If It’s Mandatory, Is it Still Voluntary?

by Barbara Sheehan

The idea of mandating volunteerism by teens made news headlines last year when Acting Governor Richard J. Codey, who was then a state senator, proposed a bill that would require all New Jersey high school seniors to complete a minimum of 15 hours of community service as a condition of their graduation. Since then, the bill has been amended to propose a pilot community service program for high school juniors. If passed, the amended bill would require the commissioner of education to establish within the New Jersey Department of Education a three-year community service pilot program beginning in the 2005-2006 school year. Pursuant to the legislation, the commissioner of education would select 30 schools to participate in the pilot program. Juniors in those schools would be required to complete at least 15 hours of community service, unless the board of education found that doing so would pose an undue hardship for the student. Exceptions would also be considered if volunteering would interfere with the Individual Education Plans of special education students.

Feedback about the program from the commissioner would be due back to the state legislature by December 2008, in accordance with the bill. At that time, the legislature would consider expanding the program to all New Jersey high schools.

Mutual benefit

New Jersey Senator Joseph Conggio, who cosponsored the bill along with Governor Codey, says that he and the governor had been talking about this idea for a long time and share the belief that volunteerism provides a mutual benefit to the community and the students who participate. In addition to the obvious benefits of providing a service to those in need, students who participate can earn college credits and a better future, says Conggio.

Petitioning for Habeas Corpus: Who’s Entitled?

by Robert R. Glassner, Esq.

On September 11, 2001, our country was devastated by an unspeakable act of terrorism. America responded with attacks on camps in Afghanistan and Pakistan where the Al Qaeda militants who launched the 9/11 attacks were trained. U.S. forces captured more than 600 suspected male terrorists from approximately 40 different countries. The government considered these men “enemy combatants” and they were imprisoned at the Guantanamo Bay Naval Base in Cuba.

Most of the detainees have been held at the Cuban military base prison in near secrecy for more than two years. U.S. officials have interrogated all the men and a few have been set free. The remaining detainees have not been charged with a specific crime, have not been allowed to speak to an attorney and have had no contact with anyone outside the base, including their families.

The prisoners’ petition

A number of lawyers, former judges, retired military officers, representatives of civil rights groups and family members protested the legality of the detainees’ confinement and isolation. The lawyers argued that U.S. constitutional law demands that every prisoner, American citizen and non-citizen alike, must either be charged with a crime, given access to a defense attorney, and have the right to sue for the return of any property taken from them.

That is the situation facing the family of Marine recruit Justin Haase who died in December 2001 at the age of 18 after contracting a severe case of bacterial meningitis at a Marine boot camp on Parris Island, South Carolina. Military doctors treated Haase with penicillin despite an allergy to the medication.

Compounded errors

Because of his allergy to penicillin, Haase was supposed to receive a substitute drug for the dose of antibiotics that is routinely given to new recruits to prevent infections. He did not. According to newspaper accounts, as his time at boot camp continued, Haase suffered from severe headaches and vomiting. A military medic did not take his temperature and did not contact a doctor. Instead, the medic instructed Haase to sit in a van where he cried in pain. He was then ordered to stay in bed, but when he awoke Haase was incoherent. His drill instructor sent him back to bed and called a senior drill instructor, who then called 911 but incorrectly reported that Justin had “taken a spill on the obstacle course.”

Haase was finally taken to a naval hospital where he was initially treated for a head injury. The doctor suspected a bacterial infection because of Justin’s temperature, but did not take appropriate tests or begin antibiotic treatment right away. It would be two hours before Haase would receive the correct test that determined he was suffering from bacterial meningitis, which is a 55-year-old law, called the Feres Doctrine, protects them.

Imagine your son is taken to a hospital where he is first treated for the wrong injury, then misdiagnosed and ultimately declared brain dead before you can even reach his side. Now imagine being told that you cannot hold accountable those responsible for your son’s death because a 55-year-old law, called the Feres Doctrine, protects them.

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The Legal Eagle

If it's not too much to ask...  

A nationwide theme

Community service has become a integral part of many school curricula nationwide, according to a study conducted in the spring of 1999 by the U.S. Department of Education's National Center for Education Statistics (NCES). Called the National Student Service Learning and Community Service Survey, the study found that 64 percent of all public high schools, including 83 percent of public high schools, had students participating in community service activities recognized by and/or arranged through the school. The study distinguished community service from another related, volunteer-based initiative called "service learning," which it noted "takes community service one step further by incorporating the service experiences of students directly into their school work." According to the NCES study, 32 percent of all public schools organized service learning as part of their curriculum, including nearly half of all high schools.

Volunteerism or servitude?  

While many agree that community service by teens offers inherent benefits, all do not agree that mandating this kind of volunteerism is the right thing to do. In fact, a North Carolina family brought a lawsuit against a Chapel Hill high school, arguing that the school's mandatory community service requirement resulted in "unpaid servitude" and hindered the rights of parents to guide their child's education. The family took their case as high as the Fourth Circuit Court of Appeals, which held that the state of North Carolina has the right "to direct the secular education of a child" and that right "is superior to the rights of the parents as long as it is rationally related to a legitimate governmental interest."
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lawyer and brought to trial or he or she must be released. Because this was a question of the legality of their continued imprisonment, attorneys representing the prisoners of the Guantanamo filed a petition with the U.S. Supreme Court for a writ of habeas corpus.

Origin of habeas corpus

What exactly does writ of habeas corpus mean? The British word writ is simply the shortened form of a written order from a court. The exact translation of habeas corpus is from Latin and means “you may have the body.” When asked what that is, a writ of habeas corpus becomes a written order from a judge to bring “the body” of a prisoner into court.

Habeas corpus dates back to medieval England. Responding to the abuse of detention without legal authority, the English Parliament created the Habeas Corpus Act of 1679, which granted persons the right to appear before a court. Although not often used today in British courts, the right to habeas corpus was written into the original U.S. Constitution and is recognized as one of our legal system’s great protections against unfair imprisonment.

Most often, a petition or request for a writ of habeas corpus is made on behalf of two types of prisoners. Those prisoners tried in court, found guilty and sentenced who believe they have grounds to prove they were imprisoned illegally are one type. The other consists of those, merely suspected of being criminals, who assert their imprisonment is illegal because they are being held without having been charged with a specific crime. This second group includes the Guantanamo Bay prisoners who are being detained, or held, as “enemy combatants.” In order to be able to appear before a federal judge to challenge the legality of their imprisonment or detention these prisoners must petition the court for a writ of habeas corpus.

Once a writ of habeas corpus is granted, the argument before the judge is not whether the prisoner is guilty or innocent of a crime, but whether he or she is being held unlawfully. While every prisoner and habeas petitioner has the right to file a petition, a writ of habeas corpus is issued only in cases of the most convincing evidence of the wrongful denial of individual freedom.

The issue for the U.S. Supreme Court to decide in the case of the Guantanamo Bay prisoners is whether they are entitled to habeas corpus because of their status as “enemy combatants” who are not U.S. citizens. Another question at issue is whether the Guantanamo Bay Naval Base, where the detainees are being held, is covered by U.S. jurisdiction. Cuba leased the base to the U.S. in 1903.

The Justice Department’s position

The U.S. Supreme Court heard the prisoners’ claims in April 2004. Solicitor General Theodore Olson presented the case for the Justice Department and argued that the detentions were legal because “American soldiers… are still engaged in armed conflicts overseas… and that the on-going questioning of the foreign prisoners yielded important information about terrorist activities and possible future threats to this country.”

After oral arguments were completed, David Rivkin, a former Justice Department attorney, stated in television interviews, “It’s absolutely, clearly, constitutionally permissible, as a matter of international law, for an enemy combatant…

national, therefore, a foreign national being held at Guantanamo has just as much right to invoke the habeas corpus statute as a citizen of the United States.”

As for the question of jurisdiction over Guantanamo Bay, the Court concluded that the original agreement between Cuba and the U.S., dating back to 1903, granted the U.S. “complete jurisdiction and control” over the naval base, permanently if the U.S. so desires.

Three members of the Court, Chief Justice William Rehnquist and Justices Antonin Scalia and Clarence Thomas, dissented or disagreed with the majority opinion. “This detention falls squarely within the federal government’s war powers and we lack the expertise and capacity to second-guess that decision,” Chief Justice Rehnquist wrote in his dissenting opinion. Michael Ramsey, president of the Center for Constitutional Rights, responded to the Court ruling by saying, “This is a major victory for the rule of law and affirms the right of every person, citizen or non-citizen, detained by the United States to test the legality of his or her detention in a U.S. court.”

The government’s response

In response to the writ of habeas corpus granted by the U.S. Supreme Court, the government established a combatant status review tribunal (CSRT), a panel of three military officers to hear the prisoners’ challenge to their imprisonment and defense of their innocence.

For their appearance before the tribunal, the nearly 600 Guantanamo detainees were each represented by a military officer assigned to defend them, but were not given access to a lawyer. At the hearings, the “enemy combatants” learned of the charges against them, were provided with an interpreter and were permitted to testify in their own defense. According to The New York Times, 33 of the prisoners were let go as a result of those hearings.

Jeffrey F. Fogel, legal director of the Center for Constitutional Rights, objected to the denial of personal lawyers at the hearings. “Without access to a lawyer, the Supreme Court’s decision would be meaningless. The right of habeas corpus has always included the right to legal assistance,” Fogel said in a statement.

After nearly all of the detainees’ cases had been heard, according to the CSRT, a federal judge ruled them invalid under U.S. and international law. The Hon. James Robertson, of the U.S. District Court for the District of Columbia, said the CSRT was not a “competent court” and its determinations would not be approved in any U.S. court.

As a result, the Pentagon created administrative review boards to hear all the cases again. Capt. Eric Kanut of the U.S. Navy, and chief administrator of both sets of hearings, told The New York Times that the new administrative review board is “just like a parole board.” Capt. Kanut said, “The bottom line we look for is whether they are a threat to the U.S.”

Although more than 100 of the detainees have been represented by American lawyers, according to The New York Times, the new hearings share one thing in common with the CSRT. The detainees are not permitted to see the evidence against them, in some cases because the U.S. government has labeled it classified information. For this reason, civil liberties and human rights groups claim the hearings violate the prisoners’ due process rights. They specifically the right to know your accuser and the right to review all the evidence against you. According to the Navy, the second set of hearings should be completed by the end of 2005. It remains to be seen whether these hearings will be challenged through the courts.

dissenting opinion — a statement written by a judge that disagrees with the opinion reached by the majority of his or her colleagues.
due process rights — basic rights of fairness against government actions which threaten a person’s right to life, liberty or property.

immunity — exempt from penalty.

jurisdiction — authority to interpret or apply the law.

majority opinion — a statement written by a judge that reflects the opinion reached by the majority of his or her colleagues.

negligence — the failure to use the care that a reasonable person would use.

negligent homicide — a criminal offense where a person’s negligence caused the death of another.

redress — satisfaction, in the form of compensation or punishment, for an injury or wrong done.

secular — not sacred or concerned with religion.