

# Defining moments

from the past with lessons for a post-9/11 world...

## Constitutional Guarantees of Due Process

### Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

## **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, I 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 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.

# Supreme Court Cases

## Overview

There were four major court cases testing the constitutionality of the treatment of Japanese American citizens during World War II. Lawsuits concerning those cases were brought before the U.S. Supreme Court in 1943 and 1944. The justices who ruled on the cases were divided over the constitutional issues in question. At issue were both the curfew orders prohibiting persons of Japanese ancestry to move more than five miles from their usual place of residence and Executive Order 9066, which President Franklin D. Roosevelt issued, that set into motion the exclusion from certain areas and the evacuation of 120,000 people of Japanese ancestry living on the West Coast.

Lawsuits brought by Minoru Yasui, Gordon Hirabayashi and Fred Korematsu related to violations of the curfew and exclusion orders. Mitsuye Endo filed a writ of habeas corpus stating that regulations holding her in a relocation center were unconstitutional. Hirabayashi's and Yasui's convictions for curfew violations were upheld on appeal by the Supreme Court. Korematsu's conviction for violating exclusion laws was also upheld. In 1944, Endo's challenge to the internment order was successful.

In 1983, a legal team led by Sansei (third-generation Japanese American) attorneys filed a writ of coram nobis hoping to overturn the 1944 Supreme Court decisions. The coram nobis cases wanted to show that errors had occurred in Korematsu's case. The writ charged that evidence had been suppressed, altered, destroyed and concealed by the War Department and the Justice Department regarding the loyalty of Japanese Americans. Writs were filed later concerning the cases of Minoru Yasui and Gordon Hirabayashi. The petitions found that the Supreme Court decisions had been based on misrepresentations of facts and the deliberate suppression of evidence.

## Cases

### **Hirabayashi v. United States, (1943)**

Gordon Hirabayashi, a second generation Japanese American, was born and raised in Washington. When World War II broke out, Hirabayashi was a student in Seattle at the University of Washington. He was a Quaker and conscientious objector to military service. Hirabayashi disregarded the curfew laws that were enacted in the West Coast states for Japanese American citizens. He was tried and convicted on two counts and was sentenced to a work camp due to violating the curfew and not reporting to an evacuation center.

The U.S. Supreme Court upheld his convictions in 1943. In 1983, Hirabayashi tried to have his convictions overturned. A federal appeals court panel unanimously overturned both of his convictions on the grounds that they were racially discriminatory.

### **Yasui v. United States, (1943)**

Minoru Yasui was an American born citizen of Japanese ancestry. He was a graduate of the University of Oregon Law School, a U.S. Army reserve officer and an attorney. He violated the curfew orders purposefully on the grounds of racial discrimination. He served nine months in solitary confinement while awaiting trial. Yasui was tried and convicted for violating the curfew law. He appealed his case to the Supreme Court. The Court upheld the conviction.

In 1983, Yasui filed a writ of error coram nobis in the U.S. District Court of Oregon stating that the United States government had used inaccurate evidence against Japanese Americans. Minoru Yasui died in 1986 before action was taken in his case.

**Korematsu v. United States, (1944)**

Fred Korematsu was born in 1919 to a Japanese American family in Oakland, California. Korematsu tried to enlist in the United States Navy, but was denied because he was a Japanese American. After the start of World War II, he was dismissed from his job as a welder, also due to his ancestry. Korematsu ignored the evacuation orders given to West Coast Japanese Americans so that he could stay with his fiancée. He was arrested by the FBI and sent to jail. He was found guilty of violating the evacuation orders and put on five years probation and was sent to an assembly center.

The U.S. Supreme Court upheld his conviction in 1944 on the grounds of military necessity. The Court decided in a 6-3 vote with Justices Robert Jackson, Frank Murphy and Owen Roberts dissenting.

**Ex Parte Endo, (1944)**

Mitsuye Endo was an American citizen of Japanese descent who worked as a civil service stenographer in Sacramento, California. In 1942, she was dismissed from her job and ordered to go to a detention center. Her attorney filed a writ of habeas corpus on her behalf which is the Constitution's guarantee of a swift hearing in which specific accusations against the accused must be stated. Endo had been granted leave clearance by the War Relocation Authority (WRA), but military authorities would not allow her to re-enter the restricted zone. The Court decided that Endo, as a loyal American citizen, was being detained unconstitutionally and ordered her release.



### **Michigan Legal Milestone Murphy's Dissent**

A hostile climate confronted Americans of Japanese descent following the attack on Pearl Harbor that led to United States entry into World War II. Despite their loyalty and distinguished service in our armed forces, Japanese Americans were considered suspect simply because of their ancestry.

Against this backdrop of racial discrimination Harbor Beach native Frank Murphy, then a justice of the United States Supreme Court, spoke forcefully for the rights of all Americans by dissenting from a decision that upheld the exclusion from certain areas and forced internment of 112,000 persons of Japanese descent.

Fred Korematsu was a young Japanese American who was ordered by the military to leave his home and report to an internment camp. In 1944, a United States Supreme Court majority upheld his exclusion as a valid exercise of military authority.

In his dissent Justice Murphy condemned the majority's decision and rejected its reasoning. Justice Murphy wrote that the decision was nothing more than the "legalization of racism" and concluded, "Racial discrimination in any form 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."

In a belated apology, the U.S. Congress in 1988 voted to compensate those still alive who had been forced into internment camps during World War II.

Harbor Beach native Judge James Lincoln, a friend and colleague, said of Frank Murphy's dissent, "in the worst of times, he did the best of things."

Placed by the State Bar of Michigan, Huron County Bar Association and Asian American Bar Association, 1996.

*The Michigan Legal Milestone Program recognizes significant legal cases in Michigan's history and uses bronze plaques, placed at featured sites, to tell of the historical significance.*

### Michigan Legal Milestones

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1. **Ossian Sweet Trial** – In 1925 Dr. Sweet was arrested and charged with murder after a member of a white mob attacked his home was shot and killed. Clarence Darrow defended Dr. Sweet who was acquitted. Dedicated and placed inside the Frank Murphy Hall of Justice, on May 2, 1986, Detroit, MI.
2. **Baseball's Reserve Clause** – A 1914 decision in a Grand Rapids courtroom “bound a player to his team for as long as the team chose to keep him.” Dedicated and placed at the Grand Rapids Art Museum, 1986. Rededicated and placed outside on June 20, 1996 at Old Kent Park (West Michigan Whitecaps Minor League Baseball stadium), Grand Rapids, MI.
3. **Cooley Law Office** – The career of Thomas M. Cooley is recalled in this milestone. Dedicated and placed outside at Thomas M. Cooley's first law office on Maumee Street in Adrian, MI, 1986. Site is currently the home of WABJ-AM Radio.
4. **Roosevelt-Newett Libel Trial** – A much celebrated 1913 trial involving former President Theodore Roosevelt (he prevailed as plaintiff, but was awarded 10 cents in damages). Dedicated and placed at the Marquette County Courthouse in Marquette, MI in May of 1986.
5. **Justice William Fletcher** –The first chief justice of the Michigan Supreme Court. Dedicated and placed outside on the University of Michigan campus. Placed in Felch Park (intersection of Fletcher and Washington streets) in front of the Power Center for the Performing Arts, Ann Arbor, MI on September 9, 1987.
6. **Sojourner Truth** – Her life as a crusader for justice is recalled in the city she called home. Dedicated and placed at the Battle Creek Hall of Justice in 1987. Rededicated inside at the First United Methodist Church, Battle Creek, MI. Placed at the Calhoun County Justice Center, Battle Creek, MI on May 29, 1997.
7. **Augustus Woodward** – Brilliant but eccentric, the first chief justice of the Michigan territorial court is recalled at the site of his law office. Dedicated and placed inside in the Millender Center Atrium of the Omni Hotel (by the “up” escalator), corner of Randolph and Jefferson streets, Detroit, MI on May 3, 1988.
8. **Public Access to Public Water** – Legal affirmation of the public's right to the recreational use of rivers and streams began with a trout fishing trip on the Pine River in 1925. Dedicated and placed outside on June 7, 1988 at the Peterson Bridge Landing's canoe access (at the intersection of M-37 and M-55) along the Pine River – West of Cadillac, MI.
9. **Ten Hours or No Sawdust** – Michigan's largest labor strike of the 19<sup>th</sup> century, although unsuccessful, paved the way for later workers' rights legislation. Dedicated and placed outside in Morley Plaza, Saginaw, MI on August 31, 1988.
10. **1961-62 Constitutional Convention** – The Michigan Constitution we live under today was written at the Lansing Civic Arena. Dedicated and placed inside the Lansing Civic Arena (corner of Walnut and Washtenaw streets) on May 1, 1989, Lansing, MI.

11. **Eva Belles' Vote** – An early but important victory for women's suffrage was won in Flint. Dedicated and placed inside the lobby at the Genesee County Courthouse, Flint, MI on July 11, 1990.
12. **One Person, One Vote** – In one of the famous U.S. Supreme Court redistricting cases of the early 1960s, labor leader Gus Scholle assured that rapidly growing Oakland County would have proportional representation. Dedicated and placed outside the Oakland County Courthouse's South Plaza in Pontiac, MI on August 29, 1990.
13. **Improving Justice** – The idea for the American Judicature Society was born in Manistee during a boat ride on Lake Michigan shared by founder Herbert Harley and benefactor Charles Ruggles on a hot summer day. Dedicated and placed on a boulder in a corner of the Manistee City Marina on River Street in downtown Manistee, MI on May 30, 1991.
14. **The King's Grant** – One of the most celebrated cases of the 19<sup>th</sup> century involving a dispute over land granted by French King Louis XV in 1750. Dedicated and placed at Brady Park (along Water St.) at the site of Fort Brady and Fort Repentigny in Sault Ste. Marie, MI, July 16, 1991.
15. **The Uninvited Ear** – Judge Damon Keith's decision in a 1971 case upheld the right of Americans to be free from unreasonable government intrusion. Dedicated and placed inside the Penobscot Building on December 18, 1991, Detroit, MI.
16. **Laughing Whitefish** – The Michigan Supreme Court in 1889 recognized the legal validity of Native American tribal laws and customs. Dedicated and placed at Michigan Iron Industry Museum, Negaunee, MI on August 25, 1992.
17. **Protecting the Impaired** – An act of the Michigan legislature providing for forced sterilization of the mentally impaired was held unconstitutional by the Michigan Supreme Court. Dedicated and placed outside at the Old Lapeer County Courthouse on April 29, 1993.
18. **Rose of Aberlone** – The classic contracts case involving Hiram Walker & Sons, Rose the cow, and the principle of rescission based on mutual mistake. Dedicated and placed outside in Kellogg Park, Plymouth, MI, September 1993.
19. **Emelia Schaub** – Michigan's first woman elected prosecutor. The first woman in the United States to successfully defend a murder trial. And the woman responsible to a great degree for protecting the rights and tribal existence of Native Americans in northwest Michigan. Dedicated and placed outside at the Leelanau County Courthouse, Leland, MI on May 26, 1994.
20. **Mount Clemens Pottery** – Michigan's Justice Frank Murphy in 1946 authored an important labor law decision of the United States Supreme Court interpreting the Fair Labor Standards Act arising out of a case involving employee working time. Dedicated on September 1, 1994 at the Riverfront Gazebo by the Municipal Building, Mt. Clemens, MI. Placed at the Macomb County courthouse in Mt. Clemens, MI. (Along the wall by the statue of General Clemens).
21. **Pond's Defense** – Michigan Supreme Court Justice James Campbell authored an important decision about self-defense and defense of others in 1860 in Pond v. People, and overturned a lower court decision finding Augustus Pond, an Upper Peninsula fisherman, guilty of manslaughter. Dedicated and placed outside City Hall, Mackinac Island, MI on June 10, 1995.

22. **Ending Jim Crow** – Keith’s Theatre in Grand Rapids discriminated against patrons on the basis of race (Jim Crow), but that practice was found to violate Michigan’s Constitution by the Michigan Supreme Court in a major civil rights decision. Dedicated outside on September 8, 1995 in the Old Kent Bank Plaza, downtown Grand Rapids. Placed in the wall along the street beneath the Old Kent Bank clock tower, Grand Rapids, MI.
23. **Conveying Michigan** – Much of the land in southwest Michigan was conveyed out of the White Pigeon Land Office, built in 1831 and still standing. Dedicated on April 30, 1996 and placed inside the land office (on south side of US-12) in downtown White Pigeon, MI. The building is now a museum operated by the St. Joseph County Historical Society.
24. **Murphy’s Dissent** – Michigan’s U.S. Supreme Court Justice Frank Murphy wrote an impassioned dissent in Korematsu, protesting the decision to uphold exclusion orders imposed upon persons of Japanese descent during World War II. Dedicated and placed in front of the Frank Murphy home, Harbor Beach, MI, August 16, 1996.
25. **Striking Racial Covenants** – The United States Supreme Court rejected racial restrictive covenants that would have prevented Orsel and Minnie McGhee and their family from living where they chose to in Detroit. Dedicated inside on August 12, 1997 and placed outside the Museum of African American History, Detroit, MI.
26. **Milo Radulovich and the Fall of McCarthyism** – In 1953, two Michigan attorneys, the Hon. Kenneth N. Sanborn and Charles C. Lockwood assisted Milo Radulovich, a resident of Dexter Michigan at the time, in his fight against the United States Air Force. The Air Force attempted to strip Mr. Radulovich of his treasured commission for associating with his allegedly subversive father and sister. Taking the case *pro bono*, his attorneys prevailed and the Air Force reinstated Mr. Radulovich’s commission. Dedicated and placed outside at the Detroit College of Law at Michigan State University Building, East Lansing, MI, September 2, 1998.
27. **Judge Henry Hart’s No Passing Zone Pennants ‘Committee of One’** –Retired 75<sup>th</sup> District Court Judge Hart of Midland set a personal goal to improve highway safety in Michigan and led a “one-man campaign” for the uniform placement of yellow “No Passing Zone” signs on the left side of Michigan roads. The signs, shaped in the form of a pennant, have served to decrease the number of traffic accidents in no passing zones and is credited with saving thousands of lives in Michigan. Dedicated May 24, 1999 at the Midland County Courthouse in Midland, MI. The permanent plaque will be displayed in the lobby of the courthouse.
28. **Mary Coleman: Pioneer, Advocate, Woman**—Mary Coleman, the first female Michigan Supreme Court Justice and Chief Justice, made a lasting impact on Michigan’s judicial system. Her success in the profession, her devotion to juvenile justice issues, and her work on the advancement of court reorganization are just a few examples of this remarkable woman’s accomplishments. Dedicated October 20, 2000 at the McCamly Plaza Hotel in Battle Creek, MI. The permanent plaque will be displayed at the Battle Creek courthouse.

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