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## Contempt: Direct and Indirect Contempt--What Constitutes Immediate View and Presence

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## NOTES

**CONTEMPT: DIRECT AND INDIRECT CONTEMPT—WHAT CONSTITUTES “IMMEDIATE VIEW AND PRESENCE.”**—Tardiness manifests a slovenly professional attitude. It can also get you five days in the county jail. In *Lyons v. Superior Court*<sup>1</sup> the petitioner was sole counsel for the defense in a felony prosecution. He arrived forty-five minutes after the jury trial was scheduled to resume and was orally ordered to show cause why he should not be held in contempt for his absence. Petitioner replied that he had overslept in his office as a result of a very bad cold and insufficient sleep. The court refused to believe this, summarily adjudged the petitioner in contempt, and sentenced him to serve five days in the county jail.

Upon a certiorari proceeding the petitioner sought annulment of this order adjudging him guilty of a direct contempt of court. He urges there was no contempt, but that if any occurred it was *indirect* in that it was not committed within the immediate view and presence of the court. Therefore it could be punished only after affidavit, notice, and hearing, as provided for by statute.<sup>2</sup>

The question thus raised is whether a person's *absence* can be deemed contemptuous conduct within the immediate view and presence of the court?

The courts have generally defined contempt as “a despising of the authority, justice, or dignity of the court.”<sup>3</sup> In other words, one whose conduct tends to bring the authority and administration of the law into disrespect or disregard; or otherwise tends to impede, embarrass, or obstruct the court in the discharge of its duties, is guilty of contempt.

Contempts are classified as either direct or indirect. A direct contempt is one committed in the immediate view and presence of the court. All others e.g., attempt to influence a juror during recess, newspaper publication contemptuous to court, and advising a client to violate a court order or decree, are indirect contempts.<sup>4</sup>

The determination of whether or not the contemptuous conduct was “committed in the immediate view and presence of the court” has presented a difficult problem to the courts. The cases have generally held that a contempt has occurred within the “immediate view and presence” when the court can rely upon its own senses as a criteria of the truth, and that where it requires evidence of others, the contempt is indirect.<sup>5</sup>

The California Supreme Court in the instant case held that the petitioner's absence from the court when he was obligated to be present interrupted the court's proceedings as effectively as any other contemptuous conduct within the court's presence and view.<sup>6</sup> Thus the court is saying that the attorney's absence constituted direct contempt.

Such a finding is quite unrealistic since *absence* itself is not conduct which amounts to “a despising of the authority, justice, or dignity of the court.” Rather absence, at its very best, is a mere result of such conduct. Surely, it is not difficult to imagine any number of reasons, some legitimate, others perhaps contemptuous, for which the accused could have been absent. At any rate, it should be apparent

<sup>1</sup> 43 Cal.2d 755, 278 P.2d 681 (1955).

<sup>2</sup> CALIF. CODE OF CIV. PROC. §§ 1211, 1212, 1217.

<sup>3</sup> In re Shortridge, 99 Cal. 526, 217 Pac. 73 (1893).

<sup>4</sup> McClatchy v. Superior Court, 119 Cal. 413, 51 Pac. 696 (1897).

<sup>5</sup> Klein v. United States, 151 F.2d 286 (D.C. Cir. 1945); *People v. Hagopian*, 343 Ill. App. 640, 99 N.E.2d 726 (1951); *Provenzale v. Provenzale*, 339 Ill. App. 345, 90 N.E.2d 115 (1950).

<sup>6</sup> 43 Cal.2d at 759, 278 P.2d at 683.

that whatever contempt could be involved under these circumstances would lie in the conduct causing the absence and not in the absence itself. From this it follows that whatever contemptuous conduct does exist, i.e., whatever *reason* caused the contemnor to be absent, is not before the court. The reason for the absence is not within the immediate view and presence of the court and therefore the court cannot through its personal knowledge alone determine whether or not a contempt exists. Instead it requires extrinsic evidence of the contempt, and this, in all fairness to the accused, should be brought out only through the proper proceedings such as are available to those accused of an indirect contempt. It has been held that a doubt as to whether a contemnor has been guilty of a direct or indirect contempt, should be resolved in favor of the indirect contempt.<sup>7</sup>

The distinction between a direct and indirect contempt is of importance primarily in its effect upon the proceedings taken to determine the guilt or innocence of the contemnor.<sup>8</sup>

The procedure involved in punishing an indirect contempt necessitates serving the accused with notice or an order to show cause containing a formal statement of the charge against him, and he must be given opportunity to plead and answer such charge.<sup>9</sup>

On the other hand, when a direct contempt occurs the court may, upon its own knowledge of the facts, without further proof, issue or trial, and without hearing an explanation of the motives of the offender immediately proceed to determine whether the facts justify punishment and to inflict such punishment as seems proper within the limits allowed by law.<sup>10</sup> This proceeding is termed a summary proceeding.

It has been suggested, in regard to judicial proceedings that the constitutional guaranties of due process of law normally require that the accused shall have notice and an opportunity to present his defense.<sup>11</sup> Such notice and hearing of course, are necessary lest the charge be false or inaccurate. In other words, the accused is guaranteed the right that the court will not render a judgment without first having had all the relevant facts presented to it.

In the light of the foregoing let us review the proceedings involved in these two classes of contempt. In the case of an indirect contempt, formal notice and hearing are given to the defendant. Thus we see the accused is given an opportunity to shed more light upon an occurrence which did not take place within the immediate view and presence of the court. Due process is therefore not wanting. A review of the summary proceedings involved in an action for a direct contempt shows that notice and hearing may be dispensed with. Is this not a denial of due process? Not at all. In such a case the court is in a position to witness the entire act of contempt and by so doing, its own personal knowledge takes the place of evidence and makes a trial an idle ceremony. Hence it was held that displaying an armed weapon, fighting, using profanity, etc., while the court was in session, were acts of such a nature that no reasonable person could have doubted that a contempt of court had occurred. Therefore, no question of fact arose and a hearing could be dispensed with without any prejudice or denial of due process of law to the accused.<sup>12</sup>

<sup>7</sup> *Ex parte Redmond*, 159 Miss. 449, 132 So. 328 (1931).

<sup>8</sup> *Lapique v. Superior Court*, 68 Cal.App. 407, 229 Pac. 1010 (1924).

<sup>9</sup> *Reymert v. Smith*, 5 Cal.App. 380, 90 Pac. 470 (1907).

<sup>10</sup> *Ex parte Sullivan*, 10 Okl. Cr. 465, 138 Pac. 815 (1914); 12 AM. JUR., *Contempt* § 61 (1938).

<sup>11</sup> 16 C.J.S., *Constitutional Law* § 611 (1939).

<sup>12</sup> *Ex parte Clark*, 208 Mo. 121, 106 S.W. 990 (1907).