

1973

The indictment and trial of Iva Ikuko Toguri d'Aquino-- Tokyo Rose , September 1948-September 1949

John Juji Hada

Follow this and additional works at: <https://repository.usfca.edu/thes>

Recommended Citation

Hada, John Juji, "The indictment and trial of Iva Ikuko Toguri d'Aquino-- Tokyo Rose , September 1948-September 1949" (1973).
Master's Theses. 420.
<https://repository.usfca.edu/thes/420>

This Thesis is brought to you for free and open access by the Theses, Dissertations, Capstones and Projects at USF Scholarship: a digital repository @ Gleeson Library | Geschke Center. It has been accepted for inclusion in Master's Theses by an authorized administrator of USF Scholarship: a digital repository @ Gleeson Library | Geschke Center. For more information, please contact repository@usfca.edu.

The author of this thesis has agreed to make available
to the University community and the public a copy of this thesis project.

Unauthorized reproduction of any portion of this thesis is prohibited.

The quality of this reproduction is
contingent upon the quality of the original copy submitted.



University of San Francisco
Gleeson Library/Geschke Center
2130 Fulton Street
San Francisco, CA 94117-1080 USA

THE INDICTMENT AND TRIAL OF
IVA IKUKO TOGURI D'AQUINO - "TOKYO ROSE"
SEPTEMBER 1948 - SEPTEMBER 1949

A Thesis presented to
Faculty of the History Department
University of San Francisco

in partial fulfillment of the requirements
for the degree of Master of Arts
in History

BY

John Juji Hada

May 1973

This thesis, written by

John Juji Hada

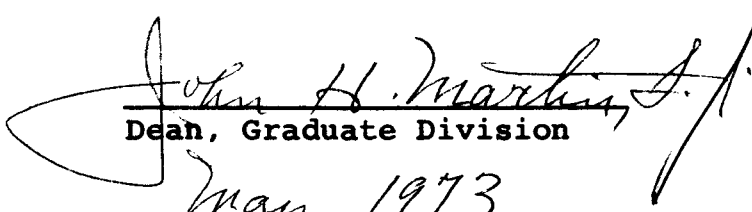
B.A., University of San Francisco, 1972

under the guidance of the Faculty Advisory
Committee, and approved by all its members,
has been presented to and accepted by the
Committee on Graduate Studies, in partial
fulfillment of the requirements for the
degree of

MASTER OF ARTS

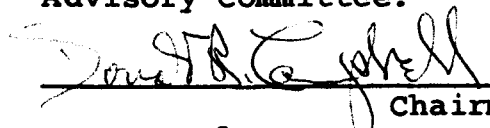
IN

HISTORY


Dean, Graduate Division

May 1973
Date

Advisory Committee:


Chairman

A. Lincoln

PREFACE

The purpose of this study is to describe, analyze, and evaluate the indictment and trial of Iva Ikuko Toguri d'Aquino, known by the sobriquet, "Tokyo Rose,"¹ cited in d'Aquino v. U.S., Proceedings, Criminal Case Nos. 31712-R

¹In Williamson v. U.S., 184 F. (2d) 280, 281, n. 4, Justice Jackson referred to Iva Ikuko Toguri d'Aquino as "Tokyo Rose" even though Justice Douglas's opinion in d'Aquino v. U.S., 180 F. (2d) 271 does not use the term. This shows how generally the sobriquet was in circulation. It obviously has some significance; when the Government brought the term into the case it brought the significance with it - a wholly extrajudicial quantity. At the very least this name was a reference to the extrajudicial knowledge of the jurors; the petitioner contended in Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof, d'Aquino v. U.S., Ninth C.A. No. 12383, pp. 78-79, ". . . the Court can take judicial notice that in popular American folklore during the war, 'Tokyo Rose' was the great and mysterious woman broadcaster of any and all treasonable propaganda in the Pacific area." The fact that "there was no claim on the part of the Government that Iva Ikuko Toguri d'Aquino broadcast as 'Tokyo Rose'" (Opinion, U.S. Court of Appeals for Ninth Circuit Court, p. 920) only makes matters worse. Bringing the term into the case was nothing but an appeal to wartime passion and prejudice. All this was further aggravated by refusing to let the defendant rebut this evidence once it was in. The fact that the term "Tokyo Rose" was in circulation before Iva Ikuko Toguri d'Aquino began to broadcast is not hearsay (6 Wigmore on Evidence (3d ed.) sec. 1770, p. 185. Here the utterance of the name is circumstantial evidence that it referred to someone else.

and 12383, Treason - (violation of Title 18 U.S.C. 1)² in the United States District Court for the Northern District of California, Southern Division, conducted in San Francisco during the period September, 1948 to September, 1949.³

A sincere attempt has been made to examine the record in the case as meticulously as possible. On the basis of my study of it, the many briefs submitted by the defendant and by the plaintiff (United States of America) to the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court, the Courts' opinions and the authorities cited in support thereof, and the numerous newspapers and periodicals that chronicled the emotional content of the indictment and trial proceedings, I have determined that the case presents five types of questions: (1) questions arising under the Constitution of the United States; particularly (a) the treason clause itself, Article III, section 3;⁴

²Title 18 U.S.C. 1 reads as follows: "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." Title 18 U.S.C. 1 is now Title 18 U.S.C. 2381.

³See also d'Aquino v. U.S., 343 U.S. 935, 958; 345 U.S. 931; 180 F. (2d) 271; 192 F. (2d) 338; and 203 F. (2d) 931.

⁴Const. Art. III, sec. 3 reads: "Treason against

(b) the speedy trial provision of the VI Amendment as applied first to destruction of evidence by the Government, second to restraints on the military; (2) the construction and application of the Geneva Convention, (47 U.S. Stats. at L. 2021); (3) settlement of the law governing the defense of duress in a Federal criminal trial, where the defendant is in the enemy's power; (4) interrelation of Title 10 U.S.C. 15 and Title 18 U.S.C. 3238;⁵ (5) questions of procedure in Federal criminal trials, divided generally into (a) questions under the law of evidence, including applicability of the rule of Upshaw v. U.S., 335 U.S. 410, where the defendant has been confined by the military authorities, and the right of the defendant to introduce evidence that her broadcasts were harmless or beneficial to the American troops; and (b) misconduct of the prosecutor.

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."

⁵Title 10 U.S.C. 15 forbids the U.S. Army to be used as posse comitatus except in Alaska. The latter statute does not except Alaska. Title 18 U.S.C. 3238 pertains to jurisdiction and venue in the district to which defendant was first brought.

If the questions seem numerous and complex, I can only say that the indictment, post-indictment, and trial proceedings took approximately twelve months in all with contested issues at every turn. Even Mr. Justice Douglas in his opinion on Application of Bail, d'Aquino v. U.S., 180 F. (2d) 271. wrote:

" . . . This appeal is plainly not frivolous. Responsible and conscientious counsel pose some problems that on this record are not free of doubt. Thus there is the question of the applicability of the principles of McNabb v. U.S., 318 U.S. 332, and Upshaw v. U.S., 335 U.S. 410, to confessions obtained during or immediately following a prolonged confinement of the accused by the military authorities. . . ."

In these times when Government activity on the international scene brings large numbers of Americans to foreign countries where they are subject to American authority on foreign soil, the decisions of the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court on this case are of far-reaching importance. The fundamental constitutional guarantees here involved are therefore not confined to Iva Ikuko Toguri d'Aquino. They are of general application.

In the intervening years since the trial, Federal Judge Michael J. Roche and attorneys for the United States: Frank J. Hennessy, United States Attorney, Northern District

of California; Thomas De Wolfe and James Knapp, Special Assistants to the United States Attorney General; and John B. Hogan, Attorney for the United States Justice Department, have all passed away.⁶ Attorneys for Mrs. Iva Ikuko Toguri d'Aquino: Wayne M. Collins; Theodore Tamba; and George Olshausen, who worked without fee⁷ because they considered this case "one of the grossest and most disgraceful miscarriages of justice in the history of the Federal courts,"⁸ are still active practitioners of law.

In preparing this study, the writer has greatly benefited from the advice and assistance of many individuals. Messrs. Wayne M. Collins and Theodore Tamba graciously

⁶Michael J. Roche, the United States District Judge who presided at Mrs. Iva Ikuko Toguri d'Aquino's trial, died in San Francisco on July 1, 1964. Thomas De Wolfe, Special Assistant to the United States Attorney General, who was chief counsel for the prosecution, died in Seattle, Washington on June 19, 1959. Frank J. Hennessy, the United States Attorney for the Northern District of California, who also represented the prosecution, died earlier, and John B. Hogan, an Attorney for the Justice Department, who appeared as the assistant counsel with them, died in 1958.

⁷Except for the taking of depositions in Japan for which the Government appropriated a fund. The forma pauperis aspect of the case gives a specious appearance of fairness. Actually it puts the defendant in the same position as a moneyed defendant who suffered an injustice.

⁸Petitioner's Reply to Brief in Opposition to Certiorari, d'Aquino v. U.S., Ninth C.A. No. 12383, in the Supreme Court

opened their files to me and gave me invaluable assistance in understanding the law, particularly constitutional law, statutory construction and trial practice in Federal criminal cases. It was through Messrs. Collins and Tamba that the writer met Mrs. Iva Ikuko Toguri d'Aquino.⁹

Father (Professor) John B. McGloin, S.J., Father (Professor) Robert I. Burns, S.J., and Associate Professor Frank L. Beach, through their seminars have provided much of the inspiration to explore the field of historical research beyond the confines of political, economic, social, intellectual, and military factors.

The broad tolerance of the faculty members of the Department of History, composed of scholars who believe that he works best who is let alone, has made conditions for independent effort ideal. Among them Professors Donald R. Campbell and Ashbrook Lincoln have been constant advisors and with sacrifice of their time have brought to bear on this study their unusual acumen.

The staff of the many libraries where I have worked or to which inquiries have been sent also deserve special

of the United States, October Term 1951, No. Misc. 299, p. 45.

⁹The writer was introduced to Mrs. Iva Ikuko Toguri d'Aquino by Messrs. Collins and Tamba in San Francisco during January, 1973.

thanks: The Library of Congress; The National Archives - Federal Records Center at San Bruno, California; The University of San Francisco Law School Library; The San Francisco Law Library in the Mills Tower Building, San Francisco; The Gleeson Library, University of San Francisco; The Bancroft Library, University of California, Berkeley; and The Government Documents Library, Stanford University.

I am grateful to my father and mother, who have instilled in me Bushido; the samurai spirit.

Finally, of course, something more than gratitude is due my wife, Mitzi, and our four children: Elayne Naomi, Matthew Stuart, Sterling Theodore, and Leslie Anne, who with gracious devotion provided for the conditions under which the study was done.

TABLE OF CONTENTS

PREFACE	ii
INTRODUCTION	1
CHAPTER I. THE INDICTMENT	8
<p>What the Indictment Alleges (8)--FBI Assailed on Questioning Defendant (11)--Defendant's Motion to be Admitted to Bail (15)-- Prosecution's Opposition to Bail for Defendant (21)--Defendant's Motions to Dismiss Indictment (22)--Prosecution's Opposition to Defense's Motion to Dismiss (53)</p>	
CHAPTER II. THE TRIAL	64
<p>Refusal to Produce Defendant's Witnesses from Japan (64)--FBI Questioned Two Former Australian POWs Who Arrived to Testify for Defendant (67)--Trial Jury Selection (69)-- The Trial (72)</p>	
CHAPTER III. THE APPEAL	121
<p>Petition for Certiorari (121)--Misconduct of Prosecutor (154)--Argumentative Questions Regarding Cross Examination of Defendant (159)- -Limitation of Cross Examination of Clark Lee and Richard Henschel (162)--Fraud in the Preparation in the Government's Case (165)</p>	

CHAPTER IV. PUBLIC OPINION	170
Public Opinion Formed on the Indictment and Trial (170)--Suspicion Cast on Americans of Japanese Ancestry (174)--Attitude of the Nisei Toward Iva d'Aquino (175)	
CONCLUSION	178
APPENDIX	181
APPENDIX	182
APPENDIX	183
APPENDIX	184
APPENDIX	185
APPENDIX	186
APPENDIX	187
APPENDIX	188
APPENDIX	189
APPENDIX	190
APPENDIX	191
APPENDIX	192
APPENDIX	193
APPENDIX	194
BIBLIOGRAPHY	195

INTRODUCTION

On October 17, 1945, Mrs. Iva Ikuko Toguri d'Aquino was arrested in Tokyo, Japan by United States military authorities under a warrant of arrest, dated September 10, 1945, which directed the incarceration of American citizens in Japan who were suspected of treason.¹ (See Appendix I). Upon such warrant of arrest, Mrs. Iva I. T. d'Aquino was imprisoned by the United States military authorities at Yokohama Prison for one month and at Sugamo Prison for a period of five months more (the first two months of which - one month at Yokohama Prison and one month at Sugamo Prison - she was held incommunicado).²

¹U.S. Court of Appeals, Ninth Circuit, Ninth C.A. No. 12383, d'Aquino v. U.S., Supplemental Opinion, R. 964. Hereafter the U.S. Court of Appeals record including the opinions of the Court of Appeals and all of its orders will be referred to by the underlined word "Opinion" followed by the letter "R" together with the page number, e.g., Opinion, R. 905. Also see Proceedings, d'Aquino v. U.S., No. 31712-R in the U.S. District Court for the Northern District of California, Southern Division, Defense Exhibit P, vol. XVI-1603 and Defense Exhibit N, XLVII-5191. Hereafter proceedings other than argument will be referred to by volume number in Roman numerals together with page and line, e.g., I-1:1-2. The arguments will be similarly designated I Arg-1:1-2, etc.

²XLVI-5173:16, 5174:1; XLVII-5206:4-7.

On April 29 and 30, 1946, Mrs. Iva I. T. d'Aquino, while confined at Sugamo Prison, was turned over to a representative of the United States Department of Justice and interrogated for two days without the aid or consultation of counsel in her behalf.³ On May 1, 1946, the United States military authorities in Japan made a finding and order to the effect that there was no evidence that she committed any crime punishable under military law, but that they continued to hold her until further order from the United States Department of Justice.

Mrs. Iva I. T. d'Aquino was detained in Sugamo Prison until October 25, 1946 (more than a year later), when she was released by the United States military authorities upon the instructions of the War Department that the "Department of Justice no longer desires Iva d'Aquino be retained in custody."⁴ (See Appendix II). During the period of her confinement at Yokohama and Sugamo Prisons, Mrs. Iva I. T. d'Aquino repeatedly demanded of her jailors that she be formally charged and tried for whatever crime she was suspected of and upon which she was

³Defense Exhibit O, XIV-1449:12-16.

⁴Defense Exhibit N, XLVII-5191.

then incarcerated.⁵ Nothing further happened to her until her release from Sugamo Prison, on October 25, 1946.

Almost two years after her release from such detention, Mrs. Iva I. T. d'Aquino was re-arrested on August 26, 1948 by the United States military authorities at the request of the United States Department of Justice on suspicion of "treasonable conduct against the United States Government during World War II."⁶ (See Appendix III).

If she was exonerated under orders of General Douglas MacArthur, Supreme Commander for the Allied Powers, why was she re-arrested? An article, written by Harry T. Brundidge in The Nashville Tennessean in May, 1948, explained the event:

" . . . One day I read a news dispatch from Washington [D.C.] setting forth that 'Tokyo Rose' would not be prosecuted for treason because of insufficient evidence. I was indignant, because I was familiar enough with the entire matter to know that evidence could be obtained in Japan. I wrote my friend John Edgar Hoover, Director of the FBI, a long letter setting forth my views in the matter and offering to go to Japan to dig out evidence and witnesses. I told Hoover I would be in Washington [D.C.] (I was in Memphis, Tenn., at

⁵XLVII-5207:5-11; 5213:4-10; Opinion, R. 877 and Supplemental Opinion, R. 964.

⁶Defense Exhibit BL and BO, XLVII-5227.

the time) about December 10, 1947, and would telephone him [J. Edgar Hoover], which I did. He was out of the city, but Kline Weatherford, a Special Agent, came to see me at The Mayflower [Hotel]. I went over the whole matter, told him I had in my possession the original confession, would be glad to turn this over to the FBI and again volunteer to go to Japan. I returned to Memphis. . . ."⁷

It was a direct result of Brundidge's "offer of cooperation" that United States Attorney General Tom C. Clark re-opened the case.

⁷Harry T. Brundidge, "Arrest of 'Tokyo Rose' Nears," The Nashville Tennessean, May 2, 1948, p. 14-A. The article discloses his motive. He wrote: ". . . It was along about this time that I began getting a kicking around by columnists and commentators - particularly by Walter Winchell. Winchell reported that the 17-page confession obtained by [Clark] Lee and me, from 'Tokyo Rose' had been stolen from me, and shamed me for the loss. This was the same document which was in my files in my New York apartment! I wired Winchell from Memphis, Tenn., where I was investigating the Crump Machine, that he was dead wrong - that the original was in my possession. The following Sunday, Winchell admitted his mistake - and said it was a copy that had been stolen. There was no copy! We didn't have any carbon paper! I so informed Winchell, telling him that what had been stolen from me in The Imperial Hotel in Tokyo was the contract I had entered into with "Rose." Winchell then demanded to know why I hadn't turned it over to the Federal Bureau of Investigation. . . . About this time Attorney General [Tom C.] Clark asked me for the confession. I was in Washington [D.C.] at the time. At 9:30 P.M. that same night, in my apartment at 17 West 54th Street, New York, I handed the document to Special Agents of the FBI. Then I came in for more ribbing. The confession was unsigned. Naturally! It didn't even occur to us to have "Rose" sign it because I had the signed contract in which she set forth she was the "one and only 'Tokyo Rose'." Most of the essential facts in her confession were contained in the contract. By this time I was furious. I explained my feelings to Silliman Evans, my publisher. "Why don't you go to Japan and get 'Rose' to sign it?" . . . It's a long way from New York

The case quite possibly might not have been resurrected. The following memorandum by Mrs. Iva I. T. d'Aquino to her attorneys during the trial explains this theory:

Reference [Major General Charles A.] Willoughby⁸
(Head of G-2 Section, General Headquarters,
Tokyo)

I never met the General personally, I cannot give you any particulars on him. All I know is that he is head of the Intelligence Section of the army, offices in General Headquarters building, the same building in which General [Douglas] MacArthur has his offices.

I was told by [United States Army] Counterintelligence Corps investigators that this General was in charge of my case. I also heard from Mr. Earl Carroll, formerly owner of the Earl Carroll Hollywood Restaurant, Hollywood, California.

Late March of 1948, I was called down to G-2 headquarters where I met Mr. Carroll, who wanted to talk with me. He told me he was on his way home to the States after a visit to China and Japan. He said he was in Tokyo for the purpose

to Tokyo, and I decided to break it up. . . . Clark Lee, who has retired as a newspaperman to become a novelist and now lives at Del Monte, California, has a beautiful home in Honolulu. He gave me permission to go through his files. I found one of the missing documents, a penciled notation in the handwriting of "Tokyo Rose" setting forth: "For Clark Lee, who interviewed me in Tokyo on September 1st [1945] at The Imperial Hotel. Iva I. Toguri 'Tokyo Rose'"

⁸Major General Charles A Willoughby (USA Ret.) died in Naples, Florida on October 25, 1972.

of making plans for the filming of "Tokyo Romance," a book written by a Mr. Hoberecht, head of the United Press News Agency in Tokyo. Mr. Hoberecht can be located at the UP House in Tokyo. Mr. Carroll asked me one question, "did you ever call yourself, 'Tokyo Rose'?" I told him I never used the name. He told me that General Willoughby had talked with him [Carroll] and that the General told him that the "trial days are over" for me and as far as the General was concerned the case was closed. This was the reason Mr. Carroll was given permission to see me at G-2 headquarters.

Mr. Carroll asked me whether I had applied for a visa to return to the States, to which I answered, "yes," and that I was waiting for an answer from the State Department for clearance to return to the States. Mr. Carroll then told me that one embittered newspaperman, Walter Winchell, was the man who was holding up my clearance by "throwing mud at you" through his column. Carroll told me that he was leaving Japan that night, that if I wanted to write to Winchell, giving him a general resume of the whole case, pointing out to Winchell that I never once called myself "Tokyo Rose" and to write about the POW who had written the scripts, helped to coach me, etc., he [Carroll] would see to it that the letter got to him [Winchell]. Carroll told me he was going to do everything possible for me to return to the States.

Mr. Carroll wrote to me several times after his return to the States, the last letter in which he said he was going to see Winchell in New York and get some things cleared. Mr. Carroll was killed in an airplane accident in Pennsylvania on his way to the Republican convention in Philadelphia.⁹ (See Appendix IV).

⁹Memorandum, Iva I. T. d'Aquino to Wayne M. Collins during the trial.

On Friday, September 3, 1948, the United States Army Transport GENERAL H.F. HODGES left Yokohama, Japan with Mrs. Iva I. T. d'Aquino on board, under the protective custody of Captain John P. Prosnak, United States Army; Captain Katherine Stull and First Lieutenant Erma D. Keener, Women's Army Corps, and arrived at the Port of San Francisco, which is the Northern Federal Judicial District of California, on Saturday, September 25, 1948.¹⁰

Throughout this voyage, the United States Army Transport GENERAL H.F. HODGES did not stop at any American port, e.g., Hawaii or Alaska. The only ports on which Mrs. Iva I. T. d'Aquino was transported from Japan to the United States at which the transport stopped were Naha, Okinawa in the Ryukyu Islands and Inchon, Republic of Korea.¹¹ (See Appendix V).

¹⁰Van Eycken, II-118-124; Prosnak, II-131-145; Stull, II-145-149; Defense Exhibit C, II-150; Defense Exhibits D thru I, III-166. The United States Department of Justice reimbursed the Department of the Army for costs involved in transporting Mrs. Iva I. T. d'Aquino from Japan to the United States. Hereafter names of prosecution witnesses will be underlined, e.g., Prosnak, II-131-145; Stull; II-145-149.

¹¹I-31:1-18.

CHAPTER I

THE INDICTMENT

What the Indictment Alleges

On October 8, 1948 an indictment was returned in the United States District Court for the Northern District of California, Southern Division, charging Mrs. Iva Ikuko Toguri d'Aquino with violation of Title 18 U.S.C. 1 - treason against the United States.¹ The indictment alleged that the defendant had adhered to the enemy, giving them aid and comfort by broadcasting over the Japanese radio from about November 1, 1943 to August 13, 1945.² (See Appendix VI).

The indictment charged the following:

1. The defendant is a native born citizen.
2. From November 1, 1943 to August 13, 1945, in Japan, she intentionally adhered to Japan and the Broadcasting Corporation of Japan, giving them aid and comfort within the United States, Japan and elsewhere.
3. That adherence, aid and comfort consisted of working as a radio speaker, announcer, script

¹See supra, p. iii, n. 2. Also see Opinion, R. 2-7.

²Opinion, R. 3.

writer and broadcaster of recorded music, which consisted of preparing and composing radio scripts, talks and announcements and introducing musical recordings and talks for broadcast by radio from Japan to members of U.S. and Allied forces in the Pacific Ocean area, and elsewhere, said activities being intended to destroy confidence in the American and Allied war efforts, to undermine and lower American and Allied military morale, to create nostalgia in the minds of American and Allied armed forces, to create war weariness among members of the American and Allied armed forces, and to impair the capacity of the U.S. to wage war against its enemies.

4. Defendant committed the following eight overt acts, viz:

- (1) That on a day between March 1, 1944 and May 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did discuss with another person the proposed participation of said defendant in a radio broadcasting program.
- (2) That on a day between March 1, 1944 and June 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did discuss with employees of said corporation the nature and quality of a specific proposed radio broadcast.
- (3) That on a day between March 1, 1944 and June 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in a studio of the Broadcasting Corporation of Japan, did speak into a microphone regarding the introduction of a program dealing with a motion picture involving war.

- (4) That on a date between August 1, 1944 and December 1, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, did speak into a microphone in a studio of the Broadcasting Corporation of Japan referring to enemies of Japan.
 - (5) That on a day during October, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did prepare a script for subsequent radio broadcast concerning the loss of ships.
 - (6) That on a day during October, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in a broadcasting studio of the Broadcasting Corporation of Japan, did speak into a microphone concerning the loss of ships.
 - (7) That on or about May 23, 1945, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan, did prepare a radio script for subsequent broadcast.
 - (8) That on a day between May 1, 1945 and July 31, 1945, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan, did speak into a microphone in a studio of the Broadcasting Corporation of Japan, and did then and there engage in an entertainment dialogue with an employee of the Broadcasting Corporation of Japan for radio broadcast purposes.
5. That said defendant committed each and every one of the overt acts herein described with treasonable intent and for the purpose of, and with the intent in her to adhere to and give aid and comfort to the Imperial Japanese Government,

and to the Broadcasting Corporation of Japan and the officials and employees thereof, enemies of the United States, and said defendant committed each and every one of said overt acts contrary to her duty of allegiance to the United States and to the form of the statute and constitution in such case made and provided, and against the peace and dignity of the United States.

6. The Northern District of California was the Federal Judicial District into which the defendant was first brought shortly prior to the date of the return of this indictment.

FBI Assailed on Questioning Defendant

On September 25, 1948, while the United States Army Transport GENERAL H.F. HODGES was in progress of docking, Mrs. Iva I. T. d'Aquino was seized aboard the vessel by Special Agents of the U.S. Federal Bureau of Investigation, upon a purported warrant of arrest issued upon a complaint filed in the United States District Court for the Northern District of California, Southern Division, on September 25, 1948 by John Eldon Dunn, Special Agent of the Federal Bureau of Investigation, being numbered and entitled Commissioner's Docket No. 11, Case 5136. Mrs. Iva I. T. d'Aquino was brought before United States Commissioner Francis J. Fox in the Post Office Building, San Francisco, where, on her arrival at approximately 11:40 A.M., in custody, she formally was arrested by Hon. George Vice, U.S. Marshal

for the Federal Judicial District, and thereupon, U.S. Commissioner Fox ordered Mrs. Iva I. T. d'Aquino into custody of the U.S. Marshal and continued the hearing on the complaint to October 7, 1948 in order to enable the Grand Jury for the district to complete its inquiry into the matter.³

On Saturday, September 25, 1948, Mr. Wayne M. Collins was conferring with his client, Mrs. Iva I. T. d'Aquino at her place of detention, the San Francisco County Jail No. 3 at Dunbar and Washington Streets, San Francisco, California, at approximately 3:30 P.M., when he was informed by the matron in charge that he would have to leave because a Deputy U.S. Marshal was coming to take Mrs. Iva I. T. d'Aquino to the U.S. Marshal's office in the Post Office Building, San Francisco, and it was necessary for Mrs. Iva I. T. d'Aquino to change from prison to civilian garb. Mr. Collins protested this interference with the privileged conference between himself and client and thereupon left the jail and was admitted to the office of County Jail No. 2 in the same building where he telephoned

³Points and Authorities in Support of Motion to be Admitted to Bail, d'Aquino v. U.S., Case No. 31712-R and Defense Exhibit M (Letter, W.M. Collins to Hon. F.J. Fox, et al., September 27, 1948.

"Market 1-2500" and asked the operator at that number to connect him with the U.S. Marshal's office and thereafter was informed by the operator that there was no answer to her ring and thereupon Mr. Collins requested to ring the U.S. Attorney's office and the telephone of Thomas De Wolfe and John Hogan, Special Assistants to the United States Attorney General in that office and thereafter was informed that none of the telephones answered her rings and that the U.S. Marshal's and U.S. Attorney's offices were closed as it was Saturday afternoon.⁴

Thereupon Mr. Collins returned to the corridor outside the County Jail No. 3 where Mrs. Iva I. T. d'Aquino was lodged and waited and at approximately 3:55 P.M., Deputy Marshal James Eagan appeared, was admitted to the jail and emerged with Mrs. Iva I. T. d'Aquino in his custody. Mr. Collins joined them and entered an automobile of the Federal Bureau of Investigation driven by John Eldon Dunn, Special Agent of that Bureau, who drove the party to the Federal Office Building, San Francisco, where the group entered the office of that Bureau and there agents of that Bureau, acting under the orders of Thomas De Wolfe and John Hogan, held Mrs. Iva I. T. d'Aquino in duress and

⁴Ibid.

subjecting her to duress, over her and Mr. Collins's protests, secretly attempted to question her in a room from which Mr. Collins was excluded.

Thereafter, on Monday, September 27, 1948, Mr. Collins filed a formal protest with the Hon. Francis J. Fox, U.S. Commissioner; Hon. George Vice, U.S. Marshal; Hon. Tom C. Clark, U.S. Attorney General; et al.⁵

The letter of protest declared:

" . . . I protest, condemn and censure that forced seizure and removal of my client from County Jail No. 3 as a prohibited violation of the Fourth Amendment of the U.S. Constitution. I protest, condemn and censure that forced seizure and removal from that jail to the office of the FBI as a willful, deliberate, wrongful and unauthorized interference by the said executive officers and agents with the judicial power of the U.S. District Court for the Northern District of California, Southern Division, in the absence of judicial process having issued thereon for any such purpose; I protest, condemn and censure that unlawful seizure and removal of my client to the office of the FBI by said agents and agencies for secret questioning by them, without advance and formal notice to me and without judicial process having issued thereon, as a direct and deliberate violation of her constitutional right not to be compelled to act as a witness against herself on the purported charge brought against her and as a violation of her constitutional rights secured to her by the provisions of the Fifth Amendment of the U.S. Constitution. I protest, condemn and censure that unlawful seizure and removal for secret questioning

⁵Ibid.

as a violation of the code of legal ethics by which attorneys, even attorneys for the U.S. Government, as officers of the U.S. District Court, are bound, and as a deliberate wrongful and wholly unjustified interference with the privileged and confidential relationship of client and attorney existing between Mrs. d'Aquino and me, and also as a distinctly discourteous action upon the part of each and every officer and agent of the Government guilty of such reprehensible conduct.

"I brand such misconduct as being of a nature and character we have always believed to be shunned in the United States. We are not willing to follow or adopt methods employed by Hitler's Gestapo and Stalin's OGPU in the violation of civil liberty and constitutional right.

"No opprobrium connected with this matter attaches to the U.S. Attorney's office in this judicial district. Neither the Hon. Frank J. Hennessy, U.S. Attorney, nor any of his Assistant U.S. Attorneys, nor any member of their staff would ever have been guilty of such similar outrageous misconduct nor would they or any of them have participated in this outrage."

Defendant's Motion to be Admitted to Bail

On October 13, 1948, counsel for the defendant motioned the United States District Court for the Northern District of California, Southern Division, under Title 18 USCA, sec. 597, and Rule 46(a) of the Rules of Criminal Procedure For The District Courts of the United States, to be admitted to bail.⁶

⁶Title 18 USCA, sec. 597, as amended June 27, 1940,

On Thursday, October 14, 1948, at 1:00 P.M., defense counsel Collins pleaded the motion before Federal Judge Louis E. Goodman. Defense counselor Collins pleaded:

"The defendant, Iva Ikuko Toguri d'Aquino, an adult female, now resides and continuously ever since about July 25, 1941, has resided in Tokyo, Japan, and, on April 19, 1945, there was lawfully united in marriage to one, Felipe J. d'Aquino, a national and citizen of Portugal and resident in Tokyo, Japan, according to the rites of the Roman Catholic faith, by Father John Baptiste Kraus, a duly ordained priest of the Jesuit Order of the Roman Catholic Church, at

referring to bail in capital cases, provides as follows: "Upon all arrests in criminal cases where the punishment may be death, bail shall be taken only by the Supreme Court or a district court, or by a justice of the Supreme Court, a circuit judge, or a judge of a district court." Rule 46(a) of the Rules of Criminal Procedure For The District Courts of the United States, referring to the Right To Bail, provides in part, as follows: "A person arrested for an offense punishable by death may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense." Originally, bail in treason cases was not specifically provided for by statute but it was allowed by federal courts for special reasons in appropriate cases because admission to bail is an incident of the constitutional grant of judicial power and is an inherent right of that power. See Hamilton v. U.S., 3 Dall. (3 U.S.) 17, 1 L. Ed. 490, decided in 1795 when the then existing statute (Act of April 30, 1790, 1 Stat. 112, sec. 4) provided only the death penalty. The accused there, nevertheless, was admitted to bail. And U.S. v. Jones (1813) (CCPa) Fed. Case No. 15495, p. 658, holding that one charged with piracy (a capital offense) who was suffering from the ravages of a disease which is injurious under confinement should be admitted to bail. See also U.S. ex rel. Herbert v. Marshal (1856), Fed. Case No. 15, 726a, where a defendant was indicted for murder and it was held that if it is clear to the court

Sophia University Chapel at Tokyo, Japan, and she thereby and thereupon, pursuant to the law of Portugal, as also the law of Japan, as also by the law of other civilized nations and by international law, became and ever since then continuously has been and now is a national and citizen of Portugal and as such within the exclusive lawful jurisdiction of the Government of Portugal while resident in Japan, and as such a foreigner lawfully residing in Tokyo, Japan, was and is entitled to the protection of the laws of Japan, and was at all of said times and now is without the lawful jurisdiction of the United States; that by reason of the foregoing, at all times since her said marriage, which ever since has been and now is in full force and effect, she continuously has been and now is a bona fide resident of Japan, residing therein at 396 Ikejiri Machi, Setagaya-Ku, Tokyo, with her said husband, and a domiciliary, national and citizen of Portugal.

". . . The defendant is an indigent; aside from used clothing and a few personal effects, the reasonable value of which does not exceed \$25.00, she possesses the following

that a conviction for manslaughter might take place the accused should be admitted to bail. Where a conviction is had for treason, the present rule is that the Court, in its discretion, may impose a minimum imprisonment of five years and a \$10,000 fine. See Title 18 USCA, sec. 2. In 1862, Congress enacted the Act of July 17, 1862, now Title 18 USCA, sec. 2, which prescribes alternative punishments in treason cases and ever since then it has been the recognized rule that an accused indicted on a charge of treason may be admitted to bail. The leading case first deciding this rule under the new statute is Case of Jefferson Davis (CCAVa.), (1867-1871), Fed. Case No. 3621a, at pp. 78, 79, where bail was authorized. In the great majority of the cases where defendants have been convicted of treason by our courts they have been sentenced to imprisonment. We find no cases where a death sentence, imposed by any of our courts, has been carried into execution. In each of the cases where death sentences were imposed by district courts and were not reversed by

assets only, viz., the equivalent of approximately \$100 in Japanese yen which is on deposit on the Postal Savings Bank in Tokyo, and a remote claim of right, subservient to the right of the Alien Property Custodian, in and to certain real property situated in Los Angeles County, California, which property has an approximate value of \$3,500, the interest of defendant therein, however, being at most a disputable claim and hence of substantially no value.

"Defendant is a person of good moral character and has not heretofore been accused of any crime.

"It will be necessary for affiant, in preparing the defense of defendant, to interview witnesses, whose number may exceed one hundred (100) persons; it will be necessary for counsel to confer with defendant in connection with each such witness to be interviewed; it is essential to her said defense that defendant personally see each witness and talk to each such witness in the presence of her counsel; such

appellate courts, our Presidents have commuted the sentence or granted pardons. See Cramer v. U.S., 325 U.S. 1, 24-25, 89, L. Ed. 1445, 1446, where Mr. Justice Jackson, delivering the Opinion of the Court states: "In the century and a half of our national existence not one execution on a Federal treason conviction has taken place. Never before has this Court had occasion to review a conviction. In the few cases that have been prosecuted the treason clause has had its only judicial construction by individual Justices of this Court presiding at trials on circuit or by district or circuit judges. After constitutional requirements have been satisfied, and after juries have convicted and courts have sentenced, Presidents again and again have intervened to mitigate judicial severity or to pardon entirely."

interviews are impossible while defendant is detained in said County Jail No. 3, by reason of the fact she there is held incommunicado from all persons except her father, sister and affiant; no person other than counsel is there permitted to visit and see defendant face to face; defendant's father and sister there are not permitted to see her features nor could any of her witnesses by reason of the fact that were they to be allowed to visit her they could speak to her only through double iron mesh wires which obscures and prevents the visibility of defendant and such persons; the closed section of the room there reserved for counsel to interview clients is tiny, encased in glass, lack ventilation, and counsel and client are separated by a bench-like desk and a partition of glass approximately two and one half feet high mounted thereon, all of which render consultations difficult.

"By reason of the fact she is detained in said County Jail No. 3 where at all hours of the night arrested women are incarcerated and make noise, it is practically impossible for defendant to obtain restful sleep, by reason of which she grows increasingly nervous and ill while under tension. Defendant is frail and weighs approximately 110 pounds. On January 5, 1948, she lost her baby at birth. She suffers from recurrent arthritis.

"There is no danger that defendant, if admitted to reasonable bail, will depart from the jurisdiction of the court; defendant and her counsel are willing, if the court sees fit so to provide that she be required to report periodically to the court or any agent who may be designated by the court, pending the final outcome of the cause."

Defense counsel Collins emphasized in his plea to admit Mrs. Iva I. T. d'Aquino to bail that inasmuch as she was illegally and in violation of the principles and rules of international law, was seized by agents of the

United States, acting under orders of the United States Attorney General, outside the jurisdiction of the United States in Tokyo, Japan, at the home and residence of Mrs. Iva I. T. d'Aquino and her husband on August 26, 1948, and thereafter forcibly was brought to San Francisco by agents of the United States, although she and her husband then were and ever since then have been and now are nationals and citizens of Portugal and were outside the jurisdiction of the United States and in Japan, but within the exclusive jurisdiction of the Government of Portugal, she should be admitted to bail.⁷

Defense counsel Collins reiterated that the United States Attorney General had neither constitutional nor statutory authority or jurisdiction to seize Mrs. Iva I. T. d'Aquino in Tokyo, Japan and remove her therefrom to San Francisco, his authority and jurisdiction being limited to the continental United States and, in consequence, there was no jurisdiction to indict the defendant.⁸

⁷Motion to be Admitted to Bail, d'Aquino v. U.S., Criminal Case No. 31712-R, in the U.S. District Court for the Northern District of California, Southern Division, filed October 13, 1948 and argued October 14, 1948.

⁸Ibid.

Defense counsel Collins asserted:

" . . . According to the law of the United States the defendant, accused by indictment herein, nevertheless, is presumed to be innocent of the charges therein preferred against her. . . ." ⁹

Defense counsel Collins contended that Mrs. Iva I.T. d'Aquino had a substantial defense to the indictment on pure questions of law as well as on pure questions of fact and the right to or the probability of a dismissal of the indictment or of an acquittal of the charges preferred against her.¹⁰

Prosecution's Opposition to Bail for Defendant

The defense motion for bail was protested by United States Attorney Frank J. Hennessy, who expressed fear that Mrs. Iva I. T. d'Aquino might leave this country. Mr. Hennessy declared:

" . . . Treason is the most heinous of crimes, and a capital offense. But it is not an extradictable crime. If Mrs. d'Aquino were to flee this country, she could not be forced to return to stand trial. . . ." ¹¹

⁹Ibid.

¹⁰Ibid.

¹¹Memorandum in Opposition to Bail, d'Aquino v. U.S., Case No. 31712-R, in the U.S. District Court for the Northern District of California, Southern Division, October 14, 1948.

United States Attorney Hennessy argued that the United States has no treaties for extraditing persons accused of treason and that Mrs. Iva I. T. d'Aquino could flee to any South American country without fear of being returned.¹² On October 14, 1948, Federal Judge Louis E. Goodman upheld Mr. Hennessy's argument that Mrs. Iva I. T. d'Aquino be denied bail; however, he was convinced Mrs. Iva I. T. d'Aquino could not avail herself of her legal rights to interview witnesses while she is held in County Jail No. 3 and instead ordered United States Marshal George Vice to provide a suitable place of confinement where she would have full opportunity to interview witnesses with her counsel.¹³

Defendant's Motions to Dismiss Indictment

Defense counsel Collins motioned to dismiss the

¹²Designation of Contents of Record of Appeal, d'Aquino v. U.S., Criminal Case No. 31712-R, in the U.S. District Court for the Northern District of California, Southern Division, filed with Clerk, U.S. District Court, October 11, 1949; S.F. Chronicle, Oct. 15, 1948; S.F. News, Oct. 15, 1948; S.F. Call Bulletin, Oct. 15, 1948.

¹³Ibid. U.S. Marshal George Vice, whose office only had a contract with the San Francisco County Jail for holding Federal prisoners, said he would have to confer with the Director of the Federal Bureau of Prisons on carrying out the Court's order.

indictment in the United States District Court for the Northern District of California, Southern Division, on November 15, 1948.¹⁴ Defense counsel Collins cited the following arguments in his Defendant's Brief on Motion to Dismiss:

1. The indictment fails to state facts sufficient to constitute an offense against the United States.
2. The allegations specially pleading overt acts control general allegations and being innocent on their face.
3. The exclusive jurisdiction over the defendant and of the cause is lodged in United States Military Commissions or Allied International Tribunals.
4. The Court has no jurisdiction over the defendant or of the case because she is an expatriate and naturalized Portuguese.
5. This Court is not the proper venue for trial of the cause and this Court had neither jurisdiction of the cause nor of the defendant.
6. The indictment is defective for misjoinder.
7. The indictment is voice of uncertainty.
8. The United States Attorney General exceeded his authority in kidnapping the defendant in Japan which deprives the Court of jurisdiction over the defendant and of the cause.

¹⁴Defendant's Brief on Motions to Dismiss, d'Aquino v. U.S., Criminal Case No. 31712-R, in the U.S. District Court for the Northern District of California, Southern Division, filed November 15, 1948.

Defense counsel Collins argued:

"The indictment pleads simply that the adherence, aid and comfort consisted of the defendant's work as a radio speaker, announcer, script writer and broadcaster of recorded music. In nowise does it allege any particulars or any ultimate facts how or wherein that work was unlawful. The types of work, as alleged therein, are lawful, harmless and innocent acts on their fact. In consequence, the conclusions pleaded therein that those types of work constitute treason do not supply the deficiency. The indictment, therefore, fails to allege treason even in general terms. It alleges nothing but the pleader's conclusions."¹⁵

The rules of civil pleadings are applicable to criminal pleadings. The requirement of certainty in indictments is the same as required in civil complaints.¹⁶

Rule 7(c) of the Rules of Criminal Procedure For The District Courts of the United States requires the indictment to contain "a plain, concise and definite written statement of the essential facts constituting the offense charged." Defense counsel Collins asserted that the indictment pleaded therein failed so to do.

Defense counsel Collins maintained that contrary to the provisions of Rule 7(c) of the Rules of Criminal

¹⁵Ibid.

¹⁶See 42 Corpus Juris Secundum, sec. 100, pp. 983, 984, and cases there cited.

Procedure and to the rules of common law pleading, required in criminal cases, the indictment therein alleged the pleader's own conclusions of treason as a substitute for ultimate facts constituting treason. In consequence, Mr. Collins stated:

". . . the general allegations utterly fail to allege any facts constituting treason and hence the indictment fails to allege an offense. . . ."17

Even where a general charge of treason (by levying war) is properly alleged in an indictment for treason it still is insufficient unless, in addition thereto, overt acts are alleged with particularity as to time, place and circumstances.¹⁸

¹⁷Supra, p. 23, n. 14.

¹⁸See U.S. v. Burr, 25 Fed. Case No. 14,693, 55 at p. 170, stating the reason therefor, viz: "A description of the particular manner in which the war was levied seems, also, essential to enable the accused to make his defense. The law does not expect a man to be prepared to defend every act of his life which may be suddenly and without notice alleged against him. In common justice, the particular fact with which he is charged ought to be stated, and stated in such a manner as to afford a reasonable certainty of the nature of the accusation and the circumstances which will be adduced against him." See also, Respublica v. Malin, 1 Dall. (Pa.) 35, 1 L. Ed. 26, 27; Vaughn's Case, 2 Salk 634, 91 Reprint 535; 63 Corpus Juris Secundum, sec. 19, p. 819.

Defense counsel Collins maintained that the eight overt acts were specially pleaded. As pleaded they were lawful, harmless and innocent on their face both as to design and effect. Mr. Collins asserted:

"Inasmuch as they are pleaded specially they control and limit the general averments. Thereby the prosecution elects to rely upon and is bound by these special averments. Inasmuch as the overt acts pleaded are innocent on their face and so limit the general averments the indictment fails to allege an offense."¹⁹

The principle is well established that where both general and specific allegations are made respecting the same matter, the specific allegations limit and control the general allegations.²⁰

Treason cannot be alleged in general terms. Under the constitutional (Art. III, sec. 3, cl 1) definition, completed overt acts, in themselves, when coupled with treasonable intent, constitute the offense.²¹

¹⁹Supra, p. 23, n. 14.

²⁰U.S. v. U.P. Railroad Co. (CCA-8) 169 Fed. 65, 67; Hayes Young Tie Plate Co. v. St. Louis Transit Co. (CCA-8) 137 Fed. 80, 85; Boatman's Bank v. Fietzler, 135 Fed. 650, 659; Kidwell v. Ketler, 146 Cal. 12, 17-18, holding that specific allegations control and qualify those that are general. (Quoting Ene. Pl. & Prac. 725); Oliver Coffman, 45 N.E. (2d) 351, 354, Ind. App.; Wile's v. Assn. of Commerce, 75 N.E. 526, 527; 332 Ill. App. 375.

²¹See Cramer v. U.S., 325 U.S. 1, 34, 35, 89 L. Ed. 1441, 1460, 1461. In that case, the U.S. Supreme Court

Defense counsel Collins declared:

". . . The indictment herein has been drawn as though the Cramer case had not been decided by the Supreme Court. It has been pleaded in disregard of the principles it established. It endeavors to plead the constitutionally required overt acts of treason as though they were of the type of incidental overt acts in an ordinary conspiracy case to which, however, they have no resemblance.

"Further, as indicated in the Cramer case,

questioned the adequacy of the indictment which pleaded three overt acts, two of which on their face, as pleaded, were innocent. (Seven overt acts, likewise innocent on their face, had been withdrawn from consideration by the jury). See statement of that Court concerning overt acts one and two in that indictment at 325 U.S. 37, 89 L. Ed., p. 1462, reading as follows: "At the present stage of the case we need not estimate their sufficiency as a matter of pleading. Whatever the averments might have permitted the government to prove, we now consider their adequacy on the proof as made." That statement clearly indicates that if the question of the sufficiency of that indictment as pleading overt acts had been raised or urged that court would have held that it did not state an offense. However, it was not called upon to decide and so did not pass on the adequacy of their pleading. It did decide, however, that aside from the question of the adequacy of the three overt acts so pleaded, the evidence adduced on two of the three overt acts were insufficient to sustain findings of guilt and reversed the judgment of conviction. (The third overt act was not passed upon). The actual rule of that case is that a completed overt act, in and of itself, constitutes treason if that overt act is accompanied by or coupled with treasonable intent. Under that rule, therefore, it is apparent that allegations of overt acts must set forth the particulars wherein and how those overt acts constitute treason, when coupled with allegations of intent.

it is clear that if the question of the adequacy of the pleading of the overt acts herein were not raised by the defendant in this motion to dismiss the indictment the prosecution, nevertheless, by defendant's objection to evidence on those allegations, would be barred from offering evidence thereon by way of proof of those acts.

"The eight overt acts alleged state nothing except that the defendant (1) discussed, (2) discussed, (3) spoke, (4) spoke, (5) prepared script, (6) spoke, (7) prepared script, and (8) spoke.

"Reduced to their essence they allege nothing except that she spoke and wrote words. However, words, so long as they are mere words, will not constitute overt acts of treason."²²

Defense counsel Collins held that the exclusive jurisdiction to charge and try Mrs. Iva I. T. d'Aquino for the purported offense alleged in the indictment is lodged in the United States Military Commissions or Tribunals set up by the United States in Japan, or in the Allied International Tribunals set up by the United States and its Allies in Japan.²³

Pursuant to the power lodged in Congress by Article I, section 8, clause 10 of the Constitution, authorizing it to "define and punish . . . offenses against

²²Supra, p. 23, n. 14. Also see Wimmer v. U.S., (CCA-6), 264 Fed. 11, 12-13, cert den. 253 U.S. 494; In re Charge to Grand Jury, 30 Fed. Case No. 18, 271, 5 Blatch 549.

²³Supra, p. 23, n. 14.

the law of nations" of which the "law of war" is an integral part, Congress enacted the Articles of War, Title 10 USCA, secs. 1471-1493. The Articles of War recognized the "military commissions" appointed by military command, as it had previously existed in the United States Army practice, as appropriate tribunals for trial and punishment of offenses against the law of war.

In consequence, military commissions have the exclusive jurisdiction to try offenses committed in Japan against the law of war.²⁴ Article 15 of those Articles of War (Title 10 USCA, sec. 1486) is the statutory authority for the military tribunals to try civilians, and enemy personnel. It expressly confers upon those military commissions concurrent jurisdiction, with courts-martial, to try civilian and enemy personnel for offenses "that by statute or by the law of war may be triable by such military commissions, provost courts, or other military tribunals." Military commissions established thereunder

²⁴See Matter of Yamashita, 327 U.S. 1, 19-20, 90 L. Ed. 499, 511-512, so deciding as to jurisdiction to try enemy nationals. Also see Ex parte Quirin, 317 U.S. 1, 27, 87 L. Ed. 3, 12, so deciding as to jurisdiction over the American civilian, Haupt, who was found within the United States.

are common law war courts.²⁵

Article 2 of the Articles of War (Title 10 USCA, sec. 1473) also confers military jurisdiction over "any person subject to military law." Article 12 of those Articles of War (Title 10 USCA, sec. 1483) also confers concurrent power on courts-martial and military commissions to try civilian offenders by including within their jurisdiction "any other person who by the law of war is subject to trial by military tribunal."²⁶

Defense counsel Collins declared:

" . . . pursuant to the authority of the terms upon which Japan surrendered, retaining the Emperor system, and the Potsdam Declaration authorizing the victorious United States and its Allies to establish international tribunals to try and to meet out punishment to civilians and others in the vanquished countries the said "international tribunals" so set up in Japan by the United States and its Allies, in addition to our military commissions and tribunals, have either a concurrent or exclusive jurisdiction over the defendant for the alleged offense committed in Japan during the war. These international tribunals, so established, are operating in Japan. . . ." ²⁷

²⁵See decision and history of these matters in Yamashita opinion, 90 L. Ed. pp. 511-512 and footnote there and also in dissent at pp. 535-539. As there pointed out, at p. 508, "Japan, by her acceptance of the Potsdam Declaration, has acquiesced in the trial of those guilty of violation of the law."

²⁶Ibid. ²⁷Ibid.

The right of an American citizen to become an expatriate, that is to say, to give up residence, domicile and allegiance to the United States, is an inherent right.²⁸

Under Title 8 USCA, sec. 801(a), Mrs. Iva I. T. d'Aquino, by her marriage to her husband on April 19, 1945, acquired the Portuguese nationality, citizenship and domicile of her husband and also his residence in Japan. That marriage took place abroad, outside the jurisdiction of the United States and actually constituted her "naturalization in a foreign state" under Title 8 USCA, sec. 801(a). The type of naturalization thereunder need not be through a formal method. Any act or course of conduct which is inconsistent with the claim of American citizenship constitutes an actual, if not a technical, "naturalization" thereunder.

U.S. ex rel. DeCicco v. Longo (DCConn. 1942), 46 F.S. 170, 174-175, deciding that, aside from the statutory prescribed methods of expatriation, "a course of conduct

²⁸See Title 8 USCA, sec. 800. The right to become an expatriate therein is declared to be a fundamental principle of the Republic. (The right to become an expatriate while remaining within the United States is limited; however, by Title 8 USCA, sec. 803(a)). Reynolds v. Haskins (CCAkans. 1925), 8 Fed. (2d) 473, 474. 14 Op. Atty. Gen. 295.

indicating recognition by the petitioner of a duty owed by him to a foreign government which is inconsistent with the maintenance of American nationality" is an act of expatriation and, in addition thereto, is actually, if not technically, an act of "naturalization" within the foreign country within the meaning of the statute and further his "course of action must be considered inconsistent with his obligations of American citizenship and, therefore, a renunciation . . . of his American citizenship." The case also decides that any of the statutory methods of expatriation, specified in Title 8 USCA, sec. 801, also constitutes a "naturalization" of the person abroad within the meaning of that statute, originally Title 8 USCA, secs. 16, 17, now sec. 801.

The statutory methods of expatriation prescribed in Title 8 USCA, sec. 801, are not the only methods whereby one becomes an expatriate and loses United States nationality. Any act or conduct which evinces an intent to renounce or abandon American citizenship abroad constitutes an act of expatriation.²⁹

²⁹See rule in Perkins v. Elg., 307 U.S. 325, 330, 83 L. Ed. 1320, 1323, to the effect that either voluntary renunciation or abandonment of citizenship abroad constitutes expatriation. See also Watkins v. Morgenthau (DCPa. 1944) 56 F.S. 529, 530-531, deciding that where a mother married

Title 8 USCA, sec. 717(a), expressly recognizes the fact that since September 22, 1922, by marriage to a foreign national who is ineligible to citizenship to a woman citizen loses her American citizenship and acquires the nationality of her husband and that, only since sec. 717(a) was enacted on October 14, 1940, has it been possible for such a person to reacquire American citizenship and then only by the formal method of "naturalization" set forth in sec. 717, provided, however, that she had not acquired foreign nationality by any

a Japanese alien in Japan in 1900 and established residence in Japan her residence there for fourteen years even though she thereafter returned to the United States with her children and remained here until her death in 1933 constituted an act of expatriation on her part which caused her children to lose U.S. citizenship because evidence that she returned here only for a ten year visit demonstrated her original intent to abandon U.S. citizenship. See also, In re Wright (DCPa. 1937), 19 F.S. 224, 225-226, deciding that although prior to the Act of 1907 an American woman did not lose her U.S. citizenship by reason of her marriage to a British alien that she, nevertheless, lost it by withdrawing from the United States after her marriage and her withdrawal and residence abroad was an act of expatriation which demonstrated her election and intent to abandon her citizenship. See also Title 8 USCA, sec. 803(a) limiting the methods of specified acts of expatriation while the person remains within the United States or its possessions but placing no limitation on acts of expatriation abroad.

affirmative act other than that marriage. Mrs. Iva I. T. d'Aquino, according to defense counsel Collins, had not applied for naturalization.

The right to become an expatriate exists during time of war and ever since Title 8 USCA, sec. 16 (Act of March 2, 1907, 34 Stat. 1128) which once prohibited it in time of war, was repealed by the Act of October 14, 1940, 54 Stat. 1172.

It is a rule of international law that a person who has become expatriated cannot be punished for breaches of duty growing out of his prior allegiance to his former sovereign even when he is within the jurisdiction of that prior sovereign.³⁰

Defense counsel Collins argued for like reason the United States has no jurisdiction over the defendant, the stated rule of international law, recognized by our Government, precluding the United States from exercising authority over her.

Under section 3 of the Expatriation Act of 1907,

³⁰See 9 Op. Atty. Gen. 357, at 362, where the United States intervened on behalf of a naturalized citizen whom the Hanoverian Government attempted to punish when he was found within its jurisdiction.

Chapter 534, 34 Stat. 1228, it was provided as follows:

"That any American woman who marries a foreigner shall take the nationality of her husband. At the termination of the marital relation she may resume her American citizenship, if abroad, by registering within one year with a consul of the United States, or by returning to reside in the United States, or, if residing in the United States at the termination of the marital relation, by continuing to reside here."

Under this section; however, only an American woman who married a "white" alien abroad could resume United States citizenship by "naturalization". One who married an alien "ineligible" to citizenship was barred from "naturalization" thereunder.³¹

³¹See In re Page (DCCal. 1926), 12 Fed. (2d) 135, and In re Lynch (DCCal. 1929), 31 Fed. (2d) 762, so declaring and also holding that so long as the American woman remained in the United States she remained a citizen but lost it if she removed abroad. See also In re Fitzroy (DCMass. 1925), 4 Fed. (2d) 541, 542, so declaring the common law rule of England. A native born American citizen of Japanese ancestry, however, who married a Japanese alien in Japan was declared thereunder to have lost her United States nationality permanently by reason of the fact that her husband, a Japanese alien, was ineligible to citizenship because she thereby acquired Japanese nationality and hence ineligibility to United States citizenship. See Toshiko Inaba v. Nagle (CCA-9, 1929), 36 Fed. (2d) 481; so holding as to a Nisei woman who married a Japanese alien in Japan and Ex parte Ng Fung Sing (DCWash. 1925), 6 Fed. (2d) 670, so holding as to an American woman of Chinese ancestry who married a Chinese alien in China.

However, sec. 3 of the Expatriation Act of 1907, was repealed in 1922, and was replaced by Title 8 USCA, sec. 9 which provided, in part, as follows:

"A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage after this section, as amended, takes effect, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens."

"Section 3 of the Expatriation Act of 1907 (34 Stat. 1228) is repealed. Such repeal shall not restore citizenship lost under such section not terminate citizenship resumed under such section. A woman who has resumed under such section citizenship lost by marriage shall, upon the passage of this Act (Act of September 22, 1922, 42 Stat. 1021, c 411), have for all purposes the same citizenship status as immediately preceding her marriage."

Section 9 was repealed by the enactment of the Nationality Act of 1940 which became effective ninety days after October 14, 1940, under Title 8 USCA, sec. 906. In consequence, the common law rule was revived which provided that marriage of an American woman to an alien abroad or her marriage in this country to an alien, followed by residence abroad, constituted an absolute act of expatriation.

When the Nationality Act of 1940 was enacted, the provisions of Title 8 USCA, sec. 9, were transferred to Title 8 USCA, sec. 717, which authorizes two classes of

American women who lost United States nationality to become "naturalized" citizens but excludes a third class. It reads, in part, as follows:

"(a) A person who was a citizen of the United States and who prior to September 22, 1922, lost United States citizenship by marriage to an alien or by the spouse's loss of United States citizenship, and any person who lost United States citizenship on or after September 22, 1922, by marriage to an alien ineligible to citizenship, may, if no other nationality was acquired by affirmative act other than such marriage, be naturalized upon compliance with all requirements of the naturalization laws with the following exceptions:

"(b) (1) From and after the effective date of this chapter (90 days after October 14, 1940), a woman, who was a citizen of the United States at birth, and who has or is believed to have lost her United States citizenship solely by reason of her marriage prior to September 22, 1922, to an alien, and whose marital status with such alien has or shall have terminated, if no other nationality was acquired by affirmative act other than such marriage, shall, from and after taking the oath of allegiance prescribed by subsection (b) of section 735 of this chapter, be deemed to be a citizen of the United States to the same extent as though her marriage to said alien had taken place on or after September 22, 1922."

This section, therefore, recognizes that an American woman who, since September 22, 1922, has married an alien who is ineligible to citizenship acquires his nationality and citizenship and that, although, under the prior law, (Expatriation Act of 1907, 34 Stat. 1228) she irretrievably would have lost U.S. citizenship, she now can reacquire

United States citizenship by following the new method of naturalization prescribed by Title 8 USCA, sec. 717(a).

Defense counsel Collins stated when Mrs. Iva I. T. d'Aquino, therefore, married her husband on April 19, 1945, in Tokyo, Japan, she acquired his Portuguese nationality.³² Her husband's father was a Portuguese national and his mother a Portuguese national of Japanese blood born in Japan.³³ In consequence, he derives his Portuguese nationality from both his father and his mother. Because he was born in Japan and is one-fourth Japanese blood and is, therefore, a "native" of an island contiguous to Asia he is ineligible to admission to the United States and, because he is of part Japanese blood he is "racially" ineligible to citizenship in the United States.³⁴ Therefore, under Title 8 USCA, sec. 717(a), Mrs. Iva I. T. d'Aquino is a Portuguese alien but is entitled to become a naturalized citizen under that section unless she is barred therefrom on other grounds, if she be so inclined. She cannot otherwise become an American citizen. Defense counsel

³²Supra, p. 23, n. 14.

³³Ibid.

³⁴Ibid.

Collins affirmed since the defendant is not such a citizen, but is a Portuguese national the Court has no jurisdiction over the alleged offense.³⁵ Mr. Collins declared:

" . . . Inasmuch as the indictment alleges her to have been an employee of the Japanese government, that employment is an "affirmative act other than such marriage" which bars her from naturalization under that section.

"By reason of her marriage on April 19, 1945, in Japan, the defendant lost the U.S. citizenship she is alleged to have had by her birth here and acquired the Portuguese nationality, citizenship and domicile of her husband and his residence in Japan.

"Inasmuch as that marriage took place since September 22, 1922, she would be eligible to become naturalized here, under Title 8 USCA, sec. 717(a), if she can qualify as an eligible person thereunder. However, it is clear that she cannot qualify for naturalization. Her husband is a Portuguese national, born of a father of half Japanese blood and a mother of full Japanese blood, in Japan, and, therefore, is a 'native of Asia'. He, therefore, is excluded from admission to the United States. (See Act of February 5, 1917, 39 Stat. at Large 874, Chap. 29, sec. 3; Comp. Stat. 4289.5, excluding "all natives of Asia and natives of islands contiguous thereto," including Japan).

"In consequence, he is racially inadmissible to the United States. In addition thereto, he is ineligible to 'naturalization'

³⁵Ibid.

in the United States by reason of the provisions of Title 8 USCA, sec. 703, enacted on October 14, 1940, which limits naturalization only to "white persons, persons of African nativity, descendants of races indigenous to the Western Hemisphere, and Chinese persons or persons of Chinese descent." That statute still excludes persons born in the Japanese islands from naturalization whether they are of pure Japanese blood or only partial Japanese blood.

". . . The defendant is the daughter of alien Japanese parents. Her mother is dead. Her father resides in the United States. Because of the fact that she is the daughter of alien Japanese parents, coupled with the fact that she herself has been a resident of Japan ever since 1941, she is presumed to have become an expatriate by the express provisions of Title 8 USCA, sec. 802, which provides, in part, as follows:

'A national of the United States who was born in the United States . . . shall be deemed to have expatriated himself under subsection . . . (d) of section 901 (that is to say, by accepting employment under a foreign state for which only nationals of that state are eligible) when he shall remain for six months or longer within any foreign state of which he or either of his parents shall have been a national according to the laws of such foreign state, or within any place under control of such foreign state, and such presumption shall exist until overcome whether or not the individual has returned to the United States. . . .'"³⁶

Under Title 8 USCA, sec. 801(d), a citizen of the United States loses United States nationality by accepting

³⁶Ibid.

or performing employment under a foreign government for which only nationals of that foreign government are eligible. Defense counsel Collins held that inasmuch as residence in Japan, and employment by a foreign government, Japan, as pleaded in the indictment, in time of war is inconsistent with a claim of American citizenship acceptance of such employment, in and of itself, is an act of expatriation which caused loss of United States citizenship.³⁷

Defense counsel Collins maintained the Court has neither jurisdiction over Mrs. Iva I. T. d'Aquino nor over the cause because Congress has not by law directed the place of judicial trial of crimes committed within the territorial jurisdiction of Japan by a resident thereof.

Clause 3 of section 2 of Article III of the Constitution provides, in part, as follows:

"The trial of all crimes . . . when not committed within any State, . . . shall be at such place or places as the Congress may by law have directed."

Title 28 USCA, sec. 102, which was effective to September 1, 1948, provided as follows:

"Offenses on the high seas. The trial of all offenses committed upon the high seas, or

³⁷Ibid.

elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought."

Thereafter, Congress, by Public Law No. 773, redrafted the U.S. Code, approved June 25, 1948, effective at September 1, 1948. This repealed Title 28 USCA, sec. 102, (see Title 18 U.S.C. Cong. Serv. 1948, p. 2415, repealing Act of March 3, 1911, ch, 231) and substituted in its place Title 18 USCA, sec. 3238, which reads as follows:

"Offenses not committed in any district. The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought."

The indictment was returned on October 8, 1948. Inasmuch as the purported offense was committed before this new statute was enacted, defense counsel Collins maintained it was not applicable to this case for if it were applied the new statute would have an ex postfacto operation forbidden by sec. 9, cl. 3 of Article I of the Constitution. Defense counsel Collins further maintained inasmuch as the former statute, Title 28 USCA, sec. 102, was repealed as of September 1, 1948, it also has no application to this case. In consequence, defense counsel

Collins asserted:

" . . . inasmuch as Title 8 USCA, sec. 102, no longer applies, the Court has no jurisdiction of the cause or of the defendant and it is not the proper venue for any trial of the cause."³⁸

The Act of April 30, 1790, Chapter IX, 1 Stat. 112, sec. 8, pp. 113-114, from which Title 28 USCA, sec. 102 is derived, demonstrates that jurisdiction and venue for trial which it conferred related to crimes committed on the high seas and also on navigable streams within the boundaries of foreign countries where ships could sail.³⁹ Nothing therein provided could be construed to assert jurisdiction over an expatriate actually residing on foreign soil.

In Ross v. McIntyre, 140 U.S. 453, 464, 35 L. Ed. 581, 586, where the United States was authorized, under a treaty with Japan to set up a consular court in Japan to try offenses of American citizens there committed, the Supreme Court declared, that except where permitted by treaty, we could not exercise jurisdiction in foreign territory, as follows:

"When, therefore, the representatives or

³⁸Ibid.

³⁹See Ross v. McIntyre, 140 U.S. 453, 471.

officers of our government are permitted to exercise authority of any kind in another country, it must be on such conditions as the two countries may agree, the laws of neither being obligatory upon the other."

The words "or elsewhere" in the venue statute clearly seem to refer to the particular places originally specified in the Act of April 30, 1790, 1 Stat. 112, sec. 8, and covered offenses committed not only upon the high seas, but also offenses "in any river, haven, basin or bay, out of the jurisdiction of any particular state."⁴⁰

The words "or into which he is first brought" in the statute clearly seem to refer to offenders apprehended aboard American or pirate vessels on the high seas, or in any river, haven, basin or bay, as specified in the original Act of April 30, 1790.⁴¹

The venue statute never was designed to apply to any person seized aboard on foreign soil and forcibly

⁴⁰See Ex parte Bollman, 4 Cranch 75, 136, 2 L. Ed. 554, 574, so construing it. Also Jones v. U.S., 137 U.S. 202, 211, 34 L. Ed. 691, 695.

⁴¹Ibid. The Court, construing the venue statute in Ex parte Bollman, said: "The law read on the part of the prosecution is understood to apply only to offenses committed on the high seas, or in any river, haven, basin or bay, not within the jurisdiction of any particular state. In those cases there is no court which has particular cognizance of the crime, and therefore, the place in which the criminal is apprehended, or, if he be apprehended where no court has exclusive jurisdiction, that to which he shall be first brought is substituted for the place in which the offense was committed."

brought to the United States; it was designed to be limited to offenders apprehended upon the high seas or in navigable streams and brought to the United States, as its history reveals.

Although the criminal laws of the United States cannot have an extraterritorial effect, vessels are deemed to be a part of the territory of the sovereign whose flag they fly, under the venue statute, and they do not lose that character whether they are on the high seas or in navigable streams within the territorial limits of another sovereign power.⁴²

The United States may define and punish offenses committed by its own citizens on its own vessels while within foreign waters.⁴³

The Federal courts have jurisdiction of offenses committed by United States citizens aboard an American

⁴²See U.S. v. Flores, 289 U.S. 137, 155-156, 77 L. Ed. 1086, 1094.

⁴³See U.S. v. Rodgers, 150 U.S. 249, 264, 37 L. Ed. 1071, 1076-1077, where the Court so held, but also declared our criminal laws cannot have any extraterritorial effect over a foreign country, in the following language: ". . . as a general principle the criminal laws of a nation do not operate beyond its territorial limits, and that to give any government, or its judicial tribunals, the right to punish any act or transaction as a crime, it must have occurred within those limits."

vessel while in a foreign harbor (Rio de Janeiro, Brazil) when the offenders were found within the United States and indicted.⁴⁴

However, where vessels and their crews engaged in piracy they have no sovereign, regardless of the flag they may fly, and piracy is punishable by any nation under the law of nations.⁴⁵

The jurisdiction of a Federal court and the venue for the trial of an alleged offense committed outside the jurisdiction of the United States on foreign soil by a resident of a foreign country was not even contemplated by Congress in enacting the original venue statute or its amendments. No appellate decisions has ever been rendered which would extend it to cover such a case. In U.S. v. Chandler (DCMass.) 72 F.S. 230, 236, it was held that our Federal courts had jurisdiction of the crime of treason committed in a foreign land by an American citizen.

⁴⁴See U.S. v. Bowman, 260 U.S. 94, 97, 67 L. Ed. 150-151, so holding, but refusing to determine that they would have jurisdiction of the offense or venue for trial purposes if the accused was a British subject and had been found (apprehended) in the judicial district of the trial court.

⁴⁵See U.S. v. Furlong, et al., 5, Wheat (18 U.S.) 184, 198-199, 5 L. Ed. 64, 68.

Obviously our courts have such a jurisdiction if the accused voluntarily comes to this country and is found and charged here. They would also have such jurisdiction if the offense had been committed upon the high seas or navigable streams and the offender had been brought here by the vessel on which it was committed or upon which he was arrested.

The real issue involved in d'Aquino v. U.S., however, which was not raised in Chandler v. U.S. is quite different. The question here involved is whether the United States District Court for the Northern District of California, Southern Division can acquire jurisdiction over a resident of Japan by seizing her in Japan, and forcibly bringing her to this country to be indicted. The word "brought" in the venue statute means only those who are brought to this country involuntarily upon their apprehension upon the high seas or in navigable waters.⁴⁶

In U.S. v. Best (DCMass.), 76 F.S. 138, 140, the defendant who was an American citizen had been indicted

⁴⁶See U.S. v. Townsend (DCNy.) 219 Fed. 761, 762. It has no reference whatever to a resident in a foreign country who is seized illegally and brought to this country involuntarily.

for treason in 1943 and was a fugitive from justice. Thereafter, he had been arrested in Austria on January 29, 1946, by British military authorities for engaging in suspected hostile activities and was delivered over to our troops and thereafter was flown to the United States. At the time of his arrest there was no stable government in Austria. It was in a chaotic condition and in the process of being occupied by Soviet and Allied troops. Best raised the question of jurisdiction over his person and this was decided against him by the District judge. He failed; however, to raise the question of jurisdiction over the offense and failed to urge the point that jurisdiction over him was lodged exclusively in our military commissions or Allied international tribunals abroad. He had not committed an act of expatriation either voluntarily or involuntarily. He was still an United States citizen who had been a mere sojourner or visitor in Germany and Austria.⁴⁷

The indictment in d'Aquino v. U.S. alleged the offense was committed in Japan, and hence outside the jurisdiction of the United States. Defense counsel Collins

⁴⁷U.S. v. Best (DCMass.), 76 F.S. 138, 140.

asserted:

"In consequence, the indictment fails to state an offense cognizable in this court."⁴⁸

⁴⁸Supra, p. 23, n. 14. See also American Banana Co. v. United Fruit Co., 213 U.S. 347, 355-356, 53 L. Ed. 826, where it is stated: "It is obvious that, however, stated, the plaintiff's case depends on several rather startling propositions. In the first place, the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States, and within that of other states (Costa Rica). It is surprising to hear it argued that they were governed by the act of Congress. "No doubt in regions subject to no sovereign, like the high seas, or to no law that civilized countries would recognize as adequate, such countries may treat some relations between their citizens as governed by their own law, and keep, to some extent, the old notion of personal sovereignty alive. See The Hamilton (Old Dominion S.S. Co.) v. Gilmore, 207 U.S. 398, 403, 52 L. Ed. 264, 269; Hart v. Gumpach, L.R. 4 FC 439, 463, 464; British South Africa Co. v. Companhia de Mocqambique, (1893) A.C. 602. They go further, at times, and declare that they will punish anyone, subject or not, who shall do certain things, if they can catch him, as in the case of pirates on the high seas." "But the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done. Slater v. Mexican Nat. R. Co., 194 U.S. 120, 126, 48 L. Ed. 900, 902. This principle was carried to an extreme in Milliken v. Pratt, 125 Mass. 374, 28 ABR 241. For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent. Phillips v. Eyre, L.R. 4 Q.B. 225, 239, L.R. 6 Q.B. 1, 28: Dicey, Conflict L. 2d ed. 647."

Under treaty provisions authorizing the United States to set up courts in China prior to 1948, when an indictment has been issued in the United States Court in China and the defendant is apprehended in the United States, he can be remanded to the court in China through the medium of extradition proceedings.⁴⁹

Defense counsel Collins held that the indictment improperly joins in one count several separate and distinct purported offenses without separately stating them and, in consequence, is duplicituous.⁵⁰

In *U.S. v. Chandler* (DCMass.) 72 F.S. 230, 232, the district court; however, took the view that a series of alleged acts might state a unitary offense, and not fall for duplicity, under the rule laid down in *Ford v. U.S.*, 273 U.S. 593, 602, 71 L. Ed. 793.

Defense counsel Collins summed up as follows:

" . . . Where the indictment fails to allege the identity of another person, if not alleged to be unknown, it is subject to demurrer for uncertainty.

⁴⁹*U.S. v. Chapman*, (DCWash.), 14 Fed. (2d) 312, 313.

⁵⁰*Supra*, p. 23, n. 14.

"The Attorney General had neither constitutional nor statutory authority or jurisdiction to seize the defendant in Japan and remove here therefrom to San Francisco, his authority and jurisdiction being limited to the continental United States and, in consequence, there was no jurisdiction in the Grand Jury to indict the defendant and none exists in this court to try her.

"Her seizure in Japan and removal to San Francisco is an expression of usurped autocratic legislative and treaty making power lodged in Congress and the Executive to the exclusion of the Attotney General. Neither constitutional, statutory nor treaty provision authorizes any such abduction of the defendant and to subject her to the indignity of a trial in this country.

"No power whatever is lodged in the United States to indict a foreign national illegally seized abroad by our own agents and forcibly brought to this country."⁵¹

In the Declaration of Independence a protest was made against the seizure and transportation of colonists by the British to remote England for trial on treason charges, the clause reading:

"For transporting us beyond seas to be tried for pretended offenses. . . ."⁵²

The colonists, in the Declaration of Independence,

⁵¹Ibid. See also 42 Corpus Juris Secundum, sec. 142, pp. 1048-1049, and cases there cited.

⁵²James Willard Hurst, "Treason in the United States," 58 Harvard Law Review 251, 256 (1944).

voiced their protest against that oppressive trial practice on treason charges by England.⁵³

The only power over our own citizens abroad and over foreign nationals abroad which an executive officer may exercise is that particular power lodged in the Secretary of the Treasury by the President's Executive Order No. 8832 of July 16, 1941, treating United States residents in Japan and all other residents thereof as foreign nationals under Executive Order No. 8795 of June 14, 1941, sec. 5E(1), and subjecting their properties in the United States to regulation. In consequence, a United States citizen in Japan falls into the classification of an enemy national only for the purpose of obtaining jurisdiction over the assets of any such person which are situated within the confines of the United States.

The only arbitrary removal jurisdiction that the United States may exercise over alien enemies within our continental borders is that authorized by the Alien Enemy Act, Title 50 U.S.C. 21 et seq. The power to seize them during war time is an exclusive prerogative of the President.

⁵³Ibid.

He exercises that power by Executive Order. The only removal jurisdiction over alien not subject to that Act is that authorized by our immigration laws. Neither type vests any authority in the United States over aliens or residents on foreign soil.

Prosecution's Opposition to Defense's Motion to Dismiss

United States Attorney Frank J. Hennessy pointed out that the defense's Motion to Dismiss admits for the purpose of the same the verity of all factual allegations well pleaded in the indictment.⁵⁴ Prosecutor Hennessy declared:

"The indictment alleges that defendant is now and has at all times mentioned in the indictment been a citizen of the United States and one owing allegiance to the United States. Traitorous adherence to the enemies of the United States is alleged, as are likewise facts concerning the giving of aid and comfort to the enemy. Numerous overt acts effectuating the treasonous plan are alleged by the Federal grand veniremen in the indictment. The crime of treason consists of two elements: adherence to the enemy; and rendering him aid and comfort. The overt act is not an element of the crime."

⁵⁴Memorandum in Opposition to Defendant's Motion to Dismiss, For a Bill of Particulars, To Strike, and For Discovery and Inspection, d'Aquino v. U.S., Case No. 31712-R, in the U.S. District Court for the Northern District of California, Southern Division, November 19, 1948.

United States Attorney Hennessy buttressed his argument by asserting:

"The pleading and all reasonable inferences and intendments therefrom disclose that the grand jury alleged that the treasonous plan of defendant was translated from the realm of thought to action. The motion to dismiss which was interposed by the defendant under the new Federal Rules of Criminal Procedure is procedurally the successor in interest to the demurrer which was formerly utilized to attack indictments in Federal criminal proceedings. The motion to dismiss performs all the functions formerly utilized by demurrer. In testing the sufficiency of the motion to dismiss, the allegations of the indictment and all reasonable inferences therefrom in favor of the United States must be taken as true."⁵⁵

Mr. Hennessy maintained that the indictment charges but one offense and is not duplicitous.⁵⁶ The prosecution cited U.S. v. Chandler, 72 F. Supp. 230 (DCMass.), in which Federal Judge Ford sustained the sufficiency of an indictment almost identical with that before the court in the case at bar. Defendant Chandler in that case was charged with treasonous activities in connection with his work as a broadcaster for Radio Berlin.⁵⁷

⁵⁵Ibid. See also U.S. v. Doremus, 246 F. 958; U.S. v. Knoell, 239 F. 16 (CCA-3); U.S. v. Schmauder, 258 F. 251, 252.

⁵⁶Ibid. U.S. v. Ford, 273 U.S. 593, 602, 71 L. Ed. 793; U.S. v. Haupt, 152 F. (2d) 771, 798 (CCA-7), 330 U.S. 631; U.S. v. Chandler, 72 F. Supp. 230 (DCMass.). ⁵⁷Ibid.

Prosecutor Hennessy countered the defense's Motion to Dismiss by declaring:

"Spoken words considered in their setting and environment can constitute treason. In the Chandler case it will be seen that the overt acts pleaded by the grand jurors were more innocuous than those alleged in the indictment in the case at bar. Most of defendant's preliminary motions, especially those with reference to expatriation and those which contend that subject was illegally apprehended and brought to the United States are speaking motions and involve trial questions of fact. Federal Rules of Criminal Procedure, p. 47, which provides that a motion may be supported by affidavit is not intended to permit 'speaking motions,' e.g., motion to dismiss an indictment for insufficiency supported by affidavits, but to authorize the use of affidavits when affidavits are appropriate to establish a fact, e.g., authority to take a deposition or former jeopardy. . . ."58

Prosecutor Hennessy cited as legal authority, U.S. v. Werner, 247 F. 708, 711, 712 (DCPa.) where Federal Judge Dickinson, in a treason prosecution, voiced the following apt language:

"The opinion expressed by Judge Nelson will bear the construction that although words, so long as they are mere words, 'do not constitute an act of overt treason,' yet, when "printed in relation to an act or acts which if committed with a treasonable design might constitute such overt act," they may be part of the treasonable act, in addition to being evidence of treasonable intent.

⁵⁸U.S. v. Werner, 247 F. 708 (DCPa.); U.S. v. Chandler, 72 F. Supp. 230, 235 (DCMass.).

Letters written, or oral messages sent, to convey information of value to an enemy, could not be deemed otherwise than as treasonable, whether the former were sent by post or telegraph, and the latter by a messenger or a shout. If sent by the wireless operation of a publication which would make the facts known through making them notorious, the essential character of the act would be in nowise changed. The ingenuity of the criminal cannot be permitted to hide the criminality of his act.

"The form of this indictment lays it open to the criticism that it voices only the charge of entertaining because of expressing treasonable sentiments. It can be so read, however, only by ignoring or restricting the meaning of some of the legal verbiage employed. It in apt and appropriate words charges the offense of treason, and we have no warrant to assume that it means less than what it charges.

"(3) If the wish is to secure a ruling upon the question argued, the record should be put in such shape as to present that question only. The approved practice in the courts of the United States is to discourage the raising of mere procedure questions by demurrers to indictments by reason of formal defects or otherwise. This discouragement extends to raising by demurrer questions which can as well or better be raised as trial questions. R.S. 1025 is a command to ignore all defects in pleadings except such as 'tend to the prejudice of the defendant.'

"It is the right of the people, as well as the defendants, that there shall be open public inquiries into every charge of crime, and that the guilt of the defendant shall be submitted to a jury as the lawfully constituted tribunal to pass upon it. This, of course, does not lessen the responsibility of prosecuting officers and grand juries to see to it that no defendant shall be unjustly harassed by unfounded charges, nor does

it relieve the trial judge of the duty of unflinchingly pronouncing judgment that the evidence is insufficient to convict, if such be the case, and of seeing to it that no man be unjustly convicted, if entitled to an acquittal under the facts or the law. It does mean, however, that when officials charged with that responsibility have submitted an indictment, and a grand jury has found a true bill, the court shall not usurp the functions of the trial jury, and shall not dismiss the indictment unless it charges no offense against the law, or discharge the defendants unless the evidence will not warrant a conviction. The former we cannot find, because this indictment is admittedly good as an indictment, unless limitations are read into it which we do not feel justified in inserting, and the latter cannot be known until the evidence is in. What the law is, in case the indictment were read as counsel for the defendants reads it, is a speculation upon which we do not care to enter, unless the United States concurs in this reading."⁵⁹

United States Attorney Hennessy maintained that the treason statute (Title 18 U.S.C. 1) provides that it is treason to give comfort and aid to an enemy of the United States within the United States or "elsewhere".⁶⁰ Mr. Hennessy declared:

". . . As previously stated herein, defendant's United States citizenship throughout

⁵⁹Supra, p. 52, n. 54.

⁶⁰Ibid. See also U.S. v. Stephan, 50 F. Supp. 738. Stephan was convicted of treason before a petit jury with Federal Judge Tuttle of the Eastern Federal Judicial District of Michigan presiding. The instructions of the trial court

the period mentioned in the pleading under attack and her natural allegiance owed to the United States are admitted by the motion to dismiss. The defendant was a citizen of the United States and owed her allegiance to this country."⁶¹

Prosecutor Hennessy asserted that the treason statute (Title 18 U.S.C. 1) leaves no doubt that the treasonable acts may be committed "within the United States

are paraphrased in the footnotes in U.S. v. Stephan, supra. In his instructions to the petit jurors the trial court stated in part as follows (U.S. v. Stephan, 50 F. Supp. 738, 741): "The statute adopted by Congress reads as follows: 'Treason, 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. One point is interesting to note right there. We generally do not have jurisdiction of other crimes unless they are committed in the United States, but when it came to define treason Congress recognized that, if anyone did commit treason, it would be such a menace to the very existence of our government that it provided that even though the act were done outside the United States it would be an offense here.'" The court in U.S. v. Stephan, supra, further went on to say in the body of its opinion at p. 743: "If this court had not stated the law correctly the appellate courts would have reversed the case and set aside the sentence. On the contrary, the Circuit Court of Appeals in an unanimous opinion, 133 F. (2d) 87, expressly said that this court had plainly and correctly charged the jury and defined the crime with which the defendant was charged and of which he was convicted." After the Court of Appeals for the Sixth Circuit affirmed in the Stephan case, certiorari [A writ to call up records, for review or relief] was denied by the Supreme Court. U.S. v. Stephan, 133 F. (2d) 87 (CCA-6) Cert. den. 318 U.S. 781, 87 L. Ed. 1148, Reh. den. 319 U.S. 783, 87 L. Ed. 1727.

⁶¹Supra, p. 52, n. 54.

or elsewhere."⁶² In the same way, Title 28, U.S.C. 102, now Title 18 U.S.C. 3238, is territorially all inclusive for offenses committed outside the jurisdiction of any particular state or district, namely, "offenses committed upon the high seas or elsewhere."

Prosecutor Hennessy held the fact that the offense was committed within the jurisdiction of another sovereignty does not prevent trial of the defendant in the district where she is found, or into which she is first brought.⁶³ In a similar treason prosecution, Federal Judge Kennedy of the Eastern District of New York, in Ex Parte Monti, 79 F. Supp. 651, 653, 654, stated as follows:

"My conclusion is that section 41 [Judicial Code, Title 28 USCA, sec. 102] as it now stands is broad enough to confer jurisdiction on the federal courts of the district where the offender is first brought over American citizens who have committed the crime of treason against the United States in territory under a foreign sovereign. Certainly the presence of a local tribunal, adequate to deal with the crime, which Chief Justice Marshall stressed in the Bollman case, is not a feature of this case.

"If I am right in this conclusion, then the objection to the trial by a Brooklyn jury of a defendant charged with the commission of a crime in

⁶²Ibid.

⁶³Ibid.

Germany is not important, because the requirements of the Constitution (Amendment VI) have been fulfilled, although the crime was not committed within the Eastern District of New York. Since the offender was first brought here (sec. 41 [Judicial Code, Title 28 USCA, sec. 102]), that is the district 'previously ascertained by law.'

"Were the grounds just dealt with used in support of a writ of habeas corpus, I would dismiss it, and, accordingly, I must deny the application, under the procedure here followed, for the issuance of a writ."

Prosecutor Hennessy cited as authority U.S. v.

Chandler, 72 F. Supp. 230, 236, (DCMass.), where Federal

Judge Ford stated as follows:

"The defendant contends that section 41 of the Judicial Code, Title 28 USCA, sec. 102, applies only to crimes committed on the high seas and that the court has no jurisdiction in this case, despite the section's unambiguous language as follows: 'The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found, or into which he is first brought.'

"The defendant at the outset contends that the heading of section 41, as it appears at Title 28 USCA, sec. 102, viz: "Offenses on the high seas", supports his position. A slightly, but significantly, different heading appears in the original bill, found at 36 Stat. 1099, 1100, viz: "Offenses on the high seas, etc., where triable." (Emphasis supplied.)

"The defendant cites Ex Parte Bollman, 4 Cranch 75, 2 L. Ed. 554; U.S. v. Alberty, 24 Fed. Case No. 14426, and U.S. v. Chapman, D.C. 14 F. (2d) 312, and argues these cases are authority for his

contention that the phrase 'elsewhere out of the jurisdiction of any particular State or district' does not include places on land within the jurisdiction either of the United States or of foreign powers. It is the opinion of this court that these cases do not stand for the proposition defendant asserts. In all these cases, the conclusion that the court did not have jurisdiction was fundamentally based upon the fact that the offenses were committed in a district of the United States and a tribunal existed in that district where the offenses could be tried. That is not the case here.

"In a dictum in the case of U.S. v. Bowman,⁶⁴ 260 U.S. 94, 102, the Supreme Court construed section 41 of the Judicial Code as applying to crimes committed in foreign lands. Indeed it would be inconceivable to reach a conclusion, especially in view of the plain language of section 41 of the Judicial Code, that no court of the United States had jurisdiction of the crime of treason committed in a foreign land."

The case of U.S. v. Best, 76 F. Supp. 138 (DCMass.) was cited as authority by Prosecutor Hennessy in his argument that the military were possessed of the power to return Mrs. Iva I. T. d'Aquino to the United States.⁶⁵

⁶⁴In U.S. v. Bowman, 260 U.S. 94, 102, the frauds were committed on the high seas and in the port of Rio de Janeiro in Brazil. Three defendants who were American citizens were found in New York and tried there. The Supreme Court said: "Clearly it is no offense to the dignity or right of sovereignty of Brazil to hold them for this crime against the government to which they owe allegiance."

⁶⁵Supra, p. 52, n. 54.

United States Attorney Hennessy concluded:

" . . . Defendant's contention that she was kidnapped and illegally brought to the United States is wholly immaterial at this juncture and totally devoid of merit. . . . Assuming, arguendo, the arrest, detention, and removal to be illegal, this court is not concerned with the same and the motion to dismiss should be denied. . . ."66

On January 3, 1949, Federal Judge Michael J. Roche denied the defense's Motion to Dismiss.⁶⁷ On the same day, Federal Judge Roche also denied defense's Motion for Bill of Particulars,⁶⁸ Motion to Strike Indictment,⁶⁹ and Motion for Discovery and Inspection, excepting request no. seven of the last motion.⁷⁰

⁶⁶Ibid.

⁶⁷Designation of Contents of Records on Appeal, U.S. v. d'Aquino, Criminal Case No. 31712-R, in the U.S. District Court for the Northern District of California, Southern Division, October 11, 1949. See also Hearing on Special Motions of Defendant, U.S. v. d'Aquino, December 20, 1948.

⁶⁸The Motion for Bill of Particulars asked for evidentiary matters and requested the Government to give the defendant the Government's evidence.

⁶⁹The Motion to Strike Indictment moved the Court for its order to strike the whole of the indictment and, if the whole be not ordered stricken, certain parts therefrom, and Defense counsel Collins asserted the indictment should be stricken upon the grounds that said same are: (1) sham, (2) irrelevant, (3) redundant, (4) immaterial, (5) superfluous, (6) repetitious, (7) unnecessary, (8) multifarious, and (9) conclusions.

⁷⁰Request No. seven of Motion for Discovery and

Mrs. Iva Ikuko Toguri d'Aquino pleaded "Not Guilty" on January 3, 1949 and Federal Judge Michael J. Roche set the cause for trial on May 16, 1949.⁷¹ On April 25, 1949, Federal Judge Roche issued an order authorizing the issuance and service of subpoenas and motion for a list of witnesses and veniremen be continued to May 2, 1949, and ordered the case continued from May 16, 1949, to July 5, 1949 for trial.⁷²

Inspection reads: "(7) The package of typewriter sized foolscap [13X16 inches] paper, consisting of a series or number of original and perhaps, a number of carbon copies, of typewritten pages or script, approximately one-half inch thick, obtained from the defendant by agents of the [U.S. Army] Counterintelligence Corps of the Eighth U.S. Army in Japan, namely, Sergeant Page [Paige?] for Lieutenant Colonel Turner at Yokohama, Japan, on or about September 15, 1945, said package of papers thereafter being in the possession of Fred Tillman, special agent of the U.S. Federal Bureau of Investigation, who, on or about April, 1946, at Sugamo Prison, Tokyo, Japan, obtained defendant's initialing of each page thereof while she was held in restraint and duress at said prison by United States authority, said papers in said package of papers being in the nature of radio scripts purporting to have been prepared for broadcast from Radio Tokyo."

⁷¹Supra, p. 61, n. 67.

⁷²Ibid. Judge Michael J. Roche postponed the trial from May 16, 1949 to July 5, 1949 because the defense required additional time to produce witnesses and secure depositions.

CHAPTER II

THE TRIAL

Refusal to Produce Defendant's Witnesses from Japan

The Government brought its own Japanese witnesses from occupied Japan,¹ but refused to bring those requested by Mrs. Iva Ikuko Toguri d'Aquino.² (See Appendix VII). This was contrary to its action in Gillars v. U.S., 182 F. (2d) 962, 978, where the United States brought over German defense witnesses from occupied Germany.³ The

¹Defense Exhibit K, III-215:1-25.

²Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof, d'Aquino v. U.S., Ninth C.A. No. 12383, in the Supreme Court of the United States, October Term 1951, No. Misc. 299, pp. 79-80. Felipe J. d'Aquino (XLIII-4729 ff) came from Japan on a Portuguese passport; but Japanese subjects could not come from Japan to the United States without permission of the United States Government. Such permission was unconditionally refused. Expenses of the trip were a subsidiary problem.

³The basic problem was recognized in Gillars v. U.S., supra: "The serious constitutional difficulty which might arise by reason of the absence of compulsory process to aid an accused who has been involuntarily transported to the United States for trial, far removed from the acts charged is not presented for decision." (Emphasis added.) Even

District of Columbia Court of Appeals thought serious constitutional difficulties would have arisen if this had not been done.⁴

Similarly, Title 18 U.S.C. 3005 provides that in capital cases including treason, the defendant shall be enabled to get witnesses in the same manner as is usually accorded to the Government.⁵

Defense counsel Collins stated:

" . . . To justify the denial by calling occupied Japan a 'foreign country' is obvious sophistry. The rule of Blackmer v. U.S., 284 U.S. 421 is based on the practical consideration that the United States has no control over foreign citizens in foreign countries. But the United States has sufficient control over territories occupied in World War II that it has brought prosecution witnesses from Japan and both prosecution and defense witnesses from [occupied] Germany. Refusal to bring defense witnesses from

the objection of expense does not avail the Government. In the case Burgman v. U.S., 188 F. (2d) 637, 641 dealt with an expert witness [psychiatrist] not with a witness to local facts charged to the defendant, but from the scene of which she has been removed.

⁴Ibid.

⁵Title 18 U.S.C. 3005, assures a defendant in a treason case the right: " . . . to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial, as is usually granted to compel witnesses to appear on behalf of the prosecution."

Japan was because the Government did not want to, not because it could not. It is no answer that defendant was enabled to take depositions. . . ."6

The defense's motion was denied without reference to expenses.⁷ Moreover, since the Government brought witnesses from occupied countries in all the post-war treason trials, it would seem that Mrs. Iva I. T. d'Aquino was entitled to such witnesses as a matter of right under Title 18 U.S.C. 3005.⁸

Defense counsel Collins maintained that in a case prosecuted under Title 18 U.S.C. 3238 the Government has a choice of two courses.⁹ If it thinks the expense too great, it can drop the prosecution. Or if it feels that it must prosecute, it can proceed with a fully regular trial, far from the scene of the defendant's alleged activities.¹⁰ What it cannot do is what the Government has attempted to do in the case at bar; take the defendant away from the

⁶Supra, p. 63, n. 2.

⁷Ibid.

⁸Ibid.

⁹Supra, p. 41.

¹⁰Supra, p. 64, n. 5.

locality of the acts charged and then try her through the device of withholding procedural advantages which she would have in an ordinary case.¹¹ Though much more involved, the situation is fundamentally the same as in U.S. v. Fox, 3 Mont. 512. There the Government arrested the defendant and left him in jail because no appropriation had been made to cover the expense of a trial.¹²

FBI Questioned Two Former Australian POWs
Who Arrived to Testify for Defendant

On Thursday, June 30, 1949, Government agents seized two of the Australian witnesses who had notified the United States Attorney General that Mrs. Iva Ikuko Toguri d'Aquino was guiltless of any act against the interest of the United States and that they offered to testify on her behalf.¹³ They were former Royal Australian

¹¹Supra, p. 63, n. 2.

¹²U.S. v. Fox, 3 Mont. 512.

¹³Letter, W.M. Collins to The President of the United States, November 4, 1968; S.F. Chronicle, July 1 and 5, 1949; New York Times, July 3, 1949; S.F. Examiner, July 5, 1949; S.F. Call Bulletin, July 5, 1949.

Army Major Charles Cousens,¹⁴ of Sydney, Australia, and ex-Royal Australian Air Force Sergeant Kenneth George Parkyns,¹⁵ of Liverpool, New South Wales. Special agents John Eldon Dunn and Frederick G. Tillman of the Federal Bureau of Investigation, seized them on their arrival from Australia and secreted them in a locked room at the Pan American Airway Terminal at the San Francisco International Airport and subjected them to interrogation and attempted to browbeat them into refusing to testify for the defendant.¹⁶ The special agents held those Australian ex-soldiers incommunicado until counsel for the defendant was informed by a Customs officer that the agents had taken the two Australian passengers to that room. Thereupon, defense counsel Collins broke through the locked door, irrupted into the room and brought the tete-a-tete to an abrupt climax and a halt.¹⁷

¹⁴According to the Australian War Memorial Office records, Charles Cousens died on May 8, 1964.

¹⁵Supra, p. 66, n. 13.

¹⁶Ibid.

¹⁷Ibid.

Trial Jury Selection

The trial got under way on Tuesday morning, July 5, 1949, the day after Mrs. Iva Ikuko Toguri d'Aquino's thirty-third birthday, when Federal Judge Michael J. Roche read the formal indictment and then began carefully questioning the 109 prospective jurors to determine if they had any preconceived notions and if they could be fair and impartial jurors.¹⁸ (See Appendix VIII). Mr. Theodore Tamba, of the defense staff, propounded the following questions to the prospective jurors:

- "1. Reasonable doubt presumption of innocence.
- "2. Free from bias or prejudice regarding persons of Japanese ancestry; the same regarding nationals of Portugal.
- "3. Whether the prospective juror can disassociate himself [herself] from rumors, newspaper reports and try the case upon the evidence produced in Court and the instruction of the Court.
- "4. Whether the jurors heard Walter Winchell or Kate Smith¹⁹ broadcast regarding this case and if such broadcast would have any effect on their trial of this case.

¹⁸I-1:1-25; S.F. News, July 5, 1949; S.F. Call Bulletin, July 5, 1949; S.F. Chronicle, July 5, 1949; S.F. Examiner, July 5, 1949.

¹⁹Kate Smith had lured a generation of Americans with

- "5. Whether any of the jurors have lost loved ones in the war and members of the family and whether such loss would have any effect on their trial of this case.
- "6. Whether any of them are veterans.
- "7. Whether any member of the family works for a Federal agency.
- "8. Whether the prospective juror would believe a Government witness in preference to defendant's witness.
- "9. Would they be prejudiced against the defendant because she is married to a person of mixed Portuguese and Japanese blood; whether they would be prejudiced against witnesses of mixed blood or witnesses married to people of mixed blood.
- "10. Whether they be prejudiced against the witness or witnesses who might be of the Negro race.
- "11. Whether they be disinclined to sit in a trial which may take a long time.
- "12. Whether the juror knows of any reason why he [she] cannot try the case with a fair and open mind and give the defendant the benefit of any doubt that might arise in the case."²⁰

her patriotic rendition of "God Bless America." She left off long enough to add her voice to those who were condemning Mrs. Iva Ikuko Toguri d'Aquino before the evidence was in.

²⁰Notes of Theodore Tamba, Attorney, Mrs. Iva Ikuko Toguri d'Aquino File.

Mr. George Olshausen, of the defense staff accused the prosecution of racism. He asserted:

" . . . The prosecution attorneys challenged all prospective jurors on a strictly racial basis. They excused all the non-whites called to the box - six Negroes and one Chinese American."²¹

Herb Caen, a columnist for the San Francisco

Chronicle wrote:

" . . . Interesting, the racial angle in the 'Tokyo Rose' treason trial. For instance, [sic.] the prosecution got an all-white jury after using up only seven of its twenty challenges. The seven prospective jurors who were challenged (disqualified) just happened to be six Negroes and one Chinese. The Government is practicing segregation, too, like this: the white witnesses are kept in one room - and the Japanese, Filipinos and Negroes in another."²²

An all-white jury of six men and six women and two women alternates was impaneled and sworn at 2:43 P.M. on Tuesday, July 5, 1949, to try the cause and an adjournment was taken until Wednesday, July 6, 1949 at 10:00 A.M.²³

²¹Notes of George Olshausen, Attorney, Mrs. Iva Ikuko Toguri d'Aquino File.

²²Herb Caen, "It's News to Me," San Francisco Chronicle, August 2, 1949.

²³I-1:1-25; S.F. News, July 6, 1949; S.F. Call Bulletin, July 6, 1949.

The Trial

Mrs. Iva Ikuko Toguri d'Aquino was born on July 4, 1916, in Los Angeles, California,²⁴ of Japanese ancestry.²⁵ Her father and mother, both lawful residents of the United States, were born in Japan.²⁶

²⁴Government Exhibit 3, I-58; Government Exhibit 4, I-71; Government Exhibit 5, I-71; Government Exhibit 73, XLVII-5294; Defense Exhibit SS, XLIV-4919; Defense Exhibit BP, L-5522. From her birth to 1919, Mrs. I. d'Aquino lived at 947 Denver Avenue, Los Angeles, California. Her family moved to Calexico where they remained until 1925. In 1925, her family moved to San Diego. In 1928, her family again moved to Los Angeles and resided on East 38th Street. During 1935, her family lived on the 1700 block of Wilmington Avenue and 11718 Bandera Avenue, respectively, Los Angeles. In 1939, her family moved to 11630 Bandera Avenue, Los Angeles, California.

²⁵Ibid.

²⁶Supra. Her father, Jun Toguri, was decorated posthumously by the Japanese Government with the Order of the Sacred Treasure Fourth Class, on October 19, 1972. The presentation was made by Consul General Tateo Suzuki at his official residence in Chicago, Illinois, with Mrs. Iva Ikuko Toguri d'Aquino receiving the decoration. Mr. Toguri had previously been decorated with the Fifth Order of the same decoration before his death in early 1972. According to the Hokubei Mainichi [North American Daily], October 25, 1972, it was revealed for the first time at the presentation ceremony that Mr. Toguri had been making contributions to the Children Home of California in Los Angeles for thirty-six consecutive years. Her mother Fumi Toguri died in 1942.

She was educated in California public schools and graduated from the University of California at Los Angeles in June, 1941.²⁷

According to a prosecution witness she there [while still on the U.C.L.A. campus] talked about studying medicine in Japan.²⁸

Clair T. Steggall testified:

" . . . She went to Japan in July, 1941 with the thought of studying medicine, since she had relatives there who were in the medical field.

* * *

" . . . She said that she was going to Japan to medical school, she was interested in medicine, but felt she could not get into a medical school here because of being a woman and her ancestry."²⁹

²⁷Defendant, XLIV-4912:15; 4914:1. Mrs. Iva d'Aquino attended Hoffman Grammar School in Calexico; Lincoln Heights Grammar School in San Diego; The Ascot Avenue Grammar School in Los Angeles; McKinley Junior High School in Los Angeles; and graduated from Compton Union High School in 1933. She attended Compton Junior College for a half a year until the winter of 1934. Mrs. Iva Ikuko Toguri d'Aquino received a B.S. degree in zoology from U.C.L.A. She also attended Compton Japanese Language School as did most Niseis during her high school years.

²⁸Steggall, XXII-2344; 2345:4-24. Defense counsel Collins called attention to the fact that Mrs. Iva d'Aquino intended to go to Japan to study medicine; not that the trip she actually made was for that purpose. (Petitioner's Reply to Brief in Opposition to Certiorari, d'Aquino v. U.S., Ninth C.A. No. 12383 in the Supreme Court of the U.S., October Term 1951, No. Misc. 299, pp. 2-3).

²⁹Ibid.

She resided in the United States until July 5, 1941, when she sailed with Chiyeko Ito aboard the ARABIA MARU for Japan³⁰ as a family representative in lieu of her bed-ridden mother to visit her maternal aunt who was reported to be on the verge of death.³¹ Because the matter was urgent she received only a Certificate of Identification, instead of a passport.³² She arrived in Japan, July 24, 1941,³³ with only \$300 in her possession.³⁴

A passport application to the American Consulate in Tokyo, Japan never produced a passport.³⁵ A subsequent application for evacuation was pigeon-holed by the American Consulate in Tokyo on April 4, 1942, with the notation that Mrs. Iva I. T. d'Aquino's citizenship was "not proved" and

³⁰Defendant, XLIV-4912:13-14.

³¹Defendant, XLIV-4917:14-24.

³²Defendant, XLIV-4918:8-17; Defense Exhibit SS. See also XLIV-4919.

³³Defendant, XLIV-4920. ³⁴Defendant, XLIV-4921.

³⁵Defendant, XLIV-4922:9-14; Defense Exhibit TT, XLIV-4923, Letter from United States Consul to Iva Ikuko Toguri, December 1, 1941.

that she would get the same treatment as other non-resident Nisei at the end of the war.³⁶ On September 2, 1942, she withdrew her application for repatriation.³⁷ She was then without funds required to reenter the United States.³⁸

Defense witness Chiyeko Ito testified that Mrs. Iva d'Aquino also expressed the belief that she would be interned into

³⁶Defense Exhibit A, II-116 (Fragmentary page, fourth document on U.S. Exhibit 7 [Application for Evacuation], dated April 4, 1942, this, although she had her birth certificate in Japan; Government Exhibit 4, I-40 (Certified copy, Application for Passport) reciting that Mrs. Iva I. Toguri d'Aquino, then Iva Ikuko Toguri, had her birth certificate. On September 13, 1916, when Iva Ikuko Toguri was two months nine days old, she was registered in the Koseki [Family Register] of her father's ancestral line in Japan. On January 13, 1932, her father had that registration cancelled. (Defendant, XLIX-5500).

³⁷Government Exhibit 7, I-80. In September, 1942, Mrs. Iva d'Aquino received a notice from the Swiss Legation in Tokyo announcing the prospective sailing of a second evacuation ship. (Defendant, XLIV-4938). She went to the Swiss Legation to ascertain the possibility of boarding that ship and applied for passage to the United States. (Defendant, XLIV-4939). She was informed that she needed \$425 as fare. (Defendant, XLIV-4939).

³⁸Defendant, XLIV-4939-4941. Attention is invited to the fact that her parents were barred under the provisions of the Trading With The Enemy Act with advancing any such fare and that, by reason of their detention in a War Relocation Authority Center at Gila, Arizona, her parents were helpless to assist her.

a "Relocation Center," i.e., concentration camp, if she returned to the United States.³⁹ Mrs. Iva I. T. d'Aquino, however, testified that her sole reason was lack of fare.⁴⁰

In June, 1943, she was suffering from malnutrition, beri-beri, sinus infection, and otitis media, and was given hospital treatment by Dr. K. W. Amano.⁴¹ She had very poor knowledge of the Japanese language⁴² and had

³⁹Ito, XL-4531:3; 4538:5-9; 4542:1.

⁴⁰Defendant, XLVIII-5362:12-22.

⁴¹Amano, R. 818-819; Defendant, XLV-4969; Deposition of K.W. Amano, M.D. Dr. Amano is a Japanese national. He is a specialist of eyes, throat, nose, and ear ailments. Dr. Amano studied medicine in Japan, United States, France, Italy, Germany, Austria, and England. He studied at the University of Pennsylvania School of Medicine from 1929 to 1932. Dr. Amano practiced medicine in Seattle, Washington from 1925 to 1929, and in Los Angeles, California from 1932 to 1934. He was a member of the American Medical Association and the American Academy of Ophthalmology and Otolaryngology. He also taught at the College of American Medical Evangelist and the University of Southern California Medical School. Dr. Amano and his wife, who is also a physician and surgeon, since 1934 have treated foreign diplomats, their dependants, missionaries, and business persons in Tokyo, Japan. Dr. Amano stated that he had occasion to discuss the progress of the war with Mrs. Iva d'Aquino. He stated that her attitude was "entirely and definitely American." Dr. Amano recalled that Mrs. Iva d'Aquino mentioned to him that the Japanese would be defeated. Dr. Amano destroyed all of the patient records prior to evacuating Tokyo for Karuizawa because of the bombings by U.S. aircraft. In 1947, after Mrs. Iva d'Aquino was discharged from Sugamo Prison, she received pre-natal care from Dr. Amano's wife and was treated until her ninth month of pregnancy. On January 5, 1948, she lost her baby at birth.

⁴²Defendant, XLIV-4914-4915.

held odd jobs requiring knowledge of English. She did typing at Matsumiya's Language School,⁴³ gave piano lessons,⁴⁴ and worked as a monitor-typist in English for Domei News Agency during June, 1942 to December, 1943.⁴⁵ She had been without a food ration card during June through September, 1942.⁴⁶

In the summer of 1943 she applied for a typing job in the business office of the Broadcasting Corporation of Japan, also known by its popular appellation as Radio Tokyo.⁴⁷ Government witness Edward Yoshio Kuroishi stated that he helped her get this job.⁴⁸ Although Kuroishi stated

⁴³Defendant, XLIV-4941; 4946-4947.

⁴⁴Defendant, XLIV, 4946:3-13. An article by Theodore Tamba in the Hokubei Mainichi [North American Daily], September 25, 1972, revealed for the first time that Mrs. Iva Ikuko Toguri d'Aquino is an accomplished pianist.

⁴⁵Defendant, XLIV-4942-4944.

⁴⁶Defendant, XLV-4960.

⁴⁷Defendant, XLV-4969-4971; Cousens, XXVIII-3157:8-14.

⁴⁸Kuroishi, XXI-2281-2282; 2284:5-7; 2285:18-21; and Government Exhibit 13 (Card showing personnel history of employees of the Broadcasting Corporation of Japan).

that he interceded with Radio Tokyo to help Mrs. Iva d'Aquino to get the typing job; however, Mrs. Iva d'Aquino testified that she obtained the job through answering an ad and by being successful in a competitive examination.⁴⁹

At this time three Allied war prisoners were broadcasting at Radio Tokyo under Japanese duress. They were Major Charles Cousens, an Australian; Captain Wallace E. Ince, an American; and Lieutenant Norman Reyes, a Filipino.⁵⁰ The program was called the "Hinomaru Hour," or "Zero Hour".⁵¹ The program was first organized and broadcast in the Spring of 1943.⁵² It was then utilized

⁴⁹Defendant, XLV-4970:18-23.

⁵⁰Cousens, XXVIII-3122:9-18; 3179:22-25; 3180:23; 3181:3; XXIX-3235:21; 3236:8; Ince, XXXI-3463:6-11; 3521:9; 3522:8; Reyes, XXXII-3579:3-8; 3598:18-19; 3665:18-21; S.F. News, August 15, 1949; S.F. Call Bulletin, August 15, 1949; S.F. Examiner, August 19, 1949; S.F. News, August 19, 1949; S.F. Call Bulletin, August 19, 1949; S.F. Examiner, August 20, 1949; and S.F. Chronicle, August 20, 1949.

⁵¹Mitsushio, XI-1052:17-20; 1054:1-10; 1055:24; 1056:5; 1061:12-16. The name "Hinomaru Hour" or "Zero Hour" according to the evidence, was devised to connote Zero Hour as meaning the hour when you launch into battle. It also had some indirect reference to the Zero type aircraft used by Japanese military pilots. It also, according to the evidence, had some indirect reference to and in connection with some Zero symbol in the Japanese flag or national emblem.

⁵²I-20:20-25.

as a fifteen minute program.⁵³ In 1944 it was enlarged to an hour program.⁵⁴

When, in November, 1943, the Japanese authorities decided to put a female voice on their program,⁵⁵ the three Allied war prisoners talked the Japanese manager into picking Mrs. Iva I. T. d'Aquino.⁵⁶

George Hideo Nakamoto Mitsushio,⁵⁷ the civilian head of the program, thereupon took the matter up with his superior Shigechika Takano,⁵⁸ who thereupon ordered Mrs. Iva I. T. d'Aquino to broadcast.

⁵³Ibid.

⁵⁴Ibid.

⁵⁵Mitsushio, XI-1089:4-8.

⁵⁶Ibid. See also XI-1091:16-21; XII-1099:8; 1100:6; Cousens, XXVIII-3182:12; 3183:14.

⁵⁷George Hideo Nakamoto Mitsushio entered the Mitsushio family as an adopted son when he married into the Japanese family and assumed the adoptive family name. He was born in San Francisco, California and educated in California public schools and attended the University of California, Berkeley and Columbia University in New York. He worked briefly for the Rafu Shimpo, a Japanese American tabloid in Los Angeles, California. He departed for Japan in 1940, and subsequently renounced his United States citizenship. He was chief of the Overseas Section, Radio Tokyo. S.F. Call Bulletin, July 20, 1949; S.F. News, July 20, 1949; S.F. Examiner, July 20, 1949; S.F. Chronicle, July 20, 1949; S.F. News, July 21, 1949; S.F. Chronicle, July 21, 1949.

⁵⁸Mitsushio, XI-1092:7-16.

Shigechika Takano told Mrs. Iva I. T. d'Aquino:

" . . . You have no choice. You are living in a militaristic country. You take army orders. You know what the consequences are. I don't have to tell you that."⁵⁹

Mrs. Iva I. T. d'Aquino testified that she knew the Japanese purpose of the "Zero Hour" program, to the extent (and not otherwise) that she learned it from Major Charles Cousens:

"Q.[De Wolfe] Now, you knew that the purpose of the "Zero Hour" program was to make American troops homesick, didn't you, the Japanese purpose?

"A.[Mrs. I. d'Aquino] Yes, the Japanese purpose, yes.

* * *

"Q.[De Wolfe] You knew that the purpose of the program was to demoralize the Allied troops, didn't you?

* * *

"A.[Mrs. I d'Aquino] No.

* * *

"Q.[De Wolfe] You knew the purpose of the "Zero Hour" program, didn't you?

⁵⁹Defendant, XLV-4985:4-7; 4985:12-13; 4985:16-17; 4985:19-21.

"A.[Mrs. I. d'Aquino] Yes, that was first brought to my attention. I had no knowledge of it except when Major [Charles] Cousens told me all about it. That he was using the ["Zero Hour"] program for his own use and own purposes. Up to that time I just was told it was an entertainment program by Major Cousens."⁶⁰

Mrs. Iva Ikuko Toguri d'Aquino admitted that no physical force was used on her; she testified that threats put her in fear.⁶¹ In the very passage of the trial proceedings, she responded to questions regarding duress by chief counsel for the Government, Thomas De Wolfe:

"Q.[De Wolfe] No one threatened you to make you continue in your broadcasting work?

"A.[Mrs. I. d'Aquino] There were no physical threats, no.

"Q.[De Wolfe] No one threatened you to make you continue in your work, was the question, did they?

"A.[Mrs. I. d'Aquino] When you say threats, I am thinking of physical threats.

"Q.[De Wolfe] I am thinking of any kind of threats, Mrs. d'Aquino.

⁶⁰Defendant, XLVII-5306:5-8; 5306:13-14, 18; 5307:15-19.

⁶¹Defendant, XLVIII-5334:9-24.

"A.[Mrs. I. d'Aquino] Oh, yes, just [Imperial Japanese] Army orders, which I considered as fear, yes.

"Q.[De Wolfe] There were threats to make you continue in your broadcasting work, weren't there?

"A.[Mrs. I. d'Aquino] Yes.

"Q.[De Wolfe] And there were threats to make you take the job, weren't there?

"A.[Mrs. I. d'Aquino] They were not physical threats, no.

"Q.[De Wolfe] Well, they were threats, weren't they?

"A.[Mrs. I. d'Aquino] Yes."62

Much evidence was introduced by the defense, and more rejected by the Court to show the consequence of disobeying Imperial Japanese Army orders in wartime Japan.⁶³ It was the prosecution's position that the radio station in question [Broadcasting Corporation of Japan] was under the control of the Imperial Japanese Army.⁶⁴

⁶²Defendant, XLVIII-5334:9-24.

⁶³Depositions of Tamotsu Murayama; George Ozasa; Suisei Matsui; Foumy Saisho; Katsuo Okada; George Noda; Opinion, R. 895 to 904.

⁶⁴Tsuneishi, III-226:22; 227:25; 235:12-14; 235:24; 236:1-7; IV-240:17; 241:13.

The Broadcasting Corporation of Japan was divided into three bureaus: the Technical Bureau; the Domestic Bureau, and the Overseas Bureau.⁶⁵ The Overseas Bureau was divided into the Business Department; the Editorial Department, and the American Continent Department. The American Continent Department had for its duties the making up of propaganda and broadcasts beamed out for the American Continent and other points for English language listeners.⁶⁶

The three sections of the American Continent Department were: the News Section; the South American Section, and the Frontline Section.⁶⁷ The Frontline Section was charged with the responsibility and entrusted with the duties of broadcasting from Radio Tokyo propaganda to American and Allied troops, then fighting for the Allied cause in the South Pacific Ocean area.⁶⁸ The "Zero Hour" program was an activity of the Frontline Section.⁶⁹

⁶⁵I-19:5-25.

⁶⁶Ibid. ⁶⁷Ibid.

⁶⁸Ibid. The broadcasts were transmitted through a cable from Radio Tokyo to the transmitter stations at Yamata, Nazaki, and Kawachi. (See Appendix IX).

⁶⁹I-20:1-25

Lieutenant Colonel Shigetsugu Tsuneishi, chief of the Japanese military broadcasting system during the war, was called to testify for the prosecution. On direct and redirect he testified that the Japanese purpose in broadcasting to the Allied troops was to weaken their will to fight.⁷⁰ On cross-examination by the defense, however, he revealed that the Japanese purpose in permitting the broadcasts of the "Zero Hour" from Radio Tokyo was to provide simple entertainment programs to create a large listening audience of Allied troops in the South Pacific Ocean area so that if and when Allied troops landed on Japanese territory the program at that time could be converted into a propaganda program to weaken Allied morale.⁷¹ He testified bluntly that no opportunity to broadcast propaganda presented itself because of the rapid Allied successes.⁷² It is interesting that the program even included burlesque upon the Japanese themselves.⁷³

⁷⁰Tsuneishi, III-237:5-8; 238:13-14; IV-245; VII-462:9; 463:1.

⁷¹Tsuneishi, V-321:1-19.

⁷²Ibid.

⁷³Mitsushio, XII-1164:9-12.

Mrs. Iva I. T. d'Aquino made her first broadcast on the "Zero Hour" on November 13, 1943. She was the girl popularly known to American troops in the South Pacific as "Tokyo Rose," a sobriquet given to her by American and Allied troops, who listened to the "Zero Hour" program from Radio Tokyo with satisfaction because of its cheerful atmosphere and morale building effect. Some eight weeks after her first broadcast, an article appeared in the Collier's Magazine by LTJG I. Henry Strauss, U.S.N.R. In summing up the "Zero Hour" and the efforts of Radio Tokyo, Strauss commented:

" . . . On the whole, the "Zero Hour" is a very pleasant program to listen to. A session with it is enough to give a man new inspiration for memories of home that will keep him company for quite awhile. If this were Tokyo's intention, we would gladly send our thanks, but, knowing it isn't, as a bit of neighborly advice, we suggest they get a new Goebbels.

"As for the propaganda? America is a nation of poker players, and I've never seen one yet that could be bluffed out of a pot when he is holding four aces."⁷⁴

⁷⁴I. Henry Strauss, "The Zero Hour," Collier's Magazine, January 8, 1944.

In April, 1944, the following article appeared in Time Magazine:

"'Tokyo Rose' is the darling of the U.S. Sailors, G.I.s, and Marines all over the Pacific. She is a Jap propagandist, but her broadcasts are popular among listeners; she gives them humor, nostalgia, news, entertainment and good U.S. dance music. . . . She would be a good propagandist if G.I. Joe had more of a tendency to believe her."⁷⁵

"Tokyo Rose's" popularity became more evident when in August, 1945, the United States Navy presented, in absentia, a citation (See Appendix X) to "Tokyo Rose," along with an invitation "to broadcast soon to the United States Army of Occupation in Japan and to the ships of the United States Fleet at anchor in Yokohama Bay."⁷⁶

The defense offered evidence to show that her broadcasts were beneficial to the American side. Former Warrant Officer Kamini Kant Gupta testified that he had been assigned to the Alaskan Defense Command during the war, and that a classified bulletin had come over his desk

⁷⁵Time Magazine, April 10, 1944.

⁷⁶Defense Exhibit BV, L-5599. Defense counsel Collins affirmed: "Whether the document was a joke is purely a question of fact to be argued after it has been admitted in evidence. Even if it was a joke it would be an admission; the authorities were joking about something for which the defendant has now been sentenced to ten years in prison. . . ." (Petition for Certiorari to the U.S. Court of Appeals for the Ninth Circuit, d'Aquino v. U.S., Ninth C.A. No. 12383, pp. 74-75.)

instructing officers and noncommissioned officers to urge their men to listen to the "Zero Hour" program because it was free of propaganda.⁷⁷ Kamini Kant Gupta testified:

"Q.[De Wolfe] Have you access to such classified bulletins at the present time?

"A.[Gupta] No, I don't even know whether they are published any longer."⁷⁸

Federal Judge Michael J. Roche ruled that no such evidence can be introduced.⁷⁹

Neither she nor anyone else in Japan had any knowledge of the fact that she had been dubbed "Tokyo Rose" until the conclusion of the war.⁸⁰ She was known on the "Zero Hour" program as "Orphan Ann".⁸¹ The prosecution at her trial, however, cared little that its witnesses confused "Orphan Ann's" musical broadcasts with a number of alien women employed at Radio Tokyo who made regular news broadcasts at Radio Tokyo. The roster of

⁷⁷Gupta, XL-4559:15-18.

⁷⁸Ibid.

⁷⁹Ibid.

⁸⁰Depositions of Tamotsu Murayama; Hiroshi Niino; Foumy Saisho; George Noda; George Ozasa; Mary Higuchi; and Masaaki Yanagi.

⁸¹I-25:16-19.

women broadcasters employed at Radio Tokyo included in addition to Mrs. Iva Ikuko Toguri d'Aquino: June Fusaye Suyama [Canadian-born Nisei]; Ruth Sumiko Hayakawa; Katherine Kaoru Muraoka Reyes [American-born Nisei and wife of Norman Reyes]; Miyeko Furuya Oki; Mary Ishii; Margaret Kato; Lillie Abegg [Swiss national]; Kathleen Fujiwara; and Mrs. Genevieve Fayville Topping [American missionary in wartime Japan].⁸²

The contents of Mrs. Iva I. T. d'Aquino's broadcasts were shown: (1) by scripts typed at Radio Tokyo and saved from the general presurrender destruction by the Japanese.⁸³ These were Government Exhibits 22,⁸⁴ 23,⁸⁵ 44,⁸⁶ 74,⁸⁷ and Defendant's Exhibit R;⁸⁸ (2) recordings

⁸²Supra, p. 78, n. 80.

⁸³Oki, IX-664:11; 665:1; Mitsushio, X-906:10; 907:3.

⁸⁴Exhibit 22, XIII-1356.

⁸⁵Exhibit 23, XIV-1465.

⁸⁶Exhibit 44, XXVI-2823. ⁸⁷Exhibit 74, XLVIII-5354.

⁸⁸Defendant's Exhibit R, XXVIII-3199. Exhibits 22, 23, 44, 74, and Defendant's Exhibit R came from the defendant's possession. (See II Arg. 322:2-23).

taken at the Portland, Oregon, monitoring station [Exhibits 16-20, inclusive];⁸⁹ (3) one recording taken at the Silver Hill, Maryland, monitoring station [Exhibit 21];⁹⁰ Exhibit 25,⁹¹ contains a printed transcription of Exhibits 16-21; (See Appendix XI), and (4) recordings and transcriptions taken at the monitoring station in Hawaii. Most of these were destroyed.⁹² Government witness Frances Roth testified positively to the system of destroying the records and scripts.⁹³ Frances Roth testified:

"Q.[Collins] Was it a practice to destroy the original copies?

"A.[Roth] Yes, sir.

"Q.[Collins] Can you tell me why you both listened and made the wax recordings simultaneously?

"A.[Roth] Well, as we listened we also typed a summary of the program simultaneously with making a recording.

⁸⁹Exhibits 16-20, XVI-1627; 1638; 1646; 1691; 1694.

⁹⁰Exhibit 21, XVII-1729.

⁹¹Exhibit 25, XVII-1819.

⁹²Roth, LII-5849:7-9; 5855:20-21; 5866:9-12; 5867:2-4; 5870:17; 5871:2. Also see testimony of prosecutor De Wolfe, XXVI-2999:4-19; 3000:6; 3001:1.

⁹³Ibid.

"Q.[Collins] Do you know whether or not those summaries are still in existence?

"A.[Roth] No, sir, they are not."⁹⁴

Only Exhibit 63,⁹⁵ and 75,⁹⁶ [transcripts taken by the monitoring station in Hawaii] were introduced in evidence; (5) testimony of witnesses as to their recollection of what they claimed to have heard Mrs. Iva I. T. d'Aquino say over the radio.

Defense counsel Collins affirmed that Exhibit 25, [printed transcription of Exhibits 16-21, taken at the monitoring stations in Portland, Oregon and Silver Hill, Maryland, respectively], Defendant's Exhibit R, Exhibits, 22, 23, 44, and 74 [extant scripts prepared at Radio Tokyo], and Exhibits 63 and 75, contain nothing adverse to the defendant and that she did not utter a single treasonable word.⁹⁷

⁹⁴Ibid.

⁹⁵Exhibit 63, LII-5852.

⁹⁶Exhibit 75, LII, 5827.

⁹⁷Petitioner's Reply to Brief in Opposition to Certiorari, d'Aquino v. U.S., Ninth C.A. 12383, p. 22.

The witnesses who testified to their recollections fall into two groups: those who claimed to have overheard Mrs. Iva I. T. d'Aquino as she broadcast in Tokyo, and those who claimed to have recognized her voice as they listened to the radio. The former testified to momentary segments which they claimed to have heard in passing; the latter to what they believed they had heard as they were listening to the radio for recreation, from a voice which they identified after first listening to Government Exhibits 16-21.

Both groups claimed to have heard much of the same things, none of which appeared either in the scripts or transcriptions, e.g., "unfaithful wives and sweethearts," "ice cream sodas and steaks," American battle losses," and "jungle fever, mud, mosquitoes." In addition, alleged broadcasts of troop movements were testified to only by soldiers who listened to the radio for recreation.

The witnesses who said they heard bits of Mrs. Iva I. T. d'Aquino's broadcasting at Radio Tokyo are further subdivided into two classes: those who said they saw her talking into the microphone, and those who claimed they recognized her voice over the monitoring

system in Radio Tokyo. Those who testified they saw Mrs. Iva I. T. d'Aquino talking into the microphone included Kenkichi Oki,⁹⁸ and George Mitsushio, the two mainstays of the prosecution. Those who testified that they recognized her voice over the monitoring system in Radio Tokyo included Satoshi Nakamura; Hisashi Moriyama; F. Harris Sugiyama; Shinjiro Igarashi; Motomu Nii; Mary Higuchi; and Mariano Villarin. What each said as to Mrs. Iva I. T. d'Aquino's alleged broadcasts is summarized below:

Kenkichi Oki testified:

"Now you fellows have lost all your ships. You really are orphans of the Pacific. Now how do you think you will ever get home?"⁹⁹

George Hideo Nakamoto Mitsushio testified:

"Now you have lost all your ships. You really are orphans of the Pacific. How do you think you will ever get home?" "Cold water sure tastes good" -- allegedly after hearing news that an American contingent had landed on an island and were short of potable water.¹⁰⁰

⁹⁸Oki, IX-672:16-18. Kenkichi Oki was born in Sacramento, California. He attended St. Mary's College, Moraga, California and later transferred to New York University. Oki renounced his U.S. citizenship in 1940 and became a Japanese citizen. He was the wartime production supervisor for Radio Tokyo. ⁹⁹Ibid.

¹⁰⁰Mitsushio, X-919.

Satoshi Nakamura testified:

"Now you have lost so many ships, how are you going to find your way home, or something to that effect."101

Hisashi Moriyama testified:

"Dancing in the Coconut Grove." "My but it is hot!" Ice cream sodas at the corner drugstore."102

F. Harris Sugiyama testified:

"You must be lonely out there. Let me cheer you up with some music." It is very uncomfortable out there."103

Shinjiro Igarashi testified:

"Stop fighting and enjoy life." "In the United States you listened to music with your sweethearts, now listen."104

¹⁰¹Nakamura, XXI-2295:21-24; 2300:22-25; S.F. News, August 8, 1949; S.F. Chronicle, August 9, 1949. Nakamura is a Canadian-born Nisei. He was a Japanese opera singer and was master of ceremonies on the "Zero Hour" program.

¹⁰²Moriyama, XXIV-2600:13-15. Moriyama is a San Francisco, California born Nisei. He is a graduate of Polytechnic High School, San Francisco and the College of the Pacific [now University of the Pacific, Stockton, California]. Moriyama said he did not pay much attention to the "Zero Hour" program.

¹⁰³Sugiyama, XXIV-2506:16-18; XXIV-2508:10. He was sports director for Radio Tokyo. Sugiyama's father was British; his mother was Japanese.

¹⁰⁴Igarashi, XXIV-2622:7-11; 2623:1; 2648:18; 2651:4; and 2651:19-23. Igarashi was vigorously prompted by the prosecutor. He later testified that in 1943-1945, he did not know enough English to follow the defendant's broadcasts.

Motomu Nii testified:

"Why don't you stop fighting and listen to good music." "Why don't you go back to your loved ones in the United States instead of fighting in mosquito-infested jungles. . . ."105

Mary Higuchi testified:

"Are you having a good time with the girls in the islands?" "Do you miss your wives and sweethearts . . . wouldn't you like a ice cream soda and listen to juke boxes?"106

Mariano Villarin testified:

"Why stay in foxholes when your girls are running around with other men." "It's about time you went home." "Have fun back home."107

The witnesses who claimed to have heard Mrs. Iva Ikuko Toguri d'Aquino's voice on their radio receiving sets in the South Pacific Ocean area must be viewed against the background of certain other evidence, much of which came from the prosecution. Mrs. Iva I. T. d'Aquino's broadcast on the "Zero Hour" program ran from 6:00 P.M. to

105Nii, XXV-2725:12-15. On cross-examination this witness remembered definitely only the words "jungles," "mosquitoes," and "foxholes." Nii is a Hawaii-born Nisei.

106Higuchi, XXV-2773:3-15. This witness claimed she listened to Mrs. Iva d'Aquino's broadcasts for recreation over the monitoring system while the witness herself was at work typing at Radio Tokyo. She is a Tokyo-born Eurasian.

107Villarin, XXVI-2849 ff. This witness's description both of the broadcasting studio and of the person broadcasting were contradicted by other witnesses. Villarin is

7:00 P.M. Tokyo Standard Time.¹⁰⁸ Government witness Kiwamu Momotsuka testified that Japan was on Japan Standard Time throughout the war.¹⁰⁹ Government witnesses Amory F. Penniwell; William A. Sodaro; and Frances Roth testified that the United States and Hawaii during the war were on modified Standard Time called "Wartime".¹¹⁰ Government Exhibit 25 [printed transcriptions of Exhibits 16-21] gives Eastern Wartime in its heading and Japanese Standard Time in its text on page 10. (See Appendix XI).

The prosecution produced ex-soldiers as witnesses to testify to purported broadcasts made by Mrs. Iva I. T. d'Aquino.¹¹¹ Defense counsel Collins maintained that

a Filipino and a graduate of the Far Eastern College in Manila, Philippines. He testified that he came to Radio Tokyo to visit Norman Reyes.

¹⁰⁸Oki, IX-782:21-23; 782:21-25; 786:20; 788:13; Mitsushio, XIII-1251:3-6; X-924:1-4; Ishii, XVII-1828:10-14; Nakamura, XXI-2290:5-25; Moriyama, XXIV-2544:9-11; 2549:19-22; 2557:18-21; Government Exhibit 25; Penniwell, XVI-1634:3-7; 1640:11-14; 1647:17-18; Sodaro, XVII-1731:13-17; Roth, LII-5864:4-12.

¹⁰⁹Momotsuka, XXIII-2422:16-20.

¹¹⁰Supra, n. 108.

¹¹¹Velasquez, XVIII-1867 ff; XVIII-1877; XVIII-1893:2-6; XVIII-1904:7-8; XVIII-1904:21-24; XVIII-1879; XVIII-1818; XVIII-1914:24; XVIII-1915:3; XVIII-1907:4; XVIII-1910:6-7; XVIII-1882:16-19; XVIII-1926:13-14; XVIII-1880;

not one of these witnesses, however, heard a single broadcast made by her. Defense attorney Collins asserted that the fraudulent character of their testimony was established mathematically by a World Time Zone Chart.¹¹²

XVIII-1881; XVIII-1920:12-16; Sherdeman, XIX-1971 ff; XIX-1978; XIX-1979; XIX-1983:9-25; XIX-1986:22-25; Sutter, XX-2022 ff; XX-2026:7; XX-2061:6-8; XX-2103:18-20; Hoot, XX-2110 ff; XX-2116; XX-2117; XX-2119; XXI-2194; XXI-2196; XX-2142:1-5; XX-2151:18-21; XX-2152:4; XXI-2169:7-10; XXI-2179:13-17; XXI-2194:20; Cavanar, XXI-2216 ff; XXI-2217; XXI-2218; XXI-2226; XXI-2231; XXI-2221:15-17; XXI-2224:16-18; Thompson, XXI-2242 ff; XXI-2251; XXI-2252; XXI-2255; XXI-2272; Gilmore, XXIII-2451 ff; XXIII-2549; XXIII-2476; XXIII-2479:15-18; Cowan, XXVI-2809 ff; XXVI-2818; XXVI-2820; XXVI-2844:9-11; XXVI-2845; Hall, XXVI-2885 ff; XXVI-2892-2893; XXVI-2896-2899; XXVI-2902; XXVI-2904; XXVI-2928:7-17; XXVI-2936:4-10; XXVI-2938:21-22; Henschel, XXVI-2948 ff; XXVI-2959-2960; XXVI-2960-2963; XXVI-2988; XXVI-2989. Defense counsel Collins asked Henschel whether he had an opinion as to Mrs. Iva I. T. d'Aquino's guilt or innocence when he wrote newspaper articles about her some months before the trial. See Henschel, XXVI-2969:7-11; XXVI-2970:16-22. This was the beginning of an attempt to impeach him for bias. Defense counsel Collins contended that if Henschel had an opinion as to the defendant's guilt or innocence without knowing the full facts, that would indicate bias.

¹¹²Defense Exhibit T, XLVI-5139, is a World Time Zone Map showing the different time zones, as they existed during the period covered by this case and modified by Wartime in the United States, Hawaii, Alaska, and Australia.

Ten such witnesses fixed the time at which they heard the broadcasts from various points in the Asiatic Pacific Theater of Operations where they were stationed.¹¹³

Mrs. Iva I. T. d'Aquino broadcast between 6:00 P.M. and 7:00 P.M. Japan Standard Time from Radio Tokyo. The witnesses testified to times that would place the broadcasts they heard as having been broadcast from Radio Tokyo varying from 4:00 P.M. to 5:00 P.M.; 3:00 P.M. to 4:30 P.M.; 7:00 P.M. to 8:00 P.M.; 5:30 P.M. and 2:30 P.M. to 3:30 P.M.¹¹⁴ Defense counsel Collins maintained that each had lied as to what he heard and also lied as to the program to which he had listened and also as to the contents of such program. Federal Judge Roche allowed such testimony to be elicited and overruled objections thereto and refused to order it stricken and refused to admonish the jury to disregard the inconsistencies of these witnesses' testimony.

When the defense tried to show the contents of other broadcasts, the prosecution objected that they

¹¹³Supra, p. 95, n. 111.

¹¹⁴Ibid.

were not limited to the "Zero Hour" program time. But the prosecution did not limit itself to the "Zero Hour" program time - its witnesses claimed to have heard Mrs. Iva I. T. d'Aquino at all hours of Tokyo Standard Time from 3:00 P.M.¹¹⁵ to midnight.¹¹⁶ The prosecution objected that the stations may have been distant from Tokyo; however, the defense maintained that the important point is not the place from where they are sent, but whether they come in on the receiving set. Thus the defense was not allowed to prove that Myrtle Liston's Manila program¹¹⁷ contained material substantially similar to what soldier radio listeners in the South Pacific Ocean area attributed to Mrs. Iva Ikuko Toguri d'Aquino. To impeach listener witnesses, the defense offered proof that there were so many rumors afloat that the witnesses had no clear recollection of what they heard over the radio and what they heard by way of rumor.

¹¹⁵Hoot, XX-2136:24; XX-2137:2; XX-2142:15-17. Hoot testified that he heard the defendant broadcast between 6:00 P.M. to 7:00 P.M. in the Gilbert Islands.

¹¹⁶Henschel, XXVII-2960; XXVII-2988. Henschel testified that he heard the defendant between 9:00 P.M. to 11:00 P.M. in Leyte, Philippines.

¹¹⁷Myrtle Liston, known by the sobriquet "Manila Rose", broadcast from a Japanese radio station in Manila. She was a strikingly beautiful woman of mixed blood; half American and half Filipino. According to associate

There was a complete contradiction between the written or mechanical records and the oral testimony of witnesses' "recollections." Defense counsel Collins asserted:

"The Government's position is and must be that although the reception was good enough so that defendant's broadcasts could be recorded at Silver Hill, Maryland, and although she supposedly uttered no end of treasonable matter on her program, two much more favorable located monitoring stations [presumably Hawaii and Portland, Oregon] somehow managed to miss all of it."¹¹⁸

Defense counsel Collins stated that no recorded exhibit contained a single treasonable word by Mrs. Iva I. T. d'Aquino. When the Court of Appeals attempted to dispute this statement, it was driven to quote a passage given by another broadcaster.¹¹⁹

Overt Act 6, which the jury convicted Mrs. Iva I. T. d'Aquino, rested solely on the alleged recollection of prosecution witnesses. Prosecution witness, George Hideo Nakamoto Mitsushio testified that he directed

defense counsel Theodore Tamba, Myrtle Liston married a U.S. Army Colonel. As far as the writer was able to determine, Myrtle Liston was never threatened with prosecution.

¹¹⁸Petition for Certiorari to the U.S. Court of Appeals for the Ninth Circuit, Ninth C.A. 12383, d'Aquino v. U.S., p. 11. ¹¹⁹Opinion, R. 880.

Mrs. Iva I. T. d'Aquino to make the particular broadcast:

"Now that you have lost all your ships, you really are orphans of the Pacific. How do you think you will ever get home?"¹²⁰

Mrs. Iva I. T. d'Aquino denied having broadcast it.¹²¹ Defense witness Foumy Saisho testified by deposition that Kenkichi Oki's reputation for truth, honesty, and integrity was bad in the community where he lived. The reputation was asked in the present tense - fixing it as of the time of taking the deposition. Kenkichi Oki and George Hideo Nakamoto Mitsushio were the two prosecution witnesses to Overt Act 6.¹²²

In January, 1944, Mrs. Iva I. T. d'Aquino took an additional typing job at the Danish Consulate in Tokyo.¹²³ The additional income which she received enabled her to

¹²⁰Mitsushio, XI-971:13-18.

¹²¹Defendant, XLIX-5512:6; XLIX-5514:9; also XLVI-5122:6; XLVII-5302:23; XLVII-5303:14.

¹²²Oki, IX-672:16-18.

¹²³Deposition of Lars Pedersen Tillitse [Danish Minister to Japan]; Defendant, XLIV-4948; XLV-4959. Minister Tillitse waived his diplomatic immunity to give testimony in a deposition in behalf of Mrs. Iva I. T. d'Aquino.

clandestinely provide Allied prisoners of war in Bunka Camp, Tokyo, with food, medicine, tobacco, a blanket, and war news from the shortwave radio, which Felipe J. d'Aquino had access to at Atago Hill. Witnesses from both sides agreed on this point.¹²⁴

After the Japanese surrender Clark Lee and Harry T. Brundidge, American newspaper correspondents, armed and uniformed, took Government Exhibit 15, an interview of Mrs. Iva Ikuko Toguri d'Aquino, which the prosecution later labeled a confession. Mrs. Iva d'Aquino was accompanied by her husband during the interview by Lee and Brundidge.¹²⁵ After the interview

¹²⁴Ishii, XVIII-1855:12; 1856:10; Mitsushio, XIII-1310:21; 1311:2; Cousens, XXIX-3249:7-24; 3252; 3253:17; 3264:20; 3267:23; 3270:19; 3272:20; 3280:9; 3282:16; Felipe J. d'Aquino, XLIII-4764; 4771; Ince, XXXI-3503; 3505; 3509:3; 3510:19; 3512:22; 3514:11; Henshaw, XXXVII-4172:13; 4184:13; Defendant, XLV-5034; XLV-5050.

¹²⁵Lee, VII-478:14-20; 479:8-11; 490:25; 491:6; 492:16-24; 516:15-20; 531:8-21. Immediately after the surrender of Japan, Clark Lee and Harry T. Brundidge raced from Atsugi to Tokyo ahead of the U.S. Army and commissioned Leslie Satoru Nakashima to find "Tokyo Rose" for them. Nakashima in his deposition tells this story of what followed: "A.[Nakashima] So I told Clark Lee that Radio Tokyo had told us that there was no single girl by the name of 'Tokyo Rose,' that there were five or six girls and how about it? "Q.[Tamba] What did he tell you, or Brundidge? "A.[Nakashima] Well, Lee did not give me any immediate answer. He told me he would think about it and later on, I don't know how many hours elapsed, either

Clark Lee told her she ought to seek the services of a lawyer.¹²⁶

In the Spring of 1948, John B. Hogan, of the United States Department of Justice, and Harry T. Brundidge went to Japan to get Mrs. Iva I. T. d'Aquino's signature to Exhibit 15.¹²⁷ Without warrant or legal process they had Mrs. Iva d'Aquino taken in an United States Army car by two soldiers from her home to Army headquarters to sign the document.¹²⁸ When she was there Brundidge told her in Hogan's presence that signing it would help her get back to the United States.¹²⁹

he called me or I called him back. I don't remember, but he [Clark Lee] told me to go ahead and get Iva Toguri anyway and to offer her two thousand dollars for an exclusive story." Clark Lee himself testified: "I remember he [Nakashima] came in the hotel very hurriedly and we were in the lobby and he said something to the effect that he had found a 'Tokyo Rose' and I do not know whether he said a Tokyo Rose or the 'Tokyo Rose'." This was enough to satisfy Clark Lee that Iva Toguri was "Tokyo Rose". He thereupon offered her \$2,000 for an exclusive feature story for Cosmopolitan Magazine. The story was never written and the money never paid.

¹²⁶Lee, VII-520:23; VII-521:20.

¹²⁷Hogan, VIII-609:13-15; 620:5-12.

¹²⁸Hogan, VIII-610:13-16; 621:15-21; 623:2-7; 627:18-21.

¹²⁹Defendant, XLVII-5220:22-25.

Hogan testified he told her she might be tried for treason. The only persons present at this interview were Mrs. Iva I. T. d'Aquino; Hogan; Brundidge; and a receptionist, Mrs. Ahn.¹³⁰

Other witnesses testified to several other oral interviews given by Mrs. Iva I. T. d'Aquino about this time to themselves as members of the Army of Occupation. Mrs. Iva I. T. d'Aquino had at first refused, but was "persuaded" by statements that she owed an interview to The Pacific Stars and Stripes and that if she did not give an interview the Army correspondents would "hound her to death." These interviews were recounted during the trial by Dale Kramer;¹³¹ James J. Keeney;¹³² Merritt Gillespie Page;¹³³ and William E. Fennimore.¹³⁴

On October 17, 1945, Mrs. Iva Ikuko Toguri d'Aquino was arrested on suspicion of treason on a warrant issued

¹³⁰Hogan, VIII-610:19-20.

¹³¹Kramer, XIII-1343 ff.

¹³²Keeney, XIV-1401 ff.

¹³³Page, XIV-1419 ff.

¹³⁴Fennimore, XIV-1433 ff.

September 10, 1945. This warrant is Defendant's Exhibit P. (See Appendix I). She was held entirely incommunicado until December 25, 1945.¹³⁵ From then until the end of her imprisonment on October 25, 1946, she was permitted to see no one but her husband once a month, for twenty minutes at a time.¹³⁶ After a month or six weeks of this imprisonment her jailer took Government Exhibit 2 from her. Government Exhibit 2 was a piece of Japanese paper money which Mrs. Iva I. T. d'Aquino signed "Tokyo Rose" and gave to J. Richard Eisenhart.¹³⁷ After six months an FBI agent took Government Exhibit 24, discussed below. On May 1, 1946, the Army declared that "on the evidence adduced she is not considered subject to trial by military authorities for any offense against military law" and ordered her held for instructions from the Department of Justice.¹³⁸

In the meantime on April 29 and 30, 1945 she was

¹³⁵Defendant, XLVI-5173:16; XLVI-5174:1; XLVII-5206:4-7.

¹³⁶Defendant, XLVII-5206:5-7; XLVI-5177:1-7; Pray, XLIII-4712:14-17; Def. Ex. N, XLVII-5191; Def. Ex. BG, XLVII-5196; Def. Ex. BI, XLVII-5196; and entries of Apr. 20, 1946; May 15, 1946; Jun. 11, 1946; Jul. 4, 1946 of Def. Ex. BJ, XLVII-5197; Def. Ex. BK, XLVII-5197. (See Appendix XII).

¹³⁷Eisenhart, I-41:11-16; I-42:1-12; I-53:14-20

¹³⁸Supra, p. 2, n. 3.

questioned by Special Agent Frederick G. Tillman, of the Department of Justice. The military records show that she was produced "for purposes of interrogation by Agent Tillman."¹³⁹ The fruit of this interrogation became Government Exhibit 24.¹⁴⁰

After the interrogation by Agent Tillman was completed on April 30, and after the Army declared it was no longer interested in Mrs. Iva I. T. d'Aquino, she was nevertheless held in custody until October 25, 1946. At the time she was released, the Army record of the order bearing the following notations was issued:

"October 23, 1946 - subject was apprehended for suspected treason in connection with wartime propaganda from Radio Tokyo.

"October 25, 1946 - Department of Justice no longer desires Iva Toguri be retained in custody."¹⁴¹

During her year's imprisonment she repeatedly asked her jailers to be brought to trial.¹⁴²

As already stated, John B. Hogan, of the Justice Department, and Harry T. Brundidge came to Japan in the

¹³⁹Defense Exhibit O, XV-1586.

¹⁴⁰Tillman, XIV, 1457.

¹⁴¹Defense Exhibit N, XLVII-5191.

¹⁴²Defendant, XLVII-5207:5-11; 5213:4-10.

Spring of 1948 to get Mrs. Iva I. T. d'Aquino to sign Government Exhibit 15. For that purpose they had her brought from her home to Army headquarters by what amounted to a polite form of kidnapping.¹⁴³ There Hogan told her she might be prosecuted for treason, while Brundidge told her that if she signed Exhibit 15 she would have a better chance of getting back to the United States.

Hogan testified that their mission was to get her signature,¹⁴⁴ but that he had instructions on other matters not involving contact with Mrs. Iva I. T. d'Aquino;¹⁴⁵ and both Hogan and Brundidge made an inspection tour of Radio Tokyo with Mrs. Iva d'Aquino.¹⁴⁶

Brundidge had gone to Tokyo with Hogan and at Government expense.¹⁴⁷ Brundidge's passport¹⁴⁸ recited that the object of his trip was "Official business for the Department of Justice endorsed by the Department of

¹⁴³Hogan, VII-610:13-16; 621:15-21; 623:2-7; 627:18-21.

¹⁴⁴Hogan, VIII-620:10-12.

¹⁴⁵Hogan, VIII-620:13-21.

¹⁴⁶Hogan, VIII-616:12; VIII-617:22.

¹⁴⁷Hogan, VIII-619:4-19; VIII-630:18; VIII-631:5.

¹⁴⁸Defense Exhibit BR, L-5580.

Justice." While they were in Tokyo Brundidge bribed and suborned Hiromu Yagi and attempted to bribe and suborn Toshikatsu Kodaira to testify that they heard Mrs. Iva I. T. d'Aquino broadcast things which they admittedly never heard her say.¹⁴⁹ Brundidge was on the Government's witness list,¹⁵⁰ but was not called.

Federal Judge Michael J. Roche ruled that the deposition of Toshikatsu Kodaira cannot be introduced as evidence and stated he ruled so because the testimony was hearsay. Federal Judge Roche stated in his ruling:

". . . As for Brundidge, his claimed unsavory conduct was offered to be proven only by hearsay. . . ."

Defense counsel Collins asserted that Federal Judge Roche's ruling was incorrect. The testimony as to Brundidge's attempted subornation was given by the very person to whom Brundidge spoke. Defense counsel Collins declared:

"Brundidge's utterances in attempting to suborn perjury are themselves part of the issue, so not subject to the hearsay rule."¹⁵¹

¹⁴⁹Kodaira, R. 671 ff, especially R. 678-80, 683-684 quoted Petition for Rehearing, d'Aquino v. U.S., pp. 28-29, R. 954-956, Deposition of Toshikatsu Kodaira - all excluded. See also Tillman, XVI-1597:17; XVI-1599:13.

¹⁵⁰Government Exhibit 1, I-33.

¹⁵¹Appellant's Petition for Rehearing, d'Aquino v. U.S., Ninth C.A. 12383, in the U.S. Court of Appeals for the Ninth Circuit, filed November 8, 1951, pp. 27-30.

The following testimony [the questions were read by defense counsel Collins and the answers by associate defense counsel Tamba] as to what Brundidge said to Kodaira and Yagi while both were present is manifestly not hearsay:¹⁵²

Q. And did you and Yagi thereafter meet Brundidge?

Mr. De Wolfe: Objected to as incompetent, irrevelant and immaterial, no foundation having been laid.

The Court: Objection will be sustained.

A. Yes, the very next day.

Q. Where and under what circumstances?

Mr. De Wolfe: Same objection.

The Court: same ruling.

A. Ten o'clock the next morning I met Yagi in front of the Dai Ichi Hotel and Yagi called Mr. Brundidge down from his room. He [Yagi] introduced me. Mr. Brundidge and I shook hands. He was very polite. He called us up into his room.

Q. Did Mr. Brundidge give either you or Yagi some whisky while you were in the room?

Mr. De Wolfe: Object to that as incompetent, irrelevant and immaterial.

The Court: Objection sustained. Let it go out and let the jury disregard it for any purpose in this case.

¹⁵²Ibid.

A. Yes, we took a couple of drinks.

Q. Then what was said by Brundidge, if anything?

Mr. De Wolfe: Objected to as hearsay, immaterial, incompetent.

The Court: Objection sustained.

A. Well, he suggested that "you and Yagi just saw and heard Tokyo Rose broadcasting."

Q. Did he suggest the time and place and the circumstances under which you heard her broadcast?

Mr. De Wolfe: Object to that as hearsay, incompetent and irrelevant.

The Court: Objection sustained.

A. Yes, a time shortly after the March bombing.

Q. Did he suggest to you anything that she might have broadcast on that occasion?

Mr. De Wolfe: Object to that as immaterial, hearsay, incompetent.

The Court: Objection sustained.

A. Yes.

Q. What was that suggestion?

Mr. De Wolfe: Object to that as irrelevant, incompetent, hearsay.

The Court: Same ruling.

A. That we heard Tokyo Rose broadcasting: "Soldiers, your wives are out with the war workers."

* * *

Q. Incidentally, when you left Brundidge's room, after the first meeting, what, if anything, did he give you?

Mr. De Wolfe: Objected to as incompetent, irrelevant.

The Court: Objection sustained.

A. Oh, he gave me a half-finished bottle of whisky. When I was going out he gave me a suit.

Q. Suit of clothing, you mean?

Mr. De Wolfe: Object to that as incompetent, immaterial.

The Court: Objection sustained.

A. Suit of clothing.

Q. Did he say, in substance, as follows, as you left the room, after the first meeting: "You two get together and think it over"?

Mr. De Wolfe: Objected as to hearsay, incompetent, immaterial.

The Court: Objection sustained.

A. "You two get together and think it over."

Q. That is, to you and Yagi?

Mr. De Wolfe: Objected to as hearsay, and no proper foundation having been laid, incompetent.

The Court: Objection sustained.

A. At the first session or during the first session?

Q. Yes.

Mr. De Wolfe: Same objection, sir.

The Court: Same ruling.

A. Yes, he told us that.

The testimony of FBI Special Agent Frederick G. Tillman,¹⁵³ supports the fact that the indictment was defective because it was procured illegally, in part at least by the perjured testimony from an alien brought from Japan named Hiromu Yagi, and from the colored testimony of one, Harry T. Brundidge, during the Grand Jury inquiry in September-October, 1948. Tillman's testimony during the trial was as follows:¹⁵⁴

"Q.[Collins] Didn't you tell Mr. Tamba at that time and place that Mr. Yagi had confessed to you that he had been bribed to come to San Francisco in the latter part of 1948 to testify falsely before the Grand Jury in the proceeding against the defendant?

"A.[Tillman] Mr. Tamba . . ."

Chief counsel for the prosecution, Thomas De Wolfe objected to the question, arguments from both sides were heard, and Federal Judge Roche overruled the objection and the question was read.

"A.[Tillman] Yes.

¹⁵³Tillman, XVI-1597:17-21; XVI-1598:19; XVI-1599:1.

¹⁵⁴Ibid.

"Q.[Collins] Will you please explain your answer?

"A.[Tillman] My conversation with Mr. Tamba was predicated on Mr. Tamba calling on me and telling me certain facts concerning Mr. Yagi. I advised Mr. Tamba I was in possession of such facts.

"Q.[Collins] That you were in possession of such facts?

"A.[Tillman] Yes, and I had previously determined the situation as he had outlined it." (Emphasis added.)

In short the prosecution had satisfied itself that the facts were as claimed by the defense - that Yagi had committed perjury before the Grand Jury. Yet the prosecution tried to conceal that situation from the court with the false suggestion: "There is no evidence as to what anyone said or did at the Grand Jury proceedings or that Yagi perjured himself."¹⁵⁵

On September 22, 1949, George Olshausen, associate defense counsel, concluded his summary of the defense for Mrs. Iva I. T. d'Aquino, with an appeal for acquittal and a charge of attempted bribery on the part of the man he claimed revived the case after U.S. Army intelligence and

¹⁵⁵Petitioner's Reply to Brief in Opposition to Certiorari, Ninth C.A. 12383, d'Aquino v. U.S., p. 13.

the Department of Justice had investigated and released Mrs. Iva I. T. d'Aquino. Olshausen told the jury Harry T. Brundidge was the man who was responsible for the case being reopened.¹⁵⁶ Olshausen argued that the eight alleged overt acts are "clearly pieces of an entertainment program."¹⁵⁷ As for George Hideo Nakamoto Mitsushio and Kenkichi Oki, the two mainstays for the prosecution, Olshausen charged:

"They knew the story they were telling was not true . . . The witnesses were perjuring themselves to bring a conviction in against this defendant, which they knew would be unjustified . . . They were in the position of falling over themselves to please occupation authorities . . . They were just going out of their way like a lot of dogs to please their masters."¹⁵⁸

Olshausen also assailed the testimony of prosecution witnesses drawn from the defendant's Pacific audience. He noted that none of the "Zero Hour" program scripts produced by the prosecution, including several recorded by the Federal Communications Commission monitoring stations,

¹⁵⁶LI ff; S.F. News, Sept. 22, 1949; S.F. Examiner, Sept. 22, 1949; S.F. Chronicle, Sept. 22, 1949; S.F. Call Bulletin, Sept. 22, 1949; S.F. Examiner, Sept. 23, 1949.

¹⁵⁷Ibid.

¹⁵⁸Ibid.

contained any treasonous material.¹⁵⁹ Olshausen argued further that time differentials in the Pacific and the Far East demonstrate that the prosecution's witnesses were mistaken. He said they were either confusing the "Zero Hour" program with some other program - and numerous other programs did emanate from Radio Tokyo. Olshausen declared:

"They [witnesses] don't remember clearly in their own minds what they heard by radio and what they heard by rumor."¹⁶⁰

United States Attorney Hennessy, outlined three points forming the foundation of the Government's case. These were:

1. There is no validity to defendant's claim that she should be exempt from trial by the basis of her Portuguese citizenship acquired through marriage. Six of the eight overt acts of treason charged against her happened before her marriage on April 19, 1945.
2. She was neither ordered, threatened or coerced to broadcast over Radio Tokyo on the "Zero Hour" program beamed at American troops fighting in the South Pacific.

¹⁵⁹Ibid.

¹⁶⁰Ibid.

3. She did not conspire with other prisoners of war to sabotage the defeatist propaganda aims of the broadcasts.¹⁶¹

George Olshausen in his final argument charged the Government had been interested not in developing the facts, but in only obtaining a conviction. He said:

"This case isn't a case of treason at all. . . . It's a story of intrigue, the kind you see in the movies but seldom in real life."¹⁶²

Chief counsel for the prosecution Thomas De Wolfe then commenced the Government's final argument. De Wolfe attacked at great length the defense contention that Mrs. Iva I. T. d'Aquino went on the air under duress. He dealt with obvious relish upon the testimony of Norman Reyes. Reyes was a witness for the defense, who under cross-examination acknowledged that:

- "1. He had never been under duress to continue broadcasting and had been treated 'courteously and considerately by officials at Radio Tokyo.'
- "2. That he believed Australian Major Charles Cousens was in favor of a 'benevolent Japan' dominating the Pacific and broadcast "because he thought he would have a voice in explaining the idea to listeners of Radio Tokyo."

¹⁶¹Ibid.

¹⁶²Ibid.

"3. That American Major [Captain while a prisoner of war and working at Radio Tokyo on the "Zero Hour] Wallace E. Ince broadcast because of the 'inducements of better living quarters and more freedom' and "never in my presence were any overt or implied threats of torture or death made to influence him [Ince] to continue his broadcasting activities."

"4. As to the defendant, I would have trusted her with my life. I can say that I know of no threats, duress or coercion that was exercised or directed to influence her either or in control of her script or broadcasting activities."163

Earlier, Reyes testified that the defendant was acting under duress, that he and the other war prisoners who participated with her likewise did so under duress, but that they sabotaged the propagandistic purpose of the Japanese by surreptitiously transforming it into an entertainment program.164 Prosecutor De Wolfe branded Reyes as a liar and in doing so cast strong doubts on virtually everything he said thus far on behalf of Mrs. Iva I. T. d'Aquino.165 Reyes tried to explain away the inconsistencies by charging that his statements to the

163Government Exhibit 52 and Government Exhibit 54.

164Reyes, XXXII-3572 ff; S.F. News, Aug. 22, 1949; S.F. Chronicle, Aug. 23, 1949; S.F. Examiner, Aug. 24, 1949; S.F. Chronicle, Aug. 24, 1949; S.F. Chronicle, Aug. 25, 1949.

165Ibid.

Federal Bureau of Investigation [Exhibits 52 and 54] were not made voluntarily. Reyes said neither Special Agents John Eldon Dunn and Frederick G. Tillman who took the statements used physical force, but that he signed Exhibits 52 and 54 because he was afraid, "afraid of these two men, the atmosphere under which the questioning was conducted . . . the untenability of my position in connection with the subject of treason. . . ."166

On September 26, 1949, Federal Judge Michael J. Roche instructed the jurors with respect to witnesses who testified regarding the commission of overt acts of treason by Mrs. Iva Ikuko Toguri d'Aquino.167

166Ibid.

167LIV-5953 ff. Overt Act 5 [on which Mrs. Iva I. T. d'Aquino was acquitted] related to alleged preparation for Overt Act 6 - the Leyte Gulf battle during October, 1944. The eye witness testimony appears at Oki, IX-677: 21; 681:11; and Mitsushio, XI-968:16; 974:15. Since Clark Lee did not deal with the Leyte Gulf battle at all, he did not testify as to Overt Act 5, either. Apart from that, Oki and Mitsushio were admittedly witnesses both to alleged Overt Acts 5 and 6. But as to Lee the prosecutor referred solely to Overt Act 6 and expressly mentioned "that broadcast". He did not refer to any alleged preparatory steps. It stands to reason that when the jury named "Clark Lee, Kenkichi Oki, and George Hideo Nakamoto Mitsushio" as witnesses to "Overt Act 5 and 6" they identified Clark Lee with Overt Act 6 alone. This inference is strengthened by the circumstance that they later convicted on Overt Act 6 but acquitted on Overt Act 5. The combination

Federal Judge Roche declined to dismiss the jurors when it reported inability to reach an agreement for the third day of deliberation. He ordered them locked up again at the Whitcomb Hotel to resume discussions and votes. Federal Judge Roche read the following additional instructions to the panel:

"This is an important case. The trial has been long and expensive to both the prosecution and the defense. If you should fail to agree on a verdict, the case is left open and undecided. Like all cases, it must be disposed of some time. Any future jury must be selected in the same manner and from the same source as you have been chosen. So there appears no reason to believe that the case would ever be submitted to twelve men and women more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence could be produced on behalf of either side. It is unnecessary to add that the court does not wish any juror to surrender his or her conscientious convictions"168

of the jury's note and the verdict virtually compels the conclusion that the jury adopted the prosecutor's misstatements as to Overt Act 6. Satoshi Nakamura testified that he heard the defendant give a broadcast about ship losses in the Fall of 1944; the Court instructed the jury categorically that he was a witness to Overt Act 6 [laid in October, 1944]. The defendant did not testify regarding Overt Act 8, but the prosecutor was allowed to cross-examine her on it. The same thing happened with respect to Overt Acts 1 and 4. Defense counsel Collins considered the rulings on Overt Act 8 prejudicial because in argument the prosecutor used the defendant's answers and prosecution rebuttal as a basis for attacking her entire testimony. See II Arg. 337:23; 339:13.

168LIV-5942; LIV-5993.

On Thursday, September 29, 1949, at 6:04 P.M., the jury convicted Mrs. Iva Ikuko Toguri d'Aquino upon Overt Act 6 alone, to the effect:

"That on a day during October, 1944, the exact date being to the Grand Jurors unknown, said defendant, at Tokyo, Japan in the offices of the Broadcasting Corporation of Japan, did speak into a microphone concerning the loss of ships." (See Appendix XIII).

A judgment of conviction and sentence of ten years imprisonment and \$10,000 fine were imposed upon Mrs. Iva I. T. d'Aquino on October 6, 1949 by Federal Judge Michael J. Roche in the United States District Court for the Northern District of California, Southern Division.¹⁶⁹ The judgment of conviction and sentence was affirmed by Circuit Judges William Healy; Homer T. Bone; and Walter L. Pope of the United States Court of Appeals for the Ninth Circuit, the same panel which had previously held Mrs. Iva I. T. d'Aquino non-bailable and had been reversed on this point by Justice Douglas.¹⁷⁰

¹⁶⁹LIV-6017.

¹⁷⁰d'Aquino v. U.S., 180 F. (2d) 271; 192 F. (2d) 338; 203 F. (2d) 391. Mr. Justice Douglas in the United States Court of Appeals for the Ninth Circuit concluded: ". . . The question of the guilt or innocence of an appellant is not an issue on application for bail. It has long been a principle of Federal law that bail after

The Supreme Court of the United States had jurisdiction to review the judgment under Title 28 U.S.C. 1254(1), and also found no prejudicial error in the record and affirmed the judgment.

conviction and pending appeal is a remedy normally available to a prisoner. See Hudson v. Parker, 156 U.S. 277, 285. The existence of power to grant bail is, indeed, essential for the protection of the right to appeal. Otherwise a short sentence might serve before the appellate court could set aside the judgment of conviction for infirmities in the trial. An effective right to appeal would then be lost. The matter has best been summarized by Mr. Justice Butler sitting as Circuit Justice for the Seventh Circuit in the United States v. Motlow, 10 F. (2d) 657, 662. He wrote, 'Abhorrence, however great, of persistent and menacing crime will not excuse transgression in the courts of the legal rights of the worst offenders. The granting or withholding of bail is not a matter of mere grace or favor. If these writs of error were taken merely for delay, bail should be refused; but, if taken in good faith, on grounds not frivolous but fairly debatable, in view of the decisions of the Supreme Court, then petitioners should be admitted to bail.' That test has been incorporated in Rule 46(a)(2) of the Federal Rules of Criminal Procedure. . . ."

¹⁷¹d'Aquino v. U.S., 343 U.S. 935, 958; 345 U.S. 931.

CHAPTER III

THE APPEAL

Petition for Certiorari

The attorneys for Mrs. Iva Ikuko Toguri d'Aquino petitioned that a writ of certiorari be issued to review a judgment entered against her on October 10, 1951, by the United States Court of Appeals for the Ninth Circuit in a cause that was pending in that court, numbered and entitled, No. 12383, Iva Ikuko Toguri d'Aquino, Appellant, v. United States of America, Appellee.¹ The judgment affirmed a judgment of conviction and sentence of ten years imprisonment in the Federal Reformatory for Women, Alderson, West Virginia, and \$10,000 fine imposed upon her on October 6, 1949 by the United States District Court for the Northern District of California, Southern Division. The judgment and conviction were for alleged treason against the United States (violation of Title 18 U.S.C. 1)² claimed

¹d'Aquino v. U.S., 192 F. (2d) 338.

²Supra, p. iii, n. 2.

to have been committed in broadcasts which Mrs. Iva I. T. d'Aquino made in Japan over the Japanese radio during World War II.

Mrs. d'Aquino's attorneys filed a petition for rehearing on November 8, 1951, which was denied on December 17, 1951, the United States Court of Appeals writing a supplemental per curiam opinion.³

Attorneys for Mrs. d'Aquino contended that the policy of wartime naturalization to enemy countries made the adherence, aid, comfort clause of the treason statute constitutionally inoperative.⁴ The present naturalization laws do not prohibit naturalization during wartime.⁵ Previously such naturalization was forbidden.⁶ Title 8 U.S.C. 801(i) expressly authorized persons to discard their American citizenship during wartime. In Barber v. Furuya, 186 F. (2d) 775, the Government took

³Supra, p. 121, n. 1

⁴Petition for Certiorari to the U.S. Court of Appeals for the Ninth Circuit and Brief in Support Thereof, d'Aquino v. U.S., Ninth C.A. No. 12383, October, 1951, p. 6.

⁵Title 8 U.S.C. 101 ff.

⁶34 U.S. Stats. at L. 1228, sec. 2.

the position that renunciation of American citizenship under Title 8 U.S.C. 801(i) made the parties Japanese citizens removable to Japan. In the case then at bar the Government requested and the Court gave an instruction that Mrs. Iva d'Aquino could have renounced and abandoned American citizenship at any time.⁷ Four Government witnesses and two defense witnesses had been naturalized from American to Japanese citizenship after outbreak of the war.⁸ Of these George Hideo Nakamoto Mitsushio; Hisashi Moriyama; and Motomu Nii worked at Radio Tokyo in executive positions from which they supervised Mrs. Iva d'Aquino.

According to the Government, those who gave aid and comfort to Japan after publicly announcing that they spurned the United States for good, are exonerated, while those accused of doing the same thing without a formal and permanent renunciation are punished for treason. This reverses all concepts of justice; it is an irrational classification. As such it denied equal protection⁹

⁷LIV-5961:7-13.

⁸Mitsushio, X-896:17; 897:1; Kuroishi, XXI-2280:15-23; Moriyama, XXIV-2542:1-12; Nii, XXV-2675:22; 2676:7; 2687:6-17; Ozasa, R. 434; Nakashima, R. 662.

⁹Goesaert v. Cleary, 335 U.S. 464, 466.

which is guaranteed by the due process clause of the V Amendment.¹⁰

Title 8 U.S.C. 801(i) authorized abandonment of citizenship only upon approval by the United States Attorney General. Congress could have passed an act forbidding aid and comfort to Japan without following legal requirements; however, it did not do so.¹¹

Mrs. Iva d'Aquino's counsels contended that treason, however, shall be only adhering, giving aid and comfort to the enemy - not adhering, etc., without proper authorization nor adhering with intent to resume American citizenship.¹² They maintained that the charge in this case being directed only at special forms of adherence and while other forms are permitted does not

¹⁰Yu Cong Eng v. Trinidad, 271 U.S. 500, 526-528.

¹¹Furthermore, any lesser offense would presumably have been barred by the three-year statute of limitations - last date pleaded in the indictment, August 13, 1945, Opinion, R. 3; indictment found, October 8, 1948, Opinion, R. 7. This defense was specially pleaded, Opinion, R. 60, 64.

¹²Constitution, Art. III, sec. 3.

square with the constitutional definition of treason. They further maintained that assuming that Mrs. Iva d'Aquino could have been prosecuted under another act, had one been passed, she cannot be prosecuted for treason for acts done during continuance of the policy set forth in Barber v. Furuya, 186 F. (2d) 775.¹³

Her counsels pointed out that she was imprisoned on suspicion of treason for a year.¹⁴ During the first two months she was held completely incommunicado; after that her husband could see her once a month for twenty minutes at a time.

In its opinion denying rehearing the Court of Appeals conceded that the United States Constitution protected her.¹⁵ It held the VI Amendment inapplicable because the guaranty of a speedy trial supposedly applied only after formal complaint and because there was a lapse of time between Mrs. Iva d'Aquino's imprisonment on

¹³In Barber v. Furuya, 186 F. (2d) 775, the Government took the position that renunciation of American citizenship under Title 8 U.S.C. 801(i) made the parties Japanese citizens removable to Japan.

¹⁴Defense Exhibit P; Defense Exhibit N.

¹⁵Opinion, R. 965.

suspicion and her indictment.

Attorneys for Mrs. Iva d'Aquino contended that the VI Amendment was intended to give broad protection to defendants in criminal cases. It is not concerned with minutiae of procedure. They cited as authority Chief Justice Marshall, in McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407, who declared:

"In considering this question, then, we must never forget that it is a constitution we are expounding."

They maintained that limiting the speedy trial clause to situations where a formal complaint has been filed would enable the prosecution to circumvent the amendment by simply not filing a complaint. What few cases there are on the point all say (by dictum or decision) that "the Government of the United States cannot cast a man into prison and then fold its arms and refuse to prosecute."¹⁶

Similarly the English habeas corpus act provided for the liberation of those charged with nonbailable

¹⁶U.S. v. Fox, (1880 - Mont. Terr.) 3 Mont. 512, 520; Ex parte Trull, 133 Kan. 165, 298 Pac. 775; People v. Szobar, 360 Ill. 233, 195 N.E. 648; Guthman v. People, 203 Ill. 260, 67 N.E. 821.

crimes (including treason) but not indicted.¹⁷

In its opinion denying rehearing the Court of Appeals said that the imprisonment in Japan was "not relevant" because afterwards Mrs. Iva d'Aquino was free for two years before her indictment.¹⁸ The petitioner's counsels contended that in short, a year's imprisonment without charges had supposedly no legal consequences.

Attorneys for Mrs. Iva d'Aquino pointed out that the District of Columbia Circuit had indicated that the speedy trial provision was intended to obviate loss of evidence from delay.¹⁹ They maintained that thus denial of a speedy trial was analogous to the civil defense of laches.²⁰ The petitioner's counsels contended that the Court of Appeals' holding leads to the anomalous result that if the prosecution had been commenced immediately after the defendant's release

¹⁷Stats. 31, Ch. II, c. 2. sec. 1 et seq.: Hurd on Habeas Corpus, marg. p. 97.

¹⁸Opinion, R. 966.

¹⁹U.S. v. McWilliams, 163 F. (2d) 695, 696, col. 2, quoting trial judge's opinion.

²⁰To the same effect, U.S. v. Fox, 3 Mont. 512, 517, 519. In law laches is defined as "neglect to do a thing at the proper time; undue delay in asserting a right or in claiming or asking for a privilege."

in Japan, it would have been barred; whereas by waiting still longer the Government somehow revived a cause of action already defeated by delay and lawless imprisonment.²¹ In this case there was actual, not merely presumed, loss of evidence which never reappeared.

The Government destroyed practically all the recordings taken by the Hawaiian monitoring station "in the process of the routine closing of such stations."²² Mrs. Iva d'Aquino's counsels contended that all extant written and mechanical records of her broadcasts contain not a single treasonable word by her. The Court of Appeals was driven to quote from another broadcaster when it tried to contradict this point.²³ The petitioner's attorneys argued that it was unthinkable that United States officials would have destroyed the Hawaii monitoring station records "in the . . . routine closing of such stations" if they had contained treasonable matter. So it may reasonably be inferred that the Hawaiian transcriptions showed no treasonable material in the defendant's

²¹Petition for Certiorari, d'Aquino v. U.S., Ninth C.A. 12383, p. 43.

²²Opinion, R. 880.

²³Opinion, R. 879, n. 2.

broadcasts and therefore would have favored her on the prosecution.

The petitioner's attorneys contended that destroying evidence is the surest way of depriving the defendant of an opportunity to present evidence. But due process includes the opportunity to present evidence²⁴ and when a state denies such opportunity it denies due process.²⁵ They further contended that moreover, prosecuting with knowledge that the Government had made relevant evidence unavailable to Mrs. Iva d'Aquino's attorneys was on par with prosecuting on known perjured evidence.²⁶

In the Petition for Certiorari, Mrs. Iva d'Aquino's counsels asserted that it was of no consequence that the records were destroyed by way of routine rather than for evil motives. Her attorneys submitted that the same principle applied to due process as had been applied to equal protection.²⁷

²⁴Morgan v. U.S., 304 U.S. 1, 18.

²⁵Saunders v. Shaw, 244 U.S. 317, 319.

²⁶Mooney v. Holohan, 294 U.S. 103.

²⁷Smith v. Texas, 311 U.S. 128, 132, "If there has been (denial of due process) whether accomplished ingeniously or ingenuously, the conviction cannot stand." (Emphasis added).

Witnesses on both sides testified without contradiction that Mrs. Iva d'Aquino aided prisoners of war with food, medicine, tobacco, and short-wave war news "at substantial risk to herself."²⁸ The petitioner's counsels maintained that under Rule of Criminal Procedure 29(a), it has been said that a defendant is entitled to a judgment of acquittal if, under any view of the record, there is a reasonable doubt upon an essential issue.²⁹ This, of course, precludes conflicts of evidence, since taking the evidence favorable to the prosecution presumably presents a phase leaving no reasonable doubt.³⁰

The Court of Appeals said that the petitioner's contention could be sustained if it were psychologically impossible for the defendant to harbor a treasonable intent while aiding Allied prisoners. The petitioner's counsels contended that if it were impossible there would be much more than a reasonable doubt. There would be a demonstration of innocence. But the defendant need raise

²⁸Opinion, R. 884.

²⁹Curley v. U.S., 160 F. (2d) 229, 232 (App. D.C.)

³⁰Such a case is Craig v. U.S., 81 F. (2d) 816, cited by the Court of Appeals (Opinion, R. 884).

only a reasonable doubt.¹³¹

Attorneys for the petitioner asserted that the present record was stronger than the ordinary case of uncontradicted, unimpeached defense evidence.³² The help of Allied prisoners, established by both sides was a fact, which existed in every aspect of the record. Mrs. Iva d'Aquino's counsels submitted that the record raised a reasonable doubt as to whether she had an intent to betray the United States. Such an intent is a necessary element of treason.³³

Venue was laid under Title 18 U.S.C. 3238, providing, inter alia, that a crime charged to have been committed outside the United States shall be tried in the district to which the defendant was first brought.

³¹Curley v. U.S., supra, and cf. cases on defendant's quantum of proof for affirmative defenses: Davis v. U.S., 160 U.S. 469, 484, 488 (insanity); U.S. v. Marcus, 166 F. (2d) 497, 504, (C.C.A. 3 - alibi); Holloway v. U.S., 148 F. (2d) 665, 666 (App. D.C. - insanity); Reavis v. U.S., 93 F. (2d) 307, 308 (C.C.A. 20 - alibi); Falgout v. U.S., 279 Fed. 513, 515 (C.C.A. 5 - alibi); McCool v. U.S., 263 Fed. 55, 57-58 (C.C.A. 6 - alibi); compare also Morei v. U.S., 127 F. (2d) 827, 834-835 (C.C.A. 6 - entrapment).

³²cf. Penn R. Co v. Chamberlain, 288 U.S. 333.

³³Cramer v. U.S., 325 U.S. 1, 31.

If it were a question as between districts, this would be a matter of venue - where, as in the case d'Aquino v. U.S., Mrs. Iva d'Aquino's counsels contended that no district satisfied the statute, the question was one of jurisdiction.³⁴

Mrs. Iva d'Aquino was brought from Japan to San Francisco by the United States Army as an agent for the Department of Justice. She was brought at the request of the Department of Justice on an Army transport, under Army guard, with the Department of Justice reimbursing the Army for the expenses of the trip.³⁵

The petitioner's attorneys contended that on its face this violated Title 10 U.S.C. 15 forbidding the Army to be used as a posse comitatus except in Alaska. They maintained for the Government to find jurisdiction upon such acts would constitute "use by the Government of the fruits of wrongdoing by its officers" in violation of the principle, if not the direct holdings, of

³⁴Johnson v. Eisentrager, 339 U.S. 763, 790-791.

³⁵Defense Exhibit BO, XLVII-5227; Defense Exhibit F, III-166; Defense Exhibit C, II-150; Defense Exhibit D, III-166; Defense Exhibit E, III-166.

Upshaw v. U.S., 335 U.S. 410 and McNabb v. U.S. 318 U.S. 332.

The earlier Court of Appeals' decision which the opinion cited on this point³⁶ held contra on three grounds: (1) jurisdiction was not defeated because the defendant was brought into the geographical jurisdiction illegally; (2) the posse comitatus act supposedly does not operate in occupied enemy countries; and (3) the posse comitatus act had no present validity being intended to cover only post-Civil War reconstruction. Each of these points according to Mrs. Iva d'Aquino's attorneys was palpably erroneous; in Chandler and Gillars the courts seemed to feel that they were faced with traitors who had no defense on the merits; the opinions are classic examples of how hard cases make bad law.

The petitioner's counsels contended that the authorities on which the Chandler and Gillars cases³⁷ rely for holding that jurisdiction was not defeated because the defendant was kidnapped into it were all either (a) cases between states, like Pettibone v. Nichols,

³⁶Chandler v. U.S., 171 F. (2d) 921, 936 and Gillars v. U.S., 182 F. (2d) 962, 972-973.

³⁷Ibid.

203 U.S. 192 or (b) cases in which Federal venue was fixed otherwise than under Title 18 U.S.C. 3238 (usually by the place where the crime was committed) - like U.S. ex rel. Voight v. Toombs, 67 F. (2d) 744 and Whitney v. Zerbst, 62 F. (2d) 970.

Attorneys for Mrs. Iva d'Aquino maintained that the state cases did not concern her case at all - they did not involve construction of Federal statutes. In the other cases transportation of the defendant into the district was a purely collateral matter - it was not a statutory element of venue. Under Title 18 U.S.C. 3238, however, transportation is a statutory element of venue. If the transportation was accomplished criminally basing venue upon it constituted "use by the Government of the fruits of wrongdoing by its officers."

Further, the petitioner's counsels contended that it was a complete misconception to say that Title 10 U.S.C. 15 did not apply in her case because American law did not govern occupied Japan. First, the charge was not violation of any regulation governing occupied Japan, but violation of a general act of Congress - Title 18 U.S.C. 1. Second, the objection was not to anything done in Japan but to the manner of Mrs. Iva d'Aquino's

transportation across the Pacific - the bringing.

The 1900 Amendment to the section³⁸ expressly excluding Alaska, showed that the section was not otherwise limited to the continental United States. The territorial scope of an Act of Congress is a matter of statutory construction.³⁹ In extradition matters United States Marshals have always had duties outside the continental United States.⁴⁰ It stands to reason that the unqualified language of Title 10 U.S.C. 15 means that such matters cannot be delegated to the Army. So likewise the transportation from conquered territory to the United States.

The 1900 Amendment, excluding Alaska, also shows that Congress intended that the section should operate prospectively after 1900. It is, therefore, not limited

³⁸31 U.S. Stats. at L. 330.

³⁹U.S. v. Bowman, 260 U.S. 94, 97.

⁴⁰cf. Title 18 U.S.C. 3193, persons receiving fugitives in foreign countries vested with powers of U.S. Marshals, and Title 18 U.S.C. 3183, where persons have fled to an extraterritorial jurisdiction of the United States, the transportation back shall be done by agents of the demanding authority.

to post-Civil War reconstruction problems.

All the English authorities hold that there is a special rule of duress as defense to a crime where the defendant is wholly within the power of a hostile government.⁴¹ Two American cases discuss the point and take the same view.⁴² The converse is recognized in R.I. Recreation Center v. Aetna Casualty & S. Co., 177 F. (2d) 603 (C.A. 1) cited by the Court of Appeals.⁴³ Where protection from one's own government is available, this factor must be considered in deciding whether the defendant really yielded to duress.

The Court of Appeals first completely rejected this distinction as to civilians (though not soldiers)⁴⁴ and second, it held that duress can never be a defense in effect unless there has been an actual physical assault.⁴⁵ The petitioner's attorneys claimed that both holdings are contrary to all Anglo-American authorities

⁴¹Hale's Plea of Crown (1778) Ch. VIII, p. 49; Foster's Crown Cases (1776), pp. 216-217; 1 Hawkin's Pleas of the Crown (1795) Ch. 17, sec. 24, p. 90n; East's Pleas of the Crown (1806) pp. 70-72.

⁴²Miller v. The Resolution (1781) 2 U.S. 1; U.S. v. Greiner (1861) 26 Fed. Cas. 36, Fed. Cas. No. 15262.

⁴³Opinion, R. 892. ⁴⁴Opinion, R. 894.

⁴⁵Opinion, R. 894, 895, 898, 900.

dealing with the point. The question comes up in periods of war, where persons are held by the enemy or rebels; hence, like a comet, it keeps returning, though at widely spaced intervals.

The English cases developed out of the Stuart invasion of Scotland in 1745. The question of duress was always submitted to the jury on the whole evidence.⁴⁶ The phrase "an original force upon him" rules out duress of goods.⁴⁷ But no case holds that a threat with present power of execution is insufficient.⁴⁸

Mrs. Iva d'Aquino's attorneys contended that the rule that threats with present power of execution are sufficient duress was consistent with Dos Reis v. Nicolls, 161 F. (2d) 860, 862 (C.C.A. 1), Schioler v. U.S., 75 F.S. 353, 355, In re Gogal, 75 F.S. 268, 271, all dealing with abandonment of citizenship and described as "cases of real duress" in Savorgnan v. U.S., 338 U.S. 491, 502, n. 18.⁴⁹

⁴⁶East's Pleas of the Crown (1806), p. 71.

⁴⁷McGrowther's Case (1746), Foster's Rep. (2d ed. 1776), p. 13, 168 Eng. Rep. R. 8, where a threat to burn houses rather than injure the person was held insufficient.

⁴⁸U.S. v. Greiner, supra, approved the above English authorities.

⁴⁹Another case, Respublica v. McCarty, 2 U.S. 86, discusses the question but holds the defendant had an opportunity to escape.

The petitioner's attorneys asserted that this long line of contrary authority showed that the Court of Appeals was unjustified in its fears that "were any other rule to be applied, traitors in the enemy country would by that fact alone be shielded from any requirement of resistance."⁵⁰ The cited authorities showed that the jury must decide from all the evidence whether the defendant's apprehension was justified and genuine; the Court of Appeals seemed to concede that this would be practicable in the armed forces. Submitting this question to the jury carried no greater danger of a miscarriage of justice than submitting any other question of fact. Mrs. Iva d'Aquino's attorneys maintained that since the question recurs throughout history the Court of Appeals should have made an authoritative pronouncement upon it.⁵¹

Counsels for the petitioner contended that the requirement that injury must be immediate follows directly from the lower court's refusal to distinguish between

⁵⁰Opinion, R. 894.

⁵¹Petition for Certiorari, d'Aquino v. U.S., Ninth C.A. No. 12383, p. 52.

private duress and duress by a government having full control over the defendant. Punishment imposed by a government is frequently preceded by some sort of trial. Whether genuine or sham, the trial consumes time; but since the defendant cannot seek protection from her own government, the lapse of time makes the punishment no less inevitable. Where duress is by a government, an instruction requiring immediate injury is error.⁵²

Further, Mrs. Iva d'Aquino's attorneys contended that in view of the foregoing, it was also error to tell to jury that "there is nothing in the mere relationship of the parties that justifies or excuses obedience to such commands."⁵³ This was an error which the Court of Appeals did not even discuss.

The Court of Appeals admitted that the defendant's instruction to the jury No. 98⁵⁴ was correct (except on immediacy), but claimed that it was covered by another

⁵²Ibid.

⁵³Opinion, R. 892, n. 10, par. 5 of quoted instruction.

⁵⁴Opinion, R. 899. Defendant's instruction to the jury No. 98 reads: "If you find that the defendant did the acts charged in the indictment, but entertain a reasonable doubt as to whether or not she was acting under fear of bodily injury, beating or the like, then you must find the defendant not guilty."

instruction. The attorneys for the petitioner contended that this was admittedly incorrect.⁵⁵ This result was reached by saying that the defense made insufficient objection to the second, incorrect instruction. But that is confusion. Assuming that the defense made insufficient objection to the instruction quoted in Opinion, R. 899, n. 12, this merely bars the defense from asserting that instruction as an independent error. It does not change the incorrect into a correct instruction which can be used to cure other errors.

Mrs. Iva d'Aquino's counsels in their Petition for Rehearing⁵⁶ pointed out the full facts concerning the objection to the instruction quoted at Opinion, R. 899, n. 12. The trial court had declared it would give all the government's instructions to the jury on duress and refuse all the defendant's instructions. Hence the defense made an objection contrasting the two sets (Government's request [instruction] No. 50, while under one number, covered almost their whole charge):

"The next one, No. 50, entitled, 'The doctrine of coercion and compulsion' we except

⁵⁵Opinion, R. 899, n. 12.

⁵⁶Opinion, R. 939-942.

to on the ground that the instruction is too restrictive, and on the same grounds that we except to the refusal of our instructions on the same subject."⁵⁷

Attorneys for Mrs. Iva d'Aquino had requested several instructions upholding the defense of duress without the necessity of predicting which agent would inflict punishment.⁵⁸

⁵⁷LIII-5933:5-8.

⁵⁸Defense Request No. 93, Opinion, R. 311-312. "If you find from the evidence that the defendant was compelled by the Japanese, that is to say, by order of the Japanese Imperial Army Headquarters or by order of Japanese civilian authority at Radio Tokyo, to become a radio broadcaster and that she had no choice but to obey such order and that, in so doing, she acted in fear that if she failed so to do her life would be imperiled or she would suffer grievous physical harm by the Japanese you must return a verdict acquitting her of the charges brought against her." Defense Request Nos. 96-103, Opinion, R. 313-314. No. 96. "If you find that defendant did any of the acts charged in the indictment, but find that she was acting under fear of bodily injury, beating or the like if she refused, then you must find for the defendant on such act." No. 97. "If you find that any act charged in the indictment was done by defendant in fear of death if she refused, then you must find for the defendant as to such act." No. 98, supra, p. 139, n. 54. No. 99. "If you find that the defendant did the acts charged in the indictment but entertain a reasonable doubt as to whether she was acting under fear of death when she did them, then you must find her not guilty." No. 100. "If you find that any and all acts charged by the indictment were done by defendant under fear of bodily injury, beating or the like if she refused, then you must find the defendant not guilty." No. 101. "If you find that any and all acts charged by the indictment were done by defendant under fear of death if she refused, then you must find her not guilty." No. 102. "If you find that defendant did any of the acts

The petitioner's attorneys maintained that the Government's instructions to the jury wholly deprived her of the defense of duress since she obviously could not predict who would be ordered to punish her.

Mrs. Iva d'Aquino's attorneys cited the case of U.S. v. Balodimas, 177 F. (2d) 485, which involved two opposing individual requests; the defense had made no objection at all. The Seventh Circuit held the point was sufficiently preserved for appeal; in any event, since it was important, the petitioner's counsels claimed that the Appellate Court should have noticed it under Rule of Criminal Procedure 52.

Failure to instruct on cumulative effect of duress was admitted as an error by the Court of Appeals, but passed off as "nonprejudicial."⁵⁹ Attorneys for

charged in the indictment, but entertain a reasonable doubt as to whether she was actually in fear of death if she refused, then you must find for the defendant on such act." No. 103. "If you find that defendant did any of the acts charged in the indictment but entertain a reasonable doubt as to whether she was acting in fear of bodily injury, beating of the like if she refused, then you must find for the defendant on such act." The foregoing requests all uphold the defense of duress without requiring the defendant to predict who would actually inflict punishment on her.

⁵⁹Opinion, R. 898.

the petitioner contended that in view of all the other errors, and of the instructions meticulously saying that each item was insufficient, they submitted this "so far departs from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this court's power of supervision."⁶⁰

The Court of Appeals upheld exclusion of evidence of duress on others because it "was likely to get out of hand and mislead the jury."⁶¹ Such evidence was offered to show the surrounding circumstances in which Mrs. Iva Ikuko Toguri d'Aquino lived; fear of injury which might seem farfetched in the United States was well-grounded in wartime Japan.

Counsels for the petitioner contended that to say that such evidence might "mislead the jury" meant simply that it might lead them to acquit. Petitioning counsels maintained that it was no reason for excluding such evidence; it shows exclusion, if error, to be prejudicial. Mrs. Iva d'Aquino's attorneys submitted

⁶⁰Petition for Certiorari, d'Aquino v. U.S., Ninth C.A. 12383, p. 54.

⁶¹Ibid.

that evidence of a background and setting unfamiliar to the jurors was logically relevant. Other jurisdictions, including the Tenth Circuit have held that evidence otherwise admissible does not become inadmissible because it may tend to inflame the jury.⁶² Furthermore, evidence was excluded of statements which were communicated to Mrs. Iva I. T. d'Aquino.⁶³

Exhibits 24 and 15 were substantially complete accounts of the facts by Mrs. Iva d'Aquino. They contained exculpatory material as well as parts which the Government used to support the prosecution. Such statements were held to be confessions in Bram v. U.S., 168 U.S. 532, 541, and again in Ashcraft v. Tennessee,

⁶²Prudential Ins. Co. v. Faulkner, 68 F. (2d) 676, 678; Mohn v. Tingley, 191 Cal. 470, 491, 217 Pac. 733, 742, col. 2. Also see Shepard v. U.S., 290 U.S. 96, 104 (the Court of Appeals applies conflicting principles, each against the defendant).

⁶³See Opinion, R. 903, n. 17 (e.g., Huga's statements to Mrs. Iva d'Aquino; Reyes' statements to Mrs. Iva d'Aquino.) The court first held such evidence admissible (Opinion, R. 897, cf., the Ninth Circuit's earlier decision in Kasinowitz v. U.S., 181 F. (2d) 632, 635; then "irrelevant under any theory" (Opinion, R. 903). Opinion makes the assumption that Mrs. Iva d'Aquino made necessary offers of proof (Opinion, R. 921-922).

327 U.S. 274, 278. The Court of Appeals following the Government's brief, rather than decisions of the Supreme Court of the United States, dubbed them "so called 'confessions'".⁶⁴

Exhibit 24 was taken on April 29 and 30, 1946, by a Department of Justice agent while Mrs. Iva I. T. d'Aquino was confined by the military and had been for six months.⁶⁵ Exhibit P, (See Appendix I), quoted partly in the supplemental opinion,⁶⁶ shows that she was arrested for past acts. This was made even clearer by Exhibit N. (See Appendix II).

In its supplemental opinion the Court of Appeals seemed to take the position that because this arrest was by the military, the detention was legal indefinitely. Mrs. Iva d'Aquino was supposedly without recourse or protection. Attorneys for Mrs. Iva d'Aquino conceded for the purpose of argument that the initial arrest under Exhibit P was legal, but the continued detention

⁶⁴Opinion, R. 6.

⁶⁵Defense Exhibit P and Defense Exhibit O; Tillman, XIV-1457.

⁶⁶Opinion, R. 965.

on suspicion was illegal for both constitutional and statutory reasons:

1. The V and VI Amendments, guaranteeing due process and speedy trial, apply to the whole government, including the military. Where the constitution intends to withhold its guarantees from military proceedings, it says so expressly.⁶⁷ Attorneys for the petitioner contended that she is either a civilian, protected by these guarantees, and statutory guarantees mentioned below, or she is excepted from them as being under military jurisdiction, in which case she is protected by other statutory guarantees also mentioned below.

2. Mrs. Iva Ikuko Toguri d'Aquino was charged as a civilian under a general act of Congress. Hence she was entitled to the protection of Rule of Criminal Procedure 5(a) and of its predecessor statute. Mrs. Iva d'Aquino's attorneys contended that Upshaw v. U.S., 335 U.S. 410, governed her case. If there was any doubt whether the predecessor statute applied outside of the United States, this doubt was removed by the enactment

⁶⁷Art. I, sec. 9, cl. 2; V Amendment.

of the Rules of Criminal Procedure, which provide in Rule 54(b)(2) that they shall govern cases arising outside the bounds of the United States. The rules went into effect March 21, 1946, more than a month before Exhibit 24 was taken.

3. The defense's concession that Mrs. Iva d'Aquino was legally arrested in Japan stemmed from the fact that there are undoubtedly situations where the Army must arrest first and determine its jurisdiction afterwards.⁶⁸ A person so arrested is very much "subject to military law." If the military authorities have power to make preliminary arrests, they must have power to decide the preliminary question of their own jurisdiction in the same manner as a court.⁶⁹ But precisely because such decision is part of their regular functions, it is governed by Title 10 U.S.C. 1542. It must be made promptly. Six months' detention without action on charges was just as illegal under Title 10 U.S.C. 1542 as under Rule 5 of the Criminal Procedure. Petitioning counsels

⁶⁸Title 10 U.S.C. 1483, gives general courts martial jurisdiction over other persons besides those enumerated in Title 10 U.S.C. 1473.

⁶⁹Cf. U.S. v. Shipp, 203 U.S. 563, 573.

claimed that Exhibit 24 was therefore inadmissible under the Upshaw rule.

Attorneys for Mrs. Iva d'Aquino contended that the Court of Appeals erred in holding Title 10 U.S.C. 1542 limited to the persons described in Title 10 U.S.C. 1473.⁷⁰ Title 10 U.S.C. 1542 protects all persons affected by Title 10 U.S.C. 1483.

4. The petitioner's counsels contended that Exhibits N and P showed that even when she was arrested the military authorities were able to distinguish American citizens from aliens, and did so. There was no situation similar to that of U.S. v. Best, 76 F.S. 857, 863. Furthermore, if the situation had ever existed, the reorganization of December 27, 1945, indicated that it must have come to an end.⁷¹ December 27, 1945, was the latest date at which the Army could hold Mrs. Iva d'Aquino without turning her over to the proper authorities.

5. On April 29 and 30, 1946, the military authorities produced Mrs. Iva d'Aquino "for purposes of

⁷⁰Opinion, R. 886.

⁷¹See Supplemental Opinion, R. 965, n. 1.

interrogation by Agent Tillman."⁷² The military disclaimed her immediately afterwards, on May 1, 1946.⁷³ Hence, on April 29 and 30, the United States military authorities were holding her solely for the Department of Justice and for the unlawful purpose of interrogation. All pretense of military purposes had passed; the detention on April 29 and 30 was clearly illegal.

Exhibit 15 was taken by armed and uniformed military personnel who locked Mrs. Iva d'Aquino and her husband into a room with them. Exhibit 15 was later signed after she had been kidnapped, ever so politely, from her home to Army headquarters by soldiers in an Army car. At the signing of Exhibit 15, John B. Hogan of the Department of Justice said he told Mrs. Iva d'Aquino she might be tried for treason. She on the other hand, said Harry T. Brundidge told her that by signing it she would have a better chance to return to the United States. Attorneys for Mrs. Iva d'Aquino contended that the Court of Appeals erred when it held this evidence insufficient

⁷²Defense Exhibit O.

⁷³Defense Exhibit N.

to submit the question of involuntariness to the jury.⁷⁴

The facts in the taking of the oral confessions are given in the Court of Appeals' Opinion,⁷⁵ and held to be insufficient to raise an issue of fact on the question of voluntariness.⁷⁶ An instruction to the jury by the defense was held properly refused because it was too broad.⁷⁷ Various authorities held that where a court's attention has been called to an issue by a requested instruction, it is error, though the request be erroneous, for the court wholly to fail to instruct on the issue.⁷⁸

Petitioner's counsels conceded that requested instruction to the jury No. 88⁷⁹ was too broad; however,

⁷⁴Opinion, R. 888-889.

⁷⁵Ibid.

⁷⁶Ibid.

⁷⁷Opinion, R. 890.

⁷⁸Freihage v. U.S., 56 F. (2d) 127, 133 (C.C.A. 9); Armstrong v. U.S., 41 F. (2d) 162, 163 (C.C.A. 9); People v. Tapia, 131 Cal. 647, 653-654, 63 Pac. 1001; People v. Frey, 165 Cal. 140, 147, 131 Pac. 127.

⁷⁹Defendant's Requested Instruction No. 88: "Various alleged statements by the defendant as well as records of voice tests have been admitted into evidence for your consideration. Before you deal with these from any other

it is an important question of Federal criminal practice, whether a court may wholly fail to instruct on an issue in a criminal case after its attention has been called to it by an erroneous request.

Exhibit 2 was a piece of Japanese paper money on which Mrs. Iva d'Aquino had signed "Tokyo Rose". It was given after she had been in jail over thirty days. Her attorneys contended that Exhibit 2 falls within the McNabb rule,⁸⁰ if it is a confession.⁸¹ The Government claimed the exhibit was admissible to prove handwriting. Her attorneys contended as said in the case of Shepard v. U.S., 290 U.S. 96, 104:

". . . When the risk of confusion is so great as to upset the balance of advantage, the evidence goes out."

standpoint you must first determine whether the defendant made each of these voluntarily and of her own free will not acting either under inducement or threats. If as to any you do not find that the Government has shown the statement to have been made voluntarily, then you must discard any such alleged statement from your consideration of the case."

⁸⁰McNabb v. U.S., 318 U.S. 332.

⁸¹Eisenhart, I-41:11-16; I-42:1-12.

The phonograph records, Exhibits 16-21 were the most direct evidence of what actually came over Mrs. Iva d'Aquino's program. They went to the essence of the case. Her counsels contended the recordings were not made audible to the public, although this could readily have been done. The Court of Appeals likened them to exhibits which are not passed among spectators. The petitioner's attorneys contended that any spectator, if he wishes, may look at the exhibits in the hands of the Clerk. Her attorneys maintained that there was no way in which the general public could get first-hand knowledge of these crucial exhibits.

In Gaines v. Washington, 277 U.S. 81, 85, this court noted that the Circuits have differed upon the question of a public trial, but found it not presented by the case at bar at that time. Mrs. Iva d'Aquino's counsels asserted that it should have been decided.

The Geneva Convention authorizes a detaining power to utilize the work of war prisoners provided it has "no direct relation with war operations" - like "manufacturing and transporting arms or ammunition of any kind, or transporting material intended for combatant

units."⁸² It follows that all other work may legally be demanded - even though it may indirectly aid the war effort of the detaining power.

After the outbreak of the war, Japan and the United States exchanged notes making this convention apply both to prisoners of war and interned civilians.⁸³ (See Appendix XIV).

Mrs. Iva d'Aquino's counsels contended that the Court of Appeals misconstrued both Haupt v. U.S., 330 U.S. 631, and Cramer v. U.S., 325 U.S. 1, in holding that the Geneva Convention was not to be read in pari materia with the treason statute. Haupt v. U.S., held that the overt acts were ambiguous and presented a jury question as to whether they were help to the son or help to the enemy.⁸⁴ Cramer v. U.S., 325 U.S. 1, holds precisely what the petitioner's attorneys had argued - that if the overt act is indisputably legal, intent cannot turn it into treason. The same result

⁸²47 U.S. Stats. at L. 2021, 2040-2041, arts. 27 and 31.

⁸³Defense Exhibit BU, L-5595.

⁸⁴Haupt v. U.S., 330 U.S. 631, 641.

follows in the case of an overt act legalized by the Geneva Convention.

As between the United States Government and its citizens, the Geneva Convention established a policy respecting citizens within the enemy's power. This applies with equal force to those who are interned, and those subject to internment, but uninterned for accidental reasons.⁸⁵

When a new policy is established, it covers all cases falling within its scope.⁸⁶ Mrs. Iva d'Aquino's attorneys contended that she, wholly in the power of the Japanese and subject to internment at any time, must have the benefit of the Geneva Convention to the same extent as citizens whom the Japanese saw fit to intern.

Misconduct of Prosecutor

The numerous assignments of misconduct by the prosecutor were nearly all admitted by the Court of Appeals.

⁸⁵Defendant, XLV-4966:13-22. Mrs. Iva d'Aquino was refused internment, being a woman, and considered harmless. See also Deposition of Katsuo Okada, who testified by deposition that the Japanese found it impractical to intern Chinese, Manchurians, and Niseis, as there were too many. (Okada, XLII-4687 ff.).

⁸⁶Van Beek v. Sabine Towing Co., 300 U.S. 342, 344.

Two additional incidents were not mentioned by the Court. Instructions to disregard were requested by the defense in all instances which the Court of Appeals mentioned and in one of the two which it did not mention. All but one were refused. This one was given after the reference to contemplated prosecution of other persons for other crimes.⁸⁷

The Eighth Circuit had held such statements prejudicial despite an instruction to disregard.⁸⁸

Attorneys for Mrs. Iva d'Aquino contended that Prosecutor Thomas De Wolfe repeated his misstatement that Clark Lee was a witness to Overt Act 6. Prosecutor De Wolfe had said:

"Now this testimony from five witnesses that the defendant broadcast the incident about American ship losses after Leyte Gulf, concerning which five government witnesses testified. . . ." ⁸⁹

Mrs. Iva d'Aquino's counsels maintained that without Clark Lee there were not five witnesses.⁹⁰ The petitioner's attorneys made no separate assignment to this repetition, the court having already declined her request

⁸⁷Opinion, R. 909.

⁸⁸Turk v. U.S., 20 F. (2d) 129, 131.

⁸⁹II Argument: 329:2-5.

⁹⁰Opinion, R. 907.

for instruction. Her attorneys contended that this second instance of misconduct showed conclusively that the Court of Appeals' construction of the first occurrence was wrong. Her attorneys maintained that the prosecutor was referring to her testimony on Overt Act 6, not to her entire testimony.

Counsels for Mrs. Iva d'Aquino contended that the Court of Appeals' speculation as to whether the jury could have been misled was wholly beside the point. The Court of Appeals failed to mention that the record affirmatively showed that they were misled. In one of their requests for transcripts of the trial proceedings, furnished by stipulation, the jury had asked:

"Would it be possible for the jury to examine in the jury room the transcripts of the testimony of the following relative to Overt Acts 5 and 6: Clark Lee, Oki, and Mitsushio."91

Attorneys for Mrs. Iva d'Aquino contended that the record affirmatively showed that the jury accepted the prosecutor's misstatement that Clark Lee was a witness to Overt Act 6. Her attorneys further contended that "this goes to the core of the conviction."92

91LIV-6001:5-8.

92Petition for Certiorari, d'Aquino v. U.S., Ninth C.A. 12383, p. 64.

The petitioner's counsels contended that the Court of Appeals omitted to mention the second instance of misconduct involving Exhibit 52.⁹³ The exhibit was used as the source of affirmative facts to impeach defense witness Charles Cousens. Chief counsel for the prosecution, Thomas De Wolfe argued:

"Here is what he [Norman Reyes] says about Cousens, who was a proponent of what the Japanese fondly called the 'Greater East Asia Co-prosperity Sphere'. (Exhibit 52) Now this is her own witness. You will have this exhibit in the jury room. Here is what he [Reyes] says about his fellow witness, his fellow worker at Radio Tokyo: "I recall that Major Charles Cousens, Australian Imperial Forces, who had been taken a prisoner of war by the Japanese [Imperial] Army, [at Singapore] was also engaged in work at Radio Tokyo. During the time I was associated with him, I became convinced (this is Reyes) that he (that is, Cousens) believed that the political problems of Asia and the Pacific Islands could only be solved through the domination of this territory by a strong power, namely, a beneficent Japan. This coincided with the Japanese propaganda idea of the Greater East Asia Co-prosperity Sphere. It is my belief (that is the defendant's witness) that Major Cousens was induced to take part in the broadcasting of propaganda from Radio Tokyo because he thought that he would have a voice in explaining this idea to the listeners of Radio Tokyo.""

"The defendant's own witness says that Cousens was pro-Japanese."⁹⁴

⁹³LIV-5941:7-11.

⁹⁴II Argument: 328:1-21.

Chief prosecutor De Wolfe continued the argument:

"They [Imperial Government of Japan] got the right man in Charles Cousens, an anti-war man who believed, according to the defense, in a beneficial Japan, in the domination of Asia by Japan who was plugging against an unconditional surrender being imposed on Japan and who was plugging, according to the defense testimony, valiantly for the Greater East Asia Co-prosperity Sphere. This is the defense evidence, and not the government's."⁹⁵

Attorneys for Mrs. Iva d'Aquino contended that the assignments were all misstatements of evidence - not merely "invective based on evidence."⁹⁶ In this respect the record differed from that in all but one of the authorities cited by the Court of Appeals. The remaining decision was *Holt v. U.S.*, 218 U.S. 245, 250, where the disputed remark came in the opening statement; it was not a misstatement of evidence.

The petitioner's counsels contended that the suggestion relative to F. Harris Sugiyama's testimony⁹⁷ that the defense's assignment cured the misstatement even though the assignment was denied, overlooked: (1) the failure to give the requested instruction disparaged the

⁹⁵II Argument: 329:23; 330:5.

⁹⁶Petition for Certiorari, d'Aquino v. U.S., Ninth C.A. 12383, p. 65.

⁹⁷Opinion, R. 909-910.

the request, and (2) the weight which the prosecutor carried with the jury as a public official.⁹⁸

Mrs. Iva d'Aquino's counsels contended that, throughout, the Court never rebuked the prosecutor, but threw the question of misstatement back into the jurors' laps. Her counsels argued that this implied that the prosecutor may not have misstated the evidence; so did not correct a misstatement.

Mrs. Iva d'Aquino's application for reestablishment of her American citizenship was shown by Government Exhibit 9.⁹⁹ Her attorneys contended that the Court of Appeals failed to mention it. The petitioner's attorney's maintained that:

" . . . certainly the prosecutor has no excuse to be 'proceeding up the wrong alley' when this means trying to break down defendant's testimony which merely repeats the contents of a Government exhibit already in evidence. Prejudice does not depend on defendant's actually retracting truthful testimony. . . ." ¹⁰⁰

Argumentative Questions Regarding
Cross Examination of Defendant

Attorneys for Mrs. Iva d'Aquino contended that the

⁹⁸Berger v. U.S., 295 U.S. 79, 88.

⁹⁹I-83. ¹⁰⁰XLVII-5249 to XLIX-5491.

questions put to her were designed to show the alleged inconsistency between her testimony and that of other witnesses. The petitioning attorneys claimed the questions were therefore purely argumentative. Her attorneys maintained that if she was subject to cross-examination like any other witness, she was immune to argumentative questions like any other witness. The Court of Appeals neglected to say that this method of cross-examination went on for 240 pages.¹⁰¹

The few cases in point held such cross-examination improper.¹⁰² Attorneys for Mrs. Iva d'Aquino contended that the continuing improper cross-examination of her for 240 pages cannot but be prejudicial.

Mrs. Iva I. T. d'Aquino did not testify regarding Overt Act 8, but the chief prosecutor, Thomas De Wolfe was allowed to "cross-examine" her on it. The same thing happened with respect to Overt Acts 1 and 4 - but

¹⁰¹Ibid.

¹⁰²State v. Schleifer, 102 Conn. 708, 130 At. 184, 191; State v. Bradley, 134 Conn. 102, 55 Atl. (2d) 114, 120; Williams v. State, 17 S.W. (2d) 56, 58 (Tex. App.); Temple v. Duran, 121 S.W. 253, 255 (Tex. App.). Cf. McDowell v. U.S., 74 Fed. 403, 407 - improper to cross-examine witness on another person's statement.

the petitioner's attorneys considered the rulings on Overt Act 8 prejudicial because in argument the prosecutor used Mrs. Iva d'Aquino's answers and prosecution rebuttal as a basis for attacking her entire testimony.¹⁰³

Attorneys for the petitioner contended that Overt Act 8 was innocuous as shown by the testimony of prosecution witness, Kenkichi Oki. Oki testified:

"Well, as I remember it, she said in substance to George Mitsushio, 'How do you like my new hat?' And Mr. Mitsushio said, 'What hat?' Miss Toguri answered, 'You can't see it from there, because it is on the other side of my head.'"¹⁰⁴

The Court of Appeals said cross-examination on this was admissible as going to the intent of the overt acts upon which she did testify.¹⁰⁵

Mrs. Iva d'Aquino's attorneys contended that in treason overt acts and intent are two separate categories.¹⁰⁶ If an overt act bespeaks its own intent no further evidence is necessary; if not, the prosecution may introduce separate

¹⁰³II Argument: 337:23; 339:13.

¹⁰⁴Oki, IX-686:20-23.

¹⁰⁵Overt Acts 2, 3, 5, and 6. See pp. 9-10.

¹⁰⁶Cramer v. U.S., 325 U.S. 1; Haupt v. U.S., 330 U.S. 631.

evidence of intent. But one overt act is not established to show the intent of another overt act. The Eighth Circuit Court had held that when a defendant testified to only certain elements of a charge, he cannot be cross-examined as to other elements.¹⁰⁷

Mrs. Iva d'Aquino's attorneys contended that since the Government claimed that she was an American citizen it was clearly improper to ask defense witness Wallace E. Ince on cross-examination:

"Now defendant was not the only Japanese with whom you were friendly, was she?"

Her attorneys contended that it is true Mrs. Iva Ikuko Toguri d'Aquino's race was obvious to the jurors; but it was misconduct to "rub it in."¹⁰⁸

Limitation of Cross Examination of
Clark Lee and Richard Henschel

Clark Lee testified that Mrs. Iva d'Aquino had

¹⁰⁷Tucker v. U.S., 5 F. (2d) 818, 822, 824; Wilson v. U.S., 4 F. (2d) 888. To the same effect: State v. Crowder, 119 Wash. 450, 205 Pac. 850, 852; State v. Hall, 20 Mo. App. 397, 404-405 (the "dissenting" opinion is the majority opinion upon this point). Lombard v. Mayberry, 24 Neb. 674, 40 N.W. 271, 279.

¹⁰⁸Cf. Ross v. U.S., 180 F. (2d) 160, 168 (C.A. 7); Viereck v. U.S., 318 U.S. 236, 247-248.

told him the purpose of her program "was to make them homesick and unhappy about sitting in the mud." In his book, One Last Look Around, he stated that her "programs were at least entertaining to the American troops."¹⁰⁹ Mrs. Iva d'Aquino's attorneys maintained that "this does to the essence of the case." Cross-examination on the point was stopped in limine.¹¹⁰ The Court of Appeals upheld the ruling on the ground that there was supposedly no inconsistency between the two statements. Her counsels contended that she would hardly have made the statement attributed to her had it not been the fact, and the statement in Lee's book tended to show it was not the fact. Attorneys for Mrs. Iva d'Aquino claimed that there was an underlying inconsistency which she should have been allowed to explore on cross-examination. Her attorneys contended that cutting off all cross-examination at the outset was an error similar to that in the Alford case,¹¹¹ but on a much more vital point.

¹⁰⁹Clark Lee, "Her Neck in a Noose," One Last Look Around (New York: Duell, Sloan and Pearce, 1947), p. 86.

¹¹⁰Alford v. U.S., 282 U.S. 687, 694.

¹¹¹Ibid.

Attorneys for Mrs. Iva d'Aquino declared that as to what constituted inconsistency, "it was only necessary that the testimony offered should have a tendency to explain, repel, counteract, or disprove the opposite statement in order to render it admissible."¹¹² Her attorneys contended that the idea of "no inconsistency" was a brainchild of the Court of Appeals, the Government did not suggest this objection either at the trial or in its brief.¹¹³

Richard Henschel testified that he heard Mrs. Iva d'Aquino's broadcast, Overt Act 6, although he fixed the time between 9:00 P.M. and 11:00 P.M. Philippine Time,¹¹⁴ which was 10:00 P.M. and 12:00 P.M., Tokyo Time. Mrs. Iva d'Aquino admittedly broadcast only between 6:00 P.M. and 7:00 P.M., Tokyo Time.

Mrs. Iva d'Aquino's attorneys asked Henschel whether he had an opinion as to the defendant's guilt or innocence when he wrote newspaper articles about her

¹¹²³ Wigmore on Evidence (3rd. ed.) sec. 1040, pp. 725-726 quoting opinion on Clifford, J., in U.S. v. Holmes, 1 Cliff. 116.

¹¹³ Petition for Certiorari, d'Aquino v. U.S., p. 70

¹¹⁴ Henschel, XXVI-2960:25; 2988:14-16.

some months before the trial.¹¹⁵ Her attorneys declared that this was the beginning of an attempt to impeach Henschel for bias, distinctly not an attempt to get his opinion before the jury as independent evidence.¹¹⁶ The petitioner's counsels contended that if the witness had an opinion as to the defendant's guilt or innocence without knowing the full facts, that would indicate bias.¹¹⁷

Fraud in the Preparation
in the Government's Case

Attorneys for Mrs. Iva d'Aquino contended that the

¹¹⁵Henschel, XXVI-2969:7-11; XXVI-2970:16-22.

¹¹⁶Cf. Opinion, R. 916.

¹¹⁷Cf. 3 Wigmore on Evidence (3rd ed.) sec. 940, p. 493 - witness may be asked directly whether he has bias, though this is rarely done; sec. 944, p. 495 - "in extracting evidence by cross-examination the largest possible scope shall be given to evidence attempted to be procured that way" (Wigmore's emphasis); Sunderland v. U.S., 19 F. (2d) 202, 212 (C.C.A. 8) desire to see a party defeated as of date previous to trial.) On this issue, too, the trial court stopped the cross-examination at its threshold. Cf. Alford v. U.S., 282 U.S. 687, 694. The United States Attorney made no specific objection to the question, but only "I object to that as highly improper, your Honor." See also XXVI-2970:20-21.

Government misdated twenty five subpoenas, directing witnesses to appear before the trial started, and at 9:00 A.M. instead of 10:00 A.M.¹¹⁸ The Court of Appeals held that these systematically wrong dates are insufficient to take the issue of intentional misdating to the jury. Attorneys for Mrs. Iva d'Aquino submitted that merely stating the proposition showed its incorrectness. Her counsels contended the Court of Appeals had frequently granted certiorari where lower courts have refused to submit factual issues to the jury.¹¹⁹ The petitioner's attorneys argued if this was a good reason for granting certiorari in a civil case, it must be even more so in a criminal case.

Attorneys for Mrs. Iva d'Aquino contended that refusal to admit proof of these facts (as distinguished from excluding the illegally subpoenaed witnesses) conflicted with the holding of the Second Circuit in U.S. v. Remington, 191 F. (2d) 246, 251.

Brundidge's attempted to bribe and suborn Kodaira

¹¹⁸Defense Exhibit BT, L-5590.

¹¹⁹Cf. the F.E.L.A. cases, e.g., Wilkerson v. McCarthy, 336 U.S. 53, 55.

and did bribe and suborn Hiromu Yagi to testify that they had heard Mrs. Iva d'Aquino broadcast matters which they did not hear her broadcast. All of Toshikatsu Kodaira's testimony on this subject was excluded; it was quoted by attorneys for the petitioner in her Petition for Rehearing.

The Court of Appeals refused to submit to the jury the question whether Brundidge was acting in the scope of his employment. Brundidge went on on evidence-gathering mission to Japan at Government expense; on official business for the Department of Justice.¹²⁰ Her attorneys contended that whether Brundidge went "as a newspaperman" was merely a conflicting inference from the evidence which can be argued to the jury. Other Circuit Courts have held that the fact that an agent may have performed his mission fraudulently did not make him any less an agent.¹²¹

Attorneys for the petitioner claimed that the quotation of Kodaira's testimony showed it was not hearsay. Her counsels argued that Brundidge's attempts

¹²⁰Opinion, R. 920.

¹²¹Ricketts v. Penn. R.R. Co., 153 F. (2d) 757, 759 (C.C.A. 2); Ralston Purina Co. v. Novak, 111 F. (2d) 631, 639 (C.C.A. 8).

at subornation and bribery were the very facts in issue, and therefore not hearsay.¹²²

Mrs. Iva d'Aquino's attorneys contended that the Court of Appeals admitted at least twelve errors, in the trial, but passed them off as being singly nonprejudicial. The cumulative effect was not even considered. Her counsels argued that this isolated treatment particularly obscured the concentration of errors on Overt Act 6, upon which she was convicted. The attorneys for Mrs. Iva d'Aquino have followed the court's subject order; consequently the prosecutor's misconduct on Overt Act 6, the categorical instruction, the failure to instruct the jury on the cumulative effect of duress since the Government witnesses said Overt Act 6 was broadcast in response to their direct order.¹²³ Failure under such circumstances to consider the cumulative effect of admitted errors on pivotal issues, her attorneys submitted, "so far departs from

¹²²⁶ Wigmore on Evidence (3rd ed.) sec. 1770, p. 185; Bedell v. U.S., 78 F. (2d) 358, 364, a decision from the Eighth Circuit on bribery of a juror is directly contrary to the holding by the Ninth Circuit in this case.

¹²³ Mitsushio, XL-971:13-18.

the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision."¹²⁴

Mrs. Iva d'Aquino's attorneys contended that a writ of certiorari should be granted accordingly and the judgment of conviction reversed.¹²⁵

The United States Court of Appeals for the Ninth Circuit and the Supreme Court of the United States reviewed the case during 1951 and 1952 and found no prejudicial error in the record, and therefore affirmed the judgment of conviction.¹²⁶

¹²⁴Petition for Certiorari, Ninth C.A. 12383, d'Aquino v. U.S., p. 82.

¹²⁵Ibid.

¹²⁶192 F. (2d) 338; 203 F. (2d) 391; 343 U.S. 935, 958; 345 U.S. 931.

CHAPTER IV

PUBLIC OPINION

Public Opinion Formed on the Indictment and Trial

The indictment and trial were held in a time of public hysteria. A veritable flood of propaganda masked in the guise of publicity in newspapers, magazines, and via radio broadcasts for a period of one year served as a prelude to the indictment and trial. It was nothing but an indictment and trial by prejudice and by propaganda.¹ The following copyrighted article in the Nashville Tennessean appeared in the Associated Press World Service:

"Those hundreds of thousands knew 'Rose' -- a nickname they had given her during the war years. She would play nostalgic music, which they loved, and then inform them their wives and sweethearts were carrying on with 4Fs and highly paid war workers, while they were giving their sweat, blood and lives in the heat, muck, rain and jungles in the Pacific. . . . Even if I had quit broadcasting on the Zero Hour a year

¹Supra, p. 71, n. 22.; Harry T. Brundidge, "Arrest of 'Tokyo Rose' Nears," Nashville Tennessean, May 2, 5, 9, 10, 12, 14, 19, 20, 21, and 23, 1948.

ago (1944) it would be the same thing. If I am guilty of treason now (1945) I would have been equally guilty in 1944."²

Had the case been instituted and tried in normal times or without a barrage of unfavorable publicity against her flooding the country immediately following the cessation of hostilities,³ perhaps the outcome would have been favorable for her. However, it was brought to trial when so much prejudice and propaganda had been uttered, printed, and broadcast questioning the loyalty of American citizens of Japanese ancestry and their alien parents residing in the United States.

In early 1948 a Gold Star mother⁴ learned that "Tokyo Rose" had applied in Japan for a United States passport to return to her home in California. She reported the matter to Walter Winchell, a New York newspaperman and radio commentator, and stated that if "Tokyo Rose" had made derogatory remarks about the United States she should be denied a passport. Winchell

²Harry T. Brundidge, Nashville Tennessean, May 9, 1948.

³S.F. Chronicle, Sept. 1, 1945; S.F. News, Sept. 5, 1945; Sacramento Bee, Sept. 6, 1945; S.F. Chronicle, Sept. 6, 1945; New York Times, Dec. 4, 1947.

⁴Mothers whose sons were killed during World War II.

broadcast that matter as a protest and directed the attention of the United States Attorney General Tom C. Clark to the matter. The Attorney General, however, asserted that "Tokyo Rose" had been investigated and that the Government had no evidence of wrong doing on her part.⁵

Harry T. Brundidge, a newspaperman and writer for various magazines, and the same person who, together with John B. Hogan of the Department of Justice, took Exhibit 15, heard of Winchell's broadcast and told him and also informed the Attorney General that he had a "confession" from "Tokyo Rose."⁶ He presented his own notes he had made up for an article he proposed to write on "Tokyo Rose" for the Cosmopolitan Magazine and the Attorney General informed him that it was not a confession.⁷ Thereupon Brundidge informed the Attorney General he would go to Japan and get a "confession" from Iva Ikuko Toguri d'Aquino. Thereafter, Brundidge and John B. Hogan

⁵Letter, Wayne M. Collins to The President of the United States, November 4, 1968.

⁶Supra, p. 4, n. 7.

⁷Ibid.

went to Japan to interview Mrs. Iva I. T. d'Aquino where the former asked her to initial and sign the pages of his notes for his story as being notes he made for an article for Cosmopolitan Magazine in her presence. This was the document he subsequently asserted constituted a "confession."⁸

The notoriety given to "Tokyo Rose" by Walter Winchell and Harry T. Brundidge ultimately led to her indictment.

A few days after her conviction the following article appeared in the San Francisco News:

The conviction of Tokyo Rose cast a blight on the otherwise happy retirement of Reporter Philip L. Hanley from the newspaper business. The trial was the last story he'll cover in a court, because he now moves over to the other table and becomes a lawyer. It was also the hardest. Each day he had to give an extra look so as to be sure his copy was staying fair, objective, and unprejudiced. You see, Hanley was Navy during the war, and he heard those Tokyo Rose broadcasts out in the South Pacific. Even when he made the most of them he couldn't see any treason, so he went through the entire proceedings as prejudiced as he could get - in favor of Rose.⁹

⁸Hogan, VII-610:13-16; 616:12; 617:22; 619:4-19; 620:13-21; 621:15-21; 623:2-7; 630:18; 631:5; and Defense Exhibit BR, L-5580.

⁹S.F. News, October 1, 1949.

Suspicion Cast on Americans of Japanese Ancestry

When World War II broke out none of the Nisei committed any acts of espionage or sabotage either in the continental United States or in Hawaii, but that proved all the more that they would do so in the future.

This type of emotional "thinking" affected the most responsible officials in Government. Justice Murphy of the Supreme Court of the United States had this to say of the army commanders who ordered the Nisei internment on the American continent:

"Further evidence of the Commanding General's [Lt. General John L. DeWitt] attitude toward the individuals of Japanese ancestry is revealed in his voluntary testimony on April 13, 1943, in San Francisco before the House Naval Affairs Subcommittee to Investigate Congested Areas, Part 3, pp. 739, 740 (78th Cong., 1st Sess.): 'I don't want any of them [persons of Japanese ancestry] here. They are a dangerous element. There is no way to determine their loyalty. . . . It makes no difference whether he is an American citizen, he is still a Japanese. American citizenship does not necessarily determine loyalty. . . . The final report, p. 34, makes the amazing statement that as of February 14, 1942, 'The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.'"¹⁰

¹⁰Justice Murphy's dissenting opinion in Korematsu v. U.S., 323 U.S. 214, 236, 241, nn. 2 and 15.

Even after the war, there was no way in which the American of Japanese ancestry could escape the suspicion of treason. In view of this attitude toward the Nisei, there were many Americans, including some Nisei, who pronounced judgment against her without hearing all of the evidence.

Attitude of the Nisei Toward Iva d'Aquino

Japanese Americans feared that the "Tokyo Rose" case would bring undesired notoriety to the Nisei in America. They worried that the case would bring additional outcries by the "Jap-haters" concerning the alleged disloyalty of the Nisei. Minoru Yasui, writer for a Japanese American tabloid, The Colorado Times, wrote:

" . . . Together with the Kawakita treason case¹¹ these two former Niseis will be spotlighted by the nation's press. The sacrifice of the 30,000 Nisei GIs and the heroic record of the 442nd [Infantry Regimental Combat Team composed mainly by Nisei officers and men] will be apt to be forgotten in the hue and cry over 'treason'

¹¹Tomoye Kawakita, known by the sobriquet, "Meatball" was a Japanese American who operated a wartime factory in Tokyo, Japan. He was convicted of treason in the Federal court in Los Angeles.

by repatriated Nisei. Personally, we wonder about such cases. Whenever a Nisei in Japan now tries to claim U.S. citizenship and tries to return to the U.S., the State Department is frequently reluctant to admit their American citizenship. . . . We understand that there were half a dozen or more 'Tokyo Roses' who participated in propaganda broadcasts to American troops in the Pacific. A thin line of legal technicality might convict her of treason, whereas the five or six other "Tokyo Roses" would be untouched by American law. As Japanese nationals, these other girls would be regarded as nationals of Japan doing their patriotic duty in trying to win the war. We do not defend Kawakita, or the Tokyo Rose. But to bring discredit upon the Nisei in America and besmirch the war record of our Nisei soldiers seems to be an unwarranted procedure in these cases. We hope that the treason charges will be dropped, and if necessary punishment for some other crime can be imposed, it will be far better for everyone concerned."¹²

The following letter by Lincoln Yamamoto of Pasadena, California appeared in Newsweek Magazine, in February, 1956, a few weeks after Mrs. Iva d'Aquino was released from the Federal Reformatory for Women at Alderson, West Virginia, after having served six years and two months of her sentence:

"I think it was prejudice and miscarriage of justice that 'Tokyo Rose,' Iva d'Aquino

¹²Minoru Yasui, The Colorado Times, July 28, 1948.

(Newsweek, Jan. 16 [1956]), was convicted of treason. Was MacArthur guilty of treason for fighting for his country? Why then was Iva d'Aquino guilty of treason for doing her duty to hers? It's our custom to consider ourselves citizens of Japan, regardless of where we're born and our first allegiance is to Japan. We Nisei are proud of Iva d'Aquino and we're going to give her a heroine's welcome."¹³

Lincoln Yamamoto's letter stirred the indignation of numerous Nisei and Nisei organizations, who expressed their displeasure in letters to Newsweek Magazine. Typical of some of those letters was one by Masao Satow, National Director of the Japanese American Citizens League, who wrote:

"Lincoln Yamamoto, if there be such a person, speaks only for himself in his irresponsible fanatical outbursts . . . for more than a quarter of a century our national organization of the Japanese American Citizens League, with its motto 'For Better Americans in a Greater America,' has operated upon the principle that we are Americans and that our first and only loyalty is to the United States of America, not a single one of our members believes as does Yamamoto that 'it is our custom to consider ourselves citizens of Japan.' . . ."¹⁴

Jiro Oishi of Lincoln Yamamoto's hometown wrote:

"On behalf of the Pasadena Japanese Community Center, we wish to refute the letter written by Lincoln Yamamoto. He does not represent the Nisei of Pasadena . . ."¹⁵

¹³Newsweek Magazine, February 20, 1956, p. 2.

¹⁴Newsweek Magazine, March 5, 1956, p. 6.

¹⁵Ibid., p. 8.

CONCLUSIONS

After a careful study of the trial record and the U.S. Supreme Court's and Appellate Court's opinions and the authorities cited in support of the Courts' opinions, the writer has concluded that important questions of constitutional and statutory law were incorrectly applied and decided in this case.

The case was studded with bribery, perjury, kidnapping, unlawful imprisonment, destruction of records, and strange meddling by private persons in the business of the United States Attorney General's office.

At the trial the prosecution indulged in one misstatement of evidence after another; in an attempt to make Mrs. Iva d'Aquino retract evidence proved truthful by a government exhibit; in appeals to race prejudice and wartime passions; in long stretches of cross-examination, which the government does not now even attempt to defend.

Iva Ikuko Toguri d'Aquino was one of the victims

of the war. She became a casualty of our judicial system which failed to protect her fundamental rights.

The appellate courts gave scant consideration to the very important issues and points in Mrs. d'Aquino's appeal. Unfortunately, the case was a political one. It arose in the immediate post-war period when the public temper was still inflamed against Japan and citizens of the United States of Japanese ancestry.

Months after the trial was concluded, Federal Judge Michael J. Roche, Thomas De Wolfe, and Frank J. Hennessy had informed Wayne M. Collins that they would give a good report relating to Iva d'Aquino. Each informed Collins that he would not oppose the grant of a pardon for her. Unfortunately, their deaths precluded her attorneys from obtaining from them a recommendation in her favor, and also precluded the United States Attorney General and the Pardon Attorney from obtaining an expression of their views on the granting of a pardon for her.

Twenty-three years have elapsed since her tragic trial. All through those years her lawyers have had absolute faith in her innocence.

The author is impelled to ask, did Theodore Dreiser write The American Tragedy, or did Harry T. Brundidge, Clark Lee, and Walter Winchell write "The American Tragedy" in the case of Iva Ikuko Toguri d'Aquino?

APPENDIX I

EXHIBIT P

SECRET

COPY

PRIORITY

10 SEPTEMBER 1945

CINCAFPACADV

COM GEN SIXTH ARMY PRIORITY

COMGEN EIGHTH ARMY PRIORITY

COMGEN TENTH ARMY PRIORITY

COMGEN XXIV CORPS PRIORITY

THE APPREHENSION AND DETENTION OF PERSONS BY
UNITED STATES FORCES IN JAPAN AND KOREA WITHIN ACTUAL
ZONES OF OCCUPATION AND WITHIN THE FOLLOWING CATEGORIES
IS AUTHORIZED CINPAREN ONE PAREN CITIZENS AND NATIONALS
OF THE UNITED NATIONS SUSPECTED OF GUILT OF TREASON
CMA SEDITION CMA OR WAR CRIMES PAREN TWO PAREN CITIZENS
AND NATIONALS OF NEUTRAL COUNTRIES SUSPECTED OF GUILT OF
WAR CRIME OR WHO COMMIT OVERT ACTS ENDANGERING THE
SECURITY OF OUR FORCES PD (CA X 51822) PAREN THREE
PAREN CITIZENS AND NATIONALS OF ANY COUNTRY WITH WHICH
ANY OF THE UNITED NATIONS IS OUR HAS BEEN AT WAR CMA
EXCEPT JAPAN CMA WHO ARE OFFICIALLY IDENTIFIED BY THE
COUNTER INTELLIGENCE CORPS AS CONSTITUTING A THREAT TO
THE SECURITY OF OUR FORCES PD ALL DIPLOMATIC OFFICIALS
OF SUCH ENEMY COUNTRIES CMA EXCEPT JAPAN CMA WILL BE
TAKEN INTO PROTECTIVE CUSTODY PD MEMBERS OF THE ARMED
FORCES OF SUCH ENEMY COUNTRIES CMA EXCEPT JAPAN WILL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

EXHIBIT P

BE ACCORDED TREATMENT PROVIDED IN THE RULES OF LAND
WARFARE PARA THE OPINION OF ARMY COMMANDERS AND
COMMANDING GENERALS OF INDEPENDENT CORPS APPREHENDING
FOR INTERNMENT A PERSON IN THE ABOVE CATEGORIES WILL
BE DECISIVE IN ALL QUESTIONS OF CITIZENSHIP OR
NATIONALITY RAISED FOR THE PURPOSE OF DETERMINING
THE INITIAL DISPOSITION OF THAT PERSON PARA COMPOUNDS
FOR THE DETENTION OF THE ABOVE MENTIONED PERSONS CMA
PENDING THEIR DISPOSITION BY THIS HEADQUARTERS CMA
WILL BE ESTABLISHED BY THE COMMANDING GENERAL CMA
TENTH ARMY AND THE COMMANDING GENERAL CMA SIXTH ARMY
AND THE COMMANDING GENERAL CMA EIGHTH ARMY CMA AND
THE COMMANDING GENERAL CMA TWENTY FOURTH CORPS WITHIN
THEIR RESPECTIVE AREAS .

OFFICIAL:

APPROVED BY:

R. M. HOLLINGS

MAJOR, A.U.S.

B. M. FITCH

OCC I O

Brigadier General U.S. Army

Adjutant General

COPY TO

(Cert. true copy)

APPENDIX II

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

UNITED STATES ARMY FORCES, PACIFIC

23 October 1946

TO: Commanding General Eighth Army, APO 343
(Attention: Commandant, Sugamo Prison)

2. Ikuko was incarcerated per authority contained in letter, Headquarters Eighth Army, Office of the Provost Marshal, dated 17 October 1945, and per authority contained in radio, CAK 51822 dated 10 September 1945, from CINCPAC to Commanding Generals, Sixth, Eighth, Tenth Armies and Twenty-Fourth Corps.

Adjutant General

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6

2

3

4

6

7

8

9

0

7

2

7

4.

•

20

2

0

1

2

3

4

5

6

EXHIBIT N - EXCERPTS (p. 9)

GENERAL HEADQUARTERS U.S. ARMY PACIFIC

ADJUTANT GENERAL'S OFFICE

INCOMING MESSAGE

Priority

6 Oct 46

From: Washington (From WD SCA WC)

To: CINCAFPAC

MR: War

Reurad Sept C 65467 Dept. Justice no longer desires Iva Toguri be retained in custody. No prosecution contemplated at present.

NO SIG

APPENDIX III

WARRANT OF ARREST

In the Name and Authority of

THE SUPREME COMMANDER FOR THE ALLIED POWERS

TO: The Provost Marshal, General Headquarters, Far East Command, APO 500

1. You are directed to arrest, and deliver forthwith to the Sugamo Prison, the following described person:
 - a) Ikuko (Iva) Toguri D'Aquino
 - b) Residing at 396 Ikijiri-machi, Setagaya-ku, Tokyo, Japan
 - c) Age 32 years.
2. Upon complaint and sufficient information made to me by the Department of Justice, United States Government, as contained in Radio WCL 20431, from the Adjutant General, Department of the Army, dated 25 August 1948, the person described in paragraph 1 above is suspected of having committed the following crime:

Treasonable conduct against the United States Government during World War II.

3. You will make known to the person arrested, in her native language, the contents of this document.
4. Authority to arrest under this warrant expires 30 days from date herein.

Place: Tokyo, Japan

Date: 26 August 1948

W. A. BENDERLINSEN

Brigadier General, United States Army
Assistant Chief of Staff, G-1
General Headquarters
Far East Command
APO 500

U. S. DIST. CT. N. D. CAL.

No. 31712 R

EX. B O

F. 9-12-49

C. W. CALBREATH, Clerk

BY *JP Mabel*
DEPUTY CLERK

HEADQUARTERS SUGAMO PRISON
APO 181

CHECK SHEET

(Do not remove from attached sheets)

FILE NO:

SUBJECT: RELEASE OF PRISONER

NOTE FROM: PRO
NO.

TO: See Distribution DATE: 1 Sept 48

The below named prisoner will be dressed and at the
Processing Room by 0630, 2 September 1948:

TOGURI, Iva Ikuko

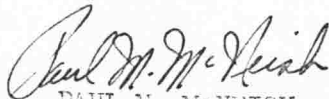
Blue Area

s/ R. L. Lacey
t/ R. L. LACEY
Major CMP
Prison Records Officer

DISTRIBUTION:

- 1 - OD
- 1 - Red Area
- 1 - Files

A TRUE COPY:


PAUL N. MCNISH
Captain Inf
Adjutant

MEDICAL DETACHMENT SUGAMO PRISON
APO 181

3 September 1948

C-E-R-T-I-F-I-C-A-T-E

I certify that Iva d'Aquino has been physically examined and found to be free of communicable disease. Immunizations for above named individual have been completed in accordance with existing Army regulations for return to the United States.

s/ Robert S. Johnson
t/ ROBERT S. JOHNSON
Captain, MC
Asst. Prison Surgeon

A TRUE COPY:

Paul M. McNeish
PAUL M. McNEISH
Captain Inf
Adjutant

APPENDIX IV

395 Ikejiri Inchi
Sotomaya-ku, Tokyo, Japan
April 14, 1948

Dear Mr. Winchell,

I hope you won't think me presumptuous for writing to you in this manner but as I have been offered a fine opportunity to write you I am grabbing this chance to send you these few lines. Please don't set aside this letter before you come to the end. Thank you for your trouble.

I have known of your reputation and know that you have a vast audience both on the air and in your daily columns. I know that you are a just man and have always tried to see that justice is done all the way around. I know that all of your readers have closely followed you and that you have always listened to anyone desiring to contact you. So please hear my story.

I had the wonderful experience of meeting and talking with Mr. Earl Carroll here in Tokyo, Japan and he was very kind to listen to a few phases of the 'Tokyo Rose' case which did not reach the presses. He suggested I write you and try to get you to be generous enough to lend an ear to what I have to say.

This case on 'Tokyo Rose' is in its third year and it seems to be dragging on forever. I was interned in Sugamo Prison, Tokyo for over a year from October 17, 1945 to October 25, 1946. I was kept in prison in order to enable the various investigating bodies to get all the dope on 'Tokyo Rose'. Since my release I have been living as a housewife. I understand that during this period investigations have been carried on in my case and I am still sitting on the fence, not knowing which side I am to fall.

Last year I applied for re-admission into the United States but no official word has been received as yet. I am writing this to present to you some facts which have been kept out of the presses.

All the rumpus about 'Tokyo Rose' centers around one person, myself. I am sure there has been plenty of reasons for all the misunderstandings, both by the press and the general public. I can't say I blame all the readers for forming their opinions. But I should like to point out, with your permission, the fact that the name 'Tokyo Rose' was a mythical name applied to a feminine voice which came over Radio Tokyo during the war years. There were so many feminine voices from East Asiatic radio stations and consequently my voice has been confused with all the others. I myself never used the name 'Tokyo Rose'. I worked on a more or less compulsory radio program which was presented by Allied Prisoners of War who were interned here in Tokyo during the war.

My spoken scripts were written by these POW's and I was trained by these same people for the work. So many of the statements made

by the so-called 'Tokyo Rose' have been attributed to me. I can honestly say that it was quite impossible for me to make damaging remarks over the air as the speaking parts were written by interned prisoners of war here in Japan. They were certainly unable to obtain secret information--especially on Allied troop movements. The press has placed the responsibility of all these damaging statements on me. I am sure if you contacted these former prisoners of war they will confirm my statement that I was not responsible for slandering the listening public.

The Counter Intelligence Corps, who investigated my case have gone into all the angles surrounding my case and have not, up until today, connected me with all these 'bad sayings'.

I agreed to work with the former prisoners of war because they told me that I would be aiding the sending of messages, written by the prisoners themselves, to their relatives and friends who were anxious to get some kind of word from them. Please believe me when I say that I honestly wanted this to be the main objective of these broadcasts. My part on the program consisted of introductions to musical recordings and very little else. The prisoners of war named me 'Orphan Ann' and I never at any time called myself 'Tokyo Rose'. Please feel free to investigate through any channels to verify this fact.

I understand that a movie short of my broadcasting from Radio Tokyo has been shown in the United States. This was not filmed during the war but was taken by the United States Army Signal Corps, and was taken under their direction. No movie was taken of me during the war. Those which have been shown were taken after the surrender in 1945. The one taken by the Signal Corps, was taken in the middle of October of 1945.

I feel that this is getting a little elaborate and I feel this must be quite boring to you. But please be kind enough to look into the matter more thoroughly and be generous enough to form your opinions again after investigating all the facts which I have presented above.

I was kept out of circulation for over one year, kept in Sugamo prison, giving plenty of time and opportunity for the CIC and all other investigating bodies to look into my case. The United States Justice Department, when releasing me from custody, stated that 'due to lack of sufficient evidence I was being released from Sugamo Prison, Tokyo'.

When I was formally arrested on October 17, 1945 I was told that the United States State Department cabled to Tokyo that I was a citizen of the United States and therefore was to be placed in custody until investigations were completed. I was under that impression through my one year stay in Sugamo Prison. This being the case I applied through the United States Consulate in Yokohama for permission to return to the states in May of 1947. I felt that if I was held in custody as a United States citizen I was most certainly still a citizen of that country. I have been

waiting for some kind of an answer, yes or no, but as yet no word has come through.

I have had no opportunity to read any of your columns pertaining to me desires to return to the states. If you can spare the time please be kind enough to write me your opinions on me. If you can find room in your heart to do so please re-look into the 'Tokyo Rose' case and send me a few lines of what your attitude is on the whole case, after reading this through.

I am afraid I have taken up much of your valuable time. Please forgive me for all the trouble. I realize that there has been causes for doubts in the minds of the United States public. But since a person in the United States is 'innocent until proven guilty', please give me the chance to clear up some of the misunderstandings through your kind offices.

Under normal circumstances I should be called a 'bad girl' but there were so many complicated cobwebs during the war years I was one who had to find a way to survive this war. I was one with a United States citizenship in a foreign country and was one who was under close surveillance by the civilian and military police and although being cornered managed to come out alive. I was in a similar position as the prisoners of war and had little chance in choosing a way to survive.

I did not intend to cry on your shoulders. If I have given you this impression please forgive me. My only intention was to ask you to be generous enough to see both sides of the case and reform your opinions. As I mentioned in the beginning of this letter, Mr. Earl Carroll, was kind enough to suggest my writing to you. He told me that you were a very considerate person and that you would be willing to hear all sides of any case. Please don't totally ignore this letter and if you can find time in your busy life please be kind and generous enough to contact me if you wish to clarify confusing facts on the case on 'Tokyo Rose.'

My sincerest thanks and appreciation for granting me a part of your valuable time to read this letter. Regardless of what your opinions may be after reading this letter please let me know how you feel about all this.

I am afraid I have dragged this on in a very amateurish style. Please forgive me for burdening you with all the above details.

This letter is being carried to the states by Mr. Earl Carroll who has been kind enough to take the trouble to do so. Mr. Carroll can get in touch with me if you do not wish to contact me directly.

Thanking you very much for consideration, I remain,

Very truly yours,

Iva Toguri d'Aquino.



EARL CARROLL THEATRE RESTAURANT

SUNSET NEAR VINE • PHONE HOLLYWOOD-7101

HOLLYWOOD
CALIFORNIA

April 20 - 1948

Mrs. Iva Toguri d'Aquino
396 Ikejiri Machi
Setagaya-ku, Tokyo - Japan

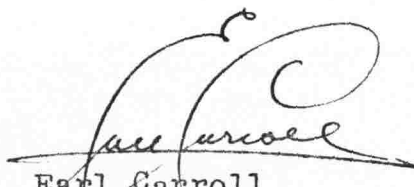
Dear Iva:

I arrived home safely last Friday.

I wrote to Mr. Winchell today. The minute I hear from him I will immediately send the word on to you. I thought your letter was quite good and I shall be most interested in his reaction.

With every kind wish believe me to be

Yours sincerely,



Earl Carroll

ec-tl

May 14, 1948

Dear Earl:

When you write Miss Toguri please tell her that I have confidence in the administration of United States justice and she will get a fair trial in court.

I may run part of her letter in some column and ask readers what they think.

Regards,

/s/ Walter
Walter Winchell

t1

May 18 - 1948

Miss Inez Toguri
11631 Wilmington Ave.
Los Angeles 2 California

Dear Miss Toguri:

Thank you for your letter of May 3rd.

We have not had an answer from Walter Winchell to our letter of April 20th. When, we do - if we receive a reply, I will be pleased to advise you further.

Very truly yours,

T. Lynne
Secretary to Earl Carroll

tl-v



★ ★ ★ ★ ★ ★ ★ ★
EARL CARROLL THEATRE RESTAURANT

SUNSET NEAR VINE • PHONE HOLLYWOOD-7101

HOLLYWOOD
CALIFORNIA

May 27 - 1948

Iva Toguri d'Aquino
396 Ikejiri Machi
Setagaya-ku, Tokyo -Japan

Dear "Rose":

I received your letter of April 28th and a few weeks ago had a letter from your sister. I did not write to you sooner, because I was waiting for some reply from Mr. Winchell. I am enclosing a copy of the letter I just received from him. He mentions something about a fair trial in court. I cannot quite understand what this could mean because, according to my information from the Military Intelligence Section in Tokyo, your "trial days are over."

I expect to go east the first week in June and if I meet Mr. Winchell in New York I will have a good talk with him and send his reactions to you.

Sincerely,


Earl Carroll

EC-t1
enc-2

APPENDIX V

Restricted

GENERAL HEADQUARTERS
FAR EAST COMMAND
APO 500

Special Orders)

30 Aug 1948

No.....131)

EXTRACT

5. Fol off are reld from asgmt and dy, orgns indicated, FEC APO 500 eff o/a this date and asgd Personnel Center, Camp Stoneman, California. WP o/a 2 Sep 48 and report to CO 2D Med Port APO 503 for transportation aboard the US Army Transport Gen Hodges to San Francisco, California for purpose of escorting and guarding Mrs Iva Toguri D'Aquino to the US. Upon arrival at San Francisco Port of Debarkation, Mrs D'Aquino will be met by, and placed in custody of proper civil authorities. Auth: DA Rad (TAG) (AGAO-C) WCL 20431, 25 Aug 48. After delivering Mrs D'Aquino to the proper authorities officers will proceed and report to Personnel Center, Camp Stoneman, California for reasgmt under provisions of RR 1-1. Dept of the Army reasgmt instructions not received. TDN. PCS. 901-2 P432-02 2190425 S49-157. Dept of Justice will reimburse the Dept of the Army for all expenses incident to this travel. EDGAR: 26 Sep 48. Shipment of household goods in accordance with WD Cir 357, 1946 auth. Shipment of a privately owned automobile auth in accordance with DA Cir 120-AFL 75-43, 30 Apr 48. Military payment certificate currency will be disposed of in accordance with existing instructions. Immunization records will accompany individuals. Immunizations in conformity with current Dept of the Army instructions and physical inspection as prescribed by par 4, FEC Cir 79, 23 Jul 47 will be completed by each individual prior to departure.

CAPT JOHN P PROSNAK 01845090 (Army) CMP, PMO, GHQ FEC
CAPT KATHERINE STULL L803004 (Army) WAC, G-2 Sec, GHQ FEC
1ST LT ERMA D KEENER L412130 (Army) WAC, Audit Agency, FEC

BY COMMAND OF GENERAL MacARTHUR:

OFFICIAL:

R. M. LEVY,
Colonel, AGD,
Adjutant General.

PAUL J. MUELLER
Major General, General Staff Corps,
Chief of Staff, DIST OF N D CAL

No. 31712 R
Repts EX 10
FILED 7-8-49
J. P. Walsh
CLERK

DISTRIBUTION:

TAG, Washington 25, DC Attn: CSGPA-O-PMG-CMB (2) (Air-Mail)
DA PMG, Washington, DC (2) (Air-Mail) CO 2D Med Port APO 503 (1)
CO Pers Cen, Cp Stoneman, Calif (1) CG SFPE (1)
Chief, Audit Agency, FEC APO 500 (1) PMO (1)
G-2 Sec (1) Fiscal Director (1)
Capt Prosnak (20) thru PMO Capt Stull (20) thru G-2 Sec
1st Lt Keener (20) thru AAFEC APO 500 APO 500 (1)
Dept of Justice, San Francisco, Calif (1)
CG Sixth Army, Presidio of San Francisco, Calif (1)

Restricted

R-E-S-T-R-I-C-T-E-D
GENERAL HEADQUARTERS
FAR EAST COMMAND
APO 500

Special Orders)
:
No.....131)

30 Aug 1948

EXTRACT

5. Fol off are reld from asgmt and dy, orgns indicated, FMD APO 500 eff o/a this date and asgd Personnel Center, Camp Stoneman, California. WP o/a 2 Sep 48 and report to CO 2D Med Port APO 503 for transportation aboard the US Army Transport Gen Hodges to San Francisco, California for purpose of escorting and guarding Mrs Iva Toguri D'Aquino to the US. Upon arrival at San Francisco Port of Debarkation, Mrs D'Aquino will be met by, and placed in custody of proper civil authorities. Auth: DA Rad (TAG) (AGAO-C) WCL 20431, 25 Aug 48. After delivering Mrs D'Aquino to the proper authorities officers will proceed and report to Personnel Center, Camp Stoneman, California for reasgmt under provisions of RR 1-1. Dept of the Army reasgmt instructions not received. TDN. PCS. 901-2 P432-02 2190425 S49-157. Dept of Justice will reimburse the Dept of the Army for all expenses incident to this travel. MDGIR: 26 Sept 48. Shipment of household goods in accordance with WD Cir 357, 1946 auth. Shipment of a privately owned automobile auth in accordance with DA Cir 120-AFL 75-43, 30 Apr 48. Military payment certificate currency will be disposed of in accordance with existing instructions. Immunization records will accompany individuals. Immunizations in conformity with current Dept of the Army instructions and physical inspection as prescribed by par 4, FEC Cir 79, 23 Jul 47 will be completed by each individual prior to departure.

CAPT JOHN P PROSNAK 01845090 (Army) CMP, PMO, GHQ FEC
CAPT KATHERINE STULL L303004 (Army) WAC, G-2, Sec, GHQ FEC
1ST LT ERMA D KEENER L412130 (Army) WAC, Audit Agency, FEC

BY COMMAND OF GENERAL MacARTHUR:

PAUL J. MUELLER
Major General, General Staff Corps,
Chief of Staff

OFFICIAL:

R. L. LEVY,
Colonel, AGD,
Adjutant General

A TRUE COPY:

Paul M. McNeish
Paul M. McNEISH
Captain Inf
Adjutant

DISTRIBUTION:

TAG, Washington 25, DC Attn: CSGPA-O-PMG-CMB (2) (Air-Mail)	CO 2D Med Port APO 503 (1)
DA PMG, Washington, DC (2) (Air Mail)	CG SFPE (1)
CO Pers Cen, Cp Stoneman, Calif (1)	PMO (1)
Chief, Audit Agency, FEC APO 500 (1)	Fiscal Director (1)
G-2 Sec (1)	Capt Stull (20) thru G-2 Sec
Capt Prosnak (20) thru PMO	APO 500 (1)
1st Lt Keener (20) thru AAFEC APO 500	
Dept of Justice, San Francisco, Calif (1)	
CG Sixth Army, Presidio of San Francisco, Calif (1)	

R-E-S-T-R-I-C-T-E-D

DEPARTMENT OF THE ARMY

RFC/ejm/das/1E889

~~XXXXXXXXXXXXXXXXXXXX~~

THE ADJUTANT GENERAL'S OFFICE

WASHINGTON 25, D. C.

IN REPLY REFER TO:

AGPA-UT 201 Prosnak, John P.
(9 Jun 49)

14 June 1949

SUBJECT: Orders

TO: Commanding Officer
503d MP Battalion
Fort Bragg, North Carolina

1. Provided no military objection exists Captain John P. Prosnak, 01845090, C.M.P., will proceed at the proper time from Fort Bragg, North Carolina, to San Francisco, California, so as to report at 9:00 a.m., 29 June 1949, to the United States Attorney, for temporary duty for the purpose of testifying on behalf of the Government in the case of United States v. Iva Toguri D'Aquino, pending in the United States District Court for the Northern District of California, and upon completion of this duty return to proper station.

2. TDN. 901-2 P 432-02 A 2190425 S 99-999. The provisions of Paragraph 34, AR 35-4820, 30 January 1948, apply, except per diem is limited to \$6.00.

3. Reimbursement for expenses incurred in connection with this travel will be made to the Department of the Army by the Department of Justice. The Disbursing Officer making payment for the travel performed will forward a copy of each paid voucher together with a copy of travel orders by letter of transmittal to the Office of Chief of Finance, Attention: Receipts and Disbursements Division stating that inclosed voucher and orders are furnished for the purpose of securing reimbursement from the Department of Justice.

BY ORDER OF THE UNDER SECRETARY OF THE ARMY:

Ray F. Hyle Jr.
Adjutant General.

U. S. DIST. CT. N. D. CAL.
No. 31712B
FILED 7-8-49
BY *JP Walsh*
DEPUTY CLERK

AMPNS-CI 333.5

SUBJECT: Receipt of Mrs. D'Aquino

TO : Commander-in-Chief
Far East Command
APO 500, c/o Postmaster
San Francisco, California
ATTENTION: Provost Marshal

1. Reference TWX, this headquarters, file AMPNS-CI 0951, dated 27 September 1948.
 2. Attached herewith are two true copies of Receipt of Prisoner.
- FOR THE COMMANDING GENERAL:

1 Incl
1-Rec of Pris (dup)

U.S. DEPARTMENT OF JUSTICE
No. 31712R
Rlfto EE
7-8-49
C. W. CAY
BY J. P. Nish
DEPUTY CLERK

cc Fregnak

CG SIXTH ARMY PRES OF S/F CALIF

COMMANDER-IN-CHIEF
FAR EAST COMMAND

UNCLASSIFIED

ROUTINE
X

ATTN FM MRS IVA TARE D APOSTROPHE AQUINO AND ESCORT ARRIVED SEPE TEN HUNDRED
HOURS OMA TWO FIVE SEP FOUR EIGHT PD FEDERAL BUREAU OF INVESTIGATION ACCEPTED
CUSTODY OF MRS D APOSTROPHE AQUINO AT ONE ONE ZERO FIVE HOURS OMA TWO FIVE SEP
FOUR EIGHT PD TRUE COPY OF RECEIPT OF THE ACCEPTANCE OF CUSTODY OF MRS D
APOSTROPHE AQUINO BY FEDERAL BUREAU OF INVESTIGATION BEING FORWARDED VIA AIR
MAIL END AMPMS DASH CI ZERO NINE FIVE ONE

cc Presnak

U. S. DIST. CT. N. D. CALIF.
No. 31712 R
EX. 94
7-8-49
J. P. M. K. L.

UNCLASSIFIED

AMPMS-CI 0951

27 Sep 48

1 1

APPENDIX VI

No. _____

UNITED STATES District COURT

Northern District of California,

Southern Division

THE UNITED STATES OF AMERICA

vs. L

IVA IKUKO TOGURI D'AQUINO

31712 R

INDICTMENT

FOR VIO. Title 18 U. S. C. Sec. 1.
TREASON

A true bill,

John P. Jones

Foreman.

Filed in open court this _____ day
of _____, A.D. 19____PRESENTED IN OPEN COURT
AND ORDERED.

Clerk.

FILED.

Bail, \$ _____

OCT - 8 1948

C. W. CALBREATH, Clerk

U. S. GOVERNMENT PRINTING OFFICE

7-433

BY *John Schaffer*

CLERK

John P. Jones

UNITED STATES vs. IVA IKUKO TOGURI D'AQUINO

PENALTIESTitle 18 USC §1/Title 18 USC §2381 (Revised)
TreasonShall suffer death, or shall be imprisoned
not less than 5 years and fined not less
than \$10,000.00 and shall be incapable of
holding any office under the United States.

(COVER OF INDICTMENT)

NO. 31712-R

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA

vs.

IVA IKUKO TOGURI D'AQUINO

INDICTMENT

FOR VIO. Title 18 U.S.C. Sec. 1
TREASON

A true bill,
/s/ John P. Jones
Foreman

PRESENTED IN OPEN COURT
AND ORDERED

F I L E D
OCT 8 1948
C. W. CALBREATH, Clerk

By /s/ John E. Schaeffer
Deputy Clerk

Bail, \$ _____

1
2
3
4
5
6
7
8 IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT
9 COURT, FOR THE NORTHERN DISTRICT OF CALIFORNIA.
10

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 IVA IKUKO TOGURI D'AQUINO,

15 Defendant.
16

NO. 31712-R

(INDICTMENT)

TREASON (Title 18 U.S.C.
Sec. 1.)

17
18 The Grand Jurors for the United States of America duly
19 impaneled and sworn in the Southern Division of the United
20 States District Court for the Northern District of California
21 and inquiring in and for that District and Division, upon
22 their oaths present:

23 1. That IVA IKUKO TOGURI D'AQUINO, whose full and
24 true name is to said Grand Jurors unknown, other than as
25 hereinabove stated, hereinafter called "said defendant", was
26 born in Los Angeles County, California, on July 4, 1916, and
27 she has been at all times herein mentioned and is now a
28 citizen of the United States of America and a person owing
29 allegiance to the United States of America.
30

31 2. That said defendant, at Tokyo, Japan, and other
32 places within the Empire of Japan, and outside the jurisdic-
tion of any particular state and district of the United States,

1 continuously and at all times beginning on or about the 1st
2 day of November, 1943, and continuing thereafter up to and
3 including the 13th day of August, 1945, under the circumstances
4 and conditions and in the manner and by the means hereinafter
5 set forth, she then and there being a citizen of the United
6 States and a person owing allegiance to the United States,
7 in violation of said duty of allegiance, did knowingly,
8 wilfully, unlawfully, feloniously, intentionally, traitorously
9 and treasonably adhere to the enemies of the United States,
10 and more particularly, to-wit, the Imperial Japanese Govern-
11 ment, with which the United States at all times since
12 December 8, 1941, and during the times set forth in this
13 indictment, has been at war, and the Broadcasting Corporation
14 of Japan and the officials and employees thereof, giving to
15 the said enemies of the United States aid and comfort within
16 the United States, Japan and elsewhere, that is to say:

17 3. That the aforesaid adherence of said defendant and
18 the giving of aid and comfort by her to the aforesaid enemies
19 of the United States during the period aforesaid consisted:

20 (a) Of working as a radio speaker, radio announcer, radio
21 script writer, and as a broadcaster of recorded music in the
22 short wave radio broadcasting station of the Broadcasting
23 Corporation of Japan, a company controlled by the Imperial
24 Japanese Government, which work included the preparation and
25 composition of radio scripts, talks and announcements, the
26 announcing of the same, and the announcing and introduction
27 of musical recordings and talks for broadcast by radio from
28 Japan to members of the armed forces of the United States and
29 their allies in the Pacific Ocean area, and to people else-
30 where.

31 (b) Of working as a composer and organizer of radio
32 broadcasting programs for subsequent broadcast by radio from

1 Japan to members of the armed forces of the United States and
2 their Allies in the Pacific Ocean area and to people else-
3 where.

4 That the aforesaid activities of said defendant were
5 intended to destroy confidence in the war effort of the United
6 States and its Allies, to undermine and lower American and
7 Allied military morale, to create nostalgia in the minds of
8 the America and Allied armed forces, to create war weariness
9 among members of the American and Allied armed forces, to
10 discourage members of the American and Allied armed forces,
11 and to impair the capacity of the United States to wage war
12 against its enemies.

13 4. And the Grand Jurors aforesaid upon their oaths
14 aforesaid do further present that said defendant, in the
15 prosecution, performance and execution of said treason and of
16 said unlawful, traitorous and treasonable adhere and giving
17 aid and comfort to the enemies of the United States as afore-
18 said, at the several times hereinafter set forth in the
19 specifications hereof (being times when the United States was
20 at war with the Imperial Japanese Government), did knowingly,
21 wilfully, unlawfully, feloniously, traitorously and treason-
22 ably and with treasonable intent in her to adhere to and give
23 aid and comfort to said enemies, perform, do and commit certain
24 overt and manifest acts which gave aid and comfort to said
25 enemies, that is to say:

26 1. That on a day between March 1, 1944 and May 1, 1944,
27 the exact date being to the Grand Jurors unknown, said defend-
28 ant, at Tokyo, Japan, in the offices of the Broadcasting
29 Corporation of Japan, did discuss with another person the
30 proposed participation of said defendant in a radio broad-
31 casting program.
32

1 2. That on a day between March 1, 1944 and June 1, 1944,
2 the exact date being to the Grand Jurors unknown, said
3 defendant, at Tokyo, Japan, in the offices of the Broadcasting
4 Corporation of Japan, did discuss with employees of said
5 corporation the nature and quality of a specific proposed
6 radio broadcast.

7 3. That on a day between March 1, 1944 and June 1, 1944,
8 the exact date being to the Grand Jurors unknown, said
9 defendant, at Tokyo, Japan, in a studio of the Broadcasting
10 Corporation of Japan, did speak into a microphone regarding
11 the introduction of a program dealing with a motion picture
12 involving war.

13 4. That on a date between August 1, 1944 and December 1,
14 1944, the exact date being to the Grand Jurors unknown, said
15 defendant, at Tokyo, Japan, did speak into a microphone in a
16 studio of the Broadcasting Corporation of Japan referring to
17 enemies of Japan.

18 5. That on a day during October, 1944, the exact date
19 being to the Grand Jurors unknown, said defendant, at Tokyo,
20 Japan, in the offices of the Broadcasting Corporation of
21 Japan, did prepare a script for subsequent radio broadcast
22 concerning the loss of ships.

23 6. That on a day during October, 1944, the exact date
24 being to the Grand Jurors unknown, said defendant, at Tokyo,
25 Japan, in a broadcasting studio of the Broadcasting Corpora-
26 tion of Japan, did speak into a microphone concerning the loss
27 of ships.

28 7. That on or about May 23, 1945, the exact date being to
29 the Grand Jurors unknown, said defendant, at Tokyo, Japan, in
30 the offices of the Broadcasting Corporation of Japan, did
31 prepare a radio script for subsequent broadcast.

32 8. That on a day between May 1, 1945 and July 31, 1945,

1 the exact date being to the Grand Jurors unknown, said
2 defendant, at Tokyo, Japan, did speak into a microphone
3 in a studio of the Broadcasting Corporation of Japan, and
4 did then and there engage in an entertainment dialogue with
5 an employee of the Broadcasting Corporation of Japan for
6 radio broadcast purposes.

7
8 That said defendant committed each and every one of
9 the overt acts herein described with treasonable intent and
10 for the purpose of, and with the intent in her to adhere to
11 and give aid and comfort to the Imperial Japanese Govern-
12 ment, and to the Broadcasting Corporation of Japan and the
13 officials and employees thereof, enemies of the United
14 States, and said defendant committed each and every one
15 of said overt acts contrary to her duty of allegiance to
16 the United States and to the form of the statute and
17 Constitution in such case made and provided, and against
18 the peace and dignity of the United States.

19 That the Northern District of California was the
20 Federal Judicial District into which the defendant was
21 first brought shortly prior to the date of the return of
22 this indictment.

23
24 A True Bill.

25 /s/ John P. Jones
26 Foreman

27 /s/ Frank J. Hennessy
28 FRANK J. HENNESSY
29 United States Attorney

30 /s/ Tom DeWolfe
31 TOM DE WOLFE

32 /s/ John B. Hogan
JOHN B. HOGAN
Special Assistants to the
Attorney General.

ORIGINAL
FILED

OCT -8 1948

File Clerk, U. S. Dist. Court
San Francisco

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT
COURT, FOR THE NORTHERN DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
IVA IKUKO TOGURI D'AQUINO,)
Defendant.)

No. 31712-R.

TREASON (Title 18 U.S.C.
Sec. 1.)

The Grand Jurors for the United States of America duly
impaneled and sworn in the Southern Division of the United States
District Court for the Northern District of California and inquiring
in and for that District and Division, upon their oaths present:

1. That IVA IKUKO TOGURI D'AQUINO, whose full and true
name is to said Grand Jurors unknown, other than as hereinabove
stated, hereinafter called "said defendant", was born in Los Angeles
County, California, on July 4, 1916, and she has been at all times
herein mentioned and is now a citizen of the United States of America
and a person owing allegiance to the United States of America.

2. That said defendant, at Tokyo, Japan, and other
places within the Empire of Japan, and outside the jurisdiction of
any particular state and district of the United States, continuously
and at all times beginning on or about the 1st day of November, 1943,

1 and continuing thereafter up to and including the 13th day of August,
2 1945, under the circumstances and conditions and in the manner and
3 by the means hereinafter set forth, she then and there being a citizen
4 of the United States and a person owing allegiance to the United States,
5 in violation of said duty of allegiance, did knowingly, wilfully,
6 unlawfully, feloniously, intentionally, traitorously and treasonably
7 adhere to the enemies of the United States, and more particularly,
8 to-wit, the Imperial Japanese Government, with which the United States
9 at all times since December 8, 1941, and during the times set forth
10 in this indictment, has been at war, and the Broadcasting Corporation
11 of Japan and the officials and employees thereof, giving to the said
12 enemies of the United States aid and comfort within the United States,
13 Japan and elsewhere, that is to say:

14 3. That the aforesaid adherence of said defendant and
15 the giving of aid and comfort by her to the aforesaid enemies of the
16 United States during the period aforesaid consisted:

17 (a) Of working as a radio speaker, radio announcer, radio script
18 writer, and as a broadcaster of recorded music in the short wave
19 radio broadcasting station of the Broadcasting Corporation of Japan,
20 a company controlled by the Imperial Japanese Government, which work
21 included the preparation and composition of radio scripts, talks
22 and announcements, the announcing of the same, and the announcing and
23 introduction of musical recordings and talks for broadcast by radio
24 from Japan to members of the armed forces of the United States and
25 their allies in the Pacific Ocean area, and to people elsewhere.

26 (b) Of working as a composer and organizer of radio broadcasting
27 programs for subsequent broadcast by radio from Japan to members
28 of the armed forces of the United States and their Allies in the
29 Pacific Ocean area and to people elsewhere.

30 That the aforesaid activities of said defendant were
31 intended to destroy confidence in the war effort of the United States
32

1 and its Allies, to undermine and lower American and Allied military
2 morale, to create nostalgia in the minds of the American and Allied
3 armed forces, to create war weariness among members of the American
4 and Allied armed forces, to discourage members of the American and
5 Allied armed forces, and to impair the capacity of the United States
6 to wage war against its enemies.

7 4. And the Grand Jurors aforesaid upon their oaths
8 aforesaid do further present that said defendant, in the prosecution,
9 performance and execution of said treason and of said unlawful,
10 traitorous and treasonable adhering and giving aid and comfort to the
11 enemies of the United States as aforesaid, at the several times
12 hereinafter set forth in the specifications hereof (being times when
13 the United States was at war with the Imperial Japanese Government),
14 did knowingly, wilfully, unlawfully, feloniously, traitorously and
15 treasonably and with treasonable intent in her to adhere to and give
16 aid and comfort to said enemies, perform, do and commit certain
17 overt and manifest acts which gave aid and comfort to said enemies,
18 that is to say:

19 1. That on a day between March 1, 1944 and May 1, 1944, the
20 exact date being to the Grand Jurors unknown, said defendant, at
21 Tokyo, Japan, in the offices of the Broadcasting Corporation of
22 Japan, did discuss with another person the proposed participation of
23 said defendant in a radio broadcasting program.

24 2. That on a day between March 1, 1944 and June 1, 1944, the
25 exact date being to the Grand Jurors unknown, said defendant, at
26 Tokyo, Japan, in the offices of the Broadcasting Corporation of Japan,
27 did discuss with employees of said corporation the nature and quality
28 of a specific proposed radio broadcast.

1 3. That on a day between March 1, 1944 and June 1, 1944, the
2 exact date being to the Grand Jurors unknown, said defendant, at
3 Tokyo, Japan, in a studio of the Broadcasting Corporation of Japan,
4 did speak into a microphone regarding the introduction of a program
5 dealing with a motion picture involving war. *not
found*

6 4. That on a date between August 1, 1944 and December 1, 1944,
7 the exact date being to the Grand Jurors unknown, said defendant,
8 at Tokyo, Japan, did speak into a microphone in a studio of the
9 Broadcasting Corporation of Japan referring to enemies of Japan.

10 5. That on a day during October, 1944, the exact date being
11 to the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the
12 offices of the Broadcasting Corporation of Japan, did prepare a
13 script for subsequent radio broadcast concerning the loss of ships.

14 6. That on a day during October, 1944, the exact date being to
15 the Grand Jurors unknown, said defendant, at Tokyo, Japan, in a
16 broadcasting studio of the Broadcasting Corporation of Japan, did
17 speak into a microphone concerning the loss of ships.

18 7. That on or about May 23, 1945, the exact date being to
19 the Grand Jurors unknown, said defendant, at Tokyo, Japan, in the
20 offices of the Broadcasting Corporation of Japan, did prepare a radio
21 script for subsequent broadcast.

22 8. That on a day between May 1, 1945 and July 31, 1945, the
23 exact date being to the Grand Jurors unknown, said defendant, at
24 Tokyo, Japan, did speak into a microphone in a studio of the Broad-
25 casting Corporation of Japan, and did then and there engage in an
26 entertainment dialogue with an employee of the Broadcasting Cor-
27 poration of Japan for radio broadcast purposes.

28
29 That said defendant committed each and every one of
30 the overt acts herein described with treasonable intent and for the
31 purpose of, and with the intent in her to adhere to and give aid and
32 comfort to the Imperial Japanese Government, and to the Broadcasting

1 Corporation of Japan and the officials and employees thereof, enemies
2 of the United States, and said defendant committed each and every one
3 of said overt acts contrary to her duty of allegiance to the United
4 States and to the form of the statute and Constitution in such case
5 made and provided, and against the peace and dignity of the United
6 States.

7 That the Northern District of California was the Federal
8 Judicial District into which the defendant was first brought shortly
9 prior to the date of the return of this indictment.

10

11

A True Bill.

12

13

14

15

16

17

18 FRANK J. HENNESSY
United States Attorney

19

20 TOM DE WOLFE

21

22 JOHN B. HOGAN
23 Special Assistants to the
Attorney General.

24

25

26

27

28

29

30

31

32

John P. Jones
Foreman.

Original Bill / Lof 64
Oct/44

ind script

in Gt. Ind. 4/48 / Lof 64

1/13/48 Lof 64
as above - 74 Lof 64
didn't say they were
U.S. or American ships

DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

Filed
Sept 25, 1948

Commissioner's Docket No. 11

Case No. 5736

UNITED STATES OF AMERICA)

v.)

IVA TOGURI D'AQUINO.)

COMPLAINT
FOR VIOLATION OF UNITED
STATES CODE TITLE 18
SECTION 1.

BEFORE FRANCIS ST. J. FOX, 267 Post Office Building,
San Francisco, California.

UNITED STATES OF AMERICA)

ss.

NORTHERN DISTRICT OF CALIFORNIA)

JOHN ELDON DUNN, being first duly sworn, on his oath
deposes and says:

That he is now and has been for some years a Special
Agent of the Federal Bureau of Investigation, United States
Department of Justice, and as such has been assigned to work
in connection with the case against defendant above named.

1. That IVA TOGURI D'AQUINO, the defendant herein, was
born in Los Angeles, California, on 4 July, 1916, and she has
been at all times herein mentioned and now is a citizen of the
United States of America, and a person owing allegiance to the

1 United States of America.

2 2. That said defendant, IVA TOGURI D'AQUINO, at
3 Tokyo, Japan, and other places within the Empire of Japan
4 and outside the jurisdiction of any particular state and
5 district of the United States, continuously and at all times
6 beginning on or about the 1st day of November, 1943, and
7 continuing thereafter up to and including the 16th day of
8 August, 1945, under the circumstances and conditions and in
9 the manner and by the means hereinafter set forth, she then
10 and there being a citizen of the United States and a person
11 owing allegiance to the United States, in violation of said
12 duty of allegiance, did knowingly, intentionally, wilfully,
13 unlawfully, feloniously, traitorously and treasonably adhere
14 to the enemies of the United States, and more particularly
15 to-wit: the Imperial Japanese Government, with which the
16 United States at all times since December 8, 1941, and during
17 the times set forth in this complaint, has been at war, and
18 the Broadcasting Corporation of Japan, and the officials
19 and employees thereof, giving to the said enemies of the
20 United States aid and comfort within the United States and
21 elsewhere, that is to say:

22 3. That the aforesaid adherence of said defendant,
23 IVA TOGURI D'AQUINO, and the giving of aid and comfort by
24 her to the aforesaid enemies of the United States during the
25 period aforesaid consisted:

26 (a) Of working as a radio speaker, radio announcer,
27 radio script writer and as a broadcaster of recorded music
28 in the short wave radio station of the Broadcasting Corporation
29 of Japan, a company controlled by the Imperial Japanese
30 Government, which work included the preparation and composition
31 of radio scripts, talks and announcements, the announcement
32 of the same and the announcement and introduction of musical

1 recordings and talks for broadcast by radio from Japan to
2 members of the armed forces of the United States and their
3 allies in the Pacific Ocean area and to people in the United
4 States and elsewhere.

5 That the aforesaid activities of said defendant,
6 IVA TOGURI D'AQUINO, were intended to persuade members of
7 the American and Allied military forces and citizens and
8 residents of the United States to decline to support the
9 United States in the conduct of said war, and to weaken and
10 destroy confidence in the war effort of the United States and
11 its allies, and to undermine and lower American and Allied
12 military morale.

13 4. That said defendant, IVA TOGURI D'AQUINO,
14 in the prosecution, performance and execution of said treason
15 and of said unlawful, traitorous and treasonable adhering and
16 giving aid and comfort to the enemies of the United States as
17 aforesaid, at the several times hereinafter set forth in the
18 specifications hereof, (being times when the United States
19 was at war with the Imperial Japanese Government), did unlaw-
20 fully, feloniously, wilfully, knowingly, traitorously and
21 treasonably and with treasonable intent to adhere to and give
22 aid and comfort to said enemies, perform, do and commit cer-
23 tain overt and manifest acts which gave aid and comfort to
24 said enemies, that is to say:

25 1. That on or about March 9, 1944, IVA TOGURI
26 D'AQUINO, at Tokyo, Japan, did speak into a microphone at the
27 short wave radio station of the Broadcasting Corporation of
28 Japan, and did then and there broadcast to American and Allied
29 troops in the Southwest Pacific and elsewhere.

30 2. That on or about March 29, 1944, IVA TOGURI
31 D'AQUINO, at Tokyo, Japan, did speak into a microphone at the
32 short wave radio station of the Broadcasting Corporation of

1 Japan, and did then and there broadcast to American and
2 Allied troops in the Southwest Pacific and elsewhere.

3 That said defendant, IVA TOGURI D'AQUINO,
4 committed each of the overt acts herein described with
5 treasonable intent and for the purpose of and with the intent
6 in her then and there to adhere to and give aid and comfort to
7 the Imperial Japanese Government and to the Broadcasting
8 Corporation of Japan, and the officials and employees thereof,
9 enemies of the United States, and said defendant, IVA TOGURI
10 D'AQUINO, committed each of said overt acts contrary to her
11 duty of allegiance to the United States and to the form of the
12 statute and Constitution in such case made and provided, and
13 against the peace and dignity of the United States.

14 That the Northern District of California was
15 the Federal Judicial District into which the defendant was
16 first brought shortly prior to the time of the filing of this
17 complaint.

18 Further affiant sayeth not.

19

20 JOHN ELDON DUNN
21 John Eldon Dunn
22 Special Agent, Federal Bureau
of Investigation, United States
Department of Justice.

23 Sworn to before me and subscribed in my presence this
24 25th day of September, 1948.

25

26 United States Commissioner:

27

28

29

30

31

32

APPENDIX VII

"CORRECTED COPY"GENERAL HEADQUARTERS
FAR EAST COMMAND
APO 500

14 Jun 49

AG 230 - AGPO

LO 145-9

SUBJECT: Travel Authorization

TO: Individuals concerned, Japanese Nationals

1. Following individuals will proceed on or about 18 Jun 49 to San Francisco, California, escorted by Agent Sydney E. Browne, for purpose of appearing as witnesses in the trial of Mrs. Iva Toguri D'Aquino. Upon release by the Dept. of Justice, individuals will be returned to Tokyo, Japan. Auth: DA Rad WCL 29567, 11 Apr 49.

Kenkichi Oki	Yukio Ideda ^(K)
Shigetsu Tsuneishi	Shigeru Okamoto
George H. Mitsushio	Yoshitoshi Tanabe
Kenneth Ishi	Yoshio Kuroishi
Seizo Huga	Sugiyama Harris
Shinjiro Igarashi	Kisashi Moriyama
Kiwamu Momotsuka	Satoshi Nakamura
Motomi Nii	Shinichi Oshidari
Isamu Yamazaki	Chujo Watanabe
Mary Higuchi	

2. Tvl by commercial acft (par 3b (2) AR 55-120 c22) to the US and return is directed except where other means of auth tvl are equally or more expeditious and is necessary for the accomplishment of an urgent mission directly related to the emergency. Tvl by commercial steamship, rail and govt mtr transportation auth. TDN. 901-2 P432-02 2190425 S49-157. An alws of sixty-five (65) pounds

GAGAN
PORTER
LEHNER
WENNY
WIGHT
RY, JR.

OFFICIAL REPORTERS
United States District Court
Northern District of California

1 baggage auth while traveling by air. Dept. of Justice
2 will reimburse the Dept. of the Army for all expenses
3 incident to this travel.

4 3. Physical inspection as prescribed by par 4, FEC Cir
5 79, 23 Jul 47 will be completed by each individual prior
6 to departure.

7 BY COMMAND OF GENERAL MacARTHUR:

8
9 /Signed/ B. E. Craig
10 B.E. CRAIG
11 Lt. Col., AGD
12 Asst Adj Gen"

13 I will not read the distribution of the copies.

14 THE CLERK: Let me mark it, please.

15 MR. COLLINS: He asked for it to be returned.

16 THE CLERK: I have got to mark it. Is it to be withdrawn?

17 MR. COLLINS: Yes, you desire it to be returned to him, do
18 you, Mr. Hogan?

19 MR. HOGAN: Yes.

20 MR. COLLINS: So stipulate, it may be withdrawn and re-
21 turned to the witness?

22 MR. HOGAN: Yes.

23 MR. DE WOLFE: We will have a copy made, with the Court's
24 permission, and substitute a copy for the original.

25 MR. COLLINS: Surely.

Q. Mr. Ikeda, during the months of April and May of 1949 you
were residing and working in Tokyo, Japan, weren't you?

APPENDIX VIII

ANGLES, Walter Cleveland, 728 3rd St., San Mateo, married, is an electrician for Swift & Co.

ARMISTONG, Mrs. Mary, 1916-A Golden Gate Ave., San Francisco, is the wife of James, who is a bus driver for the Municipal Ry.

BAKER, Henry F., 211 Elm Ave., Mill Valley, an accountant at 525 Market St., Room 518, San Francisco. C.P.A., also teacher of accounting; 2nd wife. Lived Union League Club 1 yr.

BARLOW, Herbert F., 501 Coventry Rd., Berkeley, probably Lewis Leland Barlow, attended Stanford in 1918, and received his A. B. from Washington in 1924. In the stationery business in Berkeley in 1943.

BINGHAM, James M., 1964 Mountain Blvd., Oakland, married, an accountant. In the early 1940's at the same address, James D., a bkkr with the Piedmont Lumber & Mill Co., and Jack T., a driver.

BLACK, Mary Elizabeth, 614 12th, Richmond, wife of Láslie A., for whom no occupation is listed. This is a modest residential district.

BLANDIN, Mrs. Pearl A., 1305 Ward St., Berkeley, wife of Eugene, listed in '43 as a waiter, and at same address Eugene, Jr., a shipyard wrkr at that time.

BLOMQUIST, Mrs. Fausta U., 552 Noe St., San Francisco, wife of Conrad, probably a Scandinavian, a modest district. Conrad is a carpenter.

BLOMQUIST, Norman A., 349 Mastick Ave., San Bruno, not listed, but probably a Scandinavian.

BRUGLER, Mrs. Louise H., 127 Linden Ave., San Bruno, probably the wife of Jos. J., listed as an operator for the P. G. & E. Co.

CADY, Frieda Anna, 741 Niantic St., Daly City, not listed, wife of Virgil.

CALLAGHAN, Wm. C., 635 Brewer Dr., San Mateo, married, manager of the Chase Brass & Copper Co., and Vice Pres. of the C. E. Grosjean Milling Co., in San Francisco. His wife attended U. C. in 1926.

CALS, Mrs. Buena Grace, 1828 Melvin Rd., Oakland, wife of Jos. M., In 1942 he was listed owner of Cal's Prescription Pharmacy, in Oakland. She attended one term at U. C. in 1929.

CALVIN, John S., 81 Partridge Lane, Daly City, not listed.

CHAPMAN, Cathryn Eliz., 537 44th St., Oakland, wife of Harry Lee, listed as a laborer, (may be colored). in 1938.

CHILDRESS, Gus S., 276 Golden Gate Ave., San Francisco, which is the business address of the Snap-On Tools Corp'n. In 1945 listed as residence address 2490 Geary. His firm was sued ten years ago by Tamba.

CHRISTENSEN, Olga Emily, 1346 24th Ave., San Francisco. In 1942 she was listed as a seamstress. At present listed at the same address Arthur L., wife Hildar, a policeman. Scandinavian.

CLARK, John H., 512 Francisco Dr., Burlingame, married, Chief Accountant with the General Petroleum Co., in San Francisco.

COLE, Mrs. Mildred B., 44 Southwood Dr., Rt. 1, Orinda, wife of Dr. Walter C. Cole. In 1943 listed with them at a different address Frank M. Cole, U. S. N.

COVELL, Flora E., 148 Estates Dr., Piedmont, wife of Dr. Charles V., a dentist in Oakland. He is U. C., dentistry 1921.

DEAL, Denver D., 714 Haight St., San Francisco, a machinist, married, his wife a typist with the Cal-Pac. Title Ins. Co.

DUCKETT, Earl M., 109 Roanoke St., San Francisco, married, listed a plasterer.

EVERETT, Warren T., 2218 Bonar St., Berkeley, not listed.

FARNELL, Isabelle, 1609 Blake St., Berkeley, in 1943 listed as the wife of Henry, U. S. N., a clerk in 1941.

FIELD, Mrs. Virginia Keith, 1015 Geary St., San Francisco, which is the address of the Hotel Lombard. In 1941 she was listed as an artist with the Drury Adv. Co.

FLOWERS, Mrs. Avie, 918 45th St., Oakland, 1943 listed as the wife of Jesse, janitor in the Oakland Municipal Auditorium. (May be colored).

GENESY, Walter A., 6055 Manchester Dr., Oakland, married. In 1941 listed in women's clothing business.

GOODLETT, Mrs. Willette, 1845 Fillmore St., San Francisco, wife of Dr. Carlton B., a physician.

GRASSENS, Adele T., 105 Santa Maria Ave., Woodside Highlands, Redwood City, wife of Jos. B., assistant Cashier, Bank of America.

HERRICK, Lyman C., 141 Bellevue Ave., Daly City, not listed.

HILL, Wm. L., Jr., 3814 Market St., Oakland, not listed.

HILLS, Elizabeth Ward, 1515 Stuart St., Berkeley, not listed.

HUNTER, Donald E., 10 Orchard Ct., Rt. 1, Orinda, married, in 1942 listed office manager of the Hebrank-Hunter Co., Ltd., auto dealers.

HOPPER, Harry F., 2305 Hillside Dr., Burlingame, married. In 1946 listed insurance business at 1163 Broadway, not listed retired.

HUBBS, Harry G., 1025 Laurel St., Menlo Park, a directory engineer for the P. T. & T. Co., married, wife at U. C. in 1924.

IBHOTSON, Fannie, 6031 Burlingame Ave., Richmond, not listed.

IRVINE, Lucille Veronica, 1439 28th Ave., San Francisco, not listed.

JACKSON, Mrs. Grace M., 1784 Sutter St., San Francisco, wife of Willis H., a packer. (May be colored).

KENNEDY, Leroy C., 918 8th St., Richmond, married, no occup. listed. A very modest district.

KLEIN, Louis Julius, 723 12th Ave., San Francisco, Jewish. 1941 listed Vice Pres. and Treasurer of Roos Bros. Has had Federal Jury Experience. In 1943 Hussell R., was listed at the same address, U. S. A., now a physician at 490 Post St.

KOHLBRENNER, Betty, 463 Evergreen Ave., Daly City, not listed.

KOLB, Mrs. Charlotte S., 2 Lexford Rd., Piedmont, wife of Dr. Harrison J., physician and surgeon. He at U. C. 1927.

KOSEC, Thelma I., 10218 Pippin St., Oakland, listed with California Physicians Service, in San Francisco.

LONG, Mrs. Ival Barbara, 1370 9th Ave., San Francisco, wife of Earl N., a furniture finisher. In 1943 he was a shipyard worker. Has own business at 1372 9th Ave.

MANES, George Elmer, 322 Hanover Ave., Oakland, married, in 1943 listed a machine operator for the Street Dept., Oakland Board of Public Works.

MANN, John, 1048 Underhills Rd., Oakland, not listed, but believed to be A. B. Stanford '26, Econ., an accountant.

MARTIN, Edward, 8 El Sereno, Rt. 2, Orinda, salesmanager Blyth & Co., stocks and bonds, in San Francisco.

MARKIS, Charles E., 2305 Poppy Dr., Burlingame, married, listed manager Heieck & Moran, plumbing supplies. May be slsman.

McMAHON, Mrs. Margaret J., 20 Glorietta Ct., Orinda, wife of John B., with Merrill, Lynch, etc., stocks and bonds.

McNAMARA, Aileen Catherine, 2131 Jones St., San Francisco, wife of Merton J., a civil engineer.

MEYER, Ernest W., 465 Calif. St., San Francisco, res. 2395 Broadway, married, Golden Gate Petroleum Co., In 1944 U. S. N.

MILLER, Earle G., 2036 Alma St., San Carlos, married, Ass't Sec'y, Firemans Fund Ins. Co.

MOODY, Irene M., 215 W. Poplar Ave., San Mateo, wife of Robt. R., no occup. listed.

MURRAY, P. V., 89 Manor Dr., San Francisco, married, Supplies Supervisor for the P. T. & T. Co., and with them many years. Naturalized citizen from Australia, in 1903.

NILSEN, Mrs. Alice E., 49 Beechwood Dr., Rt. Lafayette, not listed.

NOBLE, Henry F., 309 Corte Madera Ave., Corte Madera, not listed.

NORTH, Wm. C., 766 Walnut Ave., Burlingame, married (Barbara Elgelhart) listed as a sales engineer, but also listed as Manager of the International Gen'l Electric Co. He has an A. B., and an E. E. from Stanford 09, his wife U. C. 1915.

NOZIGLIA, Dan, 1028 Pennsylvania Ave., Richmond, married, real estate an insurance, and also a Notary. Also reported to practice a little law on the side. Probably Italian. May have been under suspicion by the Bar Ass'n.

NYE, James A., 171 Elm Ave., Mill Valley, with the Sutliff Tobacco Co., in San Francisco.

OAKES, Robert, 9 Theresa St., San Francisco, married, listed a factory worker.

OHDE, Fred E., 5439 Barrett Ave., Richmond, married, an engineer with the Standard Oil Co.

ONG, Woodrow W., 975 Jackson St., operates the Man Sang Market, at 1200 Mason St. Mrs. Frances (probably his wife) is a punch operator the Assessor's Office. Chinese.

PALMER, Mrs. Dora V., 3064 Sacramento St., San Francisco, wife of Roger, not listed.

PAYNE, Harry R., 833 32nd St., Oakland, listed as an Associate Sec'y of the Y. M. C. A. in San Francisco.

PETERSEN, Julia Vivian, Mrs., 23 Woodrow St., Daly City, not listed.

PHILLIPS, Minnie Lerue, 1731 Barrett Ave., Richmond, a widow, in a very modest district.

PITTMAN, Mrs. Terea, 2930 Grove St., Berkeley, wife of Dr. Wm. R., a dentist, he U. C. 1925, his wife also U. C. '25.

POLKINGHORN, Wm. B., 333 Pomona Ave., El Cerrito, married, an engineer with Hudson & Grady Engineers, 525 Market St., San Francisco.

PORTER, Harold B., 115 Curry, Richmond, married, a Research Engineer with the Standard Oil Co., U. C. degree G. B. 1930, his wife attended U. C. in 1938.

PRICE, Andrew M., 1888 San Lorenzo Ave., Berkeley, not listed. At U. C. in 1936.

PURDY, Margaret, 901 Powell St., San Francisco, probably wife of Manuel, in 1943 listed a Marine Engineer.

RAFF, Thurston O., 412 27th Ave., San Mateo, married, an accountant with the Southern Pacific Co.

RAWSON, Clyde Ansel, 513 Everett St., El Cerrito, not listed.

REID, David Wm., 955 Jackling Dr., Hillsborough, married, the A. B. Reid Draying Co., San Francisco.

RENFRO, Orvin E., 1061 Elmer St., Belmont, not listed.

REYNOLDS, Carroll B., 630 Lake St., San Francisco, married, Manager of the Seiberling Rubber Co.

ROBINSON, ~~Henry W.~~ Mrs. Nettie, 1036 Francisco St., San Francisco, wife of Henry W. Robinson, attorney in the Mills Tower. Jewish.

ROSE, Henry A., 26 Stoneybrook Ave., San Francisco, at that address listed one Alf C. Rose (Hazel) a salesman.

ROWE, Wm. J., 155 Berry St., department manager with S. & W., business at that address. Lives in Atherton.

RYAN, Cecil M., 623 Baker St., not so listed. But at that address is listed one Joseph Fassler, a carpenter, who has a wife Cecil.

SANCHEZ, Mrs. Marie C., 2800 Octavia St., Oakland, in 1943 listed as the wife of Angelo, a laborer, and at the same address, Hannah, a cannery worker, and Joseph (Mary) a factory worker.

SAUER, Joseph Francis, 83 Clyde St., San Rafael, ~~not listed~~ Plant Supt. for PG&E., in 50's, married, believed Catholic.

SAVERCOOL, Bessie F., 1760 Pacific Ave., San Francisco, widow of a designer. Has had much jury experience in the Superior Court. Brought in both plaintiff and defense verdicts in 1932, during the depression. Appears to have pretty good judgment.

SCANLAN, Charles J., 1228 Ordway St., Berkeley, not listed, but one Charles J., Sr., listed as an importer.

SCHLOBOHM, Edith Marie, 530 2nd St., Corte Madera, probably wife of Stanley S., a construction superintendent for the Capitol Co. Was an estimator; she formerly stenographer for Nathan Dohrmann Co., resigned in 1943.

SCHWERIN, Mrs. Ruth F., Rt. 2, Box 1830 Lafayette, not listed.

SEDLACEK, Mrs. Evelyn T., 1545 S. 54th St., Apt. 2-F, Richmond, this was a war housing project. Not listed.

SHELLOVE, Daniel C., 310 Post St., San Francisco, which is the Plaza Hotel. Listed Manager of Armour & Co.

SKATES, Harry Victor, 603 Pacific Ave., Alameda, married. Agent of the West Coast Life Ins. Co.

SMITH, Frank A., 1324 Balboa Ave., Burlingame, married, of Smith Lynden & Co., wholesale groceries.

SNYDER, Eugene E., 447 Cumberland Rd., Burlingame, married, with the Diamond Match Co.

SPALTEHOLZ, Ruby Mae, 7224 View Ave., Richmond, probably the wife of George, service supervisor of the P. T. & T. Co.

STAHMANN, Mrs. Helen B., 517 36th Ave., San Francisco, wife of John A., not listed.

STARK, Lillian Rothman, 1116 E. 22nd St., Oakland, wife of Sidney M. a bookkeeper.

STEVENSON, Robin E., 534 Battery St., which is the address of the Zellerbach Paper Co., married, listed as a Department Manager. Attended Stanford in 1930.

STOUT, Robert Lee, 617 Ohio Ave., Richmond, married, no occupation listed. A very modest district.

SWAN, Mrs. Thelma I., 826 31st Ave., San Francisco. She is listed a bookkeeper for Woolworth Co., and the wife of Claude, a patrolman with the Calif. Highway Patrol.

SYMONS, Henry H., 1435 Capuchino Ave., Burlingame, married, a mining engineer with the State Division of Mines.

TAYLOR, Wm. James, 3533 Hageman Ave., Oakland, married. In 1943 listed a shipyard worker. In 1941 listed a cook.

THOMPSON, Hazel Serena, 7026 Lockwood St., Oakland, wife of John, a janitor in 1943.

WALKER, Clark G., 1425 Avondale Rd., San Mateo, Ass't Division Manager Gen'l Petroleum Corp'n.

WARNER, Edith Weeks, 324 Larkin St., San Francisco, a sales woman.

WHEELER, Wm. Thomas, 1460m Golden Gate Ave., San Francisco. There are two of this name, and cannot definitely identify. One is a printer; the other is a U. C. civil engineer.

WILEY, Ruth Rudy, 2415 St. Francis Way, San Carlos, wife of Bruce T., freight traffic representative for the Southern Pacific Co.

WILLIAMS, R. L., (prob. Robert Lee) married, in 1937 listed a porter.

WILLIARD, Luther, 141 Peralta St., San Leandro, married. In 1946 listed as "San Leandro Taxi."

WURTS (or Z), Mrs. Babette F., Rt. 1, Box 790, Mill Valley. No occupation listed for her or her husband. Both active Christian Scientists. SEE BELOW:

YERBIC, or ZERBIC, 1882 Geary St., married, his wife shows as the manager of the Hamilton Hotel, at that address. No occupation is shown for him.

ZINN, Chester T., 5841 Pinewood Rd., Oakland, married, 1943 listed ins. agent. In 1936 listed Special Agent for Swett & Crawford, general agents. U. C. 1929.

WURTZ-ADDITIONAL: Her husband is V-P of Rhoades & Davis, 690 Market St., formerly from Jefferson City, Wis. She was previously married to one David Kaplan, prob. Jewish, and her maiden name was Frankel, also probably Jewish. She formerly worked in N. Y., and in 1946-6 was employed by the American Red Cross.

AGLES, Walter Cleveland, 728 3rd Ave., San Mateo

ARMSTRONG, Mrs. Mary, 1916-A Golden Gate Ave., S. F.

BAKER, Herbert F., 211 Elm Ave., Mill Valley

BARLOW, Lewis L., 501 Coventry Road, Berkeley

BINGHAM, James M., 1964 Mountain Blvd., Oakland

BLACK, Mary Elizabeth, 614 12th, Richmond

BLANDIN, Mrs. Pearl A., 1305 Ward St., Berkeley

BLOMQUIST, Mrs. Fausta U., 552 Noe St., S. F.

BLOMQUIST, Norman A., 349 Mastick Ave., San Bruno

BRUGLER, Mrs. Louise H., 127 Linden Ave., San Bruno

CADY, Frieda Anna, 741 Niantic St., Daly City

CALLAGHAN, Wm. C., 635 Brewer Dr., San Mateo

CALS, Mrs. Buena Grace, 1829 Melvin Rd., Oakland

CALVIN, John S., 81 Patridge Lane, Daly City

CHAPMAN, Cathryn Eliz., 537 44th St., Oakland

CHILDRESS, Gus S., 276 Golden Gate Ave., S. F.

CHRISTIANSON, Olga Emily, 1346 23th Ave., S. F.

CLARK, John H., 512 Francisco Dr., Burlingame

COLE, Mrs. Mildred B., 44 Southwood Dr., Rt 1, Orinda

COVELL, Flora E., 148 Estates Dr., Piedmont

DEAL, Denver D., 714 Haight St., S. F.

DUCKETT, Earl M., 109 Roanoke St., S. F.

EVERETT, Warren T., 2218 Bonar St., Berkeley

FARNELL, Isabelle, 1609 Blake St., Berkeley

FIELD, Mrs. Virginia Keith, 1015 Geary St., S. F.

FLOWERS, Mrs. Avie, 918 45th St., Oakland

GENESY, Walter A., 6055 Manchester Dr., Oakland

GOODLETT, Mrs. Willette, 1845 Fillmore St., S. F.

GRASSENS, Adele T., 105 Santa Maria Ave., Woodside Highlands, Redwood City

HERRICK, Lyman C., 141 Bellevue Ave., Daly City

HILL, Wm. L., Jr., 3814 Market St., Oakland

HILLS, Elizabeth Ward, 1515 Stuart St., Berkeley

HUNTER, Donald E., 10 Orchard Ct., Rt 1, Orinda

HOPPER, Harry F., 2305 Hillside Dr., Burlingame

HUBBS, Harry G., 1025 Laurel St., Menlo Park,

IBBOTSON, Fannie, 6031 Burlingame Ave., Richmond

IRVINE, Lucille Veronica, 1439 28th Ave., S. F.

JACKSON, Mrs. Grace M., 1784 Sutter St., S. F.

KENNEDY, Leroy C., 918 8th St., Richmond

KLEIN, Louis Julius, 723 12th Ave., S. F.

KOHLBRENNER, Betty, 463 Evergreen Ave., Daly City

KOLB, Mrs. Charlotte S., 2 Lexford Rd., Piedmont

KOSEC, Thelma I., 10218 Pippin St., Oakland

LONG, Mrs. Ival Barbara, 1370 9th Ave., S. F.

MANES, George Elmer, 322 Hanover Ave., Oakland

MANN, John, 1048 Underhills Rd., Oakland

MARTIN, Edward, 8 El Sereno, Rt 2, Orinda

MARKIS, Charles E., 2305 Poppy Dr., Burlingame

McMAHON, Mrs. Margaret J., 20 Glorietta Ct., Rt 1, Orinda

McNAMARA, Aileene Catherine, 2131 Jones St., S. F.

MEYER, Ernest W., 465 Calif. St., S. F.

MILLER, Earle G., 2036 Alma St., San Carlos

MOODY, Irene M., 215 W. Poplar Ave., San Mateo

MURRY, P. V., 89 Manor Dr., S. F.

NILSEN, Mrs. Alice E., 49 Beechwood Dr., Rt. 2, Lafayette

NOBLE, Henry F., 309 Corte Madera Ave., Corte Madera

NORTH, Wm. C., 766 Walnut Ave., Burlingame

NOZIGLIA, Dan, 1028 Pennsylvania Ave., Richmond

NYE, James A., 171 Elm Ave., Mill Valley

OAKES, Robert, 9 Theresa St., S. F.

OHDE, Fred E., 5439 Barrett Ave., Richmond

ONG, Woodrow W., 975 Jackson St., S. F.

PALMER, Mrs. Dora V., 3064 Sacramento St., S. F.

PAYNE, Harry R., 833 32nd St., Oakland

PETERSEN, Julia Vivian, Mrs., 23 Woodrow St., Daly City

PHILLIPS, Minnie Lerue, 1731 Barrett Ave., Richmond

PITTMAN, Mrs. Terea, 2930 Grove St., Berkeley

POLKINGHORN, Wm.B., 333 Pomona Ave., El Cerrito

PORTER, Harold R., 115 Curry St., Richmond

PRICE, Andrew M., 1888 San Lorenzo Ave., Berkeley

PURDY, Margaret, 901 Powell St., S. F.

RAFF, Thurston O., 412 27th Ave., San Mateo

RAWSON, Clyde Ansel, 513 Everett St., El Cerrito

REID, David Wm., 955 Jackling Dr., Hillsborough

RENFRO, Orvin E., 1061 Elmer St., Belmont

REYNOLDS, Carroll B., 630 Lake St., S. F.

ROBINSON, Mrs. Nettie, 1036 Francisco St., S. F.

ROSE, Henry A., 26 Stoneybrook Ave., S. F.

ROWE, Wm. J., 155 Berry St., S. F.

RYAN, Cecil M., 623 Baker St., S. F.

SANCHEZ, Mrs. Marie C., 2800 Octavia St., Oakland

SAUER, Joseph Francis, 83 Clyde St., San Rafael

SAVERCOOL, Bessie F., 1760 Pacific Ave., S. F.

SCANLAN, Charles J., 1228 Ordway St., Berkeley

SCHLOBOHM, Edith Marie, 530 2nd St., Corte Madera

SCHMERIN, Mrs. Ruth F., Rt 2, Box 1830, Lafayette

SEDLACEK, Mrs. Evelyn T., 1545 S. 54th St., Apt. 2, F, Richmond

SHELLOOE, Daniel C., 310 Post St., S. F.

SKATES, Harry Victor, 603 Pacific Ave., Alameda

SMITH, Frank A., 1324 Balboa Ave., Burlingame

SNYDER, Eugene E., 447 Cumberland Rd., Burlingame

SPALTEHCLZ, Ruby Mae, 7224 View Ave., Richmond

STAHLANN, Mrs. Helen B., 517 36th Ave., Apt 301, S. F.

STARK, Lillian Rothman, 1116 E. 22nd St., Oakland

STEVENSON, Robin E., 534 Battery St., S. F.

STOUT, Robert Lee, 617 Ohio Ave., Richmond

SWAN, Mrs. Thelma I., 826 31st Ave., S. F.

SYMONS, Henry H., 1435 Capuchino Ave., Burlingame

TAYLOR, Wm. James, 3533 Hageman Ave., Oakland

THOMPSON, Hazel Serena, 7026 Lockwood St., Oakland

WALKER, Clark G., 1425 Avondale Rd., San Mateo

WARNER, Edith Weeks, 324 Larkin St., S. F.

WHEELER, Wm. Thomas, 1460 Golden Gate Ave., S. F.

WILEY, Ruth Rudy, 2415 St. Francis Way, San Carlos

WILLIAMS, R. L., 3424 Market St., Oakland

WILLIARD, Luther, 141 Peralta St., San Leandro

WURTS, Mrs. Babette F., Rt 1, Box 790, Mill Valley

YERBIG, Matthew J., 1882 Geary St., S. F.

ZINN, Chester T., 5841 Pinewood Rd., Oakland

APPENDIX IX

Medium wave or standard broadcast band stations operated by the J.B.C.

JOUK	Akita	645 kc	JOMK	Nagano	635 Kc
JOCG	Ashikawa	655	JOAG	Nagasaki	930
JOFG	Fukui	990	JOCK-1	Nagoya	810
JOLK	Fukuoka	680	JOCK-2	Nagoya	1175
JOVK	Hakodate	680	JOKK	Okayama	700
JODJ	Hamamatsu	635	JOBK-1	Osaka	750
JOFK	Hiroshima	650	JOBK-2	Osaka	1085
JOJK	Kanazawa	710	JOIK	Sapporo	830
JORK	Kochi	720	JOHK	Sendai	770
JOSK	Kokura	735	JOPK	Shizuoka	780
JOGK	Kumamoto	790	JOXK	Takushima	980
JOOK	Kyoto	960	JOAK-1	Tokyo	870
JOBG	Maebashi	970	JOAK-2	Tokyo	590
JOTK	Matsue	625			

(Under favorable conditions, many of the above stations can be heard on the West Coast of the U.S. in the Winter months.)

KOREA			SIAM		
JODK-1	Keijo	610 Kc	HSP1	Bangkok	857 Kc
JODK-2	Keijo	900	HSP3	Bangkok	938
			HS7PJ	Bangkok	750
BURMA			HS8PJ	Bangkok	7023
2H2	Rangoon	857 Kc	HS8PJ	Bangkok	19.020
			HSP	Bangkok	17.740
TAIWAN (Formosa)			HS5PJ	Bangkok	9.590
JFAK	Taihoku	670 Kc	HS5PD	Bangkok	5.994
JFBK	Tainan	720			
FRENCH INDO-CHINA			MALAYA (Straits Settlements)		
FZR2	Saigon	16.214 Kc	RADIO SHONAN (Singapore)		
FZS4	Saigon	11.783	Frequencies: 4825, 9690, 15.300 and 12.000 Kc		
			ZHJ	Penang	6090
			ZGE	Kuala Lumpur	6025

DEFENSE EXHIBIT AA FOR IDENT.

JAVA (called JAWAH by the Japs)

YHN	Djokjakarta	10842 Kc
PLS	Batavia	10.365
YDC	Batavia	15.150
YDB	Soerabaja	11.860
YDB	Soerabaja	9.550
YDB	Soerabaja	19.590
PLP	Bandoeng	11.000
PLQ	Bandoeng	10.680
PMN	Bandoeng	10.260
PMY	Bandoeng	5.146
PMC	Bandoeng	18.135
PMA	Bandoeng	19.345
PMH	Bandoeng	6.750
PLT	Bandoeng	9.419
PLN	Bandoeng	11.600
PLE	Bandoeng	18.830
PLJ	Bandoeng	14.630
PLV	Bandoeng	9.410
PLY	Bandoeng	10.062
YDB	Batavia	2.240
YDD	Batavia	2.602
YDA	Bandoeng	3.024
YDI	Soerabaja	3.240

JAVA con.

YDI2	Soerabaja	4.370 Kc
YDD2	Batavia	4.868
YDB2	Batavia	4.910
YBJ	Djokjakarta	5.620
YDA2	Bandoeng	6.170
YDA3	Bandoeng	7.115
YDB3	Bandoeng	7.271
YDH2	Semerang	11.034
YDE1	Batavia	11.770
PLDG	Batavia	17.630

PHILIPPINES

KAZ	Manila	9.990 Kc
KOW	Manila	9.110
KBB	Manila	8710
KUF	Manila	5.015
KZRH	Manila	6.140
KZRH	Manila	9.630
KZRM	Manila	9.570
KZRF	Manila	6.140
KZRC	Cebu	6.100
KZIB	Manila	6.050
KZMB	Manila	6.000
KZFM	Manila	11.840
KZFJ	Manila	11.890
KAC	Manila	17.910
KBD	Manila	17.950
KBT	Manila	16.155
KAY	Manila	14.980
KBJ	Manila	13.240
KUV	Manila	12.280
KBL	Manila	11.530
KTE	Manila	10.910

Above is a list of about 200 stations on various frequencies, which were available to the Japs at the peak of their invasion of South-East Asia, not including Chinese stations, of which they had several, but including Hong Kong only. About one-third of the stations listed herein have been verified by the compiler.

Short Wave Reception is found on the higher frequencies, which are here given in kilocycles. The wave bands allocated for this purpose are as follows:

13-Meter Band	included	frequencies	from	21.000	to	21.700	Kc
16-Meter Band	"	"	"	17.200	to	18.000	Kc
19-Meter Band	"	"	"	15.000	to	15.500	Kc
25-Meter Band	"	"	"	11.600	to	12.000	Kc
31-Meter Band	"	"	"	9.500	to	10.000	Kc
40-Meter Band	"	"	"	7.000	to	7.5000	Kc
49-Meter Band	"	"	"	6.000	to	6.7000	Kc
60-Meter Band	"	"	"	4.000	to	5.000	Kc

Note: The frequency ranges in the above table are those which have been allocated by International agreement to stations broadcasting for purely entertainment purposes (music, etc.). Frequencies lying outside of the named are generally reserved for purely commercial interests, Government services, aircraft, amateur phones, police, weather bureau, etc.

Short Wave Transmitting Frequencies assigned to the
Broadcasting Corporation of Japan

JLP2	Tokyo	15.325 Kc	TAIWAN (Formosa Group)
JLT3	"	15.225	JFO Taihoku 9.680 Kc
JLG4	"	15.105	JIE2 " 9.695
JZK	"	15.160	JIB " 10.530
JZL	"	17.785	
JVZ2	"	11.825	
JZJ	"	11.800	MANCHOUKUO (Manchuria) Group
JVW3	"	11.725	MTCY Hsingking 5.720, 6.125,
JVL	"	11.660	9.545, 10.065,
JLG3	"	11.705	11.785
JVU3	"	11.900	JQAK Dairen 645
JLT2	"	9.645	JDY " 9.925
JLT2	"	9.595	
JZI	"	9.535	S.W. Phone and Commercial
JLG2	"	9.505	Stations. All or any of
JLG	"	7.285	these stations are available
JVW	"	7.257	on occasion for broadcast
JRAK	"	9.656	transmission or relay.
JLU4	"	17.790	JVL 11.660 Nazaki
JLR	"	6.015	JZB 10.960 "
JZH	"	6.095	JVM 10.740 "
JZH	"	6.135	JVN 10.660 "
JLT	"	6.190	JVO 10.375 "
JLU2	"	9.525	JVS 9.840 "
JLP	"	9.605	JVB 7.510 "
JLS	"	9.645	JVQ 7.470 "
JVW2	"	9.675	JVR 7.390 "
JLR2	"	15.115	JVS 6.990 "
JVW4	"	15.235	JVT 6.750 "
JLU4	"	17.795	JVU 5.790 "
JVW5	"	17.825	JVV 5.730 "
JLP3	"	17.835	JVW 7.257 "
JLS2	"	17.845	JO9H 3.075 Tokyo
JZM	"	21.520	JKE2 4.860 "
JLP4	"	21.560	JKF2 4.910 "
JLS3	"	21.620	JKG2 4.930 "
JFAK	"	9.695	JO8G 6.005 Sapporo

JFAK	Tokyo	6.185
JFAK	"	9.550
JFAK	"	15.280
JFAK	"	17.815

JO9K	9.550	Tokyo
JZM	21.520	Nazaki
JVA	18.910	"
JZL	17.785	"
JVC	16.050	"
JVD	15.860	"
JIA	15.740	Chureki
JYT	15.700	Nazaki
JVE	15.660	"
JVF	15.620	"
JVG	14.910	"
JVH	14.600	"
JVI	13.500	"
JVK	12.020	"
JVL	11.660	"
JZB	10.960	"

APPENDIX X

NAVY DEPARTMENT

HOLD FOR RELEASE
PRESS AND RADIO
UNTIL 1:15 P. M. (E.W.T.)
AUGUST 7, 1945

Left EX. *BV* FOR IDENT.

NAVY "CITATION" FOR TOKYO ROSE OF RADIO TOKYO

The Navy Department, through Captain T. J. O'Brien, U.S.N., Director of Welfare, today cited Tokyo Rose of Radio Tokyo for "meritorious service contributing greatly to the morale of United States armed services in the Pacific," and gave her permission to "broadcast soon to the United States Army of Occupation in Japan and to the ships of the United States Fleet at anchor in Yokohama Bay, the history-making scene of Admiral Halsey riding the Japanese Emperor's white horse through the streets of Tokyo."

The "citation" was recorded by Captain O'Brien for broadcast over "The Navy Reporter," radio program which is short-waved to all personnel beyond the continental limits.

The text of Captain O'Brien's statement follows:

"The men and women of the Navy, Marine Corps and Coast Guard take pleasure in presenting this citation to Tokyo Rose of Radio Tokyo, for service as set forth in the following:

"For meritorious achievement while serving as a radio propaganda broadcaster for the Japanese. While the United States armed forces in the Pacific have been extremely busy capturing enemy-held islands, sinking Jap ships, and killing Japs and more Japs, Tokyo Rose, ever solicitous of their morale, has persistently entertained them during those long nights in fox-holes and on board ship, by bringing them excellent state-side music, laughter and news about home. These broadcasts have reminded all our men of the things they are fighting for, which are the things America has given them. And they have inspired them to a greater determination than ever to get the war over quickly, which explains why they are now driving onward to Tokyo itself, so that soon they will be able to thank Tokyo Rose in person.

"As the Japanese Empire crumbles about her, Tokyo Rose zealously continues to bring laughter and entertainment to our men and women.

"In recognition of this meritorious service, this citation is presented and with it goes permission to broadcast soon to the United States Army of Occupation in Japan and to the ships of the United States Fleet at anchor in Yokohama Bay, the history-making scene of Admiral Halsey riding the Japanese Emperor's white horse through the streets of Tokyo."

(Photographs available in Pictorial Section, Office of Public Information)

APPENDIX XI

AUGUST 16, 1944

WRITTEN TRANSCRIPTION OF A FEDERAL
COMMUNICATIONS COMMISSION ACETATE
RECORDING #8 AND #9, RECORDED AT
PORTLAND, OREGON, BETWEEN 0500 HOURS,
E.W.T. AND 0600 HOURS, E.W.T., ON AUGUST
16, 1944.

NOTE: * * * * Indicates unintelligible dialogue.

- - Indicates pause.

1. MUSIC
2. ANN: Hello there you fighting orphans somewhere in that pool
3. of water called the Pacific. This is your playmate
4. Orphan Ann taking roll call for -- that's right--* * * *
5. to present music for you--the kind that hits the spot,
6. the right spot. And incidentally the man from Saipan
7. saw me just before we went on the air saying that he
8. had important business with you orphans.
9. ANN: I wonder what it is? Anyway, forget about him until
10. he actually * * * * He can get into more sidetracks.
11. Well, I'm going ahead as usual and Miss Jane Pickens
12. tells us all about a sweet young thing named Lindy Lu.
13. Thank you honey.
14. MUSIC "Lindy Lu"
15. ANN: That little melody definitely takes you below that Mason
16. Dixon line. Now Mr. Eddie Howard borrows the Mike
17. from Miss Jane Pickens and invites us to accompany
18. him to * * * * of the Singing Hills. This ought to be
19. good stuff * * * * boneheads and * * * *
20. MUSIC "The Singing Hills"
21. ANN: * * * *
22. MAN FROM SAIPAN: Ugh * * * *
23. ANN: * * * * I think so too but * * * *
24. MAN: What's wrong Ann?

AUGUST 16, 1944

1. 2nd MAN: Yea man.
2. CHORUS OF
- MALE VOICES: The man from Siapan.
3. MAN: Look's like he's really got a message this time. Am I
4. right Mr. Saipan?
5. MAN FROM
- SAIPAN: Yea man * * * *
6. CHORUS MALE
- VOICES: * * * *
7. ANN: Gee, what does that mean?
8. MAN: There's only one meaning and that's--
9. CHORUS OF MALE
- VOICES: Disaster.
10. ANN: What kind of disaster?
11. MAN: There's only one kind and that's--
12. CHORUS OF
- MALE VOICES: Saipanic disaster.
- 13.
14. ANN: And when will that happen?
15. MAN FROM
- SAIPAN: * * * *
16. ANN: * * * * What?
17. CHORUS OF
- MALE VOICES: Yes, when?
18. MUSIC
19. ANN: Whew--coming back to reality--this is Orphan Ann at-
20. tempting to gather the reigns once more to * * * *
21. sweet propaganda to my favorite family--you orphans
22. of the vast Pacific. * * * * is already to help me in my
23. endeavors with a tune which needs no introduction.
24. Just listen quietly.
25. MUSIC "A Pretty Girl Is Like a Melody"
26. ANN: And need I tell you that was Irving Berlin's "A Pretty
27. Girl Is Like A Melody" from Ziegfield Follies of 1919.
28. In 1944 they're just as pretty aren't they boys * * * *
29. including the * * * * models. Well, here's a cute little
30. model, Ella Logan by name asking you orphans musically

AUGUST 16, 1944

1. "Are You Having Any Fun?" How about that boneheads?
2. MUSIC "Are You Having Fun"
3. ANN: Horace Heidt and His Musical Knights take over for the
4. concluding number of this evening's little show and * * *
5. vocalist Larry Cotton in a little number entitled "Lilacs
6. In The Rain." Are lilacs or fancy orchids bothering you
7. boneheads at the present time. Never mind we still love
8. you.
9. MUSIC "Lilacs In The Rain."
10. ANN: Ah--another few minutes of grace granted to Eddie
11. Howard * * * * before closing time and asks "Where Was
12. I?" I don't know.
13. MUSIC "Where Was I?"
14. ANN: Our union hours are definitely up and we thank you for
15. your kind attention. Lay that pistol down boys. I'm all
16. finished for the day bombarding you with vicious
17. propaganda. Take it easy, relax, and see you tomorrow,
18. same time, same station, same me, but different music.
19. Until then--be good and--
20. MUSIC "Goodbye Now"

END

WRITTEN TRANSCRIPTION OF A SERIES OF
FEDERAL COMMUNICATIONS COMMISSION
ACETATE RECORDINGS #WA-98-A, #WA-98-B
#WA-99-A AND #WA-99-B, RECORDED AT
PORTLAND, OREGON, BETWEEN 0500 HOURS,
E.W.T. AND 0600 HOURS, E.W.T., ON AUGUST 11,
1945.

NOTE: * * * * Indicates unintelligible dialogue.
-- Indicates pause.

1. MAN And now it's time for the Zero Hour.
2. ANNOUNCER: MUSIC
3. MAN Hello again to all fighting men in the Pacific. This is
4. ANNOUNCER: your Zero Hour.
5. MUSIC
6. MAN The Zero Hour is on the air and as our theme song comes
7. ANNOUNCER: to you over the Pacific we invite you to listen to a
8. program of news from home,--familiar melodies and a
9. little bit of this and that. And we have to get started
10. fast because our lead off man's a live wire and he's
11. ready to * * * *
12. Hold on Moe. We want to hear some of that new stuff.****
13. MUSIC
14. MAN: Now we're under way and the swing department offers
15. another one for the great fraternity of guys and gobs
16. who've got the time and the inclination. So it's another
17. invitation to get * * * * for another 3 minutes and it'll
18. help you if you take those shoes off.
19. MUSIC
20. MAN: Another wax work offering * * * * and the swing depart-
21. ment of the Zero Hour offers this * * * * little job to
22. the guys and gobs. Once again the nickel is on the house.
23. This time it's the music of Tony Pastor.
24. MUSIC

AUGUST 11, 1945

1. MAN: Just one more piece of Stateside music for the guys and
2. gobs from foxholes to on board ship and another * * * *
3. citation as the swing department serves up on a silver
4. platter the tastiest little piece of goods that American
5. radio ever produced, and we do mean little Miss Helen
6. Forrest.
7. MUSIC "WHAT'S THE MATTER WITH ME?"
8. MOE: Well, friends there's a lot more in the old Zero Hour bag
9. of tricks and it's waiting right now. So if you'll please
10. stand by while we yell for the maestro.
11. BOSS: This is the Zero Hour calling in the Pacific and this is
12. your MC complaining that Moe is the biggest gyp on the
13. air.
14. MOE: Ye gods, Boss, give a guy a chance. I've got the whole
15. department out looking for the fellow who snitched those
16. records.
17. BOSS: Well, you'd better get busy. The San Francisco news
18. says that the American fighting men are now listening
19. to those new records they * * * * And that's a heck of
20. a situation because we've been playing the old * * * *
21. night after night after night.
22. MOE: Well, you're the Boss. Anytime those records come in
23. I'll be glad to play them for the boys. But until then
24. we'll just have to sort of take things easy with these old
25. favorites.
26. JOE: Hi yah, Boss.
27. BOSS: Well, Joe.
28. JOE: Looka here, Boss, in recognition of my services in
29. entertaining the Pacific men I've been cited and will you
30. please recognize my new position and address me as Sir.

AUGUST 11, 1945

1. BOSS: Well, Mr. Joseph * * * * what brings you down here
2. tonight? We fired you last week you know.
3. JOE: Ah, have a heart Boss. I came down to hear those new
4. records.
5. BOSS: If that's what you came to hear you're going to be awfully
6. disappointed, Joe. There's just * * * * along the studio,
7. and anyway what new records are you talking about?
8. JOE: Well, the Frisco radio news said that the Pacific GI's
9. are listening to the records they dropped from a B-29
10. for this program.
11. BOSS: Listen, Joe, if you don't know plain malarkey when you
12. hear it you're no use on this all-purpose propaganda
13. program. Every night at this time we--
14. JOE: * * * * Goodnight, Boss.
15. BOSS: Shall we carry on? This is the Zero Hour and we have
16. just started on a nightly trip around the clock with the
17. Zero Hour four star program for Pacific fighting men.
18. It's straight from the corn belt, but we don't hit below
19. the belt. Pure corn but with a kick that you get when
20. it comes in a bottle. And if that doesn't lay you out
21. here's just what the doctor ordered. Here Joe, take
22. * * * * will you?
23. JOE: Okay. I swear GIs that here's the smooth stuff to help
24. you forget the rocky going. Just the stuff for overworked
25. nerves, the perfect cure for overworked pilots. We give
26. you languid tunes, but first we give you Annie.
27. ANN: That smells, but here goes anyway. That's right,
28. Orphan Ann takes over and makes those wheels of industry
29. run for a few more minutes. And we'll have that soft
30. kind of music where you * * * *. Of course, we haven't

AUGUST 11, 1945

1. the latest stuff on the market, but it's all pretty
2. familiar music. So lend your good ear * * * * prewar
3. days * * * * The voices four on the vocal and * * * *

4. MUSIC

5. ANN: One of the voices drops out, and we have the voices three
6. in a spirited rendition of another oldey, "Every Sunday
7. Afternoon."

8. MUSIC "EVERY SUNDAY AFTERNOON"

9. ANN: So, now it's the half way mark on Tommy Tucker Time
10. * * * * an old novelty number, the title song from the
11. Walt Disney masterpiece, "The Reluctant Dragon."
12. It was entertaining then, and it's not so bad now. * * * *
13. still goes.

14. MUSIC "THE RELUCTANT DRAGON"

15. ANN: By the hands on the wall clock I see that I can oil the
16. wheels of industry for about another three minutes or
17. so. With your very kind permission, my boneheads in
18. the Pacific * * * * Just relax and take our last * * * *
19. tonic for the day. Orin Tucker's music and the voices
20. four and "Where Do I Go From You" is the title of their
21. curtain number * * * * own particular bandstand. Okay
22. Mr. Tucker. We're all ears.

23. MUSIC "WHERE DO I GO FROM YOU"

24. ANN: Okay, Boss. I'm all * * * * and I don't get paid for
25. overtime. I'm no sucker. Here take it away. I've got
26. other things to do. This is one of those nights you know.
27. MAN * * * * on your frequency, it's the Zero Hour with
28. ANNOUNCER: music, news and other things for the Pacific fighting men
29. who have the time and the inclination for entertainment
30. on the Black Market. If your reception is not up to par,

AUGUST 11, 1945

1. remember that we operate on both the 19 and 25 meter
2. bands. If neither of them work well, then come up and
3. see us sometime.
4. Now, if those languid tunes have brought back a few
5. thoughts of home, here's something to help the process
6. along a quick trip to the news room and our news editor
7. rolls off a few interesting items on the home front.
8. NEWSCASTER: First here's a report from Washington. President
9. Truman yesterday announced that Edward Stettinius,
10. former American Secretary of State, has been appointed
11. as the American representative on the Preparatory
12. Commission of the United Nations Organization with
13. the rank of Ambassador.
14. Meanwhile, the American Secretary of War, Henry
15. Stimson, said yesterday in a letter to Senator Edwin
16. Johnson, Democrat of Colorado, that he was opposed to
17. any plan for the reduction of the American Army by even
18. one man, according to a Washington report. Stimson
19. added that the present nominated strength of the Army
20. is absolutely necessary for the battle against Japan.
21. The noted American military editor * * * * Baldwin
22. commenting on the Russian entry into the Pacific war
23. declared that the Russian entry has widespread political
24. implications. He pointed out that the Soviet entry into
25. war means not only that Russia wants to dominate its
26. * * * * Manchuria and Korea, but of establishing its
27. rights and voice in all Pacific Asiatic problems.
28. It was announced today that * * * * and association had
29. purchased the Liberty Magazine for approximately two
30. million dollars. Ownership of the magazine will change

AUGUST 11, 1945

1. hands about August 20. The entire capital stock of
2. the Liberty Magazine Incorporated is being acquired
3. from Paul Hunter, Publisher and * * * * The Liberty
4. is published in the United States and Canada * * * * con-
5. sisting of about * * * * million and a half.
6. And here's a bit of news from San Francisco. A new
7. way of removing tonsils has been found by Dr. Greenburg.
8. In the new method the patient doesn't even feel the
9. removing of his tonsils. Radium is put into a * * * *
10. covered container and placed in the form of a bandage
11. opposite the tonsil. The patient keeps the bandage on
12. for 24 hours. During that time he can do as he pleases
13. such as smoke, drink, walk around, etc. The only pre-
14. caution which the patient must take is to see that the
15. container bandage is kept in place. After 24 hours--
16. presto-- the tonsil has disappeared. The radium has
17. shriveled up the tonsil and made it disappear. Though
18. Dr. Greenburg doesn't care whether you go out of the
19. house that day, the insurance company does. The com-
20. pany doesn't think it's safe to let a patient go out of
21. the house with radium wrapped around his neck worth
22. 5 to 10,000 dollars.
23. Now we skip over to London for a report. The London
24. Daily Herald, the official organ of the British Labor
25. Party in an editorial yesterday suggested to outlaw
26. the use of the atom bomb employed by America.
27. Describing the bomb as a threat to peace, the editorial
28. suggested a gathering of the powers to consider it.
29. Opposing the proposal that the secret of the new weapon
30. should remain an Anglo-American monopoly, the paper

AUGUST 11, 1945

1. charged that this would start * * * * a far more * * * *

2. than any known hitherto. Secrecy or suspicion would

3. shed poisonous light upon all international relations the

4. paper added. Economic monopolies in the use of energy

5. as a new weapon would be just as dangerous to peace as

6. military monopoly.

7. JOE: * * * * That's just the trouble, nothing new--what's the

8. good of hearing all about new records if we don't ever

9. get to put them on the air. Now what are those fellows

10. there trying to do? Shoot us a lot of hot air. Now

11. suppose we forget that and concentrate on some good

12. local talent for a change.

13. BOSS: And I suppose you've got some talent lined up outside

14. the door, Joe.

15. JOE: * * * * that's me. Shall I ask them in, Boss?

16. BOSS: Joe, you're an angel in sheep's clothing. Bring them in

17. with my blessing and if you can fill up these open 7

18. minutes or so the drinks are on me.

19. JOE: Come on gang. * * * * and let's go.

20. MUSIC

21. JOE: Well, fellows there's still some life in the old bunch,

22. what?

23. BOSS: Well, thanks Joe, and I guess we won't fire you for

24. awhile yet, * * * * so all's well.

25. Now stand by for the closing few minutes and here are

26. a few more tunes for you.

27. MUSIC

28. MAN
29. ANNOUNCER: This is your Zero Hour calling in the Pacific. Thanks for

30. listening, and remember your Zero Hour comes to you

every night at 6 p.m. on the 19 and 25 meter bands with a

AUGUST 11, 1945

1. variety program of news and music. Don't forget to
2. tune in again tomorrow night, and until then we bid
3. you all a pleasant goodnight.

WRITTEN TRANSCRIPTION OF A SERIES OF
FEDERAL COMMUNICATIONS COMMISSION
ACETATE RECORDINGS #WA-7-A, #WA-7-B,
#WA-8-A AND #WA-8-B, RECORDED AT
PORTLAND, OREGON, BETWEEN 0500 HOURS
E.W.T., AND 0600 HOURS, E.W.T., ON
AUGUST 14, 1944

NOTE: * * * * indicates unintelligible dialogue
— indicates pause

MUSIC "STRIKE UP THE BAND"

1. MAN ANNOUNCER: This is the Zero Hour calling in the Pacific and for the
2. next * * * * minutes we're going to take you to music as you
3. like it--sweet and hot and otherwise.
4. Music from all over the world and a thought for the day.
5. Sometimes even two thoughts for the day.
6. First let's have the fighting news for the fighting men.
7. NEWSCASTER: Although the bulk of the fighting on the Western front
8. is still in the area between * * * * and * * * * rivers, the
9. center of gravity of the Allied offensive at present is more
10. marked than before in the mobile wing of the American Army
11. operating between Normandy and Loire. The first Canadian
12. Army has been trying to accomplish a breakthrough
13. between * * * * and * * * *. The Allied pressure in
14. Normandy was brought to bear partly with the intention
15. of tying down the bulk of the German counter thrust in the
16. area south of * * * *.
17. Today the United States Army pushed forward its motorized
18. spear head with strong air force support from * * * *
19. southeastward in order to cut off the German communica-
20. tions. The American units from Nates and Angers appeared
21. to be moving forward towards Loire. In Brittany the Allies
22. redoubled its efforts to take the fortified coastal places.
23. Fierce fighting is going on for Lorient and off Brest. In
24. St. Lo the German garrison is continuing to offer heroic

AUGUST 14, 1944

1. resistance. There is no noticeable change in the battle line
2. between the * * * * river and the area south of here. The
3. battle continues north and northeast of * * * *. Here
4. Canadian attacks were met by German troops with stubborn
5. resistance.
6. In Italy no major operations took place on Saturday.
7. On the Eastern front several Soviet attacks between * * * *
8. and the big Vistula bend were warded off and numerous Soviet
9. tanks destroyed. The Luftwaffe carried out several success-
10. ful raids on Soviet tank columns west of * * * *. Northwest
11. of Bialystok further breakthrough attempts by more than
12. * * * * Soviet divisions were checked in a grim battle as were
13. all Soviet thrusts in Latvia. Southwest of Lake * * * * on
14. the other hand the Soviets succeeded in enlarging their
15. penetrations.
16. On the India-Burma front the Japanese forces inflicted
17. tremendous blows on the enemy troops of over 30,000 in
18. battle around * * * *.
19. Within a period of 5 months up to the end of July, the enemy
20. suffered a loss of more than 15,000 men including those
21. killed, wounded and taken prisoners.
22. In the Pacific our garrison on Chichi Jima Island in the
23. Ogasawra group reports on Saturday an enemy formation
24. of 15 4-engine bombers which came to raid the island.
25. At dawn the same day 16 enemy fighters attempted to raid
26. Wotje Island in the Marshalls but were driven back by our
27. interceptors.
28. MAN ANNOUNCER: You have just heard the fighting news for the fighting men.
29. This is the Zero Hour calling in the Pacific.
30. MAN: Hear about the trouble we had Boss?

AUGUST 14, 1944

1. BOSS: What trouble?
2. MAN: You remember Frank * * * *?
3. BOSS: Yeh, we had him Saturday.
4. MAN: Well, he was in again last night.
5. BOSS: How come?
6. MAN: He busted right in on the news.
7. BOSS: You're not allowed--that's against the rules.
8. MAN: Well, * * * * anyway.
9. BOSS: Hey Gus * * * * In the meantime we bring you Ann and her
10. playmates--the orphans.
11. MUSIC
12. ANN: Hello you fighting orphans in the Pacific. How's tricks?
13. This is after her week-end Annie back on the air strictly
14. under union hours. Reception O.K.? Well, it better be
15. because this is all request night and I've got a pretty nice
16. program for my favorite little family--the wandering bone-
17. heads of the Pacific Islands. The first request is made by
18. none other than the Boss and guess what. He wants Bonnie
19. Baker and "My Resistance Is Low." My what taste you
20. have sir, she said.
21. MUSIC "MY RESISTANCE IS LOW"
22. ANN: And now that * * * * * * * *. The second request was sent
23. in by a moving bonehead of an orphan, request No. 29. He
24. wants Tony Martin of all people to help him forget the
25. mosquitoes and dirty rifles. Well, you know--obliging Annie.
26. Tony Martin and "Now It Can Be Told."
27. MUSIC "NOW IT CAN BE TOLD"
28. ANN: This is Monday. Wash day for some, rifle cleaning for some
29. and for the others just another day to play. Let's all get
30. together and forget those wash day blues. Here's Kay Kaiser,

AUGUST 14, 1944

1. Sully Mason and all the playmates. So come join the
2. parade you boneheads.
3. MUSIC "PLAYMATES"
4. ANN: Well, well, * * * * signed just MSS and he wants a song
5. also from your favorite sweetheart of melody * * * *
6. Well,--Miss Bonnie Baker with the usual in the back-
7. ground and the song "Baby's Asleep." Quiet now
8. everyone.
9. MUSIC
10. ANN: I see Betty's getting impatient with her request of the
11. evening. Oh come on, don't hold back Betty. What is
12. you want to hear? Don't be bashful.
13. BETTY: Can you oblige with "My Heart Belongs to Daddy"--Bea
14. Wayne doing the vocal of course.
15. ANN: Swell. No sooner said than done.
16. MUSIC
17. ANN: Just managing to squeeze in his request is our Zero
18. Hour man to show off the other side of his character * * * *
19. languid Eddie Howard singing "Now I Lay Me Down to
20. Dream."
21. MUSIC
22. ANN: According to union hours we're all through today. We
23. close up another chapter of sweet propaganda in the
24. form of music for you, for my dear little orphans
25. wandering in the Pacific. There are plenty of * * * *
26. union hours coming around the corner, so be seeing you
27. tomorrow, but in the meanwhile always remember to be
28. good and so--
29. MUSIC "GOODBYE NOW"
- 30.

AUGUST 14, 1944

1. MAN
ANNOUNCER: This is the Zero Hour calling in the Pacific. We've just
2. had it sweet and in a moment we're going to have it hot.
3. But in the meantime here are your news highlights.
4. NEWSCASTER: Honolulu is alive with rumors, all of them wrong. It was
5. rumored that the closely guarded Navy command where
6. the President stayed would be the site of a meeting with
7. Churchill or Chiang Kai-Shek or both. Actually the whole
8. affair was an American huddle. To reporters who asked
9. the President about an Anglo-American meeting,
10. Roosevelt replied that Churchill is not in Honolulu nor
11. is he expected in Waikiki. A Churchill conference, he
12. said, is a question for future determination. Roosevelt
13. said he'll report to the nation on his Pacific trip--his
14. first war journey. He said he has no time for political
15. campaign in the usual sense, but said that he would
16. report to the people from time to time.
17. Roosevelt ordered the seizure of mid-west bus companies
18. involved in an 8-day strike and that they will be operated
19. by the Office of Defense Transportation until the dispute
20. is settled.
21. The War Labor Board which found itself powerless to
22. solve the controversy in which 108 companies refuse to
23. pay a directed 7 cents an hour wage increase and 25,000
24. drivers went on * * * *
25. One whole day was spent on the fire that licked the
26. Hudson River pier at New Jersey. Firemen still battled
27. the flaming waves Saturday night. Police and officials of
28. the Fire Department announced that the damage exceeded
29. millions of dollars. The dockmen suffered minor injuries
30. while battling the fire. The Police Department reports
that the fire started from one of the drums when one of

AUGUST 14, 1944

1. the drums and the oil which were being loaded caught
2. fire.
3. Oh, Oh, Army practice--practice bombers dropped
4. something on the ground in Florida when the mechanical
5. releasing device suddenly went haywire. The planes on
6. practice bombing missions dropped several bombs which
7. fell behind the target and what do you think happened?
8. Four civilians were killed and five others injured. Well,
9. what can you expect in this day and age.
10. The Australian war brides have arrived in San Francisco
11. forming the largest contingent of Australian wives of
12. American servicemen. There were 296 wives carrying
13. 72 babies. Australian sources have announced that
14. there's plenty more--a larger number than there were
15. in 1942. Already some 200 babies of these brides have
16. traveled to the United States. Another batch of 134
17. brides are awaiting transportation and 200 others have
18. applied for permits to enter the United States.
19. MAN ANNOUNCER: You have just heard the news highlights for tonight.
20. This is the Zero Hour calling in the Pacific. We've
21. had it sweet and now--
22. MAN: Hey Boss, What are we going to do about * * * *
23. BOSS: Has he received any protest from the International
24. Red Cross?
25. MAN: That's just what I'm worried about.
26. BOSS: Better be careful next time he's around.
27. MUSIC "I KNOW THAT YOU KNOW";
28. MAN ANNOUNCER: Six-thirty p.m. and hello again to American fighting
29. men in the Pacific. Once again the Music from Home
30. Man brings you swinging music for syncc,ating smoothies.

MUSIC

AUGUST 14, 1944

1. MAN: There's that old theme song again and I know that you
2. know--So let's get together again and get associated.
3 Drop everything, easy there and lend an ear to the music.
4. There are familiar tunes that were a part of your land-
5. scape back in those years of 1940 and 41 and when you
6. hear them again perhaps you can remember one or two of
7. the little things that used to make life worth living back
8. in those times. And here's our first one. Sing along
9. with Helen Forrest and swing along with Goodman. Sing
10. like one of those little meadow lark things--Are you
11. ready?

12. MUSIC "MR. MEADOWLARK"

13. MAN: Maestro Benny Goodman lifts his baton again and still
14. once more we hear the voice of our enchanting chantress
15. Helen Forrest chanting her song of love to the starry
16. night--"The Fable of the Rose."

17. MUSIC

18. MAN: And now listen to the maestro take off with one of the
19. familiar old ballads that people like Nelson Eddy or
20. * * * * would be very glad to sing--"Yours is My Heart
21. Alone."

22. MUSIC

23. MAN: The whole gang now chimes in and gives us something
24. called a jazz masterpiece. The maestro has gotten
25. together some of the best men in the business, Toots
26. * * * * leads the saxes, Ziggy Elman leads the trumpets.
27. Listen to this gang of wildcats get together and
28. annihilate that grand old American tune your favorite
29. and mine too--"Down By the Old Mill Stream."

30. MUSIC

AUGUST 14, 1944

1. MAN: Listen to this same bunch of musicians under the baton of
2. Benny Goodman take off again for a flying tackle at one
3. of the popular tunes of the day that people were singing
4. back around in '41 I think it was. This is from Ziegfield
5. Girl. Remember that picture? When a picture with
6. Heddy Lamar in it came out I don't think there were many
7. representatives of the male side of the population who
8. failed to plank down their two bits and see the thing.
9. Just for the music of course. Well, see if you remember
10. this one. Benny Goodman plays--

11. MUSIC "I'M ALWAYS CHASING RAINBOWS"

12. MAN: But now let's pull back on those old reigns and see if we
13. can't slow things down a bit. We're turning into the home
14. stretch now and we ought to have a little steam left for
15. that grand finale. So we'll have two numbers by the
16. Benny Goodman Sextet and the first one will be that
17. sweet little old lovely tune they sang in the last decade
18. and a bit before that--"Poor Butterfly."

19. MUSIC

20. MAN: And now we give the maestro a chance to lead his
21. wonderful sextet through something that he himself
22. contributed to the musical world. Listen to this bunch
23. play something called * * * *

24. MUSIC

25. MAN: Parting usually brings such sweet sorrow, but in this
26. case it brings you something really juicy when it comes
27. to swing music. Maestro Benny Goodman gives his
28. baton the first wave and in a few seconds he'll launch
29. into the last effort for the evening during which the
30. maestro has held the rostrum all by himself, and we

AUGUST 14, 1944

1. must be gentlemen enough to say not bad, not bad at all.
2. But anyway here she comes--"Somebody Stole My Gal."
3. MUSIC "SOMEBODY STOLE MY GAL"--(into theme)
4. MAN: And that's all there is for now friends. This music from
5. home has come to you via the Zero Hour. In just a few
6. seconds the Boss will tell you what comes next. But in
7. the meantime the Music from Home Man says many
8. thanks for listening, and so long for now.
9. MUSIC
10. MAN ANNOUNCER: We've had it sweet and we've had it hot. Now before we
11. surrender ourselves to Betty how about that thought for
12. the day. The Zero Hour calling in the Pacific proudly
13. presents Mopey Dick who's in an awful rut. He's saying
14. the same thing he was saying last night. But that's the
15. way it goes. Sometimes he doesn't even make his
16. average of one thought for the day.
17. MOPEY DICK: Well, just like I was saying to myself a couple a nights
18. ago. A fella gets to thinking some strange things when
19. he's sitting out here on this little island like this. Now
20. you take me for instance. I think of some mighty strange
21. things. You got lots of time to think in a place like
22. this. The days and nights just come before you know it.
23. This morning I carved a little notch in that big log by
24. the spring. Yeh, I remember Robinson Crusoe did
25. something like that, and I guess that's good enough for
26. me too. I always used to say that the way to live life is
27. without a clock or a watch in the doggone place. What
28. do I need a watch for anyhow? I don't care if I miss
29. lunch by a couple of hours. It doesn't matter what time
30. you have it--lunch is lunch. Of course these three other

AUGUST 14, 1944

1. fellows here are sticklers for time. They insist that each
2. meal has to be at a regular time. Well, I let them have
3. their way. But look at what happened to those guys this
4. morning. We were sitting out there on the raft fishing
5. and really having the grandest time sleeping. That's
6. the best part of fishing, the sleeping you can do. Oh, but
7. anyway here we were sitting quiet and peaceful like out
8. under the sun and the tiny waves were just rocking us
9. gently back and forth. And I was dreaming of chicken and
10. Mabel--Yeh, Mabel--that's my wife. And all of a sudden
11. this dope Harry he had to get up and say--Well boys, the
12. sun says it's 12 o'clock so we better get in and have lunch.
13. Now what can you do with a guy like that? Me, I didn't
14. care if we had lunch two hours or three hours late. What's
15. the difference anyway. But those guys just don't know
16. anything. Perhaps it's because I've been out here so
17. much longer than they have. I'm just getting to be a
18. lazy old coot, sitting in the sun all day and doing just
19. nothing. Yeh and * * * * *
20. But then I guess that's life. There's always some guy
21. fussing around trying to do more than nature intended
22. him to do. I guess that's what makes nervous wrecks
23. out of a lot of people. Being in too much of a hurry. I
24. always knew those old Chinese philosophers had the right
25. idea. Yeh, and I remember reading in a book one day,
26. what one of them said--"Don't go through life on a high-
27. spirited, breathless steed for you shall indeed miss the
28. beauty of the wayside. Choose yourself instead a plodding
29. old mule and let him amble along happy, and amuse your-
30. self by gently contemplating the landscape around you."

AUGUST 14, 1944

1. Yeh, I bet I got that all wrong, but anyway that's the
2. general idea. Maybe that's the way the kids at school
3. started calling me Mopey Dick--I always used to mope
4. along and take things easy. Heh, heh. But I sure could
5. have showed them some smoke when Mabel came to
6. school. The whole school certainly sat up and took
7. notice when we trotted up the aisle a year later. Yeh,
8. that was one time I wasn't mopey--But now it's a different
9. sort of thing. The four of us can just sit back here and
10. take things easy. Perhaps till the day all this fighting
11. is over. We don't know how the fighting is going or who
12. else has joined in on the fight. The only way we'll ever
13. know is when one day some ship sticks its nose over the
14. horizon and takes us home. Till then the four of us
15. might as well take it easy and forget about the things
16. like watches and clocks and Emily Post. Yeh, I wonder
17. what Emily would say if she could see us, the four of
18. us running--running around the way nature intended us
19. to do. Ha--all we need is fig leaves. But anyway, what
20. I want to know is why there always has to be some guy
21. ruining things by being in a hurry. I'm not in any hurry
22. to get home. All through the fighting I went through I--
23. I used to wish like everything for a little sunny island
24. like this, where a fellow could sort of warm his back till
25. the war is over,--a little island with some fishes in the
26. water around it and some coconut trees on it and a
27. little room for some wild potatoes and beans to sort of
28. sprout up and * * * * yes, sir. I can remember the
29. names of a lot of people who would give plenty to be here
30. right now, aheh--Why I remember--Oh, Oh, there's Harry.

AUGUST 14, 1944

1. Well, it's baked fish and mashed potatoes again tonight
2. so I guess I better get along.
3. MAN
ANNOUNCER: Thank you Mr. Dick. That was Mopey Dick, but please
4. don't mind him. He is just that way. This is the Zero
5. Hour calling in the Pacific. Now for the delight of the
6. lonesome lads we bring you Betty.
7. BETTY: Greetings and salutations to my dear friends in Saipan
8. and all points north and souther in the Pacific. This
9. is Betty and company with classic music for classic
10. minds to bring you joyous relief from the tortuous
11. twisting of the Music From Home Man, and in case the
12. transition from his noise to my music proves too much
13. for you, my first selection for you tonight is sort of an
14. in between number and a surprise too. But here it is at
15. any rate, so are you ready?
16. MUSIC "TOYLAND"
17. BETTY: And that was the Victor Light Opera Company under the
18. direction of Nathaniel * * * * singing selections from
19. Babes in Toyland. And now for something really
20. classical, I've chosen part 3 of Tchaikowsky's "Nut-
21. cracker Suite * * * * played by Leopold Stokowski and
22. the Philadelphia Symphony Orchestra. Pleased classic
23. fans?
24. MUSIC
- 25.
- 26.
- 27.
- 28.
- 29.
- 30.

WRITTEN TRANSCRIPTION OF RECORDING,
RECORDED BY WILLIAM A. SODARO, IN
WASHINGTON, D. C., BETWEEN 0500 HOURS
E.W.T. AND 0600 HOURS E.W.T. ON SEPTEMBER
15, 1944

NOTE: * * * * indicates unintelligible dialogue
-- indicates pause

1. MUSIC
2. ANN: Hello to the * * * * fighting orphans of the Pacific.
3. This is of course your favorite playmate Orphan Ann
4. with Friday's invitation to listen to good music--in
5. other words--music for you. It's been so long since
6. you boneheads have listened to one single orchestra in
7. one single city--let alone dance to one. I'm getting you
8. boys into condition,--just in case mind you. Never know
9. when you'll be able to afford the price for a cover charge,
10. flowers, and so forth. A nice orchestra is all set to
11. entertain you.
12. MUSIC
13. ANN: Yes, that man from south of the Mason-Dixon line--
14. Kay Kyser and Company of entertainers. He's starting
15. off * * * * those sweethearts of love songs Jinny Simms
16. and Harry Babbitt.
17. MUSIC "My Mother Would Love You."
18. ANN: That was enough wasn't it orphans. Keep those * * * *
19. you've got one more * * * * the next one features Harry
20. Babbitt on the vocal in the song "Day in Day Out."
21. MUSIC "Day in Day Out"
22. ANN: Yes, day in, day out. Coconuts and palm trees are all
23. right for tourists, but a change in scenery wouldn't
24. hurt you boys any. I'm game. Let's change our
25. calling cards. * * * * while Sassy Sully Mason gets

SEPTEMBER 15, 1944

1. going with a little number entitled "Holy Smoke!
2. Can't You Take a Joke?" It all depends, Sully,
3. What's the joke.
4. MUSIC "Holy Smoke, Can't You Take a Joke"
5. ANN: * * * * please? Thank you. Stop jumping around.
6. You don't have to * * * * with a fury. Relax. Take
7. it easy. Here's Jinny Simms * * * * and beautifully
8. sings one of the popular numbers from "Du Barry
9. Was ALady." You'll need this * * * *
10. MUSIC "Do I Love You, Do I"

APPENDIX XII

JAPAN)
CITY OF TOKYO) ss:
AMERICAN CONSULAR SERVICE)

I, Glen Bruner, Consul of the United States of America at Tokyo, Japan, duly commissioned and qualified, do hereby certify that Paul M. McNEISH, whose true signature is subscribed to each of the attached documents in certification of correctness and truth of copy, is, on this eleventh day of May, A.D. 1949, a Captain of Infantry, United States Army, on duty at Sugamo Prison, Tokyo, Japan, and that faith and credit are due to his official acts as such officer.

IN WITNESS WHEREOF I have here-
unto set my hand and the seal of the
Consulate at Tokyo, Japan, this eleventh
day of May, A.D. 1949.

Glen Bruner

Glen Bruner
Consul of the United States of America

Service No. 857
Tariff No. 38
No fee prescribed

ADV ECH HQ 35th AAA GROUP
XI CORPS STOCKADE APO 503

Toguri, Iva Ikoko
Name

Civilian
rank

17 October 1945
date interned

INVENTORY OF ARTICLES ON OR WITH PRISONER

1. Clothing

1 Drawers, Wool
4 Handkerchiefs, Cotton
1 Pajamas
1 Shoes
1 Socks, Cotton
1 Towel, Bath
1 Blouse, silk
1 Skirt, Woolen
1 Foot Warmers, pr. wool
1 Sweater
2 Stockings, silk
2 Panties, rayon
1 Scarf
1 Jacket
1 Blouse, cotton

2. Toilet Articles

1 Comb
1 Soap w/case
1 Toothbrush
1 Mentholatum
1 Cup, drinking
1 Vaseline
2 Lipstick
1 Case w/aspirin
1 Bag, cloth, for
toilet articles
1 Nail file

3. Miscellaneous

1 Glasses, eye
w/case
1 Pencils
1 Canvas Bag
1 Shoe horn
1 Compact
1 Case w/pins
3 Stamp
1 Badge #453
1 Stamp w/case
1 Purse

4. Held in Office:
1 envelope, misc papers.

5. Currency & Valuables - On Person

1 Cameo ¥ 16.79
1 Crucifix w/ chain

HELD IN SAFEKEEPING

1 watch, wrist, women's, gold "Gruen"
w/o strap.
1 watch, wrist, silver w/band.
¥400.00

CERTIFICATE NO. 1

17 October 1945

I certify that the amounts and articles as listed above are correct.

s/ Iva Ikoko Toguri
Prisoner's Signature

Anton Lattal Jr, Major, CAC
Officer's Signature

A TRUE COPY:

Paul M. McNeish
PAUL M. McNEISH
Captain Inf
Adjutant

ADV ECH HQ 35th AAA GROUP
XI CORPS STOCKADE, APO 503

RECORD OF CURRENCY AND VALUABLES IN SAFEKEEPING

Toguri, Iva Ikoko

Civilian

17 October 1945

1. Currency.

<u>DEMONINATIONS</u>	<u>QUANTITY</u>	<u>VALUE</u>
Notes		
100 ¥	4	¥400.00

TOTAL: ¥400.00

2. Valuables.

1 Watch, wrist, woman's gold "Gruen" w/o band.
1 Watch, wrist, woman's silver w/ band - given to husband
18 Dec 45

CERTIFICATE NO. 1

17 Oct 1945

I certify that the amounts and articles as listed above are correct.

Iva Ikoko Toguri
Prisoner's Signature

Anton Lattai Jr, Major, CAC
Officer's Signature

A TRUE COPY:

Paul M. McNeish

PAUL M. McNEISH
Captain Inf
Adjutant

ADV ECH HQ 35th AAA GROUP
XI CORPS STOCKADE APO 503

27 Oct 1945

ADDITIONAL ITEMS DELIVERED TO PRISONERS

I certify that I have delivered this date the following listed items to Iva Toguri who is interned at this stockade.

(List of Items)

Tissue Paper	1 pr Canvas Shoes	1 Mirror
2 Sweaters	1 Jar Pomade	1 Comb
2 Panties	1 Jar Face Cream	1 Towel
3 Pcs Under Garments	1 Jar Face Powder	2 Slips (1 wool-1 rayon)
3 Pr Stockings	2 Pr White Socks	3 Coat Hangers
1 Pr Foot Covers	2 Pr Slacks	8 Handkerchiefs
1 Prayer Book	1 Leather Belt	1 Rosary
1 Can "Quest"	2 Shirts	1 Eye Brow Plucker
Sanitary Pads - 1 San Belt	2 Suit Pajamas	
1 Suitcase	1 Jacket & Belt	

s/ Joseph C. Altman, 1st Lt., Inf
Witnessing Officer

s/ P. D'Aquino
Signature of person making
delivery

I certify that I have received this date the above listed items in good condition.

s/ Joseph C. Altman, 1st Lt., Inf
Witnessing Officer

s/ Iva Toguri
Prisoner's Signature

The following items are classified as non-permissible and are being retained for safekeeping:

(list)

1 Bottle Anacin
1 Bottle Hydros-Cole-Compound

A TRUE COPY:

Paul M. McNeish
PAUL M. McNEISH
Captain Inf
Adjutant

ADV ECH HQ 35th AAA GROUP
XI CORPS STOCKADE, APO 503

14 Nov 1945

ADDITIONAL ITEMS DELIVERED TO PRISONERS

I certify that I have delivered this date the following listed items to Iva Tagori who is interned at this stockade.

(list items)

1 bath towel
3 pr socks
1 pr wool stockings
1 scarf
2 wool sweaters
1 vest
1 pr slacks
2 doz oranges

1 bible
1 bottle hair oil
1 box talcum powder
1 jar vaseline
1 jar cold cream
2 pieces patching material
1 handkerchief
1 small suitcase

s/ Lester W. Abrams
Witnessing Officer

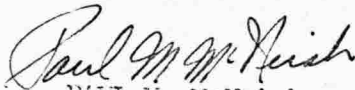
s/ P. d'Aquino
Signature of person
making delivery

I certify that I have received this date the above listed items in good condition.

R. C. Besler, Major, CAC
Witnessing Officer

Iva Toguri
Prisoner's signature

A TRUE COPY:


PAUL E. McNeish
Captain Inf
Adjutant

ADV ECH HQ 35th AAA GROUP
XI CORPS STOCKADE, APO 503

ADDITIONAL ITEMS DELIVERED TO PRISONERS

7 Nov 1945

I certify that I have delivered this date the following listed items to Iva Toguri who is interned at this stockade.

(List Items)

1 sweater	fruit
1 jacket	flowers
1 vest	1 pr scissors
1 pr gloves	
1 pr stockings	
1 pr slippers	
1 sewing kit	
1 book	

s/

Witnessing Officer

s/ P. d'Aquino

Signature of person making
delivery

I certify that I have received this date the above listed items in good condition.

s/

Witnessing Officer

s/ Iva Toguri

Prisoner's Signature

The following items are classified as non-permissible and are being retained for safekeeping:

(List)

1 Pr Scissors.

s/

Officer's Signature

A TRUE COPY:

Paul M. McNeish
PAUL M. McNEISH
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

23 Nov 45

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) ~~(Red-West)~~ ~~(Red-East)~~ Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva, TOGURI to the custody of the guard as specified in 1st Ind.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ Joseph P. Graeve

1st Ind

Sugamo Prison Guard, APO 503, _____.

TO: Officer in Charge (Blue) ~~(Red-West)~~ ~~(Red-East)~~ Area.

1. Deliver the person named above to the temporary custody of T/5 Harry M. Moore who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Mario G. Pavline

(Officer of the Guard)

Received: Transfer to Guard

Received: Transfer from Guard

1420 s/ T/5 Harry M. Moore
(time) (signature)

1455 s/ Sgt R. L. Beswick
(time) (signature)

A TRUE COPY:

Paul M. McHeish
Paul M. McHeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

24 Nov 1945
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva, TOGURI to the custody of the guard as specified in 1st Ind.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ John H. Bassart, 1st Lt.

1st Ind

Sugamo Prison Guard, APO 503, _____.

TO: Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. Deliver the person named above to the temporary custody of T/5 Walter Rutkowski who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Mario G. Pavline
(Officer of the Guard)

<u>Transfer to Guard</u>		<u>Transfer from Guard</u>	
Received:		Received:	
0900	s/ Walter Rutkowski	1030	s/ Sgt D. G. Cromrath
(time)	(signature)	(time)	(signature)

A TRUE COPY:

Paul H. McNeish
Paul H. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

27 Nov 1945

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (Red West) (Red East) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva, TOGURI to the custody of the guard as specified in 1st Ind.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ John H. Bassart
Adjutant

1st Ind

Sugamo Prison Guard, APO 503, _____.

TO: Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. Deliver the person named above to the temporary custody of Pfc Montague who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Chas H. L. Davis, 1st Lt. CAC
(Officer of the Guard)

Transfer to Guard
Received: _____

Transfer from Guard
Received: _____

0920
(time) s/ Montague
(signature)

1125 s/ S/Sgt John Gallagher, Prov Sgt
(time) (signature)

A TRUE COPY:

Paul M. McLeish
Paul M. McLeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

12 Dec 45
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva TOGURI to the custody of the guard as specified in 1st Ind.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ Joseph F. Graeve, 1st Lt.

1st Ind

Sugamo Prison Guard, APO 503, 12 Dec 1945.

TO: Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area.

1. Deliver the person named above to the temporary custody of T/S Barbera who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Charles T. Folkerts, 1st Lt, CAC
(Officer of the Guard)

Transfer to Guard
Received:

Transfer from Guard
Received:

1350 s/ Louis Barbera
(time) (signature)

1500 s/ Lax Berner, 1st Lt, Inf
(time) (signature)

A TRUE COPY:

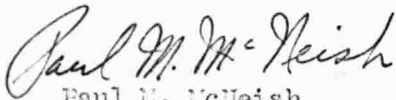
Paul M. McLeish
Paul M. McLeish
Captain Inf
Adjutant

13 Dec 1945

Received this date from 1st Lt J. F. Grawe, 1 Gruen wrist
watch and 1 wrist watch without name, belonging to Iva Toguri who is
imprisoned at Sugamo Prison.

s/ P. d'Aquino

A TRUE COPY:



Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

21 Dec 45

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva. TOGURI to the custody of the guard as specified in 1st Ind.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ J. Graeve, 1st Lt, CAC

1st Ind

Sugamo Prison Guard, APO 503, 21 Dec 1945.

TO: Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. Deliver the person named above to the temporary custody of Pfc Schurman who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Charles Folkerts, 1st Lt, CAC
(Officer of the Guard)

Received: Transfer to Guard

Received: Transfer from Guard

1005 s/ Pfc H. Schurman
(time) (signature)

1055 s/ Sgt John Gallagher
(time) (signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS SUGAMO PRISON
APO 181

Medical Record of Prisoner

1. Toguri, Iva, Civilian
2. Present Complaint: None
3. Physical Examination:
 - a. General appearance: Good
 - b. EENT: Neg
 - c. Heart: Normal
 - d. Lungs: Normal
 - e. Abdomen: Neg
 - f. Genitourinary: not examined
 - g. Hemorrhoids: not examined
 - h. Hernia: not examined
 - i. Skin: clear
 - j. Extremities: normal
 - k. Neuromuscular: normal
4. Remarks: None
5. Immunization:
Smallpox: 25 Oct 46
Typhus: 25 Oct 47

s/ W. B. Blake
t/ W. B. BLAKE
Capt MC

A TRUE COPY:

Paul M. McNeish
PAUL M. McNEISH
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

25 Dec 1945

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva TOGURI to the custody of the guard as specified in 1st Ind.,

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. The form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ Joseph F. Graeve

1st Ind

Sugamo Prison Guard, APO 503, 25 Dec 45.

TO: Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area

1. Deliver the person named above to the temporary custody of Pfc Richard Grime who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Thurloc Tollyson, 1st Lt. CAC
(Officer of the Guard)

Transfer to Guard

Transfer from Guard

Received:

Received:

1315 s/ Pfc Richard L. Grime
(time) (signature)

1355 s/ Sgt Robert L. Desnick
(time) (signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

9 Jan 45
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) ~~(Red-West)~~ ~~(Red-East)~~-Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of TOGURI, Iva to the custody of the guard as specified in 1st Ind.,

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. The form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ J. F. Graeve

1st Ind

Sugamo Prison Guard, APO 503, 9 Jan 1946.

TO: Officer in Charge (Blue) ~~(Red-West)~~ ~~(Red-East)~~ Area

1. Deliver the person named above to the temporary custody of T/5 H. Garst who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Lester W. Abrams, 1st Lt. CAC
(Officer of the Guard)

Transfer to Guard

Transfer from Guard

Received:

Received:

0920 s/ T/5 H. Garst
(time) (signature)

1000 s/ Sgt R. L. Beswick
(time) (signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 503

4 Jan 1946

SUBJECT: TEMPORARY RELEASE FROM PRISON

THROUGH: The Officer of the Guard

TO: The Officer-In-Charge (Blue) Area.

1. Pursuant to authority Ltr Temp Release Hqs 80th MET, CIC
Unit APO 500, 3 Jan 46 and when these instructions are confirmed by
telephone from the Officer of the Guard, deliver the person of Iva Toguri
to the custody of the guard as specified in 1st Indorsement.

2. The Officer of the Guard will assume responsibility for the
custody of the prisoner until he obtains Receipt No. 2, 2nd Lt Irving
Hardesty Jr. CIC who is authorized to receive and remove the prisoner
from the prison. Upon return of the prisoner, the Officer of the Guard
will again assume the responsibility for his custody by issuing Receipt
No. 4 and will retain custody until the prisoner is returned to your area
and Receipt No. 3 is accomplished.

BY ORDER OF COLONEL HARDY:

s/ John H. Bassart, 1st Lt.
Adj - Assistant Adjutant

1st Ind

SUGAMO PRISON GUARD, APO 503, 4 January 1946

TO: The Officer in Charge, (Blue) area.

1. Deliver the prisoner to the custody of Pfc Bass, who will ack-
nowledge with Receipt No.1.

2. I assume responsibility for the prisoner while in custody of the
guard.

s/ R. T. Townsend
OFFICER OF THE GUARD

RECEIPT NO. 3

1400 4 Jan 1946
(time) (date)

Return of prisoner Iva Toguri to
cell area is acknowledged.

s/ Max Derner
(Name)

1st Lt Inf, 01056335

RECEIPT NO. 2

0955 4 Jan 1946
(time) (date)

Received Iva Toguri who is tem-
porarily released from Sugamo
Prison to my custody.

s/ Irving Hardesty Jr., CIC
(name)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

16 Jan 46
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva TOGURI to the custody of the guard as specified in 1st Ind.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ John H. Bassart, 1st Lt.

1st Ind

Sugamo Prison Guard, APO 503, 16 Jan 46.

TO: Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. Deliver the person named above to the temporary custody of Cpl Wilkinson who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Leo P. Quinn, 1st Lt. Inf
(Officer of the Guard)

Received: Transfer to Guard
1350 s/ Cpl Wilkinson
(time) (signature)

Received: Transfer from Guard
1455 s/ Cpl Ralph E. Boniasik
(time) (signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

24 Jan 46

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of TOGURI, Iva Ikuko to the custody of the guard as specified in 1st Ind.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ John H. Bassart, 1st Lt

Adjutant

1st Ind

Sugamo Prison Guard, APO 503, 24 Jan 46.

TO: Officer in Charge (Blue) (~~Red East~~) (~~Red East~~) Area.

1. Deliver the person named above to the temporary custody of Pfc Albertson who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Charles T. Folkerts
(Officer of the Guard)
1st Lt, CAC

Received: Transfer to Guard

Received: Transfer from Guard

0930 s/ Pfc Albertson
(time) (signature)

1030 s/ Cpl Ralph E. Beniasih
(time) (signature)

A TRUE COPY:

Paul H. McNeish
Paul H. McNeish
Captain
Adjutant Inf.

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

27 Feb 46

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva, TOGURI to the custody of the guard as specified in 1st Ind., for the purpose of Visit.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. The form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL PARDY:

s/ Raymond D. Meyers, 1st Lt, Inf

1st Ind

Sugamo Prison Guard, APO 503, 27 Feb 46.

TO: Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area

1. Deliver the person named above to the temporary custody of Hill who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Gerard L. Lamber, 2nd Lt.
(Officer of the guard)

Transfer to Guard

Transfer from Guard

Received:

Received:

1340 s/ Hill
(time) (signature)

1420 s/ J. Degenaar, 2nd Lt, Inf
(time) (signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

Mar 18 1946

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva, TOGURI to the custody of the guard as specified in 1st Ind. for the purpose of Dentist.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ Raymond Dnoyers, 1st Lt. Inf.

1st Ind

Sugamo Prison Guard, APO 503, Mar 18 1946.

TO: Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area.

1. Deliver the person named above to the temporary custody of Wilcome who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Frederick J. Snow, 2nd Lt

(Officer of the Guard)

Received: Transfer to Guard

Received: Transfer from Guard

1310 s/ Francis J. Wilcome
(time) (signature)

1400 s/ Birignos
(time) (signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

20 Mar 46

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red-West~~)-(~~Red-East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of Iva, TOGURI to the custody of the guard as specified in 1st Ind., for the purpose of Dentist.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ Joseph Groove, 1st Lt, CAC

1st Ind

Sugamo Prison Guard, APO 503, 20 Mar 46

TO: Officer in Charge (Blue) (~~Red-West~~)-(~~Red-East~~) Area.

1. Deliver the person named above to the temporary custody of Pfc Cathcart who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Dennis A. Matthews, 2nd Lt, Inf
(Officer of the Guard)

Transfer to Guard
Received:

1335 s/ Cathcart
(time) (signature)

Transfer from Guard
Received:

1400 s/ Sgt Mannino
(time) (signature)

A TRUE COPY:

Paul H. McLeish
Paul H. McLeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

Mar 22 1946

(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of ROBERT L. Iva to the custody of the guard as specified in 1st Ind., for the purpose of Dentist.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ J. Gruene, 1st Lt, CAC

1st Ind

Sugamo Prison Guard, APO 503, Mar 22 46

TO: Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. Deliver the person named above to the temporary custody of Sgt Ontto who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Houston H. Broseous, 2nd Lt, Inf
(Officer of the Guard)

Received: Transfer to Guard

Received: Transfer from Guard

1347 s/ Sgt Ontto
(time) (signature)

1440 s/ Dirignes
(time) (signature)

A TRUE COPY:

Paul H. McNoish
Paul H. McNoish
Captain Inf
Adjutant

#12383

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

Apr 29 1946
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red-West~~)-(~~Red-East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of TOCUNT, Iva to the custody of the guard as specified in 1st Ind., for the purpose of interrogation by Mr. Tillman.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ Houston M. Broseous, 2nd Lt Inf.

1st Ind

Sugamo Prison Guard, APO 503, Apr 29 1946.

TO: Officer in Charge (Blue) (~~Red-West~~)-(~~Red-East~~) Area.

1. Deliver the person named above to the temporary custody of Partin who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ G. L. Pawbeck, 2nd Lt.
(Officer of the Guard)

Transfer to Guard
Received:

Transfer from Guard
Received:

1000
(time) s/ Partin
(signature)

1150
(time) s/ Sgt Lannino
(signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

U. S. DIST. CT. N. D. CAL.

No. 31712 R

Left EX.

7-76-49

John M. Smith
John M. Smith
Clerk

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

Apr 30 1946
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of TOGURI, Iva to the custody of the guard as specified in 1st Ind., for purpose of interrogation by Mr. Tillman.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ T. Laman, 2nd Lt. CMP

1st Ind

Sugamo Prison Guard, APO 503, APR 30 1946.

TO: Officer in Charge (Blue) ~~(Red West)~~ ~~(Red East)~~ Area.

1. Deliver the person named above to the temporary custody of Pfc Roshe who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ J. Degenaar, 2nd Lt Inf
(Officer of the Guard)

Received: Transfer to Guard

Received: Transfer from Guard

1425 s/ Pfc Roshe
(time) (signature)

1605 s/ Sgt Mannino
(time) (signature)

A TRUE COPY:

Paul H. McNeish
Paul H. McNeish
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

Apr 30 1946
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) ~~(Red-West)~~ ~~(Red-East)~~ Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of TOGURI, Iva to the custody of the guard as specified in 1st Ind., for the purpose of interrogation by Mr. Tillman.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ T. Laman, 2nd Lt, CMP

1st Ind

Sugamo Prison Guard, APO 503, Apr 30 1946.

TO: Officer in Charge (Blue) ~~(Red-West)~~ ~~(Red-East)~~ Area.

1. Deliver the person named above to the temporary custody of Pfc Thornton who will acknowledge receipt in the space provided below (left).

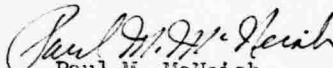
2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Dennis A. Matthews, 2nd Lt Inf
(Officer of the Guard)

<u>Transfer to Guard</u>		<u>Transfer from Guard</u>	
Received:		Received:	
<u>0930</u> (time)	<u>s/ Thornton</u> (signature)	<u>1140</u> (time)	<u>s/ Sgt Mannino</u> (signature)

A TRUE COPY:


Paul H. McNeish
Captain Inf
Adjutant

HEADQUARTERS 138th AAA GROUP
SUGAMO PRISON
APO 181

RECEIPT FOR VALUEABLES

11 June 1946

Received from: D'AQUINO, PHILIP

Valuable Article: One (1) Ladies Wrist Watch.

For: TOGURI, Iva (Blue Cell)

RECEIPT OF DELIVERY

11 June 1946

I have received the valuable article or articles listed above.

s/ Iva Toguri

Blue Cell

A TRUE COPY:

Paul M. McNeish

PAUL M. McNEISH
Captain Inf
Adjutant

HEADQUARTERS SUGAMO PRISON
APO 181

RECEIPT FOR VALUABLES

21 June 1946

Received from: TOGURI, Iva (Blue Area)

Valuable Article: 1 wrist watch "Citizen"

For: KIDO, Mamiko

RECEIPT OF DELIVERY

21 June 1946

I have received the valuable article or articles listed above.

s/ Seal _____

A TRUE COPY:

Paul M. McEnish

PAUL M. McENISH
Captain Inf
Adjutant

HEADQUARTERS 35th AAA GROUP
SUGAMO PRISON
APO 181

Jul 16 1946
(Date)

SUBJECT: Temporary Transfer of Custody.

THRU: The Officer of the Guard

TO: The Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. When these instructions are confirmed by telephone from the Officer of the Guard, deliver the person of TOGURI, Iva to the custody of the guard as specified in 1st Ind., for the purpose of dental work by Lt. Bellevue.

2. The Officer of the Guard will assume responsibility for the custody and safety of the person named above during temporary transfer of custody.

3. This form will be used for the movement of prisoners within the confines of the prison.

BY ORDER OF COLONEL HARDY:

s/ Harry Suddart, 1st Lt, Inf

1st Ind

Sugamo Prison Guard, APO 503, July 16, 1946.

TO: Officer in Charge (Blue) (~~Red West~~) (~~Red East~~) Area.

1. Deliver the person named above to the temporary custody of Bryant who will acknowledge receipt in the space provided below (left).

2. I assume responsibility for the custody and safety of the prisoner.

3. Upon the return of the prisoner, receipt will be acknowledged in the space provided below, right, and this form surrendered to the person making delivery.

s/ Sgt Godfrey Koepplin
(~~Officer of the Guard~~)

Received: Transfer to Guard

Received: Transfer from Guard

1050 s/ Bryant
(time) (signature)

1123 s/ Guy A. Bernard, 1st Lt, Inf
(time) (signature)

A TRUE COPY:

Paul M. McNeish
Paul M. McNeish
Captain Inf
Adjutant

HEADQUARTERS SUGAMO PRISON
APO 181

No. 32

16 October 1946

SUBJECT: TEMPORARY TRANSFER OF CUSTODY

TO: OFFICER in CHARGE (Blue)

1. Deliver prisoner Toguri, Iva, Blue A8 to the custody of Moore a member of the guard for the purpose of escorting this prisoner to the Dental Clinic for Dental Work by Dentist.

2. The Officer of the Guard will assume responsibility for the custody and safety of this prisoner for the duration of this temporary transfer of custody.

3. This form will be used only for movements of prisoners within the confines of the prison.

BY ORDER OF COLONEL CRAWY:

s/ A. E. Lounsbery
Prison Personnel Officer

*To be filled in by Registrar

Maj. CMP
(rank) (arm or Ser)

Transfer to Guard

Receipt of the above prisoner is acknowledged.

1110 L. B. Moore
(time) (Guard)

Transfer to Jailer

Receipt of the above prisoner is acknowledged.

1145 S/Sgt Henncke
(time) (Guard)

A TRUE COPY:

Paul M. McNeish
PAUL M. McNEISH
Captain Inf
Adjutant

HEADQUARTERS SUGAMO PRISON
APO 181

No. 44

18 Oct 1946

SUBJECT: TEMPORARY TRANSFER OF CUSTODY

TO: OFFICER in CHARGE (Blue)

1. Deliver prisoner Toguri, Iva, Blue A8 to the custody of Schut, a member of the guard for the purpose of escorting this prisoner to the Dentist for Dental Work by Capt Blake.

2. The Officer of the Guard will assume responsibility for the custody and safety of this prisoner for the duration of this temporary transfer of custody.

3. This form will be used only for movements of prisoners within the confines of the prison.

BY ORDER OF COLONEL CRARY:

s/ A. E. Lounsbery
Prison Personnel Officer

*To be filled in by Registrar

Maj. CMP
(rank) (arm or Ser)

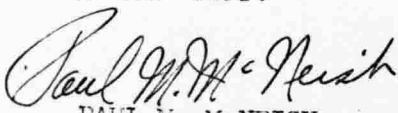
Transfer to Guard
Receipt of the above prisoner is acknowledged.

1450 Schut
(time) (Guard)

Transfer to Jailer
Receipt of the above prisoner is acknowledged.

1527 S/Sgt Chas Henneke
(time) (Jailer)

A TRUE COPY:


PAUL H. McNEISH
Captain Inf
Adjutant

HEADQUARTERS SUGANO PRISON
APO 131

No. 44

25 October 1946

SUBJECT: TEMPORARY TRANSFER OF CUSTODY

TO: OFFICER in CHARGE (blue)

1. Deliver prisoner Toguri, Iva, Blue A3 to the custody of Johnson a member of the guard for the purpose of escorting this prisoner to the Hospital SP for Dental Work by Captain Blake.

2. The Officer of the Guard will assume responsibility for the custody and safety of this prisoner for the duration of this temporary transfer of custody.

3. This form will be used only for movements of prisoners within the confines of the prison.

BY ORDER OF COLONEL GRANT:

s/ A. E. Lounsbury
Prison Personnel Officer

*To be filled in by Registrar

Maj. CHP
(rank) (arm or Ser)

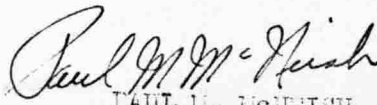
Transfer to Guard
Receipt of the above prisoner is acknowledged.

1720 Johnson
(time) (Guard)

Transfer to Jailer
Receipt of the above prisoner is acknowledged.

1750 S/Sgt Chas Henneke
(time) (jailer)

A TRUE COPY:


PAUL M. McELISH
Captain Inf
Adjutant

APPENDIX XIII

In the Southern Division of the United States District Court

FOR THE

Northern District of California

FIRST DIVISION

171
FILED

SEP 29 1949
at 6:03 P.M.

C. W. CALLEFAM, CLERK

No. 31712-R

THE UNITED STATES OF AMERICA

vs.

IVA IKUKO TOGURI D'AQUINO

We, the Jury, find as to the defendant..... at the bar as follows:

Guilty

John Mann
Foreman.

170

FILED

SEP 29 1949
at 6:03 P.M.

C. W. CALBREATH, CLERK

By *J. W. Walsh*
Deputy Clerk

IN THE SOUTHERN DIVISION OF THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
IVA IKUKO TCGURI D'AQUINO,
Defendant.

No. 31712-R

TREASON (Title 18 U.S.C.
Sec. 1.)

SPECIAL FINDINGS BY THE JURY

In accordance with the instruction already given by
the Court, the jury makes the following findings:

I.

Did the jury find overt act 1., as it is laid in
the indictment, a treasonable act committed by the
defendant D'Aquino with an intent to betray the
United States? (Answer, in writing, yes or no).

10 No

II.

Did the jury find overt act 2., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

10 No

III.

Did the jury find overt act 3., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

IV.

Did the jury find overt act 4., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

V.

Did the jury find overt act 5., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

VI.

Did the jury find overt act 6., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

Yes

VII.

Did the jury find overt act 7., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

VIII.

Did the jury find overt act 8., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

A San Francisco, California
Sept 29, 1949.

John Mann
Foreman

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
IVA IKUKO TOGURI D'AQUINO,
Defendant.

No. 31712 - R

248
FILED

OCT 31 1949

C. W. CALBREATH, CLERK

CERTIFICATE OF CLERK TO SUPPLEMENT TO
RECORD ON APPEAL.

I, C. W. CALBREATH, Clerk of the District Court of the
United States for the Northern District of California, do
hereby certify that the documents listed below, are the
originals filed in this Court, in the above-entitled case,
and that they constitute the Supplement to the Record on
Appeal herein, to-wit:

54 Volumes of Reporter's Transcripts

Reporter's Transcript for September 20 and 21, 1949
- Argument

Reporter's Transcript for September 22 and 23, 1949
- Argument

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed the seal of said
District Court this 29th day of
October, 1949.

(SEAL)

C. W. CALBREATH, Clerk

By M.E. Van Buren

Deputy Clerk.

Received the above Reporter's Transcripts this ^{31st} 29th day of
October, 1949

W. E. Wilson

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN
DISTRICT OF CALIFORNIA.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
IVA IKUKO TOGURI D'AQUINO,
Defendant.

No. 31712 - R

248
FILED

OCT 31 1949

C. W. CALBREATH, CLERK

CERTIFICATE OF CLERK TO SUPPLEMENT TO
RECORD ON APPEAL.

I, C. W. CALBREATH, Clerk of the District Court of the
United States for the Northern District of California, do
hereby certify that the documents listed below, are the
originals filed in this Court, in the above-entitled case,
and that they constitute the Supplement to the Record on
Appeal herein, to-wit:

54 Volumes of Reporter's Transcripts

Reporter's Transcript for September 20 and 21, 1949
- Argument

Reporter's Transcript for September 22 and 23, 1949
- Argument

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed the seal of said
District Court this 29th day of
October, 1949.

(SEAL)

C. W. CALBREATH, Clerk

By M.E. Van Buren

Deputy Clerk.

Received the above Reporter's Transcripts this ^{31st} 29th day of
October, 1949

W. E. Wilson

"SPECIAL FINDINGS BY THE JURY"

In accordance with the instruction already given by the Court, the jury makes the following findings:

I.

Did the jury find overt act 1., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

II.

Did the jury find overt act 2., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

III.

Did the jury find overt act 3., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

IV.

Did the jury find overt act 4., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

V.

Did the jury find overt act 5., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

VI.

Did the jury find overt act 6., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

Yes

VII.

Did the jury find overt act 7., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

VIII.

Did the jury find overt act 8., as it is laid in the indictment, a treasonable act committed by the defendant D'Aquino with an intent to betray the United States? (Answer, in writing, yes or no).

No

San Francisco, California
Sept. 29, 1949.

Signed/ John Mann
/s/ Foreman."

The jury upon being asked if said verdict and Special Findings were its verdict and Special Findings, each juror replied that it was. The jury was polled. Ordered that the jury be discharged from further consideration hereof and be excused. On motion of Mr. Collins, it is ordered that this case be continued to October 6, 1949 for judgment.

2
DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

AT A STATED TERM of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 19th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

(PRESENT: The Honorable MICHAEL J. ROCHE, DISTRICT JUDGE

UNITED STATES OF AMERICA

VS.

IVA IKUKO TOGURI D'AQUINO

NO. 31712

(Minute order denying motion to strike certain testimony; to strike U.S. Exhibits Nos. 2 and 15; to dismiss Indictment; and motion for acquittal.)

The defendant, the attorneys and the jurors impanelled herein being present as heretofore, the further trial of this case was this day resumed. Frances Roth, Rafael Velasquez, Sr., and Rafael Velasquez, Jr., were sworn and testified on behalf of the United States. Mr. Knapp introduced in evidence and filed U.S. Exhibits Nos. 63 - 75. The United States rested its case in rebuttal. Both sides rested. The attorneys for the defendant made the following motions: to strike certain testimony; to strike U. S. Exhibits numbered 2 and 15; to dismiss the indictment; and motion for acquittal. After hearing the arguments of the attorneys, it is Ordered that each of said motions be denied. It is Ordered that this case be continued to September 20, 1949 at 10 o'clock A.M. for further trial, and the jury after being duly admonished by the Court was excused until said time.

DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF CALIFORNIA
~~SOUTHERN DIVISION~~

AT A ~~STATED~~ TERM of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 26th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

(PRESENT: The Honorable MICHAEL J. ROCHE, DISTRICT JUDGE

UNITED STATES OF AMERICA)

VS.)

NO. 31712

IVA IKUKO TOGURI D'AQUINO)

(Minute Order re: Court's instruction to jury; Aileen McNamara, alternate juror, excused from further service; Marshal instructed to provide meals and lodging for jurors and two deputy marshals, etc.)

The defendant, the attorneys, and the jurors impanelled herein being present as heretofore, further trial of this case was this day resumed. After hearing the instructions of the Court, the jury at 11:43 A.M. retired to deliberate upon its verdict. It is Ordered that alternate juror Aileen McNamara be excused from further service. It is ordered that the U. S. Marshal furnish meals and lodgings for the jurors and two Deputy Marshals. At 2:41 P.M. the jury returned into the Courtroom, requested and received the written instructions of the Court, by stipulation. At 2:44 P.M. the jury again retired to deliberate upon its verdict. At 11:20 P.M. the jury retired for the night. Ordered case continued to September 27, 1949 for further trial.

DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

AT A STATED TERM of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 27th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

(PRESENT: The Honorable MICHAEL J. ROCHE, DISTRICT JUDGE

(UNITED STATES OF AMERICA)	
VS.)	NO. 31712
IWA IKUKO TOGURI D'AQUINO)	

(Minute order - re portions of transcript and exhibit requested by and delivered to jury; etc.)

The defendant, the attorneys, and the jurors impanelled herein being present as heretofore, the further trial of this case was this day resumed. At 11:42 A.M. the jury returned into Court, requested and received certain portions of the transcript. At 11:46 A.M. the jury again retired to deliberate upon its verdict. At 2:35 P.M. the jury returned into Court, requested and received certain portions of the transcript. At 2:36 P.M. the jury again retired to deliberate upon its verdict. At 3:56 P.M. the jury returned into Court, requested and received U.S.Exhibit No. 15. At 3:58 P.M. the jury again retired to deliberate upon its verdict. At 10:15 P.M. the jury retired for the night. Ordered case continued to September 28, 1949 for further trial.

DISTRICT COURT OF THE UNITED STATES
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

AT A STATED TERM of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Thursday, the 29th day of September, in the year of our Lord one thousand nine hundred and forty-nine.

(PRESENT: The Honorable MICHAEL J. ROCHE, DISTRICT JUDGE

~~UNITED STATES OF AMERICA~~

VS.

NO. 31712

~~IYA IKUKO TOGURI D'AQUINO~~

(Minute order - re Jury requesting and receiving certain volumes of testimony, and further instructions of the Court; Jury's verdict & Special Findings, etc.)

The defendant, the attorneys, and the jury impanelled herein being present as heretofore, the further trial of this case was this day resumed. At 11:40 A.M. the jury returned into Court, requested and received certain volumes of testimony. At 11:43 A.M. the jury again retired to deliberate upon its verdict. At 5:38 P.M. the jury returned into Court, requested and received further instructions. At 5:40 P.M. the jury again retired to deliberate upon its verdict. At 6:04 P.M. the jury returned into Court and upon being asked if they had agreed upon a verdict, replied in the affirmative and returned the following verdict and Special Findings which were ordered filed and recorded:

"We, the Jury, find as to the defendant at the bar as follows: Guilty.

signed *[Signature]* John Mann,
10 Foreman."

APPENDIX XIV

Case No. 19665 CE
125 vs. Tawakita
Defts EXHIBIT CU
Date _____ IDENT
Date 8-9-48 CU IN EVIDENCE
Clerk, U. S. District Court, Sou. DISTRICT CALIF
O. M. Eastman, Jr. D.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I Certify That the document hereunto annexed contains (1) a true copy of a certified copy of the official French text of the convention relating to the treatment of prisoners of war signed at Geneva July 27, 1929, which certified copy is on file in the archives of this Government, and (2) the English translation of that convention.

I further certify that, according to the official records of the Department of State, the convention first entered into effect June 13, 1931, six months after the deposit of at least two instruments of ratification, in accordance with the provisions of article 33 of the convention, and became effective in respect of the United States of America August 4, 1933, six months after the deposit of its instrument of ratification.

I further certify that, in response to proposals made by the Government of the United States of America through the Swiss Minister in Tokyo, the Swiss Minister telegraphed on January 30, 1940 that the "Japanese Government has informed me: '... Although not bound by the Convention relative treatment prisoners of war we will apply mutually mutual provisions of that Convention to American prisoners of war in its power.'"

In testimony whereof, I, ROBERT A. LOVETT, Acting Secretary of State, have hereto caused the seal of the Department of State to be affixed and by name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this second day of June, 1948.

Robert A. Lovett
Acting Secretary of State.

By [Signature]
Authentication Officer
Department of State.

TREATY SERIES, No. 846

PRISONERS OF WAR

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND OTHER POWERS

Signed at Geneva, July 27, 1929.

Ratification advised by the Senate of the United States, January 7, 1932.

Ratified by the President of the United States, January 16, 1932.

Ratification of the United States of America deposited with the Government of Switzerland, February 4, 1932.

Proclaimed by the President of the United States, August 4, 1932.



UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1932

TELEGRAM SENT

Clear

Washington

December 18, 1941

AMERICAN LEGATION

BERN

RUSH 331, eighteenth.
AMERICAN INTERESTS

Please request the Swiss Government through its representative at Tokyo to make a communication in the following sense to the Japanese Government:

QUOTE It is the intention of the Government of the United States as a party to the Geneva Prisoner of War Convention and the Geneva Red Cross Convention, both of July 27, 1929, to apply the provisions of those conventions.

It is, furthermore, the intention of the Government of the United States to apply the provisions of the Geneva Prisoner of War Convention to any civilian enemy aliens that may be interned, in so far as the provisions of that convention may be adaptable thereto.

Although the Japanese Government is a signatory of the above conventions, it is understood not to have ratified the Geneva Prisoner of War Convention. The Government of the United States nevertheless hopes that the Japanese Government will apply the provisions of both conventions reciprocally in the above sense.

The Government of the United States would appreciate receiving an expression of the intentions of the Japanese Government in this respect. UNQUOTE

HULL

TELEGRAM RECEIVED

PLAIN

From Bern

Dated February 4, 1942

Recd. 2:24 p.m.

Secretary of State

Washington

398, fourth.

AMERICAN INTERESTS, JAPAN

Reference Department's 331, December 18 Swiss
Minister, Tokyo, telegraphs January 20 as follows
"Japanese Government has informed me: 'first. Japan
is strictly observing Geneva Red Cross Convention as
a signatory State. Second. Although not bound by the
Convention relative treatment prisoners of war Japan
will apply mutatis mutandis provisions of that Con-
vention to American prisoners of war in its power.'"

HUDELF

TELEGRAM SENT
DEPARTMENT OF STATE

Plain

Washington,

February 7, 1942.

AMERICAN LEGATION

BERN

776, seventh.

Your 798, fourth.

Please ask the Swiss Government to ascertain from the Japanese Government whether this Government is correct in its assumption that the expression *mutatis mutandis* under the second point means that Japan will also apply the provisions of the Prisoner of War Convention to civilian enemy alien internees as suggested by this Government in its 331 of December 18.

This Government has informed the Spanish Embassy in charge of Japanese interests in the United States that visits are invited to prisoner of war camps and to civilian detention stations. Please ask Swiss Government to request permission for Swiss representatives in Japan and Japanese-occupied territory at earliest possible moment to begin visits of inspection to places of detention of American nationals, both prisoners of war and civilians, in Japanese hands in accordance with Article 86 of the Geneva Prisoners of War Convention.

HULL

TELEGRAM RECEIVED

Plain

From Bern

Dated February 24, 1942

Rec'd 7:29 p.m.

SECRETARY OF STATE,

WASHINGTON.

733, twenty-fourth.

AMERICAN INTERESTS, JAPAN.

Swiss Foreign Office note February 19 advises it called attention Swiss Minister Tokyo to contradictions existing in reports of treatment accorded Americans in Japanese occupied territory (see Legation's 514, February 11) and Minister replied by telegram February 17.

Minister states that he consulted with Swiss Chargé d'Affaires Shanghai regarding other representations to be made to Japanese Government. He then says "Ministry of Foreign Affairs sent me new note declaring Japan will apply on condition of reciprocity Geneva Convention for treatment prisoners of war and civilian internees in so far as convention shall be applicable, and that they shall not be forced to perform labor against their will. American civilians detained in all Japanese territories number 134. Conditions applied to them are more favorable than contemplated by convention. Their provisioning in bread, butter, eggs, meat, heating oil, coal and fats assured by Japan. They can receive from outside gifts of food and clothing. Despite inconvenience which arrangement presents Japan they are specially detained in vicinity of residence of their families in order that latter can see them more easily. Internees are visited from time to time by doctor and sick persons can consult doctor from outside and obtain admission subsequently to hospital. They are permitted to read papers, books, and listen to Japanese radio and to go out subject to certain restrictions if they submit valid reasons."

Minister

Minister continues that such statements must be verified on spot but that he has not yet been able obtain requested permission for regular visits by his special representative at Tokyo and at Yokohama. Promises are continually made. Upon two visits which were made to Tokyo and one to Yokohama internees did not complain but gave rather impression of mental suffering. Minister finally adds "as for reports from other cities in Japan I have again insisted that my delegates be allowed to verify internees living conditions. Until now I have had no particular information. I do not see necessarily any contradiction between this situation and that reported in China where the internees may be worse treated. Foreign Ministry assures me Japan will do all in its power to extend good treatment but is not in a position to offer standard of living equal to that of American for conditions between two countries are so different. Japanese people are poor and contented with little from which facts arise difficulties concerning treatment of foreign internees. Regarding noninterned Americans situation good according to their own statements. Assure American Government that I am attentively following question both with Foreign Office and with my representatives."

HUDDLE

TELEGRAM SENT

DEPARTMENT OF STATE

Plain

Washington,

March 19, 1942

AMERICAN LEGATION

BERN

712, nineteenth.

Your 733, February 24, and 865, March 4.

AMERICAN INTERESTS - JAPAN

Please request the Swiss Government to inform the Japanese Government (one) that the Government of the United States has taken note of the Japanese Government's declaration that it will apply, on condition of reciprocity, the Geneva Prisoners of War Convention in the treatment of prisoners of war and, in so far as the provisions of the Convention shall be applicable, in the treatment of civilian internees, and that the latter shall not be forced to perform labor against their will, (two) that this Government did not contemplate and has not made use of the provisions of Article 27 of the Convention to compel Japanese civilians detained or interned by it to labor against their wills, (three) that this Government is preparing for presentation to the Japanese Government proposals for the carrying out of the Geneva Prisoners of War and Red Cross Conventions and for the extension of applicable provisions of the Prisoners of War Convention to civilian internees and temporary detainees; (four) that the following rations are provided for each Japanese national detained by the American authorities: In temporary custody of the Department of Justice: Weight in pounds per day per individual: Meats and fish, 0.75; lard and cooking oils, 0.15; flour, starches and cereals, 0.80; dairy products, 1.00; eggs 0.03; sugar and syrup, 0.25; beverages (coffee or tea) 0.10; potatoes and root vegetables, 1.00; leafy green or yellow vegetables, 0.60; dried vegetables and nuts, 0.10; fresh fruits and berries, 0.15; dried fruits, 0.08; miscellaneous food adjuncts, 0.015; spices, relishes and sauces, 0.10; Japanese food, 0.06032; Interned in the custody of the War Department: Weight in ounces per day per individual: Meat, 18.0; fresh eggs, one each; dry vegetables and cereals, 2.6; fresh vegetables, 21.0; fruit, 4.7; beverages, coffee, 2.0; cocoa, 0.3; tea, 0.05;

lard

TELEGRAM SENT
DEPARTMENT OF STATE

Plain

Washington,

March 19, 1942

AMERICAN LEGATION

BERN

712, nineteenth.

Your 733, February 24, and 865, March 4.

AMERICAN INTERESTS - JAPAN

Please request the Swiss Government to inform the Japanese Government (one) that the Government of the United States has taken note of the Japanese Government's declaration that it will apply, on condition of reciprocity, the Geneva Prisoners of War Convention in the treatment of prisoners of war and, in so far as the provisions of the Convention shall be applicable, in the treatment of civilian internees, and that the latter shall not be forced to perform labor against their will, (two) that this Government did not contemplate and has not made use of the provisions of Article 27 of the Convention to compel Japanese civilians detained or interned by it to labor against their wills, (three) that this Government is preparing for presentation to the Japanese Government proposals for the carrying out of the Geneva Prisoners of War and Red Cross Conventions and for the extension of applicable provisions of the Prisoners of War Convention to civilian internees and temporary detainees; (four) that the following rations are provided for each Japanese national detained by the American authorities: In temporary custody of the Department of Justice: Weight in pounds per day per individual: Meats and fish, 0.75; lard and cooking oils, 0.15; flour, starches and cereals, 0.80; dairy products, 1.00; eggs 0.03; sugar and syrup, 0.25; beverages (coffee or tea) 0.10; potatoes and root vegetables, 1.00; leafy green or yellow vegetables, 0.60; dried vegetables and nuts, 0.10; fresh fruits and berries, 0.15; dried fruits, 0.08; miscellaneous food adjuncts, 0.015; spices, relishes and sauces, 0.10; Japanese food, 0.06032; Interned in the custody of the War Department: Weight in ounces per day per individual: Meat, 18.0; fresh eggs, one each; dry vegetables and cereals, 2.6; fresh vegetables, 21.0; fruit, 4.7; beverages, coffee, 2.0; cocoa, 0.3; tea, 0.05;

lard

lard and cooking fats, 1.28; butter, 2.0; milk, evaporated, 1.0; fresh, 8.0; flour (wheat) 12.0; sugar and syrup, 5.5; macaroni, 0.25; cheese, 0.25; spices, relishes and sauces, 0.984; allowance is made in the preparation of food for Japanese national and racial preferences, (five) that detainees and internees are permitted to receive visits from their friends and relatives, are regularly visited by doctors and are hospitalized should their health require it, are permitted to read newspapers and books, and are held in general under conditions no less favorable than those which the Japanese Government states are applied to American internees in its hands; (six) that this Government has informed the Spanish Embassy as the protecting power for Japanese interests in the United States, the Swedish Legation as the protecting power for Japanese interests in Hawaii, and the Delegate in the United States of the International Red Cross that it welcomes visits by representatives of their offices to all of the places of detention of detained or interned Japanese nationals in American hands and that representatives of the Spanish Embassy have already begun to visit such places in the United States

WELLES
Acting

Case No. 19665-Cr
US vs. Kawakita
Defte EXHIBIT CV
Date 8-9-48 IDENTIFICATION
Date 8-9-48 CV IN EVIDENCE
Clerk, U. S. District Court, Sou. Dist. of Calif.
E. M. Enstrom, Jr. Deputy Clerk



In reply refer to
L/T

DEPARTMENT OF STATE

WASHINGTON, D. C.

Date

8-9-48

Clerk, U. S. District Court, Southern District of Calif.

July 13, 1948

My dear Mr. Lavine:

Reference is made to your letter of June 21, 1948 and our telephone conversation of July 2, 1948, regarding the meaning of the words "mutatis mutandis" and of the statement that "... Although not bound by the Convention relative treatment prisoners of war Japan will apply mutatis mutandis provisions of that Convention to American prisoners of war in its power." Reference also is made to your letter of June 24, 1948 requesting certified copies of agreements concerning the trial of Japanese or others for war crimes.

In accordance with our conversation, I enclose herewith certified copies of telegrams sent and received by the Department concerning the arrangements made between the United States Government and the Japanese Government with regard to the treatment of prisoners of war and civilian internees and the application of the convention relating to the treatment of prisoners of war, signed at Geneva on July 27, 1929. Your attention is invited particularly to telegram no. 376, February 7, 1942 to the American Legation at Bern, and to telegram no. 733, February 14, 1942 from the American Legation at Bern, the second paragraph of which refers to the Japanese Government's declaration that it will apply, on condition of reciprocity, the Geneva prisoners of war Convention in the treatment of prisoners of war and, in so far as the provisions of the Convention shall be applicable, in the treatment of civilian internees, and that the latter shall not be forced

to perform

Mr. Morris Lavine,
619-620 A. G. Bartlett Building,
215 West Seventh Street,
Los Angeles 14, California.

to perform labor against their will. On the basis of these arrangements, made with the Japanese Government through the Swiss Government, concerning the treatment of prisoners of war and civilian internees, this Government considers that there was a binding commitment on the part of Japan to apply the provisions of the Geneva Convention to American prisoners of war.

In accordance with the request in your letter of June 14, 1941 there are enclosed also certified copies of the international agreements and proclamations relating to the trial of war criminals.

Sincerely yours,

For the Secretary of State:



Bryson Barron
Assistant for Army Affairs
Office of the Legal Adviser

Enclosures:

1. Certified copies of telegrams.
2. Certified copies of agreements and proclamations.

BIBLIOGRAPHY

The most important reference materials for the study of the indictment and trial of Iva Ikuko Toguri d'Aquino can be found in the record files of the Federal Records Center, National Archives, San Bruno, California. In addition to this official repository, a number of private law libraries contain relevant manuscript resources to such an extent that they can be considered a second major source of information.

Primary Sources

Public Documents

Indictment, October 8, 1948.

Notice of Motion and Motion to be Admitted to Bail, October 23, 1948.

Demand for Bill of Particulars, October 27, 1948.

Demand for Discovery and Inspection, November 3, 1948.

Demand for Additional Bill of Particulars, November 3, 1948.

Notice and Motion to Strike, November 15, 1948.

Notice and Motion to Dismiss Indictment, November 15, 1948.

Notice and Motion for Discovery and Inspection, November 15, 1948.

Notice and Motion to Dismiss Indictment on Defenses and Objections Capable of Determination Without Trial of General Issue, November 15, 1948.

Affadavit in Support of Motions to Dismiss, November 15, 1948.

Notice and Motion for Bill of Particulars, November 15, 1948.

Memorandum in Opposition to Defendant's Motion to Dismiss, November 19, 1948.

Memorandum in Opposition to Defendant's Special Pleas, December 17, 1948.

Claim of Expatriation, December 20, 1948.

Minute order that Motion for Bill of Particulars, Motion to Dismiss Indictment be denied; Motion for Discovery and Inspection be granted as to Request No. 7, but denied as to remaining requests, and Motion to Strike Indictment be denied, January 3, 1949.

Minute order that defendant pleads "Not Guilty" and setting cause for trial on May 16, 1949, January 3, 1949.

Motion for Order Authorizing and Directing Issuance of Subpoenas requiring attendance of witnesses in a foreign country at the trial at expense of the Government and for service thereof, March 1, 1949.

Minute order that motion to take certain depositions be granted and that remaining motions be denied, March 14, 1949.

Order Denying Seven Motions and Granting Defendant's Motion For Taking Depositions Abroad, March 15, 1949.

Stipulation To Taking Oral Depositions Abroad, March 22, 1949.

Motion for Lists of Witnesses and Veniremen, April 5, 1949.

Motion for Order Authorizing and Directing Issuance and Service of Subpoenas Requiring Attendance of Witnesses at Trial Herein at Government Expense, April 15, 1949.

Notice and Motion for Postponement of Time of Trial, April 21, 1949.

Minute order authorizing issuance and service of subpoenas and motion for list of witnesses and veniremen be continued to May 2, 1949, and ordering case continued from May 16, 1949 to July 5, 1949 for trial, April 25, 1949.

Motion for Order Authorizing and Directing Issuance and Service of Subpoenas requiring Attendance of Witnesses at Trial at Expense of the Government, and Affidavit in Support Thereof, May 4, 1949.

Order Granting Defendant's Motion for Order Authorizing and Directing Issuance and Service of Subpoenas of Defendant's Witnesses at Government Expense, May 18, 1949.

Order Denying Defendant's Motion for List of Witnesses and Veniremen, May 18, 1949.

Motion for Order Authorizing and Directing Issuance and Service of Subpoenas at Government Expense, May 24, 1949.

Order Granting Defendant's Motion to Subpoenas Albert Rickert and Edwin Kalbfleish, Jr., at Government Expense, June 1, 1949.

Notice and Motion for List of Witnesses and Veniremen, June 16, 1949.

Notice and Motion for Supplemental Order Authorizing Additional Subsistence Expenses to be Paid Defendant's Counsel for Attending Examination of Witnesses Abroad, June 16, 1949.

Notice and Motion for Production of Documentary Evidence, June 16, 1949.

Order Granting Motion for Supplemental Order Authorizing Additional Subsistence Expenses to be Paid by the Government to Defendant's Counsel for Attending Examination of Witnesses Abroad, June 20, 1949.

Minute Order Granting Plaintiff's Motion to Quash Subpoena duces tecum Served on Mr. Hennessy, June 20, 1949.

Order Requiring Plaintiff to Supply Defendant with Lists of Witnesses and Veniremen, June 22, 1949.

Minute Order Quashing Subpoenas duces tecum Issued to Mr. De Wolfe, and Subpoena, June 22, 1949.

Minute Order Denying Defendant's Motion to Produce, June 22, 1949.

Copy of List of Witnesses and Jurors, June 28, 1949.

Amended Witness List, June 29, 1949.

Appearance of Attorneys, July 5, 1949.

Minute Entry Ordering Oral Motion for Judgment of Acquittal Continued to August 13, 1949, August 12, 1949.

Minute Order Denying Defendant's Motion for Judgment of Acquittal, August 13, 1949.

Motion for Order for Production, Examination, and Inspection of Records and Script, August 13, 1949.

Minute Entries of Defendant's Motions to Strike Certain Testimony, to Dismiss Indictment and for Judgment of Acquittal, and Minute Order Denying the Same, September 19, 1949.

Minute Entry Reading "Trial resumed. Jury instructed and retired to deliberate upon its verdict. Ordered alternate juror Aileen McNamara excused from further service. It is ordered that the Marshal furnish meals and lodging for the jurors and two deputy marshals. At 11:20 P.M. Jury retired for the night. Ordered continued to September 27, 1949, for further trial," September 26, 1949.

Minute Entry Reading "Trial resumed. Jury requested and received certain portions of transcript and certain exhibits and retired to deliberate its verdict. At 10:15 P.M. the jury retired for the night. Ordered continued to September 28, 1949 for further trial," September 27, 1949.

Minute Entry Reading "Trial resumed. Jury deliberated further upon its verdict. After requesting and receiving certain volumes of testimony and further instructions and after due deliberation the jury returned a verdict of "Guilty". The jury was thereupon polled. Ordered jury to discharged from further consideration hereof and be excused, on motion of Mr. Collins it is ordered that this cause be continued to October 6th for judgment," September 29, 1949.

Special Findings of the Jury finding defendant "Not Guilty" on Overt Acts 1, 2, 3, 4, 5, 7, and 8 but "Guilty" on Overt Act No. 6, September 29, 1949.

Jury Verdict, September 29, 1949.

Motion in Arrest of Judgment, October 3, 1949.

Motion for Acquittal or New Trial, October 3, 1949.

Motion for New Trial, October 3, 1949.

Supplemental Ground in Support of Motion for Acquittal or New Ground, October 5, 1949.

Minute Order Denying Defendant's Motions for New Trial, Acquittal or New Trial and in Arrest of Judgment, October 6, 1949.

Minute Entry showing defendant was called for judgment, October 6, 1949.

Minute Entry showing defendant was ordered sentenced and committed to the custody of the Attorney General for imprisonment for a period of 10 years and fined \$10,000, October 6, 1949.

Minute Entry showing that there was filed defendant's instructions covered by the court in other instructions and that defendant excepts thereto on grounds they have not been covered, October 3, 1949.

Minute Entry showing that there was filed defendant's instructions which were refused by court as not being correct statements of law, October 3, 1949.

Notice and Motion of Defendant for Admission to Bail Pending Appeal, October 7, 1949.

Order Staying Execution of Sentence to and including October 17, 1949, October 7, 1949.

Affidavit and Order for Filing Appeal in forma pauperis, October 7, 1949.

Notice of Appeal, October 7, 1949.

The Reporter's Transcripts (54 volumes) of all evidence, oral and documentary, which was stenographically reported and was taken down on behalf of the plaintiff and also of the defendant, including all oral motions by the respective parties and orders and rulings of Court made thereof. All exhibits introduced in evidence by either side and all exhibits offered in evidence by the defendant and rejected and subsequently marked exhibits for identification.

All instructions given to the jury by the Court and all instructions the defendant requested the Court to give to the jury while the Court refused to give to the jury, and also the arguments of counsel to the jury.

All depositions offered or admitted in evidence.

Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit and Brief in Support Thereof, d'Aquino v. U.S., Ninth C.A. 12383, in the Supreme Court of the United States, October 1951, No. Misc. 299.

Petitioner's Reply to Brief in Opposition to Certiorari, d'Aquino v. U.S., Ninth C.A. 12383, in the Supreme Court of the United States, October Term 1951, No. Misc. 299.

Appellate's Petition For Rehearing, d'Aquino v. U.S., No. 12383, in the United States Court of Appeals for the Ninth Circuit, filed November 8, 1951.

Supplemental per curiam Opinion of United States Court of Appeals for the Ninth Circuit, d'Aquino v. U.S., No. 12383, December 17, 1951.

Application for Leave to File Brief amici curiae in Support of Appellate's Petition for Rehearing and Brief amici curiae, d'Aquino v. U.S., No. 12383, in the United States Court of Appeals for the Ninth Circuit. November 14, 1951.

Legal Authorities Cited

Alford v. U.S., 282 U.S. 687

Armstrong v. U.S., 41 F. (2d) 162

Ashcraft v. Tenn., 327 U.S. 274

Barber v. Furuya, 186 F. (2d) 775.

Bedell v. U.S., 78 F. (2d) 358.

Berger v. U.S., 295 U.S. 78.

Best v. U.S., 184 F. (2d) 131, 76 F.S. 857.

Blackmer v. U.S., 284 U.S. 421.

Bram v. U.S., 168 U.S. 532.

Chandler v. U.S., 171 F. (2d) 921.

Craig v. U.S., 81 F. (2d) 816.

Cramer v. U.S., 325 U.S. 1.

Curley v. U.S., 160 F. (2d) 229.

d'Aquino v. U.S., 180 F. (2d) 271.

d'Aquino v. U.S., 192 F. (2d) 338.

d'Aquino v. U.S., 203 F. (2d) 391

d'Aquino v. U.S., 343 U.S. 935, 958.

d'Aquino v. U.S. 345 U.S. 931.

Davis v. U.S., 160 U.S. 469.

Dos Reis v. Nicolls, 161 F. (2d) 860.

Ex parte Trull, 133 Kan. 165, 298 Pac. 775.

Falgout v. U.S., 279 Fed 513.

Freihage v. U.S., 56 F. (2d) 127.

Gage v. U.S., 167 F. (2d) 122.

Gaines v. Washington, 277 U.S. 81.

Gillars v. U.S., 182 F. (2d) 962.

Glasser v. U.S., 315 U.S. 60.

Goesaert v. Cleary, 335 U.S. 464.

Goldman v. U.S., 316 U.S. 129.

Guthman v. People, 203 Ill. 260, 67 N.E. 821.

Haupt v. U.S., 330 U.S. 631.

Holloway v. U.S., 148 F. (2d) 665.

Holt v. U.S., 218 U.S. 245.

In re Gogal, 75 F.S. 268.

Johnson v. Eisentrager, 339 U.S. 763.

Kasinowitz v. U.S., 181 F. (2d) 632.

Knode v. Williamson, 84 U.S. 586.

Lombard v. Mayberry, 24 Neb. 674, 40 N.W. 271.

McCool v. U.S., 263 Fed. 55.

McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316.

McDowell v. U.S., 74 Fed. 403.

McNabb v. U.S., 318 U.S. 332.

McGrowther's Case, Foster's Rep. 13, 168 Eng. Rep. R. 8

Miller v. The Resolution, 2 U.S. 1.

Mohn v. Tingley, 191 Cal. 470, 217 Pac. 733.

Mooney v. Holohan, 294 U.S. 103.

Morei v. U.S., 127 F. (2d) 827.

Morgan v. U.S., 304 U.S. 1.

Penn. R.R. Co. v. Chamberlain, 288 U.S. 333.

People v. Frey, 165 Cal. 140, 131 Pac. 127.

People v. Szobar, 360 Ill. 233 195 N.E. 648.

People v. Tapia, 131 Cal. 647, 63 Pac. 1001.

Pettibone v. Nichols, 203 U.S. 192.

Powell v. U.S. 35 F. (2d) 941.

Prudential Ins. Co. v. Faulkner, 68 F. (2d) 676.

Ralston Purina Co. v. Novak, 111 F (2d) 631.

Reavis v. U.S., 93 F. (2d) 307.

Respublica v. McCarty, 2 U.S. 86.

Ricketts v. Penn. R.R. Co., 153 F. (2d) 757.

R.I. Recreation Center v. Aetna Casualty Co., 177 F. (2d) 603.

Robinson v. U.S. 324 U.S. 282.

Ross v. U.S., 180 F. (2d) 160.

Saunders v. Shaw, 244 U.S. 317.

Savorgnan v. U.S., 338 U.S. 491.

Schioler v. U.S., 75 F.S. 353.

Shepard v. U.S., 290 U.S. 96.

Smith v. Texas, 311 U.S. 128.

State v. Bradley, 134 Conn. 102, 55 Atl. (2d) 114.

State v. Crowder, 119 Wash. 450, 205 Pac. 850.

State v. Hall, 20 Mo. App. 397.

State v. Schleifer, 102 Conn. 708, 130 Atl. 184.

Sunderland v. U.S., 19 F. (2d) 202.

Temple v. Duran, 121 S.W. 253.

Tucker v. U.S. 5 F. (2d) 818.

Turk v. U.S., 20 F. (2d) 129.

Upshaw v. U.S., 335 U.S. 410.

United Brotherhood C. & J. v. U.S., 330 U.S. 395.

U.S. ex rel. v. Toomba, 67 F. (2d) 744.

U.S. v. Balodimas, 177 F. (2d) 485.

U.S. v. Bowman, 260 U.S. 94.

U.S. v. Flint Fed. Cas. No. 15121, 25 Fed. Cas. 1107.

U.S. v. Fox, 3 Mont. 512.

U.S. v. Greiner, 26 Fed. Cas. 36, Fed. Cas. No. 15262.

U.S. v. Holmes, 1 Cliff 116.

U.S. v. Marcus, 166 F. (2d) 497.

U.S. v. McWilliams, 163 F. (2d) 695.

U.S. v. Remington, 191 F. (2d) 246.

U.S. v. Shipp, 203 U.S. 563.

U.S. v. Throckmorton, 98 U.S. 61.

Van Beek v. Sabina Towing Co., 300 U.S. 342.

Viereck v. U.S., 318 U.S. 236.

Whitney v. Zerbet, 62 F. (2d) 970.

Wilkerson v. McCarthy, 336 U.S. 53.

Williams v. State, 17 S.W. (2d) 56.

Williamson v. U.S., 184 F. (2d) 280.

W.S. Fain Grain Co. v. U.S., 68 Ct. Cl. 441.

Wilson v. U.S. 4 F. (2d) 888.

Yu Cong Eng v. Trinidad, 271 U.S. 500.

Ziang Sung Wan v. U.S., 266 U.S. 1.

Federal Statutes

Amendment V to the U.S. Constitution.

Amendment VI to the U.S. Constitution.

U.S. Constitution, Article I, Sec. 9.

U.S. Constitution, Article III, Sec. 3.

Geneva Convention, 47 U.S. Stats, at L. 2021.

Federal Rule of Criminal Procedure 3.

Federal Rule of Criminal Procedure 26.

Federal Rule of Criminal Procedure 29.

Federal Rule of Criminal Procedure 52.

Federal Rule of Criminal Procedure 54(b)(2).

31 Stats. Ch. II, C. 2.

31 Stats. at L. 330.

34 Stats. at L. 1228.

Supreme Court Rule 38.

8 U.S.C. 101.

8 U.S.C. 801(i).

10 U.S.C. 15.

10 U.S.C. 1473.

10 U.S.C. 1483.

10 U.S.C. 1542.

18 U.S.C. 1.

18 U.S.C. 3005.

18 U.S.C. 3183.

18 U.S.C. 3193.

18 U.S.C. 3238.

28 U.S.C. 1254(i).

Legal Texts

East's Pleas of the Crown (1806).

Foster's Crown Cases (1776).

Hale's Pleas of the Crown (1778).

Hawkins's Pleas of the Crown (1795).

Hurd on Habeas Corpus.

2 Moore on Facts.

2 Wigmore on Evidence.

4 Wigmore on Evidence.

6 Wigmore on Evidence.

Newspapers, Magazines, and Periodicals

Colorado Times.

Hokubei Mainichi [North American Daily].

Los Angeles Times.

Nashville Tennessean.

New York Times.

Sacramento Bee.

San Francisco Call Bulletin.

San Francisco Chronicle.

San Francisco Examiner.

San Francisco News.

Strauss, Henry I. "The Zero Hour," Collier Magazine,
January 8, 1944.

Newsweek Magazine, February 20, 1956

Newsweek Magazine, March 5, 1956.

Time Magazine, April 10, 1944.

Hurst, James Willard. "Treason in the United States,"
Harvard Law Review 251, 156 (1944).

Books

Lee, Clark. "Her Neck in a Noose," One Last Look Around ,
New York: Duell, Sloan, and Pearce, 1947.

Secondary Sources

Books

Boveri, Margaret. Treason in the Twentieth Century,
New York: G.P. Putnam's Sons, 1963.

Schoefield, William G. "Tokyo Rose," Treason Trail,
Chicago: Rand McNally and Company, 1964.

The books by Boveri and Schoefield, respectively,
are of less help than might be expected, because they move

so rapidly and superficially over the vast subject of the trial proceedings. They are not based on immense research and exhibit a characteristic bias against Iva Ikuko Toguri d'Aquino.

VITA AUCTORIS

Name: John Juji Hada

Date of Birth: April 16, 1927

High School: Topaz High School
Central Utah War Relocation Authority Center
Topaz, Utah

Graduated: June, 1944

Baccalaureate Degree: Bachelor of Arts

College: University of San Francisco

Date: July, 1972