

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Criminal Justice/Infamous Crimes

Haupt v. United States, 330 U.S. 631 (1947)

Hans Max Haupt was a naturalized American citizen of German birth who lived near Chicago. His son, Herbert, was also a naturalized American citizen of German birth. In 1941, Herbert traveled to Mexico and from there to Germany, where he trained as a saboteur. In 1942, a German submarine delivered him to the east coast of the United States with instructions to make his way back to Chicago and engage in espionage and sabotage of American munitions manufacturing. Shortly after his return to Chicago, he was arrested along with other German saboteurs from the same mission and quickly tried by military commission and executed.

Hans Haupt was arrested not long after his son and generally cooperated with the Federal Bureau of Investigation. Nonetheless, the father was also tried for treason for aiding and abetting his son in acquiring a car and employment at a bomb manufacturing facility. He was convicted and sentenced to death. That conviction was overturned on appeal; he was tried again, and again he found guilty but this time sentenced to life in prison. His conviction was affirmed by a divided circuit court. In an 8–1 decision, the U.S. Supreme Court likewise affirmed the conviction, concluding that acts that were otherwise innocent could be rendered treasonable by their motive and effect and that the Constitution’s requirement of the testimony of two witnesses to convict for treason only required testimony as to the same treasonable action but not necessarily to the same aspects of that action. Hans was released and deported to Germany in 1957. His wife, Erna, who had also been convicted of treason, was released and deported in 1946.

JUSTICE JACKSON delivered the opinion of the Court.

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The most difficult issue in this case is whether the overt acts have been proved as the Constitution requires, and several grounds of attack on the conviction disappear if there has been compliance with the constitutional standard of proof. The Constitution requires that “No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act. . . .” Art. III, § 3. . . .

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It is sufficiently proved by direct testimony of two witnesses that the saboteur stayed in the house where the father lived and with the latter’s knowledge. But it is said that this is not enough, that it fails because the two witnesses did not see him enter his parents’ apartment therein. But the hospitality and harboring did not begin only at the apartment door. It began when he entered the building itself where he would have no business except as a guest or member of the family of one of the tenants. . . .

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The Constitution requires testimony to the alleged overt act and is not satisfied by testimony to some separate act from which it can be inferred that the charged act took place. And while two witnesses must testify to the same act, it is not required that their testimony be identical. Most overt acts are not single, separable acts, but are combinations of acts or courses of conduct made up of several elements. It is not easy to set by metes and bounds the permissible latitude between the testimony of the two required

witnesses. It is perhaps easier to say on which side of the line a given case belongs than to draw a line that will separate all permissible disparities from forbidden ones. Concrete even if hypothetical cases may illustrate this.

One witness might hear a report, see a smoking gun in the hand of defendant and see the victim fall. Another might be deaf, but see the defendant raise and point the gun, and see a puff of smoke from it. The testimony of both would certainly be "to the same overt act," although to different aspects. And each would be to the overt act of shooting, although neither saw the movement of a bullet from the gun to the victim. It would still be a remote possibility that the gun contained only a blank cartridge and the victim fell of heart failure. But it is not required that testimony be so minute as to exclude every fantastic hypothesis that can be suggested.

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It is urged that the conviction cannot be sustained because there is no sufficient proof of adherence to the enemy, the acts of aid and comfort being natural acts of aid for defendant's own son. Certainly that relationship is a fact for the jury to weigh along with others, and they were correctly instructed that if they found that defendant's intention was not to injure the United States but merely to aid his son "as an individual, as distinguished from assisting him in his purposes, if such existed, of aiding the German Reich, or of injuring the United States, the defendant must be found not guilty." The defendant can complain of no error in such a submission. It was for the jury to weigh the evidence that the acts proceeded from parental solicitude against the evidence of adherence to the German cause. . . . 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.

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Affirmed.

JUSTICE DOUGLAS, concurring.

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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. . . .

JUSTICE MURPHY, dissenting.

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It does not follow, however, that every act that gives aid and comfort to an enemy agent constitutes an overt act of treason, even though the agent's status is known. The touch of one who aids is not Midas-like, giving a treasonable hue to every move. An act of assistance may be of the type which springs from the well of human kindness, from the natural devotion to family and friends, or from a practical application of religious tenets. Such acts are not treasonous, however else they may be described. They are not treasonous even though, in a sense, they help in the effectuation of the unlawful purpose. To rise to the status of an overt act of treason, an act of assistance must be utterly incompatible with any of the foregoing sources of action. It must be an act which is consistent only with a treasonable intention and with the accomplishment of the treasonable plan, giving due consideration to all the relevant surrounding circumstances. Thus an act of supplying a military map to a saboteur for use in the execution of his nefarious plot is an overt act of treason since it excludes all possibility of having been motivated by non-treasonable considerations. But an act of providing a meal to an enemy agent who is

also one's son retains the possibility of having a non-treasonable basis even when performed in a treasonable setting; accordingly, it cannot qualify as an overt act of treason.

It is true that reasonable doubts may be raised as to whether or not the prime motive for an act was treasonous. Yet the nature of some acts is such that a non-treasonous motive cannot be completely dismissed as a possibility. An overt act of treason, however, should rest upon something more substantial than a reasonable doubt. Treason is different from ordinary crimes, possessing unique and difficult standards of proof which confine it within narrow spheres. It has such serious connotations that its substance cannot be left to conjecture. Only when the alleged overt act manifests treason beyond all reasonable doubt can we be certain that the traitor's stigma will be limited to those whose actions constitute a real threat to the safety of the nation.

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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.