

THE TRIAL OF TOKYO ROSE: UNITED STATES v. IVA TOGURI D'AQUINO*

ROLES (IN ORDER OF APPEARANCE)

IVA TOGURI D'AQUINO	<i>Defendant; Japanese American radio broadcaster alleged to be "Tokyo Rose"</i>
NARRATORS 1 AND 2	
CITIZEN	<i>Representative of public opinion at the time</i>
FORMER NAVY SEEBEE	<i>Representative of public opinion at the time</i>
WALTER WINCHELL	<i>Influential broadcast personality and columnist</i>
FBI REPRESENTATIVE	<i>Soliciting witnesses for Tokyo Rose prosecution</i>
THOMAS DEWOLFE	<i>Special Assistant Attorney General who prosecuted Iva Toguri</i>
RICHARD EISENHART	<i>Government witness; Sugamo Prison guard</i>
WAYNE COLLINS	<i>Defense attorney for Toguri</i>
JUDGE ROCHE	<i>Judge presiding over the trial</i>
CLARK LEE	<i>Government witness; reporter who, along with Brundidge, interviewed Toguri after the war</i>
MARSHALL HOOT	<i>Government witness; enlisted sailor</i>
GEORGE OLSHAUSEN	<i>Defense attorney for Toguri</i>
TED TAMBA	<i>Defense attorney for Toguri</i>
MAJOR CHARLES COUSENS	<i>Government witness; Australian P.O.W. who was Iva's superior at Radio Tokyo</i>
CAPTAIN WALLACE INCE	<i>Government witness; American P.O.W. who was Iva's superior at Radio Tokyo</i>
KENKICHI OKI	<i>Government witness; Radio Tokyo employee; later discovered to have committed perjury</i>
GEORGE MITSUSHIO	<i>Government witness; Radio Tokyo employee; later discovered to have committed perjury</i>

TIMELINE OF EVENTS

Jul. 4, 1916	Iva Toguri is born in Los Angeles.
Dec. 7, 1941	The Japanese attack Pearl Harbor. Toguri, who is visiting her aunt in Japan at the time, is stranded in Japan.

* During the 2010 presentation of the Trial of Tokyo Rose: *U.S. v. Iva Toguri D'Aquino*, the presenters used a slideshow to accompany the re-enactment. The slideshow was prepared by Jury Group, <http://www.jurygroup.com>, which is on file with the authors and available at <http://lawreview.aabany.org/>.

Nov. 1943	Toguri starts broadcasting on the “Zero Hour” radio show at Radio Tokyo under the name “Orphan Ann.” Toguri is one of several English-speaking women used by the Japanese government to broadcast propaganda over the radio to Allied servicemen.
Aug. 13, 1945	The last of Toguri’s 340 broadcasts for “Zero Hour” airs. Two days later, Japanese forces surrender.
Sept. 1, 1945	After public outcry, hundreds of journalists go to Japan to find “Tokyo Rose.” Toguri meets with reporters Clark Lee and Harry Brundidge, and represents to them that she is “Tokyo Rose.”
Sept. 5, 1945	Toguri participates in a news conference attended by fifty correspondents, announcing Lee and Brundidge’s discovery.
Oct. 17, 1946	Toguri is arrested and held for over a year before the FBI and Army officials decide there is insufficient evidence to prosecute her.
Oct. 25, 1946	Toguri is released from custody. She seeks to return to the United States, resulting in more public outcry and prompting the government to renew its search for evidence against her.
Dec. 1947	The FBI issues a press release seeking witnesses who either saw Toguri broadcasting as “Tokyo Rose” or recognized her voice.
Aug. 26, 1948	Toguri is arrested for the second time and brought to the United States.
Oct. 8, 1948	A federal grand jury indicts Toguri for treason, charging eight overt acts.
Jul. 6, 1949	The trial against Toguri commences in federal court. The prosecution rests on Aug. 12, 1949, after six weeks of testimony by 47 witnesses. The defense rests on Sep. 19, 1949.
Sep. 26, 1949	Jurors begin their deliberations. After four days, they return a guilty verdict, basing their finding of treason on Overt Act No. 6.
Oct. 6, 1949	Toguri is sentenced to ten years in prison and a \$10,000 fine.
Oct. 10, 1954	The Ninth Circuit affirms Iva’s conviction. The Supreme Court declines to hear Iva’s appeal.
Jan. 1956	Toguri is released from prison, after serving six years and four months of her 10-year sentence.
Jan. 19, 1977	In his last hours as president, Gerald Ford grants Iva executive clemency. Toguri becomes the only American ever to be pardoned for treason.
Sept. 26, 2006	Toguri dies in Chicago of natural causes at the age of 90.

INTRODUCTION¹

[TOGURI sitting in studio at Radio Tokyo broadcasting]

TOGURI: Hello there, Enemies -- how's tricks? This is Ann of Radio Tokyo, and we're just going to begin the Zero Hour for our Friends -- I mean, our Enemies! -- in Australia and the South Pacific. So be on your guard, and mind the children don't hear! All set? O.K., here's the first blow at your morale -- the Boston Pops playing "Strike Up the Band."

[PLAY BOSTON POPS' "STRIKE UP THE BAND"]

NARRATOR 1: Orphan Ann was a disk jockey on Japanese radio during World War II. She was a real person. Her name was Iva Toguri, and this is her story.

NARRATOR 2: This is also the story of Tokyo Rose, who was *not* a real person but a myth. As the U.S. Government would later acknowledge, Tokyo Rose was "strictly a G.I. invention."²

NARRATOR 1: The Japanese Government used as many as twenty English-speaking women during World War II to broadcast propaganda over the radio to Allied servicemen in the Pacific. Many GIs reported hearing the voice of a seductive and sultry Japanese woman, who lured them to her broadcasts and then tormented them with stories of the infidelities of their wives and girl friends back home. Some servicemen reported that somehow this woman was able to predict Allied military movements, as if she had access to Allied military secrets. The GIs called her Tokyo Rose, and Tokyo Rose became famous, both in the Pacific and at home in the United States. None of the women broadcasters, however, actually used the name "Tokyo Rose."

NARRATOR 2: Iva Toguri was born in Los Angeles on the Fourth of July in 1916, the daughter of Japanese immigrants. She was raised a Methodist, joined the girl scouts, and played varsity tennis. She graduated from UCLA in 1940 with a degree in zoology.

In July 1941 Iva was sent to Japan to tend to her aunt, who was gravely ill. On December 7, 1941, the Japanese attacked Pearl Harbor.

NARRATOR 1: Iva was stranded in Japan. She was pressured by Japanese authorities to renounce her U.S. citizenship, but she refused. As a consequence, she was denied a food ration card, and rather than pose difficulties for her aunt's family, she moved out. Iva's family in the

¹ The background information in this script is largely drawn from FREDERICK P. CLOSE, *TOKYO ROSE/AN AMERICAN PATRIOT: A DUAL BIOGRAPHY* (2010); REX B. GUNN, *THEY CALLED HER TOKYO ROSE* (2007). Trial transcripts were obtained from the National Archives in San Francisco, and important documents such as letters and memoranda were found in now de-classified Department of Justice files. Further, documents related to the case may be found at *Annotated Case Documents*, AUTHOR'S OFFICIAL WEBSITE FOR TOKYO ROSE/AN AMERICAN PATRIOT, <http://www.tokyoroseww2.com/Tokyo-Rose-case-documents-menu.html> (last visited Sept. 5, 2012) [hereinafter CLOSE COMPANION SITE].

² In August 1945, prior to Japanese surrender, the U.S. Office of War Information had concluded: "There is no 'Tokyo Rose;' the name is strictly a GI invention. The name has been applied to at least two lilting Japanese voices on the Japanese radio. . . . Government monitors listening in 24 hours a day have never heard the words 'Tokyo Rose' over a Japanese-controlled Far Eastern radio." See CLOSE, *supra* note 1, at 42.

United States could not help her -- they were relocated to an internment camp near Phoenix, where her mother died in 1942.

To support herself, Iva found work first at a Japanese news agency, then as a typist at Radio Tokyo, a Japanese government radio station that broadcast a show called “Zero Hour” to Allied servicemen. Starting in November 1943, Iva was pressed into service on-air, performing under the name “Orphan Ann.” She participated in 340 broadcasts of the Zero Hour. The last was August 13, 1945, two days before the Japanese surrendered.

In the meantime, in April 1945, Iva married Felipe D’Aquino, a Portuguese national of Japanese-Portuguese descent. Iva declined to take his citizenship, preferring to remain an American.

PUBLIC REACTION

NARRATOR 2: When the war ended, the American public clamored for Tokyo Rose to be brought to justice. Hundreds of journalists arrived in Japan, intent on finding her. Two reporters, Clark Lee and Harry Brundidge, were led to Iva. For the promise of \$2,000, she agreed to give them an exclusive interview. Perhaps for the money, perhaps for the attention, Iva represented to them that she was “Tokyo Rose.”

Lee and Brundidge told other reporters of their find. Within days, on September 5, 1945, Iva participated in a press conference attended by fifty correspondents. A warrant for her arrest issued shortly thereafter. On October 17, 1945, Iva was arrested in Tokyo. She was imprisoned for more than a year, under severe conditions.³ When the U.S. concluded there was insufficient evidence that she had aided the Japanese, she was released, in October 1946.

Iva sought to return to the United States. Public reports of her efforts to do so triggered strong resistance from Americans offended at the thought of “Tokyo Rose” returning to America. Typical of the public reaction were the remarks of a citizen who wrote to the Department of Justice, a former U.S. Navy Seabee, and the columnist Walter Winchell.⁴

[CITIZEN, FORMER NAVY SEEBEE, and WINCHELL take CENTER stage]⁵

CITIZEN: In our local papers this morning, there is an item regarding the desire of Tokyo Rose to return to the United States.

I should like to protest. During the war it was well-known that the American-born and educated Japanese were the most cruel to our boys interned in their camps and these same Japanese were eager and willing to do anything in their power and might to harm our country and its people.

³ See George Olshausen, *D’Aquino v. United States: The So-Called “Tokyo Rose” Case*, 15 L. GUILD REV. 6, 9-10 (1955-56) (discussing the legality of Iva’s lengthy preliminary detention). Olshausen was one of Toguri’s defense attorneys.

⁴ See CLOSE, *supra* note 1, at 301-02.

⁵ This and the Former Navy SeeBee sections were excerpts from letters found in now de-classified Department of Justice files.

In the hearts of the Japanese, I cannot believe there is gratefulness for any of the privileges they receive here, and, I believe, secretly they are harboring the thought that there will be another “Pearl Harbor” day for them in the not too distant future.

Let “Tokyo Rose” forever remain in the country of her forefathers.

FORMER NAVY SEEBEE: If there is any truth to the report that Tokyo Rose is to be admitted into the United States, I demand by authority of my rights as a Naval Veteran who spent twenty-three months on the Pacific Islands that this damnable traitor be left in the country she chose to serve so well. To bring her back would be a savage injustice to the dead she helped to torture, as well as to those who outlived her torment.

WALTER WINCHELL:⁶ Tokyo Rose wants to come back here to live. Why not let her book passage on any of the floating hearses returning our Pacific war dead?

NARRATOR 1: Iva’s efforts to return to the United States failed. The 1940s was a time when loyalty to the United States was at a premium: the House Un-American Activities Committee⁷ was subpoenaing witnesses, and 150 loyalty boards⁸ were established across the country. The Department of Justice succumbed to public pressure and re-opened its investigation of Iva. In December 1947, the FBI issued a press release:⁹

FBI REPRESENTATIVE: Anyone who ever saw Iva Ikuko Toguri D’Aquino broadcasting as “Tokyo Rose,” or recognized her voice coming over the airways, should contact the FBI. The inquiry is proceeding and, if possible, the case will be presented to a grand jury.

NARRATOR 2: Hundreds of GIs responded. Many responses were discarded, as the Government was not obliged in the 1940s to disclose exculpatory evidence.¹⁰ Still, the

⁶ Walter Winchell was a popular and powerfully influential broadcast personality with a nationally syndicated newspaper column and radio show. His highly-publicized opposition to Iva Toguri would prove to have an impact on the Department of Justice’s decision to prosecute Toguri. See Stanley I. Kutler, *Forging a Legend: The Treason of “Tokyo Rose,”* 1980 WIS. L. REV. 1341, 1356-59 (1980) (discussing Attorney General Clark’s sensitivity to Winchell’s demands). For more information on Winchell, see NEAL GABLER, WINCHELL: GOSSIP, POWER AND THE CULTURE OF CELEBRITY (1994).

⁷ The House Un-American Activities Committee (HUAC), established in 1938 to investigate disloyal and subversive organizations, received national attention for its investigations of the Hollywood Motion Picture Industry, former State Department official Alger Hiss, and Julius and Ethel Rosenberg. See G. L. TYLER, THE ENCYCLOPEDIA OF AMERICAN CIVIL LIBERTIES, VOLUME ONE, 780 (Paul Finkelman ed., 2006).

⁸ Loyalty boards were the product of Executive Order No. 9835, issued by President Truman on March 21, 1947 and implementing a “loyalty program” for all federal employees and applicants. Under the Executive Order, federal employees could be fired if a loyalty board concluded that “reasonable doubt” existed concerning their loyalty. See JAMES GILBERT RYAN & LEONARD C. SCHLUP, HISTORICAL DICTIONARY OF THE 1940S, 231-232 (2006).

⁹ See CLOSE, *supra* note 1, at 301-02.

¹⁰ It was not until 1963, with *Brady v. Maryland*, 373 U.S. 83 (1963), that the Supreme Court would find that suppression by the prosecution of favorable evidence to the defendant violated due process where the evidence was material to guilt or punishment, regardless of the prosecution’s good faith.

Department of Justice was not inclined to prosecute. In May 1948, Thomas DeWolfe,¹¹ who would later become the lead prosecutor against Iva, wrote a memo concluding:

DeWOLFE: There is no available evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt. There is insufficient evidence to make out a prima facie case.¹²

NARRATOR 1: DeWolfe predicted that the case would never reach a jury -- the judge would dismiss it once he heard the government's own witnesses.¹³ DeWolfe's memo was sent up the chain of command at the Department of Justice, all the way to Attorney General Tom Clark, with a note that referred to "all the publicity given to the case."¹⁴ The Attorney General responded the next day:

ATTORNEY GENERAL CLARK: Prosecute it -- vigorously.¹⁵

NARRATOR 2: In August 1948, Iva was arrested, again, and brought home to the United States. Her husband remained in Japan.

GRAND JURY INDICTMENT

NARRATOR 1: On October 6, 1948, DeWolfe presented the case to a federal grand jury. Witness Hiromu Yagi testified that he had observed Iva at Radio Tokyo broadcasting propaganda. The grand jurors complained to DeWolfe that they thought an indictment would be unfair: how could the Government prosecute Iva, but not the American officer, Wallace Ince, who commanded her at Radio Tokyo? DeWolfe promised them that the Government would indict Ince as well.

NARRATOR 2: A month later, the prosecution learned that Yagi's testimony was a fabrication, induced by reporter Harry Brundidge. Yagi admitted to the FBI that he had never seen the defendant broadcast, and had no information about her. The Government determined not to prosecute Brundidge for suborning perjury for fear of losing the opportunity to convict Iva.¹⁶ The grand jury indicted Iva for treason.¹⁷ Ince was never prosecuted.

¹¹ No stranger to treason cases, DeWolfe had been a member of the prosecution team in the post-war treason trials of Douglas Chandler and Robert H. Best, both of whom were convicted for giving aid and comfort to the German government by broadcasting propaganda during World War II. See Kutler, *supra* note 6, at 1367-68.

¹² Statement of the Case from Thomas DeWolfe to Raymond P. Whearty, Top Assistant to Assistant Attorney General T. Vincent Quinn (May 25, 1948), *available at* <http://www.tokyoroseww2.com/DeWolfe-Statement-of-the-Case.html>.

¹³ In his memo, DeWolfe noted that under *Cramer v. United States*, the accused's overt acts must be accompanied by an *intention* to betray to support a finding of treason—a state of mind that the government simply could not show. See *id.* at 4 ("...the Government's case must fail as a matter of law because the testimony of the Government will disclose that subject did not adhere to the enemy or possess the requisite disloyal state of mind") (citing *Cramer v. United States*, 325 U.S. 1, 30 (1945)). DeWolfe also compared the lack of evidence in the Tokyo Rose case to the sufficiency of the evidence in the treason trials of Chandler and Best. *Id.* at 5.

¹⁴ Memorandum from Assistant Attorney General T. Vincent Quinn to Attorney General Tom C. Clark (May 27, 1948), *available at* <http://www.tokyoroseww2.com/Attorney-General-Clark-memo-to-prosecute.html>.

¹⁵ Clark's response to Quinn consisted entirely of these three words, scribbled on the same sheet of paper. *Id.*

¹⁶ See Kutler, *supra* note 6, at 1373-77 (discussing Brundidge's political connections and the cover-up that ensued after the government's discovery of the link between Yagi and Brundidge in order to preserve the case against

FEDERAL TRIAL

On July 6, 1949, trial commenced in federal court in San Francisco before Chief Judge Michael Roche. The words you will hear are drawn from the 6,000-page transcript of the trial. Prosecutor DeWolfe opened for the United States:¹⁸

DeWOLFE: May it please your Honor and ladies and gentlemen of the jury.

The indictment alleges that although the defendant is an American citizen and one who owed her allegiance to the United States, she adhered to and gave aid and comfort to the imperial government of Japan, our enemy. The indictment further alleges that the defendant was employed by the Broadcasting Corporation of Japan, a company under the control of the Japanese government, as a radio speaker, commentator and script writer and as an announcer of recorded music and propaganda transmitted to American troops on the battlefields during the war.

Now the indictment charges the defendant with violating the treason statute. That statute says in substance that whoever owing allegiance to the United States of America gives aid and comfort to the enemy is guilty of the crime of Treason. Ladies and gentlemen, treason is the only crime that the founding fathers saw fit to define in the Constitution. It is a heinous crime. It has an odious history.

The evidence will show that the defendant worked on a program called the Zero Hour. The defendant wrote scripts for and spoke on broadcasts beamed to American troops in the South Pacific Ocean area on the Zero Hour program.

Now the evidence will show that the Zero Hour was intended to create nostalgia among the American and Allied fighting men in the South Pacific, to create homesickness, to make them war weary, and to impair the capacity of the United States to wage war. Ladies and gentlemen of the jury, the evidence will show that these nefarious propagandistic purposes of the Zero Hour were fully, thoroughly, clearly, and completely explained to this defendant before she went on the air and that she was aware of those purposes.

Now we submit that at the end of the case you can come to no other conclusion than that the material averments of this indictment have been proven beyond reasonable doubt.

Toguri). Moreover, because of the common-law voucher rule (since abolished by the Federal Rules of Evidence), which requires a party to vouch for the veracity and truthfulness of one's own witness, the defense could not call Brundidge to the stand in the Toguri trial to impeach him. *See id.* at 1377.

¹⁷ Specifically, the indictment charged eight, vaguely-worded overt acts of treason, all involving broadcasts Toguri had allegedly made or of script preparation in which had allegedly personally participated. The jury's finding of any one of the overt acts was sufficient to convict. Overt Act No. 6, charging that Toguri had broadcast information "concerning the loss of ships" during October 1944, quickly emerged as the focus of the government's case and would ultimately become the overt act on which the jury hinged their finding of treason. *See infra* pp. 125-26.

¹⁸ The following portions of DeWolfe's opening statement are derived from the Transcript of the Trial Proceedings at 7-8, 13-14, 20-22, 33, *United States v. D'Aquino*, No. 31712-R (N.D. Cal. 1949).

NARRATOR 1: The defense team consisted of Wayne Collins, George Olshausen, and Ted Tamba. Collins was a prominent civil rights activist who had represented Fred Korematsu and other Japanese Americans. As the trial record shows, Collins was tenacious -- to a fault. He fought virtually everything, even the admission of the most innocuous evidence. He made hundreds of objections, the vast majority of which were overruled. The *San Francisco Chronicle* described him as “perpetually indignant.”¹⁹ For purposes of this presentation, we have provided only a few samples of the objections and colloquy, to avoid subjecting you to the kind of frustration that the jury undoubtedly experienced.

The defense reserved its opening statement for its case.

NARRATOR 2: The Government called its first witness, Richard Eisenhart, a guard at Sugamo Prison at Yokohama, to address a critical issue: whether Iva was Tokyo Rose.

DIRECT EXAMINATION OF RICHARD EISENHART by DeWOLFE²⁰

Q. Where did you first see the defendant?

A. At the prison in Yokohama.

Q. Approximately what date?

A. When she was first brought in, in October of 1945.

Q. And you were stationed at that prison in what capacity?

A. As a corporal of the guard.

Q. I hand you Government’s exhibit 2 for identification and ask you whether you recognize the signature on the back?

A. Yes, sir, I do.

Q. Tell the Court and jury, Mr. Eisenhart, how you came to obtain that and whose signature it is, if you know.

A. Well, at the time I was on duty in the prison, all of the soldiers became souvenir-conscious, and I requested one of the guards to obtain an autograph for me. I went with the guard to the cell, and I saw the signature being made.

Q. State whether or not the signature on the back of exhibit 2 for identification was marked in your presence.

A. Yes, sir, it was.

Q. Who signed it in your presence?

A. The defendant.

¹⁹ See CLOSE, *supra* note 1, at 341 (quoting the *San Francisco Chronicle* article).

²⁰ The following portions of the direct examination of Richard Eisenhart are derived from the Transcript of the Trial Proceedings at 34-37, *D’Aquino*, No. 31712-R.

- Q. Do you recognize her?
A. Yes, sir.

DeWOLFE: Government's exhibit 2, sir, is offered in evidence.

COLLINS: We object on the ground it is incompetent, irrelevant and immaterial, has no bearing on any issue involved in this case; upon the further ground that the document itself has not yet been explained as to the initialing, and no foundation has been laid for its admission into evidence.

JUDGE ROCHE: The objection is overruled. Government's exhibit 2 is received.

DeWOLFE: May I show that to the jury, sir, and read what is on the back of it?

JUDGE ROCHE: Yes.

DeWOLFE: On the back of it, government's exhibit 2, it is signed "Iva I. Toguri," quote: "'Tokyo Rose.'" Your witness, Mr. Collins.

NARRATOR 1: Exhibit 2 was a yen note that Iva had autographed for Eisenhower.²¹ She wrote the words "Tokyo Rose" underneath her signature. Although it was clear that Iva had given the autograph -- later evidence would show that she gave autographs like this dozens of times -- Collins attacked Eisenhower at length, to little effect.

CROSS-EXAMINATION OF EISENHART by COLLINS²²

- Q. Isn't it a fact, Mr. Eisenhower, that the jailers molested the defendant when she was incarcerated in that prison by continually turning on and turning off the lights?
A. No, sir, not to my knowledge.
- Q. Mr. Eisenhower, when you were in the cell, didn't she refuse at first to sign this Exhibit No. 2?
A. No, sir.
- Q. Isn't it a fact that you first asked her if she would, and she refused, and then you were insistent that you wanted a souvenir and she then signed?
A. No, sir, that's not true.
- Q. Now, did you tell the defendant at that time that she had a right to refuse to sign that document?
A. No, sir, that question was not brought up.

²¹ The yen note can be viewed at CLOSE COMPANION SITE, *supra* note 1, <http://www.tokyoroseww2.com/Yen-note-autographed.html> (last visited Sept. 4, 2012).

²² The following portions of the cross-examination of Richard Eisenhower are derived from the Transcript of the Trial Proceedings at 47, 51, 57, *D'Aquino*, No. 31712-R.

COLLINS: If your Honor please, I renew at this time my motion to strike the exhibit together with the testimony of the witness on the ground that no foundation has been laid.

JUDGE ROCHE: Submitted?

COLLINS: Yes.

JUDGE ROCHE: The motion to strike will be denied.

NARRATOR 2: Another prosecution witness was Clark Lee, one of the two reporters who had hunted for the mythical Tokyo Rose and found Iva. He interviewed her on September 1, 1945, at the Imperial Hotel in Tokyo with Harry Brundidge, who worked for *Cosmopolitan* magazine. There, Iva signed a one-page contract stating that she was the “one and original ‘Tokyo Rose.’”²³

DIRECT EXAMINATION OF CLARK LEE by DeWOLFE²⁴

Q. Do you remember any statement made by her as to the Battle of Formosa?

A. Yes, sir.

Q. Tell the Court and jury.

A. She said that in the fall of '44, at the time that Japan had claimed they had sunk a number of American ships off Formosa, a major came to her from Imperial headquarters and bluntly suggested that she broadcast as follows: “Orphans of the Pacific, you really are orphans now. How are you going to get home now that all of your ships are sunk?”

Q. Did she say whether or not she broadcast that?

A. She said she broadcast that.

Q. Was any statement made to you by her at that time as to American wives and sweethearts at home?

A. She said that she said in her broadcast that she told the truth that their sweethearts were unfaithful to them, that their wives were out dancing with other men while they were fighting in the muck and jungle.

NARRATOR 1: Collins cross-examined.

²³ The contract may be viewed at CLOSE COMPANION SITE, *supra* note 1, <http://www.tokyoroseww2.com/Cosmopolitan-Contract.html> (last visited Sept. 4, 2012).

²⁴ The following portions of the direct examination of Clark Lee are derived from the Transcript of the Trial Proceedings at 485-86, *D'Aquino*, No. 31712-R.

CROSS-EXAMINATION OF CLARK LEE by COLLINS²⁵

Q. When you met with Mrs. D'Aquino, Mr. Brundidge offered her an exclusive contract for a story for the sum of \$2,000, isn't that true?

A. That is correct.

Q. So that when that offer was made to her, she told you a story, didn't she?

A. Yes, sir.

Q. Mr. Lee, isn't it a fact that the very first thing she told you and Harry Brundidge was that she was not the only girl on Radio Tokyo and that she was not Tokyo Rose?

A. That is not a fact. It is half true. She said she was not the only girl, but she was the only Tokyo Rose.

Q. Now, you testified on direct examination that in that conversation with you the battle of Formosa was discussed?

A. It was what the Japanese called the battle of Formosa. Actually there was no battle, but just that Halsey was making a fighter sweep through there. But there was no battle; they didn't even have contact.

Q. There was no battle?

A. No, it simply existed in the minds of the Japanese propagandists.

MITSUSHIO AND OKI

NARRATOR 2: Without Hiromu Yagi, the witness who lied before the grand jury, the government had to locate other witnesses who could testify to overt acts of treason by Iva.²⁶ The government selected Kenkichi Oki and George Mitsushio. Like Iva, both were California born Japanese Americans, who moved to Japan during adulthood and worked at Radio Tokyo during the War. Unlike Iva, they both renounced their U.S. citizenship.

Oki testified that the purpose of the broadcasts was propaganda -- to attract Allied soldiers to the program, to create nostalgia, and to make them war-weary.²⁷ He said Iva was present during meetings with Japanese military and that she wrote scripts that fulfilled these objectives.²⁸ Oki's most damaging testimony was his recollection that Iva typed a script concerning the loss of American ships at the Battle of Leyte Gulf -- a battle that the U.S. had won. In this script, according to Oki, Iva said, "Now you fellows -- you are orphans of the Pacific -- you will never get home."²⁹

²⁵ The following portions of the cross-examination of Clark Lee are derived from *id.* at 522, 572, *D'Aquino*, No. 31712-R.

²⁶ *Cramer v. United States* required at least two witnesses to testify to overt acts of treason. 325 U.S. 1, 30 (1945).

²⁷ See CLOSE, *supra* note 1, at 371.

²⁸ *Id.* at 369.

²⁹ Transcript of the Trial Proceedings at 681, *D'Aquino*, No. 31712-R. This was the alleged act at issue in Overt Act No. 6 of the indictment.

On cross-examination, Oki and Mitsushio stood by their remarkably similar stories. Only years later was it revealed that both Oki and Mitsushio had committed perjury.³⁰

CROSS-EXAMINATION OF MARSHALL HOOT by COLLINS³¹

NARRATOR 1: Among the Government's most effective witnesses were the G.I.s who testified they had listened to radio broadcasts and heard a woman broadcaster named Orphan Ann taunt them. One of these was Chief Bosun's Mate Marshall Hoot. On direct, Hoot recalled specific lines from broadcasts he heard while patrolling in the Pacific and testified that the voice he recalled matched the voice on the recordings that were Government Exhibits 16 through 21. Moreover, Hoot testified to keeping a record of what he heard on the Zero Hour. Some of the most memorable testimony for the prosecution came out on cross-examination and re-direct, when Collins was seeking to undermine Hoot's extremely precise recollection of the dates of broadcasts and the witness referred to a letter he just happened to have in his pocket.

Q. You heard a radio program on January 3, 1944, didn't you?

A. Yes, opening with a man's voice and theme music.

Q. Is there anything in particular that fixes your mind to the fact that it took place on January 3, 1944?

A. I am absolutely sure.

Q. What makes you sure?

A. I have a letter in my pocket to prove it. I wrote to my wife that day.

Q. Did you refer to the program in that letter?

A. I did.

Q. May I see the letter?

A. I don't know whether you can read it or not, Mr. Collins.

Q. I don't want to read anything personal. I don't want you to read it out loud.

A. I will not.

Q. Have you got the envelope with it?

A. I have the censored envelope, January 3, 1944.

Q. May I see that? Did you have this letter with you yesterday, Mr. Hoot?

A. I have had the letter with me – starting right here, I just marked it out sir. That is what I would like you to look at, nothing else.

Q. All right.

³⁰ The perjury was uncovered by *Chicago Tribune* journalist Ron Yates in early 1976. See *infra* pp. 127.

³¹ The following portions of the cross-examination of Marshall Hoot are derived from the Transcript of the Trial Proceedings at 2179-88, *D'Aquino*, No. 31712-R, available at <http://www.tokyoroseww2.com/Marshall-Hoot-Trial-Testimony-Introduction.html>.

DeWOLFE: Let us see it, Mr. Collins, after you get through with it.

COLLINS: You can look at it first if you want to.

DeWOLFE: You can look at it first. After you get through, I will look at it. . . . [All look at letter.] If the Court please, with the consent of the witness, the Government offers this letter in evidence.

COLLINS: Just a moment, please. We were having a man on cross-examination.

Q. In the letter that you wrote January 3, you mentioned the name of Tokyo Rose, and you heard a voice broadcast on January 2, didn't you?

A. That is what we called her. I am positive that I did not hear her on January 2 because that was a Sunday and she didn't broadcast on Sunday. What I bracketed did not relate to a broadcast. It related to an incident that I will never forget. I lost some of my men. That is when she had told us a few days before what was going to happen, and it happened on the 2nd of January at night at 10:00.

RE-DIRECT EXAMINATION OF HOOT by DeWOLFE³²

NARRATOR 2: On re-direct, the prosecution offered the letter the witness seemed so reluctant to share.

DeWOLFE: Your Honor please, the Government wishes to offer in evidence a two-page letter dated January 3, 1943 and the envelope.

JUDGE ROCHE: It may be admitted as Exhibit 26.

DeWOLFE: With Your Honor's permission, I will read the letter to the jury.

The envelope is addressed to the witness's wife, Mrs. Jennie Hoot, in California. The letter is addressed to Hoot's two children.

Dearest Biddy and Betty, I received Betty's letter this a.m. Sure glad you heard from me. I know how it is to not hear. I am O.K. yet.

Betty, I am just a little older today and maybe a little grayer, but we can take it. What you read in the papers, do not let it worry you any more than you can help.

Babies, it is all bad. Yes, I wrote often to ease my loneliness, and you or mama must write every day if you can. That is the most important thing on this island, mail and more mail. Well, Charlie and his washing machine cut me off. Will finish later.

³² The following portions of the re-direct examination of Marshall Hoot are derived from the Transcript of the Trial Proceedings at 2204-05, *D'Aquino*, No. 31712-R, available at <http://www.tokyoroseww2.com/Marshall-Hoot-Trial-Testimony-Introduction.html>.

HOOT: Charlie and his washing machine -- that's what we called the enemy and the Jap bombers.

DeWOLFE: [continuing to read] January 4th. I am still O.K this a.m. Hope my babies are the same. We have a radio now and we get Tokyo best, they have an American Jap girl who has turned down the United States for Japan. They call her Tokyo Rose, and does she razz us fellows out here in the Pacific, telling how well Japan is getting along, and to hear her start out you would think that she was broadcasting from the U.S and sorry that we were losing so many men and ships, it sure makes the fellows sore. Last night before Charlie we had Radio KNY, made me so jittery I smoked half a pack of cigarettes.

Honey babies, I must lay off for today, hope I dream of you tonight as I think of you all day. So write me anything.

Lots of love, Daddy.

NARRATOR 1: A journalist covering the trial reported that as the letter was read, jurors wiped away tears. Judge Roche later advised that for him the letter was the turning point in the trial. Despite its impact, the letter did nothing to establish Iva's guilt; among other things, Radio KNY was not the station that broadcast the Zero Hour.

RULE 29(a) MOTION AND RULING

NARRATOR 2: On Friday, August 12, 1949, the Government rested after calling 47 witnesses over six weeks. The next day, Saturday, defense attorney George Olshausen argued Iva's motion to dismiss.

OLSHAUSEN:³³ At this time, the defendant makes the motion under Rule 29(a) of the Rules of Criminal Procedure for a judgment of acquittal.

The basic provision of the Constitution, Article III, Section 3, reads as follows:³⁴

“Treason against the United States shall consist only of levying war against them or in adhering to their enemies, giving them aid and comfort.”

Now, the case law teaches us the elements of treason. First, there must be the intent, not only to do the act, as in an ordinary criminal case, but to betray the United States.³⁵

Second, the overt acts must themselves be criminal in the sense that they must themselves be sufficient to give aid and comfort to the enemy.³⁶

³³ The following portions of Olshausen's argument are derived from the Transcript of the Trial Proceedings at 3004-15, *D'Aquino*, No. 31712-R.

³⁴ U.S. CONST. art. III, § 3. Treason is the only crime outlined in detail in the Constitution.

³⁵ See *Cramer*, 325 U.S. at 7; *Haupt v. United States*, 330 U.S. 631, 634-35 (1947).

The Government's case is based on eight overt acts. The Government is assuming, and I think correctly, that the overt acts do not in and of themselves show treasonable intent.³⁷ Consequently, they are introducing all this other evidence on the subject of intent. However, the record is incomplete. The Government introduces certain scripts but shows by their own witness that certain other scripts were delivered to them and are now missing. Under these circumstances, where part of the evidence is unavailable after being in the Government's hands, the prosecution of the case violates due process.

NARRATOR 1: Olshausen analyzed the testimony of each of the government witnesses to show that none of the "overt acts" gave "aid and comfort" to the enemy. Rather, Olshausen argued, the Government's proof showed that Iva had given "aid and comfort" to the Allies.

OLSHAUSEN:³⁸ The Government's own witness testified that the defendant brought food and tobacco to the American and other allied prisoners of war. Illegally, against the Japanese rules. When we remember that this was a world in which the people were kept under police surveillance, in which they were put in jail by the thought police, in which they were deprived of their ration cards, and in which she herself was right under the surveillance of a planted agent, a spy, right in the same broadcasting room, to go and smuggle food and tobacco to the prisoners of war is a pretty big act. It is a little hard to give an exact adjective to cover it, but it is quite an accomplishment under those circumstances.

Your Honor, the rule is that if there is a reasonable doubt any way you take the evidence, there has to be a motion to acquit. Even looking only at the scripts that are in evidence, forgetting about all the scripts that the Government has failed to produce, the items that were picked out still were harmless in their content. Add to that the testimony that she went out of her way in a virtual police state to give food and tobacco to prisoners, which is uncontradicted, and the Government's own proof has cast a reasonable doubt on her intention. And without proving the intention beyond a reasonable doubt, there is no case. Consequently, a judgment of acquittal should be granted now.

NARRATOR 2: When he stood up, DeWolfe promised to speak for only 20 minutes. His main point was a simple one, although directly contrary to the conclusion of his earlier internal memorandum: The United States had made a *prima facie* case.³⁹ Once Olshausen finished his rebuttal argument, the judge ruled immediately.⁴⁰

³⁶ Later, however, Judge Roche would give the confusing jury instruction that when overt acts were judged "in the light of related events, [they] may turn out to be acts which were not of aid and comfort to the enemy." Kutler, *supra* note 6, at 1380. For a discussion of the function of overt acts, see Olshausen, *supra* note 3, at 7.

³⁷ See *Cramer*, 325 U.S. at 31 (explaining that a defendant must intend the act *and* intend to betray his country by means of the act).

³⁸ The following portions of Olshausen's argument are derived from the Transcript of the Trial Proceedings at 3049-54, *D'Aquino*, No. 31712-R.

³⁹ See *id.* at 3068, *D'Aquino*, No. 31712-R ("[T]he Government has proven for the purpose of this motion all the material essential allegations of the indictment, the essential and material ingredients of the statutory and constitutional crime and offense of treason. The United States has made out a *prima facie* case.").

⁴⁰ See Transcript of the Trial Proceedings at 3074, *D'Aquino*, No. 31712-R.

JUDGE ROCHE: Is the motion submitted?

OLSHAUSEN: Yes.

JUDGE ROCHE: The motion to dismiss will have to be denied.

DEFENSE OPENING

NARRATOR 1: Olshausen was a retired attorney who had volunteered his time at Collins's request, a scholarly gentleman in a three-piece suit. When Olshausen advised Iva of the ruling, he said:

OLSHAUSEN: [in tone of disbelief] I always thought the world was round.⁴¹

NARRATOR 2: It was the defense's turn. Preparation for Iva's team of volunteers had been difficult. While the government flew nineteen witnesses to San Francisco from Japan in first class to testify, because Iva was indigent, the defense had to rely largely on depositions to be read in court. Judge Roche had permitted one defense attorney to travel to Japan at government expense to take depositions. Tamba made the trip, and found his steps dogged by a DOJ attorney who cross-examined at each deposition and kept DeWolfe well informed. It later emerged that the prosecutors received wiretaps from the U.S. Army of the defense attorneys' telephone conversations during the trip.

Tamba opened for the defense.⁴²

TAMBA: Ladies and gentlemen of the jury, it is now our privilege to tell you briefly what we expect to prove on behalf of the defendant. Iva Toguri was an American citizen by birth. She received her education in this country. She lived the normal life of an average American girl in this country. Then it was necessary for her to go to Japan to visit her sick aunt, and war breaks out while she is there.

She was unable to return to the United States. She cannot get out of Japan. She was harassed by the Japanese military police, the *kempeitei*. It was not unusual for her to walk into her room and find three or four *kempeitei* going through her personal effects, searching for things, things in the English language, harassing her, attempting to make her change her citizenship from American to Japanese.

She goes to work for Radio Tokyo as a typist in the business office -- no discussion of broadcasting -- she is just in the business office of Radio Tokyo minding her own business doing her own work and trying to exist in a country where conditions are none too pleasant particularly for one who was a foreigner and she was a foreigner to the Japanese because she was nisei born in this country. And one day this gentleman Mitsushio tells her to report for a voice test. She

⁴¹ CLOSE, *supra* note 1, at 385.

⁴² The following portions of Tamba's opening statement are derived from the Transcript of the Trial Proceedings at 3077-89, *D'Aquino*, No. 31712-R.

protests. She doesn't want to have anything to do with it, but she must do what she is told. She is under their control.⁴³

And with that she started to broadcast. The script is written by Cousens, an Australian prisoner of war. He coaches her. There will be evidence of where he made faces and laughed in order to burlesque the show, the object being to get across prisoner of war messages and the possibility of building up morale in our home front and bringing information to the American troops.

While at Radio Tokyo she learns that the prisoners of war are not faring so well. So she takes food, medicine and tobacco to the prisoners of war -- not once or twice but scores of times. In that atmosphere she was at Radio Tokyo broadcasting, trying to do her bit for her country -- not treason, ladies and gentlemen, not collaboration. She is a patriotic American citizen.

Ladies and gentlemen of the jury, we submit to you that after you have weighed all of the evidence, only one verdict will be possible. You should find that Mrs. D'Aquino is not guilty.

NARRATOR 1: The first three witnesses for the defense were Iva's three POW superiors at Radio Tokyo, Cousens, Ince, and Reyes. Cousens focused initially on the atrocities he witnessed as a POW at the hands of the Japanese before he arrived at Radio Tokyo. The prosecution objected, again and again, claiming that evidence of coercion of Cousens could not be evidence of coercion of Iva. Judge Roche eventually ruled the testimony of prisoner abuse off-limits, absent a direct link to Iva. Nonetheless, Collins repeatedly circled back to this disallowed line of inquiry. This was typical of his style, repeating lines of questioning objected to, getting as much of the story as possible to the jury. As the prosecution objected frequently, there was a great deal of colloquy and repetition throughout direct examination of the defense witnesses. We have omitted most of it.

DIRECT EXAMINATION OF MAJOR CHARLES COUSENS by COLLINS⁴⁴

Q. When did you first see the defendant?

A. The latter part of August 1943.

Q. Did you talk to her?

A. Yes. She was very friendly, so much so that we were suspicious.

Q. Now, do you recall any conversations with the defendant about her citizenship?

A. Yes, very clearly, sir. She told us that she was an American citizen and that she had flatly refused to accept Japanese citizenship as most of the other Nisei at Radio Tokyo had done.

⁴³ See *Kawakita v. United States*, 343 U.S. 717, 735 (1952) (stating that it is not treasonable if one was "coerced by his employer or supervisor or by the force of circumstances to do things which he has no desire or heart to do").

⁴⁴ The following portions of the direct examination of Major Charles Cousens are derived from the Transcript of the Trial Proceedings at 3157-64, *D'Aquino*, No. 31712-R.

- Q. What did you say to the defendant about your being at Radio Tokyo?
- A. I told her that I was a prisoner of war and that I had to obey all orders of the Imperial Japanese Army Headquarters and all orders of any Japanese at Radio Tokyo, and that if I obeyed all orders, my life would be spared, but nothing was guaranteed.
- Q. Do you know how the Zero Hour program came to be expanded in November 1943?
- A. Yes, sir. George Mitsushio came to us and said this is an order from the Japanese Imperial Headquarters. He then fished out of his pocket some sort of rough format of the proposed enlarged program.
- Q. Did you discuss the proposed format?
- A. Yes. We told him we would have no part in it. We would not undertake to put on the air a program designed to make our boys in the Pacific homesick. But he said that we had no choice. As I recall, I said to him, "All right, get out of here and we will see what we can do. It won't be like this."
- Q. When next did you see the defendant?
- A. Probably that evening when she arrived at Radio Tokyo, as she generally did, about 5:00 o'clock.
- Q. Did you have a conversation with her then?
- A. Yes. I said to her, "Now, listen. This is a straight out entertainment program. I have written it. All you have got to do is look on yourself as a soldier under my orders. Do exactly what you are told. Don't try to do anything for yourself and you will do nothing against your own people. I will guarantee that personally because I have read the script."
- Q. Did she respond?
- A. Yes, she said she would trust me.
- Q. Did she say anything else?
- A. Only protests that she knew nothing about microphone work, had never been in front of a microphone before.
- Q. What kind of a voice did the defendant have?
- A. With the idea that I had in mind of making a complete burlesque of the program, it was just what I wanted -- rough -- I hope I can say this without offense -- a voice that I have described since as a gin fog voice. It was a rough, almost masculine, anything but a femininely seductive voice. It was the comedy voice that I needed for that particular job.
- Q. Did the defendant appear on the Zero Hour program?
- A. Yes, sir, that very evening.

NARRATOR 2: Collins later elicited from Cousens how he coached Iva to read the material he had written.⁴⁵

⁴⁵ The following portions of the direct examination of Cousens are derived from *id.* at 3177-89, *D'Aquino*, No. 31712-R.

Q. What did you tell her about the program?

A. I explained that the program had to pass Japanese censors, and that therefore we had to make some concession, make it appear to the censors that we were in fact making some sort of an attempt to attack troops in the Pacific, and that I had therefore selected the word “boneheads,” where one could have said “fools” or “idiots” or “suckers,” that I had given her the word “bonehead,” and that she would find in the script that quite often it was preceded by the word “Hon’able” written H-o-n-‘-a-b-l-e, and I coached her in how to say that in comic Japanese style, “Hon’able Boneheads.” I used “Hon’able” to give her the opportunity to keep in character, the character being that of Frank Watanabe of the series Frank and Archie, which I had explained to her was an immensely popular program in Australia and would certainly be recognized by all Australian troops.

NARRATOR 1: Over repeated objections from the prosecution, Collins also elicited testimony about Iva’s efforts to assist the POWs.⁴⁶

DeWOLFE: Object, Your Honor. I don’t think it has any bearing on the question of the defendant’s guilt or innocence.

COLLINS: It goes to the question of intent, if your Honor please.

DeWOLFE: It doesn’t go to the intent to commit an act of treason at all. It only shows she might be a kind-hearted person.

COLLINS: It shows she gave aid and comfort to our own troops held prisoners of war.

DeWOLFE: That doesn’t prevent her from giving aid and comfort to the enemy, which the evidence shows she did.

COLLINS: The evidence shows no such thing. I charge that it is highly prejudicial misconduct to make such a remark in open court.

JUDGE ROCHE: The jury will disregard the remarks of counsel on both sides. The objection will be sustained.

NARRATOR 2: Notwithstanding the Court’s ruling, Collins was eventually able to elicit some of this testimony.⁴⁷

Q. Did you ever have any discussion with the defendant with reference to medical supplies?

A. Yes, sir. I told her that the prisoners of war at Bunka had some very sick men amongst them, and that we had no medical supplies of any kind. I believe that it was on that occasion that I asked her whether she could help in buying medical supplies.

Q. What did the defendant say, if anything?

A. That she would certainly do the best she could.

⁴⁶ The following portions of the direct examination of Cousins are derived from CLOSE, *supra* note 1, at 395-96.

⁴⁷ See Transcript of the Trial Proceedings at 3267, 3280, D’Aquino, No. 31712-R.

Q. Did she?

A. Yes, indeed, consistently, till the end of the war. She brought us food, vitamins, and medicine and also tobacco and a blanket on one occasion. We had one man at that time desperately ill. We could not keep him warm, and I had mentioned this to the defendant and she produced a woolen blanket, which was worth its weight in gold in Japan at that time.

NARRATOR 1: Cousens was followed by Captain Ince, the American POW who also worked at Radio Tokyo. Ince was initially reluctant to testify on Iva's behalf, but Collins convinced him that if the government ever prosecuted him for treason, he would want Iva to testify for him. He confirmed certain key defense points.

DIRECT EXAMINATION OF CAPTAIN WALLACE E. INCE by COLLINS⁴⁸

Q. What did the defendant do on the Zero Hour when you were on the program?

A. She read introductions to musical recordings.

Q. Did she read them from script?

A. She did.

Q. And who prepared that script, if you know?

A. Major Cousens.

Q. Was any radio script prepared by Major Cousens and announced over the Zero Hour program by you at any time referring to or alluding to the loss of any ships?

A. No, sir.

Q. Or any American or allied casualties?

A. No, sir.

Q. Did the defendant broadcast any news over the Zero Hour program?

A. Never.

Q. Now, from September of 1944 to the end of the war did the defendant give you any news?

A. She did.

Q. And in giving you that news did she make any request as to what you should do with that news?

A. When it was written, that it should be destroyed, so it couldn't be traced back to her, certainly.

⁴⁸ The following portions of the direct examination of Captain Wallace E. Ince are derived from *id.* at 3493, 3507-21, *D'Aquino*, No. 31712-R.

- Q. Were you and the defendant able to speak freely when you met at Radio Tokyo?
- A. Certainly not.
- Q. Why not?
- A. Everything was done in a guarded fashion, as the studio was covered with kempeitei, with army people.
- Q. Were you announcing on the Zero Hour program yourself voluntarily?
- A. Certainly not. I was ordered to.
- Q. By whom?
- A. The Japanese. We were told that we had no choice in the matter, that we were to do as we were told.

NARRATOR 2: The cross-examination of these first two witnesses did not shake their version of events. The defense's third witness, Norman Reyes, was a different story. Of the three POWs at Radio Tokyo, Reyes was the only one who was with Zero Hour from beginning to end. He was able to testify that Iva never made a broadcast about American "loss of ships." Defense counsel did not know, however, that the FBI had obtained a signed statement from Reyes. After almost four days of cross-examination where Reyes was contradicted at every turn by his prior statement, Judge Roche threw out his testimony in its entirety.

NARRATOR 1: The defense next called a series of other POWs, amateur shortwave monitors, GIs who enjoyed Zero Hour, and other volunteer witnesses. Iva's husband testified and, finally, Iva herself.

DIRECT EXAMINATION OF IVA TOGURI by COLLINS

NARRATOR 2: On direct examination, Iva described her unsuccessful efforts to leave Japan and her first encounters with the Japanese police.⁴⁹

- Q. Mrs. D'Aquino, how did you first learn that war had broken out between the United States and Japan?
- A. Well, I didn't know for sure until about two days later, because I did not understand the radio, I couldn't read the newspapers. My uncle told me that there had been a war between the United States and Japan and I refused to believe it. I went around in a daze, about three days, until I finally realized it was a war.
- Q. Now, did you have any visitation from the Japanese police after war broke out?
- A. Yes, the very next day the police came to my uncle's house. They interrogated me on various things, on my activities, the time I spent at school, the amount of money I had, what my expenditures were. They asked me what citizenship I had, and I told them United States citizenship. They told me it would be a good idea to take Japanese citizenship and I told them I would never become a Japanese citizen.

⁴⁹ See *id.* at 4931-32.

NARRATOR 1: Iva testified that after she learned that Cousens and Ince were POWs, she wanted to meet them.⁵⁰

Q. Were you able to have a conversation with Major Cousens and Captain Ince when you first met them?

A. No, I just shook Major Cousens's hand, told him to keep his chin up and I would come and see them as often as I could.

Q. When next did you see either of them?

A. In about two or three days I was able to talk to them a few minutes by pretending to take them some papers. I asked Major Cousens how long he would have to stay at Radio Tokyo and he said army orders would keep him there until the allies won. I told him, "It won't be too long the way things look now."

Q. Did you have any other conversations about how they first came to Radio Tokyo?

A. Oh, yes. At first they were reluctant to tell me. I wanted to win their confidence and I wanted to help them as much as possible, so I started to relay news of allied successes. I would take them allied news periodicals, and I gained their confidence. I later learned they were short of food and so I started taking food to them. So they opened up and told me their complete story.

NARRATOR 2: Iva testified about her meeting with Lee and Brundidge in Tokyo and how she signed an autograph for Eisenhart at Sugamo prison in Yokohama.⁵¹

Q. Will you state what Mr. Brundidge and Mr. Lee said and what you said?

A. Mr. Brundidge said, "You worked at Radio Tokyo, didn't you." I said, "Yes, I worked at Radio Tokyo." He said "You were a sort of a disc jockey, weren't you?" I said, "Yes." He said "Well, you must be Tokyo Rose." He said, "We want a story."

Q. What happened next?

A. Mr. Brundidge, he went to lock the door to the room, and Mr. Lee went to get a typewriter.

Q. Did Mr. Lee ask you if you were Tokyo Rose?

A. Yes, he asked me.

Q. What did you tell him?

A. I said, "there are five or six girls working at Radio Tokyo, none called themselves Tokyo Rose. It could apply to anybody." I said that repeatedly to Clark Lee.

Q. Did you ever see the \$2,000?

A. No, never.

⁵⁰ See *id.* at 4978-81.

⁵¹ See *id.* at 5151-55.

Q. Now do you recall seeing a Richard Eisenhart in Japan?⁵²
A. Yes, I did. At Sugamo prison, immediately after I arrived in October 1945.

Q. I show you U. S. Exhibit 2 and ask if you recognize that document?
A. Yes, I recognize that.

Q. Did you sign this document at Yokohama prison, Mrs. D'Aquino?
A. Yes. Immediately upon my arrival at the prison, the jailers asked me to give them an autograph and I wasn't going to sign anything because I didn't know what it was all about. They waited for about six days and they finally got the signature, yes. I hadn't slept for six nights.

Q. Why hadn't you, Mrs. D'Aquino?
A. The jailers kept turning the lights on and off, on and off, every night for six solid nights.

Q. So you signed U. S. Exhibit No. 2 to put a stop to that, is that correct?
A. That's correct.

NARRATOR 1: In early 1948, while Walter Winchell and the FBI were hunting for evidence against Iva, Attorney General Tom Clark had authorized reporter Harry Brundidge to fly to Tokyo at DOJ expense "to develop evidence." Upon his arrival in Tokyo, Brundidge had Iva brought from prison to General Headquarters. Iva described her meeting with Brundidge and how she came to sign Government Exhibit 15, Clark Lee's story about Tokyo Rose, which contained numerous inaccuracies.⁵³

Q. Will you state what Mr. Brundidge said to you and what you said to Mr. Brundidge, if anything?
A. Mr. Brundidge started by saying "You remember me, don't you?" I said, "Yes, I believe you are connected with the Cosmopolitan Magazine." He said, "Yes, I used to be with the Cosmopolitan Magazine." And I said, "What are you doing now?" And he said, "You know that gentleman over there?" He pointed to a man standing at the end of the room. He said, "That's Mr. Hogan, from the Attorney General's office in Washington. Mr. Hogan was the one who signed your release in October 1946."

Q. Release from what?
A. Sugamo prison. Mr. Brundidge asked me, "Do you want to return to the United States or stay in this hellhole for the rest of your life?" And I said, "Well, I made an application to return to the United States. I should like to return if I can." He said, "I am acting as an agent of the Attorney General's office." He said, "Today may decide whether you will be able to go home to the United States, or have to live in Japan forever."

⁵² See *id.* at 5167-69.

⁵³ See *id.* at 5217-23.

Q. Then what?

A. Mr. Brundidge pulled out a photostatic copy of a story written on Tokyo Rose. He said, "If you remember the interview, all you have to do is sign this story written by Clark Lee from the notes that he took in that room in 1945." I read it, but some of it I had never seen before. I told Mr. Brundidge that this was not the interview I gave to Clark Lee. Mr. Brundidge leaned over and told me I would be doing myself a good deed by signing this interview. He said, "It would aid you in getting back to the United States." And so I signed it.

Q. At the time you signed Exhibit No, 15, Mrs. D'Aquino, were you informed by anyone that you had a right to counsel?

A. No.

Q. Were you in good health at the time of that interview, Mrs. D'Aquino?

DeWOLFE: I object to that as calling for a conclusion.

JUDGE ROCHE: You may answer.

A. No, I had been sick from January and I had been very ill all that time.

Q. What was the nature of your illness?

A. I had lost my baby and I had been awfully sick for about three or four months.

CROSS EXAMINATION OF IVA TOGURI by DeWOLFE

NARRATOR 2: During Iva's cross examination, the prosecutor challenged her testimony and her recollection on every point. One topic was her citizenship.⁵⁴

Q. Where were you born, Mrs. D'Aquino?

A. Los Angeles, California.

Q. You were registered in the Japanese National Family Registry until your name was crossed out on January 13, 1932, correct?

A. I know it was crossed out, but I have never known the date.

Q. You never have known it? You have never regained Japanese nationality since January 13, 1932?

COLLINS: Well, I object to that, if Your Honor please, on the ground that is calling for an opinion and conclusion, and furthermore it is an impossibility. She never had Japanese nationality.

DeWOLFE: She had Japanese nationality.⁵⁵

⁵⁴ See *id.* at 5235-47.

COLLINS: She never had Japanese nationality. It is an absolute impossibility, as a matter of law.

DeWOLFE: We will see about that.

JUDGE ROCHE: Just a moment. The objection will be overruled. She may answer if she knows.

DeWOLFE: All right. Mrs. D'Aquino, did you ever regain your Japanese nationality after January 1932?

A. I don't think I ever had Japanese nationality. I mean, alone.

Q. Didn't you swear in 1947, 26 May, under oath that your father took steps to have you renounce your Japanese nationality? You swore that under oath, didn't you? Yes or no?

A. Yes, yes, I did to somebody.

NARRATOR 1: DeWolfe also cross-examined Iva on the number of times she gave an autograph using the name "Tokyo Rose."⁵⁶

Q. You were intrigued with the idea of using the name "Tokyo Rose," weren't you, Mrs. D'Aquino?

A. Oh, no.

Q. No? You handed out a number of autographs without being asked for them wherein you signed your name with the name "Tokyo Rose," didn't you?

A. No, I did not hand them out.

Q. How many autographs have you given out with the name "Iva Toguri, Tokyo Rose?"

A. Oh, all told I can't say.

Q. Two or three hundred?

A. Oh, no.

Q. How many?

A. There were quite a few taken. I can't remember.

Q. You were proud of the name "Tokyo Rose," weren't you?

A. No, they always asked me to put it on, and they were in uniform.

Q. How many did you sign?

A. I haven't any idea.

⁵⁵ See *Kawakita*, 343 U.S. at 719 (stating that a person born in the United States by parents with Japanese citizenship is a United States citizen by birth and a Japanese national by Japanese law).

⁵⁶ See Transcript of the Trial Proceedings at 5337-41, *D'Aquino*, No. 31712-R.

Q. Well, how many would you say, fifty?

A. Oh, I guess around thirty or forty, somewhere around there.

NARRATOR 2: DeWolfe also returned repeatedly to the issue of whether Iva had spoken about a loss of ships on the air.⁵⁷

Q. Did you ever broadcast about loss of ships?

A. I did not broadcast anything about the loss of ships, Mr. DeWolfe.

Q. Never did?

A. Never.

Q. Didn't you broadcast in 1944: "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?"

A. No.

Q. You heard Mitsushio and Oki testify you did broadcast that, didn't you?

COLLINS: I object to that on the ground it is improper cross examination; it is an improper attempt to impeach the witness on statements supposedly made by other persons who testified in this case.

DeWOLFE: The statement was made and testified to.

COLLINS: I ask that the remark of counsel be stricken from the record and the jury admonished to disregard it. I assign it as misconduct on the part of the prosecution to make such a statement.

JUDGE ROCHE: The objection is overruled. The witness may answer.

A. Yes, I believe I did.

DeWOLFE: They are wrong, aren't they?

A. I can't say what is wrong and what is right. All I know is I did not make any broadcasts of that nature.

NARRATOR 1: Iva's testimony covers more than 900 pages of the trial transcript. The defense rested on September 19, 1949, after two and a half months of trial. Iva had worn the same gray dress every single day of the trial; she cleaned it on Fridays.

⁵⁷ See *id.* at 5300-01, 5436-37. Recall that a supposed broadcast about the "loss of ships" formed the basis for Overt Act No. 6. See *supra* note 17.

THE VERDICT

NARRATOR 2: The summations lasted several days. On Monday, September 26, 1949, the jury began deliberating. The indictment contained only one count of treason, but it charged eight overt acts. The jury's finding of any one of the overt acts was sufficient to convict. Reporters covering the trial took a straw poll among themselves. The vote? 9-1 for acquittal.

The jury deliberated for four days before returning its verdict: Guilty.⁵⁸ Although the jury found Iva not guilty of seven of the overt acts, it found Iva guilty of Overt Act 6, which charged that "on a day during October 1944, the exact date being to the Grand Jurors unknown, defendant in the offices of the Broadcasting Corporation of Japan did speak into the microphone concerning the loss of ships."⁵⁹

THE SENTENCING

NARRATOR 1: On October 6, 1949, Judge Roche sentenced Iva to ten years' imprisonment and a fine of \$10,000, the equivalent of some \$100,000 today. In addition, Judge Roche stripped Iva of her U.S. citizenship. Iva was sent to the Federal Reformatory for Women in Alderson, West Virginia.

THE APPEAL

NARRATOR 2: Wayne Collins filed an appeal to the Ninth Circuit. Iva was eventually granted bail pending appeal; however, rather than risk being required to return to jail if she lost the appeal, Iva chose to remain in prison.⁶⁰

Collins submitted a 262-page brief to the Ninth Circuit that presented scores of arguments for overturning Iva's conviction. On October 10, 1951, the Ninth Circuit affirmed the conviction.⁶¹ When his petition to the Ninth Circuit for rehearing failed,⁶² Collins twice sought to appeal to the Supreme Court. The Supreme Court declined to hear Iva's appeal.⁶³

⁵⁸ See Kutler, *supra* note 6, at 1380-81 ("On several occasions, the jurors returned to the courtroom, telling Judge Roche they were 'hopelessly deadlocked,' but the judge refused to dismiss them According to Foreman John Mann, Roche's position and pressure for a verdict led to the capitulation of the holdouts."); see also ASSOCIATED PRESS, *Jury Convicts Tokyo Rose of Treason on Broadcasts*, Sept. 30, 1949 ("A somewhat reluctant Federal Court jury of six men and six women brought in the verdict after four days' deliberation. A surprised 'Oh!' of apparent disappointment, swept the courtroom.").

⁵⁹ See Iva Toguri d'Aquino and "Tokyo Rose," FBI - FAMOUS CASES AND CRIMINALS, <http://www.fbi.gov/about-us/history/famous-cases/tokyo-rose> (last visited Sept. 4, 2012) (quoting the jury verdict).

⁶⁰ D'Aquino v. United States, 1950 WL 42245 (S. Ct. Feb. 6, 1950) (Douglas, J., granting bail pending appeal).

⁶¹ D'Aquino v. United States, 192 F.2d 338 (9th Cir. 1951) (affirming conviction), *cert. denied*, 343 U.S. 935 (1952).

⁶² D'Aquino v. United States, 203 F.2d 390 (9th Cir. 1951) (denying rehearing).

⁶³ See 343 U.S. 958 (1952); 345 U.S. 931 (1953).

THE AFTERMATH

NARRATOR 1: The FBI and the Justice Department opposed parole for Iva throughout her sentence. Nonetheless, she managed to accumulate enough “good time” credit to be released from prison early, in January 1956, after serving six years and four months. The government quickly brought deportation proceedings against her, which Iva successfully fought, with assistance from Wayne Collins. She settled in Chicago, Illinois, and helped her father operate his small import business.

NARRATOR 2: In 1954, while Iva was still in prison, Ted Tamba filed a petition for clemency with President Eisenhower. The petition failed. In 1968, Wayne Collins filed a petition for a pardon with President Johnson. This effort failed as well. The Attorney General at the time was Ramsey Clark, the son of Tom Clark, the Attorney General who had instructed DeWolfe to prosecute Iva.

By the mid 1970’s, after Watergate, after Vietnam, times had changed, and support for a pardon from both the American media and public steadily increased. Editorials and favorable articles appeared in the *Wall Street Journal*, *Washington Post*, *San Francisco Examiner*, and *Denver Post*, among others.⁶⁴ Politicians also supported the pardon effort. But it was the investigatory work of Ron Yates, a correspondent for the *Chicago Tribune*, that was the turning point.⁶⁵ Yates uncovered the perjury of trial witnesses Kenkichi Oki and George Mitsushio. They confessed to Yates the truth of what happened:⁶⁶

[OKI and MITSUSHIO take center stage]

OKI: U.S. Occupation Army Police told me I had no choice but to testify against Iva -- or else.

MITSUSHIO: We were told if we didn’t cooperate, Uncle Sam might arrange a trial for us too. All of us could see how easy it was for a mammoth country like the United States to crucify a Japanese American -- all we had to do was look at Iva.

OKI: After I was flown to San Francisco, we were told what to say and not to say two hours every morning for a month before the trial started.

MITSUSHIO: Even though I was a government witness against her, I can say today that Iva Toguri was innocent -- she never broadcast anything treasonable.

OKI: Iva never made a treasonable broadcast in her life. She got a raw deal -- she was railroaded into jail.

NARRATOR 1: Yates’s story was followed by a segment on *60 Minutes*. Iva initially refused to appear on the show, but later changed her mind when she learned that President Ford watched

⁶⁴ See CLOSE, *supra* note 1, at 487.

⁶⁵ See *id.* at 488.

⁶⁶ See *id.* (referencing the 1976 *Chicago Tribune* article by Ron Yates).

the program regularly. The show aired on June 20, 1976. The impact was immediate, and support poured in from across the nation.

Within a few months, Iva submitted another petition for a presidential pardon. On January 19, 1977, in his last hours as president, Gerald Ford granted Iva executive clemency.⁶⁷ She became the only American ever to be pardoned for treason.

NARRATOR 2: Despite her experience with the American judicial system, Iva never became bitter. She handled her difficulties with dignity and grace. Iva the zoology major had always wanted to study medicine, and so when she was in prison, she learned to take x-rays, prescribe glasses, and draw blood, and she even scrubbed up and assisted in surgery. She became the pharmacist's assistant and volunteered in the Dental Clinic, and in her spare time crafted leather goods that anonymously won her ribbons at local county fairs. When she left prison, it took four people to replace her, all of whom she had trained before her release.

In an interview on May 20, 1976, Iva stated:⁶⁸

TOGURI: You can either sit in a room and feel sorry for yourself or you can go outside and look ahead. I've tried to look ahead. . . . I believe in what I did. I have no regrets, and I don't hate anyone for what happened.

NARRATOR 1: What became of the participants in the trial of Tokyo Rose?

When Wayne Collins died in 1974 of a heart attack at the age of 74, he was mourned by the Japanese American community as one of its greatest champions. It was Collins's son, Wayne Merrill Collins, who filed the successful petition for a presidential pardon on Iva's behalf. Neither father nor son ever charged Iva a fee.

Special Assistant Attorney General Thomas DeWolfe, the prosecutor who had opined that the Government had no prima facie case but nevertheless won Iva's conviction, never tried another case. He retired in 1956, the same year that Iva was released from prison. On June 19, 1959, at the age of 56, DeWolfe shot and killed himself in a Seattle hotel room.

Mitsushio and Oki became wealthy businessmen in Japan.

Phil D'Aquino returned to Japan after the trial, barred from ever returning to the United States. He never saw Iva again. Their marriage was dissolved in 1980.

⁶⁷ See, e.g., Lou Cannon, *Ford to Pardon 'Tokyo Rose' of Treason*, WASH. POST, Jan. 18, 1977, at A1 (noting the problems with the trial, including that "[h]er trial took place in an anti-Japanese atmosphere in San Francisco, and only the prosecution was allowed to subpoena Japanese witnesses. The foreman of the jury, John Mann of Berkeley, told reporters last year that the jury had convicted her only because of pressure from the judge and said he wished he 'had a little more guts to stick with my vote for acquittal.'").

⁶⁸ MASAYO DUUS, *TOKYO ROSE: ORPHAN OF THE PACIFIC* 231 (1979).

NARRATOR 2: Iva worked into her 80s, and for many years made annual trips across the country visiting the men and women who befriended her as a prisoner, including former prison guards, the U.S. Marshal who escorted her to trial every day, and her prison wardens.

On September 26, 2006, Iva Toguri died in Chicago, from natural causes, at the age of 90, still an American citizen.⁶⁹

What of the mythical Tokyo Rose? She outlived her real-life counterpart, as in published obituaries, the press continued to identify Iva Toguri as the notorious “Tokyo Rose,” a convicted traitor.

[play recording of TOGURI’s sign-off]⁷⁰

TOGURI: That’s all for now, enemies, but there’ll be more the same tomorrow night. Until then, this is Orphan Ann, your number one enemy, reminding you GI -- always to be good! Goodbye now.

⁶⁹ See Richard Goldstein, Obituary, *D’Aquino, Linked to Tokyo Rose Broadcasts, Dies*, N.Y. TIMES, Sept. 27, 2006, available at <http://www.nytimes.com/2006/09/27/world/asia/28rose.html>; Adam Bernstein, Obituary, *Iva Toguri, 90, Branded as WWII ‘Tokyo Rose,’* BOS. GLOBE, Sept. 26, 2006, available at http://www.boston.com/news/globe/obituaries/articles/2006/09/28/iva_toguri_90_branded_as_wwii_tokyo_rose.

⁷⁰ Audio clip from Radio Tokyo’s Zero Hour program at <http://www.youtube.com/watch?v=wftthdvbSDw> (last visited on Sept 5, 2012).