

# The Burger Court Opinion Writing Database

## *Codispoti v. Pennsylvania*

418 U.S. 506 (1974)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



73-5615

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

Harry

If you are still "awing  
their circulations" in Codispote &  
Taylor - Hayes, will you await  
mine. It may concur in result but  
offer something less biting than WFR.

WRB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

June 20, 1974

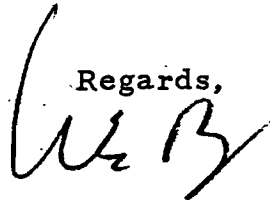
Re: 73-5615 - Codispoti v. Pennsylvania

MEMORANDUM TO THE CONFERENCE:

I was about to circulate in Codispoti on a basis that tracked a good deal of Harry's circulation of yesterday.

I now join Harry and Bill Rehnquist's Part II relating to Codispoti.

Regards,




Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

May 16, 1974

Dear Byron:

In 73-5615, CODISPOTI AND LANGNES  
v. PENNSYLVANIA please sign me up on your  
dotted line.

  
WILLIAM O. DOUGLAS

Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

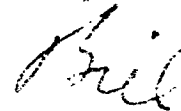
May 16, 1974

RE: No. 73-5615 Codispoti, et al.  
v. State of Pennsylvania

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

May 15, 1974

73-5615, Codispoti v. Pennsylvania

Dear Byron,

I am glad to join the opinion you have  
written for the Court in this case.

Sincerely yours,



Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

June 19, 1974

73-5615, Codispoti v. Penna.

Dear Harry,

In your dissenting opinion you have put your finger precisely on the problem that has caused me concern in this case from the beginning. Accordingly, although I wrote Byron a note some time ago joining his opinion, I have decided to withdraw from his opinion and join your dissent.

Sincerely yours,

P.S.  
1.

Mr. Justice Blackmun

Copies to the Conference

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

**SUPREME COURT OF THE UNITED STATES**

dated: 5-15-74

No. 73-5615

Recirculated: \_\_\_\_\_

Dominick Codispoti and Her- } On Writ of Certiorari to  
bert Langnes, Petitioners, } the Supreme Court of  
v. } Pennsylvania for the  
State of Pennsylvania. } Western District.

[May —, 1974]

Mr. JUSTICE WHITE delivered the opinion of the Court.

In December 1966, petitioners Dominick Codispoti and Herbert Langnes were codefendants with Richard Mayberry in a criminal trial ending in a verdict of guilty. Each acted as his own counsel, although legal advice was available from appointed counsel. At the conclusion of the trial, the judge pronounced Mayberry guilty of 11 contempts committed during trial and sentenced him to one to two years for each contempt. Codispoti was given like sentences for each of seven separate contempts. Langnes was sentenced to one to two years on each of six separate citations. Mayberry's total sentence was thus 11 to 22 years, Codispoti's seven to 14 years and Langnes' six to 12 years. The contempt convictions were affirmed by the Pennsylvania Supreme Court. This Court granted Mayberry's petition for certiorari, 397 U. S. 1020, and vacated the judgment of the Pennsylvania court, directing that "on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, [sit] in judgment on the conduct of petitioner as shown by the record." *Mayberry v. Pennsylvania*, 400 U. S. 455, 466 (1971).

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P. 10

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 73-5615

Recirculated: 5-20-74

Dominick Codispoti and Her-	}	On Writ of Certiorari to	
bert Langnes, Petitioners,			the Supreme Court of
v.			Pennsylvania for the
State of Pennsylvania.		Western District.	

[May —, 1974]

Mr. JUSTICE WHITE delivered the opinion of the Court.

In December 1966, petitioners Dominick Codispoti and Herbert Langnes were codefendants with Richard Mayberry in a criminal trial ending in a verdict of guilty. Each acted as his own counsel, although legal advice was available from appointed counsel. At the conclusion of the trial, the judge pronounced Mayberry guilty of 11 contempts committed during trial and sentenced him to one to two years for each contempt. Codispoti was given like sentences for each of seven separate contempts. Langnes was sentenced to one to two years on each of six separate citations. Mayberry's total sentence was thus 11 to 22 years, Codispoti's seven to 14 years and Langnes' six to 12 years. The contempt convictions were affirmed by the Pennsylvania Supreme Court. This Court granted Mayberry's petition for certiorari, 397 U. S. 1020, and vacated the judgment of the Pennsylvania court, directing that "on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, [sit] in judgment on the conduct of petitioner as shown by the record." *Mayberry v. Pennsylvania*, 400 U. S. 455, 466 (1971).

6-7

To: The Chief Justice  
Mr. Justice Douglas  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

3rd DRAFT

Circulated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

Recirculated: 6-13-7

No. 73-5615

Dominick Codispoti and Herbert Langnes, Petitioners,  
v.  
State of Pennsylvania.

On Writ of Certiorari to  
the Supreme Court of  
Pennsylvania for the  
Western District.

[June —, 1974]

Mr. JUSTICE WHITE delivered the opinion of the Court.

In December 1966, petitioners Dominick Codispoti and Herbert Langnes were codefendants with Richard Mayberry in a criminal trial ending in a verdict of guilty. Each acted as his own counsel, although legal advice was available from appointed counsel. At the conclusion of the trial, the judge pronounced Mayberry guilty of 11 contempts committed during trial and sentenced him to one to two years for each contempt. Codispoti was given like sentences for each of seven separate contempts. Langnes was sentenced to one to two years on each of six separate citations. Mayberry's total sentence was thus 11 to 22 years, Codispoti's seven to 14 years and Langnes' six to 12 years. The contempt convictions were affirmed by the Pennsylvania Supreme Court. This Court granted Mayberry's petition for certiorari, 397 U. S. 1020, and vacated the judgment of the Pennsylvania court, directing that "on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, [sit] in judgment on the conduct of petitioner as shown by the record." *Mayberry v. Pennsylvania*, 400 U. S. 455, 466 (1971).

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pp 1, 7, 9

To: The Chief Justice  
Mr. Justice Douglas  
✓ Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: White, J.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

Recirculated: 6-21-74

No. 73-5615

Dominick Codispoti and Her-	}	On Writ of Certiorari to the Supreme Court of Pennsylvania for the Western District.
bert Langnes, Petitioners,		
v.		
State of Pennsylvania.		

[June —, 1974]

Mr. JUSTICE WHITE delivered the opinion of the Court.\*

In December 1966, petitioners Dominick Codispoti and Herbert Langnes were codefendants with Richard Mayberry in a criminal trial ending in a verdict of guilty. Each acted as his own counsel, although legal advice was available from appointed counsel. At the conclusion of the trial, the judge pronounced Mayberry guilty of 11 contempts committed during trial and sentenced him to one to two years for each contempt. Codispoti was given like sentences for each of seven separate contempts. Langnes was sentenced to one to two years on each of six separate citations. Mayberry's total sentence was thus 11 to 22 years, Codispoti's seven to 14 years and Langnes' six to 12 years. The contempt convictions were affirmed by the Pennsylvania Supreme Court. This Court granted Mayberry's petition for certiorari, 397 U. S. 1020, and vacated the judgment of the Pennsylvania court, directing that "on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, [sit] in judgment on the conduct of petitioner as shown by the record." *Mayberry v. Pennsylvania*, 400 U. S. 455, 466 (1971).

\*Part II of the opinion is joined only by Mr. JUSTICE DOUGLAS, Mr. JUSTICE BRENNAN, and Mr. JUSTICE POWELL.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

May 16, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-5615 --Codispoti v. State of Pennsylvania

In due time, I will circulate a separate opinion  
in this case.

*TM*  
T. M.

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-5615

From: Marshall, J.

Circulated: MAY 23 1974

Recirculated: \_\_\_\_\_

Dominick Codispoti and Herbert Langnes, Petitioners,  
v.  
State of Pennsylvania. } On Writ of Certiorari to  
the Supreme Court of  
Pennsylvania for the  
Western District.

[May —, 1974]

MR. JUSTICE MARSHALL, concurring in the result.

While I concur in the judgment of the Court, and in much of the Court's opinion, I cannot join the Court's pronouncements, *ante*, at 6-7, which suggest that the trial judge in a situation such as we have here could impose an unlimited number of separate, consecutive six-month sentences upon a defendant "for separate contemptuous acts during the trial," so long as the judge convicts and punishes summarily upon the occurrence of each contemptuous act. In my view, the Sixth Amendment right to jury trial would be equally applicable to this situation.

I

The Court's opinion observes that "[t]he Sixth Amendment represents a 'deep commitment of the Nation to the right to jury trial in serious criminal cases as a defense against arbitrary law enforcement.'" *Ante*, at 8, quoting *Duncan v. Louisiana*, 391 U. S. 145, 156 (1968). The opinion further recognizes that it is the trial judge who in a single proceeding acts as prosecutor, "determin[ing] which and how many acts of contempt the citation will cover"; as trier of fact, "determin[ing] guilt or innocence absent a jury"; and as judge, "impos[ing] the sentences and . . . determin[ing] whether they will run consecutively or concurrently." *Ante*, at 8. Thus, the Court

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

No. 73-5615

Recirculated: JUN 11 1974

Dominick Codispoti and Herbert Langnes, Petitioners,  
v.  
State of Pennsylvania, } On Writ of Certiorari to  
the Supreme Court of  
Pennsylvania for the  
Western District,

[June —, 1974]

MR. JUSTICE MARSHALL, concurring in the result.

While I concur in the judgment of the Court, and in much of the Court's opinion, I cannot join the Court's pronouncements, *ante*, at 6-7, which suggest that the trial judge in a situation such as we have here could impose an unlimited number of separate, consecutive six-month sentences upon a defendant "for separate contemptuous acts during the trial," so long as the judge convicts and punishes summarily upon the occurrence of each contemptuous act. In my view, the Sixth Amendment right to jury trial would be equally applicable to this situation.

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To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist

3rd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 73-5615

Recirculated: JUN 21 1974

Dominick Codispoti and Herbert Langnes, Petitioners,  
v.  
State of Pennsylvania. } On Writ of Certiorari to  
the Supreme Court of  
Pennsylvania for the  
Western District.

[June —, 1974]

MR. JUSTICE MARSHALL, concurring.

I concur in the judgment of the Court, and in Parts I and III of the Court's opinion. However, I cannot join Part II of the Court's opinion, which suggests that the trial judge in a situation such as we have here could impose an unlimited number of separate, consecutive six-month sentences upon a defendant "for separate contemptuous acts during the trial," so long as the judge convicts and punishes summarily upon the occurrence of each contemptuous act. In my view, the Sixth Amendment right to jury trial would be equally applicable to this situation.

I

The Court's opinion observes that "[t]he Sixth Amendment represents a 'deep commitment of the Nation to the right to jury trial in serious criminal cases as a defense against arbitrary law enforcement.'" *Ante*, at 8, quoting *Duncan v. Louisiana*, 391 U. S. 145, 156 (1968). The opinion further recognizes that it is the trial judge who in a single proceeding acts as prosecutor, "determin[ing] which and how many acts of contempt the citation will cover"; as trier of fact, "determin[ing] guilt or innocence absent a jury"; and as judge, "impos[ing] the sentences and . . . determin[ing] whether they will run consecutively or concurrently." *Ante*, at 8. Thus, the Court

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

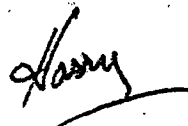
May 20, 1974

Re: No. 73-5615 - Codispoti v. Pennsylvania

Dear Byron:

I shall await the other circulations before coming  
to rest on this case.

Sincerely,



Mr. Justice White

cc: The Conference



To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan ✓  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

From: Blackmun, J.

Circulated: 6/19/74

Recirculated: \_\_\_\_\_

No. 73-5615 - Codispoti v. Pennsylvania

MR. JUSTICE BLACKMUN, dissenting.

In Bloom v. Illinois, 391 U.S. 194 (1968), this Court established a constitutional right to a jury trial of a charge for a criminal contempt where the penalty imposed exceeded six months. There the contempt consisted of a lawyer's filing of a spurious will for probate. It was not a direct contempt in open court. Where, as in Bloom, the criminal contempt takes place outside the presence of the court, there is little to distinguish the contempt, for purposes of using a jury as the fact finder, from the run-of-the-mill criminal offense. In this respect, the result in Bloom was a logical one.

In the present case, however, the contempt took place in open court and the incident and all its details are fully preserved on the trial record. The Court's opinion does not specify and leaves unclear what facts, if any, remain to be determined. I am at a loss, therefore, to see the role a jury is to perform. The perceived need to remove the case from the contemned judge is fully served by assigning the case to a different judge. See Taylor v.

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

JUSTICES: Blackmun, J.

No. 73-5615

Circulated: \_\_\_\_\_

Recirculated: 6/20/74

Dominick Codispoti and Herbert Langnes, Petitioners,  
v.  
State of Pennsylvania.

On Writ of Certiorari to  
the Supreme Court of  
Pennsylvania for the  
Western District.

[June —, 1974]

MR. JUSTICE BLACKMUN, with whom THE CHIEF JUSTICE and MR. JUSTICE STEWART join, dissenting.

In *Bloom v. Illinois*, 391 U. S. 194 (1968), this Court established a constitutional right to a jury trial of a charge for a criminal contempt where the penalty imposed exceeded six months. There the contempt consisted of a lawyer's filing of a spurious will for probate. It was not a direct contempt in open court. Where, as in *Bloom*, the criminal contempt takes place outside the presence of the court, there is little to distinguish the contempt, for purposes of using a jury as the fact finder, from the run-of-the-mill criminal offense. In this respect, the result in *Bloom* was a logical one.

In the present case, however, the contempt took place in open court and the incident and all its details are fully preserved on the trial record. The Court's opinion does not specify and leaves unclear what facts, if any, remain to be determined. I am at a loss, therefore, to see the role a jury is to perform. The perceived need to remove the case from the contemned judge is fully served by assigning the case to a different judge. See *Taylor v. Hayes*, ante; *Hayberry v. Pennsylvania*, 400 U. S. 455 (1971). And, as MR. JUSTICE REHNQUIST points out, since the new judge, not the jury, will impose the sentence, there is nothing the jury can do by way of mitigating an excessive punishment.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

April 1, 1974

No. 73-5615 Codispoti v. Pennsylvania

Dear Chief:

My recollection is that there were five votes at the Conference to DIG the above case.

Although I still have some reluctance not to decide a case on the merits after it has been briefed and argued, the history and facts of this case make it a singularly poor vehicle for plenary treatment. I suppose something would have to be written articulating the reasons for the above disposition of the case. Subject to seeing what reasons can be advanced, I write this note to say that I will certainly consider joining the five of you who thought this was an appropriate disposition.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF

LEWIS F. POWELL, JR.

May 17, 1974

No. 73-6515 Codispoti v. Pennsylvania

Dear Byron:

Please join me.

Sincerely,

*Lewis*

Mr. Justice White

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 17, 1974

Re: No. 73-5615 - Codispoti v. Pennsylvania

Dear Byron:

I will shortly circulate a dissenting opinion in  
this case.

Sincerely,

*WHR*

Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 20, 1974

Re: No. 73-5615 - Codispoti v. Pennsylvania

Dear Harry:

Please join me in your dissent.

Sincerely,

Mr. Justice Blackmun

Copies to the Conference