Decisional Rules on Treason

"The framers' effort to compress into two sentences the law of one of the most intricate of crimes gives a superficial appearance of clarity and simplicity which proves illusory when it is put into practical application."—Justice Jackson in Cramer case.

The statute.—Any person who, owing allegiance to the U. S. or the Government of the Philippines, not being a foreigner, levies war against them or adheres to their enemies, giving them aid or comfort within the Philippines or elsewhere, shall be punished by reclusion temporal to death and shall pay a fine not to exceed 20,000 pesos. No person shall be convicted of treason unless on the testimony of two witnesses at least to the same overt act or on the confession of the accused in open court. Art. 114, R.P.C.; Similar to Art. III, sec. 3, U.S. Const.

Two kinds of treason.—The law punishes two kinds of treason: (1) levying war and (2) adherence to enemies. Treason of levying war may be rebellion and insurrection. Art. 134, R.P.C.; U.S. v. Lagnason, 3 Phil. 472.

Elements of treason.—In Cramer v. U.S., 325 U.S. 1, 65 S. Ct. 918, it was ruled that the treason of adherence "consists of two elements: adherence to the enemy and rendering him aid and comfort. A citizen intellectually or emotionally may favor the enemy and harbor sympathies or convictions disloyal to this country's policy or interest, but so long as he commits no act of aid and comfort to the enemy, there is no treason. On the other hand, a citizen may take actions which do aid and comfort the enemy—making a speech critical of the government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things which impair our cohesion and diminish our strength—but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason."

Adherence and intent.—Adherence, which is a species of treason, is itself made an element of the crime. It is synonymous with treasonable intent.

In his dissent Justice Douglas stated the elements thus: (1) treasonable intent and (2) giving aid and comfort to the enemy. He did not make the confusing statement that adherence and intent are the same.

The distinction between adherence and intent is important to avoid confusion. To make adherence an element is tantamount to making the law read thus: "adheres to their enemies *and* giving them aid and comfort; instead of a comma after "enemies." there would be the conjunction "and." Adherence is the crime, not an element thereof.

Practice of our courts.—The people's court has followed the majority ruling in the Cramer case. In a certain case the court made the following decision: "There being no concrete evidence as to defendants membership in the U. N. or Makapili organizations nor on what the (Jap) patrols he accompanied actually did once they were out of town, the Court is constrained to rule that the evidence of the prosecution fails to establish, in connection with counts 1 and 2, any true overt act of treason. It is obvious, however, that the same evidence is sufficient to prove beyond question defendant's adherence to the enemy (meaning treasonable intent) "the court hereby finds the defendant Filemon Escleto guilty of treason for having adhered to the enemy and for having treasonably caused the arrest of . a guerrilla "

What the court meant was that the defendant was guilty of the treason of adherence because he gave aid and comfort to the enemy as shown by the overt act of betraying a guerrilla. His treasonable intent was shown by his accompanying the enemy on patrols. People v. Escleto, Case No. 5148, People's Court. The supreme court also considers adherence as intent. Adriano case, infra.

Function of the overt act.—The treason of adherence according to the Cramer case "might be predicated on intellectual or emotional sympathy with the foe, or merely lack of zeal in the cause of one's own country. That was not the kind of disloyalty the framers thought should constitute treason. They promptly accepted the proposal to restrict it to cases where also there was conduct which was 'giving them aid and comfort' . .

"Having thus by definition made treason consist of something outward and visible and capable of direct proof, the framers turned to safeguarding procedures of trial and ordained that 'No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, ' This repeats in procedural terms the concept that thoughts and attitudes alone cannot make a treason they added what in effect is a command that the overt acts must be established by direct evidence, and the direct testimony must be that of two witnesses instead of one. In this sense the overt act procedural provisions adds something and something important to the definition."

Intent from overt act.—The court in the Cramer case ruled that while "adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by deposition of two witnesses, . . . in some circumstances at least the overt act itself will be evidence of treasonable purpose and intent

From duly proven overt acts of aid and comfort to the enemy in their setting, it may well be that the natural and reasonable inference of intention to betray will be warranted . . ."

Aid and comfort from overt act.—"The very minimum function that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses." Cramer case.

Rules applied.—In accordance with the foregoing rules, the court held that Cramer's meeting with the German saboteurs, Thiel and Kerling, at an inn and cafeteria did not constitute the treason of adherence because "there is no two-witness proof of what they said nor in what language they conversed. There is no showing that Cramer gave them any information whatever of value to their mission or indeed that he had any to give. No effort at secrecy is shown, for they met in public places. Cramer furnished them no shelter, nothing that can be called sustenance or supplies, and there is no evidence that he gave them encouragement or counsel, or even paid for their drinks . there is no proof either by two witnesses or even by one witness or by any circumstance that Cramer gave them information or established any 'contact' for them with any person other than an attempt to bring about a rendezvous between Thiel and a girl, or that being 'seen in public with a citizen above suspicion' was of any assistance to the enemy. Meeting with Cramer in public drinking to tipple and trifle was no part of the saboteurs' mission and did not advance it. It may well have been digression which jeopardized its success."

Justice Douglas' view.—On the other hand, Justice Douglas opined that "the overt act is designed to preclude punishment for treasonable plans or schemes or hopes which have never moved out of the realm of thought or speech. It is made a necessary ingredient to foreclose prosecutions for constructive treasons. The treasonable project is complete as a crime only when the traitorous intent has ripened into a physical and observable act.

"Proof of the overt act plus proof of a treasonable intent make clear that the treasonable design has moved out of the realm of thought into the field of action an overt act is required not to corroborate the proof of a traitorous intent but to show that the treasonable project has left the realm of thought and moved into the realm of action the function of the overt act was to make certain that before a conviction for the high crime of treason may be had more than a treasonable design must be established; it must be shown that action pursuant to that design has been taken.

"The treason of adherence was defined essentially in terms of conduct for it involved giving aid and com-

fort . . . The overt act was of course 'intended as a distinct element of proof of the offense in addition to intent.' "

Overt act innocent on its face.—Justice Douglas stressed that the overt act "need not manifest on its face the treasonable intent. Acts innocent on their face, when judged in the light of their purpose and of related events, may turn out to be acts of aid and comfort committed with treasonable purpose . . . The overt act need not manifest on its face the guilty purpose. The grossest and most dangerous act of treason may be, . . . and often is, innocent on its face . . . The act standing alone may appear to be innocent or indifferent, such as joining a person at a table, stepping into a boat, or carrying a parcel of food. That alone is sufficient. It must be established beyond a reasonable doubt that the act was part of the treasonable project and done in furtherance of it . . .

"Take the case where two witnesses testify that the accused delivered a package to the enemy, the accused admitting in open court that the package contained guns or ammunition. Or two witnesses testify that the accused sent the enemy a message, innocuous on its face, the accused admitting in open court that the message was a code containing military information . . .

"Conduct amounting to aid and comfort need not have been received by the enemy. Conduct amounting to aid and comfort might be innocent by itself—such as collecting information or stepping into a boat. It was sufficient if in its setting it reflected a treasonable project. It need not entail material aid; comfort or encouragement was sufficient. The only requirement was that it definitely translate treasonable thought into action which plainly tended to give aid and comfort to the enemy."

Two-witness requirement.—A confession in open court to the overt acts charged is not an adequate substitute for the testimony of two witnesses where the accused denied treasonable purpose. U.S. v. Magtibay, 2 Phil. 703.

In the Cramer case, the court held that "the two-witness evidence of the acts of the accused, together with common-law evidence of acts of possible inferences as to the actor's others and of facts which are not acts, will help to determine which among knowledge, motivation, or intent are the true ones. But the protection of the two-witness rule extends at least to all acts of the defendant which are used to draw incriminating inferences that aid and comfort have been given . . . Every act, movement, deed, and word of the defendant charged to constitute must be supported by the testimony of two witnesses. The two-witness principle is to interdict imputation of incriminating acts to the accused by circumstatnial evidence or by the testimony of a single witness. The prosecution cannot rely on evidence which does not meet the constitutional test for overt acts to create any inference that the accused did other acts or did something more than was shown in the overt acts, in

order to make a giving of aid and comfort to the enemy."

The court acquitted Cramer because there was no 2-witness proof of the acts, movements, deeds and words constituting his overt acts of aid and comfort.

No 2-witness proof for intent.— Justice Douglas assailed the validity of these rulings. He asserted they would lead "to ludicrous results." He said "the intent need not be proved by two witnesses. It may be established by circumstantial evidence. For it is well established that the overt act and the intent are separate and distinct elements of the crime. The 'intent may be proved by one witness, collected from circumstances, or even by a single fact.'" Case of Fries, 9 Fed. Cas. pp. 826, 909, No. 5, 126; Respublica v. Roberts, 1 Dall. 39, 1 L. ed. 27; U. S. v. Lee, 26 Fed. Cas. p. 907, No. 15, 584; Trial of David Maclane, 26 How St. Tr. 721, 795-798.

"But," according to Justice Douglas, "the ruling that the related acts and events which show the true character of the overt act charged must be proved by two witnesses is without warrant under the constitutional provisions, and is so remote from the practical realities of proving the offense, as to render the constitutional command unworkable."

He said it was error to believe that the treasonable intent, which may be proved by a single witness or by circumstantial evidence must, in the absence of confession in open court, be inferred from all the facts and circumstances which surround and relate to the overt act. He averred that the constitution does not require 2-witness proof of every fact and circumstance relied upon to show the treasonable character of the overt act and the treasonable purpose with which it was committed.

He maintained that "it is the overt act charged as such in the indictment which must be proved by two witnesses and not the related events which make manifest its treasonable quality and purpose." He said there should be no confusion in the "proof of the overt act with proof of the purpose or intent with which the overt act was committed . . . There is no historical support for saying that the phrase 'two witnesses to the same overt act' may be or can be read as meaning two witnesses to all the acts involved in the treasonable scheme of the accused. Obviously one overt act proved by two witnesses is enough to sustain a conviction even though the accused has committed many other acts which can be proved by only one witness or by his own admission in open court. Hence, it is enough that the overt act which is charged be proved by two witnesses . . its treasonable character need not be manifest upon its face . . . its true character may be proved by any competent evidence . . . Any other conclusion leads to such absurd results as to preclude the supposition that the two-witness rule was intended to have the meaning attributed to it."

In accordance with these rules, Justice Douglas believed that Cramer's meetings with the German sabo-

teurs, testified to by two witnesses, was an overt act of aid and comfort sufficient to convict him of the treason of adherence. It made no difference that the meetings were innocent on their face. Their treasonable character might be proved by any competent evidence, not necessarily by two witnesses.

Confession in open court.—The testimony by an officer as to a confession made to him by the accused will not support a conviction of treason. The confession to be effective must be made in open court. U. S. v. De los Reyes, 3 Phil. 349.

Acceptance of commission not overt act.—The accused accepted a captain's commission in the "Katipunan Society," which was "an organization for forming an independent government for the Philippines, not letting their headquarters or whereabouts to be known to the American government, and to gain forces and arms by means they can; sometimes they use force in securing members."

There is no proof whatever that the accused did any other act in connection with this charge than to receive this commission. The mere acceptance of the commission by the defendant, nothing else being done, was not an overt act of treason within the meaning of the law. U. S. v. De los Reyes, *supra;* Doctrine followed in U. S. v. Nuñez, 4 Phil. 441; U. S. v. De la Serna, 4 Phil. 448; U. S. v. Manalo, 6 Phil. 364

Two-witness rule not applicable to conspiracy.—But acceptance of appointment as an officer of armed forces designed to overthrow the government may be taken into consideration as evidence of the criminal connection with the conspiracy. The crime of conspiring to commit treason is a separate and distinct offense from the crime of treason. The constitutional provision requiring the testimony of at least two witnesses to the same overt act or confession in open court to support a conviction for treason is not applicable to conspiracy to commit treason. In re Bollman, 4 Cranch, 74; U. S. v. Mitchell, 2 Dall. 348 cited in U. S. v. Bautista, 6 Phil. 581.

Being a Makapili as treason.—In People v. Adriano, G. R. No. L-477, June 30, 1947, there was 2-witness proof that "the defendant was a Makapili and was seen . . . in Makapili uniform carrying arms." However, "it cannot be said that one witness is corroborated by another if corroboration means that two witnesses have seen the accused doing at least one particular thing, be it a routinary military chore, or just walking or eating."

"Having joined a Makapili organization" according to the court, "is evidence of both adherence to the enemy (treasonable intent) and giving him aid and comfort. Unless forced upon one against his will, membership in the Makapili organization imports treasonable intent, considering the purposes for which the organization was created: . . . 'to accomplish the fulfillment of the obligations assumed by the Philippines in the Pact of Alliance with the Empire of Japan'; 'to shed blood and sacrifice the lives of our people in order to eradicate

Anglo-Saxon influence in Asia'; 'to collaborate unreservedly and un-stintedly with the Imperial Japanese Army and Navy in the Philippines'; and 'to fight the common enemies.' Adherence, unlike overt acts, need not be proved by the oaths of two witnesses. Criminal intent and knowledge may be gathered from the testimony of one witness, or from the nature of the act itself, or from the circumstances surrounding the act." Cramer case, cited in Adriano case.

Being a Makapili as overt act.—"Being a Makapili" said the court, 'is in itself constitutive of an overt act. It is not necessary, except for the purpose of increasing the punishment, that the defendant actually went to battle or committed nefarious acts against his country or countrymen. The crime of treason was committed if he placed himself at the enemy's call to fight side by side with him when the opportune time came even though an opportunity never presented itself. Such membership by its very nature gave the enemy aid and comfort . . . The practical effect of it was no different from that of enlisting in the invader's army.

"But membership as a Makapili, as an overt act, must be established by the deposition of two witnesses . . . Is the 2-witness requirement fulfilled by the testimony of the one witness who saw the appellant in Makapili uniform beating a gun one day, another witness another day, and so forth?" The court held that the 2-witness requirement was not satisfied by such testimony. Adriano case.

Two witness proof in Makapili cases.—The courts reasons: "The opportunity of detecting the falsity of the testimony, by sequestering the two witnesses and exposing their variance in details, is wholly destroyed by permitting them to speak to different acts," Wharton's Criminal Evidence, Vol. 3, sec. 1396, p. 2282, citing Wigmore; "each of the witnesses must testify to the whole overt act. It may be possible to piece bits together of the same overt act; but, if so, each bit must have the support of two oaths," U.S. v. Robinson, D.C.S.D., N.Y., 259 Fed. 685, footnote Wigmore, ante; and "the very minimum function of that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. Every action, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses." Cramer case.

The court in effect ruled that there must be 2-witness proof of every action, movement, deed and word constituting the overt act of being a Makapili; 2-witness proof of being a Makapili was not enough, altho being a Makapili 'is evidence of both adherence to the enemy and giving him aid and comfort" and "is in itself constitutive of being an overt act." The court said that while "this conclusion savors of sophism, we have only to say that the authors of the constitutional provision of which our treason law is a copy purposely made convic-

tion for treason difficult, made the rule 'severely restrictive.' "

Sophistical, untenable.—The court's ruling in the Adriano case is not only sophistical; it is the kind of interpretation which, according to Justice Douglas is "untenable," leads "to ludicrous results," renders the treason law "unworkable," and makes the way easy for the traitor, . . . makes justice truly blind."

Justice Hilado showed in his dissent why the decision is untenable. He said that Makapili membership "was one single, continuous, and indivisible overt act of the present accused whereby he gave aid and comfort to the Japanese invaders. That membership was one and the same from the moment he entered the organization till he was captured. The fact that he was seen on a certain day by one of the state witnesses being a member of a Makapili, and was seen by another state witness but on a different day being a member of the same organization, does not mean that his membership on the first day was different or independent from his membership on the other day—it was the selfsame membership all the way through. A contrary construction would entail the consequence that the instant defendant . . . was a . . . Makapili as many times as there were days from the first to the last . . . being a Makapili was an overt act of the accused.

"And the fact that no two witnesses saw him being such a member on any single day or on the selfsame occasion does not . . . work against the singleness of the act, nor does the fact that no two witnesses have testified to that same over act being done on the same day or occasion argue against holding the two-witness rule having been complied with . . . the act being single, continuous and indivisible, at least two witnesses have testified thereto notwithstanding the fact one saw it on one day and the other on another day."

The Adriano case is an example of what Justice Cardozo calls "the spawn of careless dicta."

Rule in Adriano case reiterated.—To meet the test under the 2-witness rule, it is necessary that, at least, two witnesses should testify as to the perpertation of the same treasonous overt act. The sameness must include not only identity of kind and nature of the act, but as to the precise one which has actually been perpetrated.

The treasonous overt act of doing guard duty in the Japanese garrison one specific date cannot be identified with the doing of guard duty in the same garrison in a different date. Both overt acts, altho of the same nature and character, are two distinct and incofusable acts, independent of each other. Either one, to serve as a ground for conviction of an accused for treason, must be proved by two witnesses.

That one witness should testify as to one, and another as to the other, is not enough. Any number of witnesses may testify against an accused for treason as to a long line of successive treasonous overt acts; but notwithstanding the seriousness of the

acts nor their number, not until two witnesses, at least, shall have testified as to the perpetration of a single but the same and precise overt act, can conviction be entertained. People v. Agpangan, G. R. No. L-778, Oct. 10, 1947.

However, the foregoing rule "is erroneous and misleading," according to Justice Feria, "because the mere act of doing guard duty in a Japanese garrison, independent from that of being a member of the Japanese Army or a military organization of Filipino civilians and allied with the Japanese forces, does not of itself constitute an overt act. Doing guard duty in a Japanese garrison on a specific date, and standing guard in the same or another Japanese garrison on a different date, are but parts or bits of the continuous treasonous act of being an active mmeber of such organization." Agpangan case, *supra.*

Conclusion.—Even an expert in metaphysics can hardly reconcile the conflicting decisional rules on treason so as form a system of *elegantia juris.* Taxonomy or symmetry in the treason law is difficult to attain. Every adjudicated case must be regarded as having binding force only under its peculiar environmental facts.—*R. C. A.*