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SUPREME COURT OF THE UNITED STATES

No. 2.—October Term, 1957.

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.

[November —, 1957.]

Mr. Justice Clark delivered the opinion of the Court.

This case is one of criminal contempt for refusal to answer questions at trial. Petitioner, admittedly a high executive officer of the Communist Party of California, and 13 co-defendants were indicted and convicted of conspiracy to violate the Smith Act.[1] During the trial, petitioner refused to answer 11 questions relating to whether persons other than herself were members of the Communist Party. The District Court held petitioner in contempt of court for each refusal to answer, and imposed 11 concurrent sentences of one year each, which were to commence upon the defendant's release from custody following execution of the five-year sentence imposed in the conspiracy case. 107 F. Supp. 412. This judgment was affirmed by the Court of Appeals. 227 F. 2d 851. We granted certiorari. 350 U. S. 947. The principal question presented is whether the finding of a separate contempt for each refusal constitutes an improper multiplication of contempts. We hold that it does, and find that only one contempt has been committed.

The circumstances of petitioner's conviction are these. After the Government had rested its case in the Smith Act trial, all but four of the defendants—petitioner and three others—rested their cases. Petitioner took the

[1] This Court reversed the convictions in the principal case. *Yates* v. *United States*, 354 U. S. 907 (1957).

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stand and testified in her own defense. During the afternoon of the first day of her cross-examination, June 26, 1952, she refused to answer four questions about the Communist membership of a non-defendant and of a co-defendant who had rested his case.[2] In refusing to answer, she stated, ". . . [T]hat 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 added, "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 . . . ." The District Court adjudged her guilty of civil contempt for refusing to answer these questions, and committed her 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.[3]

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[2] At the morning session petitioner indicated that she would answer questions as to the Party membership of co-defendants who had not rested their cases, and in fact she did so.

[3] 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 reconfined on Sept. 3, 1952, this time 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 on the grounds that petitioner could not purge herself of the civil contempt since the trial was over and the jury disbanded. *Yates* v. *United States*, 227 F. 2d 844. Petitioner was again confined on Sept. 8, 1952, after the District Court, on that same day, adjudged her in criminal contempt of court for her June 26 refusals to answer. She was released on bail on Sept. 11, 1952, pending appeal from that judgment, which was later reversed on appeal because the district judge had given her no notice at the time of the trial that he expected to hold her in criminal contempt for the June 26 refusals. *Yates* v. *United States*, 227 F. 2d 848. Neither the civil nor the criminal contempt sentences for the June 26 refusals, nor their reversals, are under review in the present case.

On the third day of petitioner's cross-examination, June 30, 1952, despite instructions from the court to answer, petitioner refused to answer 11 questions which in one way or another called for her to identify nine other persons as Communists. The stated ground for refusal in these instances was petitioner's belief that either the person named or his family could "be hurt by" such testimony. She expressed a willingness to identify others as Communists, and in one instance did so, if such identification would not hurt them. The judge stated that he expected to treat these 11 refusals as criminal contempt under Rule 42 (a) of the Federal Rules of Criminal Procedure.[4] Adjudication of the contempt was deferred until completion of the principal case.

After conviction and imposition of sentences in the conspiracy case, the court, acting under 18 U. S. C. § 401 (3),[5] found petitioner guilty of "eleven separate criminal contempts" for 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 answered the 11 questions then or within 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

[4] "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."

[5] "SEC. 401. *Power of Court.* 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."

Rule 35 of the Federal Rules of Criminal Procedure,

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persisted in her refusal. Thereupon the court 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 summary contempt power in the federal courts, ". . . although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it, judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them." *Ex parte Terry*, 128 U. S. 289 (1888). 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 [6] on charges of high misdemeanors for summarily punishing a member of the 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 Frankfurter and Landis, Power to Regulate Contempts, 37 Harv. L. Rev. 1010, 1023–1038. The present code provision is substantially similar.[7] We have no doubt that the refusals in question constituted contempt within the meaning of 18 U. S. C. § 401 (3).

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In the Act of 1831, the contempt power was limited to specific situations such as disobedience to lawful orders.

This case presents three issues. Petitioner claims that the sentences were imposed to coerce her into answering the questions instead of to punish her, making the con-

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

[7] See note 5, *supra*.

tempts civil rather than criminal and the sentences to a prison term after the close of the trial a violation of Fifth Amendment due process. Second, petitioner argues that her several refusals to answer on both June 26 and June 30 constituted but a single contempt which was total and complete on June 26, so that imposition of contempt sentences for the June 30 refusals was in violation of due process. Finally, petitioner contends that her one-year prison sentence was so severe as to violate due process and constitute cruel and unusual punishment under the Eighth Amendment.

I.

While imprisonment cannot be used to coerce evidence after a trial has terminated, *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 443, 449 (1911), it is unquestioned that imprisonment for a definite term may be imposed to punish the contemnor in vindication of the authority of the court. We do not believe that the sentences under review in this case were imposed for the purpose of coercing answers to the 11 questions. Rather, the record clearly shows that the order was made to "vindicate the authority of the court" by punishing petitioner's "defiance" thereof. The sentencing judge did express the hope that petitioner would still "purge herself to the extent that she bows to the authority of the court" by answering the questions either at the time of the sentencing or within 60 days thereafter. In doing so, however, he acted pursuant to the power of the court under Rule 35 of the Federal Rules of Criminal Procedure [8] rather than under any theory of civil contempt. Indeed, in express negation of the latter idea, he stated that should she answer the questions, "[i]t could have no effect

[8] "Rule 35. Correction or Reduction of Sentence. . . . The court may reduce a sentence within 60 days after the sentence is imposed . . . ."

Yates v. United States, 227 F. 2d 844; cf. Gompers

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upon this proceeding and need not be accepted as a purge, because of the fact that the time has passed . . . for the administration of justice in this case to be affected by it."

II.

Petitioner contends that the refusals of June 26 and June 30 constitute no more than a single contempt because the questions asked all related to identification of others as Communists, after she made it clear on June 26 that she would not be an informer. She urges that the single contempt was completed on June 26 since the area of refusal was "carved out" on that day. From this, petitioner concludes that no contempt was committed on June 30 and that imposition of criminal contempt sentences for refusals of that day to answer violates due process guaranties.

A witness, of course, cannot "pick and choose" the questions to which an answer will be given. The management of the trial rests with the judge and no party can be permitted to usurp that function. See *United States* v. *Gates*, 176 F. 2d 78, 80. However, it is equally clear that the prosecution cannot multiply contempts by repeated questioning on the same subject of inquiry to which a recalcitrant witness has already refused answers. See *United States* v. *Orman*, 207 F. 2d 148.

Even though we assume the Government correct in its contention that the 11 questions in this case covered more than a single subject of inquiry, it appears that every question fell within the area of refusal established by petitioner on the first day of her cross-examination. The Government admits, pursuant to the holding of *United States* v. *Costello*, 198 F. 2d 200, cert. denied, 344 U. S. 874 (1952), that only one contempt would result if Mrs. Yates had flatly refused on June 26 to answer *any* questions and had maintained such a position. We deem it *a fortiari* true that where a witness draws the lines of

refusal in less sweeping fashion by declining to answer questions within a given area of interrogation, the prosecutor cannot multiply contempts by further questions within that area. The policy of the law must be to encourage testimony; a witness willing to testify freely as to all areas of investigation but one, should not be more heavily penalized than a witness unwilling to give any testimony at all.

Having once carved out an area of refusal, petitioner remained within its boundaries in all her subsequent refusals. The slight modification on June 30 of the area of refusal did not carry beyond the boundaries already established. Whereas on June 26 the witness refused to identify other persons as Communists, on June 30 she refused to do so only if those persons would be hurt by her identification. Although the latter basis is not identical to the former, the area of refusal it set out necessarily fell within the limits drawn on June 26. We agree with petitioner that only one contempt is shown on the facts of this case.[9]

That conclusion, however, does not establish petitioner's contention that no contempt whatsoever was committed by her refusal to answer the 11 questions of June 30. The contempt of this case, although single, was of a continuing nature: each refusal on June 30 continued the witness' defiance of proper authority.

[9] Though there was but one contempt, imposition of the civil sentence for the refusals of June 26 is no barrier to criminal punishment for the June 30 refusals. *Rex Trailer Co.* v. *United States*, 350 U. S. 148, 150 (1956); *United States* v. *United Mine Workers*, 330 U. S. 258 (1947). Nor does the finding of a single contempt mean that the criminal contempt sentence under review in this case violates the Double Jeopardy Clause because the court also imposed a criminal contempt sentence for the June 26 refusals. The latter was reversed on appeal, note 3, *supra*, and in any event was imposed after the criminal contempt sentence for the June 30 refusals.

RIDER 'A'

ertainly a party who persisted in refusing to perform specific acts required by a mandatory injunction would be in continuing contempt of court; we see no meaningful distinction between that situation and petitioner's persistent refusal to answer questions within a defined area.

Though there was but one contempt, imposition of the civil sentence for the refusals of June 26 is no barrier to criminal punishment for the refusals of June 30. The civil and criminal sentences served distinct purposes, the one coercive, the other punitive and deterrent; that the same act may give rise to these distinct sanctions presents no double jeopardy problem. Rex Trailer Co. v. United States, 350 U.S. 148, 150 (1956); United States v. United Mine Workers, 330 U.S. 258, 299 (1947).[9] Clearly, if as the United Mine Workers case holds, the civil and criminal sentences could have been imposed simultaneously by the court on June 26, it scarcely can be argued that the court's failure to invoke the criminal sanction until June 30 was fatal to its criminal contempt powers. Indeed, the more salutary procedure would appear to be that a court should first apply coercive remedies in an effort to persuade a party to obey its orders and only make use of the more drastic criminal sanctions when the disobedience continues. Had the court imposed a civil sentence and found petitioner guilty of criminal contempt on June 26, it could have postponed imposition of a criminal sentence until termination of the principal case. The distinction between that procedure and the one followed here is entirely formal.

III.

Because of the disposition we make of this case, petitioner's third contention need not be considered. While the sentences imposed were concurrent, it may be that the court's judgment as to the proper penalty was affected by the view that petitioner had committed 11 separate contempts. In addition, petitioner has now served a total of over 70 days in jail awaiting final disposition of the several proceedings against her. The conspiracy conviction as well as another criminal contempt conviction have both been reversed, and the sentences imposed here have been termed "severe" by the Court of Appeals. 227 F. 2d 851, 855. All of this points up the necessity, we think, of the trial judge reconsidering the sentence in the cool reflection of subsequent events.[10]

The contempt convictions on specifications II–XI, inclusive, are reversed. The contempt conviction on specification I is affirmed, but the sentence on that conviction is vacated, and the case is remanded to the District Court for resentencing in the light of this opinion.

It is so ordered.

[10] In addition, the sentences imposed were ordered to commence upon completion of the five-year sentence in the conspiracy case. Reversal of the conspiracy conviction has rendered uncertain the date at which the sentences here imposed would begin.

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Moreover, the court should consider " . . . the extent of the willful and deliberate defiance of the court's order and the seriousness of the consequences of the contumacious behaviour . . . ." United States v. United Mine Workers, supra, at 303. In this regard, petitioner's understandable reluctance to be an informer, although legally insufficient to explain her refusals to answer, is a factor, as is her apparently courteous demeanor and the fact that her refusals seem to have had no perceptible affect on the outcome of the trial.

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MR. JUSTICE BURTON agrees with the Court of Appeals and the trial court that petitioner's refusals to answer when ordered to do so by the trial court on June 30 constituted at least nine contempts of court. However, in view of all the circumstances, he now joins in the judgment of ~~XXXX~~ this Court remanding the case for resentencing.