

Sec. 1—Judicial Power, Courts, Judges

he should not bend backward and injure the authority of the court by too great leniency. The substitution of another judge would avoid either tendency but it is not always possible. Of course where acts of contempt are palpably aggravated by a personal attack upon the judge in order to drive the judge out of the case for ulterior reasons, the scheme should not be permitted to succeed. But attempts of this kind are rare. All of such cases, however, present difficult questions for the judge. All we can say upon the whole matter is that where conditions do not make it impracticable, or where the delay may not injure public or private right, a judge called upon to act in a case of contempt by personal attack upon him, may, without flinching from his duty, properly ask that one of his fellow judges take his place. *Cornish v. The United States*, 299 Fed. 283, 285; *Toledo Company v. The United States*, 237 Fed. 986, 988. The case before us is one in which the issue between the judge and the parties had come to involve marked personal feeling that did not make for an impartial and calm judicial consideration and conclusion, as the statement of the proceedings abundantly shows.”²²⁸

*Sacher v. United States*²²⁹ grew out of a tempestuous trial of eleven Communist Party leaders in which Sacher and others were counsel for the defense. Upon the conviction of the defendants, the trial judge at once found counsel guilty of criminal contempt and imposed jail terms of up to six months. At issue directly was whether the contempt charged was one that the judge was authorized to determine for himself or whether it was one that under Rule 42(b) could be passed upon only by another judge and only after notice and hearing, but behind this issue loomed the applicability and nature of due process requirements, in particular whether the defense attorneys were constitutionally entitled to trial before a different judge. A divided Court affirmed most of the convictions, set aside others, and denied that due process required a hearing before a different judge. “We hold that Rule 42 allows the trial judge, upon the occurrence in his presence of a contempt, immediately and summarily to punish it, if, in his opinion, delay will prejudice the trial. We hold, on the other hand, that if he believes the exigencies of the trial require that he defer judgment until its completion, he may do so without extinguishing his power. . . . We are not unaware or unconcerned that persons identified with unpopular causes may find it difficult to enlist the counsel of their choice. But we think it must be ascribed to causes quite apart from fear of being held in contempt, for we think few effective lawyers would regard the tactics

²²⁸ The *Toledo Company* case that the Court cited was affirmed in *Toledo Newspaper Co. v. United States*, 247 U.S. 402 (1918).

²²⁹ 343 U.S. 1 (1952). See *Dennis v. United States*, 341 U.S. 494 (1951).