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of his rights. The fact situation should be the controlling factor. This was recognized by Judge Froessel in his dissent in *Meyer* where he stated that: "to hold that admission of a defendant's statements under the particular circumstances of this case constitutes reversible error will not serve the administration of justice."[19] Of course, this view may make the determination of the admissibility of a confession more difficult, but it cannot be alleged that this should be a controlling factor in a criminal prosecution.

T. C. L.

CONTEMPT PROCEEDINGS IMMEDIATELY FOLLOWING NOTICE HELD SUFFICIENT WHEN CONDUCT IN GRAND JURY ROOM IS OBVIOUSLY CONTEMPTUOUS

Relator was subpoenaed to appear before the Grand Jury in connection with its investigation of an attempted murder in Brooklyn. He was questioned about his activities on the afternoon of the assault but refused to answer on the ground of self-incrimination. In response to this plea, he was granted immunity; and the questions were repeated. His replies thereafter were evasive and unbelievable. He was willing and able to relate with considerable detail his activities during the morning and evening hours of that day, but pleaded lack of memory concerning his activities during the afternoon. Following his testimony before the Grand Jury, and on the same day, an application was made by the district attorney to the County Court to have the relator punished for criminal contempt. The proceedings before the Grand Jury were made known to the Judge, and he ordered the relator to answer the questions or face punishment. Relator was taken back before the Grand Jury and was once again questioned concerning his activities at the time of the attempted murder. Despite the Judge's warning that such replies would be regarded as false and treated as deliberate refusals to answer, the relator answered only that he did not remember. The district attorney renewed his motion to punish for contempt and the relator made his second appearance of the day in County Court. A hearing was held at which the minutes of the Grand Jury proceedings were introduced as evidence for the prosecution. Relator's attorney made repeated requests that he be given sufficient time (a few days) to prepare a defense and submit a brief. These requests were denied, and the relator was sentenced to thirty days in prison and fined $250. On appeal from the Appellate Division's dismissal of relator's writ of habeas corpus, *held*, affirmed, one Judge dissenting. In a conviction under section 750, subdivision 5, of the Judiciary Law, obtained through proceedings dictated by section 751 of the Judiciary Law, relator was given a reasonable time to make a defense, although such time was only momentary, when relator's contemptuous behavior was patently obvious. *People ex rel. Cirillo v. Warden of City Prison*, 11 N.Y.2d 51, 182 N.E.2d 85, 226 N.Y.S.2d 398 (1962).

19. People v. Meyer, supra note 13, at 166, 182 N.E.2d at 105, 227 N.Y.S.2d at 430.

It is the duty of the courts to prevent disorderly contemptuous behavior in order to maintain the respect and authority which is their due. The Judiciary Law specifically enumerates the acts which constitute criminal contempt[1] and provides for the procedure that shall be employed in determining guilt or innocence.[2] If the contempt occurs in the immediate view and presence of the court, it may be punishable summarily and without proof. If the contempt occurs outside the presence of the court, then the party charged must be given sufficient notice of the accusation and a reasonable opportunity to prepare a defense.[3] What constitutes sufficient notice and reasonable opportunity must be determined in the light of the circumstances of each particular case.[4]

A witness before the Grand Jury cannot evade the statutory command to testify and subsequent punishment for contempt by the mere rendering of improbable, contradictory, and obviously evasive answers.[5] When a witness, after refusing to answer questions before the Grand Jury, has appeared in court and stated his refusal, and his intention not to answer, this has been held to be contempt committed within the view and presence of the court.[6] In the case of the witness who repeats his refusal to testify before the Grand Jury within the hearing of the presiding judge, it is the second refusal which constitutes the act of contempt which may be summarily punished. However, if the acts are committed outside of the sight of the presiding judge, so that he cannot assert of his own knowledge that the acts were contemptuous, they must be examined at a hearing after the defendant has had fair opportunity to prepare his defense.[7]

The Court of Appeals viewed the conduct of the relator as behavior that might well have been treated as contempt committed within the view and presence of the court, because the relator so plainly and clearly refused to answer after being ordered by the judge to do so. However, his behavior was not so treated; instead, the court acted only upon the evasive tactics employed by the relator during his appearances before the Grand Jury. The issue actually presented to the Court of Appeals was whether the hearing afforded the defendant on this matter was fair and whether the opportunity to prepare a defense was sufficient under all of the circumstances. Though the relator's attorney asked the County Court for time to study the minutes of the Grand Jury and to prepare a defense, the County Court denied this request and the Court of Appeals held that "there was little need for study or deliberation in face of what was so plain a case." The majority decided that the relator was

1. Douglas v. Adel, 269 N.Y. 144, 145, 199 N.E. 35, 36 (1935).
2. N.Y. Judiciary Law § 750.
3. N.Y. Judiciary Law § 751.
4. People ex rel. Barnes v. Court of Sessions, 147 N.Y. 290, 41 N.E. 700 (1895).
5. Spector v. Allen, 281 N.Y. 251, 22 N.E.2d 360 (1939).
6. Matter of Kamell, 170 Misc. 868, 11 N.Y.S.2d 479 (Ct. Gen. Sess. 1939).
7. People ex rel. Hackley v. Kelly, 24 N.Y. 74, 21 How. Pr. (1861); Costello v. Schurman, 6 Misc. 2d 66, 163 N.Y.S.2d 835 (Sup. Ct. 1957); People v. Costello, 6 A.D.2d 385, 178 N.Y.S.2d 432 (1st Dep't 1958), aff'd, 6 N.Y.2d 761, 159 N.E.2d 205, 186 N.Y.S.2d 660 (1959).

afforded reasonable opportunity to prepare his defense and his hearing was a fair one. The dissent objected that the proceedings did not meet the requirements of section 751 of the Judiciary Law and amounted to a deprivation of relator's basic constitutional right to a fair hearing.[8]

The purpose of the statutory requirements is that an accused be given notice of the accusation of contempt and a reasonable time to make a defense.[9] The Court of Appeals has approved the precipitate haste with which the relator was accused and convicted of contempt in one afternoon. The Court based its decision on *Spector v. Allen*,[10] but in that case the time allowed was greater, and more importantly, there were no requests for greater time to prepare a defense. The Court here believed that allowing the relator more time would simply have opened the door to mere technical objections and that no feasible defense on the merits was possible. It is true that the facts of the case permit little doubt that the relator's answers were deliberately evasive, and it is also true that if these answers were given in the presence and view of the court, that the relator would have had no right to a hearing, but the answers *were not* given in the presence of the court, and should not be treated as if they were. The provision for summary punishment for contemptuous acts committed in the presence of the court might indicate that the provisions for hearing and defense for acts committed outside of its presence are for the purpose of contesting the factual occurrences only. Since in the case of direct contempt there is no opportunity to voice legal objections, it would seem that the only difference between direct contempt and contempt committed outside of the court is the judge's certainty of the factual occurrences. In cases where the witness has repeated his refusal to answer in the presence of the judge, he has been summarily punished. The dicta of the Court of Appeals in this case would indicate that an express refusal is not necessary but that a position amounting to refusal (deliberate flouting of the judge's express mandate to answer candidly questions asked before the Grand Jury) may be sufficient. This dicta, may well be the most important aspect of the case, since it points toward a broadening of the kind of behavior which will be regarded as direct contempt. The cases relied upon by the majority, as authority for their opinion that the conduct of the relator might have been treated as direct contempt, involved *express* refusal to answer, while relator's conduct in the instant case only *amounted to* refusal to answer. It is possible that the majority allowed their strong belief that the relator's conduct within the view and presence of the court amounted to direct contempt, to influence their judgment regarding the adequacy of the hearing afforded relator on the charge of contempt committed *outside* the court. The fact that the relator might have been guilty

8. Douglas v. Adel, supra note 1.
9. People ex rel. Roache v. Hanbury, 162 App. Div. 337, 342, 147 N.Y. Supp. 851, 855 (2d Dep't 1914).
10. Spector v. Allen, supra note 5.

of contempt within the view and presence of the court is no reason to lower the standard of procedure applied to determine his guilt of committing contemptuous acts outside of the view and presence of the court. The argument that relator's conduct outside the view and presence of the court was "plainly" contemptuous does not appear to be an adequate reason not to allow him at least some time to prepare his defense.

A. D.

CORAM NOBIS ALLOWED UPON ALLEGATION THAT ACCEPTANCE OF GUILTY PLEA VIOLATIVE OF DUE PROCESS

In 1943 a thirteen-year-old boy entered a plea of guilty to the crime of murder in the second degree. At the time of the plea there were before the court the statements of three psychiatrists, given in a conference prior to acceptance of the plea, to the effect that the boy was legally sane. A fourth psychiatrist informed the judge at that time that it was his opinion that the accused was suffering from an epileptic attack during commission of the act and that such an attack would have rendered anyone incapable of remembering the acts committed in the course of seizure. The day following the conference the court accepted the boy's plea. The convicted boy suffered a number of attacks of the grand mal type, as well as numerous lesser attacks, subsequent to his imprisonment. He brought a petition for a writ in the nature of coram nobis alleging that under the circumstances of his youth and epileptic condition his plea of guilty was neither effective nor voluntary, but was violative of due process of law. The trial court denied the petitioner a hearing on the allegations. On appeal, *held*, reversed. The taking of such a plea required an "extreme measure of caution and at least a certainty of guilty and of the complete absence of any plausible defense . . ." in view of the petitioner's youth and epileptic condition. *People v. Codarre*, 10 N.Y.2d 361, 179 N.E.2d 475, 223 N.Y.S.2d 457 (1961).

The writ of error coram nobis originated in the Chancery Court and was directed to the court of original jurisdiction to correct judgments resulting from errors of fact. The writ lay dormant in New York until the Court of Appeals gave it new life in 1943. The Court held that the right to hear a motion to vacate a judgment of conviction was within the inherent power of the court, as was exercised in common law criminal cases "through the writ of error coram nobis."[1] In a subsequent case a petitioner was denied the right to appeal from an order denying a motion to vacate a judgment of conviction.[2] The Legislature remedied this situation by permitting an appeal from an order denying[3] or granting[4] a motion for a writ of coram nobis. This was the first statutory recognition of coram nobis in New York.

1. Lyons v. Goldstein, 290 N.Y. 19, 47 N.E.2d 425 (1943).
2. People v. Gersewitz, 294 N.Y. 163, 61 N.E.2d 427 (1945).
3. N.Y. Code Crim. Proc. § 517.
4. N.Y. Code Crim. Proc. § 518.