**CRAMER v. UNITED STATES**
**SUPREME COURT OF THE UNITED STATES**
**325 U.S. 1**
**November 6, 1944**
**[5 - 4]**

We get a wonderful history lesson on the origins of the crime of treason. In 1776, it appears that nearly every resident of the American Colonies could have been considered guilty of treason; that is, they were either a traitor of England or a traitor of the Colonies.

**OPINION**: Justice Jackson...Anthony Cramer...stands convicted of violating Section 1 of the Criminal Code, which provides: "Whoever, **owing allegiance to the United States**, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason."

Interesting. Is it just assumed that one cannot commit treason against the United States unless he first is one who owes allegiance to the United States? Article III does not say anything about "allegiance." Just wondering.

Cramer owed allegiance to the United States. A German by birth, he had been a resident of the United States since 1925 and was naturalized in 1936. Prosecution resulted from his association with two of the German saboteurs who in June 1942 landed on our shores from enemy submarines to

disrupt industry in the United States and whose cases we considered in *Ex parte Quirin*.[1]

> We will come to the *Quirin* case when we look at War Powers. That case involved charges of war crimes against individuals by the names of Quirin, Haupt, Kerling, Burger, Thiel, Neubauer and Heinck.

One of those, spared from execution, appeared as a government witness on the trial of Cramer. He testified that Werner Thiel and Edward Kerling were members of that sabotage crew, detailed their plot, and described their preparations for its consummation.

Cramer was conscripted into and served in the German Army against the United States in 1918. After the war he came to this country, intending to remain permanently. So far as appears, he has been of good behavior, never before in trouble with the law...

There was no evidence, and the Government makes no claim, that he had foreknowledge that the saboteurs were coming to this country or that he came into association with them by prearrangement. Cramer, however, had known intimately the saboteur Werner Thiel while the latter lived in this country. They had worked together, roomed together, and jointly had ventured in a small and luckless delicatessen enterprise. Thiel...avowed adherence to the National Socialist movement in Germany; he foresaw the war and returned in 1941 for the purpose of helping Germany. Cramer did not do so. How much he sympathized with the doctrines of the Nazi Party is not clear. He became at one time, in Indiana, a member and officer of the Friends of New Germany, which was a predecessor of the Bund, [a Nazi organization]. However, he withdrew in 1935 before it became the Bund. He says there was some swindle about it that he did not like and also that he did not like their drilling and "radical activities." In 1936 he made a trip to Germany, attended the Olympic games, and saw some of the Bundsmen from this country who went there at that time for conferences with Nazi Party officials. There is no suggestion that Cramer while there had any such associations. He does not appear to have been regarded as a person of that consequence. His friends and associates in this country were largely German. His social life in New York City, where he recently had lived, seems to have been centered around Kolping House, a German-Catholic recreational center.

Cramer retained a strong affection for his fatherland. He corresponded in German with his family and friends there. Before the United States entered the war he expressed strong sympathy with Germany in its conflict with other European powers. Before the attack upon Pearl Harbor, Cramer openly opposed participation by this country in the war against Germany. He refused to work on war materials. He expressed concern about being drafted into our army and "misused" for purposes of "world conquest." There is no proof, however, except for the matter charged in the indictment, of any act or utterance disloyal to this country after we entered the war...

Cramer...was living in New York; and in response to a cryptic note left under his door, which did

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[1]Case 2-9 on this website.

not mention Thiel, he went to the Grand Central Station. There Thiel appeared. Cramer had supposed that Thiel was in Germany, knowing that he had left the United States shortly before the war to go there. Together they went to public places and had some drinks. Cramer denies that Thiel revealed his mission of sabotage. Cramer said to Thiel that he must have come to America by submarine, but Thiel refused to confirm it, although his attitude increased Cramer's suspicion. Thiel promised to tell later how he came to this country. Thiel asked about a girl who was a mutual acquaintance and whom Thiel had engaged to marry previous to his going to Germany. Cramer knew where she was, and offered to and did write to her to come to New York, without disclosing in the letter that Thiel had arrived. Thiel said that he had in his possession about $3,600, but did not disclose that it was provided by the German Government, saying only that one could get money in Germany if he had the right connections. Thiel owed Cramer an old debt of $200. He gave Cramer his money belt containing some $3,600, from which Cramer was to be paid. Cramer agreed to and did place the rest in his own safe-deposit box, except a sum which he kept in his room in case Thiel should want it quickly.

After the second of these meetings Thiel and Kerling, who was present briefly at one meeting, were arrested. Cramer's expectation of meeting Thiel later and of bringing him and his fiancee together was foiled. Shortly thereafter Cramer was arrested, tried, and **found guilty**. The trial judge at the time of sentencing said:

> "I shall not impose the maximum penalty of death. It does not appear that this defendant Cramer was aware that Thiel and Kerling were in possession of explosives or other means for destroying factories and property in the United States or planned to do that. From the evidence it appears that Cramer had no more guilty knowledge of any subversive purposes on the part of Thiel or Kerling than a vague idea that they came here for the purpose of organizing pro-German propaganda and agitation. If there were any proof that they had confided in him what their real purposes were, or that he knew or believed what they really were, I should not hesitate to impose the death penalty."

Cramer's case raises questions as to application of the constitutional provision that "**Treason against the United States shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.**" Article III, §3...

The Government...contends...[that no more need be shown to prove an overt act of treason than to prove an overt act of conspiracy and, therefore,] the overt acts relied on were sufficient to be submitted to the jury, even though they perhaps may have appeared as innocent on their face. A similar conclusion was reached in *United States* v. *Fricke*: "An overt act in itself may be a perfectly innocent act standing by itself; it must be in some manner in furtherance of the crime."...

When our forefathers took up the task of forming an independent political organization for New

World society, no one of them appears to have doubted that to bring into being a new government would originate a new allegiance for its citizens and inhabitants...They were far more awake to powerful enemies with designs on this continent than some of the intervening generations have been. England was entrenched in Canada to the north and Spain had repossessed Florida to the south, and each had been the scene of invasion of the Colonies; the King of France had but lately been dispossessed in the Ohio Valley; Spain claimed the Mississippi Valley; and, except for the seaboard, the settlements were surrounded by Indians -- not negligible as enemies themselves, and especially threatening when allied to European foes...

As the Constitutional Convention was taking place, we had enemies or potential enemies on all sides. We must never forget the sacrifices of our forefathers. And, somehow, we must try to imagine their existence.

The forefathers also had suffered from disloyalty. Success of the Revolution had been threatened by the adherence of a considerable part of the population to the king. The Continental Congress adopted a resolution...which in effect declared that all persons residing within any colony owed allegiance to it, and that if any such persons adhered to the King of Great Britain, giving him aid and comfort, they were guilty of treason, and which urged the colonies to pass laws for punishment of such offenders...Many of the colonies complied, and a variety of laws, mostly modeled on English law, resulted. Some of the legislation in later years became so broad and loose as to make treason of **mere utterance of opinion**.

Many a citizen in a time of unsettled and shifting loyalties was thus threatened under English law which made him guilty of treason if he adhered to the government of his colony and also under colonial law which made him guilty of treason if he adhered to his king. Not a few of these persons were subjected to confiscation of property or other harsh treatment by the Revolutionists under local laws; none, however, so far as appears, to capital punishment...

However, their experience with treason accusations had been many-sided. More than a few of them were descendants of those who had fled from measures against sedition and its ecclesiastic counterpart, heresy. **Now the treason offense was under revision by a Convention whose members almost to a man had themselves been guilty of treason under any interpretation of British law.** They not only had levied war against their king themselves, but they had conducted a lively exchange of aid and comfort with France, then England's ancient enemy. Every step in the great work of their lives from the first mild protests against kingly misrule to the final act of separation had been taken under the threat of treason charges...

This was doubtless the meaning of Franklin's quip at the signing of the Declaration of Independence that if the signers did not hang together they should hang separately. It was also the meaning of the cries of "Treason" which interrupted Patrick Henry in the speech in the Virginia House of Burgesses evoking the famous reply, "If this be treason, make the most of it."

The Convention numbered among its members men familiar with government in the Old World, and **they looked back upon a long history of use and abuse of the treason charge**.

The English stream of thought concerning treasons began to flow in fairly definable channels in **1351** with the enactment of the great Treason Act, 25 Edw. III, Stat. 5, Ch. 2:

"***Declaration what offences shall be adjudged treason.*** [Whereas there have been many past opinions setting the parameters of treason]; the King...hath made a declaration in the manner as hereafter followeth, that is to say;

> when a man doth compass or **imagine** the death of our lord the King, or of our lady his queen or of their eldest son and heir;
>
> or if a man do **violate the King's companion**, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir;
>
> or if a man do **levy war** against our lord the King in his realm, or **be adherent to the King's enemies** in his realm, giving to them aid and comfort in the realm...:
>
> And if a man **counterfeit** the King's great or privy seal, or his money;
>
> and if a man **bring false money into this realm**, counterfeit to the money of England...;
>
> and if a man **[slay] the chancellor**, treasurer, or the King's justices...
>
> And moreover there is another manner of treason, that is to say, when a **servant slayeth his master**, or a wife her husband, or when a man secular or religious slayeth his prelate, to whom he oweth faith and obedience...
>
> And if percase any man of this realm **ride armed** covertly or secretly **with men of arms against any other**, to slay him, or rob him, or take him, or retain him till he hath made fine or ransom for to have his deliverance, it is not the mind of the King nor his council, that in such case it shall be judged treason but shall be judged felony or trespass, according to the laws of the land of old time used, and according as the case requireth."

That was a monumental piece of legislation several times referred to in the deliberations of the Convention. It cut a bench-mark by which the English-speaking world tested the level of its thought on the subject until our own abrupt departure from it in 1789, and **after 600 years it still is the living law of treason in England**...

So, when Cramer's case was decided here in 1944, the English law of treason had not changed since 1351!

Adjudicated cases in English history generally have dealt with the offense of **compassing** the monarch's death; only eleven reported English cases antedating the Constitution are cited as involving distinct charges of adherence to the king's enemies...

"Compassing" — plotting or scheming.

No decision appears to have been a factor in the deliberations of our own Constitutional Convention. Nor does any squarely meet our issue here, and for good reason -- **the Act of Edward III did not contain the two-witnesses-to-the-same-overt-act requirement...**

[T]he basic law of treason in this country was framed by men who, as we have seen, were taught by experience and by history to **fear abuse of the treason charge almost as much as they feared treason itself**...

We turn then to the proceedings of the Constitutional Convention of 1787 so far as we have record of them. The plan presented by Pinckney evidently proposed only that Congress should have exclusive power to declare what should be **treason...**against the United States. [However, the draft Constitution did not allow the latitude for Congress to create new treasons.] It provided that: "**Treason against the United States shall consist only in levying war against the United States, or any of them; and in adhering to the enemies of the United States, or any of them. The Legislature of the United States shall have power to declare the punishment of treason. No person shall be convicted of treason, unless on the testimony of two witnesses. No attainder of treason shall work corruption of bloods, nor forfeiture, except during the life of the person attainted**."

...Madison..."thought the definition too narrow."...He did not see why more latitude might not be left to the Legislature...Mr. Mason was in favor of following the language of the Statute of Edward III. The discussion shows some confusion as to the effect of adding the words "giving them aid and comfort," some thinking their effect restrictive and others that they gave a more extensive meaning. However, "Col. Mason moved to insert the words 'giving (them) aid comfort' as restrictive of 'adhering to their Enemies, &c' -- the latter he thought would be otherwise too indefinite." The motion prevailed.

Mr. Dickenson "wished to know what was meant by the 'testimony of two witnesses', whether they were to be witnesses to the same overt act or to different overt acts. He thought also that proof of an overt act ought to be expressed as essential to the case."...

When it was moved to insert "to the same overt act" after the two-witnesses requirement, Madison

notes that "Doc'r Franklin wished this amendment to take place -- prosecutions for treason were generally virulent; and perjury too easily made use of against innocence." James Wilson observed that "Much may be said on both sides. Treason may sometimes be practiced in such a manner, as to render proof extremely difficult -- as in a traitorous correspondence with an Enemy." But the motion carried.

By this sequence of proposals the treason clause of the Constitution took its present form. **The temper and attitude of the Convention toward treason prosecutions is unmistakable. It adopted every limitation that the practice of governments had evolved...Limitation of the treason of adherence to the enemy to cases where aid and comfort were given and the requirement of an overt act were both found in the Statute of Edward III, praised in the writings of Coke and Blackstone, and advocated in Montesquieu's *Spirit of Laws*. Likewise, the two-witness requirement had been used in other statutes, was advocated by Montesquieu in all capital cases, and was a familiar precept of the New Testament and of Mosaic law.**

> "...take with thee one or two more, that in the mouth of two or three witnesses every word may be established." **Matthew 18, v. 16**. "One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." **Deuteronomy 19, v. 15**.

The framers combined all of these known protections and added two of their own which had no precedent. **They wrote into the organic act of the new government a prohibition of legislative or judicial creation of new treasons. And a venerable safeguard against false testimony was given a novel application by requiring two witnesses to the same overt act**.

Distrust of treason prosecutions was not just a transient mood of the Revolutionists. **In the century and a half of our national existence <u>not one execution</u> on a <u>federal treason conviction</u> has taken place**. **Never before has this Court had occasion to review a conviction...**After constitutional requirements have been satisfied, and after juries have convicted and courts have sentenced, **Presidents again and again have intervened to mitigate judicial severity or to pardon entirely**. We have managed to do without treason prosecutions to a degree that probably would be impossible except while a people was singularly confident of external security and internal stability.

Historical materials aid interpretation chiefly in that they show **two kinds of dangers** against which the framers were concerned to guard the treason offense: (1) **perversion by established authority to repress peaceful political opposition**; and (2) **conviction of the innocent as a result of perjury, passion, or inadequate evidence**. The first danger could be diminished by closely circumscribing the kind of conduct which should be treason...The second danger lay in the manner of trial and was one which would be diminished mainly by procedural requirements -- mainly but not wholly, for the hazards of trial also would be diminished by confining the treason offense to kinds of conduct susceptible of reasonably sure proof. **The concern uppermost in the framers' minds, that mere mental attitudes or expressions should not be treason, influenced both definition of the crime**

**and procedure for its trial...**

"Compassing" and like loose concepts of the substance of the offense had been useful tools for tyranny. So one of the obvious things to be put into the definition of treason not consisting of actual levying of war was that it **must consist of doing something**. This the draft Constitution **failed to provide**, for, as we have pointed out, it defined treason as merely "adhering to the enemies of the United States, or any of them." [Apart, of course, from **levying war**, which is not charged in this case and is not involved in this controversy.]

Treason of adherence to an enemy was old in the law. It consisted of breaking allegiance to one's own king by forming an attachment to his enemy. Its scope was comprehensive, its requirements indeterminate. It 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."

"Aid and comfort" was defined by Lord Reading in...[England as] "an act which strengthens or tends to strengthen the enemies of the King in the conduct of a war against the King, that is in law the giving of aid and comfort" and "an act which weakens or tends to weaken the power of the King and of the country to resist or to attack the enemies of the King and the country... is...giving of aid and comfort." Lord Reading explained it, as we think one must, in terms of an "**act**." It is not easy, if indeed possible, to think of a way in which "aid and comfort" can be "given" to an enemy except by some kind of **action**. Its very nature partakes of a deed or physical activity as opposed to a mental operation.

Thus the crime of treason consists of two elements: **adherence to the enemy**; and **rendering him aid and comfort**. [The Court, here, is not talking about the "levying war" type of treason, just the "adherence" type.] **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": faithful devotion. Can one "adhere" without intending to betray? |
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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, or on Confession in open Court." This repeats in procedural terms the concept that **thoughts and attitudes alone cannot make a treason.** It need not trouble us that we find so dominant a purpose

emphasized in two different ways. But does the procedural requirement add some limitation not already present in the definition of the crime, and if so, what?

**While to prove giving of aid and comfort would require the prosecution to show actions and deeds, if the Constitution stopped there, such acts could be inferred from circumstantial evidence**. This the framers thought would not do. So 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 provision adds something, and something important, to the definition.

**[The Constitution, however,] omits to specify what relation the indispensable overt act must sustain to the two elements of the offense as defined: viz., adherence and giving aid and comfort. It requires that two witnesses testify to the same overt act, and clearly enough the act must show something toward treason, but what? Must the act be one of giving aid and comfort? If so, how must adherence to the enemy, the disloyal state of mind, be shown?**

The defendant especially challenges the sufficiency of the overt acts to prove treasonable intention. Questions of intent in a treason case are even more complicated than in most criminal cases because of the peculiarity of the two different elements which together make the offense. Of course **the overt acts of aid and comfort must be intentional** as distinguished from merely negligent...ones. Intent in that limited sense is not in issue here. But **to make treason, the defendant not only must intend the act, but he must intend to betray his country by means of the act**. It is here that Cramer defends. The issue is joined between conflicting theories as to how this treacherous intention and treasonable purpose must be made to appear.

Bearing in mind that the constitutional requirement in effect is one of direct rather than circumstantial evidence, we must give it a reasonable effect in the light of its purpose both to preserve the offense and to protect citizens from its abuse. **What is designed in the mind of an accused never is susceptible of proof by direct testimony**. If we were to hold that the disloyal and treacherous intention must be proved by the direct testimony of two witnesses, it would be to hold that it is never provable. **It seems obvious that adherence to the enemy, in the sense of a disloyal state of mind, cannot be, and is not required to be, proved by deposition of two witnesses**.

**Since intent must be inferred from conduct of some sort, we think it is permissible to draw usual reasonable inferences as to intent from the overt acts**. The law of treason, like the law of lesser crimes, assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts. Proof that a citizen did give aid and comfort to an enemy may well be, in the circumstances, sufficient evidence that he adhered to that enemy and intended and purposed to strike at his own country...

There are, of course, rare cases where adherence might be proved by an overt act such as subscribing an oath of allegiance or accepting pay from an enemy. These might supplement proof of other acts of aid and comfort, but no such overt acts of adherence are involved here.

While of course it must be proved that the accused acted with an intention and purpose to betray or there is no treason, we think that in some circumstances at least the overt act itself will be evidence of the treasonable purpose and intent. But that still leaves us with exceedingly difficult problems. **How decisively must treacherous intention be made manifest in the act itself? Will a scintilla of evidence of traitorous intent suffice? Or must it be sufficient to convince beyond reasonable doubt? Or need it show only that treasonable intent was more probable than not? Must the overt act be appraised for legal sufficiency only as supported by the testimony of two witnesses, or may other evidence be thrown into the scales to create inferences not otherwise reasonably to be drawn or to reinforce those which might be drawn from the act itself?**

**It is only overt acts by the accused which the Constitution explicitly requires to be proved by the testimony of two witnesses**. It does not make other common-law evidence inadmissible nor deny its inherent powers of persuasion...

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. The two-witness evidence of the acts accused, together with common-law evidence of acts of others and of facts which are not acts, will help to determine which among possible inferences as to the actor's 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.**

The controversy before us has been waged in terms of intentions, but this, we think, is the reflection of a more fundamental issue as to **what is the real function of the overt act** in convicting of treason. **The prisoner's contention that it alone and on its face must manifest a traitorous intention, apart from an intention to do the act itself, would place on the overt act the whole burden of establishing a complete treason. On the other hand, the Government's contention that it may prove by two witnesses an apparently commonplace and insignificant act and from other circumstances create an inference that the act was a step in treason and was done with treasonable intent really is a contention that the function of the overt act in a treason prosecution is almost zero. It is obvious that the function we ascribe to the overt act is significant chiefly because it measures the two-witness rule protection to the accused and its handicap to the prosecution. If the overt act or acts must go all the way to make out the complete treason, the defendant is protected at all points by the two-witness requirement. If the act may be an insignificant one, then the constitutional safeguards are shrunken so as to be applicable only at a point where they are least needed.**

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. The two-witness principle is to interdict imputation of *incriminating acts* to the accused by circumstantial 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 act, in order to make a giving of aid and comfort to the enemy.**

The Court is saying that the Constitution does not require a treason to be proved by any single overt act. It may be grounded upon any number, each to be supported by the testimony of two witnesses.

The words of the Constitution were chosen, not to make it hard to prove merely routine and everyday acts, but to make the proof of acts that convict of treason as sure as trial processes may. When the prosecution's case is thus established, the Constitution does not prevent presentation of corroborative or cumulative evidence of any admissible character either to strengthen a direct case or to rebut the testimony or inferences on behalf of defendant. The Government is not prevented from making a strong case; it is denied a conviction on a weak one...

When we deal with acts that are trivial and commonplace and hence are doubtful as to whether they gave aid and comfort to the enemy, we are most put to it to find in other evidence a treacherous intent. We proceed to consider the application of these principles to Cramer's case.

The indictment charged Cramer with **adhering to the enemies** of the United States, **giving them aid and comfort...**The overt acts which present the principal issue are alleged in the following language:

1. Anthony Cramer... on or about June 23, 1942...did meet with Werner Thiel and Edward John Kerling, enemies of the United States, at the Twin Oaks Inn...in the City and State of New York, and did confer, treat, and counsel with...[them] for the purpose of giving and with intent to give aid and comfort to said enemies...

2. Anthony Cramer...on or about June 23, 1942...did accompany, confer, treat, and counsel with Werner Thiel, an enemy of the United States, for a period of time at the Twin Oaks Inn ...and at Thompson's Cafeteria...for the purpose of giving and with intent to give aid and comfort to said enemy...

**It appeared upon the trial that at all times involved in these acts Kerling and Thiel were under surveillance of the Federal Bureau of Investigation. By direct testimony of two or more agents it was established that Cramer met Thiel and Kerling on the occasions and at the places charged and that they drank together and engaged long and earnestly in conversation. This**

**is the sum of the overt acts as established by the testimony of two witnesses. 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.**

The Government recognizes the weakness of its proof of aid and comfort, but on this score it urges: "**Little imagination is required** to perceive the advantage such meeting would afford to enemy spies not yet detected. Even apart from the **psychological comfort** which the meetings furnished Thiel and Kerling by way of social intercourse with one who they were confident would not report them to the authorities, as a loyal citizen should, the meetings gave them a source of information and an avenue for contact. It enabled them to be seen in public with a citizen above suspicion and thereby to be mingling normally with the citizens of the country with which they were at war." The difficulty with this argument is that the whole purpose of the constitutional provision is to make sure that treason conviction shall rest on direct proof of two witnesses and not on even **a little imagination**. And without the use of **some imagination** it is difficult to perceive any advantage which this meeting afforded to Thiel and Kerling **as enemies** or how it strengthened Germany or weakened the United States in any way whatever. It may be true that the saboteurs were cultivating Cramer as a potential "source of information and an avenue for contact." But there is no proof either by two witnesses or by even 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 places to tipple and trifle was no part of the saboteurs' mission and did not advance it. It may well have been a digression which jeopardized its success**.

The shortcomings of the overt act submitted are emphasized by contrast with others which the indictment charged but which the prosecution withdrew for admitted insufficiency of proof. It appears that Cramer took from Thiel for safekeeping a money belt containing about $3,600, some $160 of which he held in his room concealed in books for Thiel's use as needed. An old indebtedness of Thiel to Cramer of $200 was paid from the fund, and the rest Cramer put in his safe- deposit box in a bank for safekeeping. All of this was at Thiel's request. That Thiel would be aided by having the security of a safe-deposit box for his funds, plus availability of smaller amounts, and by being relieved of the risks of carrying large sums on his person -- without disclosing his presence or identity to a bank -- seems obvious. The inference of intent from such act is also very different from the intent manifest by drinking and talking together. Taking what must have seemed a large sum of money for safekeeping is not a usual amenity of social intercourse. That such responsibilities are undertaken and such trust bestowed without the scratch of a pen to show it, implies some degree of mutuality and concert from which **a jury could say that aid and comfort was given and was intended**. If these acts had been submitted as overt acts of treason, and we were now required to decide whether they had been established as required, we would have a quite different case. We would then have to decide whether statements on the witness stand by the defendant are either

"confession in open court" or may be counted as the testimony of one of the required two witnesses to make out otherwise insufficiently proved "overt acts." **But this transaction was not proven as the Government evidently hoped to do when the indictment was obtained. The overt acts based on it were expressly withdrawn from the jury, and Cramer has not been convicted of treason on account of such acts.**

The Government contends that outside of the overt acts, and by lesser degree of proof, it has shown a treasonable intent on Cramer's part in meeting and talking with Thiel and Kerling. But if it showed him disposed to betray, and showed that he had opportunity to do so, it still has not proved in the manner required that he did any acts submitted to the jury as a basis for conviction which had the effect of betraying by giving aid and comfort...

It is outside of the commonplace overt acts as proved that we must find all that convicts or convinces either that Cramer gave aid and comfort or that he had a traitorous intention. The prosecution relied chiefly upon the testimony of Norma Kopp, the fiancee of Thiel, as to incriminating statements made by Cramer to her, upon admissions made by Cramer after his arrest to agents of the FBI, upon letters and documents found on search of his room by permission after his arrest, and upon testimony that Cramer had curtly refused to buy Government bonds. After denial of defendant's motion to dismiss at the close of the prosecution's case, defendant became a witness in his own behalf and the Government obtained on cross-examination some admissions of which it had the benefit on submission.

The testimony of Norma Kopp was probably the most damaging to the prisoner. She was a German alien who had been in the United States since 1928, but had never become a citizen. She had long and intimately known both Cramer and Thiel and became engaged to marry Thiel four days before he left for Germany. She knew him to be a Nazi. She received at Westport, Conn., where she was working as a laundry and kitchen maid, a note from Cramer, asking her to come to New York for an undisclosed reason. She came and Cramer then, she says, told her that Thiel was back, that he came with others, that six of them landed from a submarine in a rubber boat in Florida, that they brought much money "from Germany from the German Government," that Cramer was keeping it for Thiel in his safety-deposit box, that these men got instructions from a "sitz" in the Bronx as to where to go, but Cramer said he did not know what he meant by "sitz." Cramer said he expected Thiel that evening at his apartment, but Thiel did not come. Cramer failed to bring about her meeting with Thiel, as he had promised her. She was at Kolping House when Cramer was taken into custody. The following day pictures of the saboteurs and the story of their landing and arrest was in the newspapers. She was taken into custody and questioned by the FBI.

Cramer left a note for "William Thomas," the name under which Thiel was going, at the Commodore Hotel, where he was staying, saying that Miss Kopp had come and asking Thiel to meet them at Thompson's Cafeteria at 4:00 that afternoon or call them at 7:00 that evening at Kolping House. Thiel had been arrested and did not keep the rendezvous nor make the call. About 10:50 p.m. June 27, Cramer was taken into custody at Kolping House and taken to the Bureau's headquarters in New York. He told the agents that the man he had been with at Thompson's Cafeteria was William

Thomas, that Thomas had worked in a factory on the West Coast since March of 1941 and had not been out of the United States. When asked if the true name of William Thomas was not Werner Thiel, he replied that it was, and that Thiel was using an assumed name because of difficulties with his draft board. He stated that the money belt which Thiel had given him contained only $200, which Thiel owed him, and that the $3,500 in the safety-deposit box belonged to him and had been obtained from the sale of securities. The gravity of the offense with which he might be confronted was intimated to Cramer, and he asked if he might speak with agent Ostholthoff alone. **To him he recanted his previous false statements and admitted that he knew Thiel had come from Germany, probably on a mission for the German Government, which he thought was "to stir up unrest among the people and probably spread propaganda."** He repeated this in the presence of other agents and stated that he had lied in order to protect Thiel. Cramer authorized the agents to search his room and to open his safe-deposit box at the Corn Exchange Bank and remove the contents thereof.

The documents found in Cramer's room after his arrest were: "Writing Thiel in Germany, November 25, 1941, [Cramer] said that 'defiance, boldness, will, and sharp weapons will decide the war, and the German Army and the German people are not lacking in these,' that he was 'very discontent' and sat here 'in pitiable comfort,' and that he had refused a job in Detroit at $100 per week because 'I do not want to soil my hands with war work.' To his family in Germany he wrote December 3, 1941, of 'the gigantic sacrifices which the glorious, disciplined German Army is making from day to day for the Homeland,' that 'every day here I hear the shrieks of hatred and the clamor for annihilation from the hostile foreigners,' and that a lost war 'means today a complete extirpation of the German nation.' To a friend in Chicago he wrote April 21, 1942, objecting to conscription 'after one has spent almost half a lifetime here in the States,' and saying 'personally I should not care at all to be misused by the American army as a world conqueror.' All the letters were written in German."

On the Government's case a witness testified that he went to Cramer's apartment, told him that he was a representative of the United States Government on a pledge drive and asked him if he would like to sign a pledge for a bond. Cramer said he was not interested and, in reply to the question whether he would sign up for a stamp, he said he was not even interested in the purchase of a 10-cent stamp. He then closed the door. The witness rang again and Cramer opened the door again and then closed it. Norma Kopp testified that Cramer told her that the "Minute Man" called at his door "and he got kind of fresh and he closed the door at him." Miss Kopp's testimony was objected to and was offered as "showing the general motive and disposition, in so far as loyalty to the country is concerned, of this defendant," and as probative on the issue of intent. The court received it on the theory that incidents of that sort might corroborate...certain other testimony offered by the Government indicating a motive or intent.

The defendant, having testified in his own behalf, was under cross-examination. He was asked: "Q. Now, sir, isn't it the fact that you did write to Germany in the year 1941 several letters in which you discussed the United States in an unfriendly manner? A. I do not know unfriendly. I would say that I have criticized a few persons. I have never criticized the United States as such." He was then asked whether in 1941 he did not receive letters from his nephew Norbert and whether it was not the fact

that Cramer's brother, Norbert's father, "through Norbert warned you that your letters discussed the United States in such an unfriendly fashion that Norbert's father feared that you would be put on the blacklist, because according to him the letters went through an American censorship?" Objection was duly made that the letters referred to were from someone else and could not bind the defendant. The objection was overruled, and the witness answered: "Well, I have received a letter from my nephew Norbert which mentions that, I admit that." A motion to strike the answer was denied, and exceptions to both rulings were duly taken.

The Circuit Court of Appeals observed that, "Of course, these expressions of opinion could not properly bind appellant; and the objection might wisely have been sustained." But it concluded that the ruling was not sufficiently prejudicial to call for reversal.

While defendant was under cross-examination, he was asked, "By the way,...you have testified at length here about your various studies and your various occupations and interests. Were you ever interested in law? A. No, sir; I was not. Q. Isn't it a fact, sir, that at one time you were particularly interested in the law of treason? A. No, sir; I have never been interested in that." The District Attorney then offered a complete text of the Constitution of the United States as printed in the New York Times in 1937. It had been found in Cramer's room and on it were marks which he admitted making. One of the marks was opposite the paragraph which defines treason. The District Attorney offered it for impeachment and also contended it to be of probative force to show "that this witness had in mind at the time these events which are the subject of the indictment here occurred, what the law of treason was." Against objection the court admitted it as material and relevant and declined to limit the grounds on which it was received.

**It appears without dispute that the marks on this copy of the Constitution were made at a time not definitely established but clearly before the United States entered the war and when the policy of the Government was declared to be one of neutrality...**

The petitioner was naturalized in 1936 and, so far as appears, came into possession of the Constitution in 1937.

**...Much of the evidence is of the general character whose infirmities were feared by the framers and sought to be safeguarded against.**

Most damaging is the testimony of Norma Kopp, a friend of Cramer's and one with whom, if she is to be believed, he had been most indiscreetly confidential. Her testimony went considerably beyond that of the agents of the FBI as to admissions of guilty knowledge of Thiel's hostile mission and of Cramer's sympathy with it. To the extent that his conviction rests upon such evidence, and it does to an unknown but considerable extent, it rests upon the **uncorroborated testimony of <u>one</u> witness** not without strong emotional interest in the drama of which Cramer's trial was a part. **Other evidence relates statements by Cramer before the United States was at war with Germany. At the time they were uttered, however, they were not treasonable. <u>To use pre-war expressions of opposition to entering a war to convict of treason during the war is a dangerous procedure</u>**

**at best**. The same may be said about the inference of disloyal attitude created by showing that he refused to buy bonds and closed the door in the salesman's face. Another class of evidence consists of admissions to agents of the FBI. **They are, of course, not "confessions in open court."** The Government does not contend and could not well contend that admissions made out of court, if otherwise admissible, can supply a deficiency in proof of the overt act itself.

The Government has urged that our initial interpretation of the treason clause should be less exacting, lest treason be too hard to prove and the Government disabled from adequately combating the techniques of modern warfare. But the treason offense is not the only...legal weapon to vindicate our national cohesion and security. In debating this provision, Rufus King observed to the Convention that the "controversy relating to Treason might be of less magnitude than was supposed; as **the legislature might punish capitally under other names than Treason**." His statement holds good today.

So, as long as Congress does not attempt to evade the restrictions of the treason clause, it may make criminal other types of subversive activity (i.e., sabotage).

**Of course we do not intimate that Congress could dispense with the two-witness rule merely by giving the same offense another name.** But the power of Congress is in no way limited to enact prohibitions of specified acts thought detrimental to our wartime safety. The loyal and the disloyal alike may be forbidden to do acts which place our security in peril, and the trial thereof may be focused upon defendant's specific intent to do those particular acts thus eliminating the accusation of treachery and of general intent to betray which have such passion-rousing potentialities...

Congress has prohibited obtaining defense information in certain ways, *50 U.S.C. §31;* certain disclosures of information, *50 U.S.C. §32;* certain seditious and disloyal acts in wartime, *50 U.S.C. §33;* and has enacted such statutes as the Trading with the Enemy Act, 50 U.S.C. App. §3.

...The protection of the two-witness requirement, limited as it is to overt acts, may be wholly unrelated to the real controversial factors in a case...Although nothing in the conduct of Cramer's trial evokes it, a repetition of **Chief Justice Marshall**'s warning can never be untimely:

> "As there is no crime which can more excite and agitate the passions of men than treason, no charge demands more from the tribunal before which it is made, a deliberate and temperate inquiry. Whether this inquiry be directed to the fact or to the law, none can be more solemn, none more important to the citizen or to the government; none can more affect the safety of both...It is, therefore, more safe, as well as more consonant to the principles of our constitution, that the crime of treason should not be extended by construction to doubtful cases; and that crimes not clearly within the constitutional definition, should receive such punishment as the legislature

in its wisdom may provide." *Ex parte Bollman.*[2]

| Remember Chief Justice Marshall? Does *Marbury v. Madison* ring a bell? |
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...The innovations made by the forefathers in the law of treason were conceived in a faith such as Paine put in the maxim that "He that would make his own liberty secure must guard even his enemy from oppression; for if he violates this duty he establishes a precedent that will reach himself." We still put trust in it. We hold that overt acts 1 and 2 are insufficient as proved to support the judgment of conviction, which accordingly is *Reversed*.

**DISSENT:** Justice Douglas/Stone/Black/Reed...The charge against Cramer was that of adhering. The essential elements of the crime are that Cramer (1) with treasonable intent (2) gave aid and comfort to the enemy.

There was ample evidence for the jury that Cramer had a treasonable intent. The trial court charged the jury that "criminal intent and knowledge, being a mental state, are not susceptible of being proved by direct evidence, and therefore you must infer the nature of the defendant's intent and knowledge from all the circumstances." It charged that proof of criminal intent and knowledge is sufficient if proved beyond a reasonable doubt, and that the two witnesses are not necessary for any of the facts other than the overt acts. On that there apparently is no disagreement. It also charged: "Now, gentlemen, motive should not be confused with intent. If the defendant knowingly gives aid and comfort to one who he knows or believes is an enemy, then he must be taken to intend the consequences of his own voluntary act, and the fact that his motive might not have been to aid the enemy is no defense. In other words, one cannot do an act which he knows will give aid and comfort to a person he knows to be an enemy of the United States, and then seek to disclaim criminal intent and knowledge by saying that one's motive was not to aid the enemy. So if you believe that the defendant performed acts which by their nature gave aid and comfort to the enemy, knowing or believing him to be an enemy, then you must find that he had criminal intent, since he intended to do the act forbidden by the law. **The fact that you may believe that his motive in so doing was, for example, merely to help a friend, or possibly for financial gain, would not change the fact that he had a criminal intent**." On that there apparently is no disagreement. A man who voluntarily assists one known or believed to be an enemy agent may not defend on the ground that he betrayed his country for only thirty pieces of silver. "The consequences of his acts are too serious and enormous to admit of such a plea. He must be taken to intend the consequences of his own voluntary act." For the same reasons a man cannot slip through our treason law because his aid to those who would destroy his country was prompted by a desire to "accommodate a friend." **Loyalty to country cannot be subordinated to the amenities of personal friendship.**

Cramer had a traitorous intent if he knew or believed that Thiel and Kerling were enemies and were working here in the interests of the German Reich. The trial court charged that mere suspicion was

[2]Case 3-2 on this website.

not enough; but that it was not necessary for Cramer to have known all their plans. There apparently is no disagreement on that. By that test the evidence against Cramer was overwhelming. The conclusion is irresistible that Cramer believed, if he did not actually know, that Thiel and Kerling were here on a secret mission for the German Reich with the object of injuring the United States and that the money which Thiel gave him for safekeeping had been supplied by Germany to facilitate the project of the enemy. The trial court charged that if the jury found that Cramer had no purpose or intention of assisting the German Reich in its prosecution of the war or in hampering the United States in its prosecution of the war but acted solely for the purpose of assisting Kerling and Thiel as individuals, Cramer should be acquitted. There was ample evidence for the jury's conclusion that the assistance Cramer rendered was assistance to the German Reich, not merely assistance to Kerling and Thiel as individuals.

The trial judge stated when he sentenced Cramer that it did not appear that Cramer knew that Thiel and Kerling were in possession of explosives or other means for destroying factories in this country or that they planned to do that. He stated that if there had been direct proof of such knowledge he would have sentenced Cramer to death rather than to forty-five years in prison. But however relevant such particular knowledge may have been to fixing the punishment for Cramer's acts of treason, it surely was not essential to proof of his traitorous intent. **A defendant who has aided an enemy agent in this country may not escape conviction for treason on the ground that he was not aware of the enemy's precise objectives.** Knowing or believing that the agent was here on a mission on behalf of a hostile government, he could not, by simple failure to ask too many questions, assume that this mission was one of charity and benevolence toward the United States. But the present case is much stronger. For Cramer claims he believed the enemy agent's objective was to destroy national morale by propaganda and not to blow up war factories. Propaganda designed to cause disunity among adversaries is one of the older weapons known to warfare, and upon occasion one of the most effective. No one can read this record without concluding that the defendant Cramer knew this. He is an intelligent, if misguided, man. He has a quick wit sharpened by considerable learning of its kind. He is widely read and a student of history and philosophy, particularly Ranke and Nietzsche. He had been an officer of a pro-German organization, and his closest associate had been a zealous Nazi. He also had listened to German propagandists over the short wave. But, in any event, it is immaterial whether Cramer was acquainted with the efficacy of propaganda in modern warfare. Undoubtedly he knew that the German government thought it efficacious. When he was shown consciously and voluntarily to have assisted this enemy program his traitorous intent was then and there sufficiently proved. **The Court does not purport to set aside the conviction for lack of sufficient evidence of traitorous intent. It frees Cramer from this treason charge solely on the ground that the overt acts charged are insufficient under the constitutional requirement.**

The overt acts alleged were (1) that Cramer met with Thiel and Kerling on June 23rd, 1942, at the Twin Oaks Inn and "did confer, treat, and counsel" with them "for the purpose of giving and with the intent to give aid and comfort" to the enemy; (2) that Cramer "did accompany, confer, treat, and counsel with" Thiel at the Twin Oaks Inn and at Thompson's Cafeteria on June 23rd, 1942, "for the purpose of giving and with intent to give aid and comfort" to the enemy; and (3) that Cramer gave false information of the character which has been enumerated to agents of the F.B.I. "for the purpose

of concealing the identity and mission" of Thiel and "for the purpose of giving and with intent to give aid and comfort" to the enemy.

The Court concedes that an overt act need not manifest on its face a traitorous intention. By that concession it rejects the defense based on the treason clause which Cramer has made here. The Court says an overt act must "show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy." It says, however, that 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." It adds, "Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses. The two-witness principle is to interdict imputation of *incriminating acts* to the accused by circumstantial 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 act, in order to make a giving of aid and comfort to the enemy." And when it comes to the overt acts of meeting and conferring with Thiel and Kerling the Court holds that they are inadequate since there was "no two-witness proof of what they said nor in what language they conversed." That is to say, reversible error is found because the two witnesses who testified to the fact that Cramer met twice with the saboteurs did not testify that Cramer gave them information of "value to their mission" such as shelter, sustenance, supplies, encouragement or counsel.

That conclusion, we submit, leads to ludicrous results...It is conceded that if the two witnesses had testified not only that they saw Cramer conferring with Thiel and Kerling but also heard him agree to keep Thiel's money and saw him take it, the result would be different. But the assumption is that since the two witnesses could not testify as to what happened at the meetings, we must appraise the meetings in isolation from the other facts of the record. Therein lies the fallacy of the argument.

In the first place, we fully agree that under the constitutional provision there can be no conviction of treason without proof of two witnesses of an overt act of treason. We also agree that the act so proved need not itself manifest on its face the treasonable intent. And as the Court states, such intent need not be proved by two witnesses. It may even 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."...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. **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**. This, we think, is the correct and necessary conclusion to be drawn from the concession that the overt act need not on its face manifest the guilty purpose. The grossest and most dangerous act of treason may be, as in this case, and often is, innocent on its face. But the ruling of the Court 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. The treasonable intent or purpose

which it is said may be proved by a single witness or circumstantial evidence, must, in the absence of a confession of guilt in open court, be inferred from all the facts and circumstances which surround and relate to the overt act. Inference of the treasonable purpose from events and acts related to or surrounding the overt act necessarily includes the inference that the accused committed the overt act with the knowledge or understanding of its treasonable character. **To say that the treasonable purpose with which the accused committed the overt act may be inferred from related events proved by a single witness, and at the same time to say that so far as they show the treasonable character of the overt act, they must be proved by two witnesses, is a contradiction in terms. The practical effect of such a doctrine is to require proof by two witnesses, not only of the overt act charged which the Constitution requires but of every other fact and circumstance relied upon to show the treasonable character of the overt act and the treasonable purpose with which it was committed which the Constitution plainly does not require.** Here, as in practically all cases where there is no confession in open court, the two are inseparable, save only in the single instance where the overt act manifests its treasonable character on its face. The Court thus in substance adopts the contention of the respondent, which it has rejected in words, and for all practical purposes requires proof by two witnesses, not only of the overt act but of all other elements of the crime save only in the case where the accused confesses in open court. It thus confuses proof of the overt act with proof of the purpose or intent with which the overt act was committed and, without historical support, expands the constitutional requirement so as to include an element of proof not embraced by its words.

**...It is plain...that the requirement of an 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**...The treasonable project is complete as a crime only when the traitorous intent has ripened into a physical and observable act. 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 insufficient. It must be established beyond a reasonable doubt that the act was part of the treasonable project and done in furtherance of it. Its character and significance are to be judged by its place in the effectuation of the project. That does not mean that where the treasonable scheme involves several treasonable acts, and the overt act which is charged has been proved by two witnesses, that all the other acts which tend to show the treasonable character of the overt act and the treasonable purpose with which it was committed must be proved by two witnesses. The Constitution does not so declare...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. As the Court concedes, its treasonable character need not be manifest upon its face. We say that its true character may be proved by any competent evidence sufficient to sustain the verdict of a jury...

[History shows] that a meeting with the enemy may be adequate as an overt act of treason...Such a meeting might be innocent on its face. It might also be innocent in its setting,...where, for example, it was accidental. We would have such a case here if Cramer's first meeting with Thiel was charged as an overt act. For, as we have seen, Cramer went to the meeting without knowledge that he would

meet and confer with Thiel. But the subsequent meetings were arranged between them. They were arranged in furtherance of Thiel's designs. Cramer was not only on notice that Thiel was here on a mission inimical to the interests of this nation. He had agreed at the first meeting to hide Thiel's money. He had agreed to contact Norma Kopp. He knew that Thiel wanted his identity and presence in New York concealed. This was the setting in which the later meetings were held. The meetings take on their true character and significance from that setting. They constitute acts. They demonstrate that Cramer had a liking for Thiel's design to the extent of aiding him in it. They show beyond doubt that Cramer had more than a treasonable intent; that that intent had moved from the realm of thought into the realm of action. Since two witnesses proved that the meetings took place, their character and significance might be proved by any competent evidence...

We know the character of the meetings from Cramer's own admissions. We know from his own lips that they were not accidental or casual conferences, or innocent, social meetings. He arranged them with Thiel. When he did so he believed that Thiel was here on a secret mission for the German Reich with the object of injuring this nation. He also knew that Thiel was looking for a place to hide his money. Cramer had offered to keep it for Thiel and Thiel had accepted the offer. Cramer had also offered to write Norma Kopp, Thiel's fiancee, without mentioning Thiel's name. Cramer also knew that Thiel wanted his identity and his presence in New York concealed. Cramer's admissions at the trial gave character and significance to those meetings. Those admissions plus the finding of treasonable intent place beyond a reasonable doubt the conclusion that those meetings were steps in and part and parcel of the treasonable project.

Nor need we guess or speculate for knowledge of what happened at the meetings. We need not rely on circumstantial evidence, draw inferences from other facts, or resort to secondary sources. Again we know from Cramer's testimony at the trial -- from his own admissions -- precisely what transpired.

Cramer told the whole story in open court. He admitted he agreed to act and did act as custodian of the saboteur Thiel's money. He agreed to hold it available for Thiel's use whenever Thiel might need it. It is difficult to imagine what greater aid one could give a saboteur unless he participated in the sabotage himself. Funds were as essential to Thiel's plans as the explosives he buried in the sands of Florida. Without funds the mission of all the saboteurs would have soon ended or been seriously crippled. Cramer did not stop here. Preservation of secrecy was essential to this invasion of the enemy. It was vital if the project was to be successful. In this respect Cramer also assisted Thiel. He cooperated with Thiel in the concealment of Thiel's identity and presence in New York City. He did his best to throw federal officers off the trail and to mislead them. He made false statements to them, saying that Thiel's true name was "Thomas" and that Thiel had not been out of the country since the war began...

Why then must we disregard Cramer's admissions at the trial? Why must we assume, as does this Court, that those admissions are out of the case and that our decision must depend solely on the evidence presented by the government?

The Constitution says that a "confession in open court" is sufficient to sustain a conviction of treason. It was held in *United States* v. *Magtibay* that a confession in open court to the overt acts charged in the indictment was not an adequate substitute for the testimony of two witnesses where the accused denied treasonable purpose. We need not go so far as to say that if the whole crime may be proved by an admission by the accused in open court, one of the ingredients of the offense may be established in like manner. We do not say that if the government completely fails to prove an overt act or proves it by one witness only, the defect can be cured by the testimony of other witnesses or by the admissions of the accused. We do say that a meeting with the enemy is an act and may in its setting be an overt act of treason. We agree that overt acts innocent on their face should not be lightly transformed into incriminating acts. But so long as overt acts of treason need not manifest treason on their face, as the Court concedes, the sufficiency of the evidence to establish the treasonable character of the act, like the evidence of treasonable intent, depends on the quality of that evidence whatever the number of witnesses who supplied it. There can be no doubt in this case on that score...When two witnesses testify to the overt acts, why then are not admissions of the accused in open court adequate to establish their true character? Could the testimony of any number of witnesses more certainly or conclusively establish the significance of what was done? 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. Must a conviction be set aside because the two witnesses did not testify to what the accused admitted in open court? We say no. In such circumstances we have no examples of constructive treason. The intent is not taken for the deed. 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. And any possibility that an act innocent on its face has been transformed into a sinister or guilty act is foreclosed. For the significance and character of the act are supplied by the admissions from the lips of the accused in open court. The contrary result could be reached only if it were necessary that the overt act manifest treason on its face. That theory is rejected by the Court. But once rejected it is fatal to the defense.

Cramer's counsel could not defend on the grounds advanced by the Court for the simple reason that the government having proved by two witnesses that Cramer met and conferred with the saboteurs, any possible insufficiency in the evidence which it adduced to show the character and significance of the meetings was cured by Cramer's own testimony. Cramer can defend only on the ground that the overt act must manifest treason, which the Court rejects, or on the ground that he had no treasonable intent, which the jury found against him on an abundance of evidence. Those are the only alternatives because concededly conferences with saboteurs here on a mission for the enemy may be wholly adequate as overt acts under the treason clause. They were proved by two witnesses as required by the Constitution. Any possible doubt as to their character and significance as parts of a treasonable project were removed by the defendant's own admissions in open court. To say that we are precluded from considering those admissions in weighing the sufficiency of the evidence of the true character and significance of the overt acts is neither good sense nor good law. Such a result makes the way easy for the traitor, does violence to the Constitution and makes justice truly blind.

**attainder** : the forfeiture of right and property by a person convicted of treason.

**corruption of blood** : revoking the inheritance of the descendants of a treasonous person.