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CRIMINAL LAW—CRIMINAL CONTEMPT—JUDGE'S DILEMMA

In November of 1966, Richard Mayberry and two co-defendants came to trial for prison breach before Judge Fick in a Pennsylvania criminal court. The defendants, at their own request, represented themselves; but, were also advised by court appointed counsel. On the first day of the trial Mayberry said, "It seems like the court has the intention of railroading us"[1] and he subsequently moved to disqualify the judge. Upon denial of the motion, the petitioner started by referring to the judge as a "hatchet man for the State",[2] and ended, by referring to him as a "dirty sonofabitch."[3] After a peaceful week, trouble again erupted between the petitioner and the judge. During questioning by one of the co-defendants, the prosecutor objected to one of the questions. When the judge sustained the objection the record shows the petitioner saying, "you ought to be Gilbert and Sullivan the way you sustain the district attorney every time he objects to the questions."[4] The petitioner then added a description of the judge as a "dirty tyrannical old dog."[5] The trial proceeded in this manner with further insults and profanity. On numerous occasions the petitioner was ejected from the courtroom. Finally, as the court prepared to charge the jury, the petitioner advised the court:

> he [the petitioner] wishes to make it known to the Court now that he has no intention of remaining silent while the Court charges the jury, and he is going to continually object to the charge of the Court to the jury throughout the entire charge, and he is not going to remain silent. He is going to disrupt the proceedings verbally throughout the entire charge of the Court, and also he is going to be objecting to being forced to terminate his defense before he was finished.[6]

The court thereupon had the petitioner removed; later when he returned, gagged, he created such a commotion that the court again had him removed to an adjacent room where a loudspeaker made the proceedings

1. Mayberry v. Pennsylvania, 400 U.S. 456 (1971).
2. *Id.* at 456.
3. *Id.* at 456.
4. *Id.* at 457.
5. *Id.* at 457.
6. *Id.* at 462.

audible to him. The trial ended with a jury verdict of guilty. Prior to sentencing on the verdict, the judge pronounced Mayberry guilty of criminal contempt. He found that the petitioner had committed one or more instances of contempt on eleven of the twenty-one days of the trial and sentenced him to not less than one, nor more than two years, for each of the eleven contempts, the sentences to run consecutively.

The Supreme Court of Pennsylvania affirmed by a divided vote.[7]

Mr. Justice Douglas, speaking for the Supreme Court of the United States said:

> Our conclusion is that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a public trial before a judge other than the one reviled by the contemnor . . . . In the present case that requirement can be satisfied only if the judgement of contempt is vacated so that on remand another judge, not bearing the sting of these slanderous remarks and having the impersonal authority of the law, sits in judgement on the conduct of the petitioner as shown by the record.[8]

By way of *obiter dictum* Justice Douglas added:

> A judge cannot be driven out of a case. Where, however, he does not act the instant the contempt is committed, but waits until the end of the trial, on balance, it is generally wise where the marks of the unseemly conduct have left personal stings to ask a fellow judge to take his place.[9]

Justice Black concurred, but took exception to the part of the decison stating that a judge, without a jury, could have convicted Mayberry instantaneously with the outburst. *Mayberry v. Pennsylvania*, 397 U.S. 1020 (1971).

The Supreme Court in *Mayberry*[10] has for the first time stated that a judge, who is personally reviled by the contumacious acts or words of a defendant or attorney, and who chooses not to sentence "the instant the contempt is committed,"[11] relinquishes his right to punish at all to another judge. This note is an attempt to trace the current direction of judicial thought in the United States in the area of criminal contempt and to put in perspective the effect of recent restraints on judicial authority.

American law, both by statute and judicial precedent, has not viewed contempt of court as a monolithic wrong; but, rather has divided it into differently treated categories. The particular category has a substantial

7. Mayberry v. Pennsylvania, 434 Pa. 478, 255 A.2d 131 (1969).
8. *Supra* note 1 at 466.
9. *Supra* note 1 at 463.
10. *Supra* note 1 at 456.
11. *Supra* note 1 at 463.

bearing on the options available to the trial judge and the protections guaranteed the contemnor. The actual location of the act itself determines the distinction between the two categories—direct contempt, "committed in the actual presence of the court,"[12] and indirect contempt. This distinction is rather straightforward and usually easily discernible. However, both of these types of contempt are subdivided into civil and criminal contempt. If the sentence is penal in nature, the contempt is criminal; if the sentence is coercive the contempt is civil. It is necessary to bear these distinctions in mind to weigh the relevance of prior court decisions. *Mayberry*[13] is an instance of direct criminal contempt.

The summary contempt power of the judiciary can move with enough momentum to maim or destroy individual liberty and rights. It is also the historical cornerstone and foundation of courtroom control and dignity. One of the primary differences between Chancery and common law courts was the power of enforcing a judgment. In the common law courts "the judgment did not originally command the defendant to do anything but was simply that the plaintiff recovers his damages. Failure to satisfy the judgment was therefore not contempt of court."[14] The orders of these courts were made in the name of the King and "in legal theory it was the direct command of the King to his subject to do or refrain from doing certain things."[15] Thus, to be found in contempt of these courts was to be in contempt of a King's decree. Punishment was unlimited and the court's power was seen at its most awesome level. Contempt power of this nature eventually spread to all the English courts and covered more contumacious acts.

The courts of the American colonies inherited the English concept of contempt. After the American Revolution summary contempt power was legislatively enshrined by the Act of September 24, 1789: "[C]ourts of the United States shall have power . . . to punish by fine or imprisonment, at the discretion of the said courts, all contempts of authority. . . ."[16] This was narrowed to "misbehaviour of any person or persons in the presence of the said courts. . ."[17] in 1831. It is clear at this point in history that both the courts and the legislatures in the United States were primarily concerned with the criminal aspects of con-

12. FED. R. CRIM. P. 42(a).
13. *Supra* note 1.
14. M. VAN HECKE, CASES AND MATERIALS ON EQUITABLE REMEDIES, 3 (1959).
15. *Id.*
16. Act of September 24, 1789, ch. 20, § 17, 1 Stat. 73, 87.
17. Act of March 2, 1831, ch. 99, § 1, 4 Stat. 487-488.

tempt. If the contemnor misbehaved in the "presence of the court," the court needed the right to punish him summarily. It would require later developments before the courts would consider the merits and dangers of coercive civil sentencing.

The current summary powers of the federal courts are derived from the rule making powers of the United States Supreme Court.[18] The individual states have statutes governing criminal contempt and guidelines on the exercise of judicial summary powers.[19] State legislatures, in the last twenty-five years, have made deep cuts into the summary power of the state courts. However, the federal court system has not had any legislative restrictions imposed on penalties for summary punishment of direct criminal contempt.

The United States Supreme Court has also inherited the common law, equitable view of the need for strong summary powers in the hands of judges. No judicial restraints were evident through all of the nineteenth century. As late as the last three decades of that century, the Supreme Court stood intransient. In 1873[20] an attorney, who re-

18. FED. R. CRIM. P. 42(a).

19. Twenty-eight states have established maximum terms of imprisonment for criminal contempts for some of their courts: Alabama: circuit court—5 days, ALA. CODE tit. 13 § 9 (1959); Alaska: six months, ALASKA STAT. tit. 9 § 09.50.020 (1962); Arizona: six months, ARIZ. REV. STAT. ANN. § 13-341 (1956); Arkansas: ten days, ARK. STAT. ANN. § 34-902 (1962); Connecticut: six months, CONN. GEN. STAT. ANN. § 51-33 (1960); Hawaii: circuit court—thirty days in summary proceedings, two years after jury trial, HAWAII REV. LAWS § 729-1 (1968); Idaho: five days, IDAHO CODE § 7-610 (1969); Indiana: three months, IND. ANN. STAT. § 3-906 (1968); Iowa: six months, IOWA CODE § 665.4 (1950); Kentucky: thirty hours, KY. REV. STAT. § 432.260 (1970); Louisiana: thirty days, LA. REV. STAT. § 13-4611 (1968); Michigan: thirty days, MICH. STAT. ANN. § 27a.1715 (1962); Minnesota: six months, MINN. STAT. ANN. § 588.10 (1947); Mississippi: thirty days, MISS. CODE ANN. § 1656 (1957); Montana: five days, MONT. REV. CODES ANN. § 93-9810 (1964); Nevada: twenty-five days, NEV. REV. STAT. § 22.100 (1963); New York: thirty days, N.Y. JUDICIARY LAWS § 751.1 (1968); North Carolina: thirty days, N.C. GEN. STAT. § 5-4 (1969); North Dakota: thirty days, N.D. CENT. CODE § 27-10-2 (1960); Ohio: ten days, OHIO REV. CODE ANN. § 2705.05 (1954); Oregon: six months, ORE. REV. STAT. § 33.020 (1969); Tennessee: ten days—special provision for profanity, twenty-four hours, TENN. CODE ANN. §§ 23-903, 23-907 (1956); Texas: three days, TEX. REV. CIV. STAT. ANN. arts. 1911, 1955 (1962); Utah: thirty days, UTAH CODE ANN. § 78-32-10 (1953); Virginia: ten days in summary proceedings, VA. CODE ANN. 18.1-295 (1960); Washington: six months, WASH. REV. CODE § 7.020.020 (1961); West Virginia: ten days in summary proceedings, W. VA. CODE ANN. § 61-5-26 (1966); Wisconsin: thirty days, WIS. STAT. ANN. § 256.06 (1971); and three states have a statutory maximum on the basis of declaring criminal contempt as a misdemeanor: CALIF. PENAL CODE § 166 (West 1970); State v. Janiec, 25 N.J. Super. 197, 95 A.2d 762 (1962); S.D. COMP. LAWS § 16-15-2 (1969).

20. *Ex parte* Robinson, 86 U.S. (19 Wall.) 505 (1873).

fused, in terms that were "grossly and intentionally disrespectful,"[21] to obey a court order to answer a judicial inquiry in writing was ordered disbarred. The Supreme Court reversed declaring that summary power was limited to fine and imprisonment. However, Justice Field, explaining the need for strong summary power, said, "the power to punish for contempt is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings."[22]

In 1888[23] Justice Harlan went further. In this case a marshal, executing an order to remove Althea Terry, was attacked and beaten with a deadly weapon in the courtroom by David S. Terry. While upholding Terry's six month summary sentence, Justice Harlan said, "that [summary] power cannot be denied [the courts] . . . without inviting or causing such obstruction to the orderly and impartial administration of justice as would endanger the rights and safety of the entire community."[24] The legal rationalization for this power in the United States has been the view that the courts have taken of the contumacious act itself. "Historically, criminal contempt has been considered to be a *sui generis* in that it is not a crime but is punishable by criminal sanctions."[25]

Labor's disregard of court injunctions in the early twentieth century required a new examination of judicial interpretation of contempt. In *Gompers v. Bucks Range Stove Co.*,[26] Gompers was enjoined from boycotting or publishing any statement declaring a boycott against the company. When he ignored the injunction, the Supreme Court appointed a commission to inquire into his activities. Because it was an indirect contempt, summary power was not available; but, the question of classification of his acts *sui generis* as criminal, became important.

Justice Holmes in *Gompers v. United States*[27] classified intentional violations of a court injunction as "criminal" acts for the first time.[28] The Court ruled that since the acts were criminal, the normal criminal

21. *Id.* at 507.

22. *Id.* at 510.

23. *Ex parte* Terry, 128 U.S. 289 (1888).

24. *Id.* at 309.

25. Besette v. W.B. Conkey Co., 194 U.S. 324, 326 (1904).

26. 221 U.S. 418 (1911).

27. 233 U.S. 604 (1914).

28. *Id.* at 610-11. "If such acts are not criminal, we are in error as to the most fundamental characteristic of crimes as that word has been understood in English speech. So truly are they crimes that it seems to be proved that in early law they were punished only by the usual criminal procedure. . . ."

defense of the statute of limitations applied and Gompers' conviction was reversed. Implied in this decision was that, at least, in indirect criminal contempt some of the normal criminal safeguards are required. It would be thirty-five years before the Court would apply this thinking to direct criminal contempt, but the first cut into judicial summary powers was at last made.

In 1948, the Court in *Oliver*[29] expanded the *Gompers* decision[30] in a case growing out of Michigan's "one-man grand jury" law.[31] In a confusion of issues arising out of testimony before a judge, who was sitting as a one-man grand jury, the judge combined all aspects of direct and indirect contempt with all aspects of criminal and civil sentencing. Based on the testimony of other witnesses unheard by Oliver, the judge felt that one witness had given false testimony. The judge reasoned, however, that the contempt was direct, and summarily sentenced Oliver in a secret proceeding in which Oliver had none of the criminal safeguards the *Gompers* Court would have given him. He was sentenced to "be confined . . . until such time as he . . . shall appear and answer questions heretofore propounded to him by this court. . . ."[32] Subsequently, before the Supreme Court, Justice Black recognized the need under the due process clause for a " . . . reasonable opportunity to defend"[33] against indirect contempts; but, by way of *dicta,* he also affirmed a narrow exception to "due process" protection in *direct contempt* actions for "misconduct, in open court, in the presence of the judge, which disturb the court's business."[34]

The following year Justice Douglas, with Justice Black's concurrence, in a dissenting opinion sounded the first warning about the use of summary power in direct, criminal contempt actions, "But its [summary power] exercise must be narrowly confined lest it become an instrument of tyranny."[35]

Just as labor problems had caused a re-evaluation of judicial thought concerning contempt, the political trials of Communists during the 1950's under the Smith Act,[36] created a new turbulence in the court room.

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29. *In re* Oliver, 333 U.S. 257 (1948).
30. *Supra* note 27.
31. MICH. STAT. ANN. §§ 28.943-28.946 (1956).
32. *Supra* note 29, at 260.
33. *Supra* note 29, at 273.
34. *Supra* note 29, at 275.
35. Fisher v. Pace, 336 U.S. 155, 163 (1949).
36. 18 U.S.C. 2385 (1970).

In the *Sacher*[37] case, a majority of the Court still upheld summary sentencing at the end of a trial for contumacious conduct during the trial.[38] But the Court went further by not limiting summary punishment to "such minor contempts as leave the judge indifferent."[39] Justice Frankfurter was the spokesman for the dissent and heralded future thinking of the Court. Frankfurter indicated that when the judge is personally involved in the contumacious acts, he should permit another judge to hear the contempt charges and thereby avoid combining "in himself the functions of accuser and judge."[40] Second, summary power should only be used where the act requires immediate action by the judge. "Interruption for a hearing before a separate judge would disrupt the trial and thus achieve the illicit purpose of the contemnors."[41]

Two years later in *Offitt v. United States*,[42] Justice Frankfurter, speaking for the majority of the court, set aside a summary criminal sentence for direct contempt where the judge "sitting in judgment on such a misbehaving lawyer . . . [gave] vent to personal spleen or respond[ed] to a personal grievance."[43] Justices Black and Douglas, concurring, added that a contemnor in such a situation should be afforded a jury trial.[44] Here, the Court, in a case involving a judge who became embroiled with a defense attorney to the extent that he showed "personal animosity" and "lack of proper judicial restraint",[45] marked the beginning of an acceptance of the Douglas dissent in *Sacher*.[46]

In another political trial under the Smith Act,[47] the Court involved itself in the question of jury trial for criminal contempt. Here the contemnor, released on bail, refused to surrender. When he was apprehended, he was tried for indirect criminal contempt. The politics and public interest in the case, perhaps, temporarily tempered the changing attitude of the Court towards summary criminal contempt power. The

37. Sacher v. United States, 343 U.S. 1 (1952).

38. *Id.* at 10. "If the conduct of these lawyers warranted immediate summary punishment on dozens of occasions, no possible prejudice to them can result from delaying it until the end of the trial. . . ."

39. *Id.* at 12.

40. *Id.* at 28.

41. *Id.* at 37.

42. 348 U.S. 11 (1954).

43. *Id.* at 14.

44. *Id.* at 18.

45. *Id.* at 11.

46. *Supra* note 37.

47. *Supra* note 36.

Court held in *Green v. United States*[48] that a three year sentence for contempt, without a jury, was justifiable.[49] Here Justice Frankfurter said, "[W]hat is indisputable is that from the foundation of the United States the constitutionality of the power to punish for contempt without the intervention of a jury has never been doubted."[50] But, Justice Black with Justice Douglas dissented, reasoning that summary power,

> has relentlessly swollen, at the hands of not unwilling judges, until it has become a drastic persuasive mode of administering criminal justice usurping our regular constitutional methods of trying those charged with offenses against society.[51]

The basis of these dissents is found in Holmes' labeling of contempt as "criminal" in *Gompers case* and recommending the requirement of criminal procedures.

Two cases before the 1964 Court dealt with the same problem and refined it still further. In *Ungar v. Sarafite*,[52] Justice White, speaking for the majority, upheld a sentence because the contemnor's criticism of the court's ruling and failure to obey its orders did not constitute a personal attack on the judge. However, Justice Goldberg now joined Justices Black and Douglas in dissenting:

> An impartial judge, not caught up in the cross-currents of emotions enveloping the contempt charge, is the only one who can protect all rights and determine whether a contempt was committed or whether the case is either one of judicial nerves on edge or of judicial tyranny.[53]

In his dissent, Justice Goldberg carefully outlined the position that was later to be taken by the majority in *Mayberry*.[54] It differed substan-

48. 356 U.S. 165 (1958).

49. *Id.* at 190. The Supreme Court has upheld summary punishment in the following: *Ex parte* Kearney, 21 U.S. (7 Wheat.) 37 (1822); *In re* Chilles, 89 U.S. (22 Wall.) 157 (1874); *Ex parte* Terry, 128 U.S. 289 (1888); *In re* Savin, 131 U.S. 367 (1893); *In re* Cuddy, 131 U.S. 280 (1889); *In re* Swan, 150 U.S. 637 (1893); *In re* Debs, 158 U.S. 564 (1895); Brown v. Walker, 161 U.S. 591 (1896); *In re* Lennon, 166 U.S. 548 (1897); Besette v. W.B. Conkey Co., 194 U.S. 324 (1904); Nelson v. United States, 201 U.S. 92 (1906); United States v. Shipp, 203 U.S. 563 (1906), 214 U.S. 386 (1909); *Ex parte* Young, 209 U.S. 123 (1937); Toledo Newspaper Co. v. United States, 247 U.S. 402 (1918); Blair v. United States, 250 U.S. 273 (1919); Craig v. Hecht, 263 U.S. 255 (1923); Brown v. United States, 276 U.S. 134 (1928); Sinclair v. United States, 279 U.S. 749 (1929); Blackmer v. United States, 284 U.S. 421 (1931); Clark v. United States, 289 U.S. — (1932); United States v. United Mine Workers, 330 U.S. 258 (1946); Rogers v. United States, 340 U.S. 367 (1950); Sacher v. United States, 352 U.S. 385 (1956); Yates v. United States, 355 U.S. 66 (1957).

50. *Supra* note 48 at 190.

51. *Supra* note 48 at 194.

52. 376 U.S. 575 (1964).

53. *Id.* at 602.

54. *Supra* note 1.

tually from *Offitt*[55] because it applied the measure to a passive judge who was personally attacked, and no longer limited it to a judge who became actively involved with the contemnor.

In the second case, another political trial, involving the refusal of the Governor of Mississippi to admit a black student after a court injunction, the Supreme Court held that the Governor did not have the right to a jury trial.[56] Here Justice Goldberg's dissent goes right to the question of a "non-trivial penalty"[57] requiring trial by jury. Justice Goldberg wanted the Court to come to grips with the constitutional issue of "due process." If contempt was "criminal," and the penalty was non-trivial (exceeding six months), was not a jury trial required to replace summary power? The majority of the Court remained unmoved.

In 1966 the Court[58] upheld a six month sentence, handed down by a panel of three judges without a jury and stated:

[T]herefore, in the exercise of the *Court's Supervisory Power* and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof.[59]

The Court still hedged at basing its decision on "due process" and acted under its "Supervisory Power," but it did draw a line at six months. This, however, did not satisfy the dissenters. Justice Harlan questioned the trial judge's advance decision regarding sentence, as to whether or not a jury was needed; and Justice Douglas questioned whether *petty* depended on the maximum sentence available rather than the sentence imposed. Nevertheless, *Cheff* took the question of jury trial out of its place in minority and dissenting opinions and put it squarely in the majority.

In 1968, Justice White speaking for the Court,[60] put the question to rest:

Our deliberations have convinced us, however, that serious contempts are so nearly like other serious crimes that they are subject to the jury trial provisions of the Constitution, now binding on the States, and that the traditional rule is con-

55. *Supra* note 42.

56. United States v. Barnett, 376 U.S. 681 (1964).

57. *Id.* at 756.

58. Cheff v. Schnackenberg, 384 U.S. 373 (1966); Company president convicted where company refused to obey cease and desist order of F.T.C.

59. *Id.* at 380.

60. Bloom v. Illinois, 391 U.S. 194 (1968); Contemnor willfully introduced falsely prepared will to probate—two year sentence reversed.

stitutionally infirm insofar as it permits other than petty contempts to be tried without honoring a demand for jury trial.[61]

In 1970 the *Allen*[62] Court discussing a case of a criminal contemnor, whose behavior exceeded all reasonable bounds, affirmed the conviction of criminal contempt and advised all judges that,

> We think there are at least three constitutionally permissible ways for a trial judge to handle an obstreperous defendant like Allen (1) bind and gag him, thereby keeping him present; (2) cite him for contempt; [and] (3) take him out of the courtroom until he promises to conduct himself properly.[63]

By the end of 1970 summary power in direct criminal contempt had changed radically from the nineteenth century concept. The reasoning of both majority opinions and dissents, and particularly the reasoning from indirect contempt actions, had been used to shape the attitude towards the use of summary power in *direct* contempt actions. From the indirect contempt cases, in which the judge had not observed the offense, came: the *Gompers* decision, defining contumacious acts as criminal and inferring the need for criminal safeguards, and the dissent in the *Green* case wherein came the first hints that perhaps a jury would be needed where sentences were long. Then the *Barnett* dissent which recommended using the jury trial requirement for "non-trivial" sentences and the Douglas dissent in *Cheff* which questioned whether "non-trivial" should depend on the actual sentence or potential maximum. Thus, in spite of the fact that this reasoning applied to acts which a judge did not see, the same result applies to acts which occur *in the presence* of the judge.

It will be remembered that the *Offitt* dissent requested jury trial in direct contempt for the first time, and the *Bloom* Court affirmed it. The *Sacher* dissent started the movement for requiring a new judge and the *Offitt* decision required it, where the judge had been an activist. *Allen* inferred that a jury trial might be necessary if the judge waited for the end of the trial. And now it was time for *Mayberry*.

Mayberry, growing directly out of Justice Goldberg's dissent in *Ungar*, takes this line of decisions one step further. It makes the judge, who through no fault of his own becomes involved with the obstreperous contemnor, relinquish his summary power to another judge. Further, if the contumacious conduct is severe enough to warrant major sentence, the referral judge must in turn relinquish some of his inherent power to a jury.

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61. *Id.* at 198.
62. Illinois v. Allen, 397 U.S. 337 (1970).
63. *Id.* at 343.

Today the trial judge, in a disrupted court, can bind and gag the contemnor at the risk of prejudicing a jury, and destroying the image of democratic justice. Second, he can exclude the offending defendant at the risk of approaching trial *in absentia*. Of course, neither of these options apply to a contemptuous attorney. Third, he can stop the trial and sentence the contemnor to six months and resume the trial at the end of this sentence, as many times as the contemnor makes it necessary. Fourth, he can sentence the contemnor civilly, until such time as the contemnor will return and continue in peace. Finally, he can conclude the trial, if possible, and bring charges before another judge and, if necessary, a jury.

How effective are these alternatives? In a criminal trial, which may impose a substantial penalty, delays and recalling of witnesses can make contempts by either defendant or attorney an advantageous tactic. Shackling or removing defendants can have untold repercussions on juries. In political trials Justice Douglas feels that the Supreme Court has "broad supervisory powers over them."[64] This will undoubtedly entail future decisions. Finally, trials described by Justice Douglas as "trials used by minorities to destroy the existing constitutional system"[65] will be almost unaffected by these procedures.

There are several unanswered questions. For example, Harlan raised the question in *Cheff* whether the new judge must decide the sentence before he can determine whether a jury is needed. In addition, Justice Douglas raised the question in *Cheff* whether any contempt hearing requires a jury because of the potential of major sentence. Similarly, if contempt is really a crime, do not the contemnors deserve all the constitutional protections of "due process?" Also unresolved is the effect of a series of six month consecutive sentences for each contumacious act, adding up to a major sentence. The effect on judicial control of courtrooms awaits future resolutions of these questions.

It would appear that the current alternatives open to a trial judge will not cope with the potential problems facing the balance of the twentieth century. The problem of balancing the needs of individual

64. *Supra* note 64 at 353 n.2, *accord,* Spies v. People, 122 Ill. 1, 12 N.E. 865 (1887), involving the Haymarket riot; *In re* Debs, 158 U.S. 564 (1895), involving the Pullman strike; Mooney v. Holohan, 249 U.S. 103 (1918), involving the copper strikes of 1917; Commonwealth v. Sacco, 255 Mass. 369, 151 N.E. 839 (1958), 259 Mass. 128, 156 N.E. 57 (1959), 261 Mass. 12, 158 N.E. 167 (1959), involving the Red scare of the 20's; Dennis v. United States, 341 U.S. 494 (1950), involving an agreement to teach Marxism.

65. *Supra* note 64 at 356.

liberty with freedom from oppressive courts against lack of power by the judges to maintain orderly courts is by no means easily attained. If judicial decision and legislative enactment strip the trial judge of power to control his courtroom, the resulting chaos can impair the effectiveness of our whole judicial system. Judicial or legislative reaction to such chaos can result in radical repression of individual rights. The balance must be found, whether by combination of jury and impartial judges at the trial level or, strong involved judges, with mandatory appellate review.

Gordon Schneider