

Washington, D.C.
November 1, 1948

REC'D: vng
146-28-1941

E.J.W.

FRANK J. HENNESSY
UNITED STATES ATTORNEY
SAN FRANCISCO, CALIFORNIA

FILED
CMB
NOV 8 1948

RE IVA YOGURI D' AQUINO TREASON PROSECUTION. TOM DeWOLFE

YOUR DISTRICT THURSDAY 4 NOVEMBER.

ALEXANDER M. CAMPBELL
ASSISTANT ATTORNEY GENERAL

TED
JK

CC: Records ✓
chron.
Mr. DeWolfe
Accounts

FILECOPY

Cham
RM

AMG:TED:vng

Com October 26, 1948

146-28-1941

air mail

R. Mc

FILED
BY GMB
OCT 28 1948

Frank J. Hennessy, Esq.
United States Attorney
San Francisco 1, California

Dear Mr. Hennessy:

Re: United States v. Iva Toguri D'Aquino-
Treason

Reference is made to the above entitled treason prosecution presently pending in your jurisdiction. The Department acknowledges receipt of and thanks you for yours of the 18th instant, in which you advise that defendant's motion for enlargement upon bail has been denied by Federal Judge Goodman.

Tom DeWolfe of this Division should be out in your District during the latter part of next week to work on this and possible prospective sequel criminal litigation there.

Please keep the Department advised as to all material developments that ensue herein.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

OCT 27 1948
RECEIVED
AIR MAIL

cc: Records
chron.
Mr. DeWolfe

J 21
TED
AT

AMC:JBH:vng

146-28-1941

October 19, 1948

H. M.

P. 28
10/20/48

The Honorable
The Secretary of State
Washington 25, D. C.

Dear Sir:

Attention: Mrs. Ruth B. Shipley,
Chief, Passport Division

This Department is presently preparing for prosecution a case involving Mrs. Iva Toguri D'Aquino. Mrs. D'Aquino, under the name of Iva Toguri, Ikuko Toguri, or Iva Ikuko Toguri, on September 8, 1941, applied for an American passport at the American Consulate General in Tokyo, Japan. This application was transmitted to the Department of State, Washington, D. C., by the American Consulate General in Tokyo.

On March 30, 1942, this individual filed an application for evacuation at the Swiss Consulate in Tokyo, together with other documents pertaining to her evacuation from Japan. These latter documents are believed to have been in the name of Ikuko Toguri.

It will be greatly appreciated if the Department of State will furnish me certified photostatic copies of all the above mentioned documents for use at the forthcoming trial, which is expected to be set at an early date.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

cc: Records
chron.
Mr. Hogan

AMC
AM

RECORDED
INDEXED
OCT 20 1948

146-28-1941

WFT:DFG:lbn

AIR MAIL

W.P. M.
W.P.

December 28, 1954

FILED
ON JAN 7 1955

Typed: 12/28/54

Lloyd H. Burke, Esquire
United States Attorney
422 Post Office Building
San Francisco 1, California

Dear Mr. Burke:

Reference is made to your letter of October 5, 1954, with which you enclosed a Petition for Executive Clemency filed by Iva Toguri D'Aquino and requested that this Petition be referred to Mr. Tom DeWolfe for comment.

Pursuant to your request, I am enclosing a copy of a letter from Mr. DeWolfe setting forth his views in this matter, together with the Petition for Executive Clemency and other papers which accompanied your letter.

Sincerely,

WILLIAM F. TOMPKINS
Assistant Attorney General
Internal Security Division

FILED
ON JAN 3 1955

By:

THOMAS K. HALL, Chief
Subversive Activities Section

Enclosure No. 76088

CC: Records (two copies to F.B.I.)
Dorothy Fillius Green

AIR MAIL

INSPECTED AND MAILED
COMMUNICATIONS SECTION
DEC 28 1954 PM

W.P.
J.R.
SA. 12/28
W.P.
W.P.

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

WFT:DFG:mcf

146-28-1941

October 22 1954

Tom DeWolfe, Esquire
Special Assistant to the Attorney General
c/o United States Attorney
East St. Louis, Illinois

Rec'd DeWolfe
- 5 OCT 26 1954
T.D.

Re: United States v. Iva Toguri D'Aquino

Dear Mr. DeWolfe:

The United States Attorney for the Northern District of California has forwarded to the Criminal Division a Petition for Executive Clemency filed by Iva Toguri D'Aquino and has requested that it be referred to you for your recommendation.

Pursuant to the transfer of security functions from the Criminal Division to the recently created Internal Security Division, this matter is now being handled by this Division.

In view of the request of the United States Attorney and in view of the fact that you handled the trial of the case and consequently are the person in the Department most familiar with every phase of it, I shall appreciate the benefit of your views and such recommendation as you may wish to make with respect to the petition.

For your information I am enclosing the petition, together with the documents which accompanied it. It is requested that all of this material be returned to me so that I may transmit them to the United States Attorney with your recommendation.

Sincerely,

WILLIAM F. TOMPKINS
Assistant Attorney General
Internal Security Division

By: *Thomas K. Hall*
THOMAS K. HALL, Chief
Subversive Activities Section
OCT 29 1954

Enclosure No. 170962

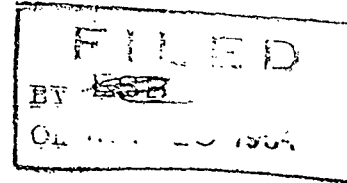
146-28-1941
RECORDED
INDEXED
OCT 29 1954

WC:WAP:mp

146-28-1941

Typed November 16, 1954

November 16, 1954



Mr. Thomas E. Dewolfe,
c/o United States Attorney,
East St. Louis, Illinois.

Dear Tom:

Re: Iva Toguri D'Aquino v. United States

Returned herewith is your letter dated November 9,
addressed to Assistant Attorney General Tompkins, containing
your recommendation against executive clemency.

I mentioned this matter to Mr. Olney today and he
stated it would be quite all right for you to sign your
recommendation as made and that, as a matter of fact, you
had mentioned it to him when he was out there the other day.

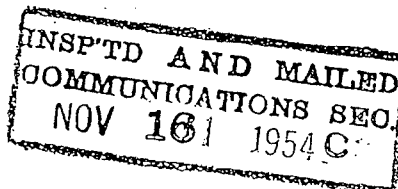
With best wishes,

Sincerely yours,

WILLIAM A. PAISLEY
Chief, Trial Staff

Enc. 168184

records
chron.
Paisley



Conf.

Director, Federal Bureau of Investigation

(Typed: 2/12/54)

Warren Olney III, Assistant Attorney General
Criminal Division

WO:EG:jk February 10 1954

IWA IKUKO TOSURI D'ACQUINO
TREASON
FBI File 61-11000

116-28-1941

Reference is made to your memorandum of February 4, 1954, in which you requested to be advised what disposition could be made of the fifteen exhibits listed in the memorandum which are being retained in the Los Angeles Office of the Bureau.

In view of your advice that all of these exhibits are duplicates, photographs, photostats or typed copies of original evidence and in further view of the fact that the Supreme Court denied certiorari in this case in April 1952, there is no objection to your disposing of these exhibits in any manner you wish.

*WJL
2/18/54*

2/10/54

2/12/54

WO:EG

EG

*1 M
2 1954*

FILED
BY JB
On FEB 17 1954

cc: Records ✓
Chrono
Mrs. Green

SENT BY MESSENGER
COMMUNICATIONS SEC
FEB 15 1954 C

Office Memorandum • UNITED STATES GOVERNMENT

TO : Tom E. DeWolfe

DATE: June 8, 1953

FROM : William A. Paisley, Chief, Trial Section

WAP:mp

SUBJECT: Tokyo Rose parole report

146-28-1941

The Tokyo Rose parole report came back with the following comment from Mr. Olney:

"I agree [with Mr. Yeagley] that 'victim of temptation' doesn't make any sense in this case. I would describe her as 'an American citizen of Japanese descent who during the war aided and abetted the enemy cause without compulsion.'"

Accordingly we have changed your characterization, "a victim of temptation", and used Mr. Olney's language in paragraph 7 of the form. It will be sent around in the regular course now to go to the United States Attorney at San Francisco.

I have assumed that this change would meet with your approval.

146-28-1941	
JUN 27 1953	

Handwritten notes:
146-28-1941
JUN 27 1953

ADDRESS REPLY TO
"THE ATTORNEY GENERAL"
AND REFER TO
INITIALS AND NUMBER

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON 25, D. C.

WO:WAP:mp

146-28-1941

November 16, 1941

*Bill
JE 13*

Mr. Thomas E. DeWolfe,
c/o United States Attorney,
East St. Louis, Illinois.

Dear Tom:

Re: Iva Toguri D'Aquino v. United States

Returned herewith is your letter dated November 9,
addressed to Assistant Attorney General Tompkins, containing
your recommendation against executive clemency.

I mentioned this matter to Mr. Olney today and he
stated it would be quite all right for you to sign your
recommendation as made and that, as a matter of fact, you
had mentioned it to him when he was out there the other day.

With best wishes,

Sincerely yours,

Bill

WILLIAM A. PAISLEY
Chief, Trial Staff

RE

Enc. 168184

*T. J. R. D.
146-28-1941*

WO:WAP:map

146-28-1941 G.A.F

Typed May 29, 1953

June 9, 1953.

Lloyd H. Burka, Esquire,
United States Attorney,
San Francisco, California.

Re: D'Aquino v. United States

Dear Mr. Burka:

This refers to prior correspondence concerning parole report in the above styled case.

Enclosed herewith you will find the original of Parole Report, Form 792, together with three copies thereof. The original you will note is signed by Mr. Tom DeWolfe, Special Assistant to the Attorney General, Criminal Division, who was chief counsel at the trial.

If this report meets with the approval of your office, please cause the customary copies to be forwarded to the Warden, Federal Reformatory for Women, at Alderson, West Virginia.

Respectfully,

For the Attorney General

WARREN OLNEY III
Assistant Attorney General

records ←

Enc. 85021

FILED
BY DE
ON JUN 18 1953

FILED
BY DE
ON JUN 18 1953

WAP
Dh
42
NO [unclear]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

FILED
JUN 18 1953
C

Office Memorandum • UNITED STATES GOVERNMENT

TO: Mr. Warren Olney III, Assistant Attorney General, Criminal Division

FROM: William A. Paisley, Chief, Trial Section, Criminal Division

SUBJECT: Iva Toguri D'Aquino - "Tokyo Rose"

DATE: May 8, 1953
 WAP:cd
 146-28-1911

From the attached you will note the problem has arisen of furnishing a parole report to the Parole Board in this case.

Normal procedure is that the United States Attorney or one of his assistants file these parole reports shortly after the prisoner is sent to prison. The report gives the Warden his first information as to the prisoner and it also remains at the institution for the use of the Parole Board. In this case, of course, there has been a change of United States Attorneys, and the report probably should be signed by Mr. DeWolfe, who was chief counsel during the trial. Attached for your convenience is one of the parole report forms, Form 792.

You will note Mr. DeWolfe is inclined to recommend parole when the prisoner is eligible but that he believes Mr. Knapp would oppose it. Mr. DeWolfe would not want to recommend it unless it meets with departmental approval. I will be glad to discuss the matter with you at your convenience.

FILE

Incl. No. 52665

In this matter I suggest that all of the facts stated in Mr. DeWolfe's memo be included in the parole form but that we refrain from recommending either for or against parole.

14	DEPT. OF JUSTICE	REC'D
	MAY 27 1953	

5/12/53
 [Handwritten initials]

146-28-1911

CB:TED:lp

146-23-1941

G.A.R.

(typed Jan. 19, 1953)

FILED
PC
BY
FEB 6 - 1953

FILED
HVG
JAN 28 1953

January 21 1953

Chauncey Tramutolo, Esquire
United States Attorney
422 Post Office Building
7th and Mission Streets
San Francisco 1, California

Attention: Joseph Karesht, Esquire,
1st Assistant United States Attorney

Re: D'Aquino v. United States
(Your ref: JK:bs - No. 31712)

Dear Mr. Tramutolo:

Reference is made to the above-entitled Federal criminal treason prosecution recently pending in the Federal appellate courts.

The Supreme Court denied appellant's petition for a writ of certiorari, directed to the Court of Appeals for the Ninth Circuit, and it is noted that appellant has already served almost one-third of her ten-year sentence.

The Department acknowledges receipt of and thanks you for yours of the 13th instant, addressed to Tom DeWolfe of this Division, with reference to the submission of a Parole Report by Messrs. DeWolfe and Knapp of the Department, who tried this case on behalf of the United States in conjunction with former United States Attorney Frank J. Hennessy of San Francisco.

The context and substance of the Parole Report requested in the above-entitled matter is presently under consideration by Messrs. DeWolfe and Knapp. The Department will answer yours of the 13th instant on the merits after Messrs. DeWolfe and Knapp have given the matter further reflection and study.

cc - Records
Chrono
Mr. DeWolfe
Mr. Knapp

RECEIVED
INSPTD AND MAILED
COMMUNICATIONS SE
JAN 21 1953

Please rest assured that your cooperation in the premises is greatly appreciated by the Department.

Respectfully,

For the Attorney General,

CHARLES B. MURRAY
Assistant Attorney General

Electo

TO: All Attorneys assigned to the Trial Section
FROM: William A. Paisley, Chief, Trial Section
RE: Attorney General's Annual Report

August 5, 1952

WAP:map *map*

Following is a copy of a memorandum dated August 1, 1952, received by me, from Mr. McNerney:

(1) "It is requested that material for the Attorney General's Annual Report for the fiscal year ending June 30, 1952, be forwarded to Miss Brookley on or before August 29, 1952. Inasmuch as it will be necessary to submit the completed report to the Deputy Attorney General at an earlier date than in prior years, it is requested that your material be prepared promptly."

If you handled any case during the past fiscal year which you feel is of sufficient importance to be mentioned in the Attorney General's Annual Report please furnish me with a resume of the facts.

James M. McInerney, Assistant Attorney
General, Criminal Division

August 5, 1952

William A. Paisley, Chief Trial Section

TED:lh

Attorney General's Annual Report

146-28-1741

file
TED

(1) IVA TOGURI D'AQUINO v. UNITED STATES
(File: 146-28-1941)

Reference is made to the above-entitled federal criminal treason prosecution recently pending on appeal in the Federal Appellate Courts. Appellant is more popularly referred to in the press as "Tokyo Rose." After an extended and protracted trial appellant was convicted on a one-count treason indictment in September 1949. The trial was held in San Francisco in the Northern District of California. The indictment was the result of appellant's war time radio broadcasting activities over Radio Tokyo. She was an American citizen and broadcast to the American troops during the late war in an endeavor to create nostalgia in the minds of the American troops and to create war weariness among the members of the American armed forces in the Orient. She was sentenced to a term of imprisonment for 10 years and fined \$10,000.

The Court of Appeals for the Ninth Circuit affirmed the judgment below on October 10, 1951. The opinion of the Court of Appeals is published at 192 F.2d 338. The Court of Appeals denied appellant's petition for rehearing. On April 28, 1952 the Supreme Court denied petitioner's petition for a writ of certiorari directed to the Court of Appeals for the Ninth Circuit. On May 26, 1952 the Supreme Court denied petitioner's petition for rehearing on the court's refusal to issue a writ of certiorari to the Court of Appeals for the Ninth Circuit.

(2) FINNEGAN v. UNITED STATES
(File: 51-42-28) ✓

Reference is made to the above-entitled federal criminal prosecution presently pending on appeal in the Court of Appeals for the Eighth Circuit. Appellant, until April 1951, was Collector of Internal Revenue for the First Missouri Collection District at St. Louis. He was indicted in October 1951 in a five-count indictment which alleged certain irregularities in office. The first three counts of the indictment alleged that appellant while collector received compensation for the rendition of services in relation to matters in which the United States was a party and directly and indirectly interested. The first three counts of the indictment pleaded violations of Title 18 U.S.C. (Rev.) Sec. 281. The last two counts of the indictment alleged that appellant while collector received bribes in violation of Title 18 U.S.C. (Rev.) Sec. 202. The trial of this

cause commenced on 3 March 1952 and culminated with a verdict of guilty on counts one and two and not guilty on counts three, four, and five. The verdict of the jury was returned on 15 March 1952. On 24 March 1952 appellant's motions for a new trial and in arrest of judgment were denied and he was sentenced to a term of imprisonment for a period of two years and fined in the sum of \$10,000. The cause is now on appeal to the Court of Appeals for the Eighth Circuit.

JMM:FR:rir

AEG

146-38-1941
~~146-78-1999~~

June 5, 1952

Nyles J. Lane, Esquire
United States Attorney
New York, New York

Re: United States v. John David Provo
Your Reference: AAB, 113134, C131-94

Dear Mr. Lane:

IFR.
wt
18/1

Reference is made to your letter of June 2, 1952, in which you requested that a copy of the typewritten transcript of the record in the case of United States v. Iva Toguri D' Aquino be made available to you for use in connection with the preparation of the above-entitled matter for trial.

In accordance with your request, I am mailing to you today under separate cover by registered mail the fifty-four volumes which comprise the typewritten record in the D' Aquino case. Inasmuch as this is the only copy of the typewritten transcript in the possession of the Department, it is imperative that it be returned to me as soon as it has served its purpose.

*

Respectfully,

For the Attorney General

[Handwritten signature]

JAMES M. MCINERNEY
Assistant Attorney General

Enclosure No. 173742 (two packages)
under separate cover
by registered mail
cc: Records
Reilly
Chrono.

JUN 5 1952

JMH:DFG:vb

146-28-1911 ✓

~~146-28-1999~~

146-28-1911 ✓

May 23, 1952

Kyles J. Lana, Esq.
United States Attorney
United States Court House
Foley Square
New York 7, New York

Re: United States v. John David Provoe
Your reference: AAB, 113134, C131-94

Dear Mr. Lana:

Reference is made to your letter of May 22, 1952, in which you requested that a copy of the transcript of the record in the case of United States v. Iva Toguri D'Aquino be made available to you for use in connection with the preparation of the above entitled matter for trial.

In accordance with your request, I am mailing to you today under separate cover by registered mail the two volumes which comprise the printed record in the D'Aquino case. I regret that, because of the limited number of copies which were forwarded to the Department, it is not possible to furnish you with a copy of the transcript for retention in the files of your office. The transcript which is being sent to you has been withdrawn from the Division of Records of the Department for your use, and it is requested that it be returned to me as soon as it has served its purpose.

I shall appreciate being advised as soon as a trial date has been set in this matter so that the necessary arrangements can be made to insure the arrival of the witnesses from the Orient in sufficient time before the trial.

Respectfully,

For the Attorney General

RECEIVED AND MAILED
COMMUNICATIONS SEC. JAMES M. McINERNEY
MAY 28 1952
Assistant Attorney General

Records
Miss Hamlin
Mrs. Green
Mr. DiGirolamo Enc. No. 70665

Under separate cover

Handwritten initials and scribbles

Handwritten initials

Handwritten initials

JMM:RSE:MAC

146-28-1941

April 29, 1952

Chauncey F. Tramutolo, Esquire
United States Attorney
422 P. O. Bldg.
7th & Mission
San Francisco 1, California

Re: No. 299 Misc. O. T. 1951 - S. Ct.
Iva Kiuko Toguri D'Aquino, Petitioner v.
United States of America

Dear Mr. Tramutolo:

This is to advise you that on April 28, 1952, the Supreme Court denied the petition for a writ of certiorari which was filed January 14, 1952, in the above-entitled case.

Enclosed for your files are two copies of our brief in opposition to the petition for certiorari.

Respectfully,

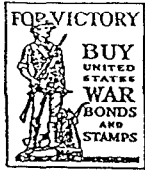
For the Attorney General

JAMES M. McINERNEY
Assistant Attorney General

Enclosure No. 80420

CC: Files
Chrono
Mr. Erdahl

INSPTD & FILED
COMMUNICATIONS SEC
APR 29 1952 J.F.



UNITED STATES DEPARTMENT OF JUSTICE

send to Knapp

TED

January 29, 1952

RECEIVED

Tom De Wolfe, Esq.,
Spec. Asst. to the Attorney General
c/o U. S. Attorney
St. Louis 1, Mo.

FEB 5 1952
CRIMINAL DIVISION
MAR 31 1952

Dear Tom:

Thank you for your note of January 26, 1952, relative to the Tokio Rose case. I was watching the advanced sheets of Fed. 2d and caught up with the opinion of the Court of Appeals about a week ago. You may remember, in my note of last October I congratulated you and Jim Knapp on what I considered an excellent brief on behalf of the Government. Apparently the Court of Appeals for the Ninth Circuit agreed with me because their opinion was practically a verbatim quotation of your brief. Again, my hearty congratulations.

Thank you for your thoughtfulness in writing.

Sincerely,

[Signature]

TED

146-24-1941
FEB 5 1952
CRIMINAL DIVISION

DEPARTMENT OF JUSTICE
ADMIN. RECORDS BRANCH
TELEGRAPH OFFICE

1952 JAN 14 PM 3:59

CRIMINAL DIVISION
RECEIVED
JAN 14 4:18 PM '52

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285 WA ST /CT-C/

SAN FRANCISCO 11-14-52 1232P

JAMES M. MCINERNEY ASST ATTY GENERAL
DEPT OF JUSTICE WA

146-28-1971
DEPARTMENT OF JUSTICE
1 14 10
REC'D
CRIM. INTERNAL SECURITY SEC
CRIMINAL DIV. - TRIAL SEC.

ON THE SEVENTH INSTANT THE ORIGINAL REPORTER-S TRANSCRIPT IN 6
VOLUMES IN D-AQUINO CASE TOGETHER WITH EXHIBITS WAS FORWARDED VIA EX-
PRESS TO CLERK SUPREME COURT OF THE UNITED STATES YOUR U.S. ATTORNEY
HERE IS FORWARDING YOU ANOTHER COPY OF THE REPORTER-S TRANSCRIPT VIA AIR
EXVER 0000 MHBRIEM CLERK U.S. COURT OF APPEALS

6

MB 1235P

[Handwritten signature]

[Handwritten signature]

JMM:JWK:ae

146-28-1941

AEC

January 5, 1952

AIR MAIL

Chauncey Tramutolo, Esq.
United States Attorney
422 Post Office Building
7th and Mission Streets
San Francisco, California

Re: D'Aquino v. United States
No. 12383

Dear Mr. Tramutolo:

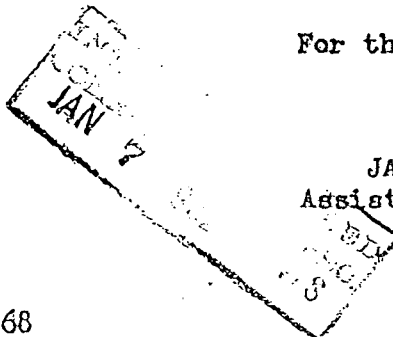
There is enclosed a copy of a letter addressed to Mr. Paul P. O'Brien, Clerk of the United States Court of Appeals for the Ninth Circuit, requesting him to return to this office the Government's copy of the transcript and exhibits in the above-captioned case.

It will be greatly appreciated if you will check up on this matter with Mr. O'Brien in order to be sure that the above records are returned to this office as soon as possible. You will note that the Government must be in a position to resist any attempt by the appellant to obtain a review of this matter by the Supreme Court. Appellant's petition is due to be filed in that Court on January 16 unless an extension of time is obtained by her.

Respectfully,

For the Attorney General

JAMES M. McINERNEY
Assistant Attorney General



cc: Records
Chron

Enclosure No. 76868
Mr. Knapp

AIR MAIL

JMM:JWK:ae

146-28-1941

A E C

January 5, 1952

AIR MAIL

Mr. Paul P. O'Brien
Clerk, United States Court of Appeals
Post Office Building
7th and Mission Streets
San Francisco, California

Re: D'Aquino v. United States
No. 12383

Dear Mr. O'Brien:

When the above-captioned case was argued before the Court of Appeals, the Government lodged with you its only copy of the transcript and its only photostatic copies of the defendant's and Government's exhibits in the case. You may recall that at that time the Government attorneys suggested that in the event of an affirmance by the Court of Appeals, the Government would need its transcript and copies of exhibits for use in connection with a possible petition for a writ of certiorari by appellant.

Although we have not been advised by appellant's attorneys of their intentions, we are of the opinion that they are likely to file a petition for a writ of certiorari in this matter. Unless the time is extended by the Supreme Court, such a petition is due in that Court on January 16, 1952. The Government's response to the petition would be due thirty days thereafter. In view of the size of the transcript and of the large number of exhibits, it is desirable that the Government be in a position to start preparation of its brief in opposition immediately upon receipt of service of the petition.

Therefore, it will be appreciated if you will return the Government's transcript and exhibits to this office as soon as possible. They should be addressed as follows: James M. McInerney, Assistant Attorney General, Criminal Division, Attention Robert S. Erdahl, Chief, Appeals and Research Section.

AIR MAIL respectfully,

For the Attorney General

MAILED
JAN 7 1952

JAMES M. McINERNEY
Assistant Attorney General

cc: Records
Chron
Mr. Knapp

AMC:RPW:MMCK

146-28-1941

RECORDED

August 30, 1948

The Honorable
The Secretary of State
Washington 25, D. C.

Dear Sir:

Attention: Mr. Hobert V. Haig

Re: Mrs. Iva Toguri D'Aquino
Treason

There are enclosed herewith copies of two letters to the Department of the Army, dated August 13 and 17, 1948, concerning the arrest and transportation to this country of Iva Toguri D'Aquino, and the location and transportation of certain Japanese nationals from Japan who are witnesses in the criminal prosecution.

The latest information is that the defendant will arrive in San Francisco aboard the SS. General H. F. Hodges on or about September 27, 1948. Advice as to the date and method of arrival of the witnesses has not been received. However, you will be notified as soon as such information is obtained.

FILED
SEP 2 1948

It will be appreciated if you will make the necessary arrangements for the admission of these persons to the United States.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

Mr. Whearty *W*
cc: Records
Garano

SIGNED AND MAILED
AUG 27 1948
ENCLOSURE No. 495460
DIVISION OF RECORDS

AMG:RPW:DJ

146-28-1941

RPW

September 1, 1948

Tom E. DeWolfe, Esquire
c/o United States Attorney
Detroit, Michigan

Dear Mr. DeWolfe:

Re: Iva Toguri D'Acuino

Enclosed is a self-explanatory letter from the Department of the Army with respect to the above case.

I have your letter of August 27 concerning the preparation of a trial brief. Mr. Hogen is away for a few days before going into the continuous work and will be instructed as you have directed as soon as he returns.

For your information, I am also enclosing a letter and enclosures from United States Attorney McGrath regarding the Sachs case. Please return these with whatever comment is necessary as to their handling. Your letter of August 27 returning the earlier correspondence in this matter has been received.

SEP 3 1948
ED

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

Clayton
AM
Amc
AM

RECORDED AND INDEXED
2
Enclosure
No. 67839
cc: Records
Chron.
Mr. Whearty

The Director, Federal Bureau of Investigation

August 16, 1948

Alexander M. Campbell, Assistant Attorney General,
Criminal Division

AMG:JBH:vng
146-28-1941

Mrs. Iva Toguri D'Aquino
Treason

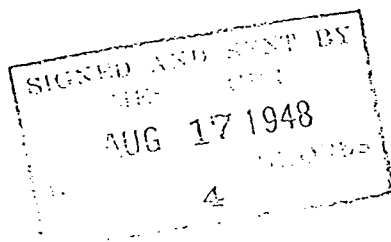
Today, I have addressed a request to the Secretary of the Army to arrest the subject in Tokyo, and return her to the Port of San Francisco on an Army transport which, it is expected, will arrive in this country on September 21 or September 28, 1948. In a separate letter, I have requested the Secretary of the Army to locate and transport to the United States approximately nine Japanese witnesses who are considered essential for presentation to the Grand Jury. Such presentation is expected to begin almost immediately after the defendant's arrival in this country.

Representatives of the Criminal Division will be in touch with you from time to time to make the necessary final arrangements for the Grand Jury.

cc: Records ✓
chron.
Mr. Hogan

Jit

*Amg
AMW*



ASC:TED:vng

146-28-1941

August 16, 1948

A.Y.

FILED
BY G.D.
AUG 19 1948

James M. Carter, Esq.
United States Attorney
Los Angeles, California

Dear Mr. Carter:

Re: Iva Toguri
Treason

Reference is made to the above entitled prospective treason prosecution pending in the Department.

The Department acknowledges receipt of and thanks you for yours of the 4th instant pertaining to the Bureau reports and exhibits which are presently in your possession in connection with this matter.

TED

Please rest assured that your cooperation herein is appreciated by the Department.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL,
Assistant Attorney General.

Blue M

cc: Records ✓
chron.
Mr. DeWolfe

SIGNED AND MAILED
AUG 17 1948
DIVISION OF RECORDS

S. A. Andretta, Administrative Assistant to
the Attorney General - Attention: Mr. Pickett
Alexander M. Campbell, Assistant Attorney General

June 9, 1949

AMC:TD:NHF;fjw

MH7

UNITED STATES v. IVA TOGURI D'AQUINO - 146-28-1941 - Treason
Shipment of official records

*file
10/1*

146-28-1941

Authority is requested to have the attached boxes containing official records to be used in the trial of the above case which is scheduled for July 5, 1949, in San Francisco, California, bound with heavy twine to secure same.

*6
11
A*

It is requested that the two boxes be shipped via express to the following address as soon as possible:

Came

Thomas E. DeWolfe, Esquire
Special Assistant to the Attorney General
c/o United States Attorney
SAN FRANCISCO, California.

CC: ✓ Records
Chrono
Andretta
Franke
Int. Security Section
DeWolfe

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. DiGirolamo
Director, Division of Records and Communications
FROM : Alexander M. Campbell, Assistant Attorney General,
Criminal Division
SUBJECT: United States v. Iva Toguri D'Aquino

DATE: June 9, 1949

AMC:JBH:mmv
146-28-1941

AMC

RECORDS
V.M.P.

Authorization is requested to send to San Francisco, California, the files listed below for use in the prosecution of the above captioned case.

146-28-1941, Sections 1 to 11; 146-28-1935, Sections 1 and 2.

[Handwritten signature]

[Handwritten signature]

AMC:TED:mmv

146-28-1941

June 7, 1949

J. E. F.

Frank J. Hennessy, Esquire
United States Attorney
San Francisco, California

Dear Mr. Hennessy:

Re: United States v. Iva Toguri D'Aquino -
Treason

Reference is made to the above entitled criminal treason prosecution presently pending in your District. Tom DeWolfe of this Division is scheduled to arrive in San Francisco on or about 17, June, to work in connection with the preparation for and trial of this cause.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

TED
gjf
WT
AMC by waf

cc: Records ✓
Chrono
~~Our file~~

RECEIVED AT
JUN 7 1949

S. A. Andretta, Administrative Assistant to
the Attorney General
Alexander M. Campbell, Assistant Attorney General
Criminal Division

J. E. F. June 1, 1949

UNITED STATES v. IVA TOGURI D'AQUINO - Treason - 146-28-1941
Crating for shipment - radio equipment

RECORDED

*AMC
7/17*

In the trial of the above-styled case which is scheduled to begin July 5, 1949, it will be necessary to ship certain pieces of radio equipment to San Francisco.

Please have the following **CRATED** for shipment via **AIR FREIGHT** -

FRAGILE - 2 pieces of radio equipment as indicated
on each, to be delivered soon to Supply Branch.

Please have authority granted for shipment via **AIR FREIGHT** the following -

FRAGILE - 5 pieces of radio equipment which are already
encased in portable suitcases and do not
need crating.

The above items are to be shipped **AIR FREIGHT** in order to arrive in San Francisco, California by June 19th or 20th, 1949 at which time the Department of Justice attorneys handling the case will have arrived to receive same. The above packages should be sent to:

Thomas E. DeKofa, Esquire
Special Assistant to the Attorney General
c/o The United States Attorney
SAN FRANCISCO, California.

At the close of the trial it is requested that authority be granted for the return to Washington, DC of all of the above equipment via **AIR FREIGHT**.

APPROVED:

CG: ✓ Records
Chrono
Int. Security Section
Mr. Andretta
Criminal - Room 2213

AMC:TED:1949

116-28-1941

J. E. E.

May 27, 1949

AIR MAIL

Frank J. Hennessy, Esquire
United States Attorney
San Francisco, California

Dear Mr. Hennessy:

Re: United States v. Iva Toguri D'Aquino - Treason

Reference is made to the above entitled treason prosecution presently pending in your district. The Department acknowledges receipt of and thanks you for yours of the 25th instant, addressed to Tom DeWolfe of this Division with which you enclosed a copy of defendant's motion seeking the entry of an order directing the issuance of subpoenas to certain witnesses resident in the United States. The motion is apparently based on the provisions of F. R. Crim. P. 17.

The Department concurs with your view that the motion referred to has merit and should be confessed.

Please keep the Department advised as to all material developments that ensue herein.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

cc: Records

Chrono

~~Confidential~~

AIR MAIL
MAY 27 1949

TEP
JJE
AMC by
WAP

AJC:TED:ramv

146-28-1941

May 26, 1949

AIR MAIL

Noel E. Story, Esquire
c/o PHS, OHQ, FEC
APO 500, c/o Postmaster
San Francisco, California

Dear Mr. Story:

Re: United States v. Iva Toguri D'Aquino

Reference is made to the above entitled treason prosecution presently pending in the Northern District of California at San Francisco. The trial of this cause on its merits is scheduled to commence on July 5. The Department acknowledges receipt of and thanks you for yours of the 16th instant addressed to Tom DeWolfe of this Division, with which you enclosed one copy each of the depositions of four Japanese nationals taken on behalf of the defendant herein recently. The Department will appreciate your continued prompt transmittal of copies of any depositions that have been or remain to be taken.

TED
JK
WT

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

cc: Records
Chrono
Our file

RECEIVED AND MAILED
COMMUNICATIONS SEC
MAY 28 1949

AIR MAIL

AAC:TED:mvv

146-28-1941

May 23, 1949

J. M. B.

AIR MAIL

Noel E. Story, Esquire
c/o PMS, GHQ, FEC
APO 500, c/o Postmaster
San Francisco, California

Dear Mr. Story:

Re: United States v. Iva Toguri D'Aquino

Reference is made to the above entitled treason prosecution presently pending in the Northern District of California. The trial of this cause on its merits will commence July 5, 1949, at San Francisco, California.

The Department acknowledges receipt of and thanks you for yours of the 5th instant, addressed to Tom DeWolfe of this Division, with which you enclosed one copy each of depositions of eight witnesses recently taken by counsel for the defendant herein, in the Orient. It is noted that five other depositions on behalf of the defendant have been taken and will be forwarded shortly to the Department. The Department would appreciate the prompt and expeditious transmittal here of copies of all depositions taken for and on behalf of the defendant, so that the preparation of this cause for trial may go on as scheduled.

Please keep the Department advised as to all material developments, in connection with this litigation, that ensue at your end.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

cc: Records
Chrono
~~Our File~~

INSPECTED AND MAILED
COMMUNICATIONS SECTION
MAY 23 1949
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46-28-1941

May 23, 1949

AIR MAIL

Frank J. Hennessy, Esquire
United States Attorney
San Francisco, California

Dear Mr. Hennessy:

Re: United States v. Iva Toguri D'Aquino

Reference is made to the above entitled treason prosecution presently pending in your jurisdiction. You will find enclosed herewith copy of a letter dated May 13, 1949, from Wayne M. Collins, Esquire, Counsel for the defendant, herein, to Tom DeWolfe of this Division, together with a copy of the enclosure therein referred to. The enclosures are self-explanatory.

It is understood that Mr. DeWolfe had previously advised Mr. Collins orally that the Government would not require the document in question to be certified if the defense disclosed to Mr. DeWolfe the original letter emanating from the Department of the Navy which forwarded to Collins the alleged Navy "citation" referring to defendant. It is likewise understood that Mr. DeWolfe advised Mr. Collins orally that the document in question was undoubtedly inadmissible in evidence and that the Government at the appropriate time would, among other grounds, object to the introduction of the same for the reasons that it was incompetent and immaterial.

The Department wishes to abide by Mr. DeWolfe's agreement and if the "citation" referred to is offered by the defendant at the trial on the merits, the Government will interpose no objection thereto on the ground that the same is not properly authenticated or certified under appropriate Federal statutes and Rules of Criminal Procedure for the United States district courts. The Government will, however, object to the introduction of said document in evidence on the grounds that the same has not been properly identified, is immaterial, irrelevant and incompetent, and on the further ground that the same is hearsay. You are requested to notify Counselor Collins of the Government's position in this matter.

Please keep the Department advised as to all material developments that ensue herein.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

Records ←
Chrono
~~Our file~~

Enclosure No. 203912

T&D
JX
JF
all

AHC:TED:mcav

146-28-1941

EX-104

May 18, 1949

AIR MAIL

Frank J. Hennessy, Esquire
United States Attorney
San Francisco, California

Dear Mr. Hennessy:

Re: United States v. Iva Toguri D'Aquino

Reference is made to the above entitled treason prosecution presently pending in your jurisdiction. You will find enclosed herewith copy of a letter from this Department to the Department of the Army under date of May 18, 1949, concerning the personal attendance at the trial on the merits herein of certain aliens as Government witnesses. The enclosure is self-explanatory.

TED
JH
JH

Respectfully,

For the Attorney General

INSP'D AND MAILED
COMMUNICATIONS SEC
MAY 19 1949 WS

ALEXANDER M. CAMPBELL
Assistant Attorney General

Enclosure No.
203911

cc: Records ←
Chrono
~~Out File~~ ←

AIR MAIL

4
AMC:JBH:marv

146-28-1941

May 13, 1949

file
104

B.A.

Dr. Dallas D. Irvine
Director, Photographic Records Division
The National Archives
Washington 25, D.C.

Dear Dr. Irvine:

Re: United States v. Iva Toguri D'Aquino -
Treason

Reference is made to my letter to you dated March 11, 1949 concerning acetate recordings of the abovenamed defendant's broadcasts over Radio Tokyo on the Zero Hour during the war. In addition to the dates listed in my previous letter, we are also interested in the broadcasts of August 12, 1945 and August 14, 1944, as well as one recording of the Zero Hour in your possession which bears no date.

It will be appreciated if you will deliver the three recordings listed above as well as those mentioned in my letter of March 11, 1949 to the bearer of this letter, who will execute a receipt therefor. It is desired that this Department retain custody of all these recordings until the completion of the trial which is scheduled to begin at San Francisco on July 5, 1949.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

cc: Records ✓
Chrono
Hogan
~~Our file.~~

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WLLCOT

AMC:TEDeW:mkn

146-28-1941

May 12, 1949

VIA AIR MAIL

Noel E. Story, Esquire
c/o PMS, GHQ, FEC
APO 500, % Postmaster
San Francisco, California

My dear Mr. Story:

Re: United States v. Iva Toguri D'Aquino

Reference is made to the above entitled treason prosecution presently pending in the Northern District of California. The Department acknowledges receipt of and thanks you for yours of 29 April, addressed to Mr. Tom DeWolfe of this Division, with which you enclosed one copy each of defense depositions of nine aliens presently resident in the Orient.

It is noted that associate counsel for the defendant in the Orient estimates that approximately twenty more depositions remain to be taken in the Orient by and on behalf of the defendant herein. It is requested that you forward to Mr. DeWolfe and/or the Department by air mail copies of such additional defense depositions as are taken in the future immediately upon the transcription and correction of the same.

It is believed that the trial date herein of July 5 will stand.

Respectfully,

For the Attorney General,

ALEXANDER M. CAMPBELL
Assistant Attorney General

cc: Records
Chrono
DeWolfe

TED
JZ
WJ

INSPECTED AND MAILED
COMMUNICATIONS SECTION
MAY 18 1949

AIR MAIL

AMC:TED:mmv

146-28-1941

May 6, 1949

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AIR MAIL SPECIAL DELIVERY

Frank J. Hennessy, Esquire
United States Attorney
San Francisco, California

C
~~SECRET~~

Dear Mr. Hennessy:

Re: United States v. Iva Tegurí D'Aquino -
Treason

Reference is made to the above entitled treason prosecution presently pending in your district. The Department acknowledges receipt of and thanks you for yours of the 4th instant addressed to Tom DeWolfe of this Division, with which you enclosed copies of a defense motion for an order directing the issuance of subpoenas, which motion has just been served upon you by counsel for the defendant herein.

TED
JZS
HOK
AMC
by
JFK

It is the view of the Department that defendant's motion for the entry of an order directing the issuance of subpoenas to witnesses resident in the United States is for the most part in compliance with F. R. Crim. P. 17 and that the same may be confessed by the Government in its entirety.

Please keep the Department advised as to all material developments that ensue herein.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

cc: Records
Chrono
~~Our file~~

RECEIVED AND MAILED
COMMUNICATIONS SEC.
MAY 6 1949 A1

AMC:TED:mrav

April 21, 1949

146-28-1941

Frank J. Hennessy, Esquire
United States Attorney
San Francisco, California

Dear Mr. Hennessy:

Re: United States v. Iva Toguri D'Aquino

Reference is made to the above entitled treason prosecution presently pending in your jurisdiction. It is noted that the trial date of this cause has been continued to July 5, 1949. You will find enclosed herewith a copy of the Department's letter under even date to the Secretary of the Army requesting that arrangements to transport Government witnesses herein to the United States for arrival in the Port of San Francisco on May 2 be deferred for the present. The enclosure is self-explanatory.

Please keep the Department advised as to all material developments that ensue herein.

Respectfully,

For the Attorney General

ALEXANDER M. CAMPBELL
Assistant Attorney General

Enclosure No.
203922

cc: Records ←
Chrono
~~Our file~~

SEARCHED
SERIALIZED
INDEXED
MAY 2 1949

TED

J 24
WJ

AMC by
WAP

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Nathan T. Elliff

DATE: July 26, 1946 ✓

FROM : E. Olson

TIG:EO:ejk

SUBJECT: The Admissibility of Recordings of
Radio-broadcast Messages in a
Treason Trial

*Photograph
+ D: [unclear]
needs
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While no case has been found where a court has discussed the problem, writers on the subject have stated that the rules regarding the admissibility of telephone conversations will undoubtedly be applied by the courts in deciding the admissibility of radio-broadcasted messages. 1/ The reason for this is clear because the

1/ See Wigmore on Evidence, 3d Ed. (1940) § 2157; also 1 Journal of Radio 362, 364 where it is stated that:

As the speaker is unseen, there will be the question of proof of the identity of the speaker and of the Radio/station over which he is speaking. The rules regarding identification of a speaker over the telephone undoubtedly will be applied here. Although there is some disagreement, three, and perhaps four, rules are generally recognized as to telephone conversations: (1) A speaker may be identified by familiarity with the voice; (2) He may, perhaps, be identified by the subject matter and context of his statements; (3) When the speaker has answered a phone call made by the one making the identification and admits his identity over the phone, there is an inference that the party answering is the one called; (4) When the call is made by the speaker to the one making identification, the speaker's mere assertion of his identity over the phone is sufficient to show that fact. (The cases are collected and discussed in 4 Wigmore on Evidence, 2d Ed. § 2155, pp. 585 et seq.; (1918) 31 Harv. L. Rev. 794; Note, 20 Ann. Cas 705. Consult, especially: Shawyer v. Chamberlain, 113 Iowa, 742, 84 N.W. 661, 36 Am. St. Rep. 411 (1900); Miller v. Kelly, 215 Mich. 254, 183 N.W. 717 (1921); Barrett v. Magnor, 105 Minn. 118, 117 N.W. 245, 127 Am. St. Rep. 531 (1908). In the radio situation, it is sub-matter that, insofar as identification of the station is concerned, the third rule, above, is applicable. In view

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146-28-1991

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problem in both instances is the same, i. e. the identity of an unseen speaker.

1. The Speaker Must be Identified.

Statements made by an unseen speaker are admissible in

1/ (Cont'nd)

of the physical and mechanical laws governing radio, it would seem that if a witness testifies that he adjusted the dials of his receiving set to the point at which due to the frequency assigned to it, the station in question should be audible there is an inference that the station heard is the one "dialed." Also, in view of the Commission's regulations requiring the regular announcing of call letters, (General Order No 8 (1931) 1 Jour. Radio Law, 74). it is submitted that the hearing of the call letters of a given station, when the dials were set at its frequency, should be the equivalent of the answering and admission of identity by the person called in the telephone cases. Whether this can be extended to allow identification of the individual speaker seems more doubtful. If this voice is not recognized by the identifying witness, the identification is being made, not by the witness or his testimony, but solely by the hearsay statement of the announcer. This would seem to be sufficient to cause its rejection. It is, therefore, possible that, where it is necessary to identify the particular speaker, testimony, such as that suggested above, should be given to identify the station over which the language was heard, and the other testimony be given to prove that the particular speaker was broadcasting over that station at the time in question. (Inasmuch as all broadcasting stations are now required to keep regular program logs: General Order No. 106, (1931) 1 JOURNAL OF RADIO LAW, 73; it would seem probable that this log, properly authenticated would be admissible to prove the identity of the speaker over a certain station at any certain time, on the basis of being an entry made in the regular course of business.)

evidence, unless otherwise objectionable, provided the identity of the person whom the witness heard is satisfactorily established. 2/ Whenever the statements made are to be attributed to a particular person, the speaker must be identified. This can be done by either direct or circumstantial evidence. 3/

2. What Constitutes Sufficient Identification for Admissibility.

One court has said that "when relevancy of evidence of spoken words depends on the identity of the speaker, the question in the first instance is for the court to decide; for it is always a question of law whether there is any evidence [of identity]. The question of its sufficiency is for the jury. 4/ It is well settled that whether or not the identity is established with reasonable certainty is a question of fact for the jury, provided there is some evidence to establish it. 5/

2/ Merritt v. U. S., 264 Fed. 870; W. B. Chubb Co. v. Sadler, 284 Fed. 710; Wallace v. U.S. 291 Fed. 972; Robilio v. U. S. 291 Fed. 975; Am. & B. Mfg. Corp. v. New Idria Quicksilver Min. Co., 293 Fed. 509; Lewis v. U. S., 11 F. (2d) 745, The Frederick Luckenbach, 15 F. (2d) 241. See Note 71 ALR 5,10 and 26 Georgetown Law Journal 162.

3/ See Snavak v. Segusse, 91 N.J. L.57; In Andrews v. U.S. 78 Fed. (2d) 274, 275, the court said that ". . . in order to render testimony detailing a telephone conversation competent, it is necessary to supply some evidence of the person with whom the conversation is alleged to have been had. However, recognition of the voice is not necessary to such identity. Like any other ordinary fact, it may be established by direct evidence or by circumstances."

4/ People v. McDonald, 165 N. Y. Supp. 41, 44.

5/ See Notes 71 ALR 5, at p. 10, 105 ALR 326.

Identification of the speaker as a certain person by actual recognition of his voice is always sufficient. 6/ This method rests on the same basis as identification by sight and the witness need not swear to absolutely certain recognition. In the case of U.S. v. Easterday 57 F. (2d) 165, where the witness went no further than to say he thought the voice was that of a certain person, a ruling that the statements of the unseen person were admissible was held proper. 7/ In People v. Dunbar Contracting Co., 215 N.Y. 416 with an opinion by Cardozo, J. the witness' opinion, guess, or best judgment was held sufficient certainty of recognition. On this basis, what the unseen speaker has said could always be put in evidence by the device of the witness' opinion on the matter of voice. 8/ It would then be up to the jury to handle the problem.

If one hears a voice he has formerly been acquainted with, there is no question. If, however, one hears a voice over a mechanical apparatus, and later upon meeting a man and hearing his voice, realizes it was that person's voice he heard, this would be sufficient identification for admissibility. 9/

6/ New York Life Ins. Co. v. Silverstein, 53 Fed. (2d) 986. See also Lord Electric Co. v. Morrill, 178 Mass. 304; Dorchester Trust Co. v. Casey, 268 Mass. 494, 495.

7/ In U. S. v. Easterday, 57 Fed. (2d) 165, the witness stated that "he thought the voice Greenhaus'." Judge L. Hand said that "this was enough to admit the testimony, for it was for the jury to decide how much weight to give it." See also 71 AIR 42 and 105 AIR 335.

8/ It is a matter of common knowledge that a man's voice frequently sounds much different over a telephone and often mistakes are made as to the voices of closest acquaintances. It may be noted that it is not really the voice of the other party that is heard, but a mechanical reproduction of it.

9/ Notes 71 AIR 35 and 105 AIR 333. People v. Dunbar Contracting Co., supra; People v. M'Donald, supra; People v. Strolle, 191 N.Y. 42. This is important because when recordings are available, a voice expert not previously acquainted with the voice of the party charged can acquaint himself with it and then listen to the records. This should enable him to give testimony as to whether or not the voice recorded is that of the party charged. See 7 Wigmore on Evidence, 3d, § 2157, p. 625, footnote 1.

The fact that the unseen speaker has made representations as to his own identity is not sufficient identification to make what he said admissible. 10/ This in connection with other circumstances may, however, be enough. 11/ In the absence of voice recognition, the identity of the speaker may be proved by the variant circumstances of the individual case occurring before or after the conversation. 12/

However identification is made, it must be before the statements of the unseen speaker are offered in evidence. 13/

3. Admissibility of the Recordings.

Recordings of what the unseen speaker has said are admissible once he has been identified because such a record reproduces the statements as they actually were uttered and nothing is left to memory of the witnesses or to the personal

10/ See 66 United States Law Rev. 279; 9 Virginia Law Review 446; 7 Wigmore on Evid. 3d Ed. § 2155; Van Riper v. U.S. 13 Fed.(2d) 961, at p. 968; Comm. v. Harris, 232 Mass. 588; Lerner v. Mass. Bonding & Ins. Co., 238 Mass. 80; Hirsch v. Sherman, 205 N.Y. Supp. 434; Citrin v. Touse, 102 N.J.L. 368. See also Andrews v. U. S., 78 Fed. (2d) 274, 275.

11/ See Andrews v. U. S., 78 Fed.(2d) 274, 275; Van Riper v. U.S. 13 Fed.(2d) 961, 968; and State v. Duffy, 179 Minn. 439. Where no testimony is available as to the actual recognition of the voice heard, the fact that the party charged has identified himself during his broadcast plus testimony to the effect (1) that the party charged actually made broadcasts over a particular station, (2) that no other person by that name made such broadcasts over that particular station and (3) that it was that particular station which was being received at the time the person identifying himself as the party charged was heard, should make the recordings admissible. See also 78 University of Pennsylvania Law Rev. 429.

12/ Andrews v. U.S. 78 Fed.(2d) 274, 275; 7 Wigmore on Evidence, 3d Ed., § 2155, p. 617, cases cited there in footnote 4.

13/ See Comm. v. Gettigan, 252 Mass. 450, 462.

factor involved. 14/ The persons making the recordings must appear as witnesses and authenticate the records telling exactly how they

14/ Commonwealth v. Clark, 187 Atl. 237; See also Boyne C.G. A A.R. Co. v. Anderson, 146 Mich. 328; Note 84, R.A. (N.S. 306.) Two possible theories under which these records might be admitted into evidence are stated in 8 University of So. Calif. Law Review 334:

(1) It is possible that they might be identified by the operator and be admitted somewhat as a photograph is admitted. A photograph is a witness' pictured expression of the data observed by him and, by this means, communicated to the tribunal more accurately than by words. (Wigmore on Evidence (2d Ed. 1923), 93 § 792) Similarly, a dictagraph record is a witness' recorded expression of the data heard by him and thereby communicated more accurately than by words. This reasoning, however, may be criticized. Photographs are admitted into evidence upon the theory that a verbal description by a witness always would be less effective than a pictorial communication of what he saw, (State v. Knight, 43 Me. 11 (1857); Baustian v. Young, 152 Mo. 317, 53 S.W. 921, 75 AM St. Rep. 462 (1899); Hampton v. Norfolk & W. Ry., 120 N.C. 534, 27 S.E. 963, 35 L.R.A. 808 (1897); 2 Wigmore on Evidence (2d ed. 1923), 89 § 790.) whereas it may well be argued that a dictagraph record would not serve to improve a witness' version of a conversation, provided his memory was good.

(2) Thus a more logical basis for the use of dictagraph records would seem to be as an aid to the memory of the witness. Most jurisdictions make a distinction between "present memory revived" and "past memory recorded." (2 Wigmore on Evidence (2d ed. 1923), 2, § 725.) Under the doctrine of "present memory revived," any stimulus may be used to revive the recollection of the witness, as the court is concerned mainly with whether or not the witness now remembers. (Neff v. Neff 96 Conn. 273, 114, Atl. 126 (1921); Sagers v. International Smelting Co., 50 Utah 423, 168 Pac. 105 (1917); Folsom v. Apple River Log-Driving Co., 41 Wis. 602 (1877). The

were made. 15/

14/ Cont'd.

witness therefore might be allowed to revive his memory by having the record played to him through earphones. Under the doctrine of "past memory recorded," the memorandum must meet specific requirements. These requirements clearly are satisfied if the witness himself made the memorandum contemporaneously with the event. (See Maxwell's Exers. v. Wilkinson, 113 U.S. 656, 5 Sup. Ct. 691, 28 L. Ed. 1037 (1885); Putnam v. United States, 162 U.S. 687, 16 Sup. Ct. 923, 40 L. Ed. 1118 (1896); 2 Wigmore on Evidence (2d ed. 1923), 20, § 845, Hutchins & Slesinger, Some Observations on the Law of Evidence--Memory, 41 Harv. L. Rev. 860 (1928)). Then, normally, the witness is allowed to read from this memorandum. (Phoenix Ins. Co. v. Public Parks Amusement Co., 63 Ark. 187 37 S.W. 959 (1896); Cobb v. Boston, 109 Mass. 438 (1872); Halsey v. Sinesbaugh, 15 N.Y. 485 (1857); Peck v. Valentine, 94 N.Y. 569 (1884); Bryan v. Morning, 94 N.C. 687 (1886); 2 Wigmore on Evidence (2d ed. 1923), 33 § 754.) However, there are some jurisdictions that hold that the memorandum itself may be introduced into evidence, because, logically, all that the witness could do would be to repeat, word for word, what was said in the memorandum. (State v. Brady, 100 Iowa 191, 69 N.W. 290, 36 L.R.A. 693 (1897); State v. Lynde, 77 Me. 561, 1 Atl. 687 (1885); 2 Wigmore on Evidence (2d ed. 1923), 33, § 754.) A dictagraph record is one method of making a memorandum. If the analogy of a written memorandum is to be carried out, the witness, in the former jurisdiction, might be permitted to repeat word for word the conversation of the record as heard by him through the ear-phones; and in the latter jurisdictions by allowing the record to be played to the jurors.)

15/ There should be testimony to the effect that -

1. the receiving sets used were capable of reproducing effectively utterances stating from the place where the party charged allegedly did his broadcasting,
2. the dials of these receiving sets were adjusted to the frequency at which the particular station used by the party charged was audible,

Wigmore believes that recordings of radio broadcast messages would be admissible and he suggests that they be used

15/ Cont'd.

- 3 the call letters of that particular station were heard
- 4 the message recorder followed after this station identification.

Wigmore in writing on this subject stated (7 Wigmore on Evid., 3d Ed., Sec. 2157):

It is obvious that the transmitting process itself presents at least four elements of fact, viz. (1) that the party charged spoke the words at a certain time into a microphone, (2) that the sending apparatus was capable of effective transmission to a particular spot, (3) that at that spot was a receiving apparatus capable of effectively reproducing the utterances starting from the sending apparatus, (4) and that at the receiver a witness heard, reproduced at the time in question, the words uttered into the microphone. (5) There is indeed logically involved a fifth element, viz. that, at the time and place of receiving, no other person was speaking into another microphone impersonating the party charged, but this is presumably impracticable in the state of the art.

There are therefore two evidential methods conceivable, (a) the strict method of evidencing each distinct element of fact by appropriate evidence, (b) the liberal method of taking a short cut and accepting everyday experience.

(a) By the strict method, a witness present at the broadcasting station would testify to seeing and hearing the party A speak certain words into a microphone at a certain time; another qualified witness would testify to the mechanism, the wave-length, etc., of the broadcasting apparatus; another qualified witness would testify similarly to the condition of the receiving apparatus; and a witness would testify to hearing words of identical tenor with those uttered. Needless to say,

wherever possible "for the purpose of reducing the chances of error in listening and also of increasing the items of identity of the utterer" ^{16/} "The phonograph record ^{of} a radio-broadcast message⁷ will" says Wigmore "reproduce the intonation and pronunciation

^{15/} Cont'd.

such complete testimony would usually be impracticable to obtain.

Wigmore further states that the liberal method is practicable and that it is accurate enough to justify a court in accepting it. In fact, in his opinion the liberal method would be the same as that used in the case of reply telegram and reply telephone. By such a liberal method, the usual experience of everyday life would be accepted by the court as sufficient evidence. That is, in everyday experience when a person hears on his receiving set a speech purporting to come from a person at a particular radio station, it is well enough known that there was such an utterance in that station at that moment, Wigmore says:

. . . when M in Georgeville, Indiana, hears on his receiving set a concert purporting to be played by the Philharmonic Orchestra led by Krause in Jersey City, we know well enough that there was such a concert there at that moment. This experience is general enough and accurate enough to justify the Court in accepting it as the basis for admitting testimony by M to what he heard. In such cases, if there has been impersonation or misunderstanding, it is readily practicable for the party charged to produce the exonerating evidence.

(c) If the liberal method be used, it may be strengthened by corroborative evidence based on the principle well-recognized for handwriting testimony (ante, Sec. 702), i.e. by calling witnesses who have acted upon former similar utterances heard. See also 1 Journal of Radio Law 362, 364; supra footnote 2.

^{16/} 7 Wigmore on Evidence (3d ed. 1940), 625, § 2157.

peculiar to the party charged; witnesses may then be called who are acquainted with his voice-style." 17/ This aids in identification of the speaker which is a necessary prerequisite for admissibility.

4. Use of Recordings in a Treason Trial.

It has been shown that recordings of a radio-broadcasted message can be admitted in evidence if the speaker can be identified. To use these recordings in a treason trial case, however, presents a special problem because "the constitutional requirement in effect is one of direct rather than circumstantial evidence." 18/ Therefore in a treason trial if the substance of what the alleged traitor said is to be shown by a recording of a radio-broadcast as proof of the overt act it would be necessary to have two witnesses testify that the voice heard is that of the party charged.

If, however, the overt act is proved according to the constitutional requirement and the recordings are to be used to show adherence to the enemy, two witnesses would not be required to identify the voice. For the majority of the court in the Cramer case held that "It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by disposition of two witnesses." 19/ Accordingly

17/ 7 Wigmore on Evidence (3d ed. 1940), 625 § 2157. Wigmore goes on to say that this expedient was employed by U.S. Atty. in a trial in the District of New Mexico. He does not cite the case; apparently it was not reported.

18/ Cramer v. U.S. 325 U.S. 1.

19/ In spite of those clear words of the court, there might be some doubt as to whether or not two witnesses are required to show "adherence" because the court subsequently seems to contradict itself by saying that "Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses". Justice Douglas in the minority opinion recognized this seemingly "contradiction in terms" and stated:

To say that the treasonable purpose with which the accused committed the overt act may be inferred from related events proved by a single witness, and at the same time to say that so far as they show the treasonable character of the overt act, they must be proved by two witnesses, is a contradiction in terms. The practical