Mr. Justice Clark
from
Reed, J.
1/7/57

SUPREME COURT OF THE UNITED STATES

No. 15.—October Term, 1956.

Oleta O'Connor Yates, Petitioner, v. United States of America. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1957.]

Mr. Justice Reed delivered the opinion of the Court.

This case concerns sentences of contempt imposed upon petitioner for refusal to answer questions at her trial about the connections of various individuals with the Communist Party.

Petitioner has been sentenced to concurrent 1-year prison terms on each of 11 specifications of criminal contempt of court. The circumstances under which her conviction took place are these. Petitioner, who was admittedly a high executive officer of the Communist Party of California, was indicted with 13 others for conspiracy to violate the Smith Act. After the Government had presented its case in chief, all but four of the defendants—petitioner and three others—rested their cases. Petitioner took the stand and testified in her own defense. On cross-examination, she testified on June 26, 1952, that two of the three defendants who had not rested were leaders of the Communist Party. She refused, however, to disclose whether any of the defendants who had rested had been involved in Communist Party activities, on the ground that if she made such a disclosure, "I would only be contributing . . . to the prosecution case against them, and I think that that would be becoming a government informer and I cannot do that."

In the afternoon of the same day, petitioner refused to say whether she had known one Glickson, who was not

a defendant, to be a Party member, on the ground that ". . . that is a question which, if I were to answer, could only lead to a situation in which a person could be caused to suffer the loss of his job, . . . and perhaps be subjected to further harassment, and . . . I cannot bring myself to contribute to that." She stated that "However many times I am asked and in however many forms, to identify a person as a communist, I can't bring myself to do it . . . ." She also refused to say whether a co-defendant who had rested his case had been elected a delegate to the National Convention of the Communist Party in 1950, although she answered similar questions about defendants who had not rested their cases. She was then adjudged guilty of civil contempt for her refusal to answer these questions, and committed to jail until she should purge herself by answering the questions or until further order of the court. She remained in jail until the conclusion of the trial.[1] This judgment for civil contempt committed on June 26 is not here for decision.[2]

Four days later, on June 30, petitioner refused to answer 11 questions put to her on cross-examination, despite instructions to do so from the court. In each of

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[1] The trial ended on Aug. 5, 1952. Petitioner was confined under the judgment of conviction in the principal case until Aug. 30, 1952, when she was released on bail pending appeal in that case. She was again confined on Sept. 3, 1952, under the civil contempt order of June 26. She was released on bail on Sept. 6, 1952, pending appeal from the order directing her reconfinement. That order was reversed on appeal. *Yates* v. *United States*, 227 F. 2d 844. Petitioner was once more confined on Sept. 8, 1952, pursuant to a criminal contempt judgment based on her refusals to answer questions on June 26. She was released on bail on Sept. 11, 1952, pending appeal from that judgment, which was later reversed on appeal. *Yates* v. *United States*, 227 F. 2d 848. Neither that contempt nor its reversal is under review in the present case.

[2] The judgment was affirmed on appeal. *Yates* v. *United States*, 227 F. 2d 844.

these questions she was asked to identify as a member of the Communist Party either a co-defendant who had rested his case or someone not a defendant. She refused to identify as Communists people who could "be hurt by" such testimony or members of whose families could so be hurt. She was willing, however, to identify people "whom I know I cannot hurt" and whose families could not be hurt, and in fact she did identify, in response to a prosecution question, at least one deceased person. The court at that time stated that he expected to treat this contempt as criminal contempt under Rule 42 (a) of the Federal Rules of Criminal Procedure.[3] This eliminates a problem of notice treated in another appeal of Mrs. Yates.[4] The action was pursuant to 18 U. S. C. § 401.[5] At the request of counsel, adjudication was deferred.

After the jury had returned a verdict of guilty in the conspiracy case against all defendants, and after sentence had been imposed, the court adjudged petitioner guilty of criminal contempt for each of her 11 refusals to answer questions on June 30. No question is raised as to the form or content of the specifications.

Before imposing sentence, the court stated that if petitioner should answer the 11 questions then or within

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[3] "A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record." Compare *Yates* v. *United States*, 227 F. 2d 848, 850.

[5] "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

"(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;

"(2) Misbehavior of any of its officers in their official transactions;

"(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command."

60 days, while he had authority to modify the sentence under Fed. Rules Crim. Proc., 35, he would be inclined to accept her submission to the authority of the court. The petitioner persisted in her refusal to answer the questions. The court thereupon sentenced petitioner to imprisonment for one year on each of the 11 separate specifications of criminal contempt. The sentences were to run concurrently and were to commence upon her release from custody following execution of the five-year sentence imposed on the conspiracy charge. The judgment was affirmed by the Court of Appeals for the Ninth Circuit. 227 F. 2d 851. Because of the importance of the questions raised, we granted certiorari. 350 U. S. 947.

The Judiciary Act of 1789 contained a section making it explicit that federal courts could "punish by fine or imprisonment, at the discretion of said courts, all contempts of authority in any cause or hearing before the same . . . ." 1 Stat. 73, 83. After United States District Judge Peck's acquittal in 1831 [5] on charges of high misdemeanors for summarily punishing a member of his bar for contempt in publishing a critical comment on one of his judgments, Congress modified the statute. It restricted the summary power to misbehavior in specific situations that obstructed the administration of justice, such as disobedience to lawful orders. 4 Stat. 487; see Power to Regulate Contempts, Frankfurter and Landis, 37 Harv. L. Rev. 1010, 1023–1038. The present code provision is substantially similar.[6] This power of summary punishment for the obstructive contumacy of a witness is not questioned.[7] It is necessary to protect the orderly processes of reason in trials.

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[5] Stansbury, Report of the Trial of James H. Peck (1833).

[6] See n. 4, *supra*.

[7] *In re Michael*, 326 U. S. 224, 228; *Ex parte Hudgins*, 249 U. S. 378, 383.

Petitioner suggests that the generally shared disdain for talebearers and informers should have led the trial judge, after her coercive imprisonment during the trial, to discharge the specifications of criminal contempt without further penalty although refusal to reply to questions disrupts a trial. The use of an informer is not illegal.[8] He "is often a necessary if distasteful adjunct of law-enforcement agencies, and his use is well recognized in normal police activity. But in the semi-political area, where the informer has been increasingly used in recent years, special caution is required." [9]

Petitioner was subject to the obligation of every witness to answer fully questions material to the inquiry unless excused by the plea of self-incrimination or other recognized privileges, none of which exists here. Such an answer is the duty of citizenship—an essential aid to the attainment of a fair trial result. She is not free, without claim of privilege, to keep secret possible subversive conspiracies or to keep private her associates and acquaintances. Granting that Communist associations would subject others to criticism and suspicion, such result does not relieve the witness of the duty of answering material questions at trials.[10]

Factual testimony is the means by which truth is discovered. Silence brings a trial to a "dead end." It cannot be that speech or silence is permissible to a witness as he chooses. Without power to punish disobedience to lawful judicial orders, criminal trials would be a mockery.

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[8] Cf. *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 541–544.

[9] New York Times, editorial, February 5, 1955.

[10] *Rogers* v. *United States*, 340 U. S. 367, 371:

"Petitioner expressly placed her original declination to answer on an untenable ground, since a refusal to answer cannot be justified by a desire to protect others from punishment . . . ." Cf. *Ullman* v. *United States*, 350 U. S. 422.

Truth would be hidden and conspiracies flourish. Punishment may not be able to extract truth from stubborn witnesses, but our theory of criminal law rests on a generally accepted premise that it at least tends to deter others from evading their duty to answer inquiry.

Petitioner raises three issues. She claims first that her refusals to answer constituted a single contempt of court, and that commitment for criminal contempt in addition to commitment for civil contempt for this single action is contrary to 18 U. S. C. § 401 and violates the Double Jeopardy and Due Process provisions of the Fifth Amendment. Second, she argues that her sentence to a year in prison is so severe that it constitutes an abuse of the trial court's discretion and violates the Due Process Clause of the Fifth Amendment and the Cruel and Unusual Punishments Clause of the Eighth Amendment. Her final contention is that the sentence was imposed to coerce her into answering the questions instead of to punish her, and that it was consequently error and a violation of due process for the trial court to commit her for a definite term.

I. Petitioner argues that her refusals to answer questions on June 26 and June 30 constituted only one contempt of court, and that she could not lawfully be punished more than once for this single contempt. The trial court convicted petitioner of "eleven separate criminal contempts." All were refusals to testify as to the Communist connections of various persons. Each question sought somewhat different information. Nine different individuals were involved. The petitioner had been queried about one of these four days before. At that earlier hearing, as explained above, petitioner had told the court she would not identify as a Communist any person who could be "hurt." She did identify some persons as Communists when she considered such evidence harmless. The prosecutor's further queries may have been justified

to test petitioner's position as to the meaning of "hurt." We shall assume, however, that on the former day she had given the court and the prosecution notice that her purpose was to refuse to identify those named in the specifications as Communists so as to protect them from what she characterized as "harassment in a period of this character, where there is so much witch-hunting, so much hysteria, so much anti-communism."

The prosecution, we think, cannot successfully multiply contempts by asking a recalcitrant witness variations of a question to which an answer was once refused. See *United States* v. *Orman,* 207 F. 2d 148, 160. We assume that these questions were of that kind although it rather appears they were pertinent and useful to show petitioner's contacts and associations with various Communists to support the charge, then under trial in this very proceeding, of conspiracy to overthrow the Government.[11]

Petitioner's argument of fatal error fails, however, because to support this conviction it is only necessary to have one valid concurrent sentence. *Sinclair* v. *United States,* 279 U. S. 263, 269; *Pinkerton* v. *United States,* 328 U. S. 640. Each sentence was for a year. Each contempt was treated separately. Petitioner has not been punished for criminal contempt for any refusal to answer on the earlier day, June 26. One sentence, at any rate, of the 11 is not a multiple contempt. Petitioner makes no claim that the trial court's judgment as to the proper penalty to be imposed was affected by his view that she had committed 11 separate contempts on that day, nor can we assume that such was the case in light of his imposition of a one-year sentence on each of the 11 specifications of contempt. Neither the record nor the conten-

[11] In this aspect of the questions, this case differs from *United States* v. *Costello,* 198 F. 2d 200, 204, relied upon by petitioner. In that case the alleged contempt arose from a stated refusal to answer any question on the ground of illness.

tions here as to these specifications ~~depend upon~~ indicate any irascibility on the part of the judge or provocation by continued refusal of petitioner or her counsel. Cf. *Offutt* v. *United States*, 348 U. S. 11. This case follows the general pattern of *Costello, supra*, at pp. 203, 204, where the multiple contempts were reversed but a contemporaneous contempt conviction for refusal to testify at all on the same day was sustained. In the circumstances of this case it is not material to the validity of the sentence for one year whether there was a single contempt in the whole testimony of petitioner or multiple contempts. The contempts and the sentences were individual.

We find no merit in petitioner's contention that her sentence is contrary to 18 U. S. C. § 401. The argument is that since she had undergone imprisonment during the trial to coerce her to answer the questions, she was punished by that imprisonment so that another imprisonment violates the Double Jeopardy Clause of the Fifth Amendment.

Her imprisonment on June 26, 1952, for refusal to answer the questions of that date should have terminated at the conclusion of the conspiracy trial. *Yates* v. *United States*, 227 F. 2d 844, 846–848. The language of the committing order imprisoned her until she purged herself or "until further order of the Court." This did not impose punishment for past disobedience.[12] Her imprisonment was civil in character, coercive.[13] After civil coercion, a criminal punishment does not violate the Double Jeopardy Clause.[14] And to require the simultaneous application of these two sanctions would, in a situation such as this,

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[12] *Maggio* v. *Zeitz*, 333 U. S. 56, 68.

[13] *Penfield Co.* v. *S. E. C.*, 330 U. S. 585; *United States* v. *United Mine Workers*, 330 U. S. 258, 298; *McComb* v. *Jacksonville Paper Co.*, 336 U. S. 187.

[14] *Helvering* v. *Mitchell*, 303 U. S. 391, 397; *Rex Trailer Co.* v. *United States*, 350 U. S. 148, 150.

deprive the trial court of a useful flexibility in dealing with contempt of court.

II. Petitioner's second contention is that the one-year prison term to which she has been sentenced is so disproportionate in its severity to the seriousness of her offense that its imposition constituted an abuse of the trial court's discretion and violated the constitutional prohibitions against the infliction of cruel and unusual punishments and the deprivation of liberty without due process of law. U. S. Const., Amends. VIII and V. Whatever the extent of our power to correct the sentence imposed by a federal judge,[15] we are not convinced that the trial court here abused its discretion. Petitioner was on trial for conspiracy to commit a serious crime, for which she could be and was sentenced to five years in prison.[16] She refused to answer material questions put to her on cross-examination in the face of directions from the court to answer the questions. Her course of conduct was one of deliberate defiance of the authority of the court, showing plainly the characteristic that calls for the exercise of a court's contempt power—obstruction of the effectiveness of a trial in discovering truth. *Ex parte Hudgins*, 249 U. S. 378, 383. The record thus shows adequately the reason for a year's sentence rather than a shorter period. Compare *Stack* v. *Boyle*, 342 U. S. 1, 6. Her offense cannot be characterized as trivial. While the sentence is

[15] Cf. *Sacher* v. *Association of the Bar*, 347 U. S. 388; *United States* v. *United Mine Workers of America*, 330 U. S. 258.

[16] Fourteen defendants, consisting largely of important members and officials of the California Communist Party, were on trial, alleged to have conspired with 12 other named but unindicted co-conspirators and "other persons to the grand jury unknown." The trial consumed 6 months and produced a record totaling 26 volumes and nearly 15,000 pages. The principal case is one of significance in the administration of the Smith Act, 18 U. S. C. § 2385, and of consequence to the success of that Act's purpose to combat Communism.

heavier than that usually imposed for the contemptuous conduct of a witness in refusing to answer, it is by no means unprecedented.[17]

Petitioner places some reliance on the fact that Congress has set a statutory maximum of six months on imprisonment for contempts so far away from the presence of the court so as not to obstruct the administration of justice. 18 U. S. C. § 402. But Congress has placed no limit on punishment for contempts committed, like petitioner's, in the presence of the court, 18 U. S. C. § 401, and it has specifically exempted such contempts from the operation of § 402. And Congress has authorized imprisonment for one year for a witness's refusal to answer a question before a congressional committee. 2 U. S. C. § 192. While petitioner's sentence is severe, we cannot say that the trial court abused its discretion in imposing it. And the sentence is plainly not so unrelated to the seriousness of petitioner's crime as to contravene the prohibitions of the Fifth and Eighth Amendments.[18]

III. Finally, petitioner argues that the challenged sentences were imposed not to punish her but instead to coerce her into answering the 11 questions. From this premise she draws the conclusion that the criminal sentence is invalid because imprisonment cannot be used to coerce evidence after the end of the conspiracy trial.

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[17] See *Lopiparo* v. *United States*, 216 F. 2d 87 (18 months or until discharge of grand jury for refusal to produce records before grand jury); *Carlson* v. *United States*, 209 F. 2d 209 (reversing on another point a sentence of 18 months for evasion of questions before a grand jury), and connected cases; *Healey* v. *United States*, 186 F. 2d 164 (reversing on another point a sentence of one year for refusal to answer questions before grand jury).

[18] See *Baddus* v. *United States*, 240 U. S. 391; *Collins* v. *Johnston*, 237 U. S. 502, 510; *Weems* v. *United States*, 217 U. S. 349; cf. *Palko* v. *Connecticut*, 302 U. S. 319, 325.

Gompers v. *Bucks Stove & Range Co.*, 221 U. S. 418, 443, 449. The record is clear to us that Mrs. Yates was imprisoned to punish her for her interference with the progress of the trial and her defiance of the authority of the court by refusing to answer pertinent questions as to the conspiracy and her connection with it, after taking the stand as a witness. In the statement of facts, p. —, *supra,* we have spoken of the effort of the court to encourage Mrs. Yates to submit to the authority of the court to require obedience to its lawful orders. Such humane efforts to spare the petitioner from the effects of her wrongful refusals to identify her associates and still maintain the authority of the court were commendable. The judgment is

Affirmed.

not an effort to coerce testimony.