

Opposed to B.C.C. of
3/19/57

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In view of the clear position taken by petitioners on June 26th and reiterated on June 30th as well as the nature and similarity of the questions propounded to her on each of these days and which she declined to answer, we are inclined to agree. However, her refusal of the thirtieth was but a continuation of her contumacious conduct of the twenty sixth for which she was then in custody under a civil contempt order. She was clearly subject to sentence for criminal contempt in addition. United States v. United Mine Workers of America, 330 U.S. 228 (1947). As was stated there each ^{of these proceedings} sentence has a specific purpose, civil contempt being used here to compel obedience to the lawful orders of the court while criminal contempt is to vindicate the public interest. Supra at 303-4. Also see

Nor is criminal punishment, after civil coercion, violation of the double jeopardy clause of the Fifth Amendment. Holloway v. Mitchell, 303 U.S. 391, 397; Lex Trunk Co. v. United States 350 U.S. 148, 153.

Penfield Co. v. SEC 330 U.S. 585.) In fact the trial judge was careful to so warn the petitioners ~~of their fact~~ at the time of her continued contumacy on June 30th [and, further, when she persisted in her refusal, ~~that she was subjecting herself to criminal contempt~~ that he would thereafter treat her action as criminal contempt, ~~the question~~ ~~is~~ ~~whether~~ is this he did after the trial was concluded, which was before ~~he~~ was proper. Sacher v. United States 343 U.S.]

¶ Nor do we believe that the sentences imposed were for the purpose of coercing ^{petitioner} ~~her~~ into answering the questions. While it is true that imprisonment cannot be used to coerce evidence after a trial has terminated, Gompers v. Buck's Store + Range Company, 221 U.S. 418, 443, 449, it is unquestioned that imprisonment ^{for a definite term may be imposed} ~~can be imposed~~ for her refusal to obey the lawful orders of the court. Here her continued contumacy interfered with the progress of the trial and was in ~~other respects~~ ~~the court's orders~~ for the purpose of the punishment of the condemned in vindication of the authority of the court. The record clearly shows that the order was made to "vindicate" the "authority of the court" and in punishment of petitioner's "defiance" thereto. Although the sentencing judges expressed the hope that petitioner would "purge himself to the extent that she bows to the

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authority of the court" by answering the questions he was merely indicating ~~that she was~~ ~~she was~~ merely ~~intended~~ to petitioner that the court might "accept [such] submission to the authority of the court" ~~to~~ as evidence of her repentence. He stated that she should answer the questions "It could have no effect upon this proceeding and need not be accepted as a purge, because of the fact that the time has passed, as you point out, Mr. Margolis [petitioner's counsel] for the administration of justice in this case to be effected by it." The case had been concluded. The sentencing judge was merely offering what he thought, ~~under the circumstances~~, was "a humane, merciful thing to do under the circumstances".

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III Petitioner's conviction of "eleven separate criminal contempt" has more substance. Especially in view of her clear position taken on June 26th and thereafter on June 30th and in light of the nature and similarity of the questions ^{upon which the specifications are based} we are inclined to view her continuous conduct in this regard as but one contempt. Her refusals to testify were as to the communist connections of various persons, while nine different individuals were involved ~~the~~ questions sought the same information as to each. One of those included had been involved in the June 26th questions on which the civil contempt order of ~~June 30th~~ ^{that date} was based. At that earlier hearing petitioner had ~~testified~~ stated that "However many times I am asked and in however ~~from~~ many forms, to identify a person as a communist, I can't bring myself to do it." On the hearing involved here she had said she would not identify as a communist any person who could be "hurt." In fact she did identify some persons as communists when she considered such evidence harmless. However her general position was that she would refuse to identify those named in the specifications as communists because she wished to protect them from "harassment".

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in a period of this character, where there is so much witch-hunting, so much hysteria, so much anti-communism." A witness, of course, cannot "pick and choose" the questions to which an answer will be made. It is the function of the court to determine what questions must be answered and a witness and ~~the~~ ^{the} management of the trial rests with the judge and no party can be permitted to usurp that function. In *United States v Gates*, 176 F.2d 78, 80. However, neither can the prosecution multiply contempts by asking a recalcitrant witness variations of a question to which an answer was once refused. *United States v Orman* 207 F.2d 148, 160. A careful analysis of these questions place them in that category. The witness ~~had~~ announced ~~she~~ ^{she had} not ~~wanted~~ ^{wanted} to answer the first of the questions ~~when~~ ^{subsequent} ~~had been~~ proposed on that day that she would not answer questions ~~but~~ ^{going to}.

She took this position at her own peril.

Identifying persons as communists if it might "hurt" such parties. Although each of the questions might ~~be~~ ^{have been} pertinent to her knowledge of communist membership since they were all in the ^{narrow} field that she had ^{so} refused to enter. We believe that she ~~had~~ ^{was} punished for this ~~refusal~~ ^{for} to answer the eleven questions therefore her refusal consisted of only one act of contumacy and is subject to only one punishment as a criminal contempt. Petitioner had not been punished for criminal contempt for any refusal to answer on the earlier contumacy of June 26th. Her action on the 30th was but a continuation of that offense and was subject to a criminal contempt charge. One sentence would not have been a multiple contempt. On a finding of guilty she was subject to sentence in criminal contempt not on each of the specifications but on her general refusal to answer these type of questions covered

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by the specification.⁹ While the sentences imposed were concurrent it may be that ~~the court's~~ ^{the, cōfīt's} sentencing judge ~~the~~ judgment as to the proper penalty, was affected by the view that petitioner had committed eleven separate contempt on that day. In addition, petitioner has now served a total of over seventy days in jail, her conspiracy conviction as well as another criminal contempt order have both been reversed and the sentence imposed here have been termed "severe" by the Court of Appeals. All of this points to the fact that ~~the trial judge~~ ¹⁰ forced ~~to~~ another up the necessity, we think, of the trial judge reconsidering the sentence ~~to be served later~~ in the cool reflection of these subsequent events. The ~~petitioner~~ sentences are therefore vacated and the cause is remanded to the District Court for re-sentence in the light of this opinion.

It is so ordered.

FN 9: In general pattern this case follows United States v Costello, 198 F.2d 200, 203-4, in that multiple contempts were reversed but his refusal to testify to any questions was sustained. Here the witness carried out a class of questions to which refusal was ~~not~~ imposed.

FN 10: In addition the sentences imposed were ordered to be served after completion of the five year sentence in the conspiracy case. That case having been reversed there is no sentence outstanding, which renders uncertain the date at which the sentences here imposed would begin.