

Primary Source Document Project: The Role of the Supreme Court in US History

A. Lesson Plan: ***Korematsu v United States (1944)***

- a. Essential guiding question: *Should / can constitutional rights be limited during wartime? To what extent?*
- b. At the end of this lesson, students will be able to:
 - i. *Explain context for anti-Japanese sentiment before and during World War II* (docs for teaching: Dr. Suess cartoons, "hunting license")
 - ii. *Identify justifications for internment in Executive Order 9066* (docs for teaching: Executive Order 9066)
 - iii. *Discuss reasons Supreme Court gives for limiting rights during World War II* (docs for teaching: excerpted decision for case)
 - iv. *Explain Korematsu's position* (docs for teaching: Amicus Curiae brief, Seattle Times Korematsu Obituary)
 - v. *Explain immediate implications of court decision on US home front during WWII* (docs for teaching: camp sign, letter from Manzanar, maps/pictures of camps)
 - vi. *Discuss what this decision could mean in future cases* (docs for teaching: SF Gate Korematsu article, dissent from case, contemporary Guantanamo cases)
- c. Suggested Primary Source Documents (attached)
 - i. Political Cartoon – "Waiting for the Signal from Home" (EE-M)
 - ii. Executive Order 9906 (CH)
 - iii. Letter from Poston, Arizona (CH)
 - iv. Camp Sign (CH)
 - v. Excerpted supreme court decision – opinion & dissent (EE-M)
 - vi. "Japanese Hunting License"
 - vii. Map of Internment camps

B. Student Assessment options: ***Korematsu v United States (1944)***

- a. Socratic seminar / scored discussion / debate answering essential guiding question (above)
- b. Essay options →
 - i. Question connecting Korematsu to other court cases – as precedent or as response (*Schenck, habeas corpus*, and/or current day Guantanamo cases, etc.)
 - ii. Document Based Question (DBQ) AP-style essay using included documents
- c. One-day activity → "Classifying arguments for either side" – see site below

Historical Overview, adapted from landmarkcases.org and ourdocuments.gov

Approximately 275,000 Japanese immigrated to Hawaii and the mainland United States between 1861 and 1940. Many settled on the West Coast and worked as contract laborers, farmers, fishermen, and small business owners. According to the national archives, “Japanese Americans controlled less than 4 percent of California’s farmland in 1940, but they produced more than 10 percent of the total value of the state’s farm resources.” This led to massive economic envy. Most Japanese Americans settled into ethnic neighborhoods because of discrimination by real estate agents and covenants. In *Ozawa v. U.S.* (1922) the Supreme Court upheld the government’s right to deny U.S. citizenship to Japanese immigrants. Popular opinion at the time suggested deep anti-Japanese sentiment as can be seen in the **Dr. Seuss cartoons**. When Japan attacked Pearl Harbor on December 7, 1941 economic jealousy as well as racism and distrust spilled over and many lobbying groups pressured Congress to exclude those of Japanese descent living in areas around the West Coast. Congress was unwilling to do this so instead President Franklin Roosevelt issued **Executive Order 9066** authorizing the U.S. Army to exclude both Issei (meaning “first generation” of Japanese in the U.S.) and Nisei (the second generation of Japanese in America – American citizens.)

Quickly, after Exec. Order 9066 was issued on February 19, 1942, close to 122,000 Japanese Americans (70,000 who were American Citizens) on the West Coast were ordered to register and evacuate to 10 Relocation Centers (commonly referred to as Internment Camps.) Many were housed in temporary facilities, most horse racing tracks, such as Tanforan and Santa Anita, until they were able to be transported to the Internment Camps. The government made no charges against them. Most lost homes, businesses and property as a result of the relocation. Many were drafted and served in the armed forces for the United States. The relocation centers were set up as communities with work, school, social activities, etc. One photo we include is taken either at Tanforan or a Relocation Center, it is unclear where, and lists the **rules** that must be followed in the center. The photo was taken circa 1942 by Jack Iwata, a Japanese American photographer. It was found as part of Calispheres images of the **War Relocation Authority (WRA)** records of the official documentation of camp life from 1942 – 46. Miss Breed, a Children’s Librarian in San Diego, CA, kept in touch with many of her Nisei students after they were relocated to internment camps, sending them letters, care packages and books. She also was a staunch advocate for the repeal of the evacuation order. Included is a **letter** from one of her students, Tetsuzo Hirasaki, who was relocated to Camp Poston, Arizona.

In upholding a flagrantly racist and discriminatory executive action during World War II, the 1944 case of **Korematsu v United States** is widely considered to be one of the grossest misjudgments in Supreme Court history and a blatant violation of the 5th and 14th Amendments. After Japanese-American citizen Fred Korematsu refused to leave the “West Coast war area” that was his home in 1942, he was convicted of violating Civilian Exclusion Order No. 34 and Executive Order 9906. Korematsu appealed his case twice on the grounds that these orders, which forcibly excluded all persons of Japanese descent from certain California “military areas,” were unconstitutional and denied him his basic due process rights as a loyal citizen of the United States. In a 6-3 decision, the Court upheld Korematsu’s conviction. The Court adopted a new test (strict scrutiny), holding that any law or order that discriminated on the basis of race or ethnicity could only be constitutional if it served an extremely important purpose for the government (referred to as a “compelling state interest”). However, the Court found that the Government had met its burden because discrimination against the Japanese in this case served the government’s military concerns about the possibility of Japanese spies. The Court went further to justify rounding up *all* persons of Japanese descent by claiming that it was too difficult to distinguish between “loyal” and “disloyal” citizens and that war is simply a time of hardship for all. Justice Black said this case was not about imprisonment or racial discrimination and was simply “excluding temporarily” those who were associated with the Japanese Empire, with whom we were at war. Justice Murphy disagreed wholesale and dissected every piece of the court’s opinion. What do you think?

Document One: Political Cartoon – “Waiting for the Signal from Home”

Theodor Seuss Geisel. “Waiting for the Signal from Home.” 1941. Cartoon.

<http://www.landmarkcases.org/korematsu/cartoon1.html> (accessed July 20, 2009)



Questions for students, some adapted from landmarkcases.org

1. What do you see in the cartoon? Make a list. Include objects, people, and any characteristics that seem to be exaggerated.
2. Which of the items on the list from Question 1 are symbols? What does each symbol stand for?
3. What is happening in the cartoon?
4. What is the cartoonist's message?
5. How does this message fit with or connect to what you already know about World War II and/or the Korematsu case?

Document Two: Executive Order 9066

Executive Order 9066: Resulting in the Relocation of Japanese. February 19, 1942.

<http://www.ourdocuments.gov/doc.php?flash=true&doc=74&page=transcript> (accessed July 20, 2009)

Transcript of Executive Order 9066: Resulting in the Relocation of Japanese (1942)

Executive Order No. 9066

The President

Executive Order

Authorizing the Secretary of War to Prescribe Military Areas

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 there from, 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.

Questions

1. What is the purpose of Executive Order 9066? How does FDR plan to achieve that purpose? Do you believe the ends justify the means? Explain.
2. This Executive Order was used to intern primarily Japanese-Americans; however, race is never mentioned. Who is given the power to make the determination of military areas and do you think Caucasians living in those areas would have been evacuated? Why or why not?
3. If this order only refers to one particular race what part of the Constitution would it violate? Explain.
4. Article II gives the president the role of Commander-in-Chief of the armed forces; does the threat of sabotage give him the right to incarcerate 122,000 Japanese Americans without charge? Explain.
5. Executive Order 9066 wasn't fully repealed until 1976 by President Ford. Since the order was vague how could have it been used again prior to that date? and Since then, had it not been repealed?

Document Three: Letter from Camp to Miss Breed

Tetsuzo Hirasaki. Letter to Miss Breed. November 16, 1942. Poston, Arizona.

<http://www.ourdocuments.gov/doc.php?flash=true&doc=74&page=transcript> (accessed July 20, 2009)

322-14-d
Poston, Arizona

November 16, 1942

Dear Miss Breed,

Guess who? Yup it's ole unreliable again, none other than yours truly, Tetsuzo. Gosh the wind's been blowing all night and all morning. Kinda threatening to blow the roofs down. Dust is all over the place. Gives everything a coating of fine dust.

The food has been all right except for quantity...The medical situation here is pitiful. For that matter in all three camps. The main and the only hospital is at Camp I 15 miles away. Here in Camp III there is one young doctor with not too much experience and one student doctor working in an emergency clinic. They are supposed to take care of approximately 5000 people!!!! and they (the Big shots) wonder why we squawk about inadequate medical attention.

No I haven't hiked to the river yet. I'd better do it soon cause there is going to be a fence around this camp!!!!!! 5 strands of barbed wire!!!!!!!!!! They say it's to keep the people out. . . . It's also to keep out cattle. Where in the cattle countries do they use 5 strands of barbed wire??

If they don't watch out there's going to be trouble. What do they think we are, fools?? At Santa Anita at the time of the riot the armored cars parked outside of the main gates, pointed the heavy machine guns inside and then the army had the gall to tell us that the purpose of that was to keep the white folks from coming in to mob the Japs. Same thing with the guards on the watch towers. They had their machineguns pointed at us to protect us from the outsiders, hah, hah, hah, [I'm] laughing yet.

I am sending you a few things in appreciation for what you have done for me as well as for my sister and all the rest.... Your name plate I made from mesquite as are also the lapel pins. However the dark pin is made from a pine knot from Santa Anita. The rest are all Poston Products.

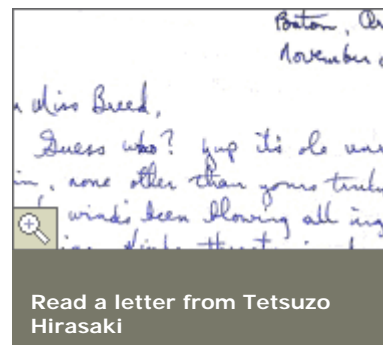
I've got to close now so that I can make the outgoing mail today.

Very truly yours,

Tetsuzo

P.S. Have a nice Thanksgiving dinner. TH

P.S. Do you think you could send me some Welch's peanut brittle? TH



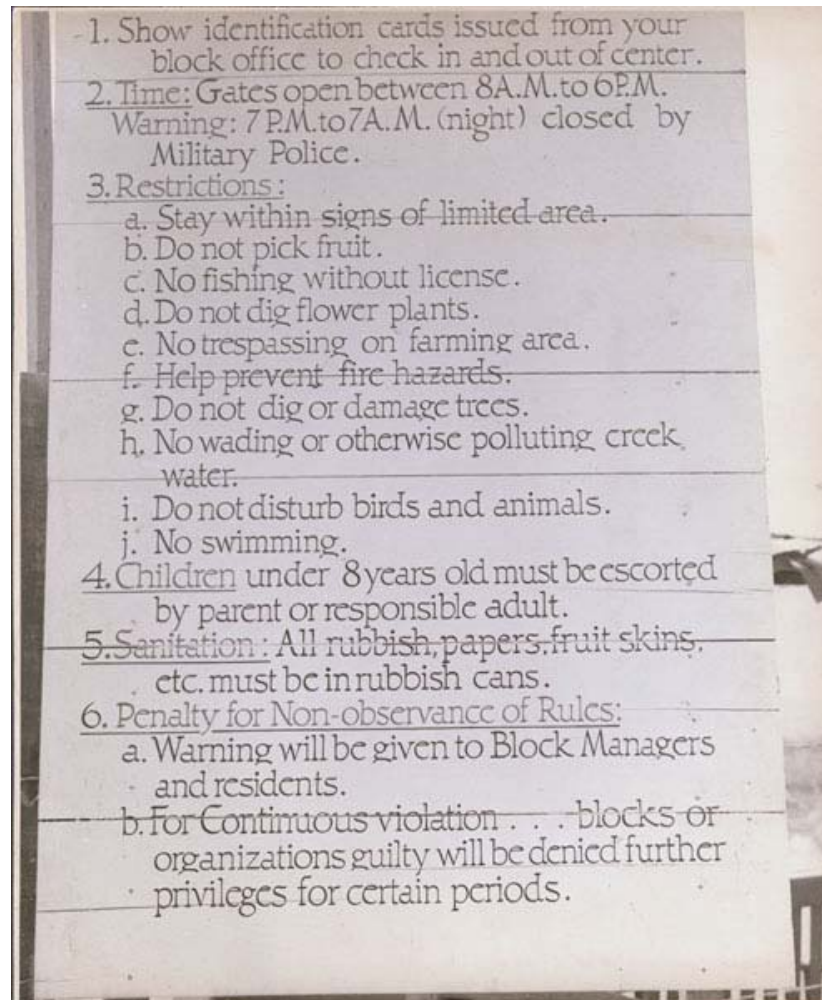
Questions

1. What is Tetsuzo's intent in writing to his friend, the librarian?
2. If you were the librarian, how would you respond to this letter? Draft a possible response.
3. How would you feel if you were interned in the same circumstances as Tetsuzo?
4. If they hadn't put up barbed wire around the camp yet, what in the letter hints at why people wouldn't just leave?
5. Was the government justified in treating American citizens this way? Why or why not.

Document Four: Photo – “Camp Sign”

Jack Iwata. “Camp Sign.” Circa 1942. Photo.

<http://content.cdlib.org/ark:/13030/tf4w1003x1/?brand=calisphere> (accessed July 20, 2009)



Courtesy of Japanese American National Museum (Los Angeles, Calif.)

Title:

Camp sign

Creator/Contributor:

Iwata, Jack, Japanese American, photographer

Date:

ca. 1942

Questions

1. Which of the restrictions do you find most offensive? Why?
2. If people were allowed to leave the camp during certain hours to work, why would they return?
3. In looking at this list of rules and the U.S. Constitution, what elements of the Constitution would you argue are violated by these requirements? Explain at least two Constitutional provisions.
4. With the exception of the rule concerning being allowed to leave the camp, this sign could have been posted at another location in the world in different circumstances. Give at least one location you can imagine this sign being posted and in comparing the events how does this make you feel about Japanese Internment?
5. What other information about life in the camps does this photo make you wonder about? What additional information do you need to get a clearer view of what life was like in the camps?

Document Five: Key Excerpts from the Majority & Dissenting Opinions

Korematsu v. the United States. [323 U.S. 214 \(1944\)](http://www.landmarkcases.org/korematsu/home.html). <http://www.landmarkcases.org/korematsu/home.html>. Web. (accessed July 21, 2009).

The decision was 6-3, and Mr. Justice Black delivered the opinion of the Court:

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a "Military Area," contrary to Civilian Exclusion Order No. 34 of the Commanding General of the Western Command, U.S. Army, which directed that after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to petitioner's loyalty to the United States. The Circuit Court of Appeals affirmed, and the importance of the constitutional question involved caused us to grant *certiorari*...

Exclusion Order No. 34, which the petitioner knowingly and admittedly violated, was one of a number of military orders and proclamations, all of which were substantially based upon Executive Order No. 9066, 7 Fed. Reg. 1407. That order, issued after we were at war with Japan, declared that "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 is the case with the exclusion order here, that prior curfew order was designed as a "protection against espionage and against sabotage." In *Hirabayashi v. United States*, we sustained a conviction obtained for violation of the curfew order. ... We upheld the curfew order as an exercise of the power of the government to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attack.

...Here, as in the *Hirabayashi* case, "... 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."

...The judgment that exclusion of the whole group was for the same reason a military imperative answers the contention that the exclusion was in the nature of group punishment based on antagonism to those of Japanese origin. That there were members of the group who retained loyalties to Japan has been confirmed by investigations made subsequent to the exclusion... There was evidence of disloyalty on the part of some, the military authorities considered that the need for action was great, and time was short. We cannot -- by availing ourselves of the calm perspective of hindsight -- now say that at that time these actions were unjustified.

...We uphold the exclusion order as of the time it was made and when the petitioner violated it. In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent

with our basic governmental institutions. But when under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.

Mr. Justice Murphy, dissenting:

This exclusion of "all persons of Japanese ancestry, both alien and non-alien," from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over "the very brink of constitutional power" and falls into the ugly abyss of racism.

In dealing with matters relating to the prosecution and progress of a war, we must accord great respect and consideration to the judgments of the military authorities who are on the scene and who have full knowledge of the military facts...

At the same time, however, it is essential that there be definite limits to military discretion, especially where martial law has not been declared. Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance nor support...

...Being an obvious racial discrimination, the order deprives all those within its scope of the equal protection of the laws as guaranteed by the Fifth Amendment. It further deprives these individuals of their constitutional rights to live and work where they will, to establish a home where they choose and to move about freely. In excommunicating them without benefit of hearings, this order also deprives them of all their constitutional rights to procedural due process. Yet no reasonable relation to an "immediate, imminent, and impending" public danger is evident to support this racial restriction which is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law.

... The main reasons relied upon by those responsible for the forced evacuation, therefore, do not prove a reasonable relation between the group characteristics of Japanese Americans and the dangers of invasion, sabotage and espionage. The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices -- the same people who have been among the foremost advocates of the evacuation...

Questions for students, some adapted from landmarkcases.org

1. What happened to Korematsu as a result of Executive Order 9906? How did this case get to the Supreme Court?
2. What does the U.S. Constitution say about the respective war powers of the president and Congress? Does the power of the president as "commander in chief" give him unlimited power to act in time of war?
3. How does the Supreme Court justify excluding those of Japanese ancestry from "the West Coast war area"? Cite at least two different arguments from the opinion. How convincing are these arguments?
4. How did the Supreme Court rule in the *Korematsu* case with regard to President Roosevelt's use of presidential power in wartime?
5. Why does Justice Murphy say this is a case of "obvious racial discrimination"? Give at least two different reasons / pieces of evidence that he provides.
6. How does Justice Murphy refute the claim "disloyalty" claim given in the majority opinion?

Document Six: Japanese Hunting License

"Japanese Hunting License." <http://clioweb.org/openseason/license2.html> (accessed July 20,2009)

**JAPANESE
HUNTING LICENSE**

Season Now Open—For the Duration
ISSUED: Dec. 7, 1941

FEE: Loyalty to American Ideals.
BOUNTY: Gratitude of 150,000,000
True Americans

This is to Certify That _____
IS ENTITLED TO HUNT THE JAPANESE BAT, and is hereby warned to exercise extreme
caution in approaching this savage beast: It is a vicious animal and strikes from behind
without warning.

This animal has the characteristics of a skunk in appearance and odor, but
has an appetite for women and children instead of small fowl. Look for the
yellow stripe down its back.

In shooting this stinkin' skunk, aim at its stomach, since it has lots of GUTS,
but no heart or brains.

Game Warden
Uncle Sam

Issued by
Clerk
Hari Kari

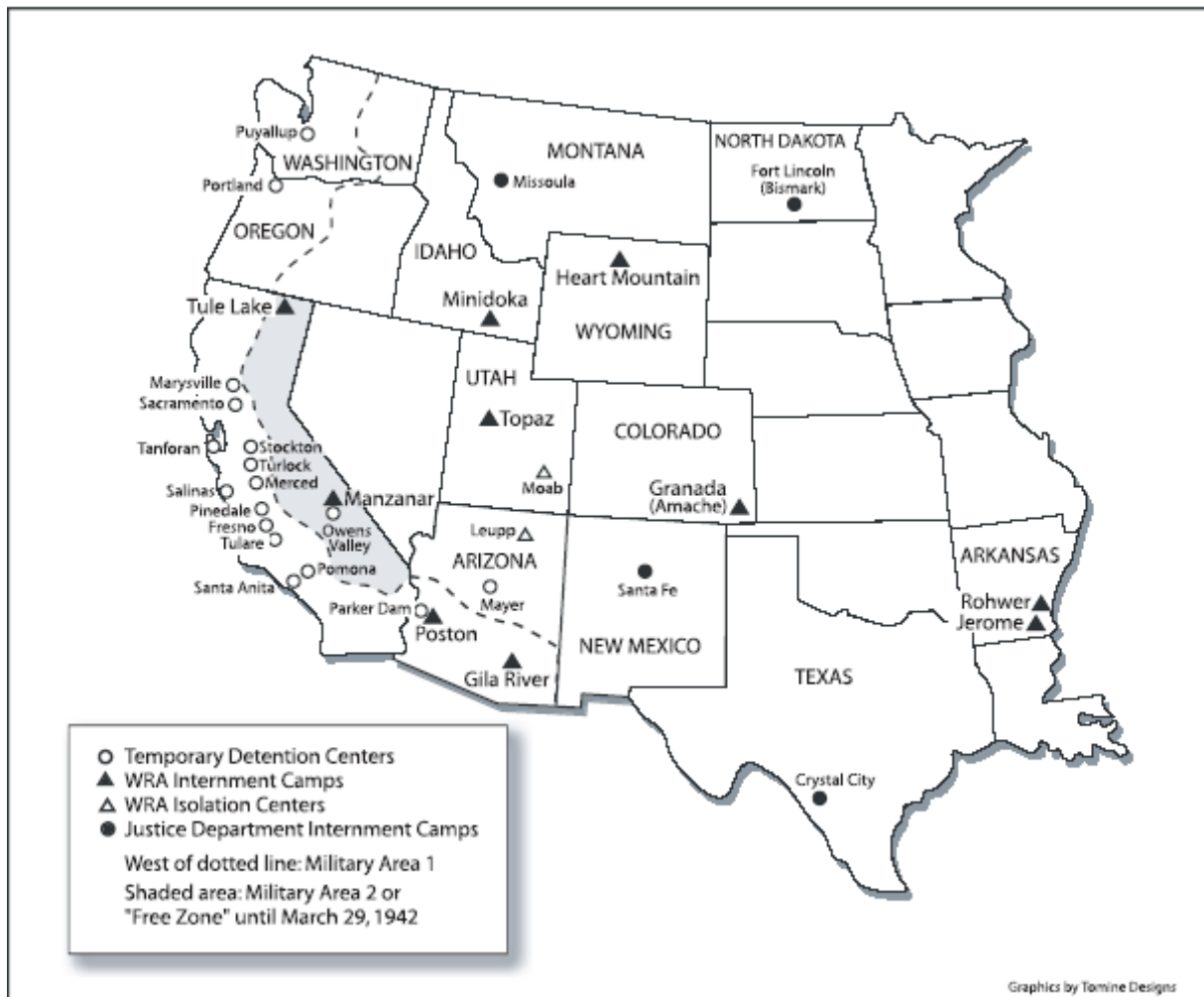
This license expires soon, we hope.

REMEMBER PEARL HARBOR.
KEEP 'EM DYING.

Document Seven: Map of Internment Camps

"Map of Interment Camps." <http://www.jacl.org/edu/MapofConcentrationCamps.pdf> (accessed July 20,2009)

Camp Location	Camp Population	Date Camp Opened
1. Amache, Colorado	7,318	August 27, 1942
2. Gila River, Arizona	13,348	July 20, 1942
3. Heart Mountain, Wyoming	10,767	August 12, 1942
4. Jerome, Arkansas	8,497	October 6, 1942
5. Manzanar, California	10,046	March 21, 1942
6. Minidoka, Idaho	9,397	August 10, 1942
7. Poston, Arizona	17,814	May 8, 1942
8. Rohwer, Arkansas	8,475	September 18, 1942
9. Topaz, Utah	8,130	September 11, 1942
10. Tule Lake, California	18,789	May 27, 1942



Other resources and ideas:

1. *Korematsu v U.S.* on Landmark Cases (especially look at the section called "Classifying Arguments for Each Side of the Case" → <http://www.landmarkcases.org/korematsu/home.html>)
2. 1940s newspaper articles on Internment → <http://www.sfmuseum.org/war/evactxt.html>
3. Anti-Japanese propaganda during WWII → <http://clioweb.org/openseason/animals.html>
4. Dr. Seuss political cartoons → <http://orpheus.ucsd.edu/speccoll/dspolitic/Frame.htm>
5. Japanese American Citizens League → <http://www.jacl.org/edu/scholar.htm> (see left for docs – thanks Marc!!)
6. 2004 SF Gate article by Korematsu on racism and due process during wartime → <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2004/09/16/EDGP28P0T11.DTL>
7. 2005 Korematsu obituary with his testimony → http://seattletimes.nwsource.com/cgi-bin/PrintStory.pl?document_id=2002226476&zsection_id=2002107549&slug=webkorematsuobit31&date=20050331
8. Korematsu Amicus Curiae brief → http://supreme.lp.findlaw.com/supreme_court/briefs/03-1027/03-1027.mer.ami.korematsu.pdf