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EDITORS’ PREFACE

Stories of palpable injustice, particularly when the victim is sympathetic, have the power to both move our emotions and rouse our indignation. The trials of Iva Ikuko Toguri d’Aquino in Japan, as an American citizen trapped during World War II, and in the United States, after she returned, fit this description. A woman of valor mistreated by both of the warring nations during and after—long after—the conflict was over, is now shown in her true colors by Yasuhide Kawashima. “Tokyo Rose,” the name that Americans gave her, never really fit, but when she finally departed Tokyo, she found that American justice was no fairer to her than Japanese officialdom.

Kawashima’s account is deeply rooted in the Japanese language sources, to which he had unparalleled access, the American legal sources, which he fully exploited, and the cultures of both nations. Because of his multicultural heritage, his thorough research, and his abiding commitment to justice in this case, he pulls no punches. There are heroes and villains aplenty, in both the United States and Japan: prosecutors who sought to build careers on her conviction for voluntarily betraying her country, defense counsel who braved public censure to prove her innocence of treason, and above all ordinary men and women who befriended her because of her personal qualities.

In 1977, Iva was finally pardoned by President Gerald Ford, an act of belated grace for which both houses of the California legislature and the city governments of San Francisco and Los Angeles, among others, had pleaded. Los Angeles’s act was especially moving, in light of the city’s 1948 resolution that she not be allowed to return from Japan. Interwoven in Iva’s story are larger ones—of the internment of thousands of loyal Japanese Americans during the war; of the meaning of citizenship and the nation’s commitment to the ideal of fair trial; and of the place that tabloid journalism has in our culture. Yet first and foremost, Iva’s story is hers—a story that Yasuhide Kawashima has been waiting to tell for many years. No one will read it and come away unimpressed.
Iva Ikuko Toguri d’Aquino, American-born but infamously identified in history books as the traitorous “Tokyo Rose,” found herself living in Tokyo during World War II, arguably the worst period of the city’s history. I had a similar experience, living through both the war and early postwar period, first in Nagasaki and then in Tokyo. When the atomic bomb was dropped on Nagasaki, I and many other teenagers were working in the mountains only thirty miles from the city, tapping resin (matsuyani) from pine trees for conversion into turpentine. The Japanese government was making desperate efforts to convert such fluids into airplane fuel, and we were responding to the order of government officials who had a vise-grip on our lives in the service of the Emperor.

Word spread immediately after the bomb struck Nagasaki, but I did not go back to the city until four months later. When I did I was appalled by the extent of the destruction this lone “new-style bomb” had inflicted. Although the B-29 had actually missed its target, thus destroying only half of the city, it left in its wake desolate ruins. The devastation was so complete that very little remained; the heights where charming school buildings and houses had once stood had in an instant turned into bare hills, and the sections that formerly contained hospitals and other public buildings and busy, prosperous streets had become darkened, empty fields. Nothing seemed to have been spared. On top of that, the radiation damage, we were told, would be incalculable while remaining at the same time insidiously invisible to us.

I was in the second year of middle school when the war ended, just old enough to read newspapers seriously. Among the news items that stood out to me and my classmates were the stories about “Tokyo Rose” and her alleged propaganda broadcasting activities on behalf of the Japanese government during the war. We thought it odd that two enterprising American correspondents had targeted Iva and tried to purchase the exclusive rights to her story, and that Iva had agreed and thereby implicated herself in ways that later led to her arrest, imprisonment, and trial. (And we were indignant when we found out that the journalists had used her story but not actually paid her.)

Iva had already left for San Francisco for trial and been found guilty of treason and imprisoned by the time I went to college in Tokyo. The capital
city at that time still languished amid the enormous physical destruction caused by American bombings during the war—from the Doolittle air raid of 1942 through the terrible fire-bombings late in the war. General Curtis LeMay’s systematic destruction of Tokyo by the explosive and incendiary bombs in early 1945 paralyzed the city, destroying over 65 percent of all residences. Yet, due to the selectiveness of the American bombing policies—quite in contrast to the sweeping, indiscriminate destruction wrought by the atomic bombs—Tokyo’s financial and business district went largely undamaged and the railroads still functioned effectively throughout the country. Thus in the midst of immense physical devastation, much of the necessary infrastructure and social order remained intact, with national, prefectural, and local governments all functioning nearly normally throughout the period. The Radio Tokyo building, the place of Iva’s employment, was one of the survivors. Unfortunately for Iva, its survival also served as a marker for her alleged traitorous broadcasts, which came to occupy (some might say “preoccupy”) the military and civilian investigators and prosecutors who relentlessly pursued her case. In the pages that follow, I focus on how that case emerged, evolved, and concluded; what legal and constitutional issues were at stake; and the degree to which justice was ultimately served. By the end of the book, I think the reader will likely detect that Iva’s case has an ongoing resonance for our own time.

I would like to express my deep appreciation for all the help I have received during the long period of time this project has been in preparation. Indispensable were many comments and suggestions provided by Yuma Totani, of the University of Hawaii at Manoa, who carefully went over the manuscript with a fine-tooth comb, which helped to improve the book greatly. I also thank Roger Daniels and the other reviewer, who read my copyedited manuscript and made many useful comments. I owe a special debt of thanks to Peter C. Hoffer, one of the editors of the Landmark Law Cases and American Society series, for his careful reading of my manuscript and various suggestions that have substantially enhanced the quality of the book.

The University Press of Kansas has done an excellent job transforming my manuscript into a decent book. As always, Michael Briggs, editor-in-chief, has performed superb work. My repeated delays in finishing the
book, however, made even Mike, an ideal editor known for his patience, understanding, and ability to elicit the best out of an author, almost lose his patience. In addition, I appreciated his specific suggestions on the Tokyo Rose case, in which he has a deep interest. Thanks also to the entire University Press of Kansas publishing team, and I am particularly grateful to Susan Schott (assistant director and marketing manager), Kelly Christian Jacques (production editor), and Martha Whitt (copyeditor) for their superb work.

This book is written as a chapter in American history, and I am deeply indebted to several professors at the University of California, Santa Barbara, who taught me various fields of American history, which cover this topic in one way or another. It is to them I gratefully dedicate this book. Tokyo Rose and her activities during World War II have long attracted the attention of many writers, both scholarly and popular, and the debts I owe to them are acknowledged in the bibliographical essay, but I should specifically mention here the pioneers, Masayo Duus, Rex B. Gunn, John Juji Hada, Russell W. Howe, and Stanley I. Kutler.

I also thank my brother, Takehide Kawashima, professor emeritus of Nihon University, Tokyo, who not only helped arrange all my research in Japan, including at the Japanese Diet Library and the NHK Library, both in Tokyo, and the Yamanashi Prefectural Library in Kofu, but also guided my visit to the Kofu Prefectural High School and Kagami Nakajo in Yamanashi Prefecture, where Iva’s father came from.

For personal information about Thomas E. DeWolfe, the main prosecutor, which has been obscure, I am grateful to Elizabeth Torres, reference librarian at the University of Texas at El Paso, who uncovered some rare accounts about him. For all kinds of computer problems I encountered, I heavily relied on the expertise of my good friend, John K. Fahey, director of the Liberal Arts Center for Institutional Technology at the University of Texas at El Paso, to whom I am deeply grateful. This book was written during a period when I was carrying a full teaching load, and my teaching assistants helped me admirably in easing my teaching. I am especially grateful to Craig J. Cummings, Gary Kieffner, Mark Kirkland, and Dana K. Teasley.

Over the years, I have discussed Tokyo Rose with my family, relatives, and close friends on various occasions. Ancy Morse and Robert Morse, former Minnesota district judge and retired Mayo psychiatrist, respectively, who have a strong interest in the subject, talked with me about it.
over many lunches and dinners and gave me some useful suggestions. And finally, my wife, Ruth Tone Kawashima, has my deepest appreciation for research assistance, criticism of the manuscript, proofreading, and keeping me clear from all kinds of interruption and disturbance.
The Tokyo Rose Case
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. . . . 
The Congress shall have Power to declare the Punishment of Treason, 
but no Attainer of Treason shall work Corruption of Blood, or 
Forfeiture except during the Life of the Person attained. 
U.S. Constitution, Article III, Section 3

On September 29, 1949, at 6:04 p.m., the jury that had been deliberating 
for over seventy-eight hours, instead of going to dinner as the judge had 
suggested, filed back into the courtroom just thirty-three minutes after 
they had left.

Judge Michael J. Roche of the federal district court for the Northern 
District of California in San Francisco, who had presided over the trial for 
almost three months, asked, “Has the jury arrived at a verdict?” “We have, 
your Honor,” replied the foreman of the jury, John Mann, and handed the 
verdict to the court clerk, James Welch, who in turn passed it on to Judge 
Roche. He read it without expression and handed it back to the clerk.

The defendant, Iva Ikuko Toguri d’Aquino, stood in front of the de-
defense table facing the judge, flanked by her lawyers. She was wearing 
the same plaid two-piece suit that she had taken to Japan eight years pre-
viously and had been wearing every day throughout the trial, ironing it 
every night in her cell. She was a slender, “birdlike,” and alert Japanese 
American woman. Her beautiful shoulder-length, raven-black hair (midori 
no kurokami, the kind of hair the Japanese admire) was, as Masayo Duus 
describes it, “neatly bobbed and swept back by a band.”

In the hushed room Clerk Welch announced in a clear voice: “Guilty.”

As a moan of disappointment arose from the courtroom audience, Iva 
slumped into her chair, staring at her hands. Her face clearly revealed
expressions of shock and incredulity. The verdict, however, was guilty only on one count but not guilty on the other seven counts.

A week later, Judge Roche sentenced Iva to ten years in prison and fined her $10,000, in accordance with the U.S. statute stipulating that “a person convicted of Treason shall suffer death, or shall be imprisoned not less than 5 years and fined not less than $10,000 and shall be incapable of holding any office under the United States.” She was ordered imprisoned in the Federal Reformatory for Women at Alderson, West Virginia, where Iva’s German counterpart, Mildred (“Axis Sally”) Gillars, had already been serving her time and where, more recently, Martha Stewart served for five months.

What exactly had Iva T. d’Aquino, a Japanese nisei woman, who went to Japan just before the Japanese attack on Pearl Harbor, done to have been declared guilty of such a crime as treason, the “gravest of all crimes”? She was accused of having broadcast propaganda from Tokyo to the American GIs fighting in the Pacific, saying things like “Give up fighting” and “Now, you fellows have lost all your ships. . . . How do you think you will ever get home?” How could anyone, let alone a college graduate, not understand that making such announcements over the enemy radio was a grievous betrayal of country?

What specific work did d’Aquino really do that would constitute a treasonable act? Or was she convinced that whatever she was doing was not treason because she was either doing her broadcasting under duress or making only innocuous announcements?

Under Anglo-American law, as in other legal systems, treason has been considered one of the most serious crimes. The essence of treason is the violation of the duty of allegiance owed by a citizen or subject to the sovereign. In English law, however, treason was construed broadly and often used for political purposes, to punish and eliminate political enemies or those who criticized and challenged the monarchical authorities. It was the American Revolution that forced the colonists to seriously reconsider the problem of treason. The colonists who declared independence and challenged the British Empire were, in British eyes, traitors and rebels, guilty of treason. At the same time, they had to deal with the internal enemy within the colonies.

In accordance with the recommendation of the Continental Congress
in 1776, most of the states enacted their treason statutes, some of which were harsh and even abusive. These laws were frequently enforced without trial by jury and other basic rules, and there were executions for treason during the war. One Philadelphian, for example, was executed for treason for passing counterfeit money.

When they won the war and achieved independence, the Americans reevaluated the problem of treason and thoroughly reformed, not just revised, the law of treason. The Constitution, drafted in 1787 and coming into effect in 1789, in the words of the leading American legal historian Lawrence M. Friedman, turned treason, “the king of crime,” into “a constitutional monarch,” defining it narrowly to “a naked essence.” Treason was now to be considered only in “levying War against the United States, or adhering to their Enemies, giving them Aid and Comfort.” This eliminated a large number of English traditional definitions of treason, such as counterfeiting and killing a judge.

The Constitution also placed procedural restrictions on trials for treason. No one could be convicted of this crime “unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.” Congress was given the power to declare the punishment of treason, but the punishment could not include “Corruption of the Blood, or Forfeiture except during the Life of the Person attained.” Accordingly, in 1790, Congress passed a law providing the death penalty for anyone convicted of treason.

Together with murder, treason has continued to be one of the most serious crimes in the United States, although due to the reform discussed above, the conviction rates were not as great as they had been in the previous decades. The leader of the 1794 Whisky Rebellion became the first American traitor sentenced to death, but he was pardoned by President George Washington.

The first major American treason case was that of Aaron Burr, whose trials took place in 1807. Burr escaped being convicted of treason because the case did not have the required two witnesses to the same overt act. He was tried by a U.S. circuit court, over which Supreme Court Chief Justice John Marshall, riding that circuit, and a district court judge, Cyrus Griffin, sitting in the circuit, presided.

Reaffirming the significant role Marshall played in the treason case, American legal history expert Peter Hoffer points out that Marshall insisted that the constitutional definition of treason required the actual
levying of war, not participating in or conspiring to levy war. As “the dress rehearsal” for the Burr case, Hoffer examines two Supreme Court decisions, *Bollman v. U.S.* (1807) and *Swartwout v. U.S.* (1807), and argues that it was in these cases that the Supreme Court for the first time explored the nature of treason, though only incidentally, as the main issue was the issuance of a habeas corpus.

While sitting as the chief justice of the Supreme Court, Samuel Chase wrote the opinion for the court in these cases, implying that there could be treason by conspiring rather than by act. On the testimony of the main witness, General James Wilkinson, commander of U.S. forces in the Mississippi Valley, Hoffer asserts that Chase “had to swallow hard and work harder to get around this point in his opinion on the admissibility of Wilkinson’s evidence in the Burr trial.” It was Marshall’s view that the Constitution demanded the levying of war, not just participation in a conspiracy (“one had to perform a traitorous act”) that prevailed.

John Brown of Harpers Ferry was indicted for treason against the state of Virginia and tried in a Virginia court, not in a federal court, and was convicted and hanged. When the Civil War started in 1861, the treason law of 1790 had still been in force. The unique nature and extent of the war, however, made it difficult for the North to enforce not only this law but the subsequent acts, the Seditious Conspiracy Act of 1861 and Second Confiscation Act of 1862, against Confederate leaders and the disloyal Northerners. No one was convicted of treason, and even Jefferson Davis, president of the Confederacy, though charged after the war with treason, was reprieved and never tried.

During World War I, treason again became an important issue, but there were no civil convictions for treason in the United States. World War II produced several important treason cases. For example, Max Stephan, a Detroit restaurateur, was convicted in 1942 of assisting an escaped German POW and was sentenced to hang, but the sentence was commuted to life imprisonment by President Franklin D. Roosevelt one day before the scheduled execution.

A landmark case is *Cramer v. United States* (1943–1945). Anthony Cramer was convicted of treason for safekeeping the money of the German saboteurs who landed on Long Island from a submarine, but the case was appealed to the Supreme Court, where the original conviction was overturned. It was in this case, J. Woodford Howard, Jr., convincingly argues,
that the Supreme Court for the first time tackled the whole host of the constitutional issues such as meanings of “treason,” “overt act,” and “aiding the enemy” and the requirement that the overt act be proved by testimony of two witnesses.

The government, before the Supreme Court, insisted that the traitorous character is inherently embodied in “an overt act of aid and comfort,” and thus need not be specifically proven (“any overt act must be an act of treason”). The defense, on the other hand, argued that a traitorous intent must independently be proven for such an overt act. The Supreme Court upheld the defense contention and established a significant precedent. In the opinion for the Court, Justice Robert Jackson stated that the framers of the Constitution were “aware of the misuse that a partisan executive might make of treason and imposed ‘every limitation’ possible.” “Overt acts,” Jackson insisted, taking language directly out of Marshall’s earlier opinion, as Hoffer points out, “must be so visible that two witnesses to each act could clearly testify to the nature of the act as well as the participants in it.” Jackson further declared that if “there is no adherence to the enemy,” even in “the actions which do aid and comfort the enemy,” and if “there is no intent to betray, there is no treason”—lines, as Hoffer noted, “Marshall would have been proud to have written himself.” The action requires proof by two witnesses not only of the overt act but all elements of the crime. “No one should be branded a traitor and perhaps executed,” Richard T. Davis, a member of the defense team headed by Harold R. Medina emphatically asserted later, “on the testimony of two witnesses for acts lacking ‘essential traitorous purpose or effect.’”

The Cramer case, Howard insists, is a milestone in American Constitutional law because the Supreme Court defended civil liberties against claimed war power by “stiffening the Constitution,” sticking to what the Constitution meant when it said: acts of adherence that aided the enemy on the oaths of two witnesses. The ruling, however, did not stop further prosecutions, although the frequency of treason charges was reduced. After the war, many were indicted for treason, some of whom were involved in broadcasting enemy propaganda. Nine convictions for aiding the enemy during World War II were upheld on appeal.

The Tokyo Rose case, known officially as United States vs. Iva Ikuko Toguri d’Aquino (1949), is one of the earliest treason cases in the postwar era. To what extent did Iva’s case follow the precedent established by the

{ Guilty! }
Cramer case? Announcing from the enemy radio to American soldiers might certainly have been unethical or even illegal, but, as will be elaborated later, not necessarily treasonous, unless the content was detrimental and was broadcast with the specific intention to betray the country.

This is the first book-length legal history of the Tokyo Rose case, treating all aspects of Iva Toguri d’Aquino’s activities fully from the legal point of view. The chapters that follow will recount the life story of the defendant of the Tokyo Rose case, closely scrutinizing her wartime broadcasts in Japan and analyzing her trial in San Francisco. The main objective of the book is to ascertain, through the court’s findings, whether Iva did indeed broadcast to the American servicemen with clear traitorous intent (a required element in the establishment of her guilt) and to assess the significance of this landmark case in the context of American law and legal history.