XVIII

NAZIS IN THE SUPREME COURT

KNAUER v. UNITED STATES sustained the denaturalization of Paul Knauer, "a thoroughgoing Nazi and a faithful follower of Adolph Hitler," according to Justice Douglas's condemnation. Knauer procured his American citizenship by fraud. When he foreswore allegiance to the German Reich, he swore falsely. Fraud on the naturalization court is a proper ground for cancellation of the naturalization.

Frederick Bernays Wiener argued the cause for the United States.

MR. JUSTICE DOUGLAS, the Court's chief libertarian, delivered the opinion of the Court *affirming* denaturalization of Knauer, a signal victory for Colonel Wiener that contributed to his growing reputation, *Knauer v. United States* 328 U.S. 654 (1946).

Fritz's pursuit of Nazis in the Supreme Court is a bright chapter in his memoirs. A patriotic soldier who risked his life in W.W. II, a retired Army Colonel who opposed Paul Knauer and fellow followers of Herr Hitler in the Supreme Court, Frederick Bernays Wiener did very well as the United States Government's lawyer in the Supreme Court.

In his book *Effective Appellate Advocacy*, Colonel Wiener describes his strategy in opening his argument as Government counsel in the *Knauer* case: "I felt I needed an opening that would rock the Court on its heels and make them sit up and take notice. This opening did just that, and the *Knauer* denaturalization was sustained."

What was Fritz's opening?

"The question in this case is whether a good Nazi can be a good American."

After Colonel Wiener's opening Paul Knauer's case is closed.

Fritz Wiener practiced what he preached. He followed his own advice, *Effective Appellate Advocacy* (**Section 89. An effective opening**), before his treatise appeared in print (1950). But that's the book's magic. It is Colonel Wiener personified in black ink.

† † †

There is a second Nazi whom Fritz Wiener unveiled in the Supreme Court. This is Hans Max Haupt, convicted of treason, sentenced to life imprisonment and a fine of $10,000. *Haupt v. United States*, 330 U. S. 631 (1947). Here is how Justice Robert Jackson begins his opinion of the Court:

> Petitioner is the father of Herbert Haupt, one of the eight saboteurs convicted by military tribunal. See *Ex parte Quirin*, 317 U. S. 1. Sheltering his son, assisting him in getting a job, and in acquiring an automobile, all alleged to be with the knowledge of his son's mission, involved the defendant in the treason charge.

The Constitution provides:

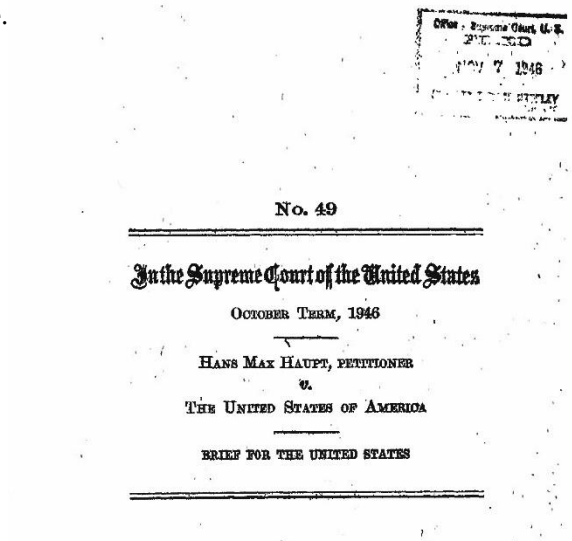
> "Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court." Article III, §3.

Justice Jackson recites the evidence against Hans Max Haupt and is satisfied that the overt acts charged are proved by the testimony of two witness to the same overt act. To the argument that Haupt had the misfortune to sire a traitor and that all that Haupt did was to act as an indulgent father toward a disloyal son, Justice Jackson replies::

> In view however of the evidence of defendant's own statements that after the war he intended to return to Germany, that the United States was going to be defeated, that he would never permit his boy to join the American Army, that he would kill his son before he would send him to fight Germany, and others to the same effect, the jury apparently concluded that the son had the misfortune of being a chip off the old block—a tree inclined as the twig had been bent—metaphors which express the common sense observation that parents are as likely to influence the character of their children as are children to shape that of their parents. Such arguments are for the jury to decide.

The Government's brief in the Haupt case is a whopping 166 pages long, filed November 1946. It is signed, inter alia, by FREDERICK BERNAYS WIENER, *Special Assistant to the Attorney General.*

Undoubtedly, Colonel Wiener was the principal draftsman. It bears the meticulous research, the admirable advocacy, the marching prose style of F.B.W.— all neatly packaged in a fighting brief that wins the case.



No. 49

In the Supreme Court of the United States

OCTOBER TERM, 1946

HANS MAX HAUPT, PETITIONER
v.
THE UNITED STATES OF AMERICA

BRIEF FOR THE UNITED STATES

Consider the following excerpt of the Brief for the United States, No. 49, October Term 1946, HANS MAX HAUPT, PETITIONER *v.* THE UNITED STATES OF AMERICA, pp. 164-165:

> D. *The jury's plea for clemency shows that its verdict did not rest on war-time passion.*—Petitioner's contention (Pet. 54-55) that the verdict of the jury was the result of passion, prejudice, and war hysteria is answered by the record. After the verdict was reached, the jury indulged in the unusual practice of writing a letter to the trial judge, signed by all the jurors (R. 45, 847), which reflects their mental attitude toward petitioner. This letter says:
>
> > Realizing fully that our function terminates with the rendering of our verdict, we, the jury, are moved humbly to beseech your Honor's consideration in dealing mercifully with this defendant.

In conformity with your Honor's instructions, neither pity nor sympathy has entered into our deliberations. In this plea, we express only what is in our hearts.

The trial judge was so impressed with this letter that, although his own considered view was that petitioner should be sentenced to death (see R. 53-55), "In deference to the request of those men and women, whose judgment may be better than mine, the sentence will be life imprisonment and, because the statute requires it, a fine of $10,000" (R. 55).

Apart from the circumstance that, as the trial judge noted (R. 54), the verdict "was fully justified by the evidence", and "No other verdict than that rendered was reasonably possible" (R.54), it certainly cannot reasonably be said that a jury which voluntarily pleaded for mercy for petitioner based its verdict on such extraneous matters as war hysteria, passion, or prejudice.

None of this shows up in the Court's opinion, but it gives the Court confidence in Colonel Wiener' appellate advocacy. The Government's *Haupt* brief concludes with three carefully crafted, Fritz-like, forcible, sentences:

CONCLUSION

Petitioner was convicted of treason after a sober, careful, and eminently fair trial, on the basis of evidence clearly establishing by the required two witnesses a number of legally sufficient overt acts of aid and comfort to the enemy, and clearly showing intent to betray. Reversal of the judgment below can be supported only by artificial refinements and technicalities which find no support in the treason clause of the Constitution. We therefore respectfully submit that the judgment below should be affirmed.

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NOVEMBER 1946.

So much for Nazis in the Supreme Court.

U. S. GOVERNMENT PRINTING OFFICE: 1946