

## Sec. 3—Treason

## Cl. 1—Definition and Limitations

“As the *Cramer* case makes plain, the overt act and the intent with which it is done are separate and distinct elements of the crime. Intent need not be proved by two witnesses but may be inferred from all the circumstances surrounding the overt act. But if two witnesses are not required to prove treasonable intent, two witnesses need not be required to show the treasonable character of the overt act. For proof of treasonable intent in the doing of the overt act necessarily involves proof that the accused committed the overt act with the knowledge or understanding of its treasonable character.”

“The requirement of an overt act is to make certain a treasonable project has moved from the realm of thought into the realm of action. That requirement is undeniably met in the present case, as it was in the case of *Cramer*.”

“The *Cramer* case departed from those rules when it held that ‘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.’ 325 U.S. p. 35. The present decision is truer to the constitutional definition of treason when it forsakes that test and holds that an act, quite innocent on its face, does not need two witnesses to be transformed into a incriminating one.”<sup>1435</sup>

**The *Kawakita Case*.**—*Kawakita v. United States*<sup>1436</sup> was decided on June 2, 1952. The facts are sufficiently stated in the following headnote: “At petitioner’s trial for treason, it appeared that originally he was a native-born citizen of the United States and also a national of Japan by reason of Japanese parentage and law. While a minor, he took the oath of allegiance to the United States; went to Japan for a visit on an American passport; and was prevented by the outbreak of war from returning to this country. During the war, he reached his majority in Japan; changed his registration from American to Japanese, showed sympathy with Japan and hostility to the United States; served as a civilian employee of a private corporation producing war materials for Japan; and brutally abused American prisoners of war who were forced to work there. After Japan’s surrender, he registered as an American citizen; swore that he was an American citizen and had not done various acts amount-

<sup>1435</sup> 330 U.S. at 645–46. Justice Douglas cites no cases for these propositions. Justice Murphy in a solitary dissent stated: “But the act of providing shelter was of the type that might naturally arise out of petitioner’s relationship to his son, as the Court recognizes. By its very nature, therefore, it is a non-treasonous act. That is true even when the act is viewed in light of all the surrounding circumstances. All that can be said is that the problem of whether it was motivated by treasonous or non-treasonous factors is left in doubt. It is therefore not an overt act of treason, regardless of how unlawful it might otherwise be.” *Id.* at 649.

<sup>1436</sup> 343 U.S. 717 (1952).