

## CIVIL CONTEMPT AND ITS PROCEDURE

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### ABSTRACT

*Any law which disregards or discounts the power or administration of the law or impedes or prejudices sides or their representatives in proceedings is referred to as contempt of court. There are two kinds of disdain: Criminal disdain and Civil disdain. Civil disdain often includes a person's inability to fulfil a court order. In order to pressure such an individual to follow a court order the individual has breached, judges impose civilian abuse sanctions. In contrast, criminal disdain fees are punitive, which means they are used to prevent potential disdain by punishing the offender, regardless of what occurs in the key case. Judges have a great deal of discretion to decide who to disregard and disdain. For some person who is discovered to be guilty of disrespect of the tribunal, a judge may apply sanctions such as a penalty or a prison. Often disregard requires the form of measures which damage the capacity of the court to administer justice.*

## INTRODUCTION

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According to the doctrine of civil disdain, a judge can command an individual who has been summarily detained for failing to conform.<sup>141</sup> Instead of criminal offenses aimed at punishing the contemporary for disobeying the tribunal, civil harassment penalties are intended to compel the contemporary to fulfil the jurisdiction of the tribunal.<sup>142</sup> Therefore, if the orders are obeyed or compliance is no longer feasible, the prisoner will be punished. This element of civil disregard has led to the notion that a civil inmate has keys to his own prison. Since he could have originally decided to follow the court order, and since he could at any moment comply, the contemporary is regarded to be “a day wasted on prison willingly, preferring to conform on the same day.”<sup>143</sup>

As civil disdain penalties are not deemed to be a penalty, many of the constitutional safeguards which accompany criminal disregard and other criminal offenses are not triggered. A civil offender has no obligation but is allowed, to notify the same judge and hear his order, to present or cross-examine witnesses or even to a court. Prisoning for civil disdain can proceed until the contemporary can fulfil it but rejects. The civil contemporary could, therefore, be imprisoned for a lengthy moment, even if he was never accused of or even charged with a felony. However, irrespective of the term, the punishment of imprisonment for civil contempt cannot be seen as uncommon and unfair, because the imprisonment is not punitive but coercive. According to this reasoning, the constitutional prohibition on double jeopardy cannot be triggered by punishment for civil contempt. A contemporary can, therefore, serve two consecutive sentences, first for civil punishment and second for criminality, in respect of the same infringement.”

A civil contemporary's restricted procedural rights are focused on the idea that the sanction of civil disdain is coercive. That is why certain judges have maintained that it is impossible if it becomes apparent that the contemporary never conforms to the order of the tribunal, to hold an adult for civil contempt. Those judiciaries explain why the ongoing detention is solely punitive once prison has lost its coercive impact and calls for enhanced proceedings protection against criminal disdain.

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<sup>141</sup>Gompers v. Bucks Stove & Range Co., 221 U.S. 418,442 (1911)

<sup>142</sup>Gompers, 221 U.S. 441-42

<sup>143</sup>Ochoa v. United States, 819 F.2d 366, 371 (2d Cir. 1987).

Civil disdain incarceration should thus cease once the tribunal finds that compliance or coercion in the future is not feasible.

This normal "no realistic compliance chance" ("NRPC") is difficult in reality to administer. Court criteria have been identified to decide whether a contemporary can be compelled, but these variables provide restricted advice at best and often contradict the rationale behind the NRPC doctrine. They are incompatible. The problems with implementing the NRPC standard have been acknowledged by the judiciary and a latest *Hicks v. Feiock*<sup>144</sup> situation throws doubt on the need for a judge to discharge a contemporary who is not coercive. However, certain judges still enforce the NRPC doctrine, and it is evident that a judge can choose to release a contemporary who is not required to conform with the Court's order at his own discretion.

Civil contempt is based on the concept that a person who is imprisoned for failure to obey a court order may be compelled to live up to his imprisonment. Nevertheless, in most instances, a sensible person in the face of a court order never complies after serving an imprisonment period. He either immediately complies or he doesn't. Moreover, after a period of incarceration, the variables that might cause a person to conform are very distinct from those proposed by present legal doctrine. In particular, only if a person lacks complete information when his or her initial choice to disobey the court order will a deferred implementation take place.

A greater understanding of why inmates decide to conform with an order of the court will assist magistrates to determine whether a certain contemporary is inclined to be coercive. It is helpful to know whether a contemporary can be influenced under both the NRPC and the discretion of a judge to release a contemnor in prison. More importantly, it indicates sweeping adjustments to the composition of civil contempt sanctions with perfect information, that a rational contemporary, once in prison, never comply. For example, the discretion of a judge to release an imprisoned contemporary could be eliminated entirely and civil contemporaries could instead be punished for fixed terms with the right to purge penalties by complying with the order.

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<sup>144</sup> Hicks, 485 U.S. 624 (1988).

## **CIVIL CONTEMPT**

The primary function of civil disdain processes is conceivably to provide the required penalty, wherever the court instructions are not complied with. Individually, corporations may be sent to prison, fined, seizures of the property may be fined, or their managers' or other agents' committals.

The following are instances of behavior that was found to be civil disdain:

- a) Failure to fulfil an undertaking given to the Court;
- b) subject to certain restrictions, disobedience or order for money to be paid within a specific period;
- c) disobedience to a timely order for money to be paid to the Court;
- d) failure to comply with a judgment or to refrain from doing any act within a specified period;
- e) failure to comply with an order of questioning and inspection of the case

## **COURTS WITH CONTEMPT JURISDICTION:**

The powers to undertake all types of disdain for the tribunal of appeal are now governed by order 52 of the Rules of the Supreme Court, which are the supreme record authorities. The person will be captured by a court official and taken into custody by a good request, under orders of the court. It is therefore within the jurisdiction of the judiciary to advise or hold safety for healthy behavior or to give an order against the repeat of misconduct, rather than commit it. An enterprise's property can be sequestered. The Court is entitled to stop the execution of the committal order on conditions and may order its enforcement at any moment on the request of the individual engaged.

## **MISBEHAVIOUR ACT IN COURT:**

It is widely agreed that courts of legislation must be adequately empowered to monitor and deter misconduct during court trials in order to preserve an environment conducive to the orderly administration of justice. The legislature has, as shown in Chapter III of the report, given tribunals of various concentrations the power to punish them for their face's disdain. If disdain also constitutes a criminal offense such as assaults (in the latest event a furious accused threw himself on the President's shoe), the accused will usually be attempted before another judge in the normal

manner and the method will not be unusual. However, misbehavior in the court interrupting the trials often comes under the summary procedure and some consider that the Court's powers are arbitrary because, as it were, the Judge sets the complaint and initiates and performs the prosecutor's trials and fixes the punishment. Warning, reprimand or, in appropriate instances, the withdrawal from custody of the aggressor is often enough to reinstate the order and permit the proceedings of the situation. However, the obvious rigor of the summary trial was diminished by the supreme court's vigilance so that the accused was informed of the exact nature of the supposed dislike and provided a complete opportunity to defend himself. We believe that the previous section from the *Balogh v. Crown Court*<sup>145</sup> judgment of Lord Denning summarizes the contemporary attitude to the practice of summary forces –

“This short penalty strength is a wonderful force. The dignity and power of the judge are maintained in order to guarantee a fair trial. It shall only be used by a judge of its own movement when acting instantly is essential—in order to preserve power if a tribunal—in order to avoid disturbance—allows witnesses to be free of fear, and lawyers to be affected incorrectly, etc. It can be done with care, of course, and only if the situation is clear and unreasonable. But it is a force that should not be reduced, practiced correctly.”

#### **THE SUMMARY PROCEDURE:**

Indeed, there are strong suggestions that the summary procedure should be retained to punish disdain against the tribunal. The President-in-office of the Council must be prepared to cope rapidly and efficiently with disruptions in the trials in order to proceed the trial. The facts are seldom serious and the judge who saw and learned about the events will be able to determine guilt and decide the correct punishment in as nice a situation as a different judge. In addition, he will be prepared to put the complained conduct in its correct framework. The dissuasive factor should also be taken into account. There is greater chance that the risk of an instant sanction will work than other parties. We do not think that a tribunal must always have the authority to cope with a disdain held against it. If the equipment of justice is working correctly, there will be instances of behavior that must be restricted and sanctioned at once. However, we believe that the interests of justice require that the increasing exercise of resumed forces only be reflected in legislation when it is a

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<sup>145</sup>1974 13 All E.R.283 at 288

question of necessity and immediate action is essential. In our view, the ordinary procedure should be the rule and the synthesis procedure the exception for justice to be done. In addition, we believe that a judicial judge should constantly codify the measures made to protect an offender's rights when the summary provision is invoked.

### **THE CIVIL CONTEMPT SANCTION**

Judges have wide power to impose penalties for court contempt.<sup>146</sup> Any act of disobedience or disregard for the Court or obstructing the legal process can be regarded as negligence. A wide variety of behavior is punishable.<sup>147</sup> For instance, offending a trial,<sup>148</sup> insulting a judge,<sup>149</sup> breaking order for an injunction or a restriction order, refused a court order for testimony before a grand jury and refused to disclose a child's whereabouts in contravention of a court order. Court offenses include.

A judge could impose a penalty of two kinds for refusing to abide by a court order. The first was that the judge would impose civil contempt penalties that compel his contemporary to abide by his order.

If the aim of the judge is to comply, it must encourage the contemporary to comply with the court order. Civil contempt, therefore, involves the imposition, in compliance with the contemporary, of an indeterminate or conditional penalty.<sup>150</sup> In contrast, criminal disregard needs a definite or unconditional penalty, which does not affect the contemporaries' future behavior.<sup>151</sup>

The processes that contempt gets to determine whether a punitive or coercive punishment is disregarded. The majority of the constitutional guarantees for criminal proceedings are imposed by punitive criminal offenses<sup>152</sup> and far fewer procedural protections are triggered through coercive civil disregard sanctions. Although a private counter has never been accused of a crime, he can be imprisoned for a very long time. Although the duration of possible imprisonment is

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<sup>146</sup> Earl C. Dudley Jr., *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts*, 79 Virginia Law Review 1025, 1026 (1993)

<sup>147</sup> Goldfarb, *supra* note I, at 1, 13; Dobbs, *supra* note 6, at 185-225

<sup>148</sup> *United States v. Seale*, 461 F.2d 345, 350-51 (7th Cir. 1972)

<sup>149</sup> *United States v. Schiffer*, 351 F.2d 91, 93-94 (6th Cir. 1965)

<sup>150</sup> *Hicks v. Feiock*, 485 U.S. 624, 633 (1988).

<sup>151</sup> *Id.*; *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 442 (1911).

<sup>152</sup> *Hicks*, 485 U.S. at 633-34; see also Dobbs, *supra* note 6, at 235, 24-42.

restricted in several times by law, in general the sanction of civil contempt is only restricted by the duration of the proceedings in which the order is based. It can be very different. For example, a witness who refuses to testify at trial can only be held under civil disrespect until the trial is over and will probably only be detained for a short period of time. on the other side, maximum civil imprisonment of a mother who fails to disclose her child's place of residence in breach of a Visitation order may last until the baby reaches majoritarian adulthood.

A civil contemporary may avoid penalties if he can demonstrate that court order cannot be adhered to. For instance, a person cannot be kept under civil disregard for not producing records which are not under his command.<sup>153</sup> In the same way, an insolvent person cannot, for not paying a judgment, be considered civilly disrespectful. However, the burden lies with the applicant to show that he cannot comply with the court order and that judges are usually opposed to such allegations without convincing proof that conformity is impossible.<sup>154</sup>

In rare cases, if a court finds there is 'just reason' for disobeying the court decision, a civil offender may evade sanctions. Acts that describe civil disrespect often specifically state that a person can only be punished if he has unjustly disobeyed the court's command. The Statutes do not normally identify a sole cause, but rather determine the judiciary. The courts have interpreted the word very closely in turn, both by restricting the conditions which can lead to just cause and putting on the contemporary the burden of evidence.<sup>155</sup>

For instance, courts interpreting the requirement of just cause under the federal recalcitrant statute of witnesses proposed few circumstances to satisfy. These are situations that compromise the confidentiality of the Grand Jury, in which the questions asked by the Prosecutor were not within the scope of the witness immunity,<sup>156</sup> in which the Minister promised a witness that he would not have to make a plea agreement or in which the contemporary could not prepare for the hearing.

In some circumstances, one circuit also suggested that the civil counterparts can use the defense of force. In the Grand Jury of December 1989 (Freligh II),<sup>157</sup> the Seventh Circuit indicated that if he

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<sup>153</sup>Rylander, 460 U.S. at 757.

<sup>154</sup> Wellington, 950 F.2d at 1529-30

<sup>155</sup>United States v. Handler, 476 F.2d 709, 713 (2d Cir. 1973).

<sup>156</sup>Handler, 476 F.2d at 714.

<sup>157</sup>Freligh 11, 903 F.2d at 1167.

was unable to miss voluntarily owing to a fear of palpable risk a civil contemporary can be disqualified from complying on grounds of compulsion. The storyteller must demonstrate very strongly that his will has been conquered by the real risk. However, the tribunal discovered in *Freligh II* that the argument of the contemporary was not backed. Given that no case has fulfilled the stringent protection requirements of the Court in the circuit, it appears that instances will be highly uncommon effectively raised. In addition, the government has no other jurisdiction.

The need to defend civil disdain was also ineffective. For instance, in *Morgan v Foretich*,<sup>158</sup> Morgan declined to follow a court decree to make her daughter because her ex-husband violated her kid sexually during previous visits. It was not convinced by the judge who gave the order that the violence happened that she was imprisoned for civil contempt. On appeal, she claimed that in order to prevent the higher harm of child abuse, it is essential to disobey the court order.<sup>159</sup> The Court rejects the claim that a civil disdain is irrelevant if a contemporary can avoid sanctions if he takes the other perspective of the damage caused by non-compliance from the courts.

### **LIMITATIONS ON CIVIL CONTEMPT SANCTIONS**

While a judge has wide discretion in designing civil disdain penalties, the time limit for which a civilian contemnitee can be imprisoned exists. Some of them were previously suggested. This chapter will discuss the existing law on civil contempt penalties in greater detail.

### **VALIDITY OF THE UNDERLYING ORDER**

In order to coerce adherence with a court order, civil violation sanctions are implemented.<sup>160</sup> When a court order is proclaimed void, it no longer requires adherence and it is necessary to release a civil contemporary prisoner on charges of disobeying such an order.

### **LENGTH OF THE UNDERLYING PROCEEDING**

Unless he can purge himself of disdain, a civil contemporary cannot be held in prison for civil contempt.<sup>161</sup> His jail period is therefore restricted to the length of the procedure that underlies the

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<sup>158</sup>*Morgan*, 546 A.2d 407 (D.C. App. 1988), cert. denied, 488 U.S. 1007 (1990)

<sup>159</sup>*Id.* at 411

<sup>160</sup>*United States v. United Mine Workers*, 330 U.S. 258, 294-95 (1947)

<sup>161</sup>*Shillitani v. United States*, 384 U.S. 364, 371-72 (1966)

order of disdain.<sup>162</sup>The reality that the total time spent in prison for civil disrespect changes with the duration of the procedure rather than with the damage created by the contemporaries' non-compliance and personal guilt can have strange outcomes. Suppose a gang member is called to confess to an innocent man in a drive-by shooting when another member of his gang is tried. If the group member refuses to give evidence, he can be imprisoned for personal dishonesty only until the trial usually ends for a few days. So he can be freed rapidly, even if an assassin can be freed by his rejection.

Consider a pupil from college who will be requested to give a statement to a grand jury researching her animal rights activists work with a band of humans experimenting in association with the illegal release of laboratory animals. If you think that testifying against your friend would be immoral, it can be held for a period of eighteen months or for the duration of the Grand Prix in civil contempt. Accordingly, the college student will be subjected to a far longer-term in prison for civil contempt than the gang member would be, though both the damage caused by her distrust and her moral guilt.

### **STATUTORY LIMITS**

While civil contempt penalties may usually be extended to the duration of the procedure at issue, the maximum period of imprisonment for some behavior is restricted by law. As a result of civil disregard for prosecutors who hesitate to bear witness at court or before a federal Grand jury, the Federal Witness Statute sets an eighteen-month cap on imprisonment.<sup>163</sup> Wisconsin confines imprisonment to six months for civil harassment deeds,<sup>164</sup> while California confines imprisonment to one year. Most States have no statutory boundaries on the punishment of civil contempt. Even if statutory limitations are imposed, the discharged civil defence against prosecution and death for criminal offense resulting as a consequence of the same act of disdain is not protected. They restrict only the highest feasible duration of civil disregard for imprisonment.

### **NO REALISTIC POSSIBILITY OF COERCION**

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<sup>162</sup> United States v. Powers, 629 F.2d 619, 627 (9th Cir. 1980)

<sup>163</sup> 28 U.S.C.A. § 1826 (West Supp. 1993).

<sup>164</sup> Wis. STAT. ANN. § 785.04(1)(b) (West 1981).

Some civil contemporaries will never comply with a judicial order although they can do so. These "uncoerced" contemporaries generally have very powerful grounds to refuse the court order. If the contemporary thinks he should lose more if he complies than when he goes to prison, he cannot be forced to abide by the court orders.

In some cases, the contemporary can have religious convictions that defy the court order.<sup>165</sup> For instance, members of the Davidian Branch Sect in Waco, Texas, resisted the command of an army of federal officials, David Koresh, the man that they thought was the Messiah. It seems likely that if they are instructed to testify against him or fellow sect members, they are not going to do so. A reporter ordering a confidential source to be revealed may think that the trust placed in him cannot be violated in decent faith, and may feel obligated to disobey the command.<sup>166</sup> Devoted political leaders often think it is immoral to provide data that could result in the detention or disturbance of a fellow activist's organization.

In other cases, the anxiety of the contemporary may result in non-compliance for his own or others safety. For instance, an innocent bystander might witness an organized crime syndicate member killing himself. He may be so afraid of retaliation that he refuses to confess to the offense before a grand jury. The person or relatives of the crime union may have been seriously harmed by members of it,<sup>167</sup> or the applicant can be aware of the other people who were killed following his consent to testify. Therefore, the witness faces a challenge. He can witness and risk severe damage to himself or his family or refuse to speak and risk being imprisoned. The witness might think that prison was his only choice when the risk from the crime syndicate is great.

Some judiciary have concluded that if a person has no realistic option, he may not be subject to civil disdain sanctions.<sup>168</sup> The judiciary argued that only the coercive and non-punitive penalties for civil disregard can be introduced with few procedural safeguards. If the contemporary never comply, then imprisonment cannot have a coercive impact, and the punishment becomes a criminal punishment. Since the contemporary is imprisoned without constitutional safeguards that

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<sup>165</sup>In re Cueto, 443 F. Supp. 857, 859, 864 (S.D.N.Y. 1978)

<sup>166</sup>In re Farr, 36 Cal. App. 3d 577, 581 (1974)

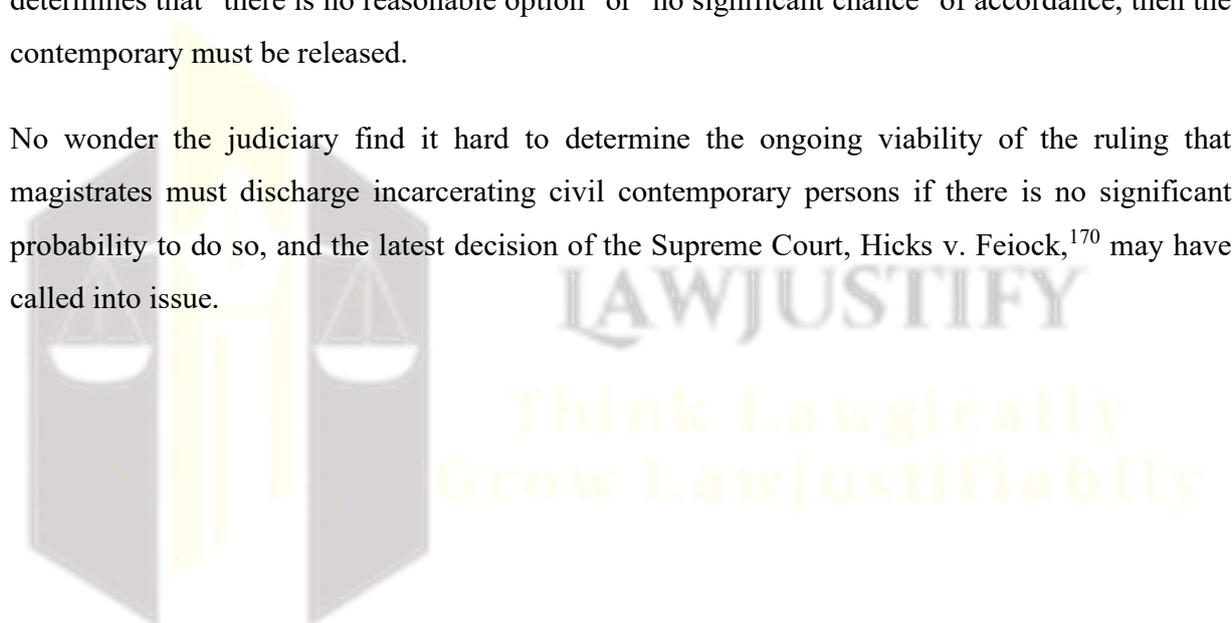
<sup>167</sup>Mark I. Pinsky, Judge Keeps Murder Case Witness in Jail, L.A. TIMES, Oct. 14, 1992

<sup>168</sup>Lambert v. Montana, 545 F.2d 87, 89-91 (9th Cir. 1976); In re Fan, 36 Cal. App. 3d 577, 584 (1977); Catena v. Seidl, 343 A.2d 744, 746-47 (N.J. 1975)

accompany criminal infringement trials,<sup>169</sup> his release requires due process or just factors. of course, the uncoercive contemporary can still be imprisoned for criminal contempt as soon as the wider procedural safeguards are provided that accompany the penal punishment.

The law of containment only as soon as a civil contemporary is enforced implies that a judge actually can determine who can be enforced. If a judge knowing from the start that a person will never comply with a court order, according to this NRPC standard, the judge probably cannot first issue the order. The NRPC standard needs a judge to regularly examine contemporaries presently imprisoned to guarantee that they are still persuaded to fulfil their responsibilities. When the judge determines that "there is no reasonable option" or "no significant chance" of accordance, then the contemporary must be released.

No wonder the judiciary find it hard to determine the ongoing viability of the ruling that magistrates must discharge incarcerating civil contemporary persons if there is no significant probability to do so, and the latest decision of the Supreme Court, Hicks v. Feiock,<sup>170</sup> may have called into issue.



## CONCLUSION

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The offense of the Court prevalent and generally relates to behavior disregarding the power or privilege of the Court or insulting it. often, disregard is in the manner of behavior which damage the capacity of the court to administer justice. Typically, judges have a lot of discretion in choosing who to disdain and disdain. Those retained for disregard may include parties, lawyers, witnesses, jurors, persons involved in or around a case, and court officials or courtrooms employees themselves. There are two kinds of disdain: criminal disdain and civil disdain. Civil disregard often includes someone's inability to fulfil a court decision. In order to press an individual to comply

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<sup>169</sup> In re Cueto, 443 F. Supp. 857, 862-65 (S.D.N.Y. 1978)

<sup>170</sup>Hicks, 485 U.S. 624 (1988).

with a court order, judges use civil-murder sanctions. on the other side, criminal offenses are punitive and thus serve to dissuade any potential act of disdain by punishing the offender, irrespective of the key process. Someone incarcerated for criminal disregard is unable to obtain their liberation by choosing to conform to the Court. Judges use different variables for their decision, including the complexity of the fundamental tribunal pre-court (criminal or civil) proceeding, and the severity of the contemptuous behavior, to embrace someone in civil or criminal disrespect.



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