



Justice Frank Murphy and Racial Prejudice: No Justifiable Part

Handout A: Narrative

BACKGROUND

Should the text of the Constitution be interpreted one way in peacetime and another way in wartime, as suggested by a unanimous Court in 1919 in the *Schenck v. United States* case? After Japan attacked Pearl Harbor on December 7, 1941, the United States entered World War II, and once again faced the challenge of applying the Constitution's guarantees in the context of wartime. Based on advice from the military that there was a real threat of a Japanese invasion of the West Coast, as well as a credible danger of Japanese espionage, the U.S. government ordered various restrictions on Japanese-Americans.

NARRATIVE

Before Franklin Roosevelt appointed him Attorney General of the United States in 1939, Frank Murphy had served in many positions of leadership. The young lawyer from Michigan had served in the U.S. Army during World War I, opened a private law practice, and had been Assistant United States Attorney for the Eastern District of Michigan. He taught law at the University of Detroit, served as a trial judge, was elected Mayor of Detroit, supervised U.S. administration of the Philippines, and was elected Governor of Michigan. In each of these positions, Murphy established systems intended to help the poor, the unemployed, and minorities. As Attorney General of the United States, he implemented a Civil Liberties Section in the Criminal Division of the U.S. Department of Justice, whose responsibility was to enforce the Bill of Rights and civil rights law. He said, "Maintenance of civil liberties...is one of the 'bulwarks of democracy.'" He sought to enforce the law, champion individual rights for the downtrodden, and fight against intolerance. In 1940, Roosevelt nominated Murphy to the U.S. Supreme Court to fill the vacancy caused by the death of Pierce Butler. Murphy served on the Court until his death in 1949.

In the immediate aftermath of Japan's attack on Pearl Harbor, Attorney General Francis Biddle assured Americans that there would be no wholesale round-up of Japanese Americans. The Territory of Hawaii's military governor, General Delos Emmons announced, "While we have been subjected to a serious attack by a ruthless and treacherous enemy, we must remember that this is America...we must distinguish between loyalty and disloyalty among our people." The FBI promptly arrested Japanese aliens who had been on its "watch list," and reported that almost all the people they suspected of planning espionage against the United States were already in custody. However, in the next few weeks wild rumors of sabotage and anxiety about a Japanese invasion of the West Coast gripped the public's imagination. Demands for the Japanese to be isolated and controlled for national security mixed with age-old anti-Asian prejudice across the country. President Roosevelt signed Executive Order 9066, which gave the military authority to forcibly remove and incarcerate anyone of Japanese ancestry living along the West Coast.

NARRATIVE

Restrictions on Japanese Americans resulted in three landmark cases during Murphy's tenure on the Supreme Court, and his response to each of these cases demonstrates the commitment to civil liberties that was a hallmark of his career. On April 1, 1942, General John L. DeWitt imposed a curfew on all enemy aliens and American citizens of Japanese descent. Believing the curfew to be unconstitutional, Gordon Hirabayashi turned himself in to the FBI to challenge the policy, and he was prosecuted and convicted of violating the federal statute.

On June 21, 1943, in the case of *Hirabayashi v. United States*, Chief Justice Stone delivered the opinion of the Court, which unanimously upheld the curfew law. He explained, "Congress and the Executive...[may take into account] those facts and circumstances which are relevant to measures for our national defense...and which may in fact place citizens of one ancestry in a different category from others." Justice Murphy had intended to dissent, but Justice Frankfurter convinced Murphy to join the majority, persuading him that it would be disastrous for the country during wartime if the Court did not stand together with the other two branches. However, his concurrence reads more like a dissent. Murphy wrote, "It has been frequently stated and recognized by this Court that the war power, like the other great substantive powers of government, is subject to the limitations of the Constitution...We can never forget that there are constitutional boundaries which it is our duty to uphold... while this Court sits, it has the inescapable duty of seeing that the mandates of the Constitution are obeyed. That duty exists in time of war as well as in time of peace, and in its performance, we must not forget that few indeed have been the invasions upon essential liberties which have not been accompanied by pleas of urgent necessity."

General DeWitt also ordered that people of Japanese ancestry report to Assembly Centers, and 110,000 people were placed in relocation camps away from the coast. Fred Korematsu was an American citizen of Japanese ancestry born in San Francisco. He wanted to serve his country during the war effort and tried to join the U.S. Navy but was turned down for health reasons. Then, he got a job as a welder in the defense industry, but he was soon arrested for refusing to report to the assigned Assembly Center. He was prosecuted and convicted for violating the Exclusion Order. Korematsu challenged the wartime provisions, believing that the President and Congress had exceeded their war powers by implementing exclusion and restricting the rights of Americans of Japanese descent.

Once again, the Supreme Court's majority sided with the government in *Korematsu v. United States* (1944) and ruled that national security concerns were more important than the rights of Korematsu and the other internees. Justice Hugo Black wrote the majority decision in the 6-3 case. He explained the imminent possibility of a Japanese invasion and espionage justified the government's temporary exclusion policy.

Justice Murphy wrote in his dissent, "This exclusion goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism...I dissent from the legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. 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

NARRATIVE

experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.” Murphy maintained that the internment of the Japanese was based upon “the disinformation, half-truths, and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices.”

In *Ex parte Endo*, handed down the same day as the *Korematsu* decision, the Court ruled that citizens deemed loyal must be set free. Mitsuye Endo was a young stenographer in the California Department of Motor Vehicles. She did not read or speak Japanese, and her brother was serving in the U.S. Army. Endo maintained that she was a loyal citizen who had obediently reported for processing, but once it had been established that she represented no national security threat, she should have been released. She charged that she was being illegally held under armed guard, and filed for a writ of *habeas corpus*. The Department of Justice and the War Relocation Authority conceded that there was no cause to detain her and that she was not even suspected of disloyalty. Justice Douglas wrote the Court’s unanimous opinion: “An admittedly loyal citizen has been deprived of her liberty for a period of years. Under the Constitution she should be free to come and go as she pleases. Instead, her liberty of motion and other innocent activities have been prohibited and conditioned. She should be discharged.” Once again, Justice Murphy wrote a more strongly worded concurrence: “...detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive, but it is another example of the unconstitutional resort to racism inherent in the entire evacuation program.”

One day prior to the *Korematsu* and *Endo* rulings, President Roosevelt had announced his intention that all internees would be released in January 1945. The 1948 Japanese-Americans Claims Act allowed camp detainees to receive compensation for their losses, and the government paid about 25% of the claims submitted. In the early 1980s, attorneys studying *Korematsu*’s case uncovered archival evidence that the Solicitor General’s office had failed to report to the Supreme Court evidence that Japanese American citizens actually posed no security threat. Fred *Korematsu* again challenged his detention, and his conviction was overturned in 1983. In 1988, President Reagan signed the Civil Liberties Act, authorizing \$20,000 in reparations to camp detainees. The checks were issued three years later, and President George H.W. Bush signed a letter of apology.

In light of the 1980s discovery that the military had no credible evidence of espionage or sabotage from Japanese Americans, Justice Murphy’s blunt condemnation of racist policies masquerading as national security measures demands another look. He spent his career championing the vital protection of civil liberties in pursuit of justice and would accept no excuses for policies designed to cross constitutional boundaries based on “pleas of urgent necessity.”