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92 S.Ct. 1653
Supreme Court of the United States

Charles Joseph KASTIGAR and
Michael Gorean Stewart, Petitioners,
v.
UNITED STATES.

No. 70—117.
|
Argued Jan. 11, 1972.
|
Decided May 22, 1972.
|
Rehearing Denied June 26, 1972.

See 408 U.S. 931, 92 S.Ct. 2478.

Synopsis
Petitioners were ordered to appear before a grand jury and to answer questions under grantof immunity and, on refusal of the petitioners to answer questions, after asserting their privilege against compulsory self-incrimination, the United States District Court for the Central District of California adjudged petitioners to be in civil contempt and ordered them confined. The Court of Appeals, Ninth Circuit, affirmed, 440 F.2d 954. The Supreme Court granted certiorari, and, speaking through Mr. Justice Powell, held that although a grant of immunity must afford protection commensurate with that afforded by the privilege against compulsory self-incrimination, it need not be broader, and immunity from use and derivative use is coextensive with the scope of the privilege and is sufficient to compel testimony over claim of privilege. The Court also held that in any subsequent criminal prosecution of a person who has been granted immunity to testify, the prosecution has the burden of proving affirmatively that evidence proposed to be used is derived from a legitimate source wholly independent of compelled testimony.

Affirmed.

Mr. Justice Douglas and Mr. Justice Marshall dissented and filed opinions.

Mr. Justice Brennan and Mr. Justice Rehnquist took no part in consideration or decision.

****1654 *441** Syllabus [*]

The United States can compel testimony from an unwilling witness who invokes the Fifth Amendment privilege against compulsory self-incrimination by conferring immunity, as provided by 18 U.S.C. s 6002, from use of the compelled testimony and evidence derived therefrom in subsequent criminal proceedings, as such immunity from use and derivative use is coextensive with the scope of the privilege and is sufficient to compel testimony over a claim of the privilege. Transactional immunity would afford broader protection than the Fifth Amendment privilege, and is not constitutionally required. In a subsequent criminal prosecution, the prosecution has the burden of proving affirmatively that evidence proposed to be used is derived from a legitimate source wholly independent of the compelled testimony. Pp. 1655—1666.

440 F.2d 954, affirmed.

Attorneys and Law Firms

****1655** Hugh R. Manes, Los Angeles, Cal., for petitioners.

Sol. Gen. Erwin N. Griswold, for respondent.

Opinion

***442** Mr. Justice POWELL delivered the opinion of the Court.

This case presents the question whether the United States Government may compel testimony from an unwilling witness, who invokes the Fifth Amendment privilege against compulsory self-incrimination, by conferring on the witness immunity from use of the compelled testimony in subsequent criminal proceedings, as well as immunity from use of evidence derived from the testimony.

Petitioners were subpoenaed to appear before a United States grand jury in the Central District of California on February 4, 1971. The Government believed that petitioners were likely to assert their Fifth Amendment privilege. Prior to the scheduled appearances, the Government applied to the

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District Court for an order directing petitioners to answer questions and produce evidence before the grand jury under a grant of immunity conferred pursuant to 18 U.S.C. ss 6002, 6003. Petitioners opposed issuance of the order, contending primarily that the scope of the immunity provided by the statute was not coextensive with the scope of the privilege against self-incrimination, and therefore was not sufficient to supplant the privilege and compel their testimony. The District Court rejected this contention, and ordered petitioners to appear before the grand jury and answer its questions under the grant of immunity.

Petitioners appeared but refused to answer questions, asserting their privilege against compulsory self-incrimination. They were brought before the District Court, and each persisted in his refusal to answer the grand jury's questions, notwithstanding the grant of immunity. The court found both in contempt, and committed them to the custody of the Attorney General until either they answered the grand jury's questions or the term of the grand jury expired.[1] The Court of ***443** Appeals for the Ninth Circuit affirmed. Stewart v. United States, 440 F.2d 954 (CA9 1971). This Court granted certiorari to resolve the important question whether testimony may be compelled by granting immunity from the use of compelled testimony and evidence derived therefrom ('use and derivative use' immunity), or whether it is necessary to grant immunity from prosecution for offenses to which compelled testimony relates ('transactional' immunity). 402 U.S. 971, 91 S.Ct. 1668, 29 L.Ed.2d 135 (1971).

I

The power of government to compel persons to testify in court or before grand juries and other governmental agencies is firmly established in Anglo-American jurisprudence.[2] The power with respect to courts was established by statute in England as early as 1562,[3] and Lord Bacon observed in 1612 that all subjects owed the King their 'knowledge and discovery.'[4] While it is not clear when grand juries first resorted to compulsory process to secure the attendance and testimony of witnesses, the general common-law principle that 'the public has a right to every man's evidence' was considered an 'indubitable certainty' that 'cannot be denied' by 1742.[5] The ****1656** power to compel testimony, and the corresponding duty to testify, are recognized in the Sixth Amendment ***444** requirements that an accused be confronted with the witnesses against him, and have compulsory process for obtaining witnesses in his favor. The first Congress recognized the testimonial duty in the Judiciary Act of 1789, which provided for compulsory attendance of witnesses in the federal courts.[6] Mr. Justice White noted the importance of this essential power of government in his concurring opinion in Murphy v. Waterfront Comm'n, 378 U.S. 52, 93—94, 84 S.Ct. 1594, 1611, 12 L.Ed.2d 678 (1964): 'Among the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel residents to testify in court or before grand juries or agencies. See Blair v. United States, 250 U.S. 273, 39 S.Ct. 468, 63 L.Ed. 979. Such testimony constitutes one of the Government's primary sources of information.'

But the power to compel testimony is not absolute. There are a number of exemptions from the testimonial duty,[7] the most important of which is the Fifth Amendment privilege against compulsory self-incrimination. The privilege reflects a complex of our fundamental values and aspirations,[8] and marks an important advance in the development of our liberty.[9] It can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory;[10] and it ***445** protects against any disclosures which the witness reasonably believes could be used in a criminal prosecution or could lead to other evidence that might be so used.[11] This Court has been zealous to safeguard the values which underlie the privilege.[12]

Immunity statutes, which have historical roots deep in Anglo-American jurisprudence,[13] are not incompatible ***446** with ****1657** these values. Rather, they seek a rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify. The existence of these statutes reflects the importance of testimony, and the fact that many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime. Indeed, their origins were in the context of such offenses,[14] ***447** and their primary use has been to investigate such

offenses.[15] Congress included immunity statutes in many of the regulatory measures adopted in the first half of this century.[16] Indeed, prior to the enactment of the statute under consideration in **1658 this case, there were in force over 50 federal immunity statutes.[17] In addition, every State in the Union, as well as the District of Columbia and Puerto Rico, has one or more such statutes.[18] The commentators,[19] and this Court on several occasions,[20] have characterized immunity statutes as essential to the effective enforcement of various criminal statutes. As Mr. Justice Frankfurter observed, speaking for the Court in Ullmann v. United States, 350 U.S. 422, 76 S.Ct. 497, 100 L.Ed. 511 (1956), such statutes have 'become part of our constitutional fabric.'[21] Id., at 438, 76 S.Ct., at 506.

*448 II

Petitioners contend, first, that the Fifth Amendment's privilege against compulsory self-incrimination, which is that '(n)o person .. . shall be compelled in any criminal case to be a witness against himself,' deprives Congress of power to enact laws that compel self-incrimination, even if complete immunity from prosecution is granted prior to the compulsion of the incriminatory testimony. In other words, petitioners assert that no immunity statute, however drawn, can afford a lawful basis for compelling incriminatory testimony. They ask us to reconsider and overrule Brown v. Walker, 161 U.S. 591, 16 S.Ct. 644, 40 L.Ed. 819 (1896), and Ullmann v. United States, supra, decisions that uphold the constitutionality of immunity statutes.[22]

We find no merit to this contention and reaffirm the decisions in Brown and Ullmann.

III

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