

YATES v. UNITED STATES

Memorandum with summary of cases involving multiple contempts:

Our immediate concern, of course, is with a situation where the witness has carved out an area and stated that she will refuse to answer any questions within that area. The significant thing that distinguishes this from the bulk of cases to consider multiple contempts is that several of the questions which fell within that area sought to elicit information~~x~~ about more than one person or occurrence. We find, unfortunately, only one case that is very close to this situation...Costello.

U.S. v. Costello, 198 F.2d200 (1952), cert. denied: He was convicted of 10 separate contempts because of walking out on a congressional investigation and refusing to answer any questions at all. (This was under the congressional contempt statute, 2 U.S.C. 192.)

The following <sup>contempts</sup> were before the CA (some dropped earlier for various reasons):

- #5. The witness walked out.
  - #6. He refused to answer any questions on grounds that he was too ill to testify, proof being a doctor's certificate that he was suffering from laryngitis and should stay in bed.
  - #7. He refused to answer a question asked after the refusal in #6.
- Then on the next day:
- #8: Again refused to testify because he was too ill to testify. Committee put first doctor on stand who said C. was capable of answering for one hour a day. And another certificate presented by another doctor.
  - #9. Refusal to answer a specific question.
  - #10. Same
  - #11. Same

The court upheld 5, 6, and 8. The court knocked out 7, 9, 10, and 11 as multiplications of contempt.

The court used this language: "Certainly the refusal to testify was an act in contempt of the Committee.... But when the defendant made his position clear, the Committee could not multiply the contempt, and the punishment, by continuing to ask him questions each time eliciting the same answer; his ~~and~~ refusal to give any testimony."

One more thing could be noted about Costello. You will note two things were found contemptuous, apart from ~~thw~~ ~~a~~ walking out, i.e., there was a separate contempt for each day he refused to testify for medical reasons. Why didn't the court find this to be a single contempt, as we are finding for the several days of refusal in our case? We don't know the answer; maybe it wasn't urged in the CA, or maybe the court felt that since he supported his refusal a different way there were two contempts.

The other authorities we have found use very broad language to the effect that so long as the questions concern the same subject of inquiry, there can be but a single contempt. One or two speak of the same subject matter. Unfortunately, however, these sweeping phrases, which appear at first blush to be dead on point in our case, are really only the courts' way of saying that the same question can't be asked ~~in~~ over and over to ~~multiply~~ multiply contempts. The following cases fall in this category. I don't mean to imply that they are against us; they just don't go quite as far. We don't know what they would have done with a broad refusal like in Yates.

U.S. v. Orman, 207 F.2d 148 (1953):

D convicted for contempt--four in number--based on the following before a congressional committee.

July 7: Refused to turn over a book containing his notes as to his 1951 business transactions. Grounds: didn't want it to be public knowledge in the city where he had his business.

July 17: Same refusal.

July 17: Refused to say where he borrowed some money; ground were he thought it was a personal affair.

July 17: Same refusal.

Court gave 12 months on counts 1 & 3; concurrent sentences. Court (trial court, that is) further gave 1 year probation on 2 and 4, to start after release from jail. CA vacated 2 and 4, holding there were only two contempts.

"But where the separate questions seek to establish but a single fact, or relate to but a single subject of inquiry, only one contempt may be imposed."

U.S. v. Emspack, 95 F.Supp. 1012 (Dist. Ct. 1951)  
This was on motion to dismiss the indictment, where numerous contempts were charged. The court did not decide exactly how many contempts were proper, saying such would be premature at this stage. This language--admittedly didta--was used:

"The counts involved...consist of questions which apparently on their face were directed to one single line of inquiry which was the specific phase of inquiry then being considered by the committee.... Since only one contempt is charged...., the rationale of the decisions discussed...would seem to limit the sentence to...one contempt."

A law review note discussing this case indicated that all the questions were for a single fact--whether or not the witness was a communist.

U.S. v. Yukio Abe, 95 F.Supp. 991 (D. Hawaii)  
The facts identical, almost, to the case above. Government was said to have right to put each refusal in a separate count, but court stressed that the counts together chaged but one offense.

U.S. v. Kamin, 135 F.Supp. 382 (D.Mass.1955)  
These questions were asked:

1. Whether individuals known to witness were party members working in defense plants.
2. Know anyone teaching at Harvard who is a communist?
3. Give names of those active in party.
4. Know "Blum"?
5. Know if Blum had contacts with peoppel with classified information?
6. Much like #2.

Ct toised out ~~XXXXX~~ 3 and 4 for being substantially the same question--much like other cases in this summary. Case is almost against us, however, since at least the witness carved a big area of refusal, and still a later question within that area was held to be contempt.

We discovered three state cases, occasionally cited by the federal courts, which stand opposed to multiple contempt when the same general question is presented.



Maxwell v. Rives, 11 Nev. 213 (1876):

This is almost laughingly old, but frequently cited. Several questions were directed to the same point; the court confined them to one contempt. Court used strong language as to why contempt must be confined.

Amarante v. McDonnell, and People v. Amarante, 100 N.Y.S.2d 463 (Sup. Ct. of N.Y.), and 100 N.Y.S.2d 677 (same): "Same subject matter" language used, apparently referring to substantially the same questions. Ct analyzed assault and battery, where each blow is not an offense.

One state case involved not really the same questions, but instead a situation where the second question was merely a "sub-head" of the first.

Fawick Co. v. C.I.O. Local, 92 N.E.2d 431 (Ohio Ct. of Appeals 1950):

Question 1: Are you a c. party member?

Question 2: Were you a delegate to a party member?

Question 3: Did you attend a certain state convention?

Ct said this was inquiry into a single subject.

Though I haven't taken the time to note them here, we have a couple of state cases where misconduct of an attorney was held to be an entire--representative of a single attitude and course of conduct (all of which happened, of course, in a few minutes). In these cases the courts found a single contempt.

I would urge you to glance over the Penn. L. Rev. I have sent in with this memo. They state that Costello is a rather new approach, since more than a single subject of inquiry is involved. In short, Costello and the forthcoming Yates decision are the only cases to set out the so-called carving theory, although as this memo indicates, no ~~cases~~ that we can find have rejected the theory.

bp

People ex rel. Aronante v. McDonnell, 100 N.Y.S. 2d 463 (Supreme Ct. 1950). Criminal contempt for refusing to answer questions before a grand jury. Seven questions, all relating to swearing by D of a store, a county judge found seven contempts. ~~Found each~~ HELD - only one contempt, since all the questions related to the same subject matter. Knocked out 6 of the 7 consecutive sentences. Relied heavily on Maxwell v. Press.

People v. Aronante, 100 N.Y.S. 2d 677 (Supreme Ct 1950). Further proceedings, with reference to the matter of contempts. Direct analogy to assault + battery - don't count every blow as one assault separate from all the other blows!

Mayhew v. Rives, 11 Nev. 213 (1876) -

~~Defendant in contempt case~~ Civil defendant refused to answer 10 questions put to him on deposition before the Ct. The questions were "all addressed to the same point, and amounted in effect to this: 'How did you become possessed of that bullion?'" Found guilty of 10 contempts and given 10 fines, aggregating \$4,250. ~~But~~ Modified by Sup. Ct. - only one contempt. Constructive contempt statute strictly. "Otherwise, there would be no limit to the amount in which he might be fined" (p. 221) [But does rely on fact that statute limits contempt fine to \$500].

U.S. v. Costello, 198 F.2d 200 (1952), cert. den.

Def. Costello convicted of 10 separate contempt because of walking out on a Cong'l investigating committee and refusing to answer any questions at all. 245C192

#2 was voluntarily dropped. 1, 3, & 4 were nolle prossed because 5th amend. properly invoked.

March 15 — #5 - walked out. OK.

#6 - refused to answer any questions on ground that he was too ill to testify, prod being a doctor's certificate that he was suffering from laryngitis & should stay in bed. OK

#7 - refused to answer a question asked anyway.

March 16 — #8 - refusal to answer because too ill to testify. ~~The~~ The Committee got the 1st dr. on stand & he said Costello was capable of answering 1 hr. a day. So Costello then presented a certificate from his regular physician, to the effect that in the latter's opinion sustained conversation by def. would be dangerous to his health.

#9 - refused to answer specific question.

#10 - " "

#11 - " "

Ct. upheld 5, 6, & 8, but cut out 7, 9, 10 & 11 as multiplications of the contempt.

QUOTE - p. 204!!!

= and different questions, too, so good here, too.

Gautreaux v. Gautreaux, 57 So.2d 188 (Supreme Ct. of La., 1952)

Attorney was held in contempt of trial court for certain conduct under a state contempt statute.

Held there is only one offense. "[T]he contempt arose out of a single proceeding and relator's conduct represented a continuous contemptuous attitude toward the court at that time."



U.S. v. Yukio Abe, 95 F.Supp. 991 (D. Hawaii)

Refusal to answer before House Unamerican Activities committee. On motion to dismiss indictments. Rulings were actually deferred until trial on merits when question of privilege could best be resolved.

One issue raised here related to the number of counts in the indictments, separate counts being based on separate refusals to answer questions pertaining to the same general subject matter.

As to the objections to the number of Counts, "the government has the right to frame each refusal to answer in a separate count. However, as the questions appear to be directed all to one subject of inquiry and the answers were simultaneous during the proceedings, and continuous acts, the indictments therefore charge only one alleged offense."

(IMPORTANT: Refusals to answer here were based on 5th amendment. Ct didn't decide there was contempt, but deferred that consideration to the merits. Ct did say that if there was contempt, there was only one!

U.S. v. Emspak, 95 F.Supp. 1012 (D.C.Cir. 1951)

~~Indictments~~  
~~XXXXXXXXXX~~ under 2 U.S.C. §192, where language ~~reads~~ reads "refusal to answer any question." This opinion was on motion to dismiss the indictment. Some indictments had as many as 68 counts. The government contended that each question refused was a violation.

Ct said: "The counts involved in the several indictments under consideration consist of questions which apparently on their face were directed to one single line of inquiry which was the specific phase of inquiry then being considered by the Committee.... The question of double jeopardy will arise only if a defendant is sentenced on more than one count. Since only one contempt is charged in each indictment, the rationale of the decisions discussed [previously] would seem to limit the sentence to a maximum penalty for one contempt. The objection is academic and premature at this stage, however...[on motion to dismiss indictment].

Note: The above does not make it clear (not in the opinion) just how closely related the questions were. The Pa. L. R. article indicated that the inquiries were almost the same question...whether the witness was a communist. The Pa. note considered this typical of the cases where the same question was asked several times--a situation short of Costello.

Context (concl) for refusal to answer questions of cong'l committee investigating Communists. Ct. dismissed counts that seemed to ~~be~~ be variations of the same questions. Harvard prof.

#1 - Whether or not individuals known to him to have been Party members are now working in defense plants.

#3 - Would you give the names of those active with him in the Party?

#4 - Know Blum?

#5 - Know if Blum had contacts with people handling gov't classified materials?

#2 - Know anyone teaching at Harvard or connected with Harvard who is a Communist?

#6 - Similar

Refused to answer ~~specifically~~ stating the ground that he "would not" establish the identity of any person or persons with whom [he] was established." p. 384. Response to #1. Response to #2 - wouldn't be an informer on others who'd been Communists.

Ct. tossed out #3 & 4 for being "substantially the same question" and being "essentially identical." Tossed out #5 & 6 for lack of pertinency.

SHAKY SUPPORT, SINCE BROAD GROUND GIVEN,  
BUT LATER QUESTIONS IN THE AREA STILL CONSIDERED.

No capture attempt

State ex rel. Parker v. Monser, 208 La. 1093, 24 So. 2d 151  
(1945).

Atty. presented in arguing with the court and not allowing opposing counsel to proceed, whereupon the Ct. found him in contempt. While dictating the contempt order, Atty. gave an order, despite warnings that he was committing further acts of contempt & word of throwing ~~an inflated check~~ a rigid bit blank check to the clerk to indicate his lack of concern with how much he was fined. Lower Ct. sentenced him to 5 days. La. Supreme Ct. noted La. statute set max. sentence at 24 hrs if only one contempt, and found that there was only one contempt here. Stated a single contemptuous attitude towards the court during one particular hearing. "... manifested but one feeling of contempt." (p. 155) Reversed the 5 days. C.S. dissented.



Ex Parte Terry, 128 U.S. 289 (1888) -

An atty. found guilty of contempt<sup>crim'l</sup>, in summary proceeding. The Court ~~refused~~ denied application for writ of habeas corpus. Court stated that the power of conducting summary contempt proceedings without hearing or trial of some " . . . 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 created for the vindication of public and private rights, nor the officers charged with the duty of administering them. "

GOOD QUOTE RE SUMMARY CONTEMPT POWER.

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2:30

cooler  
football



U.S. v. Orman, 207 F.2d 148 (1953) - Defendant convicted in DC for four contempt, based on the following, before a legislative investigating committee, pursuant to 2 USC 192.

1. July 7, 1951 - Refused to turn over a book containing his notes as to his 1951 business transactions, on ground he didn't want it to ~~go into public records and be~~ come public knowledge in the city where he had his business.
2. July 17, '51 - Same refusal.
3. July 17, '51 - Refused to tell whom he borrowed \$25,000 from in Dec. 1950, on ground that it was his personal affair.
4. July 17 - '51 - Same refusal.

Ct. gave 12 months on 143, concurrent sentences. 1 yr. probation on 2 & 4, concurrent, to start after release from jail. <sup>CA</sup> Reversed sentence on 2 & 4, holding that there were only 2 contempt.

"But where the separate questions seek to establish but a single fact, or relate to but a single subject of inquiry, only one <sup>penalty for</sup> contempt may be imposed." NB - cites Costello apart from the other cases.

Ct 160.

Franklin Airflex Co., Inc. v. United Electrical, Radio & Machine Workers  
of America, Local 735, CIO, ~~92~~ 92 N.E. 2d 431 (Ohio Ct. Appeals  
1950), ~~aff'd~~ aff'd, 93 N.E. 2d 480 ( )

(Circuit, I think)

Summary contempt for refusal to answer three questions in trial before Ct. of Common  
Pleas in Ohio.

1. Are you a member of the C. Party?
2. Have you ever been a delegate or the representative at a Com. Party meeting in the State of Ohio?
3. Did you attend a State Convention of the Ohio C. Party on April 30, 1948, held at Public Hall?

Ohio Ct. of Appeals reversed finding of three separate contempts, and held only  
one contempt. QUOTE AT P. 436 IS GOOD. "... the questions were of such  
character that they should be treated as an inquiry into but a single subject." ~~fact~~  
~~fact question involved the~~ "... "In fact, the entire inquiry was directed  
toward the establishment of but one fact." "... for the reason that they  
all had to do with the same subject matter."

SOME INDICATION THAT SINGLE SUBJECT OF INQUIRY MEANS  
COMMUNIST MEMBERSHIP OF JUST ONE PERSON.