the proceeding, he must afford the alleged contemnor at least reasonable notice of the specific charge and opportunity to be heard in his own defense. Apparently, a "full scale trial" is not contemplated.[216]

Curbing the judge's power to consider conduct as occurring in his presence, the Court, in *Harris v. United States*,[217] held that summary contempt proceedings in aid of a grand jury probe, achieved through swearing the witness and repeating the grand jury's questions in the presence of the judge, did not constitute contempt "in the actual presence of the court" for purposes of Rule 42(a); rather, the absence of a disturbance in the court's proceedings or of the need to immediately vindicate the court's authority makes the witness' refusal to testify an offense punishable only after notice and a hearing.[218] Moreover, when it is not clear that the judge was fully aware of the contemptuous behavior when it occurred, notwithstanding the fact that it occurred during the trial, "a fair hearing would entail the opportunity to show that the version of the event related to the judge was inaccurate, misleading, or incomplete." [219]

Due Process Limitations on Contempt Power: Right to Jury Trial.—Originally, the right to a jury trial was not available in criminal contempt cases.[220] But the Court held in *Cheff v. Schnackenberg*,[221] that a defendant is entitled to trial by jury when the punishment in a criminal contempt case in federal court is more than the sentence for a petty offense, traditionally six months. Although the ruling was made pursuant to the Supreme Court's supervisory powers and was thus inapplicable to state courts and presumably subject to legislative revision, two years later the Court held that the Constitution also requires jury trials in criminal contempt cases in which

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[216] Taylor v. Hayes, 418 U.S. 488 (1974). In a companion case, the Court observed that, although its rule conceivably encourages a trial judge to proceed immediately rather than awaiting a calmer moment, "[s]ummary convictions during trials that are unwarranted by the facts will not be invulnerable to appellate review." Codispoti v. Pennsylvania, 418 U.S. 506, 517 (1974).

[217] 382 U.S. 162 (1965), *overruling* Brown v. United States, 359 U.S. 41 (1959).

[218] *But see* Green v. United States, 356 U.S. 165 (1958) (noncompliance with order directing defendants to surrender to marshal for execution of their sentence is an offense punishable summarily as a criminal contempt); Reina v. United States, 364 U.S. 507 (1960).

[219] Johnson v. Mississippi, 403 U.S. 212, 215 (1971) (citing *In re* Oliver, 333 U.S. 257, 275–276 (1948)).

[220] *See* Green v. United States, 356 U.S. 165 (1958); United States v. Barnett, 376 U.S. 681 (1964), and cases cited. The dissents of Justices Black and Douglas in those cases prepared the ground for the Court's later reversal. On the issue, *see* Frankfurter and Landis, *Power of Congress over Procedure in Criminal Contempts in 'Inferior' Federal Courts—A Study in Separation of Powers*, 37 HARV. L. REV. 1010, 1042–1048 (1924).

[221] 384 U.S. 373 (1966).