

**WASHTENAW COUNTY BAR ASSOCIATION
PUBLIC SERVICE COMMITTEE**

**CONSTITUTION DAY–SEPTEMBER 17, 2011
Classroom Activity–8th Grade**

EQUAL PROTECTION OF THE LAW

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Constitution Day 2011–8th Grade

PURPOSE AND FORMAT

PURPOSE: The goal of this activity is to introduce the United States Constitution’s Fourteenth Amendment guarantee to equal protection under the law. The materials illustrate how our “individual right to equal treatment” is balanced against the President’s Constitutional duty to protect the security of the country as a whole. The topic is intended to complement the 8th grade social studies focus on American history.

FORMAT:

1. Introduce yourself to the class and teacher. Explain that Constitution Day is observed on September 17th each year to think about the important protections and rights of all Americans granted by the United States Constitution.
2. Briefly explain origins of the U. S. Constitution: drafted by America’s Founders as the fundamental law of the nation; intended to organize the government and define the rights and responsibilities of citizens and elected representatives. The Constitution of the United States guarantees justice and equality and under the law for all Americans.
3. Briefly discuss the Equal Protection Clause: Amendment XIV
“[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.”
 - a. Ask the class to give some examples; write them on the board:
Ex. Equal treatment regardless of race; ethnicity; gender; non-citizens living in the U. S.
 - b. Ex. Note that the Clause restricts the government; not private individuals/groups
4. Briefly discuss Article II, Sections 2 & 3 of the Constitution
“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.”
 - a. Briefly discuss Presidential Powers
 - b. Commander in Chief
 - c. 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 to issue Executive Orders having the force of law (until Congress passes conflicting law or court rescinds)

Classroom Activity

1. Introduce the Case: *Fred K. v Midwestia*
Hand out Case Scenarios
Read aloud with class
2. Hand out Provisions of the Constitution of Midwestia
Read aloud with class
3. Divide class into 4 small groups; ask the teacher to help divide students
4. Announce that 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 from an undisclosed location. Members of each group below will participate in the discussion for the purpose of convincing the nation as a whole to agree with their position. Divide the class into 4 groups and assign a role to each group.
 - a. Policy Committee on Midwestia National Security
Using the Midwestia Constitution to justify your decisions, state 3 arguments supporting the President's decision to remove Badger-Midwestians to military camps. How will you respond to criticism that Badger-Midwestians are being singled out for unfair treatment?
 - b. Midwestia Constitutional Rights Organization (M-CRO)
Using the Midwestia Constitution state 3 legal arguments in support of Fred K.'s decision not to voluntarily move to a military camp. 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?
 - c. Friends of Fred - Badger-Midwestian Alliance
You will be on national TV this evening to discuss why the President is unfairly discriminating against Midwestians of Badger descent.
Prepare your speech telling the nation about the impact of the President's decision on your the basic rights and those of your family (school, jobs, a family wedding or planned vacation; your pets; your home).
 - d. Midwestia Military and Defense Department Task Force
It is your job to define the role of the military under the President's Executive Order. How will the military remove Badger-Midwestians to the camps? What is the military to do if Badger-Midwestians refuse to go voluntarily? How will the military identify Badger-Midwestians for removal? What is the status of Badger-Midwestians currently on active duty in the Midwestia military?
5. Give the small groups 10 minutes to discuss and formulate their presentations for broadcast to the nation.

6. Ask each group to choose a speaker and tell the class what they will tell the nation and how they made their decisions.
7. Conclude the activity by telling the class that 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.

Distribute *Korematsu v United States* handouts.

The End.

THE CASE OF *Fred K. v Midwestia*

Midwestia is a country populated by people who came to Midwestia from many nations and cultures over many generations. Midwestians live together as equals under a Constitution and laws that they created to govern themselves. Midwestians elect their leaders.

Midwestians trace their ancestors to many places. Those of Hawkeye descent claim their ancestors were Midwestia's earliest settlers, while those of Boiler Maker descent first arrived in Midwestia 100 years ago. The majority of Midwestians are of Wolverine or Spartan descent, and since arriving here 200 years ago they have managed to put aside deep cultural rivalries and live together peaceably. Small numbers of Midwestians are descended from the Northern Gophers and Badgers and 2% of Midwestians are descendants of the Southern Wild Cats. Despite many differences, all have forged a Midwestern culture and now live together as equals under Midwestern law. Even Midwestia's newest arrivals, the interplanetary Buckeyes, consider themselves Midwestians first and foremost.

Three months ago, Midwestia was viciously attacked by the Badger Nation far to the north. It was a surprise attack, and many Midwestians were killed. The Badgers are powerful and have vowed to destroy Midwestia. Citizens of Midwestia are shocked, angry and frightened. Midwestia's President declared war immediately and instructed the military to attack the Badger Nation with all possible force.

Since the attack some Midwestians have become suspicious of their fellow Midwestians whose ancestors came from the Badger Nation. They fear that those Midwestians will be sympathetic to the Badgers and disloyal to Midwestia. There are many rumors across Midwestia that some citizens of Badger heritage are traitors.

Fear and suspicion have increased dramatically in Midwestia. The President took action last month and signed Executive Order 1234 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 48 years ago. Fred is 23 years old and works in a bicycle factory in Midwestia's largest city. Fred decided not to enter a military camp as ordered by the President. Fred was arrested last week and put in jail. He will be moved to a nearby camp soon.

The Midwestern Constitutional Rights Organization (M-CRO) will represent Fred in his lawsuit against the government. M-CRO will argue that Fred has been unfairly discriminated against and denied equal protection under the law guaranteed by the Midwestern Constitution. The case will go to trial in 4 months. Everyone in Midwestia is talking about the case and expressing conflicting opinions.

THE LAW OF THE CASE—*Fred K. v Midwestia*

The Constitution of the Country of Midwestia

1. Article 5, Section 1 of the Midwestia Constitution states:

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

The Midwestia Supreme Court, in a case called *Doe v. Roe*, defined “equal protection of the law” this way:

“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 person 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.’ 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.”

2. 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.”

In a case called *Smith v. Jones*, the Midwestia Supreme Court said that “When the President is acting to protect national security, the President has the authority to issue Executive Orders.

But whether a particular Executive Order satisfies the Midwestia Constitution is a question ultimately left to the Supreme Court to decide.”

3. When Executive Order 1234 was signed, the President of Midwestia said:

“I believe that this Executive Order is necessary to protect the national security of Midwestia.”

NOTES TO LAWYERS TEACHING THE CURRICULUM—Guide to Student Discussions

1. Midwestia's main legal argument in favor of Executive Order 1234 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.
2. Fred K's main legal argument against Executive Order 1234 is that he 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.
3. Friends of Fred 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?
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?