

*Property Eva Reich, D.*

No. 638

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**In the Supreme Court of the United States**

OCTOBER TERM, 1956

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WILHELM REICH, THE WILHELM REICH FOUNDATION,  
AND MICHAEL SILVERT, *Petitioners*

v.

UNITED STATES OF AMERICA

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On Petition for a Writ of Certiorari to the United States Court  
of Appeals for the First Circuit

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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**In the Supreme Court of the United States**

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**OPINION BELOW**

The opinion of the Court of Appeals (Pet. 1a-8a)  
is not yet reported.

**JURISDICTION**

The judgment of the Court of Appeals was entered  
on December 11, 1956 (Pet. 9a). The petition for a  
writ of certiorari was filed on January 10, 1957. The  
jurisdiction of this Court is invoked under 28 U.S.C.  
1254(1).

(1)

**QUESTION PRESENTED**

Whether, in a contempt proceeding for admitted violation of an injunction, petitioners could attack the injunction as obtained by fraud of government agents.

**STATUTES INVOLVED**

18 U.S.C. 401 provides:

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

\* \* \*

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

Sections 301(a) and (k), and Section 302(a) and (b) of the Federal Food, Drug and Cosmetic Act of 1938, 52 Stat. 1042, 1043, 21 U.S.C. 331(a) and (k), and 332(a) and (b), provide:

Sec. 301. The following acts and the causing thereof are hereby prohibited:

(a) The introduction or delivery for introduction into interstate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

\* \* \*

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in interstate commerce and results in such article being misbranded.

Sec. 302. (a) The district courts of the United States and the United States courts of the Terri-

tories shall have jurisdiction, for cause shown, and subject to the provisions of section 17 (relating to notice to opposite party) of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended (U.S.C. 1934 ed., title 28, sec. 381), to restrain violations of section 301, except paragraphs (e), (f), (h), (i), and (j).

(b) In case of violation of an injunction or restraining order issued under this section, which also constitutes a violation of this Act, trial shall be by the court, or, upon demand of the accused, by a jury. Such trial shall be conducted in accordance with the practice and procedure applicable in the case of proceedings subject to the provisions of section 22 of such Act of October 15, 1914, as amended (U.S.C. 1934 ed., title 28, sec. 387).

**STATEMENT**

The petition for a writ of certiorari seeks review of the affirmance of a judgment of contempt imposed after conviction by a jury under 18 U.S.C. 401 and Section 302(b) of the Federal Food, Drug and Cosmetic Act of 1938 (*supra*) for violating the terms of an injunction issued by the United States District Court for the District of Maine. Wilhelm Reich was sentenced to a term of two years' imprisonment; Michael Silvert was sentenced to a term of one year and one day; and the Wilhelm Reich Foundation was fined \$10,000 (R. 367). Their convictions were affirmed on appeal (Pet. 9a).

The injunction decree, which petitioners were found to have violated, was issued on March 19, 1954, under the authority of Section 302(a) of the Federal Food,

Drug and Cosmetic Act (*supra*, pp. 2-3), and was obtained upon default (R. 441). The only response to the complaint filed by the government was contained in a letter from petitioner Reich to the District Court in which Reich stated that his position in the world of science would not permit his appearance in the case since it would imply an admission of the authority of the government to pass judgment on "cosmic orgone energy" (Pet. 2a).

The decree (R. 441-446) enjoined, *inter alia*, Wilhelm Reich, the Wilhelm Reich Foundation, and all persons in active concert or participation with them, from violating the provisions of the Federal Food, Drug, and Cosmetic Act, by shipping in interstate commerce certain devices known as "orgone energy accumulators" with misleading labeling to the effect that their use would be beneficial in the cure, mitigation, treatment, and prevention of a great number of diseases ranging from the common cold to cancer. The decree also contained certain affirmative directives (R. 443-446), to the effect that orgone energy accumulator devices owned or controlled by the defendants, together with the literature constituting their labeling, which had been shipped in interstate commerce, should be recalled to the defendant's place of business and dismantled for salvage or destroyed; that certain identified items of printed matter should be destroyed and others should not again be employed as labeling; and that compliance should be under the supervision of employees of the Food and Drug Administration. Petitioners do not deny that they were served a copy of the court injunction and that they disobeyed its terms.

On October 10, 1955, this criminal contempt action was commenced against petitioners by the filing of an information charging them with disobedience of the terms of the injunction (R. 470-482). At a hearing on November 4, 1955, petitioner Reich moved that the information be dismissed on the ground that the injunction was obtained by the misrepresentation and concealment of facts and illegal procedural maneuvering (R. 512). Petitioner Reich offered to show that the government misrepresented the facts, and thus practiced fraud upon the court, when it charged, in the complaint for the injunction, that his orgone energy accumulator was a fraudulent device (R. 513, 515, 519, 520). The court explained that petitioner Reich was in the wrong forum and should have made such a showing when he had the opportunity to defend against the complaint for an injunction, instead of refusing to appear, thus forcing the court to accept the facts alleged in the complaint as true (R. 514, 515-516, 519, 520).

At a pretrial hearing on the contempt information, the court refused to consider petitioner Reich's motive in defaulting in the action for the injunction (which Reich explained was based on the fact that the court had no jurisdiction over basic natural science and because of a conspiracy against him) (R. 514, 517). It ruled that the jurisdiction of the court in the injunction proceeding had already been affirmatively determined in the injunction proceeding itself, and also by the Court of Appeals in a separate action (R. 516-517).<sup>1</sup>

<sup>1</sup> After the default decree was entered against the defendants in the action for an injunction, a group of men, including petitioner Silvert, who claimed they used the science of orgonomy in their

At the trial of the case before the jury, evidence was introduced to establish the disobedience to the injunction (see, e.g., R. 170, 189, 193-194, 197-198, 244-245, 248-249, 262, 268-269, 282, 285, 320, 343). Petitioner Reich admitted that he did not obey the injunction (R. 117, 329, 336, 532). Petitioner Silvert, in answer to a query by petitioner Reich, conceded that they (he and Reich) were determined to resist the injunction, went about armed, and were ready to go to jail rather than submit to its terms (R. 343).

#### ARGUMENT

Petitioners do not deny that they had notice of the injunction and disobeyed its terms. They renew here the arguments made before the courts below that the court issuing the injunction had no jurisdiction, on the broad ground that the government has no jurisdiction over basic natural science, and on the more specific ground that the injunction was obtained through fraud.

1. The issue of jurisdiction over basic natural science is not involved in this case as the District Court pointed out to petitioners at the pre-trial hearing (R. 515). This injunction enjoins petitioners from shipping misbranded devices through interstate commerce and restrains them from doing anything to the devices while held for sale after such shipment, which results in their becoming misbranded. Petitioners may experiment as they please and hold such theories as they choose. They may not make

practice of psychiatry, attempted to intervene to have the judgment set aside and to permit them to answer the complaint. Their petition was denied. *United States v. Wilhelm Reich Foundation*, 17 F.R.D. 96, affirmed *per curiam*, *sub. nom. Baker et al v. United States*, 221 F. 2d 957 (C.A. 1), certiorari denied, 350 U.S. 842.

false assertions of fact with respect to the curative power of articles shipped through the channels of interstate commerce. *Seven Cases v. United States*, 239 U.S. 510, 516-517.

2. The accusation of fraud, misrepresentation, and misconduct of the government officials in obtaining the injunction, whatever their validity, have no relevance in a contempt proceeding for violation of the injunction. The issue may be raised by an independent action to have the injunction vacated under the provisions of Rule 60(b) of the Federal Rules of Civil Procedure. As long as an injunction is in force and effect, however, it must be obeyed. See *United States v. United Mine Workers of America*, 330 U.S. 258, 293; *Howat v. Kansas*, 258 U.S. 181, 189-190. To hold otherwise would make a mockery of the judicial power of the United States. *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 450.

#### CONCLUSION

For the foregoing reasons, we respectfully submit that this petition for a writ of certiorari should be denied.

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FEBRUARY, 1957.