***Korematsu v. U.S.* (1944)**

After Pearl Harbor was bombed in December 1941, the American military became concerned about an attack from the Japanese on the mainland of the United States.  There were many people of Japanese descent living on the West Coast at the time and the American government was worried that they might help the enemy, Japan.

At the time there was no proven case of espionage or sabotage on the part of Japanese or Japanese Americans in the United States.  Still, in February 1942, General DeWitt, the commanding officer of the Western Defense Command, recommended that “Japanese and other subversive persons” be removed from the West Coast.  President Franklin D. Roosevelt soon signed Executive order 9066, which allowed military authorities to enact curfews, forbid people from certain areas, and to move them to new areas.  Congress then passed a law imposing penalties for people who ignored these orders.  Many Japanese and Japanese Americans on the West Coast were moved to camps farther inland.  This was called internment.  Japanese Americans were forced to sell their homes and personal belongings and to move to the camps.  They were required to live in very basic camps or barracks, many of which did not having running water or cooking facilities.

Fred Korematsu was a U.S. citizen.  He was born in America of Japanese parents.  He tried to serve in the United States military, but was rejected for health reasons.  Later, he worked in a shipyard.  When the Japanese internment began in California, Korematsu moved to another town.  He also had some facial surgery and claimed to be Mexican-American.  He was later arrested and convicted of violating an order that banned people of Japanese descent from the area of San Leandro, California, which had a large military facility.

Korematsu challenged his conviction in the courts.  He said that Congress, the President, and the military authorities did not have the power to issue the relocation orders.  He also said that because the order only applied to people of Japanese descent, the government was discriminating against him on the basis of race.

The government argued that the evacuation of all Japanese Americans was necessary to protect the country because there was evidence that some were working for the Japanese government.  The government said that because there was no way to tell who was loyal and who was not, it had to treat all people with Japanese ancestors as though they were disloyal.

The federal appeals court agreed with the government.  Korematsu appealed this decision and the case came before the U.S. Supreme Court.

In a 6-3 opinion, the Supreme Court ruled in favor of the United States.  The majority concluded that the President and Congress did not act outside of their constitutional authority, and that the exclusion order did not violate the Fourteenth Amendment.  Because the exclusion order was issued during wartime, the Court gave great deference to the judgment of military authorities, Congress, and the President, all of whom deemed the measure necessary.  The justices concluded that the Court “[could] not say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons … constituted a menace to the national defense and safety.”  According to this reasoning, the power of Congress and the President are greatly expanded during wartime, in which “the power to protect must be commensurate with the threatened danger.”

The Court decided that the exclusion order did not violate the equal protection clause of the Fourteenth Amendment.  Even though the exclusion order only targeted a specific racial group, it was not based on hostility towards those of Japanese ancestry.  Rather, it was because military authorities did not have the time or resources to efficiently separate those who were disloyal from those who were loyal that all people of Japanese ancestry as a group were subject to the exclusion order.  If the exclusion order had been based solely on racial prejudice, however, it would be unquestionably unconstitutional.

Justice Murphy wrote a strongly worded dissent.  There was no evidence proving that people of Japanese ancestry living on the West Coast were a threat to the safety of the United States.  Instead, the decision to force them into internment camps was based on “an accumulation of much of the misinformation, half-truths and insinuations” that had long been the source of racial prejudice against Japanese Americans.  He compared the exclusion order to the “abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy,” and concluded that the exclusion order violated the Fourteenth Amendment by “fall[ing] into the ugly abyss of racism.”

***U.S. v. Nixon* (1974)**

In 1972, five burglars were caught breaking into the Democratic National Headquarters in the Watergate Hotel in Washington, D.C. Among other activities, the Democratic National Headquarters was responsible for raising money for and coordinating campaigns for Democratic candidates, including the presidential candidate. Media and government investigations discovered that the burglars were connected to the White House, which at the time was occupied by President Richard Nixon, a Republican. In addition, these investigations revealed that the president and his aides probably had abused their power in other ways as well.

Congress held hearings on the scandal to investigate wrongdoing by the president and his aides. During those hearings, the public discovered that President Nixon had installed a tape recorder in the Oval Office. These tape recordings probably had conversations between the president and his aides that could support some of the accusations against them. The special prosecutor in charge of the case wanted to hear these tapes, but President Nixon did not want to give them up. President Nixon even had the special prosecutor removed from his job to stop him from obtaining the tapes. However, the next special prosecutor also requested them. This time a federal court judge ruled that the president had to hand over the tape recordings.

In response, the president released edited transcripts and shortened versions of the tapes, but these were not good enough to meet the court order. The special prosecutor again challenged the president in the United States District Court. The District Court again ruled against the president and ordered him to give up the complete tapes. When the president appealed the District Court's ruling to the United States Circuit Court of Appeals, the special prosecutor asked the United States Supreme Court to step in and settle the dispute. The Supreme Court agreed to hear the case.

Before the Supreme Court, Nixon's lawyers argued that the courts could not hear the case because it was a dispute within the executive branch over which the courts had no power or jurisdiction. They also argued that the tapes should be protected by the president's executive privilege. Executive privilege means that the communication between the president and his aides has a certain level of confidentiality. While it is not a right specifically given to the president in the Constitution, it is based on the constitutional separation of powers. Executive privilege reflects the belief that those in the executive branch should be able to communicate with the president, sharing their ideas without concern that their opinions will become the knowledge of the other branches of the government or the public. Having this freedom encourages advisors to be as honest and forthcoming as possible, which helps the president to make an informed decision. This is particularly important in matters of national defense. President Nixon's lawyers argued that only the president should be able to decide when his communications with his aides can be revealed to the public or other branches of the government.

The Department of Justice, representing the people of the United States argued, however, that executive privilege was not absolute. In this case, those normally confidential communications were very important for a criminal case. If only the president had the power to decide when his communications could be revealed to the public, then he could cover up information about illegal activities and this would be dangerous for the legal system and the rule of law.

In a unanimous decision, the Court ruled in favor of the United States and against President Nixon.  Chief Justice Burger, wrote the opinion for the Court, which concluded that presidents do enjoy a constitutionally protected executive privilege, but that the privilege was not absolute.  The Court decided that in this case, the President’s interest in keeping his communications secret was outweighed by the interests of the judiciary in providing a fair trial with full factual disclosure.

The case raised a constitutional question, and therefore clearly fell within the functions of the judicial branch as interpreter of the Constitution.  To support this ruling, the justices cited the Court’s decision in Marbury v. Madison, in which the Court declared that “it is the province and duty of the judicial department to say what the law is.”

The justices further stated that there would be cases in which the president’s need for confidentiality would outweigh the interests of the judicial branch, such as when the secret communication involved “military, diplomatic or sensitive national security secrets.”