be convicted of advising or procuring a levying of war only upon the testimony of two witnesses to his having procured the assemblage. This operation having been covert, such testimony was naturally unobtainable. The net effect of Marshall's pronouncements was to make it extremely difficult to convict one of levying war against the United States short of the conduct of or personal participation in actual hostilities.[1428]

### Aid and Comfort to the Enemy

***The Cramer Case.***—Since *Bollman*, the few treason cases that have reached the Supreme Court were outgrowths of World War II and have charged adherence to enemies of the United States and the giving of aid and comfort. In the first of these, *Cramer v. United States*,[1429] the issue was whether the "overt act" had to be "openly manifest treason" or if it was enough if, when supported by the proper evidence, it showed the required treasonable intention.[1430] The Court, in a five-to-four opinion by Justice Jackson, in effect took the former view holding that "the two-witness principle" interdicted "imputation of *incriminating acts* to the accused by circumstantial evidence or by the testimony of a single witness," [1431] even though the single witness in question was the accused himself. "Every act, movement, deed, and word of the defendant charged to constitute trea-

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[1428] There have been lower court cases in which convictions were obtained. As a result of the Whiskey Rebellion, convictions of treason were obtained on the basis of the ruling that forcible resistance to the enforcement of the revenue laws was a constructive levying of war. United States v. Vigol, 29 Fed. Cas. 376 (No. 16621) (C.C.D. Pa. 1795); United States v. Mitchell, 26 Fed. Cas. 1277 (No. 15788) (C.C.D. Pa. 1795). After conviction, the defendants were pardoned. *See also* for the same ruling in a different situation the *Case of Fries*, 9 Fed. Cas. 826, 924 (Nos. 5126, 5127) (C.C.D. Pa. 1799, 1800). The defendant was again pardoned after conviction. About a half century later participation in forcible resistance to the Fugitive Slave Law was held not to be a constructive levying of war. United States v. Hanway, 26 Fed. Cas. 105 (No. 15299) (C.C.E.D. Pa. 1851). Although the United States Government regarded the activities of the Confederate States as a levying of war, the President by Amnesty Proclamation of December 25, 1868, pardoned all those who had participated on the southern side in the Civil War. In applying the Captured and Abandoned Property Act of 1863 (12 Stat. 820) in a civil proceeding, the Court declared that the foundation of the Confederacy was treason against the United States. Sprott v. United States, 87 U.S. (20 Wall.) 459 (1875). *See also* Hanauer v. Doane, 79 U.S. (12 Wall.) 342 (1871); Thorington v. Smith, 75 U.S. (8 Wall.) 1 (1869); Young v. United States, 97 U.S. 39 (1878). These four cases bring in the concept of adhering to the enemy and giving him aid and comfort, but these are not criminal cases and deal with attempts to recover property under the Captured and Abandoned Property Act by persons who claimed that they had given no aid or comfort to the enemy. These cases are not, therefore, an interpretation of the Constitution.

[1429] 325 U.S. 1 (1945).

[1430] 89 Law. Ed. 1443–1444 (Argument of Counsel).

[1431] 325 U.S. at 35.