

Having heard what has been said by counsel for the Government and also by counsel for the defendant in the several cases in which he charged with crimes and in which he is now to be sentenced, I proceed to impose sentences.

Case No. 14,578

First I impose sentence in case No. 14,578 in which Mr. Carrollo was tried and found guilty by a jury. The indictment in the case charged the defendant with the crime of perjury. The proof of his guilt was overwhelming. Indeed his guilt scarcely was denied, although the defendant put the Government to the great expense and labor involved in a criminal trial. No one was surprised that the jury almost immediately after the submission of the case returned its verdict of guilty.

The maximum punishment which the law provides for this crime is five years' imprisonment and a fine of \$2000.

There are some crimes which are properly regarded by every citizen as in their very nature serious and gravely threatening to the well-being of the state and organized society. Perjury always has been so regarded. It has been condemned by the laws of every nation since the dawn of history and, until comparatively recently, was punishable in that system of law we have inherited by the penalty of death. The sanctity of an oath may be said to be the very cornerstone of civilization. If men testify falsely when sworn to tell the truth, if public officials violate the oaths they take on assuming office, the result would be the complete collapse not only of all justice but of all government.

In this instance the offense was aggravated in almost every conceivable way. The defendant had a criminal record when he committed the offense. The purpose of his perjury was not only to evade his liability to the United States in huge amounts for taxes due, but also to shield and to protect a condition of indescribable criminality and debauchery. The perjury which was committed before the officer who administered the oath to the defendant was deliberately repeated on the witness stand in this court at the trial. In addition to these aggravating circumstances was the further circumstance that the defendant is the subject of a foreign power, an alien, who sought to repay the people of the United States for the welcome they had extended to him and his family, for the opportunity they had given to him and his family, by violating and defying their laws and by showing in every possible way his contempt for their institutions.

It is the sentence and judgment of the court that the defendant be committed to the custody of the Attorney General and be by him confined in some institution of the penitentiary type for a period of 4 years.

Case No. 14,581

The second case is No. 14,581, transferred to me by Judge Reeves. The indictment in that case, to which the defendant has entered a plea of guilty, charges the use of the mails in the furtherance of a scheme similar to a lottery. The maximum penalty which the statute imposes is two years' imprisonment and a fine of \$10,000.

The defendant has entered a plea of guilty to this charge, but he has entered that plea of guilty at a time so late that he can claim with justice little leniency by reason of his plea. All the expense involved already has been incurred. Witnesses have been brought here by the government from as far away as California. The work of preparing the case for trial has been

done. The defendant is entitled to little consideration, but he will be given, nevertheless, substantial consideration.

The sentence is that the defendant be committed to the custody of the Attorney General to be by him imprisoned in an institution of the penitentiary type for a period of one year and one day. The sentence in this case, No. 14,581, is to be served consecutively with that imposed in case No. 14,578.

Case No. 14,639

The third case, also transferred to me by Judge Reeves, is No. 14,639. Originally the indictment in that case embraced four counts. Two of those counts have been dismissed and are not now to be considered. The two counts to which pleas of guilty have been entered, counts 5 and 4, charge attempts on the part of the defendant to evade the payment of income taxes to the United States in the years 1937 and 1938. The amounts of taxes he is charged with having attempted to evade are most substantial, \$52,966.34 for 1937 and \$115,727.71 for 1938.

I shall not now enlarge upon what heretofore I have said in other cases touching the principles that should govern the sentence in a case of this character. Any who is concerned with my views as to those principles may read them in the literature of the law. I do not repeat them. It is sufficient for me to say that in my judgment they cannot possibly be justly attacked.

The law provides substantial civil penalties for the failure to pay a tax due the government. For the two years in question here this defendant is obligated to the government not only to pay the taxes due, the interest thereon, but also to pay a fine or penalty of \$84,347.02. Certainly the civil penalty, in nine cases out of ten, has been regarded by the United States as quite sufficient and adequate punishment for a malum prohibitum offense of this character.

Many fine men undoubtedly believe that one who is charged with an attempt to evade the payment of an income and who pleads guilty to that charge and to no other charge, should, nevertheless, be punished for other offenses not charged, offenses which are against a different sovereign, offenses for which he may yet be punished in the tribunals of that different sovereign. We can understand that even intelligent laymen may entertain such views. If, however, a judge should so far forget the judicial oath as to do that by indirection which he could not directly do, he would deserve the condemnation of all good men.

If the civil penalty which the law imposes for an attempt to evade an income tax is not paid, then, of course, it is not to be considered in assessing the criminal penalty in a case where a criminal charge is brought. On that account, when, in the past, I have been called upon to assess criminal penalties in cases of this character, I have made such provision as I thought was most likely to secure the payment of the tax and the payment of the civil penalty as well. I shall do that now in this case.

It is the sentence and judgment of the court as to counts 3 and 4 of the indictment in case No. 14,639 that the defendant be committed to the custody of the Attorney General to be by him confined in an institution of the penitentiary type for a period of three years, provided, however, that if before the expiration of the present, April, 1939, Term, of this court, the defendant shall pay to the United States the income taxes due for the years 1937 and 1938, the interest thereon, and the civil penalties imposed by law in connection therewith, or such lesser amount as shall be acceptable to ultimately responsible officials of the Internal Revenue

Department, or upon arrangements therefor satisfactory to those officials, then and in that event the sentence in this case, No. 14,639, will be modified from three years' imprisonment to imprisonment in an institution of the penitentiary type for a period of one year.

The sentence imposed in case No. 14,639 is to be served consecutively with that imposed in case No. 14,581.

FILED OCT 20 1939

A. L. ARNOLD, Clerk.

By W.W. Caster, Deputy.