***Korematsu v. U.S.***

*Balancing Liberties and Safety*

*In times of war, courts are sometimes asked to balance individual rights and public safety.*

*What are the lessons to be learned from the tensions arising out of this case?*

In 1998, Fred Korematsu was awarded the Presidential Medal of Freedom. His journey to that day started during World War II when he refused to be forced into a Japanese-American relocation center where families lived in horse stalls at an abandoned race track until they were sent to remote internment camps in the West.

During the World War II, Japanese Americans were regarded as a threat to U.S. security. However, Korematsu stood up for his rights as an American-born citizen. He took his case all the way to the Supreme Court of the United States, which rejected his claim that the relocation of Japanese Americans during the War was based on racial bias.

Three of the nine Supreme Court Justices sided with *Korematsu* in separate, strongly worded dissents. Almost 50 years later, the federal court that originally convicted Korematsu for resisting the mass internment, reopened his case and found significant government fraud in justifying the internment of innocent Americans. That “[coram nobis](https://www.law.cornell.edu/wex/writ_of_coram_nobis)” litigation cleared Korematsu’s name and the names of 120,000 other incarcerated Japanese Americans, and it laid the legal cornerstone for the 1988 Civil Liberties Act that apologized, conferred $20,000 individual reparations and created a public education fund so that “it” would not happen again, to anyone. Korematsu is the name now spoken with those of other great Civil Rights leaders.

*Korematsu v. U.S*. is an example of the importance and the historical impact of what often are called “fiery dissents.” In this 6-3 decision, each dissenting justice wrote an opinion addressing the flaws in the majority opinion. It is also an example of how dogged pursuit of justice through the coram nobis cases, even decades later, can have a major impact on social justice.

The Presidential Medal of Freedom is described as the nation’s highest honor that can be given to a civilian. It is given by the sitting President in recognition of “an especially meritorious contribution to the security or national interests of the United States, world peace, cultural or other significant public or private endeavors. Here is an excerpt from the citation by President Bill Clinton when he presented the medal:

“An American who wanted only to be treated like every other American, Fred Korematsu challenged our nation's conscience, reminding us that we must uphold the rights of our own citizens even as we fight tyranny in other lands.

Defying the 1942 order for the internment of Japanese Americans, he stood strong against anti-Asian prejudice in the United States during World War II. Convicted of violating the order, he waited more than 40 years for justice, when a federal court overturned the judgment that the Supreme Court first upheld against him.... Fred Korematsu deserves our respect and thanks for his patient pursuit to preserve the civil liberties we hold dear.”

**What’s Different About this Activity?**

* Presents a Landmark Case
* Is an Engaging Court Simulation
* Judge and Attorneys are Ready in 30 Minutes
* Involves Every Learning Style
* Centerpiece is Jury Deliberations
* Presents the Power of Dissents
* Gives Experience of Dealing with Balancing Rights and Safety
* Shows Impact of Courts on Law-Abiding People

**How to Use These Resources**

To get started, download the agenda, civil discourse guidelines and the complete activity package.

1. **In-Court Preparation**. While waiting for the program to start, participants read the *Korematsu v. U.S.* facts and case summary. They also read Executive Order #9066. The attorney volunteers will present and explain these documents during the program.
2. **Student Attorneys.** Students volunteer to be attorneys for each side – four for Korematsu and four for the United States. They work in a nearby room for about 20-minutes with their respective attorney coaches to review the scripted opening protocol, the talking points, and the closing arguments guide sheet for each side. These are suggested points – not a script – for the student-attorneys’ arguments. Student attorneys are encouraged to add their own arguments. During the courtroom simulation, the presiding Judge asks questions of each student attorney after the student makes his/her argument.
3. **Student Jurors**. All other students are jurors who deliberate in the courtroom after the closing arguments. To prepare for the deliberations, they work with the assigned law clerks or volunteer attorneys to fill out the arguments worksheet. The answer key also is included. They are allowed to refer to it during the deliberations. The presiding Judge, volunteer attorneys, and student attorneys observe the jury deliberations from their places in the courtroom; however, they may not participate verbally or nonverbally. Jurors are prohibited from asking questions of them.
4. **Jury Deliberations.** To get the deliberations started, the program moderator asks an open-ended question that launches the civil discussion. The moderator enforces the rules of civil discourse and makes sure that no one dominates the discussion. Everyone should have the opportunity to speak, at least, once. When the debate winds down, the Judge asks for a show-of-hands vote. Because of time constraints, the verdict does not have to be unanimous.

*Agenda for Courtroom Program – Approximately 2.5 Hours*

*Korematsu v. U.S.*

 **What Are Civil Liberties?**

*(10 minutes)* **Welcome and Introduction**

 United States District Judge Leslie E. Kobayashi welcomes students and participants.

*(45 minutes)* **Fred Korematsu and His Fight for Justice**
Attorneys from the Federal Bar Association – Hawai'i Chapter and the National Asian
Pacific American Bar Association for Hawai'i.

*(30 minutes)* ***Panel Discussion***

In the courtroom, U.S. Senior District Judge Edward Chen, Leigh-Ann Miyasato, Eric Yamamoto, three of the attorneys who represented Mr. Korematsu, and Karen Korematsu, the Executive Director of the Fred T. Korematsu Institute, will discuss the Korematsu *coram nobis* case. Professor Eric Yamamoto, Fred T. Korematsu Professor of Law and Social Justice at the William S. Richardson School of Law (retired) will facilitate the discussion. Students should be prepared to ask and answer questions.

*(15 minutes)* **Q/A Session with the Judges and Volunteer Attorneys**

*(30 minutes)* **Refreshments** and Informal Social Interaction with the Judges and Volunteer Attorneys.

**Guidelines for a Civil Discussion**

*How do people act in a civil discussion?*

*In courtrooms, it’s not the loudest voice that prevails. Opposing arguments are grounded in reason and evidence and they are put forward within strict guidelines of courtroom decorum.*

Each side tests the arguments of the other side, and a judge holds everyone to the same protocol and code of conduct. The adversarial system is no place for incivility. In fact, court proceedings are models of the effectiveness of civil discourse.

**Put an X next to the characteristics of a civil discussion that are important to you.**

 1. **Wait** to be recognized by the moderator before speaking.

 2. **Don’t interrupt** or talk over someone else who is speaking.

**3. Listen for content** inthe statements of others, even if you disagree. Don’t engage in side conversations that distract from the speaker who has the floor.

 **4. Don’t assume that you know what someone else means. Ask questions** that help you understand perspectives different from your own.

 **5. Follow the direction** **of the discussion.**  Don’t repeat what has already been said.

 **6. Relate** your comments to those of previous speakers.

 **7. Don’t get personal.** No demeaning or inappropriate comments, facial expressions, or gestures.

 **8. Differentiate between facts and opinions**. Both are valid when expressed appropriately.

 **9. Listen more than you speak.**

 **10. What would you add?**

*Facts and Case Summary*

***Korematsu v. U.S.***

**Background**

About 10 weeks after the U.S. entered World War II, President Franklin D. Roosevelt on February 19, 1942 signed Executive Order 9066. The order authorized the Secretary of War and the armed forces to remove people of Japanese ancestry from what they designated as military areas and surrounding communities in the United States. These areas were legally off limits to Japanese aliens and Japanese-American citizens.

[The order set in motion the mass transportation and relocation of more than 120,000 Japanese people to sites the government called detention camps that were set up and occupied in about 14 weeks. Most of the people who were relocated lived on the West Coast and two-thirds were American citizens.](http://amhistory.si.edu/perfectunion/resources/history.html) In accordance with the order, the military transported them to some 26 sites in seven western states, including remote locations in Washington, Idaho, Utah, and Arizona.

**Facts**

Fred Korematsu, 23, was a Japanese-American citizen who did not comply with the order to leave his home and job, despite the fact that his parents had abandoned their home and their flower-nursery business in preparation for reporting to a camp. Korematsu planned to stay behind. He had plastic surgery on his eyes to alter his appearance; changed his name to Clyde Sarah; and claimed that he was of Spanish and Hawaiian descent.

On May 30, 1942, about six months after the Japanese attack on Pearl Harbor, the FBI arrested Korematsu for failure to report to a relocation center. After his arrest, while waiting in jail, he decided to allow the American Civil Liberties Union to represent him and make his case a test case to challenge the constitutionality of the government’s order. Korematsu was tried in federal court in San Francisco, convicted of violating military orders issued under Executive Order 9066, given five years on probation, and sent to an Assembly Center in San Bruno, CA.

Korematsu’s attorneys appealed the trial court’s decision to the U.S. Court of Appeals, which agreed with the trial court that he had violated military orders. Korematsu asked the Supreme Court of the United States to hear his case. On December 18, 1944, a divided Supreme Court ruled, in a 6-3 decision, that the detention was a “military necessity” not based on race.

**Reopening the Case**

In 1983, a pro bono legal team with new evidence filed a “coram nobis” petition and re-opened the 40-year-old case in a federal district court on the basis of egregious government misconduct in falsifying the record on military necessity. The young lawyers, mostly Japanese Americans, showed that the government’s legal team had intentionally suppressed or destroyed evidence from government intelligence agencies reporting that Japanese Americans posed no military threat to the U.S. The official reports, including those from the FBI under J. Edgar Hoover, were not presented in court. On November 10, 1983, federal judge Marylyn Hall Patel overturned Korematsu’s conviction in the same San Francisco courthouse where he had been convicted as a young man.

The district court ruling cleared Korematsu’s name, but the Supreme Court decision still stood as discredited precedent, yet precedent nonetheless. In 1944, writing for the Supreme Court majority, Justice Hugo Black announced that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect” and subject to tests of "the most rigid scrutiny,” not all such restrictions are inherently unconstitutional. “Pressing public necessity,” he wrote, "may sometimes justify the existence of such restrictions; racial antagonism never can.”

In a strongly worded dissent, Justice Robert Jackson contended: "Korematsu ... has been convicted of an act not commonly thought a crime," he wrote. "It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived." The nation's wartime security concerns, he contended, were not wholly adequate to strip Korematsu and the other internees of their constitutionally protected civil rights.

Another dissenting Justice, Frank Murphy, called the government’s mass exclusion order “the legalization of racism” that violated the Equal Protection Clause of the Fourteenth Amendment. He compared the exclusion order to the “abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy. He concluded that the exclusion order violated the Fourteenth Amendment by “fall[ing] into the ugly abyss of racism.”

**Procedural History**

**Lower Court**: U.S. District Court, Northern District of California

**Lower Court Held**: Korematsu was convicted of violating an exclusion order by the military.

**Lower Court:** Ninth Circuit Court of Appeals

**Lower Court Held:** Upheld the trial court’s decision. Conviction upheld.

140 F.2d 289 (9th Cir. 1944)

**Supreme Court Ruling:** Affirmed the lower courts.Conviction upheld.

**Supreme Court Vote:** 6-3

**Argued:** October 11-12, 1944

**Decided:** December 18, 1944

**Majority Opinion Written by**: Justice Black

**Majority:** Conviction affirmed**.** The Supreme Court ruled that the evacuation order violated by Korematsu was valid, and it was not necessary to address the constitutional racial discrimination issues in this case.

**Concurring Opinion Written by**: Justice Frankfurter

**Concurrence:** The constitutional issues should be addressed, but in evaluating them, it is clear that the “martial necessity arising from the danger of espionage and sabotage” warranted the military’s evacuation order. Conviction affirmed.

**Dissenting Opinion Written by**: Justice Jackson

In a strongly worded dissent, Justice Robert Jackson contended: "Korematsu ... has been convicted of an act not commonly thought a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived." The nation's wartime security concerns, he contended, were not adequate to strip Korematsu and the other internees of their constitutionally protected civil rights.

Justice Jackson called the exclusion order “the legalization of racism” that violated the Equal Protection Clause of the Fourteenth Amendment. He compared the exclusion order to the “abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy. He concluded that the exclusion order violated the Fourteenth Amendment by “fall[ing] into the ugly abyss of racism.”

**Issue:**

Was the military’s exclusion order justified?

**Reasoning:**

The majority opinion ruled that the court should not address the entirety of the order under which Korematsu was convicted, which included provisions requiring citizens to report to assembly and relocation centers. The majority found it necessary only to rule on the validity of the specific provision under which Korematsu was convicted: the provision requiring him to leave the designated area.

Because the order applied only to people who were Japanese or of Japanese descent, it was subject to the “most rigid scrutiny.” The majority found that although the exclusion of citizens from their homes is generally an impermissible use of government authority, there is an exception where there is “grave [ ] imminent danger to the public safety” as long as there is a definition and close relationship between the government’s actions and the prevention against espionage and sabotage. The majority ruled that there was sufficient danger and a sufficient relationship between the order and the prevention of the danger to justify requiring Korematsu to evacuate. The majority said the order was valid.

The dissenters disagreed. They put forth their position that the order should have been considered as a whole, and the Court should have considered the other contemporaneous orders, all of which, when considered together resulted in the imprisonment of U.S. citizens in what were essentially concentration camps, based only on their race.

**Executive Order No. 9066 – Authorizing the Secretary of War to Prescribe Military Areas**

*Read President Franklin D. Roosevelt's Executive Order No. 9066 that altered the lives of many Japanese Americans during World War II and beyond.*

Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities as defined in Section 4, Act of April 20, 1918, 40 Stat. 533, as amended by the Act of November 30, 1940, 54 Stat. 1220, and the Act of August 21, 1941, 55 Stat. 655 (U.S.C., Title 50, Sec. 104);

Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary, in the judgment of the Secretary of War or the said Military Commander, and until other arrangements are made, to accomplish the purpose of this order. The designation of military areas in any region or locality shall supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and shall supersede the responsibility and authority of the Attorney General under the said Proclamations in respect of such prohibited and restricted areas.

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services.

This order shall not be construed as modifying or limiting in any way the authority heretofore granted under Executive Order No. 8972, dated December 12, 1941, nor shall it be construed as limiting or modifying the duty and responsibility of the Federal Bureau of Investigation, with respect to the investigation of alleged acts of sabotage or the duty and responsibility of the Attorney General and the Department of Justice under the Proclamations of December 7 and 8, 1941, prescribing regulations for the conduct and control of alien enemies, except as such duty and responsibility is superseded by the designation of military areas hereunder.

Franklin D. Roosevelt

The White House,

February 19, 1942

[F.R. Doc. 42–1563; Filed, February 21, 1942; 12:51 p.m.]

**The Power of Fiery Dissents**

*Well-reasoned, colorful dissents that pack an emotional punch are often referred to as “fiery dissents.” Some of the fiery dissents written by Supreme Court Justices have a lasting impact.*

The dissents in *Korematsu v. U.S*. (1944) are still talked about today and brought into discussions of contemporary issues. The following are excerpts from the dissents written by three Associate Justices who sat on the *Korematsu* case.

**Justice Owen J. Roberts wrote:**

"This is not a case of keeping people off the streets at night, as was *Hirabayashi v. United States*, 320 U.S. 81, [p226] nor a case of temporary exclusion of a citizen from an area for his own safety or that of the community, nor a case of offering him an opportunity to go temporarily out of an area where his presence might cause danger to himself or to his fellows. On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. If this be a correct statement of the facts disclosed by this record, and facts of which we take judicial notice, I need hardly labor the conclusion that Constitutional rights have been violated."

**Justice Frank Murphy wrote:**

“I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting, but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must, accordingly, be treated at all times as the heirs of the American experiment, and as entitled to all the rights and freedoms guaranteed by the Constitution.”

**Justice Robert H. Jackson wrote:**

Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity and a citizen of California by residence. No claim is made that he is not loyal to this country. There is no suggestion that apart from the matter involved here he is not law abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived.

[...] [H]is crime would result, not from anything he did, said, or thought, different than they, but only in that he was born of different racial stock. Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable. Even if all of one's antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him. But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign. If Congress in peace-time legislation should enact such a criminal law, I should suppose this Court would refuse to enforce it.

**Courtroom Simulation: Roles and Responsibilities**

*This simulation involves every learning style and has active roles for every student. The centerpiece of the experience is the realistic jury deliberations. The jurors are every student who is not assigned to a designated speaking role.*

Participants stand up in court and debate the issues with their fellow jurors. The presiding judge, volunteer attorneys, and student attorneys observe this fish bowl exercise from the well of the courtroom. The jurors in the gallery are guided through the debate by a facilitator who makes sure that everyone has a chance to speak and no one dominates the conversation.

*In Advance*

**Student Attorney Roles**

In the courtroom, before the program starts, the school or organization selects eight student attorneys (four representing Korematsu and four representing the government.) Students do not prepare prior to the event. Preparation time with attorney coaches is built into the courtroom program.

*In the Courtroom*

**Job Description for the First Three Student Attorneys on Each Side**

Attorneys #1, #2, #3 on each side must be able to stand at the courtroom podium in front of the Judge and their peers and comfortably read the prepared talking points. There is no memorization and students are encouraged to add their own arguments, if they wish. From the bench, the Judge asks each student attorney follow-up questions that are not scripted so that the student attorneys have the opportunity to think on their feet.

**Job Description for Student Attorney #4 on Each Side**

Closing arguments follow immediately after Attorney #3. They are presented by student attorney #4 on each team. This student should be comfortable speaking extemporaneously. A fill-in-the-blank worksheet is provided. During the proceedings, Attorney #4 for each team takes notes on the arguments made by the other student attorneys and also is encouraged to add his/her own arguments.

**Job Description for Student Jurors – Jury Deliberations: The Centerpiece of the Program**

The core of the program is jury deliberations. All unassigned students play the most important part – the role of active jurors. While the student attorneys are preparing outside the courtroom with their coaches, law clerks work with the student jurors in the courtroom.

**Student Jurors’ Preparation While Student Attorneys Prepare in Another Room**

With the two, assigned law clerks or two attorney volunteers, the student jurors in the courtroom go through the worksheet of prepared arguments, which they discuss and classify as favoring either Korematsu or the government. Student jurors prepare in this way so that they know what to listen for in the arguments made by the student attorneys and so that they are primed for their jury deliberations after closing arguments. The open-floor debate is a simulation of jury deliberations – except that it is conducted in the courtroom as a fish bowl exercise, meaning that everyone else observes but cannot participate. Student jurors deliberate/argue based on what they hear in court. However, they can add their own opinions, too.

**Job Description for Program Facilitator During the Jury Deliberations**

The program moderator facilitates the simulated jury deliberations. The first task of the facilitator is to take a straw poll and have the student jurors be seated in the gallery behind the party they initially lean toward but are not committed to, yet. The facilitator makes sure that as many students as possible voice their opinions and debate the issues as if they are in a jury room. The moderator interjects questions and comments to keep the conversation moving and doesn’t allow any of the students to dominate the deliberations. Due to time constraints, jurors do not have to come to a unanimous decision. The verdict is determined by a show of hands vote when the judge asks for the verdict.

**Talking Points**

*Korematsu v. U.S.*

**Opening Protocol**

*Courtroom activities like this one engage every learning style and give every student an opportunity to interact with a federal judge and volunteer attorneys.*

This activity is a modification of an [Oxford style debate](http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources). The presiding judge asks three central questions and gives each side the opportunity to respond, using the suggested talking points. Participants may read the points as scripted, but are encouraged to incorporate their own thoughts and opinions. The judge asks each participant-attorney unscripted follow-up questions at the podium before he/she returns to the counsel table.

*A Law Clerk announces the Judge.*

**The Judge takes the bench, welcomes the group, and says: The overarching issue that we are dealing with today is: During times of war or imminent danger, does the Constitution give the government the authority to restrict individual rights in favor of public safety?**

**Judge: Is Counsel for the Plaintiff ready?**

**Korematsu’s Attorney #1** *(Stands at counsel table)* Yes, Your Honor.

**Judge : Is Counsel for the Government ready?**

**Government’s Attorney #1** *(Stands at counsel table)* Yes, Your Honor.

**Judge:**  **Counsel for the Plaintiff may proceed.**

**Attorneys for the Plaintiff**

**Attorney #1 *(Goes to the lectern)***

"May it please the Court? My name is \_\_\_\_\_\_\_\_\_\_\_\_. I am from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. My colleagues and I are counsel for Mr. Fred Korematsu, the Plaintiff before this Court today. There are three issues before the Court. I will argue the first issue. Seated at the Plaintiff’s counsel table are my colleagues who will handle the other issues and closing arguments. They will introduce themselves and tell you where they are from. *(Attorney #1 sits down.)*

**Attorney #2 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #2. *(Sits down.)*

**Attorney #3 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #3. (Sits down)

**Attorney #4 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_ and I will be handling the closing arguments for the Plaintiff. *(Sits down)*

**Judge: Counsel for the Defendant may proceed with your introductions.**

**Attorneys for the Defendant**

**Attorney #1** ***(Goes to the lectern)***

"May it please the Court? My name is \_\_\_\_\_\_\_\_\_\_\_\_. I am from \_\_\_\_\_\_\_\_\_\_\_ and I will be arguing the first issue on behalf of the Government. Seated at the counsel table are my colleagues who will handle the other issues and closing arguments. They will introduce themselves and tell you where they are from. *(Sits down)*

**Attorney #2 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #2. *(Sits down.*)

**Attorney #3 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and I will be handling Issue #3. *(Sits down*)

**Attorney #4 *(Stands at counsel table)***

I am \_\_\_\_\_\_\_\_\_\_\_\_ from \_\_\_\_\_\_\_\_\_\_ and I will be handling the closing arguments for the Defendant. *(Sits down)*

**Judge: The attorneys will make their arguments, then we will open the floor to you, in the gallery, to join in the debate as jurors. At the end, we will take a vote to determine the verdict.**

**The Issues**

Judge: The overarching issue that we are analyzing today is: During times of war or imminent danger, does the Constitution give the government authority to restrict individual rights in favor of public safety?

**Issue 1**

During times of war or imminent danger, does the Constitution give the government authority to restrict individual rights in favor of public safety?

**Attorney #1 for Korematsu**: No. The government can never discriminate on the basis of race, ethnicity, country of origin, or religion. The government cannot justify discriminatory action against an entire group and it can never engage in collective suspicion or collective guilt.

President Roosevelt’s Executive Order 9006 went well beyond the war powers of Congress, military authorities, and the President as Commander in Chief. The exclusion order, as it was called at the time, gave the military the authority to exclude people of Japanese descent from certain areas, particularly military bases the surrounding area.

The order allowed the military to round up, relocate, and detain for an indefinite time an entire race of people living on the West Coast. To apply such orders only to one race is obvious racial discrimination that is prohibited by the Constitution.
The government had already established a curfew only for people of Japanese descent. The exclusion order went too far.  It forced Japanese people — two-thirds of whom were American citizens — to abandon their homes and their businesses. Once they were gathered at regional assembly centers they were transported to remote locations in seven states and detained there for up to four years.

**Attorney #1 for U.S. Government**:  Yes. We are talking here about times of war or imminent danger. And we are talking about the government’s first priority — keeping us safe. To effectively protect us, the government must take actions that are equal to the threats we face.

On December 7, 1941 we were in a war emergency. The Japanese launched a surprise attack on Pearl Harbor in Hawaii which, at that time, was a U.S. territory. No one knew if the Japanese had already infiltrated the mainland of the United States. However, that would have been a logical assumption.

Of course, emergencies should never be used to justify racial discrimination or harassment. That is why our system of checks and balances is so vital. The Judicial Branch must exercise its power to provide a check and balance on the war powers of the Executive and the Legislative branches. In such instances, courts must apply “rigid scrutiny” to the issues. Sometimes the courts will find that actions that would not be acceptable in peace time turn out to be Constitutional in times of war.

We will continue to aspire to the lofty ideals in the Constitution. However, if we are going to keep our Constitutional government and our democratic way of life, we have to safeguard our ideals with common sense.

It’s a matter of being smart about the threats we face and about activating our system of checks and balances. These are not easy decisions to make but, ultimately, we have to strike a balance between individual rights and public safety.

*Judge might ask follow-up questions after each attorney speaks.*

**Issue 2**

Should the government defer to the military in times of war or imminent danger?

**Attorney #2 for Korematsu**: No. It is the duty of the courts to uphold the Constitution, even in times of imminent danger or war.

The exclusion order was an action based on a plea of military necessity. The need for it was neither substantiated by the facts nor justified by the actions of the targeted group.

The exclusion order was a wholesale confiscation of the rights of more than 120,000 people of Japanese descent, the majority of whom were American citizens.

Unlike other countries, America has a long and proud tradition of a civilian-run military to prevent military overreach.

**Attorney #2 for U.S. Government**: Yes. The war-making branches of government — the Executive Branch and the Legislative Branch — have the authority to take measures to protect the country. The military is under the command of the President.

In times of imminent danger the military makes decisions based on information and intelligence that is not accessible to the Judicial Branch.

President Roosevelt did not surrender his authority as the civilian Commander in Chief. He issued the order and the military followed it. In times of imminent danger the military must be given discretion in how to implement an Executive Order.

Let’s keep in mind the anti-Japanese sentiment in the country at the time. The Japanese were under military protection from the time they reported to the assembly centers, through the transportation process to other locations to the designated sites, and during the time they lived in the safety of the camps.

*Judge might ask follow-up questions after each attorney speaks.*

**Issue 3**

Is the government ever justified in sending U.S. citizens to detention centers when they have not been charged with or convicted of a crime?

**Attorney #3 for Korematsu**: No. The government can fulfill its responsibility for public safety without imprisoning law-abiding citizens.

Government officials have many tools at their disposal. They can impose curfews that keep people off the streets during certain hours. They also can ban people from certain places, like nuclear plants, for example.

However, detaining Americans on American soil, when the detainees have not been charged with nor convicted of a crime is always — and should always be — unconstitutional.

**Attorney #3 for U.S. Government**: Yes. In times of grave peril or imminent danger the government’s primary responsibility is to keep people safe. At such times it becomes necessary to give up some individual liberties in the name of public safety.

Times of imminent danger force a society to rethink and, sometimes, make adjustments to the balance between public safety and individual liberties. Because war time presents unique threats and challenges, government action taken in this environment should be understood in the context of war time — not in the context of peace time.

The government’s power to protect must be equal to the level of danger that is threatened. Everyone suffers hardships in times of war and, unfortunately, those hardships are not shared equally by all. It is unfortunate, but it is reality.

When the country’s very survival hangs in the balance, that changes the equation from theoretical to imminent danger. That is the time when we must decide in favor of public safety, even if the decision puts some limits on individual liberty.

*Judge might ask follow-up questions after each attorney speaks.*

**Guidelines for Drafting Closing Arguments**

Purpose of Closing Arguments: To persuade the jurors to adopt your view of the significant points favoring your team’s position on each issue. In their closing, each attorney argues the merits of their case.

**Each Attorney #4 addresses the judge and jurors**:

I would like to review with you the key points presented today.

Issue #1: During times of war or imminent danger, can race, ethnicity, country of origin, or religion be the basis for assessing a threat to national security and taking action against a particular group?

*{Write the key words from the main point that you want to emphasize. Why should the jury support your position on this point?}*

Issue #2: Should the government defer to the military in times of war or imminent danger?

*{Write the key words from the main point that you want to emphasize. Why should the jury support your position on this point?}*

Issue #3: Is the government ever justified in sending U.S. citizens to detention centers when they have not been charged with or convicted of a crime?

*{Write the key words from the main point that you want to emphasize. Why should the jury support your position on this point?}*

Summary: *{Of all the points argued, what is the most compelling reason the jury should decide in favor of your client?}*

**Judge***(after the last closing argument)*: Now that you’ve heard the closing arguments, I will turn over the program to the moderator to facilitate the jury deliberations.

**An Overview of the Korematsu Coram Nobis Case**

A writ of error *coram nobis* is a legal procedure to correct a fundamental error in a trial after the defendant has been convicted and served a sentence. “Coram Nobis” is a Latin term and means “before us”. A petition for a writ of error *coram nobis* is a writing that is filed with a court and asks that the court vacate a criminal conviction based on an error that occurred in that court and resulted in manifest injustice. In other words, a mistake that is clearly and obviously unjust.

In 1981, two researchers found documents that showed government officials during World War II had suppressed, altered, and destroyed important evidence that contradicted the government’s claims that there was a military necessity for the forced removal of Japanese Americans from the West Coast of the United States. These researchers were Peter Irons, a legal scholar, and Aiko Herzig-Yoshinaga, chief researched for the Commission on Wartime Relocation and Internment of Civilians. They found the documents in government files stored at the National Archives in Washington, D.C.

The documents revealed that the government suppressed intelligence reports from sources such as the Office of Navy Intelligence and the FBI, and that those reports directly contradicted General John L. DeWitt’s claim that military necessity required the forced removal of Japanese Americans. The researchers found that General DeWitt’s report had been altered to support the government’s arguments before the Supreme Court that curfew and forced removal orders were necessary because there was insufficient time to separate loyal Japanese Americans from those who may be disloyal. His report was false because military officers had concluded that there was no information that Japanese Americans had been illegally signaling the Japanese military, and that mass removal was not necessary. The FBI Director informed the government’s Attorney General that there was no information indicating that the Pearl Harbor attacks were associated with any signaling or espionage from the shore. Despite this information, the Supreme Court received the new, altered version of General DeWitt’s report in the *Korematsu* case.

As a result, Peter Irons contacted Gordon Hirabayashi, Fred Korematsu, and Minoru Yasui and told them about the injustice that was done to them when they were convicted during World War II for failing to submit to the forced removal, and that their appeals to the United States Supreme Court were denied based on false information. Mr. Yasui provided a list of young Asian American lawyers which included Dale Minami, who was based in Oakland. Mr. Minami recruited other attorneys in the San Francisco Bay area, and eventually led the team representing Fred Korematsu. These attorneys worked *pro bono*, which means “for the public good” in Latin. In other words, they did the legal work for free.

Gordon Hirabayashi asked Seattle civil rights attorney Kathryn Bannai to represent him and form a legal team. Minoru Minami lived in Portland, Oregon and asked Peggy Nagae, who had work for Legal Aid Services of Oregon, to be his lead counsel.

Mr. Korematsu’s legal team included Mr. Irons, Mr. Minami, Lorraine Bannai, Don Tamaki, Dennis Hayashi, Robert Rusky, Karen Kai, Edward Chen, Eric Yamamoto, Mike Wong, Donna Komure and Leigh-Ann Miyasato. They filed the petition on January 19, 1983 in the federal court in San Francisco because Mr. Korematsu was originally convicted in that court in 1942 for failing to comply with the removal order. Judge Marilyn Patel was assigned to the case.

On November 10, 1983, the court hearing was held at the federal courthouse for the Northern district of California in San Francisco, California. More than three hundred spectators attended, most of them Nisei and Sansei, and Mr. Minami asked the judge to make a judicial ruling that spelled out that serious governmental misconduct caused Mr. Korematsu’s conviction. Judge Patel allowed Mr. Korematsu to make a statement. He stood up in court and described the injustice that he and other Japanese Americans felt about their imprisonment and asked that the government admit their wrongdoing so that it will never happen again to any other American citizen.

Judge Patel surprised everyone by issuing her decision right away. She read her decision from the bench (which the area where the judge sits during court). She vacated Mr. Korematsu’s conviction. Her decision was the first judicial declaration that the original Japanese American wartime cases were based on fraud and therefore were fundamentally unfair and against the law.

Adapted from Stan Yogi’s article found at <https://encyclopedia.densho.org/Coram_nobis_cases/> (last visited Nov. 13, 2023).

**Videos And Other Teaching Resources**

<https://www.annenbergclassroom.org/>

* Video: Korematsu and Civil Liberties (27 minutes)
* Video: A Conversation on the Constitution with Justices Stephen Breyer, Anthony Kennedy and Sandra Day O’Connor: The Importance of the Japanese Internment Cases (36 minutes)

<https://www.uscourts.gov/about-federal-courts/educational-resources/facts-and-case-summary-korematsu-v-us>

* Facts and Case Summary – Korematsu v. U.S.
* Korematsu v. U.S. Activity Package

<https://rendellcenter.org//programs/teaching-the-supreme-court-to-your-students/>

* Supreme Court PDF Lessons and Videos; Korematsu v. U.S. – Lesson Plan and Video

<https://korematsuinstitute.org/pbs-learning-media/>

<https://hawaii.pbslearningmedia.org/collection/korematsu-institute-collection/>

* Lesson Plans on WWII Japanese American incarceration from grades K-2, 3-5, and 6-8.

*Jurors’ Arguments Worksheet – Preparatory Exercise for Jury Deliberations*

***Korematsu v. U.S.***

Next to each argument, designate a K if the argument supports Fred Korematsu’s position and designate a G, if the argument supports the government’s position.

1. When war or imminent danger changes the balance between individual liberty and public safety, individual liberty must take a backseat if the civilization is to survive.

2. The government should never discriminate on the basis of race, ethnicity, country of origin, or religion.

3. The government had already established a curfew only for people of Japanese descent. Excluding them from public places goes too far.

4. President Roosevelt’s Executive Order 9006 was necessary to keep the country safe from espionage and sabotage.

5. In times of imminent danger the military makes decisions based on information and intelligence that is not accessible to the Judicial Branch.

6. The government had no grounds for rounding up and detaining more than 120,000 people of Japanese descent – two thirds of whom were American citizens.

7. People who are pulled out of lines for in-depth screening at airports share the benefits accrued from the airlines’ commitment to safety.

8. It is the duty of the courts to uphold the Constitution, even in times of war or imminent danger.

9. In times of imminent danger the military makes decisions based on information and intelligence that is not accessible to the Judicial Branch.

10. If we are going to keep our Constitutional government and our democratic way of life, we have to safeguard our ideals with common sense.

*Jurors’ Arguments Worksheet – Answer Key*

***Korematsu v. U.S.***

Next to each argument, designate a K if the argument supports Fred Korematsu’s position and

designate a G, if the argument supports the government’s position.

(G) 1. When war or imminent danger changes the balance between individual liberty and public safety, individual liberty must take a backseat if the civilization is to survive.

(K) 2. The government should never discriminate on the basis of race, ethnicity, country of origin, or religion.

(K) 3. The government had already established a curfew only for people of Japanese descent. Excluding them from public places goes too far.

(G) 4. President Roosevelt’s Executive Order 9006 was necessary to keep the country safe from espionage and sabotage.

(G) 5. In times of imminent danger the military makes decisions based on information and intelligence that is not accessible to the Judicial Branch.

(K) 6. The government had no grounds for rounding up and detaining more than 120,000 people of Japanese descent – two thirds of whom were American citizens.

(G) 7. People who are pulled out of lines for in-depth screening at airports share the benefits accrued from the airlines’ commitment to safety.

(K) 8. It is the duty of the courts to uphold the Constitution, even in times of war or imminent danger.

(G) 9. In times of imminent danger the military makes decisions based on information and intelligence that is not accessible to the Judicial Branch.

(G) 10. If we are going to keep our Constitutional government and our democratic way of life, we have to safeguard our ideals with common sense.

*Program Feedback*

***Korematsu v. U.S*.**

Balancing Individual Liberties and Public Safety

**Name \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*(first) (last)*

**School \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_What year will you graduate? \_\_\_\_\_\_\_\_**

**Career Aspirations**

**1. Setting.** What was it like to have the program in a real courtroom? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**2. Judge.** What was it like to have a Judge preside? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**3.** **Lawyers.** What was it like to see the lawyers/law clerks in action? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**4. Jury Deliberations.** If you were a juror, what was it like for you? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**5. Future Jury Service.** As a result of this experience, how do you feel about serving on a jury?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**6.** **Media Comparisons.** How were today’s proceedings and people different from media portrayals?

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**7. Would you recommend this program to other students? Yes \_ No\_**

**8. What will you tell your friends about your experience today?**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**9. What would you like to say to the Judge who presided? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **10. What would you like to say to the lawyers and law clerks who participated?**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **11. How would you rate your attention and listening skills during the program?**

**Poor Good Very Good Excellent**

*Program Feedback (Faculty/Teachers)*

***Korematsu v. U.S*.**

What Are Civil Liberties?

**Name \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*(first) (last)*

**School \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. **Setting.** What was it like to be in a real courtroom?

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**2. Re-Enactment.** What did you think of the presentation? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**3. Panel Discussion.** What did you think of the panel discussion? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**4. Future Jury Service.** As a result of this experience, how do you feel about serving on a jury?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**5.** What did you like best today? What did you like least? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**6. Would you recommend this program to other teachers/faculty? Yes \_ No\_**

**7. What will you tell your colleagues about your experience today?**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**8. What suggestions do you have to improve the program? \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**