IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA

vs.

PHILIP FRANKFELD, also known as
Phil Frankfeld,
GEORGE ALOYSIUS MEYERS,
LEROY HAND WOOD, also known as
Roy H. Wood,
REGINA FRANKFELD,
DOROTHY ROSE BLUMBERG, also known as
Dorothy Oppenheim Blumberg, and
MAURICE LOUIS BRAVERMAN

Criminal No. 22209
Criminal No. 22322

TRANSCRIPT OF PROCEEDINGS

Before
HON. W. CALVIN CHESNUT
Judge

Wednesday, April 2, 1952

Volume XVIII

(Page 2623 to page 2647)

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I N D E X

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DOROTHY ROSE BLUMBERG, also known as Dorothy Oppenheim Blumberg, and	:	
MAURICE LOUIS BRAVERMAN	:	

Baltimore, Maryland

Wednesday, April 2, 1952

The above entitled matter came on for hearing before His Honor, W. CALVIN CHESNUT at 2 o'clock p. m.

A P P E A R A N C E S

For the Government:

MR. BERNARD J. FLYNN, United States Attorney
MR. JAMES B. MURPHY, Assistant United States Attorney
MR. FREDERICK J. GREEN, JR., Assistant United States Attorney

For the Defendant George Aloysius Meyers, Appearing Specially:

MR. HAROLD BUCHMAN
MR. JAMES T. WRIGHT

HL/@2pm

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PROCEEDINGS

THE COURT: Mr. Buchman, this is an opportunity to show cause as mentioned yesterday.

MR. BUCHMAN: If the Court please, both myself and Mr. Wright are entering our appearance especially on behalf of Mr. Meyers and, as I indicated, we are prepared to have Your Honor pass on the question.

THE COURT: You do not wish it transferred to another Judge?

MR. BUCHMAN: No, we do not. We prefer to have Your Honor hear the matter.

THE COURT: Very well.

STATEMENT BY MR. BUCHMAN

MR. BUCHMAN: If the Court please, I would like as briefly as possible to outline the facts, up to the time when Mr. Meyers took the stand and was questioned. Your Honor, I think, yourself took pains to exclude as irrelevant and lacking in probative value any references to other names, or any information that would lead to the eliciting of other names, as having no materiality to the issues in the case. Then, when Mr. Meyers took the stand in his own defense, for the first time the prosecution pursued a line of questioning which attempted to elicit this information.

I think, Your Honor, Mr. Meyers attempted to

make clear to the Court that regardless of the objective result it was not his intention to be in any way disrespectful to the Court, that he wasn't in anyway attempting to flout the dignity of the Court or the administration of justice, but he tried to make it clear that the line of questioning placed him in a kind of vise. On the one hand he was confronted with the dilemma of either surrendering what he considered conscientiously basic principles, that he thought he shouldn't do. It was with regard to where he spent his whole life, in the town in which he grew up, where he got his experience with the labor movement, with his union and political organization. On the one hand he was being subjected to a line of questioning that would have exposed, in his opinion, other people to persecution, socially, economically and politically. On the other hand, by refusing to answer he placed himself in a position where he was discrediting himself before the jury where he was placing himself in opposition to the Court's direct direction to answer.

Now, I first would like to submit to Your Honor that the line of questioning was improper because its sole purpose, its sole function, was in a sense an illegitimate one, and the prosecution knew the line of questioning would place Mr. Meyers in that kind of a position. Now, it is true that the first amendment with reference to the form

of political organizations, I think, is implicit in the position that he can't be compelled to give the names of political associates, or of members of the Communist Party, whose names were not relevant to the inquiry, were not relevant to the issues in the case.

Now, the effect of the position that he was placed in was, on the one hand, either to degrade himself in his own eyes. And, Your Honor, it seemsto me that it is every difficult for anyone to say that anyone placed in a similar position wouldn't have been torn likewise between these two positions. On the one hand he was placed in the position of exposing friends, associates, to persecution, and on the other hand in being forced, frustrated, in his own defense in not wishing to be put in the light of being in contempt of court and discredited before the jury.

Now, for that reason, Your Honor, we submit it was an improper line of questioning because he was in the sense of Scylla Carybdis, of either degrading himself or discrediting himself.

Now, all these arguments are directed toward mitigation, obviously, Your Honor, and I again want to emphasize and try to make clear to Your Honor that he was not in any way being disrespectful about that. He was forced by virtue of the line of questioning into that kind

of a choice.

Now, I notice in Wigmore on Evidence, Section 2213, he indicates what happens when it comes to a matter of theological opinion, and he refers to a number of English cases including the trial of Lord Gordon, where witnesses were protected against, I think, revealing the religious affiliations of other people. There the issue, as Your Honor knows, was between the Protestants and Catholics, and there was this anti-Catholic feeling in England at that time, and while the matter assumed various forms, the kernel of it was really a political battle. And he cites half a dozen English cases where the witnesses were protected in their right of refusing to identify the religious affiliations of other persons who were the subject of questioning on cross-examination. Now, I don't know whether those cases are sufficient to draw any kind of analogy, but I submit that the actual position to which Mr. Meyers was referring when he said that it went against his grain, was not a matter of Mens Rea, that he was not being contumacious. He was not picking and choosing the questions to answer, but he was in this untenanble position where the result was either to degrade himself as such, or to discredit himself. And I think the line of inquiry by the prosecution should have been prevented, and should not have been fortified by the direction addressed to the witness. So, therefore,

I submit, Your Honor, in mitigation of what occurred, this line of reasoning which reflects what took place in the defendant's mind when he was on the stand. And, finally, there wasn't the slightest intent to commit any contempt of court, the slightest subjective intent to do so. He had no criminal intent of any kind in mind of flouting the laws of the country, or of impeding the administration of justice. As a practical matter, I think it is difficult to say what any person in such situation would do.

I, therefore, submit that to Your Honor for your consideration in passing on it.

STATEMENT BY MR. WRIGHT.

THE COURT: Does Mr. Wright wish to be heard?

MR. WRIGHT: Yes, Your Honor.

May it please the Court, as Your Honor knows this man comes before you pursuant to Rule 42, particularly sub-division (a). I might say that at Mr. Meyers' request I do appear here, make a special appearance for him.

I think it is of particular interest to note that it was the defendant's request that this matter be heard before Your Honor, the reasons which went through his mind in making his determination, although, as Your Honor knows, under a section of the Federal law he might have very well asked that the matter be referred, with Your Honor's consent, to another Judge. He felt, as I do,

under the circumstances that Your Honor Heard this matter, had an opportunity to analyze it fully at the time it occurred, and had given it some careful thought since its occurrence. For that reason it was brought to you.

Your Honor, we have had the opportunity to think through it, as I know Your Honor has done, and I want to direct Your Honor's attention just for a moment to the factual situation immediately leading up to it. Now, I believe Mr. Buchman has fully covered the circumstances so far, insofar as they concerned the position of the defendant.

I would like to again reiterate the fact, and Your Honor will recall, although a series of questions similar to those that the defendant later refused to answer were propounded by Government counsel, Your Honor at the same time sustained the objection to the answering of those questions on the theory of immateriality.

THE COURT: What questions do you have in mind there, Mr. Wright? The only one I remember was the question about Dr. Blumberg.

MR. WRIGHT: As I recall it, Your Honor, the same line of questioning was propounded by Government counsel with respect to who are some of the other members who attended certain meetings at which the defendant was elected to various positions, and Your Honor, at the first instance

of it said, well, I don't see the relevance of it, and then Government counsel assured Your Honor there would be a later connection to it. Now, Your Honor did later rule that you felt it was material. Now, I want to call Your Honor's attention to this one aspect, which I think has some bearing on the matter. Yesterday, when we appeared in Court on the question of bail and Your Honor made the request of the Government as to what its position was with reference to sentence, at that time Government counsel announced to the Court a maximum sentence should be imposed, and the reason is interesting. The reason advanced by the Government counsel at that time was that the evidence was overwhelming. Now, I say to Your Honor, if that were true, then certainly the questions which the Government had propounded and which weren't later answered have no real merit toward the success in the establishment of the Government's case.

So that, taken together with the reasons advanced by the defendant for hisrefusal to answer, I think, has some merit for Your Honor to consider.

Now,it is true that no witness can take it upon himself the responsibility of refusing the Court's direction, and certainly no argument could be successfully made, and no argument would be attempted to be made, with reference to the aspect of it. We do wish, however, to comment to

Your Honor the whole sociological background of the defendant in which this situation occurred. The defendant, at that time, specifically said to Your Honor that there was no intention on his part to be disrespectful, and I think he reiterated that several times. Obviously, as Your Honor knows, in any criminal proceeding one of the essential elements that must be established by the Government would be the Mens Rea, or the wilful and contumacious disregard of the Court's authority, and we know that is a matter of objective determination.

Certainly, when it comes to the matter of the Court exercising its discretion to determine the matter of punishment, in such a situation all the facts and circumstances that are material for the Court to take into account, I think, should be taken into account. In this case the defendant did announce with some degree of certainty and clarity as to what his position was for his refusal to answer. I think in that area it could be considered something other than a wilful and contumacious disregard of the Court's authority by way of his explanation, the explanation in satisfying the point of Mens Rea.

To certainly satisfy Your Honor as to the Mens Rea element it necessarily must be satisfactorily shown, so I say to Your Honor, upon full consideration of the matter, it has been made clear

to Your Honor at the very instant of the appearance of this event, that the defendant's whole attitude, his whole approach, his refusal to answer those questions, were in a real sense from his point of view, due to the prosecution because they tried to get something from him that was very significant and very sacred to him. And it is admitted it is not of any value in terms of whether or not the offense has occurred.

The argument is advanced to Your Honor in the exercise of your discretion, and in the hope of taking all the circumstances into account, and I am satisfied that what Your Honor understands and does will be what you feel is just and honorable.

STATEMENT BY MR. FLYNN

THE COURT: Mr. Flynn, have you any comments to make in this case?

MR. FLYNN: May it please the Court, as I understand, the arguments advanced today are only advanced toward mitigation.

I do want to point out to Your Honor the fact that the witness Meyers wasn't only warned by Your Honor several times about the situation, but told a number of times by Your Honor that he should answer the questions. Now, then, as to his mental processes, whatever his reasons were for refusing to answer, he did know that this Court had instructed him to answer these questions.

Now, the questions were material. Your Honor is perfectly correct when you say the only time there was any question of materiality was with respect to the very first question that he refused to answer, and that was in reference to Dr. Blumberg. That was the question as to where Dr. Blumberg is at the present time. There was an objection, and Your Honor said you couldn't see where that was material and you sustained the objection, but you said if it was shown further on in the case that it was material you would allow it. Now, subsequent to that time, there were questions as to the members and officers in the Communist Party and, particularly, a question was asked the witness as to who were the members and the officers of the Steel Club when he returned from the army, and he refused to answer that on the ground that it went against his grain, and then he told something about having been in labor movements, union movements, and how people were considered who told things of that kind.

The whole situation, may it please the Court, was brought about by the defendant's refusal to divulge what Your Honor thinks ought to be in this case, and what should be properly answered. That is particularly true about the question, may it please the Court, as to the Clubs. When I asked the witness as to what Clubs were now in existence, and where were they, he refused to answer that.

That is a partof the setup of the Party, a part of the whole scheme.

Now, may it please the Court, I want to particularly call Your Honor's attention to the fact that at the noon recess Your Honor took the trouble to tell the witness, advise him, that he had better consult counsel at the noon recess and come back afterwards, after the luncheon hour, and after he had talked to the other members, to the men who weren't his counsel, to men who were originally with him in this case, he was asked questions again.

When he came back and went on the stand, he was asked these questions categorically again, in accordance with Your Honor's instructions, and he was told then he should answer the questions, but he absolutely and positively refused to do so.

I can't see anything, Your Honor, in this case except the wilful disobedience of the orders of this Court in a matter that was vital to this case.

I can't see any mitigation whatever in that matter.

THE COURT: Have you any further comments with regard to the materiality of the questions?

MR. FLYNN: Yes, sir.

I think they werequite material. They were particularly material inasfar as these Clubs are concerned.

You will recall there was evidence in the case,

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prior to that time, that the Clubs had gone out of existence because of the fact that there was a system of, what you call, going underground. At least, there was the scheme to cover up and of avoiding the knowledge of membership and type of organization. You will recall the evidence as to these secret meetings in Baltimore; the one on Callow Avenue, and the one in the Willard Hotel. You will recall the evidence of Lautner, I think it was, who said it was broken down into three groups, or groups of three. Now, the purpose, certainly my reason in asking the questions, was to find out from this witness whether or not that hadn't happened, whether or not this organization wasn't being divided up now in such a way that it would be covered up and wouldn't be known either as an organization or that the membership wouldn't be known.

I think it was vital material in the case, in the trial phase of it, sir. I can't see why he couldn't have told us what he knew, why he couldn't have answered those questions, instead of telling us that it would go against his grain. I can't see why unless it was that he had his instructions from Party Headquarters not to divulge this information.

Mr. Green calls my attention to the fact, may it please the Court, that the evidence of this witness up to that time has been that the Party was open and above

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board, that everything about them was in the newspapers, that all of the officers were public, that the meetings were public. He went to meetings at which Foster was there, and other people were there, and then when it comes to a question as to just what his organization was, who was in that organization, who were the officers, he says, I will not tell you anything about anyone unless they are elected officers of this organization.

I think that is particularly significant, may it please the Court, as to Mr. Buchman.

THE COURT: You mean Mr. Braverman?

MR. FLYNN: I mean Mr. Braverman.

Excuse me, Mr. Buchman.

I mean Mr. Braverman. We have Mr. Braverman who consistently avoided any reference to the fact that he was a member of the Communist Party. In his opening statement, testimony -- well, he didn't testify -- in his argument to the jury he consistently avoided any mention of the fact that he was a member of the Party. Now, there was evidence in this case that Mr. Braverman had held office in the Party. I think it was essential to know whether or not a man who was holding office in the Party was a member of the Party or not. He refused to answer questions along that line, and I think it is particularly significant, particularly important.

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I can't see where there is any mitigation. It is nothing more than an open defiance of this Court, the refusal to answer the questions.

THE COURT: Well, I think, probably everything has been said that is relevant to the present proceeding.

MR. WRIGHT: May it please the Court, might I clear up just one other thing with respect to the question of materiality?

THE COURT: Mr. Wright.

MR. WRIGHT: One of the questions put by Mr. Flynn was:

"Question (BY MR. FLYNN) What positions has Maurice Braverman held in the Communist Party to your knowledge?

"Answer: I take the same position, Your Honor, I mean about naming who or who are not members of the Communist Party outside of elected officials of the Communist Party."

Then the next question was:

"Question: State whether or not thereare any clubs of the Communist Party at the present time and if so name the clubs and state whether or not there were any of them in existence in January of 1952?"

Now, the only point I wish to make with respect to that is that if the question is directed to the existence

of clubs at the present time, which period of time extends beyond the indictment, I don't think in that aspect it would be material and, then, with respect to whether they were in existence in January of 1952, not having sufficiently fixed a particular day prior to the time mentioned in the indictment, could also raise some question of materiality in my mind, and to which I would like to call Your Honor's attention.

OPINION OF THE COURT

THE COURT: Well, gentlemen, as counsel has suggested, I have given thought to this matter, particularly, as it is a novel one in my experience.

It is true, as counsel has suggested, that Mr. Meyers was not in his manner disrespectful to the Court as an institution and, although this is really less important, not disrespectful to me personally. Therefore, there is not at all any question of wilful, intentional or deliberate disrespect to persons or institutions, as I approach the matter in this case.

The refusal of the witness, however, to answer questions, which the Court had ruled to be proper, raises a very fundamental issue in the administration of justice. The Courts of the United States, the Courts of any State of the Union, could not function unless the Court has power to require that a witness duly in Court, duly summoned,

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answer questions which the Judge thinks are pertinent to the case. The Judge may make a mistake in a particular ruling as to whether the question was material, or not, but in that regard, if necessary, there is always the right to appeal. But to keep the Court a going concern, functioning for the benefit of the litigants in the case, it is necessary for a witness to answer questions which the Court directs him to answer.

Therefore, entirely apart from the manner or the particular behavior of the witness, the definite refusal on the part of a witness to answer a question cannot be other than a contempt of court.

I do not understand counsel for Mr. Meyers to dispute that as a matter of law.

In the whole history of the English and American law, I do not know of one case to the contrary, because it is vital to the function of the Court.

Now, therefore, this incident of definite refusal on the part of the witness, whether by reason of his particular training, or experience, or ideology, or point of view with regard to Government, where such a witness refuses to answer the question, presents a challenge to the whole field of justice, which cannot be shirked, or overlooked, I think, by any Judge in the Court.

I personally would have preferred to have had

the case referred to some other Judge, but as counsel
17 have expressly said that they did not wish to do that in their statement today, and indeed indicated that yesterday afternoon to me, I feel that I must perform what I regard as my duty in the matter, and not a duty to myself, not something that I am doing by virtue of offended dignity personally, but because of a vindication of the authority of the Court itself.

Now, under Rule 42 it is indicated that the Judge should make a certificate as to what happened. I am not entirely clear that the provision of Rule 42 applies to a situation such as we have here where the contempt does not consist of physicial misbehavior, or of intentional offensive language used to a Judge, but is a refusal to conform to the requirements of the law with respect to witnesses.

In this case and indeed in all other cases, criminal in nature, the Federal Courts and most State Courts too, if not all, the defendant is not required to take the witness stand in his defense. It is an option but not an obligation, and the statute goes on to say that no presumption shall be drawn against a defendant who elects not to testify. But where a defendant does elect to testify he must be bound by the rules of the Court which are applicable to other witnesses as well as to himself.

In this case Mr. Meyers did elect to testify.

He testified under direct examination freely for several hours, and he then was turned over for cross-examination to the United States Attorney. In the cross-examination various questions arose, which he refused to answer. He did not put his refusal to answer on any constitutional ground, nor indeed on any Party ground, nor on the policy of the association to which he belonged, but on the personal ground that he had made up his mind that he was unwilling to testify along certain lines.

Now, it does seem to me quite clear that the questions asked by Mr.Flynn, the series of questions which Mr. Meyers refused to answer, had a proper bearing in the case, at least, on cross-examination. The questions with regard to groups and clubs were directly in the case. It was in one of the counts of the indictment, if I remember correctly, that was set up as a part of the conspiracy, or if not actually in the indictment it was certainly a part of the Government's case.

Then, in an indictment involving conspiracy with five or six other people where only one takes the stand, how can it be suggested that it is not material to the case toknow whether that defendant who was a witness conspired with some one other of the five or six defendants?

Now you can readily see the materiality and impor-

tance of that issue, when you realize that possibly Mr. Meyers was the only witness on the defendants' side of the case who had knowledge with regard to his alleged co-conspirator Mr. Braverman. If the Government had not had other evidence as to Mr. Braverman's relationship to the whole matter, and Mr. Meyers refused to testify about it when it was in his knowledge, or within his knowledge, or assumed knowledge, would that not have been a very considerable defect in the Government's case, and if the Government had not had other evidence would it not have been really fatal perhaps to the Government's case?

There was other evidence and, therefore, it did not have the effect that it might have had.

I would like to comment with regard to the burden of proof. The burden is upon the Government always to establish its case by affirmative evidence, but when one of the defendants charged with a conspiracy with other defendants takes the stand in his own behalf and answers freely to questions which he thinks will be helpful to him, is it not perfectly clear that the questions on cross-examination with regard to other defendants, as relating to a conspiracy, are material to the case?

So the only question that I would have at all about the matter is whether these questions were material or not.

I thought at the time they were material. I still think so. But I realize the possibility that any single Judge may make a mistake with regard to a point of evidence, especially, where a trial lasts for three weeks andresults in more than two thousand pages of testimony and argument, and the law provides that theopinion of the single Judge is not always final in such matters because there is usually an opportunity for appeal.

Now, without prolonging the matter, I have prepared the Certificate, which refers to the particular pages of the record, and recites in general, somewhat more briefly than I have stated orally, what the situation was, and it concludes this way:

"As a result of the hearing" -- including the hearing today -- "I conclude that the refusal of the witness to answer the questions as directed constituted a wilful contempt of the authority of the court in the trial of the case. The witness was not personally disrespectful in manner to the court but his refusal to answer the questions as directed raises an issue that is fundamental in the administration of justice. The power of the court to require witnesses to answer questions which the judge finds proper, and where the refusal is not based on constitutional grounds of privilege, is vitally necessary for the administration of justice in the interest of litigants in the court.

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"I have therefore adjudged that the witness Meyers is guilty of contempt of court and he is hereby this 2nd day of April, 1952, committed to custody and imprisonment for the period of thirty (30) days. An illustrative case of very similar nature is United States v. Gates, 2d. Cir., 176 F. 2d. 78. See also Rule 42(a) Federal Rules of Criminal Procedure."

I had not signed the Certificate pending the hearing today. After the hearing, that is my conclusion.

MR. BUCHMAN: If the Court please, would it be possible to stay that until Friday morning?

THE COURT: To stay that until when?

MR. BUCHMAN: Until Friday morning when the sentences are to be imposed.

THE COURT: Yes. As a matter of fact, I gave some thought to that very matter too. I am perfectly willing to stay the beginning of the service of the sentence until Friday morning.

I think there is nothing further.

MR. FLYNN: Will that have any effect on his bail?

THE COURT: Pardon me, sir?

MR. FLYNN: Your Honor, will that have any effect on his present bail?

THE COURT: No, I think not. Mr. Meyers is still

22 under $15,000 bail in the main case.

MR. FLYNN: Yes, but I just wanted to call that to Your Honor's attention.

THE COURT: Have you any suggestion?

MR. FLYNN: No, I haven't any suggestion, only I thought the record ought to show that was considered.

THE COURT: Well, it was my thought that no further bail was necessary because he is already under bail of $15,000 for appearance here on Friday morning.

Adjourned.

(Thereupon, at 2:40 p.m., the trial of the above entitled case was adjourned until Friday, April 4, 1952 at 10 o'clock a. m.)

I certify that the foregoing is a true and correct transcript of the proceedings in the above case.

Harry M. Rainier

Official Reporter