

## Remarks of Chief Justice William H. Rehnquist

To accompany *Did the Court Err in Korematsu?*

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### 100th Anniversary Celebration of the Norfolk and Portsmouth Bar Association

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Lincoln felt that the great task of his administration was to preserve the Union. If he could do it by following the Constitution, he would; but if he had to choose between preserving the Union or obeying the Constitution, he would quite willingly choose the former course. Franklin Roosevelt felt the great task of his wartime administration was to win World War II, and, like Lincoln, if forced to choose between a necessary war measure and obeying the Constitution, he would opt for the former.

This is not necessarily a condemnation. Both Lincoln and FDR fit into this mold. The courts, for their part, have largely reserved the decisions favoring civil liberties in wartime to be handed down after the war was over. Again, we see the truth in the maxim *Inter Arma Silent Leges* -- time of war the laws are silent.

To lawyers and judges, this may seem a thoroughly undesirable state of affairs, but in the greater scheme of things it may be best for all concerned. The fact that judges are loath to strike down wartime measures while the war is going on is demonstrated both by our experience in the Civil War and in World War II. This fact represents something more than some sort of patriotic hysteria that holds the judiciary in its grip; it has been felt and even embraced by members of the Supreme Court who have championed civil liberty in peacetime. Witness Justice Hugo Black: he wrote the opinion for the Court upholding the forced relocation of Japanese Americans in 1944, but he also wrote the Court's opinion striking down martial law in Hawaii two years later. While we would not want to subscribe to the full sweep of the Latin maxim -- *Inter Arma Silent Leges* -- in time of war the laws are silent, perhaps we can accept the proposition that though the laws are not silent in wartime, they speak with a muted voice.

*Source: [http://www.supremecourtus.gov/publicinfo/speeches/sp\\_05-03-00.html](http://www.supremecourtus.gov/publicinfo/speeches/sp_05-03-00.html)*