

## CONSTITUTION DAY – SEPTEMBER 17

### Classroom Activity

#### Purpose

The goal of this activity is to introduce 8th grade students to the Fourteenth Amendment of the U. S. Constitution (equal protection under the law).

#### Format

- 10-15 minute interactive (Socratic style) lecture about the Fourteenth Amendment
- Review case of *Fred K. v Midwestia*
- Students do the exercise
- Students role play a press conference

#### Materials Needed:

- Power Point (on thumb drive or email to your teacher ahead of time)
- Group Assignments

### **Interactive Lecture (10-15 minutes)**

- Introduce yourself and spend a couple of minutes telling the students what kind of law you practice.
- Make your lecture interactive by asking the students if they know some of the following information:
  - The U.S. Constitution was created on September 17, 1787 and ratified on June 21, 1788 in Boston, Massachusetts
    - was drafted by America's founders as the fundamental law of the nation
    - was intended to organize the government and define the rights and responsibilities of citizens and elected representatives
    - guarantees justice and equality and under the law for all Americans
    - James Madison drafted the Bill of Rights (the first 10 amendments) in 1789 and they were adopted in 1791.
  - The 14<sup>th</sup> Amendment states:

***“[N]o state shall make or enforce any law . . . which shall deprive any person of life, liberty, or property ... nor deny to any person within its jurisdiction the equal protection of the laws.”***
  - The Fourteenth Amendment guarantees the right to equal protection under the law.
  - The amendment restricts the government; not private individuals/groups
  - What are some examples of characteristics of people that has resulted in disparate (unequal) treatment by the government?
    - race;
    - ethnicity;
    - gender;
    - citizenship
    - residency

- “Individual right to equal treatment” must be balanced against the President’s Constitutional duty to protect the security of the country as a whole.

- Article II, Sections 2 & 3 of the Constitution state:

***“The President shall be Commander in Chief of the Army and Navy of the United States, and the militia of the several states when they are called into the service of the United States . . . and [the President] shall take care that the laws be faithfully executed.”***

- Meaning of Sections 2 & 3:

- states the basic mission of the executive branch to enforce the law;
- justifies the President taking sweeping action to carry out the law;
- permits the President (Commander in Chief) to issue Executive Orders having the force of law - until Congress passes conflicting law or court rescinds the Order

## *Fred K. v Midwestia*

Midwestia is a beautiful country, rich in resources and populated by people who emigrated from other countries over many generations. Midwestern citizens treat one another as equals under their Constitution and other laws. They elect their leaders through a democratic process. The majority of the citizens are grateful for the freedoms they enjoy and their “enlightened” way of life.

Midwestians hail from many cultural backgrounds that they proudly and openly honor in their free country. The vast majority of citizens are descendants of Wolverines or Spartans, but some are of Hawkeye descent. Others have Boiler Maker blood from 100 years ago. Still others are descended of the Gophers and the Wild Cats.

About 200,000 Midwestians come from descendants of Badgers who once lived in the Badger nation to the north.

Since arriving in Midwestia 200 years ago, Midwestians managed to put aside deep cultural rivalries and live together in peace and harmony until three months ago, when Midwestia was viciously attacked by the Badger nation to the north. It was a surprise attack, and many Midwestians were brutally killed. The Badgers are powerful and have vowed to continue their maniacal destruction of Midwestia. Midwestern government does not know yet whether the attack was an “inside job” or whether it emanated from the Badger nation to the north.

Citizens of Midwestia are shocked, angry and frightened. They believe that all they have worked for is at risk, and their own family’s lives are in danger.

Midwestia’s President declared war immediately and instructed the military to attack the Badger nation with all possible force.

Midwestians have become increasingly suspicious of their friends, neighbors and classmates whose ancestors hail from the Badger nation. They fear these people will be sympathetic to the Badger nation and become traitors. They are even worried that some of them might have had something to do with the attack.

Meanwhile, many Badger-Midwestians feel like everyone is watching them and suspecting them when they have done nothing to deserve it except have a great grandparent from another land that happens to be attacking their own country.

In the midst of the increasing fear and suspicion of Badger-Midwestians, the President signed Executive Order "Operation Safe" requiring all 200,000 Midwestians of Badger heritage to voluntarily relocate to military camps where they will be confined and watched until the conflict with the Badgers ends. Military officials are ordered to arrest any citizen of Badger heritage who does not voluntarily move to the camps.

Fred K. was born in Midwestia. His parents moved to Midwestia from the Badger nation as children. Fred is 35 years old and works in a bicycle factory in Midwestia's largest industrial city. Fred decided he would not willingly go to a military camp as ordered by the President because he is not a traitor and needs to work in order to provide food for his wife, who is of Wolverine descent, and his children, who are part Badger and part Wolverine.

Fred was arrested last week and put in jail because of his refusal to go to the military camp. He and his part-Badger children will be moved to a nearby camp soon against his will.

Fred's Wolverine wife has notified the Midwestern Constitutional Rights Organization (MCRO), a non-profit agency staffed by recent graduates of Midwestia Law School and charged with protecting the citizens' rights under the Midwestia Constitution, about Fred's plight.

MCRO has agreed to represent Fred in a lawsuit against the Midwestern government to release him under the 14<sup>th</sup> amendment of Midwestia's Constitution. MCRO will argue that Fred has been unfairly discriminated against and denied equal protection under the law guaranteed by the 14<sup>th</sup> Amendment.

Everyone in Midwestia is talking about the case and expressing conflicting opinions. The National Press Association is convening a panel discussion this evening at 9:00 p.m. It will be broadcast to the entire nation and all regular programming will be pre-empted.

The President of Midwestia and key members of Congress will be watching and listening. Members of each group below will participate in the panel discussion:

1. Midwestia Constitutional Rights Organization (MCRO)
2. Congressional Public Policy Committee on National Security

3. National Association for the Advancement of Badger-Midwestians
4. Midwestia Military and Defense Department Task Force

You will divide into these 4 groups to prepare for the press conference, and designate one student/group to sit on the panel, but first, you need to know the LAW.

## Midwestian Law

Article 5, Section 1 of the Midwestia Constitution states:

*“No person within Midwestia shall be denied equal protection of the law.”*

What does “equal protection of the law mean”?

The Midwestia Supreme Court defined “equal protection of the law” in *Blue v Board of Education*:

*Equal protection of the law means that our nation’s laws must treat all persons equally unless there is some very important reason to treat people differently. If the government wants to treat some people differently because of the ancestors came from a particular place, then the government must prove two things:*

*a. First, the government must prove that there is an ‘extremely important purpose’ for treating some people differently than others.*

*b. Second, the government must prove that no other way to achieve this extremely important purpose exists that is ‘less restrictive of freedom.’*

*c. If we look at all of the facts in a particular situation and conclude that the government has failed to prove either one of these things, then the government’s action is unconstitutional.*

Article 2, Section 3 of the Midwestia Constitution states:

*“The President shall be the chief officer in charge of protecting the national security of Midwestia.”*

The Midwestia Supreme Court said in *Bin Lawless v U.S.*

*When the President is acting to protect national security, the President has the authority to issue Executive Orders. ... Whether Executive Orders comply with the Midwestia Constitution is a question for the Supreme Court to decide.*

Midwestia Constitutional Rights Organization (MCRO)

Using the Midwestia Constitution, give three legal arguments in support of Fred K.'s decision not to voluntarily move to a military camp:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

How will you respond to criticism that in a time of extreme crisis, the President's Executive Order is necessary for the security of the nation?

\_\_\_\_\_



Congressional Public Policy Committee on National Security

Using the Midwestia Constitution to justify your decisions, give 3 legal arguments supporting the President's decision to remove Badger-Midwestians to military camps:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

How will you respond to criticism that Badger-Midwestians are being singled out for unfair treatment?

\_\_\_\_\_

National Association for the Advancement of Badger-Midwestians

Prepare a statement to read at the press conference explaining why the President is unfairly discriminating against Midwestians of Badger descent, including:

1. the impact of the President's decision on Fred's basic rights

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2. the impact of the President's decision on Fred's family and customers

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3. the impact of the President's decision on Midwestern society as we know it

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Midwestia Military and Defense Department Task Force

It is your job to explain to the public during the press conference the role of the military under the President's Executive Order – it is your job to reassure Midwesterners that you are acting in the nation's best interests. Tell the people:

1. How will the military remove Badger-Midwesterners to the camps?

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2. What will the military do if Badger-Midwesterners refuse to go voluntarily?

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3. How will the military identify Badger-Midwesterners for removal?

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4. What is the status of Badger-Midwesterners currently on active duty in the Midwestia military?

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## Guide to Student Discussions for Presenters

1. The MCRO's main legal argument against Executive Order "Operation Safe" is that Fred is a Midwestia citizen, and the government has not proved that he isn't loyal to Midwestia. He says he is being punished not because he did anything wrong, but just because his ancestors came from Badger Nation – a fact that Fred cannot control. Fred says he is just like all other Midwestia citizens who are not descendants of Badger Nation, and those people are not being relocated to military camps. If the Midwestia government is concerned about disloyal citizens, there are ways to identify those citizens that are less restrictive of freedom than simply putting large groups of people in military camps, such as engaging in legal investigations to ferret out traitors.
2. The Constitutional Public Policy Committee on National Security's main legal argument in favor of Executive Order "Operation Safe" is that the President has constitutional authority to protect Midwestia's national security. The President is concerned that Midwestia citizens who trace their ancestry to Badger Nation may still be loyal to Badger Nation, and so may pose a threat to Midwestia's security. There is no way to protect Midwestia's national security that is less restrictive of freedom, because there is no way to tell which persons of Badger Nation descent may still be loyal to Badger Nation, no matter how much legal investigation to ferret our traitors is done.
3. The National Association for the Advancement of Badger-Midwestians should talk about how Badger-Midwestians feel unfairly singled out. If forced to live in military camps for an undetermined length of time: what will happen to their jobs, their ability to go to school, their family pets? How will they pay to maintain their homes and who will care for their property? Will families be placed together in the same camp or separated? In the past, they have enjoyed equal status in Midwestern society, but because of this disparate treatment in internment camps, they will forever be outcasts in Midwestia, unfairly discriminated against in the job market and shunned in social settings.
4. The Military and Defense Task Force should be prepared to answer how Badger-Midwestians will be identified and singled out for relocation. What level of force may the military use if individuals refuse to relocate? What happens to Badger-Midwestians on active duty in the military? How will the military be instructed to respond to individuals in the camps who refuse to cooperate with military orders? Can the military eavesdrop on individuals in the camp? Record their every move on video cameras?

## DID THIS REALLY HAPPEN?

The Case of *Fred K. v. Midwestia* is based on a real United States Supreme Court case, *Korematsu v. United States* (1944). Fred Korematsu refused to relocate to an internment camp under President Roosevelt's Executive Order to relocate 120,000 Japanese Americans to military camps during World War II. Fred Korematsu sued the United States to challenge his internment. He was convicted of violating the President's Executive Order; he was sentenced to 5 years probation and was forced to relocate to an internment camp. His case went to the United States Supreme Court in 1944 and the majority upheld his conviction in the lower courts.

United States Supreme Court Justice Frank Murphy, a Michigan native, wrote a stinging dissent to the majority opinion stating that all Americans are guaranteed equal protection under the law and freedom from unfair discrimination.

*(From Wikipedia):*

*Korematsu v. United States*, 323 U.S. 214 (1944), was a landmark United States Supreme Court case concerning the constitutionality of Executive Order 9066, which ordered Japanese Americans into internment camps during World War II regardless of citizenship.

In a 6-3 decision, the Court sided with the government,<sup>[2]</sup> ruling that the exclusion order was constitutional. Six of eight Roosevelt nominees sided with Roosevelt. The lone Republican nominee, Owen Roberts, dissented. The opinion, written by Supreme Court justice Hugo Black, held that the need to protect against espionage outweighed Fred Korematsu's individual rights, and the rights of Americans of Japanese descent. (The Court limited its decision to the validity of the exclusion orders, adding, "The provisions of other orders requiring persons of Japanese ancestry to report to assembly centers and providing for the detention of such persons in assembly and relocation centers were separate, and their validity is not in issue in this proceeding.") During the case, Solicitor General Charles Fahy is alleged to have suppressed evidence by keeping from the Court a report from the Office of Naval Intelligence indicating that there was no evidence that Japanese Americans were acting as spies or sending signals to enemy submarines.

The decision in *Korematsu v. United States* has been very controversial. Korematsu's conviction for evading internment was overturned on November 10, 1983, after Korematsu challenged the earlier decision by filing for a writ of *coram nobis*. In a ruling

by Judge Marilyn Hall Patel, the United States District Court for the Northern District of California granted the writ (that is, it voided Korematsu's original conviction) because in Korematsu's original case, the government had knowingly submitted false information to the Supreme Court that had a material effect on the Supreme Court's decision.

The *Korematsu* decision has not been explicitly overturned, although in 2011 the Department of Justice filed official notice, conceding that it was in error, thus erasing the case's value as precedent for interning citizens. However, the Court's opinion remains significant both for being the first instance of the Supreme Court applying the strict scrutiny standard to racial discrimination by the government and for being one of only a handful of cases in which the Court held that the government met that standard.