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Criminal Law—Refusals to Answer Questions Concerning Same Subject Matter Constitute a Single Contempt

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tion of 1290-a is not limited to prosecutions which would have formerly been "obtaining money by false pretenses".

REFUSALS TO ANSWER QUESTIONS CONCERNING SAME SUBJECT MATTER CONSTITUTE A SINGLE CONTEMPT

In one of the numerous cases arising out of the so-called "Apalachin meeting" of November 1957, the Court of Appeals reversed and remitted for resentence the conviction of the defendant in *People v. Riela*.[38] The defendant, Riela, was called as a witness before the Grand Jury investigating the meeting which he and some sixty others had attended at the country estate of the late Joseph Barbara in Apalachin, New York. He refused to answer seventeen questions concerning that meeting on the ground that to do so might tend to incriminate him. He again refused to answer all seventeen questions when he was granted immunity pursuant to Section 2447 of the New York Penal Law.[39]

Because of his refusal to answer although granted immunity, he was indicted, convicted,[40] and sentenced for seventeen separate crimes of contempt in violation of New York Penal Law Section 600.[41] On each of the 17 counts he received a sixty day sentence, to be served concurrently, and a fine of $250, making a total fine of $4250.

Defendant appealed unsuccessfully to the Appellate Division,[42] and finally brought his case to the Court of Appeals. Riela defended his refusal to answer on the ground that the immunity granted him was not broad enough to assure him the protection guaranteed by the Constitution.

The Court brushed this objection aside and pointed out that it was clear under current decision, that a witness may be compelled to answer in a state proceeding, as long as the immunity granted by the state protects against prosecution under *its* laws, even though it may not protect against prosecution by the federal government or by other states.

In remitting the case for resentence, the Court of Appeals in a unanimous opinion reversed sixteen of the seventeen counts, holding that defendant's refusal to answer the seventeen questions constituted a single contempt of court and not seventeen separate offenses. The Court found that the defendant had

38. 7 N.Y. 571, 200 N.Y.S.2d 43 (1960).

39. (1). In any investigation or proceeding where by express provision of a statute, a competent authority is authorized to confer immunity, if a person refuses to answer a question or produce evidence of any kind on the ground that he may be incriminated thereby, and, notwithstanding such a refusal, an order is made by such competent authority that such person answer the question or produce the evidence, such person shall comply with the order. If such person complies with the order, and if, but for this section he would have been privileged to withhold the answer given or the evidence produced by him, then immunity shall be conferred upon him, as provided for herein.

40. 14 Misc. 2d 213, 178 N.Y.S.2d 873 (County Ct. 1958).

41. A person who commits a contempt of court, of any one of the following kinds is guilty of a misdemeanor: . . . (6). Contumacious and unlawful refusal to be sworn as a witness, or, after being sworn, to answer any legal and proper interrogatory; . . . .

42. 9 A.D.2d 481, 195 N.Y.S.2d 558 (3d Dep't 1959).

"carved out an area of refusal" such that the District Attorney necessarily knew, ahead of time, that the refusal would be reiterated after each question.

The holding in this case serves as an effective shield for a witness who would otherwise find himself charged with criminal contempt just as often as an ingenious prosecutor was able to think of a new way of approaching the object of his questioning.

Similarly in *Yates v. United States*,[43] where the defendant refused to answer eleven questions about the membership of her friends in the Communist Party on the ground that to do so would hurt them and their families, the U. S. Supreme Court held that a prosecutor might not multiply contempts by repeated questioning on the same subject of inquiry about which a recalcitrant witness had already refused answers.

The Court in the instant case distinguished the refusal of a witness to answer questions in a certain area which the prosecutor knows will go unanswered, from the bonafide interrogation of the District Attorney in *People v. Saperstein*,[44] wherein the defendant refused to tell who were the persons with whom he had spoken in five different telephone conversations. According to the Court in the instant case, the prosecutor in the *Saperstein* case had to continue questioning in order to find the limits of the defendant's refusal to answer. After a witness's refusal to answer an initial question we are thus left with the anomaly that the criminality of his subsequent refusal to answer depends not on the witness's intent but upon that of the prosecutor. Of course a witness may avoid this simply by spelling out after his first refusal the precise extent to which he is in contempt of court, but such a course of action might reveal precisely what he is attempting to conceal.

A better rule, perhaps implicit though unarticulated in the instant case, is that a witness may be adjudged guilty of contempt only once for each general subject concerning which he refuses to testify.

Extortion Without Direct Assertion of Force

In *People v. Dioguardi*[45] the defendants were convicted upon a jury verdict for extortion and conspiracy to extort. The Appellate Division reversed the judgments of conviction on the facts and on the law and dismissed the indictment.[46] On appeal to the Court of Appeals,[47] the Court, examining the testimony from the point of view most favorable to the people, had to determine as a question of law whether there was a question of fact regarding defendants' guilt which should have been let to the jury and not been disposed of by the Appellate Division.[48] The Court of Appeals held that such a question of fact

43. 355 U.S. 66 (1957).
44. 2 N.Y.2d 210, 159 N.Y.S.2d 160 (1957).
45. 8 N.Y.2d 260, 203 N.Y.S.2d 870 (1960).
46. 8 A.D.2d 426, 188 N.Y.S.2d 84 (1st Dep't 1959).
47. N.Y. Code of Crim. Proc. § 519.
48. People v. Bellows, 281 N.Y. 67, 22 N.E.2d 238 (1939).