

## Sec. 1—Judicial Power, Courts, Judges

the offense was more than a petty one.<sup>222</sup> Whether an offense is petty or not is determined by the maximum sentence authorized by the legislature or, in the absence of a statute, by the sentence actually imposed. Again the Court drew the line between petty offenses and more serious ones at six months' imprisonment. Although this case involved an indirect criminal contempt (willful petitioning to admit to probate a will known to be falsely prepared) the majority in dictum indicated that even in cases of direct contempt a jury will be required in appropriate instances. "When a serious contempt is at issue, considerations of efficiency must give way to the more fundamental interest of ensuring the even-handed exercise of judicial power."<sup>223</sup> Presumably, there is no equivalent right to a jury trial in civil contempt cases,<sup>224</sup> although one could spend much more time in jail pursuant to a judgment of civil contempt than one could for most criminal contempts.<sup>225</sup> The Court has, however, expanded the right to jury trials in federal civil cases on nonconstitutional grounds.<sup>226</sup>

***Due Process Limitations on Contempt Powers: Impartial Tribunal.***—In *Cooke v. United States*,<sup>227</sup> Chief Justice Taft uttered some cautionary words to guide trial judges in the use of their contempt powers. "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 is most important and indispensable. But its exercise is a delicate one and care is needed to avoid arbitrary or oppressive conclusions. This rule of caution is more mandatory where the contempt charged has in it the element of personal criticism or attack upon the judge. The judge must banish the slightest personal impulse to reprisal, but

<sup>222</sup> *Bloom v. Illinois*, 391 U.S. 194 (1968). See also *International Union, UMW v. Bagwell*, 512 U.S. 821 (1994) (refining the test for when contempt citations are criminal and thus require jury trials).

<sup>223</sup> 391 U.S. at 209. In *Codispoti v. Pennsylvania*, 418 U.S. 506 (1974), the Court held a jury trial to be required when the trial judge awaits the conclusion of the proceeding and then imposes separate contempt sentences in which the total aggregated more than six months even though no sentence for more than six months was imposed for any single act of contempt. For a tentative essay at defining a petty offense when a fine is levied, see *Muniz v. Hoffman*, 422 U.S. 454, 475–77 (1975). In *International Union, UMW v. Bagwell*, 512 U.S. 821, 837 n.5 (1994), the Court continued to reserve the question of the distinction between petty and serious contempt fines, because of the size of the fine in that case.

<sup>224</sup> The Sixth Amendment is applicable only to criminal cases and the Seventh to suits at common law, but the due process clause is available if needed.

<sup>225</sup> Note that under 28 U.S.C. § 1826 a recalcitrant witness before a grand jury may be imprisoned for the term of the grand jury, which can be 36 months. 18 U.S.C. § 3331(a).

<sup>226</sup> *E.g.*, *Beacon Theatres v. Westover*, 359 U.S. 500 (1959); *Dairy Queen v. Wood*, 369 U.S. 469 (1962); *Ross v. Bernhard*, 396 U.S. 531 (1970). However, the Court's expansion of jury trial rights may have halted with *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

<sup>227</sup> 267 U.S. 517, 539 (1925).