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TRAITORS AND TURNCOATS: THE LAW OF TREASON

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"We are a rebellious nation; our whole history is treason."
The Reverend Theodore Parker, 1848

The United States of America is a country founded and created, in large part, by dissenters, seditionists, rebels, and traitors to the British Crown. Although many colonists were not British subjects, but instead victims of oppression who had fled the tyranny of such governments as Holland, Germany, and Sweden, the colonies, and indeed the entire continent of North America, were considered by King George to be the property of Great Britain in 1776. However, Britain's proprietary interest and dominion over the colonies was not without constant and bitter opposition. Consider the following politically rebellious statements written by several of the founders of the United States:

John Locke, "The Right of Revolution" – 1689

The reason why men enter into society is the preservation of their property; and the end why they choose and authorize a Legislature, is, that there may be law made, and rules set as guards and fences to the properties of all the members of the society, to limit the power, and moderate the dominion of every part and member of the society. . . . whenever a Legislature endeavors to take away and destroy the property of the People, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the People, who are then absolved from any further obedience and are left to the common refuge, which God hath provided for all men, against force and violence.

Josiah Quincy, 1775

If to appear for my country is treason, and to arm for her defense is rebellion – like my fathers, I will glory in the name of rebel and traitor, as they did in that of Puritan and enthusiast.

Patrick Henry, "Give Me Liberty or Give Me Death" – March 23, 1775

If we wish to be free- if we mean to preserve inviolate those inestimable privileges for which we have been so long contending – if we mean not basely to abandon the noble struggle in which we have been so long engaged, and which we have pledged ourselves never to abandon until the glorious object of our contest shall be obtained – We must Fight! I repeat it, sir, We Must Fight!

The Declaration of Independence – Presented to Congress on July 4, 1776 by the Thirteen United States of America.

The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of absolute tyranny over these States. . . . In every stage of these Oppressions, We have petitioned for Redress in the most humble terms; Our repeated petitions have been answered only by repeated injury. A Prince whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of free people. . . . We, therefore, the Representatives of United States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do in the name, and by Authority of the good people of these colonies, solemnly publish and declare, that these United Colonies are, and of Right ought to be free and independent states; and that they are absolved from all allegiance to the British Crown.

Each one of these statements offered sufficient evidence for the King of England to publicly hang each and every author. If the King had been in a particularly foul mood that day, he could have ordered the rebels drawn and quartered. Benjamin Franklin is quoted as saying to his fellow delegates assembled in Philadelphia, "We must all hang together or assuredly we shall all hang separately." As a colonist might have perceived the situation living in Boston at the time, oppressed by the various taxes levied on tea, paper, glass, paint and any other necessary items, each one of the foregoing statements is a proclamation of nationalism. Indeed, in 1776 in America, a patriot was a traitor, and the Founding Fathers political offenders. It is exactly for this reason, because the new Republic was raised from the fiery oratory of revolution and the spilled blood of loyal Americans, who were one and the same, traitors to England, that the United States government has always been tolerant of openly rebellious behavior by its citizenry.

TRAITORS DON'T HAVE MANY FRIENDS

I did never know so full a voice issue from so empty a heart:

But the saying is true, "The empty vessel makes the greatest sound."

Shakespeare – Henry V

1. **Take for Example: Benedict Arnold.** Benedict Arnold is infamous in the annals of American revolutionary history. The reason for his disgrace is that his treason against the American people was so open and egregious, so outlandish, and such a betrayal to the fledgling Republic that his name has come to represent the very definition of an unfaithful, disloyal, treacherous "back stabber."

In his youth, Benedict Arnold was a brilliant and courageous American patriot. For five years he fought valiantly to throw off the tyranny of British rule in the colonies. He had been wounded twice in battle and had been rewarded for his daring by being made a brigadier general (a one star general). After being appointed commandant of Philadelphia in 1778, Arnold became an embittered man, disdainful of his fellow officers and resentful towards Congress for refusing to promote him more quickly. Arnold believed that he was entitled to a higher rank, more privileges and a larger pension from the government. While Arnold grew more and more disdainful, he also fell deeper and deeper into debt. Faced with financial ruin in 1780, Arnold conceived of a scheme to sell his patriot's soul for money. Thus, with calculated malice, he set about to and did convince General George Washington to give him command of the Fort at West Point. Once in command of the Fort, Arnold initiated correspondence with Sir Henry Clinton, the commander of the British fleet, and promised to surrender the Fort to the British for the sum of 20,000 pounds sterling (approximately \$1 million in today's currency). Arnold's plan eventually failed and Arnold fled to Britain where he was given a stipend and the rank of brigadier general. While serving the British army, Arnold returned to American soil to wage war against his former comrades in arms and burn their towns. In the end, Arnold was reviled in America and held in contempt in Britain as a man who betrayed his principles for money. For most, it was understandable that a man during that period of history could commit treason for political or religious purposes, but Benedict Arnold died a man without a country because his treason was, in the end, wrought from purely selfish motives.

The story of Benedict Arnold presents a clear cut, unambiguous picture of a traitor, but one who was never tried for his crimes. Thus, we have no judicial interpretation or mandate issued contemporaneous with the ratification of the Constitution to guide us in determining exactly those acts which are or might be considered by the judiciary of the new republic as treason or traitorous. Thus, the exact nature of treason remains an indefinite transgression so much so that it is a charge that is rarely brought, even when it should be.

2. **Treason Defined by the Constitution and Federal Statute.** It has been said that treason is the *"highest of all crimes in the United States. It must be so in every civilized state; not only because the first duty of a state is self-preservation, but because this crime naturally leads to and involves others, destructive of the safety of individuals and of the peace of society. This crime is defined by the Constitution itself and its magnitude may be inferred from the fact that it is the only offense defined in that instrument."*

There are only three crimes referred to in the entire Constitution of the United States. Those crimes are treason, piracy and counterfeiting. Among those crimes, treason is the only crime for which the Founding Fathers defined and circumscribed specific conviction requirements. Treason is discussed in Article III Section 3 of the Constitution, which reads:

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Constitution, ratified by two-thirds approval in 1788, does not prescribe the punishment for treason but confers that power on Congress. In response, Congress has passed a statute regarding treason at **18 U.S.C. 2381**. This statute reads:

Whoever owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason and shall suffer death, or shall be imprisoned not less than five years and fined under this title but not less than \$10,000; and shall be incapable of holding any office under the United States,

In interpreting the Constitution and the treason statute, the Courts have determined the following general rules:

- a. Treason may be committed by an American citizen in any geographical location in the world and it does not require the traitor to be a resident of the United States.
- b. American citizens, whether born citizens or naturalized, owe an allegiance to the United States wherever they reside.
- c. Every species of aid and comfort which, if given to a foreign enemy, constitutes treason.
- d. Any intentional act furthering hostile designs of enemies of the United States gives "aid and comfort" and constitutes "adhering" to such enemies is treason.

e. Treason comprehends an "adherence" to the enemy by one residing in enemy territory or country.

e. War can only be levied by the employment of actual force.

f. If war is actually levied, then all citizens who perform any part, however minute or however remote from the scene of actual warfare, and who are in league in the general conspiracy are traitors.

3. **Treason as Interpreted by the Courts.** In the 213 years since the Constitution was ratified, fewer than forty people have been prosecuted for treason.

The first treason case to be considered by the United States Supreme Court (as opposed to the lower District Courts) did not occur until 1944. In that case, a man named Cramer, a German citizen by birth who had served in the German army in World War I, came to the United States and became a naturalized citizen in 1936. Thus, during WWII, Cramer owed allegiance not to Germany but to America. Unfortunately for Cramer, in the Summer of 1942, two Nazi saboteurs landed on American shores from enemy submarines with the intent of blowing up factories and industry. In short, Cramer provided his former countrymen with aid and assistance. For his trouble, he alone was tried and found guilty of treason.

On appeal to the United States Supreme Court, Cramer's conviction was overturned. In a narrow 5-4 decision, the majority Justices ruled that aid must be shown to have been "actually" given the enemy and such "aid" must be proved by two witnesses. In a long opinion discussing in depth the history of treason in England and the United States, and the intent of the Framers of the Constitution, the Court determined the following:

The crime of treason consists of two elements: adherence to the enemy; and rendering him aid and comfort. A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to this country's policy or interest, but so long as he commits no act of aid or comfort to the enemy, there is no treason. On the other hand, a citizen may take actions which do aid and comfort the enemy – making a speech critical of government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things which impair our cohesion and diminish our strength – but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason.

AN AMERICAN TALIBAN IN WASHINGTON

The current case of John Walker (Lindh), the 20 year old Californian who not only joined and fought for the Taliban, but also voluntarily joined Al Qaeda, which has long boasted about its commitment to murdering Americans, has raised the hue and cry of "treason" once again in this country. Many Americans consider Mr. Walker a turncoat and want him tried for his betrayal of the United States. Others believe that Mr. Walker is a pathetic, misguided waif, caught in circumstances outside his control or comprehension.

Is Mr. Walker a traitor by legal definition? Probably.

Can the United States convict Mr. Walker of treason? Probably Not.

As of April 2, 2002, the evidence against Mr. Walker is not sufficient to sustain an indictment for treason. How can the evidence be insufficient, you ask, when the United States armed forces recovered Mr. Walker from a prison camp in northern Afghanistan where he had been detained by the Northern Alliance forces as a prisoner of war and housed with other Al Qaeda fighters? The answer lies in the Constitutional Framer's requirement that the United States find two witnesses to testify against Mr. Walker as to the same overt traitorous offense. So far, the authorities have not been able to locate any witnesses against Mr. Walker.

The facts against Mr. Walker, also know by his Arabic name of "Suleyman al-Faris", are as follows:

- a. Walker voluntarily joined the "jihad."
- b. Walker fought with Ansar, a group of non-Afghan fighters funded by Osama Bin Laden.
- c. Walker supported the September 11, 2001, attack on the World Trade Center.
- d. Walker defends Al Qaeda's bombing of the United States Destroyer, the USS Cole, in Yemen in October, 2000. The bombing killed 17 sailors.

The standard of proof in a treason trial is that the crime must have been committed beyond a reasonable doubt. With regard to a treason indictment against Mr. Walker, the burden of proof cannot be met by the United States government because two witnesses cannot be produced to attest to the incriminating facts, and in the alternative, Mr. Walker has not properly confessed in open court to his traitorous conduct.

If two witnesses could be located to testify that they personally witnessed Walker standing at the ready with his AK-47 rifle, on the side of the Taliban, prepared to kill American military, then perhaps a treason case could be made. However, until those two witnesses are located, no conviction for treason can be had. Accordingly, the charges against Mr. Walker at the current time are conspiracy to kill Americans. Mr. Walker's trial is scheduled to go forward on August 26, 2002, and if he is convicted, he could receive a sentence of three life terms plus 90 years in jail and a fine of up to \$1 million.

U.S. District Court Judge Thomas S. Ellis, III, the judge that will be hearing the Walker case, stated in a pre-trial hearing on discovery matters held April 1, 2002, that under federal conspiracy laws, it isn't actually necessary for Lindh (Walker) to kill Americans to be charged with conspiracy to kill them. In other words, if the government is able to show that Walker joined the Taliban with the knowledge that the Taliban was committed to killing Americans, it may be enough for a conspiracy conviction. At the April 1, 2002, hearing, the government cited over 25 acts which it contends Walker committed in furtherance of the conspiracy.

The John Walker Lindh case mirrors several quasi-treason cases of the past century in its similar difficulty in locating the required two witnesses to testify to treason. Prosecutors, always reluctant to bring a weak case to trial, will usually settle for the less troublesome charges of espionage, sedition, sabotage, or conspiracy to commit such acts. Probably the best known example of this is the case against Ethel and Julius Rosenberg in 1953 which resulted in a guilty verdict, a death sentence, and the eventual execution of both Rosenbergs by the electric chair.

ESPIONAGE: IT ISN'T EXACTLY TREASON, BUT YOU CAN STILL GET THE CHAIR

The Espionage Act was passed by Congress in 1917 in response to the first World War. Espionage is defined by statute as the act of spying or the gathering, transmitting or losing of information respecting the national defense with the intent or reason to believe that the information is to be used to the injury of the United States, or to the advantage of a foreign nation.

There are significant legal distinctions between spying and committing treason, although, at times, the offenses can merge. The only evidence that the prosecution needs to convict someone of violation of the Espionage Act is proof that the defendant:

- (1) acted in such a way to incite sedition, riot, or revolution in America for the purpose of embarrassing and/or defeating the military plans of the government, or
- (2) unlawfully uttered, printed, wrote or published, disloyal, scurrilous, and abusive language about the government of the United States intending to bring the government into contempt, scorn, contumely and disrepute.

Thus, it appears, that at least during war time, that the First Amendment of the United States may be suspended in the name of keeping America safe from espionage and sedition.

Espionage was rampant during the Civil War and employed by both the Union and Confederate Army. However, few were prosecuted for the sake of attempting to heal the wounds of the country. After World

War I, America began in earnest to pursue and prosecute those who had disclosed her military plans and secrets to her enemies under the relatively new 1909 treason statute.

Undoubtedly, the most publicized and notorious case of espionage in this country's history is that of Julius and Ethel Rosenberg in 1951. Prosecutors wanted to try the Rosenbergs for treason but understood they could not prevail due to the two-witness requirement. Therefore, the Rosenbergs, who were of Russian Jewish descent, were charged with and tried for espionage. Their offense was the delivery to the Russians of American know-how, methods and secrets concerning the atomic bomb which allowed the Russians to create nuclear weapons at least ten years before they would have otherwise been capable of making them.

The case was explosive and split the country into two camps. Those who believed the Rosenbergs were innocent and being unfairly prosecuted, and those who were afraid of the spread of Communism and nuclear annihilation. The Rosenberg case took place at the height of McCarthyism in this country. The Rosenberg saga started in February 1950, when Alger Hiss, also convicted of spying, informed authorities that he had passed secret information to a Communist agent named Whittaker Chambers. The investigation soon led to the arrest of a man named Klaus Fuchs, who then confessed to disclosing to the Soviets information about the Manhattan Project. The Fuchs' arrest initiated a chain reaction of investigations whereby American cryptanalysts successfully deciphered intercepted cables (the "Venona Cables") from the Soviet Consulate to the KGB. One cable in particular led authorities to a man named David Greenglass. Greenglass was a machinist-soldier stationed in Los Alamos, New Mexico, the military base where the United States conducted its top-secret atomic testing. Greenglass was the brother of Ethel Rosenberg.

When the trial began, United States Attorney Irving Saypol told the jury that the Rosenbergs' had "committed the most serious crime which can be committed against the people of this country." It was argued that the Rosenbergs conspired to deliver to the Soviet Union the weaponry which would allow the Russians to destroy the United States. Both Rosenbergs pleaded the Fifth Amendment (the right to refuse to incriminate yourself in the face of criminal prosecution) in response to all questions concerning their membership in the Communist Party in order to protect other acquaintances who might be members of their spy network. The trial lasted a month and took place in front of a jury made up of eleven men and woman.

The jury returned a verdict of guilty on all counts as to both Ethel and Julius Rosenberg. At the sentencing hearing, Judge Irving Kaufman read into the record the following statement:

I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. . . . I believe your conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted that Russia would perfect the bomb has already caused, in my opinion,

the Communist aggression in Korea, with the resultant casualties exceeding 50,000 and who knows but that millions of more of innocent people may pay the price of your treason.

Thus, the Judge blamed the Rosenbergs for the death of 50,000 people in Korea and heaped upon them as much scorn, contempt and loathing as the judiciary could muster.

Ethel and Julius Rosenberg were sentenced to death in the electric chair. Unapologetically, the Rosenbergs engaged in a dramatic two-year battle to overturn their convictions. In the end, the United States Supreme Court, voted 5 to 4 in refusing to stay their executions. At 8:00 p.m. in Sing-Sing prison New York on June 19, 1953, the death sentences were carried out against the Rosenbergs.

Ethel Rosenberg was the first woman executed by the United States Government since Mary Surratt was hanged for her role in the assassination of Abraham Lincoln on July 7, 1865. Surratt was the first woman ever executed by the United States, making Ethel Rosenberg both the second and the last woman executed by our government.

Since the execution of the Rosenbergs, all lingering doubts which may have remained about their culpability have evaporated due to the public release of the "Venona Cables" and other information released after the collapse of the Soviet Union. In 1997, an elderly KGB agent, interviewed for a documentary, disclosed for the first time that Julius Rosenberg had indeed been a Russian spy in the 1940's with the code-name "Liberal." Surprisingly though, the KGB agent stated that, so far as he knew, Ethel Rosenberg had never engaged in any espionage. Without mentioning the Rosenbergs by name, the deciphered Venona Cables reflect that the Soviet consulate in America was communicating to the KGB top-secret information about the atomic bomb and nuclear secrets.

ESPIONAGE STILL HAPPENS

(ITS ALL ABOUT THE MONEY NOW)

Famous spies in recent U.S. History:

1. **Robert Philip Hanssen (2001)**. Tried three separate times for being a mole inside the FBI for the Russians. Gave substantial volumes of highly classified information to Moscow. Under a plea agreement, plead guilty to fifteen counts of espionage and conspiracy on July 6, 2001, in order to avoid the death penalty.
2. **George Trofimoff (2000)**. The highest-ranking military officer ever charged with espionage. A retired Army Reserve colonel, he is accused of spying for the Russians for 25 years. Still being prosecuted at this time, the government alleges that Trofimoff, born in Germany to Russian parents, was awarded the Order of the Red Banner, the Soviet medal awarded for "bravery and self-sacrifice in defense of the

socialist homeland.

3. **Harold Nicholson (1996)**. The highest ranking CIA officer to ever face espionage charges. Arrested at Dulles Airport in Washington D.C. in late 1996, he was caught attempting to board an airplane for Switzerland where he was planning to meet up with Russian agents who had paid him \$180,000. At the time of his capture, he was carrying ten rolls of film containing classified documents and a computer disk containing coded messages. He pleaded guilty in 1997 to charges of espionage and was sentenced to 23 years in prison.

4. **Edwin Earl Pitts (1996)**. A FBI agent in 1987 when he contacted the KGB and offered to sell his services for money. Received a total of \$224,000 for selling American secrets to the Russians. Betrayed by a Russian double agent, Pitts was arrested in 1996 as part of a sting operation. Pleaded guilty to espionage and sentenced to 27 years in prison.

5. **Aldrich Ames (1994)**. Characterized as the "most damaging turncoat in history," Ames began selling secrets to the KGB in 1985 when he was the head of the CIA's counter-intelligence unit in Russia. During a ten year span, Ames divulged to the Russians the details of over 100 covert operations and betrayed not less than 30 American agents. Ten of the American spies were killed by the Soviets. It is thought that Ames, and his co-conspirator wife, received approximately \$2.7 million for the secret information. Arrested in 1994, he was convicted of espionage and sentence to life in prison without possibility of parole.

6. **The Walker Family (1985)**. John A. Walker, Jr., was a Navy warrant officer who sold information to the Russians about U.S. encryption devices. After retiring from the Navy, he recruited his son, Michael Walker, a petty officer aboard the U.S.S. Nimitz, to obtain classified documents that his father would then sell to the Soviets. In addition, ex-Navy Lt. Commander Arthur James Walker, also sold secrets to the Soviets through his brother John A. Walker. All three were arrested in May, 1985, after John Walker's wife tipped the FBI to his activities. John Walker pleaded guilty to espionage in exchange for a lesser sentence against his son. John Walker was sentenced to two life terms plus 10 years. (The son) former Petty Officer Michael Walker was sentenced to 25 years. (The brother) former Lt. Commander Arthur James Walker was tried and convicted of seven counts of espionage and sentence to life in prison.

7. **Larry Wu-tai Chin (1985)**. Chin was an intelligence officer in the CIA for 30 years. He was arrested in 1985 for spying for China, and convicted of 17 counts of espionage. Before sentencing, he killed himself in his jail cell.

8. **Jonathan Jay Pollard (1986)**. A civilian working with Naval Investigative Services convicted of espionage in 1986 for selling classified information to Israeli intelligence. He was sentenced to life in prison. Israel granted Pollard citizenship and requested that President Clinton pardon Pollard. Clinton indicated that he would pardon Pollard in 1998, but then declined after the then Director of the CIA, George Tenet, threaten to quit if Pollard was pardoned. Pollard is still in prison.

TURNCOATS YOU JUST LOVE TO HATE - PROSECUTE THOSE BASTARDS!

The following is a partial list and account of some of the most significant treason cases in the United States. This list is not complete but only intended to reflect the nature of the types of treason prosecuted, and to provide a back drop against which Mr. John Walker's actions, conduct and statements may be measured. To reiterate, there have been less than forty (40) treason cases pressed to trial by the federal government in the entire history of this Nation. Remarkably, there has never been an execution for a federal treason conviction. As the Supreme Court observed in the *Cramer* case, "*We have managed to do without treason prosecutions to a degree that probably would be impossible except while a people was singularly confident of external security and internal stability.*"

1. *United States v. Burr*, 25 F. Cas 55 (August 31, 1807, District Court – Virginia).

Aaron Burr rose to the office of Vice President of the United States under Thomas Jefferson serving from 1801-1805. However, he is generally best remembered for his duel with Alexander Hamilton, which resulted in Hamilton's death, and for his schemes of empire, which ended in his trial and acquittal of treason charges. After his term of Vice-President, Burr's insatiable appetite for personal glory led him to contrive of a plan to create a new American empire stretching from the Ohio River to Mexico over which he would preside as Emperor. Burr considered the West and Mexico to be bountiful and the Atlantic states to be pretentious and unnecessary. Burr's plot was thwarted when Jefferson issued a proclamation that led to Burr's arrest for treason on November 27, 1807.

Burr's subsequent treason trial was held in Richmond, Virginia, and was presided over by Chief Justice John Marshall, arguably the greatest Constitutional jurist ever. Justice Marshall construed the law of treason so narrowly that the jury was out only 25 minutes before acquitting Burr. Although not convicted, Burr remained marked as a traitor for the rest of his life and spent most of his remaining years vacationing in Europe.

2. *United States v. Haupt*, 136 F.2d 661 (7th Cir. 1943), Cir. Court of Appeals – Illionis).

Hans Max Haupt, together with five others including his wife, Erna, was convicted of treason by the District Court sitting in Illionis. Mr. Max Haupt was born in Germany but became a naturalized citizen of America. The case against Max Haupt contained only one count, that of adhering to and aiding the enemy of the United States. In truth, the actual enemy was his son, Herbert, a Nazi saboteur.

On June 17, 1942, the Haupt's son, Herbert Haupt, a German national and secret agent for the German Reich, voyaged to the city of Chicago as a Nazi saboteur and spy, under the pretense of visiting his parents. Japan had not yet bombed Pearl Harbor, and the United States had not yet entered the war

because it was maintaining a policy of neutrality. However, Herbert Haupt's mission was to secure information about the national defense of the United States and to furnish it to the German government for the purpose of assisting the Nazis in waging war upon America. Max and Erna Haupt were accused of helping their son by giving him shelter, harboring, abetting, assisting, counseling and advising Herbert Haupt. Max and Erna Haupt further employed false information to conceal the true identity of their son, Herbert, as an enemy of the United States. After spending only ten days in this country, Herbert Haupt was arrested by the FBI, tried before a military tribunal in Washington, found guilty of committing acts of sabotage on United State's soil, and executed on August 9, 1942.

Max and Erna Haupt were then tried for treason as American nationals. At their sentencing hearing, where Max Haupt was sentenced to death by electrocution and Erna Haupt was given a term of 25 years, the District Court Judge Campbell said,

In pronouncing sentence upon these six men and women, this Court is constrained to give full consideration to the fact that our nation, and every man, woman and child in it, are engaged in a global death struggle against the forces of tyranny and evil unprecedented in the history of mankind. . . . Here then is the most iniquitous offense on the unholy list of crimes, an offense which imperils at one and the same time, the structure of our government, the production of the tools for victory, the lives of our production workers and citizens, and the very ideals of free humanity.

On appeal, the treason verdict was reversed on constitutional grounds and technical abuses of discretion by the lower court. In particular, the prosecution had not produced two separate witnesses to testify to the overtly treasonous acts.

3. *Cramer v. Unites States* (1945) 325 U.S. 1.

The *Cramer* case has previously been discussed herein. However, it warrants additional mention because it was the first treason case to come from the United States Supreme Court. In essence, the case posed the problem of the relationship between the "intent to commit treason" versus the "act of the crime of treason." On two separate occasions, the defendant was observed by two F.B.I. agents meeting with a Nazi agent named Werner Thiel at a deli/cafeteria in New York. The two witnesses required for a treason conviction (both FBI agents) could testify only to the fact that the defendant and the Nazi secret agent had eaten a meal together and nothing more. The only other evidence which the government had against Mr. Cramer was the defendant's own admissions on the witness stand wherein he stated that (1) he was aware that he was meeting with the enemy, and (2) that he did give aid to the enemy by holding funds for the latter's convenience and by putting him in contact with a friend.

Cramer was convicted, in small part, because he was imprudent enough to write letters to Werner Thiel in Germany a year before the Nazi's arrival in America. In one such letter dated November 25, 1941,

Cramer said, "defiance, boldness, will and sharp weapons will decide the war, and the German Army and the German people are not lacking in these." In addition, at his trial, Cramer admitted that he had lied to the authorities in order to protect Thiel.

Four out of the nine Justices believed that the evidence against Cramer was sufficient to sustain a verdict of treason. The *Cramer* dissent is long and strongly worded. In it, Justice Douglas wrote that (1) the prosecution had showed that Cramer *intended* to commit treason, and (2) that he knowingly gave aid and assistance to a person that he knew to be the enemy of the United States. The minority wrote that the fact that Cramer did not know of Thiel's exact intentions to blow up aluminum factories was not essential to proof of Cramer's acts of treason. "A defendant who has aided an enemy agent in this country may not escape conviction for treason on the ground that he was not aware of the enemy's precise objectives."

In conclusion, the dissenters clarified, so that there could be no mistake, that the Court was not setting aside the treason conviction for lack of sufficient evidence of traitorous intent. On the contrary, Mr. Cramer's traitorous intent had been overwhelmingly displayed. The Court freed Cramer from the treason charge solely on the ground that the government had failed to prove "overt acts of treason." Or at least, five of the nine justices were of the opinion that such overt acts had not been proved beyond a reasonable doubt.

4. **Iva Ikuko Toguri D'Aquino v. United States, 192 F.2d 338 (9th Cir. 1951).**

Ikuko Toguri was born in Los Angeles in 1916 to Japanese parents. She went to college at UCLA and graduated in 1940 with a Bachelors degree in zoology. On July 5, 1941, Ms. Toguri traveled to Japan to visit a sick aunt and to study medicine. Before Ms. Toguri could return to America, the United States was at war with Japan. Ms. Toguri had left the United States without a passport, and after hostilities broke out, she could not obtain a passport to return home. Accordingly, in August 1943, Ms. Toguri obtained a job as a typist for Radio Tokyo. Quickly, Radio Tokyo realized that Ms. Toguri was smart and she spoke English like an American. In November of the same year, Radio Tokyo made Ms. Toguri a broadcaster. This new career would make Toguri, who was nicknamed by American troops "Tokyo Rose", a villain and would eventually result in her conviction of treason against the United States.

Tokyo Rose was a broadcaster on a show called the "Zero Hour" which broadcast anti-American propaganda. The Japanese used this show as psychological warfare against the US armed forces in the Pacific. The show aired every day except Sunday and was created specifically for the purpose of lowering the morale of the American men fighting the Pacific theatre. While the Zero Hour was dedicated chiefly to news, Tokyo Rose appeared on it for approximately 20 minutes everyday to introduce American songs and to speak directly to Americans. She did not write the things that she said, but read them on behalf of the Japanese government. On a daily basis, she taunted the armed forces men with statements such as:

"Hello boneheads. This is your favorite enemy, Ann. How are all you orphans of the Pacific? Are you enjoying yourselves while your wives and sweethearts are running around with the 4Fs in the States? How do you feel now when all your ships have been sunk by the Japanese Navy? How will you get home? Here's another record to remind you of home."

"Greetings everybody! This is your number one enemy, your favorite playmate, Orphan Ann on Radio Tokyo--- the little sunbeam whose throat you'd like to cut! Get ready for another vicious assault on your morale, this is for our friends--- I mean, our enemies in the South Pacific."

After Japan surrendered, the United States Army arrested Tokyo Rose and brought under military escort to San Francisco in September, 1948. There she was arrested by the FBI and charged with the crime of treason. On September 29, 1949, the jury returned a verdict of guilty against Tokyo Rose for the adhering to the Imperial Government of Japan during WWII. Tokyo Rose was only the seventh person to be convicted of treason in the history of the United States. Toguri's three-month trial would become the biggest and most expensive treason trial to date, with a price tag of \$500,000. She was ultimately convicted of one count of treason (she had been charged with eight) with nearly no concrete evidence against her. She was sentenced to ten years in prison and given a \$10,000 fine. She served more than six years of that sentence before being released.

In 1954, 1968 and 1976, Ikuko Toguri filed petitions for a Presidential Pardon. On January 19, 1977, President Gerald Ford finally issued a pardon to Ikuko Toguri D'Aquino aka Tokyo Rose on his last day in office because she was actually a loyal American, not a traitor. Although the United States government was aware of many of the true facts concerning Ms. Toguri's broadcast career as "Tokyo Rose," it instead chose to prosecute her for treason as a sacrificial lamb. Anti-Japanese sentiment was running high in 1951, and Ms. Toguri was shamelessly railroaded.

The true facts regarding "Tokyo Rose" are that at the time she went to work as a typist for Radio Tokyo, a high-ranking military officer from Australia, General Cousens, was a prisoner of the Japanese. The Japanese, aware of his communications background made him the director for the Zero Hour. General Cousens welcomed the position because it would provide him with an opportunity to subtly slip messages through to American armed forces by carefully writing scripts that would be approved by the unsuspecting Japanese officers. General Cousens picked Ikuko Toguri to be the messenger of his secret broadcasts because she had a sincere voice, and together they worked hard to provide helpful information to the U.S. military intelligence during each Zero Hour broadcast. In addition, Tokyo Rose worked herself to exhaustion gathering food for American war prisoners in jail. Because she was free to visit the American captives in prison, she smuggled in fruits and vegetables that she had gathered from the country side. Thus, for some American prisoners, she was an angel of mercy providing them with enough food to survive the deprivations of a Japanese prisoner camp.

As of January 9, 2002, Iva Ikuko Toguri D'Aquino lived quietly in Chicago with her family. She is 85 years old and hopes to be remembered as an American patriot.

5. Kawakita v. United States, 343 U.S. 717 (1952).

If anyone deserved to be standing in front of a firing squad, it was this guy. Tomoya Kawakita.

Mr. Kawakita was born in the United States in 1921. His parents were Japanese nationals. Therefore, Mr. Kawakita had dual nationality with both the United States and Japan. On March of 1941, Mr. Kawakita decided to attend the University of Meiji in Japan. Although war broke out between the United States and Japan in December, 1941, Kawakita remained at school. After graduation, Kawakita sought employment as an interpreter. He never attempted to join the military of either country. Kawakita worked for a private company engaged in mining and processing of minerals for munitions. He worked on the island of Honshu, on which, there was also a Japanese prisoner of war camp supervised and managed by Japanese military personnel.

In early 1945, approximately 400 American prisoners-of-war were housed at the camp on Honshu. These men had been in captivity under terrible circumstances for almost two and half years, and due to malnutrition, inadequate health care, confinement and hard work, the American prisoners were suffering and in bad condition. Kawakita aided the Japanese military in numerous ways, both requested and not requested by the military personnel, and in the course and scope of giving aid to the Japanese, Kawakita abused the American prisoners. The American prisoners were used as workers for the mine until August, 1945, when the camp was surrendered to the American military forces. Kawakita then assisted the American military forces with interpreting services. In June, 1946, Kawakita sought re-entry to the United States and took the oath of allegiance to America.

Once back in America, Kawakita started graduate studies at USC. While in a store in Los Angeles, Kawakita was recognized by William Bruce, a former POW. Bruce reported Kawakita to the authorities. The FBI arrested Kawakita in June of 1947, and before the end of the month, he was indicted for 15 acts of treason. Kawakita entered a plea of "not guilty" on the grounds that he had renounced and/or abandoned his United States citizenship and was expatriated at the time of providing assistance to the Japanese military on Honshu.

The District Court jury found Kawakita guilty of eight overt acts of treason as follows:

1. Kawakita knocked an American prisoner of war into the camp cesspool and beat the POW repeatedly on the head as he tried to crawl out of the cesspool.
2. Although Kawakita had no authority and no military duties, he swore at the prisoners, beat them, threaten them, and punished them for either resting, or not working faster and harder at the mine, and for

not filling their quota of ore.

3. Kawakita and Japanese guards lined up about 30 POWs, and as punishment for making clothing out of Red Cross blankets, beat the POWs or forced them to beat each other. Kawakita hit prisoners who, he thought, did not hit other prisoners hard enough.

4. Kawakita threw stones and dirt and prisoners forced to run around the camp because they finished work early.

5. Kawakita forced a prisoner to carry a log up an icy slope. When the prisoner fell and became badly injured, Kawakita did not seek assistance for the prisoner for over five hours.

6. Kawakita forced a prisoner to kneel on bamboo sticks jammed into the joints of the prisoner's knees. The prisoner was forced to keep his arms above his head holding a bucket of water. When the prisoner tired and bent his elbows, Kawakita would hit him. Kawakita engaged in this torture of American POWs for no other reason other than he was bored on Honshu island.

7. Kawakita repeatedly taunted the American POWs with statements such as: "We will kill all you prisoners right here anyway, whether you win the war or lose it. You will never get to go back to the States." And " I will be glad when all the Americans is dead, and then I can go home and live happy."

The jury found that all of these overt acts of cruelty actually gave aid and comfort to the enemy. Kawakita was convicted of treason and sentenced to death.

On appeal to the United States Supreme Court, Kawakita argued that (1) he had lost his US citizenship by registering in Japan as a Japanese national, and (2) that a person who has dual nationality can only be guilty of treason to the country where he resides, not to the other country that claims him as a national. The Supreme Court rejected both of these arguments holding that (1) Kawakita was a national of the United States upon his birth and that he had never renounced it, and (2) a person who holds dual nationality will be subject to the claims of both nations. The Court wrote, "One who wants that freedom can get it by renouncing his American citizenship. He cannot turn it into a fair-weather citizenship, retaining it for the possible contingent benefits but meanwhile playing the part of the traitor."

The United States Supreme Court confirmed the District Court conviction of treason against Kawakita, and stated that it would not interfere regarding the imposition of a death sentence. In refusing to reverse both lower courts, the Justices wrote, the "flagrant and persistent acts of petitioner" against the POWs was such that a trial judge had great leeway in reaching the decision of death.

On the last day of President Eisenhower's administration, he commuted Kawakita's death sentence. Kawakita was then released from prison, stripped of his US citizenship, and roughly deported to Japan.

THE INALIENABLE RIGHT TO REBEL - EVEN IF WHAT YOU SAY IS REVOLTING

America maintains a virtually unbroken tradition of political dissent. In fact, our entire system of representative government operates on the assumption that political and social change should come about peacefully, without violence and blood shed, through public discourse and discussion. In order to foster and protect the right of every American to disagree with the government and to not be subject to whimsical charges of treason, the Founding Fathers provided in the First Amendment to the Bill of Rights the right to freedom of speech.

In *Abrams v. U.S.*, 250 U.S. 616 (1919), Justice Oliver Wendell Holmes wrote a stinging dissent in which he articulated the theory of a "marketplace of ideas", where he argued that the importance of allowing ideas to compete with each other for acceptance by the masses was so great that even opinions which we loathe and believe to be fraught with death should not be suppressed unless they "imminently threaten immediate interference with lawful and pressing purposes of the law that an immediate check is **required to save the country.**" (*emphasis added*).

It is not treason to voice an opinion about the government which is not in lock-step with its policies, whatever they may be. On the contrary, it is the height of patriotism to disagree with your government and to voice an opinion about how it may be improved. Small rebellions of opinion is what keeps America healthy and growing as a democracy. Minor flare-ups of dissent is what prevents America from stagnating into an obsidian-like morass of out-dated laws and antiquated rules which have little application to the vibrant day to day life of American citizens. Peaceful protest is good for the soul of America because it airs out the energy for treason.

The value of free speech cannot be underestimated as the single most important safety value against treason. In *Whitney v. California*, 274 U.S. 357 (1927), Justice Brandeis wrote one of the most eloquent judicial statements concerning the benefit and importance of free speech:

An orderly society cannot be maintained merely through fear and enforced silence, for fear breeds repression . . . repression breeds hate . . .(and) hate menaces stable government. On the contrary, the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies . . . The fitting remedy for evil counsels is good ones. (paraphrased)

CONCLUSION – GOD BLESS AMERICA

The charge of treason appears to be a crime which has historically been prosecuted during, or directly after, a time of war for the United States. While President Bush has declared war on terrorism, there has

been no formal declaration of war made by Congress on any country. One can only speculate about John Walker's fate if America had actually been engaged in a full wartime effort against a known enemy at the time of his capture. Needless to say, Mr. Walker should thank his lucky stars that he is an American. If he were a national of a less tolerant country, it is likely that he would have been shot by now.

The fact that John Walker (Lindh) cannot be indicted for treason is good for all of us. While his treachery and betrayal is no less poisonous or stinging than that of Benedict Arnold or Tomoya Kawakita, the fact that the Constitution requires two witnesses to the overt act and that the crime be proved beyond a reasonable doubt protects all United States citizens. The higher standards established by the Founding Fathers concerning the law of treason were conceived as a result of bitter experience, and in the hopes that the charge of treason would no longer be used as a fist to strike down dissent and the free debate of ideas. Thomas Paine wrote that "He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty, he establishes a precedent that will reach himself."

It is the duty of every American to preserve even John Walker Lindh from a reckless treason prosecution and to demand an honest trial on the charges of conspiracy to commit the murder of our citizens. In doing so, each of us reaffirms the forethought of the Founding Fathers, the beauty of our Constitution, and the greatness of our nation. America is a mighty and virtuous country exactly because its jurists, government and people have in the past, and continue to this day, to exercise a willingness and capacity to apply its laws fairly to all, even its traitors and turncoats.

The information provided herein is not intended as legal advice and should not be acted upon. If you have additional questions about this subject matter or would like to consult with an attorney, please call Jennifer J. Hagan or James Hagan at The Hagan Law Firm (650) 322-8498.

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