Informational Text Analysis Task #1

In this task you will read a brief introduction to the *Korematsu v. United States* Supreme Court Case. You will then analyze an excerpt of the majority opinion by Justice Hugo Black and an excerpt of the dissenting opinion by Justice Robert Murphy. As you read these texts, you will gather information and answer questions to help you compare and contrast how the two opinions address the case. At the end of the task, you will be asked to write an analytical essay.

Introduction to the *Korematsu v. United States* Supreme Court Case

During World War II, when the United States was at war with Japan, President Franklin Roosevelt issued Executive Order 9066. This order gave the U.S. military the power to exclude U.S. citizens of Japanese descent from areas of the country believed to be critical to national defense and potentially vulnerable to espionage, or spying. Using the power of Executive Order 9066, the U.S. military then issued a series of its own orders, including Civilian Exclusion Order No. 34, that banned all persons of Japanese ancestry from an area on the west coast of the United States stretching from Washington State through California.

The military orders like Exclusion Order No. 34 forced Japanese Americans to leave their homes and businesses on the west coast and relocate to internment camps. All citizens of Japanese descent were expected to submit to relocation and to remain in the camps until the end of the war.

Fred Korematsu, an American-born citizen of Japanese descent, defied Exclusion Order No. 34 and refused to leave his home in California. In 1942, Korematsu was convicted in federal court for failing to report for relocation to an internment camp. He appealed the federal court conviction and his case reached the Supreme Court in 1944.

The Supreme Court, in a 6-3 majority, agreed with the earlier federal court ruling and upheld Korematsu's conviction.

Justice Black wrote the opinion for the majority of the court. Justice Murphy wrote one of the three dissenting opinions.

The majority opinion of the court, written by Justice Hugo Black

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in . . . a "Military Area," contrary to Civilian Exclusion Order No. 34 . . . which directed that after May 9, 1942 all persons of Japanese ancestry should be excluded from that area. No question was raised as to the petitioner's loyalty to the United States.

It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

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. That order, issued after we were at war with Japan declared that "the successful prosecution of the war requires every possible protection against espionage[1] and against sabotage[2]. . . ."

. . . we are unable to conclude that it was beyond power of Congress and the executive to exclude those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one's home is located is a far greater deprivation than [curfew]. Nothing short of . . . the gravest imminent danger to the public safety can constitutionally justify either. But exclusion from a threatened area . . . has a definite and close relationship to the prevention of espionage and sabotage. The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion.

Exclusion of those of Japanese origin [from prescribed West Coast military areas] was deemed necessary because of the presence of an unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to this country. It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order [in the *Hirabayashi case*] as applying to the whole group. In the instant case, temporary exclusion of the entire group was rested by the military on the same ground.

We uphold the exclusion order as of the time it was made and when the petitioner violated it. 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.

To case this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted

---

[1] *espionage:* spying

[2] *sabotage:* damage, disruption, or obstruction, especially for political or military advantage

military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and, finally, because Congress, reposing its confidence in this time of war in our military leaders -- as inevitably it must -- determined that they should have the power to do just this. 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.

Affirmed.

Briefly answer each of the following questions about Justice Black's majority opinion in the space provided.

1. What point is Justice Black making in paragraph two? Use textual evidence from the passage to support your answer.

2. What is the meaning of "commensurate" as it is used in the last line of the sixth paragraph? Use textual evidence from the passage to support your answer.

3. What is the central argument that Justice Black makes to support the government's power to relocate Japanese Americans during war? Use textual evidence from the passage to support your answer.

A dissenting opinion, written by Justice Frank Murphy

This exclusion of "all persons of Japanese ancestry, both alien[1] and non-alien[2]," 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.

The judicial test of whether the Government, on a plea of military necessity, can validly deprive an individual of any of his constitutional rights is whether the deprivation is reasonably related to a public danger that is so "immediate, imminent, and impending" as not to admit of delay and not to permit the intervention of ordinary constitutional processes to alleviate the danger. Civilian Exclusion Order No. 34, banishing from a prescribed area of the Pacific Coast "all persons of Japanese ancestry, both alien and non-alien," clearly does not meet that test. 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[3]. Yet no reasonable relation to an "immediate, imminent, and impending" public danger is evident to support the 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. A military judgment based upon such racial and sociological considerations is not entitled to the great weight ordinarily given the judgments based upon strictly military considerations.

I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life.

---

[1] *alien:* a resident without U.S. citizenship
[2] *non-alien:* U.S. citizen
[3] *procedural due process:* an established course for judicial proceedings designed to safeguard the legal rights of the individual

Briefly answer each of the following questions about Justice Murphy's dissenting opinion in the space provided.

1. In the third paragraph, Justice Murphy writes, "... it is essential that there be definite limits to military discretion..." What does "discretion" mean as it is used in the third paragraph? Use textual evidence from the passage to support your answer.

2. What point does Justice Murphy make in the second paragraph? Use textual evidence from the passage to support your answer.

3. What is the central point that Justice Murphy makes to argue against the right of the government to relocate Japanese Americans during the war? Use textual evidence from the passage to support your answer.

Essay

Use what you have learned from reading the majority opinion of the court written by Justice Black and a minority opinion written by Justice Murphy to write an essay that compares and contrasts how both texts address the Korematsu case. Analyze how the texts agree and disagree on the right of the government to relocate Americans of Japanese descent during a time of war.

Develop your essay by providing textual evidence from both texts. Be sure to follow the conventions of standard English.

Submit your typed essay response to Turnitin.com no later than 7:05 AM Feb. 28th.