

June 6, 1957

MEMORANDUM FOR THE CONFERENCE.

Since the matter of questions in No. 15, Yates v. United States, and No. 570, Brown v. United States, is to be considered tomorrow, for convenience' sake I am circulating the original questions proposed by Mr. Justice Harlan and me and the additional questions suggested by Brother Black.

F.F.

June 6, 1957

MEMORANDUM FOR THE CONFERENCE.

The following is an additional question suggested by Mr. Justice Douglas in No. 15, Yates v. United States, and No. 570, Brown v. United States:

"Can contempt citations be multiplied by asking recalcitrant witnesses variations of questions to which answers were previously refused? If not, did petitioner's refusal to answer questions on June 30, 1952, constitute contempt?"

F. F.

No. 15      Yates v. United States

No. 570      Brown v. United States

1. What is the scope of 18 U.S.C. § 401 (1) and 18 U.S.C. § 401 (3) respectively?
2. Under which provision of 18 U.S.C. § 401 was the power to punish for contempt in these cases exercised?
3. What are the prerequisites for a finding of criminal contempt under the pertinent subsections of 18 U.S.C. § 401, especially in the light of Ex parte Hudgings, 249 U. S. 378, and Clark v. United States, 289 U. S. 1, 10-12?
4. Did the procedure followed in these cases satisfy the relevant provisions of Rule 42 of the Federal Rules of Criminal Procedure?

J.M.H.

F. F.

ADDITIONAL QUESTIONS IN 15 & 570

(5) What provision or provisions of the Constitution empower Congress to define conduct as criminal and subject to imprisonment persons who engage in that conduct through trials not carried on in accordance with the Bill of Rights?

(6) What historical evidence is there that the Framers of the Constitution intended to exempt trials for criminal contempt (other than those necessary to prevent immediate disturbance and disorder in the courtroom) from those provisions prescribed by the Fifth and Sixth Amendments to be followed in criminal prosecutions?

(7) What cases in this country or in England show the exercise of power by courts, either before or after the Constitution was adopted, to impose unlimited punishment for "contempt" without indictment and trial by jury?

(8) What historical evidence is there that a sentence of three years can be imposed for any conduct unless it constitutes a "crime" which must be tried under all Bill of Rights' safeguards?