the policy statement and implications for social context
Addresses contradictions or other viewpoints in evidence	<ul style="list-style-type: none"> Does not discuss contradictions in position statement 	<ul style="list-style-type: none"> Acknowledges positions that contradict position statement 	<ul style="list-style-type: none"> Addresses and responds to positions and evidence that contradict position statement
Thoroughness	<ul style="list-style-type: none"> Uses only one source to formulate position statement Provides limited or no support data Inadequately covers most areas of the topic 	<ul style="list-style-type: none"> Uses two sources to formulate position statement Provides appropriate data May include pertinent information Adequately covers most areas of the topic 	<ul style="list-style-type: none"> Uses more than two sources to formulate position statement Provides relevant and specific data Adds considerable pertinent information including personal experience when appropriate Even coverage of all areas of the topic Analyzes and summarizes various points of views

6D: Activity for Non-Delegates on the Day of the Summit

Write Your Representatives in Springfield and Washington

Now that you have studied the Summit issues, weighed the evidence (Handout 6B), and formed your opinions, select one issue or policy and write a letter to your representative expressing your views. Letters are one of the ways elected officials gauge public opinion. Although U.S. representatives may not personally read your letter, he or she has assistants who reads letters and tally opinions. Your letter will be read and answered.

Make sure that you choose the appropriate official to receive the letter. For issues that affect federal policy, write to the U.S. congressperson from your district or to U.S. Senator Durbin and/or U.S. Senator Obama, who represent the entire state. For policies that affect the state, write to one of your state representatives. Contact information for these policymakers is listed in the "Supplemental Internet Resources" section on page 69 of this curriculum.

Guidelines for Writing to Your Elected Official

Tell who you are: Give your name, address (home or school) and tell who you are. The people who read your letter want to know why you care and how to reach you.

Focus on one issue: Don't try to fight crime, air pollution and unemployment all in one letter.

Keep it short and simple: State your ideas in the first paragraph. Get the idea across in a page or less. People who read a lot of letters don't have a lot of time.

Be polite: You can disagree, but never threaten or insult in a letter. Let your ideas do the talking.

Include supporting materials: If you have any newspaper articles, letters to the editor, or other written materials supporting your position, include these materials along with your letter.

Tips for Formal Letter Writing

- § Type or write neatly in black ink. Use a standard 12-point type (Times New Roman is good).
- § Include your address (school or home) in the heading – envelopes are often thrown away and you want the person receiving the letter to know where to send a response.
- § Proofread your letter carefully – errors in grammar, punctuation and spelling will detract from great ideas.
- § Fold the letter correctly - use a business envelope and 8½" by 11" paper. Fold the paper into three equal parts.
- § Address the envelope carefully – addresses can be found on your representative's website.
- § Keep a copy for yourself.
- § Have a friend review (and if necessary revise) the letter before you send it.

6E: Activities: After the Summit

Share the Experience

Delegates who attended the Summit should begin by sharing their impressions of the culminating Summit. Delegates may also take questions about the event from members of the class who did not attend the Summit. When sharing their experiences, delegates should consider the following questions:

- § Was there a new piece of information, or a clarification about one of the issues that you learned for the first time at the Summit? If so, share what it was and whom you learned it from.
- § What happened in your discussions with peers from other schools that you found interesting or surprising?
- § Were there any service projects that other schools conducted that you thought were particularly effective or creative?
- § What surprised you about the discussions with policymakers?

Class Activity

Working in small groups led by a delegate, re-examine a Summit issue that the class studied. As a group:

- § briefly list the strongest arguments for and against the policy in question
- § allow each member to vote for or against the policy
- § tally and record the group's voting results

Working as a whole class, share your group's voting results with your classmates. After each group has reported out, tally up the entire class's votes. Compute the percentages and compare them with the final results of the town hall meeting at the Summit (your teacher will have this information). Is your class's viewpoint similar to the viewpoints of the students who attended the Summit?

Finally, consider whether or not your views on the issue changed in any way as you studied and learned more about it. Share your thoughts and reasons with the class.

Post-Summit School Exchange

CRFC has funding to help teams of students from Summit classes participate in student exchanges with other interested Illinois high schools. Entire classes can visit or host students from another school to teach about the Summit and its focus issues. Exchanges will take place in May following the Summit.

If you would like your class to be involved in a Post-Summit exchange, contact Jessica Chethik at CRFC as soon as possible.



Supplemental Internet Resources

Law-Related Education

Constitutional Rights Foundation Chicago
www.crfc.org

American Bar Association Division of Public Education
<http://www.abanet.org/publiced/youth.html>

Center for Civic Education
<http://www.civiced.org>

Constitutional Rights Foundation (Los Angeles)
<http://www.crf-usa.org>

Street Law, Inc.
<http://www.streetlaw.org>

United States Government

FirstGov
<http://www.firstgov.gov/>

Office of Senator Durbin
<http://durbin.senate.gov/>

Office of Senator Obama
<http://obama.senate.gov/>

Offices of Illinois US Representatives
[http://www.house.gov/your-representative's last name](http://www.house.gov/your-representative's-last-name)

U.S. Department of Justice
<http://www.usdoj.gov>

Supreme Court of the United States
<http://www.supremecourtus.gov/>

Illinois Government

Governor Blagojevich
<http://www.illinois.gov/gov/>

Attorney General Madigan
<http://www.ag.state.il.us/toc.htm>

General Assembly
<http://www.legis.state.il.us>

For Information on Your State Representative
<http://www.legis.state.il.us/house/>

For Information on Your State Senator
<http://www.legis.state.il.us/senate/>

Participating Schools

Bogan High School, Chicago
Chicago Agricultural High School, Chicago
Chicago Vocational High School, Chicago
Clemente High School, Chicago
Downers Grove North High School, Downers Grove
Downers Grove South High School, Downers Grove
Dyett Academy, Chicago
Eisenhower High School, Decatur
Farragut Career Academy, Chicago
Glenbard East High School
Julian High School, Chicago
King College Prep High School, Chicago
Leyden East High School, Franklin Park
Lincoln Park High School, Chicago
Maine South High School, Park Ridge
Maine West High School, Des Plaines
Mather High School, Chicago
Perspectives Charter School, Chicago
Riverdale Resource Center, Riverdale
Schurz High School, Chicago
Senn High School, Chicago
Steinmetz Academic Centre, Chicago
Waukegan High School, Waukegan
Wells Community Academy, Chicago

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