Michigan Law Review

Volume 57 | Issue 2

1958

Constitutional Law - Right to Jury Trial in Indirect Criminal Contempts in Federal Courts

Denis T. Rice S.Ed.
University of Michigan Law School

COMMENTS

CONSTITUTIONAL LAW—RIGHT TO JURY TRIAL IN INDIRECT CRIMINAL CONTEMPTS IN FEDERAL COURTS—Should constitutional provisions for jury trial apply to contempts committed outside the physical presence of a federal court? The United States Supreme Court, in the recent case of *Green v. United States*,[1] reviewed this long disputed question. The case involved two Communist Party leaders who had been convicted of Smith Act violations and then had "jumped bail" when they disappeared in violation of surrender orders requiring their presence in court for sentencing. After four and a half years as fugitives they surrendered in 1956 and were charged with criminal contempt of court. Following a so-called "summary" hearing (without the benefit of jury), they were found guilty and sentenced to three years in prison, to be added to their five-year sentences under the Smith Act. The majority sustained these convictions. But in a long dissent, Justice Black brought into focus several decades of criticism which has been leveled at summary procedure in "indirect" criminal contempts (contempts which are committed outside the immediate vicinity of the court).[2] Against an imposing array of precedent sustaining summary procedure since the first Judiciary Act of 1789,[3] Justice Black has gathered extensive authority to discredit such procedure. He has now gained support for his thesis, that such nonjury proceedings violate the Constitution, from Justice Douglas and Chief Justice Warren. Their argument appears to be that the burden of persuasion should be cast upon those who would curtail the use of trial by jury, and that the historical basis of summary proceedings has been so undermined that any resultant doubt should be resolved in favor of jury trial.[4] The inference is drawn that if the founders of the Constitution had squarely considered the problem of indirect criminal contempts, they would surely have desired to remove them from the power of a single judge. The present majority, in contrast, reason that

1 356 U.S. 165 (1958).

2 It should be noted that Justice Black would prefer to overrule the use of summary procedure in any type of contempt, whether direct or indirect. See his dissenting opinion, Sacher v. United States, 343 U.S. 1 at 14 (1952).

3 Cases are collected in the concurring opinion of Justice Frankfurter, Green v. United States, 356 U.S. 165 at 191, n. 2 (1958).

4 Id. at 207-208.

the weight of stare decisis creates a presumption in favor of summary procedure, and find the arguments adduced by Justice Black insufficient to overcome the precedents.[5] Among the problems raised by the *Green* case are (1) whether the constitutional guarantee of jury trial should be judicially extended to cover criminal contempts committed outside the face of the court, and (2) what judicially imposed restrictions, if any, will the Court create on exercise of the contempt power.

I. *The "Historical Error" of Summary Procedure*

The status of proceedings against indirect contempts in English law at the time of the Constitutional Convention has never been fixed with any degree of certainty, although an extensive search into the relevant materials was accomplished by Sir John Fox.[6] Fox offered the conclusion that at the time the Constitution was drafted, summary power to punish indirect contempts was not established in English practice, and that consequently the doctrine was neither part of the common law of the United States nor part of the "judicial power" that Congress was constitutionally authorized to confer on the courts.[7] Close examination of Fox's research, however, yields a more cautious conclusion: that by 1787 there probably was no valid basis for summary punishment of a libel on the court by a stranger to the proceedings; that summary punishment of resistance to a lawful writ or process of the court was doubtfully grounded; but that an adequate common law basis existed for summary punishment of out-of-court contempts committed by an "officer" of the court.[8] Fox's research started from the undelivered opinion of Justice Wilmot in *The King v. Almon,* a 1765 case involving a libel on Lord Chief Justice Mansfield by Almon, a bookseller.[9] The opinion, which declared that summary proceedings to punish such contempt were based upon "immemorial usage and practice," was not delivered since the prosecution was abandoned

[5] Id. at 184, 186-187. Cf. Justice Frankfurter's concurring opinion at 189-193.

[6] FOX, THE HISTORY OF CONTEMPT OF COURT (1927); Fox, "The King v. Almon," 24 L. Q. REV. 184, 266 (1908); Fox, "The Summary Process to Punish Contempt," 25 L. Q. REV. 238, 354 (1909); Fox, "The Writ of Attachment," 40 L. Q. REV. 43 (1924).

[7] FOX, THE HISTORY OF CONTEMPT OF COURT 205-207 (1927).

[8] Id. at 98-99, 108-110; Fox, "The Summary Process to Punish Contempt," 25 L. Q. REV. 238 at 244-245, 252 (1909). Justice Harlan's majority opinion in the Green case, 356 U.S. 165 (1958), seems to point toward a similar conclusion, at 185, n. 18.

[9] WILMOT, NOTES 243 (1802).

because of a procedural mistake. The bulk of Fox's research was aimed at refuting this "immemorial usage" concept. Fox summed up the procedure to punish indirect contempts as having been unknown originally at common law, created by the Star Chamber, and later filtered into common law courts after abolition of the Star Chamber in 1641.[10] It should be noted that counsel in *Almon's Case* proceeded on the assumption that summary procedure was regularly employed where there was resistance to the King's process; their arguments merely opposed extension of this procedure to out-of-court libels.[11] Fox himself separates the contempts of disobedience to writ, and resistance or abuse of the process server, from the contempt of libelous abuse of the court, since his research discredited summary procedure in the last more convincingly than in the other two types of contempt.[12]

II. *Relation of Almon's Case to the Constitution*

Any defective common law basis of the doctrine in *Almon's Case* would be immaterial if it were possible to define with certainty the intent of the constitutional framers with regard to the criminal contempt problem.[13] It does not appear, however, that there was any discussion in the Convention or in any of the state ratifying conventions dealing with this issue.[14] Apparently the Convention rejected establishment of jury trial in every case whatsoever.[15] It is clear that jury trial was important to the colonials and that deprivation of jury trial was a principal

[10] FOX, THE HISTORY OF CONTEMPT OF COURT 116-117 (1927). This is the part of Fox's research relied upon by Justice Black in his dissent in Green v. United States, 356 U.S. 165 at 205, n. 17 (1958).

[11] The King v. Almon, WILMOT, NOTES 243 at 253 (1802).

[12] FOX, THE HISTORY OF CONTEMPT OF COURT 109-110 (1927). Note Fox's concessions as to earlier cases in Chancery, at 108-109, 117. Justice Harlan's rejection of the jury trial argument notes the limited purpose behind Fox's efforts. Green v. United States, 356 U.S. 165 at 185, n. 18 (1958).

[13] Ex parte Grossman, 267 U.S. 87 (1925), held: "The language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions as they were when the instrument was framed and adopted. The statesmen and lawyers of the Convention who submitted it to the ratification of the Conventions of the thirteen States, were born and brought up in the atmosphere of the common law, and thought and spoke in its vocabulary." See also FOX, THE HISTORY OF CONTEMPT OF COURT 108-109 (1927).

[14] Justice Black's dissent, Green v. United States, 356 U.S. 165 at 207 (1958).

[15] THE FEDERALIST, No. 83, Ford. ed., 567 (1898) (Hamilton). Hamilton commented that "though trial by jury, with various limitations, is known in each State individually, yet in the United States, *as such*, it is at this time altogether unknown, because the present federal government has no judiciary power whatever." Id. at 563.

grievance against the King.[16] But evaluation of the extent of "jury trial" as written into the Constitution invites a great deal of inference and guesswork.

Unpublished until 1802 (when it was included in a posthumous edition of Wilmot's *Notes*[17]) and not cited until 1811,[18] *Almon's Case* could hardly be said to have itself influenced the colonial lawyers. Its significance lies in the fact that it had been incorporated by Blackstone in his *Commentaries,* in which the author repeated Wilmot's theme that summary proceedings had derived from "immemorial usage."[19] Blackstone was widely known to the colonials, so that even a misstatement by him would shed light on the possible intent of the Convention. Justice Harlan's majority opinion in *Green* indicates the belief that Blackstone's statement (or misstatement) of the law on this point expressed the "prevailing views in the American Colonies."[20] Perhaps Justice Harlan's conclusion is too sweeping, since Blackstone also commented that summary procedure was "not agreeable to the genius of the Common Law in any other instance."[21] It is at least conceivable that this last phrase had an even greater influence on colonial lawyers than Blackstone's statement of the *Almon* doctrine. Moreover, the views of some of the other authorities available to the colonials should perhaps be considered. For example, a widely-used law dictionary said that the summary nature of an "attachment" for contempt would be contrary to the jury trial provision in Magna Charta, and "must be for a contempt in the face of the court" or else for a contempt committed by officers of the court.[22] Gilbert's *History and Practice of Common Pleas,* in its third (1779) edition, included a notation by the commentator that an English statute, which Gilbert had cited as confirming the power to commit for contempt after summary hearing, was properly meant to apply only to killing in resistance to process; the commentator added that Magna Charta's guarantee of jury trial would have been logically breached by any "Commitment for Contempt

16 LESSER, HISTORY OF THE JURY SYSTEM 151 (1894).

17 Note 9 supra.

18 FOX, THE HISTORY OF CONTEMPT OF COURT 5-6, 27 (1927). Almon's Case was first cited by counsel in Burdett v. Abbot, 14 East 1, 104 Eng. Rep. 501 (1811).

19 4 BLACKST. COMM., c. 20, §3.

20 Green v. United States, 356 U.S. 165 at 186 (1958).

21 4 BLACKST. COMM., c. 20, §2.

22 JACOB'S LAW DICTIONARY, 9th ed. (1772) cited in FOX, THE HISTORY OF CONTEMPT OF COURT 38 (1927).

merely ex officio."[23] Conversely, nonjury procedure was supported by Hawkins' important work, *Pleas of the Crown,* in which the author noted that contempts both direct and indirect were punishable by attachment, which required the contemnor to present himself to the court, answer interrogatories concerning his offense, and, unless he denied the charges (which purged him of contempt and left him to normal jury trial for perjury), be liable to judicial conviction.[24]

The foregoing discussion of authorities available to the colonial lawyers shows that some contemporary sources were at hand which could possibly have been interpreted to weigh against the use of summary procedure. But it is difficult to conclude with any conviction that such materials were so interpreted. A survey of the relevant decisions by colonial and state courts in the period between the writing and the publication of Wilmot's opinion in *Almon's Case,* 1765 to 1802, is no more conclusive as an indication of the thinking of lawyers and judges of that period. In the year *Almon's Case* was argued, a Massachusetts chief justice entrusted a contempt by publication to the grand jury for indictment, but he explicitly informed them that the court had power to proceed summarily if it had so decided.[25] Thirty years later, the South Carolina court drew a distinction between direct and indirect contempts and prescribed jury trial in the latter type.[26] Some other cases allowed a summary procedure, but most of these involved direct contempts or contempts by officers of the court, which were both historically punished by summary procedure.[27] The cases of this period are so sparse and inconclusive that they furnish no adequate illumination of the constitutional scope of "jury trial."

23 GILBERT, HISTORY AND PRACTICE OF COMMON PLEAS, 3d ed., 25, note (1779). The statute was Statute of Westminster the Second, chapter 39.

24 2 HAWKINS, PLEAS OF THE CROWN, 5th ed., c. 22, §1, 141 ff. (1771).

25 "The Charge of the Chief Justice to the Grand Jury," Quincy (Mass.) Rep. 241 (1765).

26 Lining v. Bentham, 2 Bay Rep. (S.C.) 1 at 8 (1796).

27 See 1 RECORDS OF THE SUFFOLK COUNTY COURT 87 (1933); State v. Stone, 3 H. & McH. (Md.) 115 (1792) (attachment of contempt against justices of county court for refusing to allow a certiorari issued by the court of appeals); Respublica v. Oswald, 1 Dall. (Pa.) 319 (1788) (contempt by libelous publication punished summarily, the court relying upon Blackstone's "immemorial usage"); Thwing v. Dennie, Quincy (Mass.) Rep. 338 (1772) (snatching papers from the hand of the opposing counsel in court); Butterworth v. Stagg, 2 Johns. (N.Y.) 290 (1801) (person brought suit in name of another without his consent). In one libel case, defendant was summarily fined and imprisoned for contempt, but as a result the judges were impeached and a law passed to avoid repetition of such

Perhaps the language of the Judiciary Act of 1789, enacted by a Congress whose judiciary committee included members of the then recent Constitutional Convention, and who "no doubt shared the prevailing views in the American Colonies of English law," could be instructive.[28] Justice Harlan, indeed, feels the act buttresses the validity of summary procedure. Some difficulties arise, however, from the wording of the act. It authorized summary punishment of "all contempts in any cause or hearing before . . . [the courts]."[29] The more probable interpretation of this phrase would apply the preposition "before" as merely describing the "cause or hearing," and thus make the act applicable to all contempts. Yet it is arguable that a possible interpretation would apply this preposition to "contempts," and thus limit summary procedure to direct contempts. In the only Supreme Court decision affected by the 1789 act, habeas corpus was refused a witness whose contempt had been refusal to answer a question under oath, i.e., a direct contempt.[30] In 1831, federal judge Peck construed the act to apply to a lawyer who had published a criticism of an opinion while an appeal was pending, and thereby raised a furor that caused his own impeachment by the Senate. A result of this famous impeachment, which ended in a one-vote acquittal, was revision of the Judiciary Act in 1831.[31] The revised act recognized the validity of summary proceedings in both direct and indirect contempts, but sought to exclude remote newspaper criticism by limiting the contempt power to acts committed in the presence of the court "or so near thereto as to obstruct the administration of justice."[32] Neither the authors of this new legislation, nor the prosecutors of the impeached Judge Peck, disputed the fundamental validity of summary proceedings.[33]

punishments. Respublica v. Passmore, 3 Yeates (Pa.) 441 (1802). But compare People v. Freer, Col. & Cai. Cas. (N.Y.) 300 (1803). A later decision is Morris v. Creel, Brock. & Hol. (Va.) 333 (1814) (clerk of the executive council of Virginia refused to obey subpoena).

28 Justice Harlan in Green v. United States, 356 U.S. 165 at 186 (1958).

29 1 Stat. 73, 83 (1789).

30 Ex parte Kearney, 7 Wheat. (20 U.S.) 38 (1822).

31 See Frankfurter and Landis, "Power of Congress over Procedure in Criminal Contempts in 'Inferior' Federal Courts—A Study in the Separation of Powers," 37 HARV. L. REV. 1010 at 1024-1026 (1924), for a discussion of this incident.

32 4 Stat. 487, 488 (1831).

33 See Storrs' argument reported in STANSBURY, REPORT OF THE TRIAL OF JAMES H. PECK 372-373, 380 (1883). This point noted by Justice Frankfurter in Green v. United States, 356 U.S. 165 at 190 (1958).

III. *Development of Summary Procedure in Indirect Contempts*

After the Judiciary Act of 1831, summary procedure became firmly entrenched in a series of Supreme Court decisions rejecting jury trial starting with *In re Savin* in 1889.[34] Although the Court took note as early as 1914 of the questionable common law background,[35] the weight of stare decisis gradually mounted. At present, three principal strains are discernible in the law of indirect criminal contempts: (1) establishment and enforcement of minimal procedural standards, but not including jury trial; (2) gradual reduction of the area where the criminal contempt power can be exercised; (3) increasing severity in actual punishments inflicted under the criminal contempt power.

In 1925 the Court laid down basic requirements for judicial handling of an indirect contempt, including notice, hearing, right to counsel, right to present witnesses and to cross-examine others, and, when not impracticable, hearing of the contempt charge by a judge other than the one involved in the offense.[36] The Court demonstrated its willingness to enforce this last, discretionary, safeguard in 1954 when it overruled a conviction for a *direct* contempt on grounds that the judge had sufficient time to assign the trial to another more impartial arbiter.[37] Almost all the constitutional guarantees save jury trial thus have been extended to the indirect contemnor. And when certain indirect contempts are also made crimes under state or federal statutes, the Clayton Act of 1914 furnishes the alleged contemnor with an optional jury trial.[38] Although an attempt was made to attack this delimiting legislation as an unconstitutional abridgement of the "inherent" contempt power of the federal judiciary, the Court sustained the Clayton Act provision in 1924.[39]

34 131 U.S. 267 (1889). Cases are collected in Justice Harlan's opinion in Green v. United States, 356 U.S. 165 at 183, n. 14 (1958).

35 Justice Holmes, writing for the court in Gompers v. United States, 233 U.S. 604 at 610-611 (1914), noted the research of Solly-Flood, who had endeavored to show that summary procedure to punish any kind of criminal contempt was erroneously grounded. See SOLLY-FLOOD, THE STORY OF PRINCE HENRY OF MONMOUTH AND CHIEF-JUSTICE GASCOIGN (1886).

36 Cooke v. United States, 267 U.S. 517 (1925).

37 Offutt v. United States, 348 U.S. 11 (1954). See Weisman, "Sacher and Isserman in the Courts: Note III," 15 LAW. GUILD REV. 67 (1955).

38 38 Stat. 730 at 739 (1914).

39 Michaelson v. United States, 266 U.S. 42 (1924).

Lagging somewhat behind the establishment of procedural standards came gradual narrowing of the limits within which the contempt power can be exercised. This circumscription was foreshadowed by the uneasiness with which some justices had earlier regarded the contempt power.[40] The trend was given its start in 1941 with the decision in *Nye v. United States*,[41] when the phrase "so near thereto as to obstruct the administration of justice," which had previously been defined in terms of causal relationship, was redefined to mean the immediate geographic vicinity. In 1945 Justice Black ruled on behalf of the Court that perjury in and of itself did not qualify as a criminal contempt, and added that criminal contempt should be always strictly construed.[42] Judicial confinement of the power was most sharply etched in 1956 when a 7-2 majority led by Justice Black held that, contrary to the earlier accepted meaning, an attorney was not a court "officer" within the second clause of the Judiciary Act and therefore his misbehavior was not punishable summarily.[43] A coincident trend involved closer scrutiny by the Court of contempt proceedings within the states. The Fourteenth Amendment guarantee of due process was construed to require "imminent" rather than "likely" obstruction to justice in order to have actionable contempts,[44] and minimal procedural guarantees were imposed.[45] Echoing the Court's restraining attitude, lower federal courts have in scattered cases begun to show a tendency to curb their contempt powers.[46]

40 See dissenting opinion of Justice Holmes in Toledo Newspaper Co. v. United States, 247 U.S. 402 (1918). Cf. Opinion of Chief Justice Taft, in Cooke v. United States, 267 U.S. 517 at 539 (1925), that exercise of contempt power "is a delicate one and care is needed to avoid arbitrary or oppressive conclusions."

41 313 U.S. 33 (1941).

42 In re Michael, 326 U.S. 224 (1945).

43 Cammer v. United States, 350 U.S. 399 (1956), interpreting 18 U.S.C. (1952) §401(2). The strained interpretation is analyzed in comment, 8 HASTINGS L.J. 56 (1956).

44 Craig v. Harney, 331 U.S. 367 (1947).

45 In re Oliver, 333 U.S. 257 (1948), required public trial, reasonable opportunity to defend, notice, right to cross-examine, right to counsel, when immediate action was not necessary. In re Murchison, 349 U.S. 133 (1955), added the requirement that the hearing be conducted by a different judge whenever possible.

46 Lower federal courts have in some cases narrowed the definition of criminal contempt, and some federal judges have even favored abolition of summary procedure in indirect contempts. Carlson v. United States, (1st Cir. 1954) 209 F. (2d) 209 (erroneous but good-faith refusal of witness to answer question before grand jury not contempt); Matusow v. United States, (5th Cir. 1956) 229 F. (2d) 335 (defendant's execution of affidavit stating that he had falsely testified in prior prosecution not within contempt statute). In Farese v. United States, (1st Cir. 1954) 209 F. (2d) 312 at 315, an incident occurring in corridors of the courthouse after proceedings had ended for the day was held not within

As the Court has increasingly restricted the sphere of application of the contempt power and increasingly regulated the manner of its application, a gradual intensification of the severity with which contempts are punished has taken place.[47] The most severe punishments have been inflicted in the past decade, when sentences up to four years have been approved by the Court.[48] In the *Green* case petitioners argued that courts were without power to sentence for more than one year for a conviction produced from summary proceedings. In rejecting this contention the Court said the severity of punishment was in the hands of the trial judge, absent any "abuse of discretion."[49]

IV. *Conclusion*

In perspective, the evidence of the colonial and Constitutional Convention attitudes toward jury trial in contempt proceedings is sketchy and inconclusive. Silence of the founders on the problem most logically means that they did not consider it; any other inference is pure conjecture. If the intent of the framers cannot accordingly be ascertained, what remains with which to resolve this controversy? Surely the long, consistent line of judicial precedent supporting and endorsing the use of summary proceedings in both direct and indirect criminal contempts cannot be forgotten. As Justice Frankfurter pointed out in his concurring opinion in the *Green* case, "the fact that scholarship has shown that historical assumptions regarding the procedure for

the statute. Magruder, C. J., stated: "It is the clear teaching of the Nye and Michael cases that the grant of summary contempt power, as contained in 18 U.S.C. §3401, is to be grudgingly construed, so that the instances where there is no right to a jury trial will be narrowly restricted to the bedrock cases where concession of this drastic power to the courts is necessary to enable them to preserve their authority and to insure the maintenance of order and decorum in the proceedings before them." Judge Cameron of the 5th Circuit has announced in favor of abolishing summary proceedings as unconstitutional in his partial concurrence in Ballantyne v. United States, (5th Cir. 1956) 237 F. (2d) 657 at 666-670, a case which exempted from the statute defendant who failed to answer questions before a grand jury, with some indication of bad faith on his part.

47 Examination of the twenty-five cases cited as providing the weight of precedent by Justice Frankfurter in his concurring opinion, in Green v. United States, 356 U.S. 165 (1958), reveals that, with two exceptions, fines and light jail sentences were imposed in every instance. Fines ranged from $5 in Brown v. Walker, 161 U.S. 591 (1896), to $700,000 assessed against the United Mine Workers in United States v. United Mine Workers, 330 U.S. 258 (1947). Jail terms varied upwards from 30 days in Brown v. Walker supra.

48 United States v. Thompson, (2d Cir. 1954) 214 F. (2d) 545, imposed a four-year sentence for bail-jumping by co-defendants of Green in the Smith Act prosecutions.

49 Green v. United States, 356 U.S. 165 at 188 (1958).

punishment of contempt of court were ill-founded, hardly wipes out a century and a half of the legislative and judicial history of federal law based on such assumptions."[50] Moreover, the existence of summary power rests on more than precedent and custom; it is supported as well by reason. Even Chief Justice Taft, wary of the power, recognized as indispensable "the power of contempt which a judge must have and exercise in protecting the due and orderly administration of justice and in maintaining the authority and dignity of the court."[51] Justice Holmes conceded that when judicial functions were truly threatened he "would go as far as any man in favor of the sharpest and most summary enforcement of order in Court and obedience to decrees. . . ."[52] To add the requirement of a slow and cumbersome jury trial could not but curtail the effectiveness of the court's sanctions and decrees. The need for summary procedure, moreover, is as strong in indirect contempts as it is in direct contempts. This would seem to be true despite historical distinctions uncovered by Fox or theoretical distinctions suggested by the Clayton Act, which provides for optional jury trial only for indirect contempts. Proper judicial operation is impaired as much by persons fleeing or resisting court orders as by counsel trading invective with the judge in the courtroom. As has been shown in the previous discussion, the federal courts today exercise the criminal contempt power over only the most immediately damaging actions, and with almost all the procedural safeguards, save jury trial, spelled out in the Bill of Rights.

If it is to be accepted, then, that summary proceedings are supported by stare decisis and are necessary to protect the court's function, still a further question may be asked: how much punishment is necessary for this protection? While the imposition of small fines and short jail terms might be approved as devices to deter would-be contemnors, sentences of ten or twenty years would certainly seem to exceed the amount of deterrent power needed. Within these extremes lies an area where the penalty imposed would depart from the minimum needed to implement judicial effectiveness and begin to encroach on the criminal law notion of meting out punishment. To the extent that un-

[50] Id. at 189.

[51] Cooke v. United States, 267 U.S. 517 at 539 (1925).

[52] Dissenting opinion in Toledo Newspaper Co. v. United States, 247 U.S. 402 at 425 (1918).

necessarily severe punishments are used, perhaps Justice Black is correct in contending that the contempt proceeding is essentially criminal in nature, and therefore jury trial should be afforded.[53] An incongruous feature of the *Green* case is that, after arguing that contempt is not a crime within traditional meanings or practical concepts, the majority used the five-year maximum sentence available under the criminal bail-jumping statute of 1954 as a yardstick to justify the three-year sentences imposed on the defendants.[54]

At present, the punishment of contemnors lies in the complete discretion of the trial court, subject to review only on the nebulous ground of an "abuse of discretion."[55] Congress could greatly clarify this problem by establishing definite restrictions on contempt punishments available to the courts. In 1957 it took an isolated step in this direction and regulated the severity of punishment available in indirect contempt proceedings under the new Civil Rights Act. A maximum penalty is fixed, and an option of jury trial is afforded a contemnor whose fine or sentence exceeds specified limits within the maximum.[56] Similar, though more comprehensive, legislation should be enacted to cover all criminal contempts.

Denis T. Rice, S.Ed.

53 Justice Black argues the nature of criminal contempt as a crime rather than a sui generis proceeding in his dissent in the Green case, 356 U.S. 165 at 201-202. He relies strongly on the fact that criminal punishment is imposed, and feels that contempt thus "possesses all of the earmarks commonly attributed to a crime."

54 Green v. United States, 356 U.S. 165 at 189 (1958). The bail-jumping statute is 18 U.S.C. (Supp. IV, 1957) §3146.

55 Green v. United States, 356 U.S. 165 at 188 (1958).

56 Civil Rights Act of 1957, 71 Stat. 634 at 638, 42 U.S.C. (Supp. V, 1958) §1995. The maximum penalty under the statute is a $1000 fine and six months imprisonment. The option of jury trial is afforded the contemnor if the judge upon conviction levies a fine in excess of $300 or a jail sentence in excess of forty-five days.