Following its decisions in Borovsky v. Commissioner of Immigration, supra, and Mejoff v. Director of Prisons, the Court ordered that the writ issue and the detainees released. As precaution against the possibility of petitioners becoming a menace to public peace and safety the Court conditioned their release on the following terms: The petitioners shall be placed under surveillance of the immigration authorities or their agents in such form and manner as may be adequate to insure that they keep the peace and be available when the government is ready to deport them. The surveillance shall be reasonable and the question of reasonableness shall be submitted to the Supreme Court or to the Court of First Instance of Manila in case of abuse. Each of them shall likewise file a bond of ₱5,000.00 with sufficient surety or sureties.

PAZ MAURICIO

DOES THE SENATE HAVE POWER TO CONTINUE INDEFINITE DETENTION OF A RECALCITRANT WITNESS FOR CONTEMPT WHEN SUCH WITNESS' ANSWER IS CONSIDERED UNSATISFACTORY?

I. *Arnault's Efforts to Purge Himself of Contempt*

Jean Arnault was committed to the custody of the Sergeant-at-Arms and imprisoned in the New Bilibid Prison for his refusal to reveal the identity of the person to whom he allegedly gave the ₱440,000 representing part of the ₱5,000,000 stipulated purchase price of the Buenavista and Tambobong landed estates.[1] The resolution of the Senate committing him to prison was dated May 15, 1950. After months of incarceration, he asked the Senate committee for leave to purge himself of the contempt and on December 14, 1951, he testified under oath before the Senate committee that he gave the ₱440,000 to one "Jesse D. Santos." His counsel also introduced a 66-page affidavit subscribed to by Arnault in which he revealed the name of the person to whom he had delivered the ₱440,000. Arnault explained to the committee why in his previous testimony he failed to name "Jesse D. Santos" as the person to whom he gave the ₱440,000. He explained that he had a very vague recollection of the name of the man at the time and it was only after consultation with his secretary that he recalled the right name.[2]

II. *The Problem*

After he had given a reply to the question asked of him by the committee, does the fact, if it be a fact, that he did not truthfully answer the question justify his further detention?

---

[1] See *Arnault v. Nazareno*, 46 O.G. No. 7, 3100.

[2] The *Manila Chronicle*, December 15, 1951, p. 1.

III. *Alternative Views*

One view holds that when a person thus detained for contempt testified under oath as to the identity of the person, he thereby purged himself of the contempt committed against the Senate for refusing to testify, irrespective of whether his answer was true or not. In making such answer, the witness did not evade an examination nor contumaciously refuse to answer questions.[3] He answered the question directly, and unless the committing body had the power to determine summarily that the statement is false and to know the state of mind of the allegedly prevaricating witness, it would be difficult to see how the continuing detention can be sustained.

A contrary view holds that it is the duty of every citizen to give frank, sincere, and truthful testimony before a competent authority.[4] This might imply that unless such an answer is given, the

[3] *People ex rel. Falk v. Sheriff of New York County,* 180 NE 110, 111:

"Upon the record now before us, the untruthfulness of the answer may be a possible inference, but a necessary one it certainly is not. We are not at liberty to say, at all events as a matter of law, that 'the testimony is not a bona fide effort to answer the questions at all.' *United States v. Appel, supra.* True, indeed, it is that at an earlier stage of the inquiry the witness had declined to answer a like question on the ground that the answer might tend to incriminate him. We are asked how such a claim of privilege could have been genuine if the witness could truthfully have answered 'no.' But to put such a question is to ignore the character and limitations of the proceedings now before us. Conceivably the witness interposed the claim of privilege in a deceitful endeavor to hinder and delay the legislative inquiry. Whether such an endeavor would be a contempt of the Legislature, punishable by that body (Legislative Law [Consol. Laws, c. 32] sec. 4), we do not now consider. Such a contempt, if contempt it was, does not constitute the offense for which the witness is in custody."

Moynihan v. Devaney, 153 NYS 670, 672:

"Where, however, the judgment debtor does answer the question directly, he has not refused to answer, nor has he evaded the questions, and he cannot be punished for a contempt if he answers falsely."

To the same effect is *Manzella v. Ryan,* 77 NYS 132, 133:

"The judgment debtor apparently answered, although in an equivocal and unsatisfactory way, every question put to him; and, if he answered falsely, punishment for contempt of court is not the redress for that offense."

The same ruling from *Hurwitz v. Bernstein,* 141 NYS 1124:

"The debtor cannot be punished for a criminal contempt upon a motion, even though the affidavits presented to the judge tend to establish that the evidence given by him relating to such ownership is untrue."

[4] *Arnault v. Nazareno, supra,* note 1, at p. 3127 has the following dictum:

"As against the witness' inconsistent and unjustified claim to a constitutional right, is his clear duty as a citizen to give frank, sincere, and truthful testimony before a competent authority. The state has a right to exact fulfillment of a citizen's obligation, consistent of course with his right under the Constitution. The witness in this case has been vociferous and militant in claiming constitutional rights and privileges but patently recreant to his duties and obligations to the Government which protects those rights under the law. When a specific right and a specific obligation conflict with each other, and one is doubtful or uncertain while the other is clear and imperative, the former must give way to the latter."

contempt has not been purged. The committing body should not be deceived by untruthful answers and evasive or prevaricating statements. If a refusal to answer a proper question is beyond doubt contempt, the refusal to answer truthfully imports greater moral turpitude.[5] Further detention then is lawful.

IV. *Authority for the first view*

The New York case of *People ex. rel. Falk v. Sheriff*,[6] authority for the first view, deserves further discussion. One Doyle was engaged in lucrative practice before a municipal body having power to dispense privileges in connection with the construction of buildings. Called as a witness, Doyle admitted that he had collected more than $1 million as "fees" in this practice. He was then asked: "Have you ever bribed any public officer?" He declined to answer, asserting the privilege against self-incrimination. Acting pursuant to its empowering resolution, the committee purported to confer upon the witness immunity against prosecution. Doyle rejected the proffer, claiming that only a statute could give the committee power to clothe a witness immunity against prosecution,—a claim upheld by the Court of Appeals. The court nevertheless directed the witness to stand committed "until he answered the question whether he has bribed any public officer," grounding its decision on a section of the penal law.

The witness thereupon petitioned the committee for leave to purge himself of the contempt. At the hearing, the following questions were asked and the following answers given:

> "Q. Will you now tell this Committee whether or not you gave a bribe to any public official, and if so, to whom?
> A. I did not give a bribe to any public official. The answer is No.
> Q. You remember that your answer then was that to answer it would incriminate you?
> A. I do.
> Q. Are you now trifling with this Committee or are you making a serious and truthful answer?
> A. I am making a serious and truthful answer." [7]

Thereafter the chairman of the Joint Legislative Committee in open session announced the formal determination of the committee as follows: "The Committee stands divided, and by a vote of 5 to 4, the Committee declines to attest that Dr. Doyle, the witness, has purged himself of the contempt." The Court of Appeals of New York held otherwise:

---

[5] *People v. Doe*, 196 NW 757, 761, quoting from Chamberlayne on Evidence: "Of possible acts, few are so antagonistic to the objects of judicial administration as the intentional false swearing which seeks to baffle the search for truth, without which justice is impossible."

[6] 180 NE 110.

[7] *People ex rel. Falk v. Sheriff*, 252 NYS 387, 388.

> "To hold that he must stay in jail because he has given an answer 'no' would be equivalent to ruling that he must stay there till he gives the answer 'yes.' This would be to hold that he must confess the crime of bribery whether he has committed it or not." [8]

V. *Precedent supplied by a case in the House of Representatives of the United States*

There is a similar precedent from the United States House of Representatives to support the statement that a recalcitrant witness may be discharged on the ground that his testimony is unreliable and the proceedings would not produce any beneficial result.

On March 9, 1864, the joint committee on the conduct of the war

> *Resolved*, That Francis Waldron be ordered into the custody of the Sergeant-at-Arms of the Senate to be safely and securely kept until further order of the committee, said Francis Waldron having refused to testify before the committee.

On March 11, the committee ordered the witness discharged, on the ground that his testimony could not be relied on, and no beneficial result could be obtained by forcing him to testify.[9]

VI. *Analogy Between the Congressional and the Judiciary's Power to Punish for Contempt*

Light on the above question may be shed by the analogous exercise of the judicial power to punish for contempt. Our Rules of Court, Rule 64, section 7 reads as follows:

> "Sec. 7. *Imprisonment until order obeyed.*—When the contempt consists in the omission to do an act which is yet in the power of the accused to perform, he may be imprisoned by order of a superior court until he performs it."

If imprisonment is ordered under this section of the Rules of Court, it is remedial in purpose and coercive in character. Quaintly expressed, the imprisoned man "carries the keys to his prison in his own pocket." [10]

Under the above section, the courts have ordered the commitment of persons who refuse to pay alimony,[11] to deliver over to the husband part of the property which had been held to be conjugal and which might be in such person's possession or control,[12] to surrender books, documents, and the estate of a minor ward to the guardian newly appointed by the court,[13] and to make a detailed re-

---

[8] *People ex rel. Falk v. Sheriff*, 180 NE 110, 111.

[9] HINDS, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES, Sec. 1720, p. 72.

[10] *Harden v. Director of Prisons*, Philippine Decisions Annotated, 1948B, 509, 514.

[11] *Guevara v. Chanyungco*, 57 Phil. 992; *Hashim v. Concepcion*, 42 Phil. 694.

[12] *Slade Perkins v. Perkins*, 57 Phil. 205.

[13] *Doronila v. Lopez*, 3 Phil. 360.

port of the stock certificates in his possession.[14] There is no instance however where the commitment for contempt extended beyond a reasonable period. In *Harden v. Director of Prisons,*[15] Fred M. Harden was adjudged in contempt of court for disobeying the court's order to register the certificates of stock in his possession. On May 4, 1948, he was placed under arrest and confined at the Bilibid Prisons, Muntinglupa, Rizal, to be released only when he should have complied with the aforementioned order. Without having complied with the court's order and after motion and hearing, Harden was discharged from the custody of the Director of Prisons on August 30, 1948.[16] His confinement lasted for three months and twenty-six days. In the case of *Slade Perkins v. Director of Prisons,*[17] the petitioner, Idonah Slade Perkins was adjudged guilty of contempt by the Court of First Instance of Manila for disobedience of a final judgment thereof requiring the petitioner to render an accounting to her husband of all the conjugal property in her possession and under her control and deliver to her husband all such conjugal property as might result from said accounting. She was ordered committed to prison on May 10, 1933, there to stay until she complies with the court's judgment. On May 12, the counsel for Idonah Slade Perkins filed a petition for her immediate release on the ground that the confinement of the petitioner was making her "extremely nervous and endangers her health." Without having complied with the court's judgment and after a hearing on the petition, Idonah Slade Perkins was released from confinement on May 16, 1933.[18]

A few American cases have passed on this point.[19] In *McClung v. McClung,*[20] it appeared that the defendant was adjudged to be in contempt of court for refusing to pay alimony *pendente lite,* and was committed to jail. Although he paid none of the alimony, and made no attempt to pay it, he asked for a release from his confinement. The chancellor, in granting his motion, said: "He has not cleared his contempt, but I think that the authority of the court which he has set at naught has been vindicated in the imprisonment which he has undergone."

In *Nisbet v. Tindall,*[21] it was said in the opinion of the appellate court, affirming the discharge of the prisoner, "that it seems that His Honor must necessarily have been satisfied that the imprisonment, covering a period of 138 days, had been sufficiently long to vindicate the dignity of the court; and certainly he must have concluded that further imprisonment would not have the effect of com-

[14] *Harden v. Director of Prisons, supra,* note 10.

[15] *Ibid.*

[16] Record of Fred M. Harden, Documents Section, Bureau of Prisons, Muntinglupa, File No. 156486.

[17] 58 Phil. 271.

[18] Record of Idonah Slade Perkins, Documents Section, Bureau of Prisons, Muntinglupa, File No. 106866.

[19] Annotation, 56 ALR 701.

[20] *Ibid.,* citation.

[21] 41 SE 569.

pelling obedience to the order requiring the prisoner to pay over the money."

In the aforementioned cases, the persons detained were discharged after a time sufficient to vindicate the authority and dignity of the court committing them had elapsed. If this reason is applicable to the case of Arnault, his release might be proper not on the ground that he had purged himself of contempt but on the ground that he had been punished enough.

VII. *Arnault's Commitment A Sufficient Vindication of the Senate's Authority?*

There is this other point to consider. It is to be admitted that the failure or refusal of Arnault to give a satisfactory answer to the question asked of him by the Senate committee, especially when the answer given by him is found to be false, may be regarded as a "continuing contempt." Could he be imprisoned without limit however, until he gives an answer considered satisfactory by the committee? Is not his incarceration for over twenty months a sufficient purging of his contempt?

After imprisonment has been tried for a reasonable time, and proved unfruitful as a remedy, the question is material how and when it ought to terminate. Doubtless, there is some way to prevent imprisonment from becoming perpetual, or even from being unduly protracted.[22]

VIII. *Why Failure to Answer Truthfully is No Cause For Continuing Detention*

Those who adhere to the view that a witness purges himself of the contempt for refusing to testify by subsequently giving a reply regardless of whether his answers were true or not maintain that if such witness perjures himself in interposing the verified answer in question, his punishment must be left to the criminal court, where after proper proceedings, he may be tried for the offense as charged in the information.[23]

Indeed, it may be that Arnault's answers were not truthful, but they answered the question. If not truthful, he subjected himself to a charge of perjury, but not to a charge of contempt for refusing to answer a question. There is a marked difference between a refusal to answer a question as to render one guilty of contempt of the Senate committee directing an answer, and untruthfully answering the question. The facts of the record may tend to show perjury,

---

[22] *Perry v. Pernet*, 74 NE 609, citing *Thweatt v. Kiddoo*, 58 Ga. 300.

[23] *Fromme v. Gray*, 43 NE 215, 216:

"It is absurd to say that a false answer, in any sense deceives the court. The court is not misled by it, nor regards it otherwise than as a defense, which raises an issue to be tried by it. If we assume that the defendant perjured himself in interposing the verified answer in question, then his punishment must be left to the criminal branch of the court, where, after proper proceedings, he may be tried by a jury for the offense as charged in an indictment."

but do not show contempt based on the ground of a refusal to answer questions.

In *Ex parte Hudgings*,[24] it was held that a District Court had no power to adjudge a witness guilty of contempt solely because in the court's opinion he is willfully refusing to testify truthfully and to confine him until he shall have purged himself by giving testimony which the court deems truthful. The United States Supreme Court further stated:

> "It is true that there are decided cases which treat perjury, without any other element, as adequate to sustain a punishment for contempt. If the conception were true, it would follow that when a court entertained the opinion that a witness was testifying untruthfully the power would result to impose a punishment for contempt with the object or purpose of exacting from the witness a character of testimony which the court would deem to be truthful; and thus it would come to pass that a potentiality of oppression and wrong would result and the freedom of the citizen when called as a witness in a court would be gravely imperiled." [25]

IX. *Why Power of Senate to Continue Detention in Case of Perjury to be Upheld*

The proponents of the contrary view hold that the Senate or the courts have the right to punish for contempt manifest perjury in their presence, where such bodies know beyond doubt that the testimony is false.

If this view were adopted, Arnault's continued detention by order of the Senate would be justified. It is said that if a witness who testifies falsely were not declared in contempt, then the witness who is unwilling to make an untruthful answer, and yet is not willing to tell what he knows, and so remains silent, commits a contempt, while the witness who is equally unwilling to say what he knows, but who instead of remaining mute, readily gives an answer he knows to be false, is not guilty of contempt. For Arnault to deliberately swear falsely with a view to defeating justice is a more serious affront to the Senate than for him merely to refuse to answer. When a witness is required to answer, he is required to answer truthfully. According to this view, Arnault has no more complied with the order when he gives a false answer than when he does not answer at all. In either situation, he should be guilty of contempt.[26]

It becomes necessary then, under this view, to inquire as to whether the Senate had actual notice or legislative cognizance of the alleged falsity of Arnault's statements. The Senate or its special

---

[24] 249 US 378; 39 Sup. Ct. 337.

[25] *Ex parte Hudgings, ibid.*, at p. 340.

[26] *In re Rosenberg*, 63 NW 1065, 1066:

"The court had no right to be deceived by untruthful statements, nor to be satisfied by evasive or prevaricating answers. Prevarication by a witness has the same effect upon the administration of justice as a refusal to answer . . ."

See also Curtis and Curtis, "Story of a Notion in the Law of Criminal Contempt," 41 *Harv. L. Rev.* 51.

committee can not know that Arnault's testimony is false unless it is made to appear by the witness' own admission or perhaps by unquestioned or incontrovertible evidence. Otherwise the Senate, in not ordering his discharge from confinement, would be acting merely upon its belief or opinion, and not upon matter of fact of which it had actual notice or legislative cognizance. Knowledge of the falsity of Arnault's testimony is indispensable to the right of the Senate to exercise authority to order his continued detention. The record of the proceedings before it must show that the Senate special committee knew or could know that Arnault's testimony was false.[27]

It is said that the power to punish for contempt is an arbitrary power and should only be used when absolutely necessary in the interest of justice, and then with great care and discretion. But where the facts are admitted or demonstrated, the Senate would be shirking from a clear duty if it did not act. Circumstances may arise which would make it the duty of the body hearing the contempt charges to act even if it was obliged to weigh evidence.[28] The Senate is at liberty to decide whether a party committed perjury on testifying and to use the discretion thus reached in connection with the other material factors. It has plainly the right to use its knowledge of human nature and its experience in determining the character of the testimony given at the hearing in order to determine the ultimate question whether the party is guilty of contempt.[29] In an analogous case for a contempt of court,[30] it was found that there was much more on the record than the mere perjury of an ordinary witness. The perjury was under exceptional conditions which added elements of obstruction to the court. A considerable portion of the court's time and of the other parties had been consumed in hearings on that point. The test applied by the court was whether the reasonable tendency of the acts done constituted contempt. It was found in that case that there was plain obstruction to the performance of judicial duty and interference with the course of justice.

It is well to remember in this regard that the Senate special committee was not dealing with an ignorant, timid, unsophisticated foreign-born Filipino confused by the proceedings against him. Ra-

---

[27] *People v. Stone,* 181 Ill. App. 475, cited in *Riley v. Wallace,* 222 SW 1085, 1087:

"If false swearing in the presence of the court constitutes direct contempt, then judicial knowledge of its falsity is, in our opinion, indispensable to the right of the court to exercise authority to commit therefor, and there is nothing in the record to disclose that the court knew or could know that the testimony was false."

[28] See *Edwards v. Edwards,* 100 Atl. 608.

[29] *Blankenburg v. Commonwealth,* 172 NE 209, 212:

"Even if the trial judge regarded the perjury of the contemnor peculiarly flagrant in nature, there is no reason in law why this finding may not have been given weight with the other facts. He saw the witnesses and observed their appearance both while testifying and while before him. The contention that the trial judge erred because his findings were based on collateral inquiry and could have been made only by weighing conflicting evidence cannot be supported."

[30] *Ibid.*

ther, it was dealing with a shrewd, crafty businessman who knew more than he desired to disclose.

X. *Conclusion*

The conclusion yielded by the foregoing observations is that Jean Arnault should be discharged from imprisonment. He was originally committed to prison for disobeying an order of the Senate requiring him to testify. Punishment for such disobedience is said to be coercive in character.[31] When Arnault gave the name of the person to whom he gave the ₱440,000, formally, he made an answer to the question asked of him by the committee. In a sense, he could not be said to have refused to obey an order requiring him to testify. When contempt consists of an omission to perform some act or duty which is yet in the power of a witness to perform, he should be imprisoned only until he should have performed such act or duty. If Arnault's testimony before the committee is evidently false, he can be criminally prosecuted for false testimony under Article 183 [32] and 184 [33] of the Revised Penal Code. He should therefore be discharged from the commitment imposed by order of the Senate.

To hold otherwise would be to assume that the power exists in the Senate to hold Arnault in confinement until he consented to give a character of testimony which in the opinion of the Senate would not be perjury. The threat of continued detention might influence the witness to give a character of testimony which is intended solely to satisfy the Senate, although such witness believes otherwise.

Even if such alleged false testimony were punished by the Senate as contempt, still Arnault should be discharged from imprisonment. Such false testimony is a direct contempt of the Senate and is a disregard of its authority to fulfill its legislative functions. Punishment in such a case is punitive in nature and is imposed solely to vindicate such dignity and authority. Considering Arnault's continued detention, now going on its twenty-second month, the Senate's dignity and authority is deemed to have been sufficiently vindicated. He should therefore be released.

---

[31] See *Creasy v. Hall,* 148 SW 914; *Slade Perkins v. Director of Prisons, supra,* note 17, at p. 279; *Harden v. Director of Prisons, supra,* note 10.

[32] Art. 183, Revised Penal Code states:

"The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein."

[33] Art. 184, Revised Penal Code states:

"Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section."

Sound reasons of public policy dictate that the party committed for contempt should be discharged when his continued detention would prove fruitless and no desirable result could be expected therefrom. In the apt phrase of Chief Justice White of the United States Supreme Court, the power to commit for contempt "is a means to an end and not the end itself." [34]

The power to punish for contempt is in a sense arbitrary and dangerous, whether exercised by courts or legislative bodies. It is dangerous because the party injured becomes the judge in his own case of both law and fact. It is only to be sustained by the extremest necessity. The limits of the power so implied in either House of Congress are not clearly marked. They arise from necessity, and can not extend beyond the limits of necessity.[35] It is a noteworthy fact that in contempt proceedings against recalcitrant witnesses in the United States Senate and House of Representatives those bodies when called upon to act in the case of an alleged contempt have aimed to make the punishment light rather then severe. Undoubtedly, this is due to a just sense of the arbitrary character of the contempt proceedings.[36]

The liberty of the citizen is to be sacredly cherished. A witness should not be detained in prison for a length of time disproportionate to the offense committed by him. The continued detention of Arnault can serve no further purpose nor can it be of benefit to the public weal. For the reasons discussed above, he should be freed.

PASTOR B. SISON

SOCIAL AND ECONOMIC RIGHTS IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Assured of the traditional freedoms of speech, assembly, worship, and the rights of suffrage, citizenship, due process, equal protection, and those other familiar political and civil rights that have been well-guaranteed by the first historic declarations of the Rights of Man, the individual does not necessarily receive the fullest opportunity for the enjoyment of his life within the state. There has been a shifted emphasis from political and civil rights to the social and economic rights, or what may be classified as liberty and equality on the one hand, and security on the other. The former rights have by no means grown any less important, for it is as true now as then that they should be basic, but the recent trend only goes to show that the individual liberties alone are not the minimum rights that

[34] Cited in *Lopez v. de los Reyes*, 55 Phil. 170, 178.

[35] *In re Davis*, 49 Pac. 160.

[36] HINDS, *op. cit., supra*, note 9, sec. 1722, p. 74.