Conversations on the Constitution:
The Importance of the Japanese Internment Cases with Justices Anthony M. Kennedy, Sandra Day O'Connor, and Stephen G. Breyer

Annenberg Classroom
Sunnylands Constitution Project
www.annenbergclassroom.org

Hirabayashi v. U.S. (1943)
Korematsu v. U.S. (1944)

Essential Question: Should the executive branch have the authority to deny individual rights and liberties during times of war, even if it is done in a discriminatory way?

Standards (Center for Civic Education)

II. What are the Foundations of the American Political System?
- a. American idea of constitutional government
- d. Basic values and principles

III. Purposes, Values, and Principles of American Democracy
- a. Distribution, sharing, and limits of power and responsibility
- b. Organization and functions of the national government
- d. Place of law in the American constitutional system

V. What are the Roles of the Citizen in American Democracy?
- b. Rights of citizens

Outcomes

As a result of this lesson, students will be able to:

- Know the facts and decisions of the *Hirabayashi* and *Korematsu* cases.
- Consider the impact of war-time pressures on governmental decision-making.
- Consider the extent to which the judicial and legislative branches should defer to the executive.
- Apply the concepts of discrimination and rigid scrutiny to contemporary scenarios.

Materials

- *A Conversation on the Constitution: The Importance of the Japanese-American Internment Cases with Justices Anthony M. Kennedy, Sandra Day O'Connor, and Stephen G. Breyer*

  Video also available online at **http://www.annenbergclassroom.org/page/japaneseinternment**

- Worksheets for each student

Preparing to Teach

- Read the Teacher Briefing provided
- Duplicate Handout 1 (one per student) and Handout 2 (if using extension activity)
- Set up online video

LESSON

Activating Prior Knowledge (5 minutes)

1. Pass out Handout 1.

2. Ask students to respond to each question in the section marked "Before Watching the Film." This will enable students to better appreciate the historical timeline pertinent to these cases.

Processing (35 minutes)

1. Begin the film.

2. The students can take a few notes where appropriate on the worksheet: *Hirabayashi, Korematsu, Brown*, and *Adarand*. There won't be time for involved notes; students should just jot down some information about the facts, the issue, and the Court's decision. Not all cases are discussed in equal detail. Students should write what they can.

3. At minute 12:00, pause the video briefly. Ask the students whether or not they feel this discrimination (curfew, relocation) was uniquely related to the war. Continue the film. It will indicate that there was a pattern of discrimination, for example, regarding property ownership, that predated World War II. Pause again. Ask them if this information changes their view. Should it have entered into the Court's opinion? Why didn't it?

Synthesizing (10 minutes)

1. When the film is completed, ask students to complete the section marked "After the Film." This will help them to anticipate the ruling of the Court in the future and to determine, after reading the excerpt from *Adarand*, what standard the Court should apply.

2. Discuss responses as time allows.

EXTENSION ACTIVITY (OPTIONAL)

Students will take the hypothetical facts they have already written (for question 2 in the "After the Film" section of Handout 1) and write their opinion as a justice of the Supreme Court. Students should give their decision in the hypothetical case and their rationale.

Assessment

Assess student progress toward outcomes by evaluating:

- Students' completion of "Before the Film" section on Handout 1.
- Students' comprehension of the *Hirabayashi, Korematsu,* and *Brown* cases.
- Students' answers in the "After the Film" section of Handout 1. Students' answers to question 5 should be consistent with the *Adarand* opinion presented in #4.
- Written opinions, if students are assigned the Extension Activity.

Additional Resources

- Street Law, Inc. and the Supreme Court Historical Society publish a collection of Landmark Supreme Court cases. Go to **www.landmarkcases.org** to see the *Korematsu v. U.S. and Brown v. Board of Education* cases analyzed.

- To find the opinion for *Hirabayashi v. U.S., Korematsu v. U.S., Brown v. Board of Education, Adarand Constructors v. Pena* and other Supreme Court cases, visit the Oyez Project (**www.oyez.org**) or the Cornell University Law School Legal Information Institute (**www.law.cornell.edu/supct/search/search.html**).

Credits: *A Conversation on the Constitution: The Importance of the Japanese-American Internment Cases with Justices Anthony M. Kennedy, Sandra Day O'Connor, and Stephen G. Breyer.* The Annenberg Foundation Trust at Sunnylands.
Created for the Annenberg Foundation Trust at Sunnylands Constitution Project by Street Law

HANDOUT 1

Conversations on the Constitution:
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Before Watching the Film

1. At what point in U.S. history do you think people became most concerned about abolishing discrimination based on race?

2. When was the Civil Rights movement?

3. Was that before or after World War II?

4. Do you think the President should have more power to limit rights during wartime than peacetime?

   What do you think the Framers of the Constitution thought?

   Should there be a limit on the President's power?

   Where should the line be drawn?

During the Film

Hirabayashi v. U.S. (1943) Facts: Issue: Decision:	*Korematsu v. U.S.* (1944) Facts: Issue: Decision: Facts: Issue: Decision:
Brown v. Board of Education (1954) Facts: Issue: Decision:	*Adarand Constructors v. Pena* (1995) Facts: Issue: Decision:

After the Film

1. Do you think the Supreme Court would reach the same decision in *Korematsu* today?

What did Justice O'Connor think?

Why didn't Justices Kennedy and Breyer give an opinion?

2. There will probably never be another situation identical to the facts in *Korematsu*, but there could be something similar that raises the same issue of racial discrimination during wartime. What could that case look like? Write the facts for that hypothetical case here:

3. If you were a judge on the Court, what information would you need to consider in that case? What questions would you ask?

4. Read this excerpt from the Court's decision in Adarand. Does it help you form your opinion?

> "Our action today makes explicit… : Federal racial classifications, like those of a State, must serve a compelling governmental interest, and must be narrowly tailored to further that interest. … We think that requiring strict scrutiny is the best way to ensure that courts will consistently give racial classifications that kind of detailed examination, both as to ends and as to means. *Korematsu* demonstrates vividly that even "the most rigid scrutiny" can sometimes fail to detect an illegitimate racial classification…. Any retreat from the most searching judicial inquiry can only increase the risk of another such error occurring in the future." *Adarand Constructors v. Pena* (1995).

5. Write a final statement of the standard you would apply in this case by completing the following: In times of war as defined as _____, the president may deny individual rights and liberties if he or she finds the following:

-
-
-
-

(Use as many bullet points as you think are appropriate.)

HANDOUT 2

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EXTENSION ACTIVITY

Consider the facts you wrote in question 2 in the "After the Film" section of Handout 1. Now, pretend you are a Supreme Court justice and decide the case using the questions and standard you outlined in questions 3 and 5. Write your opinion (your decision) and be sure to give your reasons: