is not unlimited. In *Spallone v. United States*,[201] the Court held that a district court had abused its discretion by imposing contempt sanctions on individual members of a city council for refusing to vote to implement a consent decree remedying housing discrimination by the city. The proper remedy, the Court indicated, was to proceed first with contempt sanctions against the city, and only if that course failed should it proceed against the council members individually.

***First Amendment Limitations on the Contempt Power.***— The phrase, "in the presence of the Court or so near thereto as to obstruct the administration of justice," was interpreted so broadly in *Toledo Newspaper Co. v. United States*[202] as to uphold the action of a district court judge in punishing a newspaper for contempt for publishing spirited editorials and cartoons issues raised in an action challenging a street railway's rates. A majority of the Court held that the test to be applied in determining the obstruction of the administration of justice is not the actual obstruction resulting from an act, but "the character of the act done and its direct tendency to prevent and obstruct the discharge of judicial duty." Similarly, the test whether a particular act is an attempt to influence or intimidate a court is not the influence exerted upon the mind of a particular judge but "the reasonable tendency of the acts done to influence or bring about the baleful result . . . without reference to the consideration of how far they may have been without influence in a particular case."[203] In *Craig v. Hecht*,[204] these criteria were applied to sustain the imprisonment of the comptroller of New York City for writing and publishing a letter to a public service commissioner criticizing the action of a United States district judge in receivership proceedings.

The decision in *Toledo Newspaper*, however, did not follow earlier decisions interpreting the act of 1831 and was grounded on historical error. For these reasons, it was reversed in *Nye v. United*

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only if refused should they appoint a private lawyer. Id. at 801–802. Still using its supervisory power, the Court held that the district court had erred in appointing counsel for a party that was the beneficiary of the court order; disinterested counsel had to be appointed. Id. at 802–08. Justice Scalia contended that the power to prosecute is not comprehended within Article III judicial power and that federal judges had no power, inherent or otherwise, to initiate a prosecution for contempt or to appoint counsel to pursue it. Id. at 815. *See also* United States v. Providence Journal Co., 485 U.S. 693 (1988), which involved the appointment of a disinterested private attorney. The Supreme Court dismissed the writ of *certiorari* after granting it, however, holding that only the Solicitor General representing the United States could bring the petition to the Court. *See* 28 U.S.C. § 518.

[201] 493 U.S. 265 (1990). The decision was an exercise of the Court's supervisory power. Id. at 276. Four Justices dissented. Id. at 281.

[202] 247 U.S. 402 (1918).

[203] 247 U.S. at 418–21.

[204] 263 U.S. 255 (1923).