

The Internment of Japanese-Americans in World War II

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Internment Three Year History

Executive Order 9066 - Feb.1942 allowed for internment

Public Law 503 – March 1942 provided legal basis for enforcing internment

Internment started immediately; most of the Japanese Americans were released in early 1945

My Interests and Biases

Early Naturalization Acts

1790 - The Naturalization Act of 1790. Later amended to extend residency requirements; repealed in 1952 -McCarran-Walter Immigration Act

1798 – Alien Friends Act and Sedition Act. These were allowed to expire in 1800 and 1801 respectively.

1798 – Enemy Aliens Act (part of Alien and Sedition Acts). Did not expire. Basis for internment in WWII

American Nativism

Nation of Immigrants

Irish Immigration

American Party – “Know Nothing”

Blaine Amendment

Nordic Race

14th Amendment

Post Civil War

Changed the balance with States' Rights

United States v. Wong Kim Ark

The 1898 Supreme Court decision granted citizenship to an American-born child of Chinese parents. Has not been tested with other nationalities

Chinese and Japanese Immigration

Chinese were ridiculed; Japanese were praised. This changed over time.

They lived in their own communities – similar to Irish, Italians, Jews, Polish, etc.

1868 - Japanese immigrants first arrive in Hawaii

1869 - Japanese immigrants arrive in mainland United States

Immigration Bias and Anti-Immigration Laws

Europeans welcomed – Statue of Liberty

Chinese Exclusion Act is passed, prohibiting immigration from China. It was enforced between 1882 and 1892

San Francisco School Board passes a regulation sending all Japanese children to the segregated Chinese school

Russo-Japanese War

Feb. 8, 1904 Sneak attack on the Russian
Fleet in Port Arthur

Japan was winning the war

Treaty in Portsmouth, NH – Teddy Roosevelt
– Noble Peace Prize

Non-white race defeats white race

Theodore Roosevelt

Like Taft after him, Teddy Roosevelt used the influence of the White House to prevent open anti-Japanese discrimination so that he would maintain the appearance of being fair.

He sought to restrict Japanese entry and settlement in the United States

He sent a powerful message to his younger cousin that the Japanese presence in America was dangerous and undesirable

More Restrictions

1906 - San Francisco School Board orders the segregation of 93 Japanese-American students

1907 - Congress passes an immigration law banning Japanese laborers from entering the United States through Hawaii, Mexico, or Canada

1908 - The Japanese and U.S. governments negotiate the “Gentlemen's Agreement” whereby Japan agrees not to issue visas to laborers who want to emigrate

But, there were no restrictions on “Picture Brides”

Alien Land Laws

1790 Naturalization Law Sets the Stage

1913 - California passes the Alien Land Law, which denies “all aliens ineligible for citizenship” the right to own land in the state. Similar laws are soon passed in Washington, Oregon, Idaho, Montana, Arizona, New Mexico, Texas, Kansas, Louisiana, Missouri, and Minnesota

1920 - A second Alien Land Law adopted in California forbids the leasing of lands to aliens “ineligible for citizenship”

Steady Mistrust of Japan

1920 Japan stops issuing passports to "picture brides" their immigration to the U.S.

1922 Washington Naval Treaty

1923 "Japs-A Habit of Mind"

1924 The Immigration Act of 1924 incorporated the National Origins Act, and the Asian Exclusion Act bars all immigration from Japan.

Nordic Race – Eugenics

Citizenship - 1922

Takeo Ozawa v. U.S.- SCOTUS rules that U.S. citizenship is limited to “free white persons and aliens of African ancestry”. Japanese not considered white persons.

Congress passes the Cable Act which provided that anyone marrying an “alien ineligible for citizenship” will lose their US. Citizenship

Pre-war Sentiment 1920s-1930s

Common belief of a war with Japan

Court Marshall of Billy Mitchell

FDR and early relations with the Japanese

Growing concern of J-A in Hawaii

1934

Japan announced the Amai Doctrine
declaring East Asia as Japan's special
sphere of influence

Hakko ichiu – belief that all of Asia should be
united under one emperor

Japan announced its determination not to
renew the 5:5:3 ratio of capital ships
(Washington Naval Treaty of 1922).

FDR pre-war strategy

In spring 1936, FDR made significant efforts to investigate and neutralize any possibility of disloyal activity.

He focused on the J-A residents of the then-territory of Hawaii, known by Hawaiians as the "local Japanese" .

FDR (continued)

FDR mused that in the event of war with Japan some of the Japanese-Hawaiians would need to be placed in **concentration camps** .

He did not make any similar effort to keep tabs on Americans of German or Italian ancestry during this period, despite the presence of Nazi agents in the United States and the propaganda activities of pro Axis groups such as the German Bund

ABC List

Group A were identified as “known dangerous” aliens

Group B were considered “potentially dangerous” but had not been thoroughly investigated

Group C were watched because of their pro-Japanese inclinations and propagandist activities

Government Internal Investigations

1941 - Munson Report

1942 - Ringle Report

December 7, 1941

Japanese Embassy in Washington

Ultimatum delivered late

Sneak attack

Attack On Pearl Harbor

Kido Butai – “Attack Force” or “Strike Force”

No Japanese American subversion

Attack tragic but not devastating

Sub Base

Oil storage fields

Repair and Dry Docks

Aircraft Carriers

Attacked the Battleships in shallow water – 6 re-serviced

Ni'ihau Incident

December 7, 1941

Zero crash lands on Ni'ihau

Locals are unaware of the Pearl Harbor
attack

Three J-A's assist the pilot

Hostages – Weapons

Pilot is killed by locals

Incident is used to show mistrust of J-A

Immediate Steps

Froze all assets of Japanese nationals as “enemy aliens”

Arrested some 2,000 Issei on the ABC list as potential subversives

Beached fishing boats owned by Japanese nationals

Suspended their licenses to sell produce in order to protect the food supply

Spoke hypothetically about taking over all J-A businesses and setting up concentration camps

Initially Favorable Treatment of Japanese Americans

J-A sent letters/telegrams to the White House in support of the war demonstrating their loyalty to the US government.

Gen. DeWitt

FBI

FCC

Many Quick Japanese Victories

Before Pearl - fortified garrisons on French
Indochina, Thailand, Burma, Malaysia,
Philippines

Then attacked Wake, Hong Cong, Burma

Air attack on Wake, Guam, and Luzon

Port Darwin in Australia, Java

Land based bombers sunk and destroyed the
HMS Prince of Wales and Repulse

Many Quick Japanese Victories

3 months into the war, $\frac{1}{4}$ of the Pacific was under Japanese control

All of the immediate goals of the Japanese Empire were accomplished

Very cruel treatment of American POWs

TOKIO KID SAY-

BRING UP TEXTILES
WASTE FOR SCRAP
JUST LIKE BULLDOGS
BARK FOR JAP!
GADDA YOU





OUR CARELESSNESS
Their Secret Weapon

PREVENT FOREST FIRES

Changes

Rumors of J-A subversion on radio

Greed of white farm owners

Racism: “It's a question of whether the white man lives on the Pacific Coast or the brown man”

Leland Ford: Catch-22

Canada removing Japanese from their west coast

DOJ vs. Sec. Of War and Army

Biddle and Ennis (DOJ)

Stimson, McCloy, DeWitt, and Bendetsen

Final Report - Feb. 14, 1942

Cited Emp. Of Japan Victories

Loyalty of J-A to Japan - Kibei

J-A Unassimilated

Radio communications

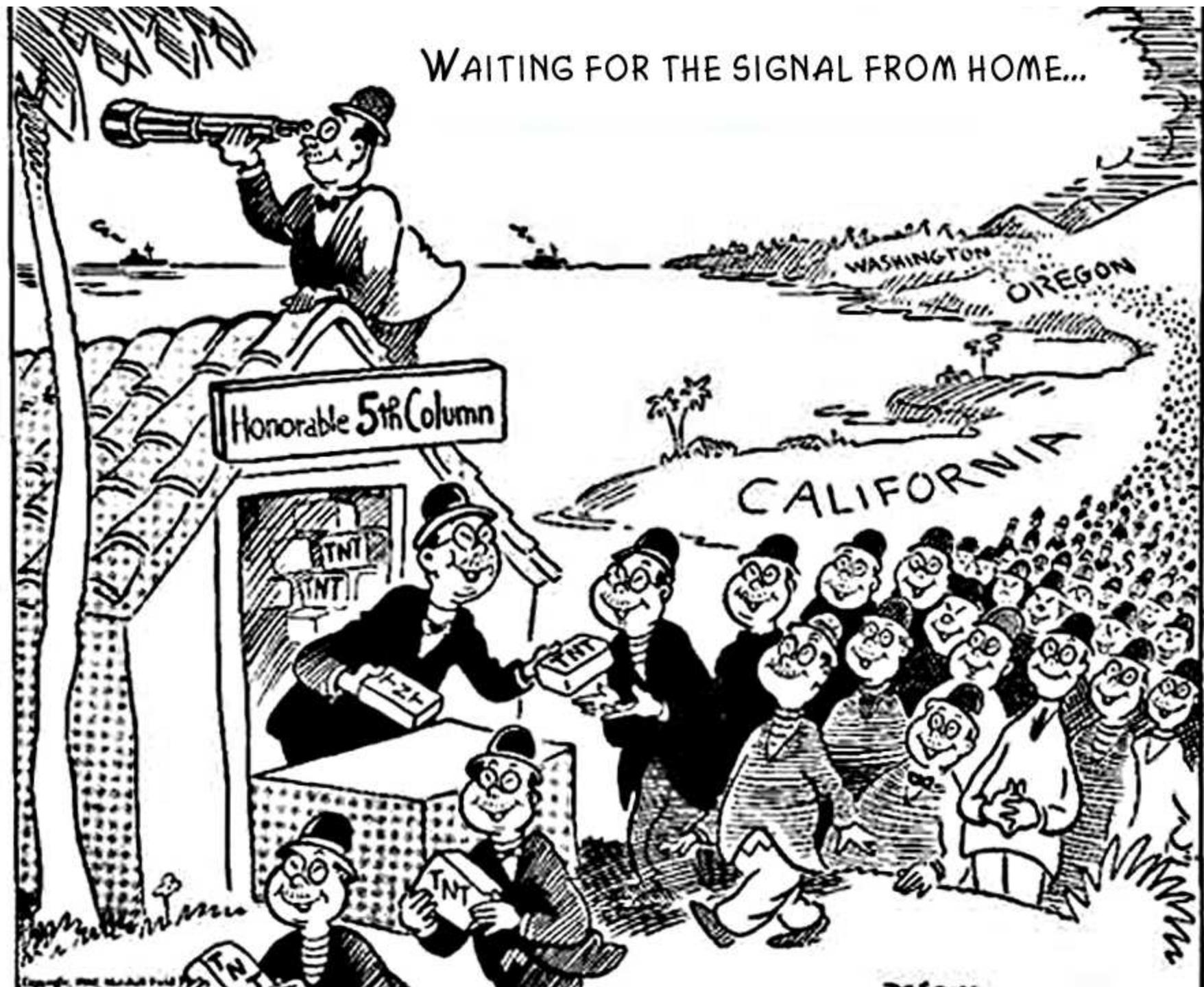
Property near military bases

Conspiracy – “The fact that these [Japanese] have committed no acts of sabotage to date, is a disturbing and confirming indication that they will do so.”

Later withdrawn by McCloy

Reissued in 1943 without the racist remarks

WAITING FOR THE SIGNAL FROM HOME...



Was a Japanese Invasion of the West Coast Possible?

D-Day Invasion - Operation Neptune

5,350 Ships / 165,000 Troops

Operation Olympic (Planned)

6,000 Ships / 436,000 Troops

Operation Coronet (Planned)

7,000 Ships / 575,000 Troops

Executive Order 9066

Signed by FDR – Feb 19, 1942

FDR did not consult with Cabinet

Evacuation of West Coast

Charged the Army with the process

Provided for food and shelter for evacuation

No provision for property

Later amended to allow for curfew restrictions

The Great Los Angeles Air Raid

On Feb. 23, 1942 a Japanese sub shelled an oil field in Ellwood, CA. – minimal damages

On Feb. 24, 1943 a meteorological balloon was misidentified as part of a Japanese air attack

Anti-aircraft fire started in the evening and then resumed early the next morning

Five civilians died as an indirect result of the anti-aircraft fire

In spite of being called a false alarm, it fueled speculation of a invasion

Public Law 503

Provided legal actions for violators of
Executive Order 9066

Rushed to vote

Passed with almost no debate

Property

Roosevelt Warned

Voluntary Evacuation

Very poor arrangement

Assistance – Execution

Fire sale

Mortgage payments

Escheat actions, legal proceedings to
absorb vacant land

Minnesota Moratorium

Home Building & Loan Association v. Blaisdell

The Great Depression resulted in a large number of home foreclosures. Minnesota and some other states extended the time available for mortgagors to redeem their mortgages from foreclosure."

CJ Charles Evans Hughes wrote the majority (5-4) opinion stating that to "safeguard the vital interests of its people" a state could adopt legislation which had the effect of "modifying or abrogating contracts already in effect." Still very controversial.

Argued in Nov. 1933. Discussions, which lasted two months, touched on the demands of the depression and emergency powers of states to respond.

Voluntary Evacuation to Internment

No Sponsorship

Limit of Funds

Property Left Behind

Hostile Mountain States

10,000 J-A moved to eastern CA – that
became part of exclusion zone

Wartime Civil Control Administration
(WCCA)

Voluntary Evacuation continued

Assembly Centers

The evacuees remained under guard, living in stables and animal pens, for weeks or months while the army began to erect relocation centers

Negative Press and WRA

WRA – defacto approval of internment?

Milton Eisenhower led the WRA – resigned
shortly thereafter

Dept. of Interior took over

Japanese Americans in Hawaii

Very strong pressure to intern

Mainland Option

Facilities on a remote Hawaiian Island

Roosevelt supported internment

Different General:- Delos Carleton Emmons

California Firing Nisei Employees

The state personnel board questioned their loyalty and charged them with “failure of good behavior, fraud in securing employment, incompetency, inefficiency, and acts incompatible with and inimical to the public service”

Doolittle Raid

16 Mitchells left Hornet

Embarrassment – Blow to pride

U.S. Breaks most of the JM25 code

250,000 Chinese Killed

Midway Atoll

Seeking the Decisive Battle ■ 103



Midway – June 4, 1942

Kido Butai – missing Shokaku (badly damaged) and Zuikaku (most of the planes destroyed) at the Battle of Coral Sea

Victory Fever

Yorktown (badly damaged), Hornet, Enterprise, and Midway Island

Kaga, Akagi, Soryu, and Hiryu (Confirmed on June 19) sunk

Yorktown sunk

Aftermath of Midway

With Kido Butai confirmed sunk, Japan had lost the war and were no longer a threat to the U.S. West Coast

McArthur started his island hopping knowing the Kido Butai was gone

By the end of 1943 the U.S. had 8 Essex Class carriers in the Pacific with 16 more in various building stages...and producing 100,000 airplanes a year. Together Russia, Germany, England, and Japan produced 40,000 a year

The Relocation Camps

10 Camps

Tule Lake – segregation facility - used for problem internees

Barracks Style

No Privacy

Shared eating – poor quality food

Shared bathrooms

Poor ventilation/heating

Mail order clothing

Very low wages

Video

War and MAGIC

Alternative Web Site

1943

Undoing a bad policy

Loyalty Questionnaire

Supreme Court cases

Camp unrest

DeWitt continues to maintain J-A are a threat

Loyalty Questionnaire

Questions 27 and 28

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27. Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered? _____
 28. Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign or domestic forces, and forswear any form of allegiance or obedience to the Japanese emperor, or any other foreign government, power, or organization? _____

ACLU and Judicial Ethics

The lawyers who represented Hirabayashi and Korematsu were recruited by local ACLU

The ACLU lawyers initially attacked the constitutionality of Executive Order 9066 that authorized the internment program

Due to personal and partisan loyalty to FDR, the ACLU national board bars this constitutional challenge in subsequent appeals

Thus, the ACLU selected lawyers violated ethics by not pursuing every possible legal approach.

Profound Questions of Legal Ethics and Professional Responsibility for Lawyers

Code of ethics that requires defense attorneys to "zealously" represent the interests of their clients. In examining witnesses at trial, their presentation of oral testimony and documentary evidence, their framing of legal briefs, and their arguments to the courts they are bound by the dictates of the adversary system to present the **strongest case possible**. It is the task of opposing lawyers to probe the weaknesses in these cases and to offer countering evidence and arguments

Legal Ethics continued

Lawyers not only represent their clients but also function as officers of the courts, sworn to canons of fairness and justice.

The same code of ethics supported by judicial decisions requires that lawyers present to the courts only truthful evidence which is contained in their briefs' contain and arguments within the bounds of the trial records.

In addition, lawyers are commanded to avoid any appeal to racial prejudice. Violations of this constitute a serious breach of legal ethics

Sadly, DOJ failed in their Judicial Ethics as well

Supreme Court Cases

Yasui v U.S. – Curfew Violation

Hirabayashi v. U.S. – Curfew
Violation

Korematsu v U.S. – Evacuation
Violation

Ex Parte Endo - Writ of *habeas
corpus*

Minoru (Min) Yasui

Born in Oregon and graduated from University of Oregon

Army Reserve officer 2nd Lieutenant

Attended the University of Oregon Law School and passed the bar

Obtained a job working for the Japanese consulate in Chicago resigned after the attack on Pearl Harbor

His father, Masuo, was arrested and not allowed to be represented by a lawyer during his loyalty hearing.

Yasui decided to challenge the government's orders when General John DeWitt ordered Military Proclamation 3.

Gordon Kiyoshi Hirabayashi

Born in Washington and attended the University of Washington

Question the necessity of curfew and several times knowingly violated the 8 P.M. curfew orders.

Hirabayashi refused to report and register for evacuation. “I consider it my duty to maintain the democratic standards for which this nation lives. Therefore, I must refuse this order for evacuation”

He deliberately disobeyed curfew - unaware of Min Yasui's challenge

Fred Toyosaburo Korematsu

Born in California attended Los Angeles City College

Later attended a welder school. After Pearl Harbor, the union expelled all of its members of Japanese ancestry.

When he tried to register for the draft, he was turned down because of a medical condition

Fred Korematsu, in contrast, hoped to evade the exclusion order

There is considerable evidence that he had an equal devotion to constitutional principle in offering himself as a test case challenger.

Mitsuye Endo

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, CLAUSE 2

Mitsuye Endo born in California and a clerical worker for the California DMV - terminated from her job because of her Japanese ancestry

She was already at Tanforan Assembly Center and was approached by attorneys to test whether it was legal for the government to detain her

She was selected to test the internment.

Usually *habeas corpus* cases are to be heard immediately, but it took almost a year before the federal courts decided on her case.

“A Jap’s a Jap”

Anti-Japanese American attitudes still pervades government thought

DeWitt prevents loyalty hearings – “A Jap’s a Jap”

1942 Final Report is replaced by 1943 Final Report

Assist. Sec. Of War, John McCloy - egregious manipulation of evidence

Eleanor Roosevelt

1942 – Silent because she believe in possible 5th column “innocent people suffer for a few guilty ones”

1943 - no acts of sabotage or espionage had been committed by Japanese Americans

1943 Visited the Gila River camp - her presence made clear her sympathy

Devoted her syndicated daily newspaper column to praising the efforts of the internees to grow their own food, ameliorate the harsh desert climate and the ugliness of the hastily constructed camps

Publicly supported resettlement

House Un-American Activities Committee

Slanted “investigation” into the “collusion”

Anti-WRA witnesses - unfounded and absurd charges that the agency had collaborated with pro-Axis groups

Governor Earl Warren, “we don't propose to have the japs [*sic*] back in California during this war if there is any lawful means of preventing it”

“If the Japs are released, no one will be able to tell a saboteur from any other Jap”

442nd Regiment and 100th Company

Half of the eligible J-A volunteered to serve
442 regiment mainland J-A – 100 Company
Hawaiian J-A difficulties in being allowed
to leave bases

DeWitt (Bendetsen) didn't want them in CA
Highest Decorated regiment
522nd Field Artillery Battalion
232nd Combat Engineer Company

Japanese American citizens challenge EO 9066 at the Supreme Court

Hirabayashi v US (1943) held that **curfews** applied against members of a minority group were constitutional. Chief Justice Harlan Fiske Stone asserted: “**some infringement on individual liberty**” was allowable in wartime and could be applied to **a group of one national extraction** if that group might “**menace that safety more than others.**”

Although Hirabayashi challenged the evacuation order too, SCOTUS ruled only on the curfew issue. Six justices assented; three concurred.

Japanese American citizens challenge EO 9066 at the Supreme Court

Three concurring opinions Douglas, Rutledge, and Frank Murphy. Murphy's, initially drafted as a dissent, wrote that “today is the first time, so far as I am aware that we have sustained a substantial restriction of the personal liberty of citizens of the United States based upon the accident of race or ancestry.”

Japanese American Citizens Challenge EO 9066 at the Supreme Court

Yasui v U.S. (1943) – the other **curfew** violation was heard and decided the same day as Hirabayashi. The decision in this case was unanimous in upholding the conviction.

In the 1980s, using a petition for a writ of error *coram nobis*, Yasui's and Hirabayashi's convictions were eventually vacated. More on this later.

Resettlement - 1944

US Govt. started to hire J-A

Needed to undo the neg. propaganda

Roosevelt's plan for disbursement and
assimilation

Dept. of Interior takeover

DeWitt Replaced by Emmons

Ex parte Endo – habeas corpus

Continued

Summer 1944 – no Japanese invasion or even a possibility/no 5th column activity

DOJ knew and advised FDR that Endo (and the J-A internees) would be granted freedom by SCOTUS

FDR could have released most on the J-A interned

Running for re-election and wanting more

Congressional house seats in CA - FDR choose to wait until after the election

Internees wait six additional months for freedom

December 17, 1944

Sunday

2nd day of the Battle of the Bulge

Italian Armistice Terms

FDR announces release of J-A Internees

The next day the SCOTUS announces its
decisions on Korematsu and Endo

Challenge to EO 9066 continued

Korematsu v. United States, (1944) also addressed the constitutionality of EO 9066. Korematsu was convicted for failing to comply with the order to evacuate.

In a 6–3 decision, the Court once again upheld EO 9066, ruling that the exclusion order was constitutional. However, unlike *Hirabayashi* and *Yasui*, three justices dissented citing concern over civil rights violations.

Challenge to EO 9066 continued

Hugo Black wrote the opinion of the court

. . . we cannot reject as **unfounded the judgment** of the **military authorities** and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that, in a critical hour, such persons could not readily be isolated and separately dealt with, and **constituted a menace to the national defense and safety which demanded that prompt and adequate measures be taken to guard against it.**

Challenge to EO 9066 continued

Justices Jackson, Murphy, and Roberts dissented.

Justice Jackson's wrote: "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.

Missing footnote

- John DeWitt, general, Western Defense issued a curfew order. Claimed falsely that Japanese Americans had committed acts of espionage.
- The contrary investigations by the FBI, the FCC, and the ONI (Ringle Report) led to a showdown with Assistant Sec. of War McCloy and DOJ (determined to alert the Supreme Court to the falsity of DeWitt's charges)

Missing Footnote continued

Ennis, a DOJ attorney, inserted a crucial footnote in the government's Supreme Court brief in the Korematsu case, informing the Court of evidence disputing DeWitt's espionage allegations.

Justice Department records Asst. Secretary of War McCloy intervened with Solicitor General Charles Fahy and prevailed on him to **remove this explicit confession** from the brief.

Missing Footnote continued

Ennis felt this conflict keenly during the war - later confessed their complicity in depriving J-A of their constitutional rights

Ennis, forced to choose between his professional role and the demands of his conscience, swallowed his doubts and signed the government's brief in the Korematsu case.

Challenge to EO 9066 continued

Korematsu's conviction for evading internment was overturned in the 1980s after the disclosure of new evidence challenging the necessity of the internment, evidence which had been withheld from the courts by the U.S. government during the war.

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Challenge to EO 9066 continued

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, CLAUSE 2

Ex Parte Endo (1944) In 1942, Endo filed a petition for a writ of habeas corpus alleging “that she is a loyal and law-abiding citizen of the United States confined in the Relocation Center under armed guard and held against her will.”

The Supreme Court held that the government cannot detain a citizen without charge when the government itself concedes she is loyal to the United States.

Endo Decision

Unanimous Court

Douglas wrote the opinion of the court:

“We are of the view that **Mitsuye Endo should be given her liberty**. In reaching that conclusion we do not come to the underlying constitutional issues which have been argued. For we conclude that, whatever power the War Relocation Authority may have to detail other classes of citizens, it has **no authority to subject citizens who are concededly loyal to its leave procedure.**”

Post Endo

Most of the Nisei were eager to be released

Many Issei were unhappy with no resources in
a hostile outside society

The WRA camps emptied and dismantled the
camps – except Tule Lake

Resettlement 1945

Significant fraction of the internees resettle east of the Rockies

Most residents chose to return to the Pacific Coast, as did a substantial percentage of those who had initially been resettled elsewhere.

By the end of the war, some 50 percent of the formerly interned population was residing in the three West Coast states.

The returnees suffered great hardship.

Resettlement (continued)

The majority were unable to acquire or regain their farm property and were forced to seek employment as tenant farmers or as laborers in urban areas

Even those who did regain their land were harassed by enforcement of state alien land acts

California - "escheat" actions

Oregon legislature passed a harsh new Alien Land Act (1948, SCOTUS declared their enforcement unconstitutional)

Resettlement (continued)

Housing was difficult to secure - much of the living space in prewar Little Tokyos had been taken by African Americans.

Returning internees had little money to spend on rent or other necessary living expenses .

The federal government discouraged resettlement on the Pacific Coast and provided scant financial aid.

State governments, ill-equipped for the task of absorption and heavily influenced by anti-Japanese sentiment, offered limited monetary support.

Anti-Japanese Mobs

West Coast whites formed numerous anti-Japanese organizations.

Demonstrations in favor of permanent exclusion made returning especially difficult.

The returnees were confronted with outbreaks of racial violence in addition to the daily hostility and prejudice to which they were subjected.

The WRA reported 34 separate incidents of violence against Japanese Americans.

White mobs beat returnees and fired bullets into the houses of Japanese Americans, and arsonists destroyed their property.

FDR remained aloof

Made no public statements during this period concerning J-A or the violence against them.

Awarded a Presidential Distinguished Unit Citation to the all-Nisei 442nd Combat Team in 1945.

FDR's health deteriorated markedly after the election.

He was preoccupied with war and diplomatic matters, notably the Yalta Conference.

Trusted aides tried vainly to interest him in the situation of the returnees. Around Christmastime, Ickes sent him an autographed copy of *Born Free and Equal*, by photographer Ansel Adams.



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Attempts for Justice and Restitution

In 1948, Congress passed the Evacuation Claims Act seeking compensation for the **Japanese American** losses incurred as a result of their incarceration

Their claims were limited to “damage to or loss of real or personal property,” which was not covered by insurance and was reasonable consequence of the evacuation and exclusion.

Restitution (continued)

It was difficult to estimate property and income losses during evacuation. The IRS had already destroyed most of its 1939 to 1942 income tax records. Many internees lost pertinent documents.

Only a small percentage of people actually received compensation for their losses. 26,568 claims were filed. Only \$37 million out of total claims of \$148 million was paid.

Rescinding EO 9066

Proclamation 4417 - Feb. 20, 1976

In this proclamation, Gerry Ford stated that “We now know that we should have known then: not only was that evacuation wrong, but Japanese-Americans were and are loyal Americans.” And that they have been and continue to be recognized for “the sacrifices and contributions they have made to the well-being and security of this, our common Nation”....

He called upon us to learn from this tragedy, to forever to treasure liberty and justice for each individual American, and to resolve that this kind of action shall never again be repeated.

Restitution and an Apology

The campaign for redress began in the early 1970's ; led by notable Japanese Americans such as Daniel Inouye and Norman Mineta

In 1980, Public Law 96-317 established the Commission on Wartime Relocation and Internment of Civilians a commission was formed to:

- investigate the primary reason for the evacuation and relocation program
- the oft-cited government belief that military necessity lay behind the evacuation
- recommend appropriate remedies

Restitution (continued)

In 1981, the commission heard testimonies from 750 witnesses. The results of the research are reported in the commission's report, *Personal Justice Denied* (1982).

Also discussed - the removal of 1,875 residents of Japanese ancestry from Hawaii, the removal and internment of German and Italian aliens, and the detainment of Japanese from Latin America

Restitution (continued)

In its February 1983 report to Congress, the Commission condemned the internment of Japanese Americans as a “grave injustice” and as the produce of decisions “conceived in haste and executed in an atmosphere of fear and anger at Japan.”

The commission's members agreed without dissent that “Executive Order 9066 was not justified by military necessity” but had been prompted instead by “race prejudice, war hysteria and a failure of political leadership.”

Righting wrongs

Formal apology that Congress made on behalf of the U.S. government and the American people

Their payments were accompanied by a letter signed by President George H.W. Bush (41)
- October 1990

82,219 surviving internees received the full \$20,000 in redress payments

Error Coram Nobis

“the error before us”

Peter Irons was doing research on the Japanese Americans and Supreme Court (1981).

FOIA request for classified documents showed that the government had suppressed evidence and presented information to the Supreme Court

Contained “lies” and “intentional falsehoods” regarding the necessity for military evacuation

Also discovered military files that showed the War Department destroyed or altered key material to Korematsu, Yasui, and Hirabayashi .

Righting Wrongs

Coram allows people who have been convicted to challenge that conviction once they have already served their sentence; Done only when the original trials had some “fundamental error”

Korematsu, Yasui, and Hirabayashi filed to have their cases reopened and convictions removed

Righting Wrongs (continued)

The three cases were retried at different times and venues; their convictions were overturned

None of the *coram nobis* cases reached the U.S. Supreme Court in the 1980s, but the original constitutional interpretation of EO 9066 - the **wartime cases – until recently was the law of the land.**

Righting Wrongs (continued)

1998 Fred Korematsu, awarded Presidential Medal of Freedom

1999 The City and County of Denver owns an office building named after Min Yasui

2009 - Korematsu Institute established

2011 "Fred Korematsu Day of Civil Liberties and the Constitution" established in California

2012 Gordon Hirabayashi awarded the Presidential Medal of Freedom (posthumously)

2015 Min Yasui awarded the Presidential Medal of Freedom (posthumously)

DOJ and Missing Footnote

2011- the U.S. Acting Solicitor General delivered the keynote speech marking Asian American and Pacific Islander Heritage Month.

- Justice Department's first public confession of its 1942-1944 ethics lapse(s).
- Cited the Hirabayashi and Korematsu cases as blots on the reputation of the Office of the Solicitor General
- Stated that SCOTUS explicitly considers as deserving of “special credence” when arguing cases
- “an important reminder” of the need for absolute candor in arguing the governments position on every case.

2014

Eleven lawyers, who had represented Korematsu, Hirabayashi, and Yasui (to nullify their convictions) sent a letter, to Solicitor General. The lawyers asked the Solicitor General to request the Supreme Court overrule its decisions on Korematsu, Hirabayashi and Yasui.

If the Solicitor General doesn't do this, they asked that the United States government "make clear" that the federal government "does not consider the internment decisions as valid precedent for governmental or military detention of individuals or groups without due process of law"

Trump v. Hawaii (2018)

Majority Opinion of the Supreme Court

“*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and – to be clear – has no place in law under the Constitution.”

C.J. John Roberts – June 26, 2018

Lessons Learned?

Inter arma silent leges (in time of war
the laws are silent)

Lincoln, Wilson, FDR, current wars
Could it happen again?

Thank You