Cornell Law Review

Volume 61
Issue 3 *March 1976*

Article 8

Constitutional Law-Labor Law-Jury Trial for Criminal Contempt-18 U.S.C.

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Constitutional Law—Labor Law—JURY TRIAL FOR CRIMINAL CONTEMPT—18 U.S.C. § 3692—LIMITED TO NORRIS-LAGUARDIA

Muniz v. Hoffman, 422 U.S. 454 (1975)

> An injunction has issued in an industrial dispute. It is charged that it has been violated. If the judge himself assumes to determine whether it has been or has not been, he can scarcely hope to make a decision that will not subject him to the charge, if he finds the prisoner guilty, of subserviency to the capitalistic interests or hostility to organized labor, or if he shall acquit, to pusillanimity or the ambition of the demagogue. In either case his court suffers in the estimation of no inconsiderable body of citizens. How much wiser it would be to call in a jury . . . .[1]

The right to a jury trial[2] in a criminal contempt[3] proceeding[4]

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[1] 51 CONG. REC. 14,369 (1914) (remarks of Senator Walsh during debate on the Clayton Act).

[2] The history of the jury trial in the United States was briefly outlined in Duncan v. Louisiana, 391 U.S. 145, 151-57 (1968).

[3] Contempt can be generally defined as an act of disobedience or disrespect toward a judicial or legislative body of government, or interference with its orderly process, for which a summary punishment is usually exacted. In a broader, more general view, it is a power assumed by governmental bodies to coerce cooperation, and punish criticism or interference even of a causally indirect nature . . . .

R. GOLDFARB, THE CONTEMPT POWER 1 (1963).

Contempt is in turn subdivided and classified by the courts and legal scholars into categories such as civil and criminal, direct and indirect, and constructive. *See id.* at 46-85; Dobbs, *Contempt of Court: A Survey,* 56 CORNELL L. REV. 183, 221-30, 235-49 (1971). These classifications have significance to the contemnor because they determine the punishment that he receives. *Id.* at 241-45.

Many of the criminal procedural safeguards apply to criminal contempt, so it is an especially important classification. *See, e.g.,* Bloom v. Illinois, 391 U.S. 194 (1968) (recognizing right to jury trial if contempt is serious); *In re* Bradley, 318 U.S. 50 (1943) (no double jeopardy); Cooke v. United States, 267 U.S. 517, 537 (1925) (appropriate notice of the charges); Gompers v. Buck's Stove & Range Co., 221 U.S. 418, 444 (1911) (recognizing right not to testify against oneself and presumption of innocence).

It is almost impossible to explain criminal contempt without reference to civil contempt by way of contrast. The Supreme Court set forth the distinctions in *Gompers*:

> Contempts are neither wholly civil nor altogether criminal. And "it may not always be easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both." . . . It is not the fact of punishment but rather its character and purpose that often serve to distinguish between the two classes of cases. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.

221 U.S. at 441, *quoting* Bessett v. W.B. Conkey Co., 194 U.S. 324, 329 (1904).

This distinction, based on the purpose for which the sentence is imposed, is the basic distinction upon which most scholars and courts agree. Dobbs, *supra,* at 235-49. One author argues, however, that it is impossible to predict the classification in which a court will place a given contempt. R. GOLDFARB, *supra,* at 66-67.

For a discussion of contempt including its history, see J. FOX, CONTEMPT OF COURT

has long been asserted by contemnors to be a constitutionally guaranteed right,[5] but as recently as 1958, the Supreme Court declared that "criminal contempts are not subject to a jury trial as a matter of constitutional right."[6] The contemnor's right to a jury only existed, if at all, as a statutory one.[7] Not until 1968, in *Bloom v. Illinois*,[8] did the Court expressly[9] state that there is a constitutional right to a jury trial in cases of "serious" criminal contempt.[10] Since *Bloom*, the Court has been struggling to define the requisite degree of seriousness.[11] *Muniz v. Hoffman*[12] is the most recent case decided by the Supreme Court in this area; this decision considered not only the constitutional, but also the statutory right to a jury trial in a case arising from a labor dispute.

Muniz arose out of a violation of an injunction obtained pursuant to the Taft-Hartley Act[13] by the Regional Director of the National Labor Relations Board.[14] The district court issued the injunction to halt illegal secondary boycott activities by Local 21 of the San Francisco Typographical Union.[15] Local 21 and some of its officials violated this injunction and were held to be in civil contempt. Local 21 continued the secondary boycott even after the contempt citation, however, and Local 70 then joined the boycott.[16]

(1927); R. GOLDFARB, *supra;* Dobbs, *supra;* Goldfarb, *The History of the Contempt Power,* 1961 WASH. U.L.Q. 1 (1961).

[4] These proceedings are governed by FED. R. CRIM. P. 42.

[5] *See* Green v. United States, 356 U.S. 165, 183 n.14, 191 n.2 (1958).

[6] *Id.* at 183.

[7] *See, e.g.,* 18 U.S.C. § 1361 (1970) (right to jury wbere contempt act constitutes separate crime under state or federal law); 29 U.S.C. § 528 (1970) (right to jury in cases, including contempt, arising under Landrum-Griffin Act); 42 U.S.C. § 1995 (1970) (right to jury in certain contempt cases arising under Civil Rights Act of 1957); 42 U.S.C. § 2000(h) (1970) (right to jury in certain contempt cases arising under 1964 Civil Rights Act); 45 U.S.C. § 439 (1970) (right to jury in contempt cases arising from violation of injunction or restraining order issued under 45 U.S.C. § 436 (1970)).

[8] 391 U.S. 194 (1968).

[9] *Id.* at 211. Although *Bloom* was the first case to state expressly that there is such a right, two earlier decisions had foreshadowed this holding. *See* 391 U.S. at 196-97; Cheff v. Schnackenberg, 384 U.S. 373, 380 (1966); United States v. Barnett, 376 U.S. 681, 694-95 & n.12 (1964).

[10] *See* note 65 *infra.*

[11] *See* notes 65-74 and accompanying text *infra.*

[12] 422 U.S. 454 (1975).

[13] 29 U.S.C. § 160(*l*) (1970).

[14] This was actually the second injunction arising out of the dispute; the Regional Director of the National Labor Relations Board obtained the first pursuant to the Labor Management Relations Act, 29 U.S.C. § 160(*l*) (1970), after a newspaper filed an unfair labor practice charge related to picketing. *See* 422 U.S. at 456.

[15] *Id.* at 482.

[16] *Id.* at 457.

Petitioners[17] and others were then ordered to show cause why they should not be held in civil and criminal contempt. Local 70 and Muniz requested a jury trial on the criminal contempt charges, but the request was denied and they were found guilty.[18] The sentence of petitioner Muniz was suspended, and he was placed on probation for one year;[19] a fine of $10,000 was imposed on Local 70.[20] On appeal, the Ninth Circuit affirmed the judgment.[21] The Supreme Court granted certiorari[22] and affirmed.

I

STATUTORY RIGHT TO A JURY TRIAL

Petitioners claimed that 18 U.S.C. § 3692[23] entitled them to a jury trial in the contempt proceedings below.[24] Congress enacted

[17] The petitioners were James Muniz, who was a labor union official, and Local 70. *Id.*

[18] The criminal contempt proceedings had been severed from the civil contempt proceedings. *See id.*

[19] *Id.*

[20] The fine was initially $25,000, but this was remitted by the district court based on Local 70's subsequent obedience to the injunction. For purposes of the case, therefore, the amount was $10,000. *Id.* at 457 n.1.

[21] 492 F.2d 929 (9th Cir. 1974). The threshold issues were the sufficiency and admissibility of the evidence. The Ninth Circuit held that on these questions the petitioners' claims were without merit. On the issue of the right to a jury trial under 18 U.S.C. § 3692 (1970), the Ninth Circuit held that "Congress [did not] intend its grant of equitable powers to district courts as embodied in section 10(*l*) of the Act, 29 U.S.C. § 160(*l*), to be repealed by the recodification of section 11 of the Norris-LaGuardia Act . . . ." *Id.* at 934.

Relying on Cheff v. Schnackenberg, 384 U.S. 373 (1966), the Ninth Circuit also held that Muniz did not have a constitutional right to a jury trial because he received only a one year suspended sentence. *Id.* at 935. Responding to whether Local 70 was constitutionally guaranteed a jury trial, the Court stated:

> Where the contemnor is a corporation, association, union or other artificial person and a fine is the ordinary punishment, the rules become obscure. . . . [W]e can go no further than to decide this case, and upon that basis we do not find that the judgment of the District Court was constitutionally prohibited.

Id. at 937.

[22] 419 U.S. 992 (1974). The Court limited review to two questions. The first was "[w]hether petitioners, charged with criminal contempt for an alleged violation of an injunction issued under the National Labor Relations Act, are entitled to a trial by jury under 18 U.S.C. § 3692." *Id.* And second "[w]hether Article III, Section 2 and the Sixth Amendment to the Constitution mandate a jury trial where a penalty of $25,000 is assessed against a labor organization in a criminal contempt proceeding." *Id.*

[23] In all cases of contempt arising under the laws of the United States governing the issuance of injunctions or restraining orders in any case involving or growing out of a labor dispute, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed.

18 U.S.C. § 3692 (1970).

[24] 422 U.S. at 457.

this section during the 1948 revision of the criminal code,[25] and at the same time repealed 29 U.S.C. § 111.[26] The Revisers' Notes[27] explain that section 3692 is based on section 111[28] which was a codification of part of the Norris-LaGuardia Act[29] whose purpose was to protect organized labor from the federal judiciary by limiting the courts' jurisdiction in labor matters.[30] Section 111 partially accomplished this objective by creating an exception to the historic rule that there was no right to a jury trial in cases of criminal contempt.[31]

Although section 3692 is based on section 111, it contains new language. Section 111 clearly applied only to the Norris-LaGuardia Act; section 3692 on its face applies to all cases of contempt arising "under the laws of the United States" and "growing out of a labor dispute."[32] The statutory construction issue in *Muniz* arose from this apparent broadening of the meaning of the statute.[33]

Subsequent to the enactment of section 111, but prior to the 1948 revision of the criminal code, Congress passed the Wagner

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[25] Act of June 25, 1948, ch. 645, 62 Stat. 844. One case has since held that § 3692 does not apply to civil contempt because it was recodified as part of the criminal code. *See* Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R., 380 F.2d 570, 579 (D.C. Cir.), *cert. denied*, 389 U.S. 327 (1967).

[26] Act of Mar. 23, 1932, ch. 90, § 111, 47 Stat. 70. *See* note 28 *infra.*

[27] H.R. REP. No. 304, 80th Cong., 1st Sess. A176 (1947).

[28] In all cases arising under sections 101-115 of this title in which a person shall be charged with contempt in a court of the United States . . . the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed . . . .

Act of Mar. 23, 1932, ch. 90, § 111, 47 Stat. 70.

[29] 18 U.S.C. § 3692 (1970), 29 U.S.C. §§ 101-15 (1970) (originally enacted as Act of Mar. 23, 1932, ch. 90, 47 Stat. 70).

[30] "[The Norris-LaGuardia] Act was intended to shield the organized labor movement from the intervention of a federal judiciary perceived by some as hostile to labor." 422 U.S. at 478 (Douglas, J., dissenting opinion).

In Boys Markets, Inc. v. Retail Clerks Local 770, 398 U.S. 235 (1970), the Supreme Court stated:

> The Norris-LaGuardia Act was responsive to a situation totally different from that which exists today. In the early part of this century, the federal courts generally were regarded as allies of management in its attempt to prevent the organization and strengthening of labor unions; and in this industrial struggle the injunction became a potent weapon that was wielded against the activities of labor groups. The result was a large number of sweeping decrees, often issued *ex parte*, drawn on an *ad hoc* basis without regard to any systematic elaboration of national labor policy.

Id. at 250 (footnotes omitted).

[31] *See* Green v. United States, 356 U.S. 165, 183-87 (1958).

[32] 18 U.S.C. § 3692 (1970). *See* notes 23, 28 *supra.*

[33] The Supreme Court had held prior to the enactment of § 3692 that § 111 did not apply to all contempt proceedings arising out of labor disputes. United States v. UMW, 330 U.S. 258, 298 (1947).

Act[34] and the Labor Management Relations Act,[35] of which the Taft-Hartley Act is a part. These two acts made it clear that the procedural limitations of Norris-LaGuardia do not apply to them.[36] The question was—even though the Court did not phrase it this way—whether the right to a jury trial, as provided by section 3692, is limited to contempts arising under the Norris-LaGuardia Act, or whether it also extends to labor legislation enacted subsequent to that Act.[37]

The Supreme Court, in resolving a conflict among the circuits,[38] held that section 3692 is limited to those contempts arising out of Norris-LaGuardia actions.[39] Justice White, writing for five members of the Court, first considered whether Congress, when it passed the Taft-Hartley Act, intended to extend the right to a jury trial to contempt proceedings arising out of Taft-Hartley violations.[40] After considerable analysis of the legislative history,[41] he

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[34] 29 U.S.C. §§ 151-62 (1970) (originally enacted as Act of July 5, 1935, ch. 372, 49 Stat. 499).

[35] 29 U.S.C. §§ 141-44, 151-68, 171-82, 185-87 (1970) (originally enacted as Act of June 23, 1947, ch. 120, 61 Stat. 136).

[36] The Labor Management Relations Act provides, in pertinent part: "[T]he jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of this title." 29 U.S.C. § 160(h) (1970). The Wagner Act is less specific, but it provides, in pertinent part: "[T]he district court shall have jurisdiction . . . notwithstanding any other provision of law . . . ." 29 U.S.C. § 160(*l*) (1970).

[37] Although the Court actually answered this question, Justice White, in his analysis, chose to approach the problem less directly. *See* notes 38-48 and accompanying text *infra*.

[38] Actually, only one case had held that § 3692 extended to Taft-Hartley violations. *See In re* Union Nacional de Trabajadores, 502 F.2d 113, 121 (1st Cir. 1974). The vast majority of cases restricted § 3692 to Norris-LaGuardia situations. *See* United States v. Robinson, 449 F.2d 925, 931-32 (9th Cir. 1971) (suit for injunctive relief against employees of federal agency); Brotherhood of Locomotive Firemen v. Bangor & Aroostook R.R., 380 F.2d 570, 579-80 (D.C. Cir.), *cert. denied*, 389 U.S. 327 (1967) (proceeding under 45 U.S.C. §§ 151-88); Madden v. Grain Elevator Workers Local 418, 334 F.2d 1014, 1020 (7th Cir. 1964), *cert. denied*, 379 U.S. 967 (1965) (proceeding under Taft-Hartley Act); NLRB v. Red Arrow Freight Lines, 193 F.2d 979, 980 (5th Cir. 1952) (proceeding brought for violation of § 7 of the Wagner Act, now 29 U.S.C. § 157); *In re* Piccinini, 35 F.R.D. 548 (W.D. Pa. 1964) (proceeding brought for violation of Fair Labor Standards Act, 29 U.S.C. §§ 215(a)(2), (a)(5) (1970)); Mitchell v. Barbee Lumber Co., 35 F.R.D. 544 (S.D. Miss. 1964) (proceeding brought for violation of Fair Labor Standards Act, 29 U.S.C. § 217 (1970)); Schauffler v. Longshoremen Local 1291, 189 F. Supp. 737, 741-42 (E.D. Pa.), *rev'd on other grounds*, 292 F.2d 182 (3d Cir. 1961) (proceeding under Taft-Hartley Act).

[39] "[S]ection 3692 does not provide for trial by jury in contempt proceedings brought to enforce an injunction issued at the behest of the [National Labor Relations] Board in a labor dispute arising under the Labor Management Relations Act.". 422 U.S. at 474 (footnote omitted).

[40] Justice White defined the question in these terms:

> The crucial issue is whether in enacting the Wagner and Taft-Hartley Acts, Congress not only intended to exempt the injunctions they authorized from Norris-LaGuardia's limitations, but also intended that civil and criminal contempt

concluded that Congress did not so intend.[42] This point was not actually in dispute, however, because the petitioners conceded that until Congress enacted section 3692, in 1948, there was no right to a jury trial in contempt cases arising out of Taft-Hartley violations.[43]

The majority opinion next analyzed the legislative history of section 3692 to determine whether Congress intended it to make a substantive change in existing law.[44] According to the majority, there was no manifestation of such an intent.[45] Furthermore, Justice White argued that the legislative history contained various statements to the contrary.[46] Applying the principle that there must be a clear expression of intent to make a substantive change in the law before a change will be read into a revision or codification,[47] the Court concluded that the statement in the Revisers' Notes that section 3692 is "based on section 111"[48] meant that it merely recodified section 111.

Justice Douglas, in dissent, argued that the phrase "based on section 111" meant that Congress reaffirmed the "purpose" of section 111 and extended the jury trial right to all criminal contempt proceedings arising out of a "labor dispute."[49] This argument, however, is not persuasive, especially in light of the proposed Ball Amendment to the Taft-Hartley Act.[50] That amendment

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proceedings enforcing those injunctions were not to afford contemnors the right to a jury trial.

Id. at 461.

[41] *See* 422 U.S. at 467-74.

[42] 422 U.S. at 461-67. The thrust of his argument was that "[b]y providing for labor injunctions outside the framework of Norris-LaGuardia Congress necessarily contemplated that there would be no right to a jury trial in contempt cases [arising from those injunctions]." *Id.* at 463-64.

[43] From the effective date of Taft-Hartley in late summer, 1947, until June 28, 1948, the effective date of the new § 3692, an alleged contemnor of a Taft-Hartley injunction would probably have been denied the jury trial guaranteed by [29 U.S.C. § 111 (1940)] because the injunction would not have been one arising under Norris-LaGuardia itself.

Brief for Petitioners at 41, Muniz v. Hoffman, 422 U.S. 454 (1975).

[44] The petitioners' claim, that § 3692 granted them a jury trial, would necessarily imply that enactment of that statute constituted a substantive change in the law.

[45] 422 U.S. at 474.

[46] *Id.* at 467-74.

[47] *Id.* at 470, *citing* Tidewater Oil Co. v. United States, 409 U.S. 151, 162 (1972), Fourco Glass Co. v. Transmirra Prods. Corp., 353 U.S. 222, 227 (1957), and United States v. Ryder, 110 U.S. 729, 740 (1884).

[48] H.R. REP. No. 304, 80th Cong., 1st Sess. A176 (1947).

[49] 422 U.S. at 478.

[50] As Senator Ball explained his amendment:

[W]hen the regional attorney of the NLRB seeks an injunction the Norris-LaGuardia Act is completely suspended . . . . We do not go quite that far in our

would have given contemnors under the Act the same right to a jury trial as existed under the Norris-LaGuardia Act, but the amendment was defeated just one year prior to the enactment of section 3692.[51]

Justice Stewart, in his dissent, avoided this issue and argued that on its face section 3692 would clearly grant a jury trial to the petitioners in *Muniz*.[52] He then searched for an express prohibition of such an interpretation, which he did not find.[53] Concluding that a literal interpretation of the statute was permissible, Justice Stewart argued that there should have been a jury trial because this was clearly a labor dispute within the meaning of the Norris-LaGuardia Act and the Labor Management Relations Act.[54] Justice Stewart supported his argument by citing the well-known rule that any doubts about the meaning of criminal statutes are to be resolved in favor of the accused.[55] The cases he cites, however, are not strong support for his contention because they are factually distinguishable from *Muniz*.[56]

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amendment. We simply provide that the Norris-LaGuardia Act shall not apply, with certain exceptions. We leave in effect the provisions of sections 11 and 12. Those are the sections which give an individual charged with contempt of court the right to a jury trial.

93 CONG. REC. 4834 (1947) (remarks of Senator Ball).

[51] 93 CONG. REC. 5118 (1947).

[52] *See* 422 U.S. at 481-84.

[53] *Id.* at 484-86. As Justice Stewart stated:

The revisers did not say that § 3692 was intended to be merely a recodification of § 11 of the Norris-LaGuardia Act. Rather, the revisers said that the section was "based on" § 11 and then noted without additional comment the change in language from reference to specific sections of Norris-LaGuardia to the more inclusive "laws of the United States . . . ." In contrast, although the recodification of 18 U.S.C. § 402, dealing with contempts constituting crimes, was also "based on" prior law, the revisers specifically noted that "[i]n transferring these sections to this title and consolidating them numerous changes in phraseology were necessary which do not, however, change their meaning or substance."

Id. at 484-85, *quoting* H.R. REP. No. 304, 80th Cong., 1st Sess. A176, A30 (footnote omitted).

[54] *Id.* at 482-83.

[55] *Id.* at 487, *citing* United States v. Bass, 404 U.S. 336, 347 (1971), Rewis v. United States, 401 U.S. 808, 812 (1971), and Smith v. United States, 360 U.S. 1, 9 (1959).

[56] In United States v. Bass, 404 U.S. 336 (1971), the Supreme Court considered part of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 1202(a)(1) (1970), a statute which, unlike § 3692 of Title 18, defines a crime. It was ambiguous whether the indictment under § 1202 need allege and the government need prove that the firearm had been possessed "in commerce or affecting commerce," so the Court reversed the conviction. The Court held that a statute which defines a crime and which is ambiguous is to be construed in favor of the defendant.

The case of Rewis v. United States, 401 U.S. 808 (1971), held that part of the Travel Act, 18 U.S.C. § 1952 (1970), which prohibits interstate travel in furtherance of criminal activity, did not apply to some residents of Georgia who had visited Florida and placed some bets. Here it was also debatable whether or not the statute made the particular activity a crime, so the Supreme Court construed it in favor of the defendants.

In Smith v. United States, 360 U.S. 1 (1959), the question was whether petitioners,

II

CONSTITUTIONAL RIGHT TO A JURY TRIAL

The constitutional right to a jury trial in criminal contempt proceedings has received much attention from the Supreme Court in recent years. In 1958, the Court found that there was no such right.[57] Six years later, in *Cheff v. Schnackenberg*,[58] the Court, affirming a six-month conviction for criminal contempt, stated:

alleged to have violated the Kidnapping Act, 18 U.S.C. § 1201 (1970), *as amended*, (Supp. IV, 1974), had to be prosecuted by indictment, as required by FED. R. CRIM. P. 7(a). The Court held that the rule could not be waived without doing violence to the substantial right involved.

Each of these decisions is clearly distinguisbable from the principal case. The first two dealt with statutes which ambiguously defined crimes, and the third concerned a rule of procedure which arguably did not permit the defendant to waive a substantial right. *Muniz*, on the other band, dealt with the legislative grant of a right to a jury trial.

[57] Green v. United States, 356 U.S. 165 (1958). This case arose after two persons, convicted of conspiracy to violate the Smith Act, 18 U.S.C. §§ 371, 2385 (1970), and released on bail, failed to surrender to the United States Marshall when ordered to do so. In criminal contempt proceedings they were found guilty of willfully disobeying the order to surrender and were given three year sentences. *Id.* at 167-68.

On certiorari the Supreme Court affirmed the convictions, holding that:

> The statements of this Court in a long and unbroken line of decisions involving contempts ranging from misbehavior in court to disobedience of court orders establish beyond peradventure that criminal contempts are not subject to jury trial as a matter of constitutional right.

Id. at 183 (footnote omitted). Justice Frankfurter even went so far as to include in his concurring opinion a list of all of the past Justices who had supported the summary use of this power. *Id.* at 192. Justice Frankfurter's concurrence in the majority opinion was surprising in light of the book he had coauthored many years earlier which had catalogued many of the abuses of the use of the summary contempt power. *See* F. FRANKFURTER & N. GREEN, THE LABOR INJUNCTION 1-134 (1930).

The dissenters in *Green*, however, argued:

> If ever a group of cases called for reappraisal it seems to me that those approving summary trial of charges of criminal contempt are the ones. The early precedents which laid the groundwork for this line of authorities were decided before the actual history of the procedures used to punish contempt was brought to light, at a time when "[w]holly unfounded assumptions about 'immemorial usage' acquired a factitious authority and were made the basis of legal decisions." These cases erroneously assumed that courts had always possessed the power to punish all contempts summarily and that it inhered in their very being without supporting their suppositions by authority or reason. Later cases merely cite the earlier ones in a progressive cumulation, while uncritically repeating their assumptions about "immemorial usage" and "inherent necessity."

Id. at 196 (Black, J., dissenting opinion), *quoting* Frankfurter & Landis, *Power to Regulate Contempts*, 37 HARV. L. REV. 1010, 1011 (1924).

[58] 384 U.S. 373 (1966). Cheff, a former president and chairman of the board of the Holland Furnace Company, was sentenced to six montbs imprisonment for criminal contempt of a cease-and-desist order against certain company selling practices. *Id.* at 375-76. The Supreme Court granted certiorari, limiting review to the question of whether a sentence of imprisonment of six months was constitutionally permissible under article III and the sixth amendment of the Constitution. Cheff v. Scbnackenberg, 382 U.S. 917 (1965). Furthermore, the Court denied Holland Furnace Company's petition for review of the $100,000 fine imposed on it. Holland Furnace Co. v. Schnakenberg, 381 U.S. 924 (1965).

> [I]n the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts absent a jury trial or waiver thereof.[59]

Two years later, the Court decided *Duncan v. Louisiana,*[60] which extended the sixth amendment guaranty of the right to a jury trial[61] for serious criminal offenses to state proceedings,[62] and *Bloom v. Illinois,*[63] which held that "convictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same."[64] According to the Court in *Bloom,* the criminal contemnor has the same right to a jury trial as other criminals. In so holding, the Court stated: "By deciding to treat the criminal contempt like other crimes insofar as the right to a jury trial is concerned, we similarly place it under the rule that petty crimes need not be tried to a jury."[65] This immediately raised the question of what is a "petty" criminal contempt, a variation on the old question of what is a serious and what is a petty crime.[66]

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[59] 384 U.S. at 380.

[60] 391 U.S. 145 (1968). Duncan was convicted of a simple battery, which under Louisiana law was a misdemeanor punishable by up to a $300 fine and imprisonment for two years, and was sentenced to serve 60 days and was fined $150. He had demanded a jury trial. However, under the Louisiana Constitution a jury trial was granted only when capital punishment or imprisonment at hard labor could be imposed. *Id.* at 146.

[61] The Court reversed the lower court's conviction of Duncan and held that the fourteenth amendment guarantees a right to a jury trial in all criminal cases that would be "serious" if tried in the federal courts. *Id.* at 149.

[62] *See* note 65 *infra.*

[63] 391 U.S. 194 (1968). Defendant Bloom was convicted of criminal contempt of an Illinois state court for willfully petitioning to admit a will falsely prepared and executed after the death of the purported testator; he was sentenced to two years' imprisonment under an Illinois law which provided no maximum sentence for contempt. He had made a timely demand for a jury trial, but this was refused. *Id.* at 195.

[64] *Id.* at 201.

[65] *Id.* at 210. The notion that there is a right to a jury trial in the case of a "serious" but not a "petty" crime has its origin in the common law. Duncan v. Louisiana, 391 U.S. 145, 160 (1968). The rationale for this distinction is that "the possible consequences to defendants from convictions for petty offenses have been thought insufficient to outweigh the benefits to efficient law enforcement and simplified judicial administration resulting from the availability of speedy and inexpensive nonjury adjudications." *Id.*

The problem is that "the boundaries of the petty offense category have always been ill-defined, if not ambulatory." *Id.* This, of course, has resulted in much confusion and litigation since courts have merely characterized offenses as either serious or petty without establishing standards for future determinations. *See, e.g.,* Codispoti v. Pennsylvania, 418 U.S. 506, 512 (1974); Frank v. United States, 395 U.S. 147, 148-50 (1969); Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216, 220 (1968). *See generally* Frankfurter & Corcoran, *Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury,* 39 HARV. L. REV. 917 (1926); Kaye, *Petty Offenders Have No Peers!,* 26 U. CHI. L. REV. 245 (1959).

[66] *See* note 65 *supra.*

In distinguishing between petty and serious crimes, the Court has sought to use objective criteria whenever possible.[67] The criteria usually employed include "the nature of the offense itself"[68] and "the severity of the maximum authorized penalty."[69] However, these are usually of little help in the case of criminal contempt. The Court explained in *Bloom* that criminal contempt is not in and of itself a "serious offense,"[70] so "the nature of the offense" is not a useful criterion in these types of cases. Furthermore, "the severity of the maximum authorized penalty" is not helpful in most cases because legislatures seldom impose a maximum penalty for criminal contempt.[71] Therefore, the Court has used "the severity of the penalty actually imposed on the contemnor" as the objective criterion for distinguishing petty from serious criminal contempt.[72]

The Court, using this criterion, decided a series of cases which provide guidelines for the distinction between serious and petty

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[67] *See* Duncan v. Louisiana, 391 U.S. 145, 161 (1968); District of Columbia v. Clawans, 300 U.S. 617, 625-28 (1937).

[68] It would seem that the "nature of the offense" is a subjective test since there are no guidelines to aid in this determination; in any case, the Court has applied this test a number of times. *See, e.g.,* District of Columbia v. Clawans, 300 U.S. 617 (1937) (engaging in business of selling secondhand personal property without license is of relatively inoffensive moral quality); District of Columbia v. Colts, 282 U.S. 63 (1930) (driving automobile so as to endanger property and individuals a grave offense); Schick v. United States, 195 U.S. 65 (1904) (knowing purchase for sale of oleomargarine not properly stamped not an offense necessarily involving moral delinquency); Callan v. Wilson, 127 U.S. 540 (1888) (conspiracy to prevent members of musicians union from pursuing their trade anywhere in United States an offense of grave character).

[69] The theory behind this criterion is that the penalty imposed by the legislature is a reflection of how seriously society views the crime. The Court, of course, then decides whether this judgment makes the crime serious enough to require a jury trial. *See, e.g.,* Baldwin v. New York, 399 U.S. 66 (1970) (no offense could be deemed petty where imprisonment for more than six months authorized); Duncan v. Louisiana, 391 U.S. 145 (1968) (crime of simple battery, a misdemeanor punishable by fine of not more than $300 or imprisonment of two years, or both, held a serious crime); Dyke v. Taylor Implement Mfg. Co., 391 U.S. 216 (1968) (alleged criminal contemnors not entitled to jury trial where maximum penalty under state law is 10 days in jail and $50 fine); District of Columbia v. Clawans, 300 U.S. 617 (1937) (punishment of up to 90 day imprisonment or a $300 fine for engaging in business without a license does not bring it into class of major offenses); Schick v. United States, 195 U.S. 65 (1904) (federal statute imposing $50 fine for violation held a petty offense).

[70] The Court held that "criminal contempt is not a crime of the sort that requires the right to jury trial regardless of the penalty involved." 391 U.S. at 211.

[71] *See* Duncan v. Louisiana, 391 U.S. 145, 162 n.35 (1968).

[72] *See* Bloom v. Illinois, 391 U.S. 194, 211 (1968); Duncan v. Louisiana, 391 U.S. 145, 162 n.35 (1968). This approach has heen criticized because it suggests as a criterion for choosing appropriate procedural safeguards, which must be imposed from the beginning of the proceeding, a determination that will not be known until the end of the proceeding—the actual sentence imposed. Sitzer, *Direct Criminal Contempt of Court—The Jury Requirement,* 18 ST. LOUIS U.L.J. 96, 105 (1973).

criminal contempt. These guidelines may best be summarized in the Supreme Court's own language:

> [L]acking legislative authorization of more serious punishment, a sentence of as much as six months in prison, plus normal periods of probation, may be imposed without a jury trial . . . but imprisonment for longer than six months is constitutionally impermissible unless the contemnor has been given the opportunity for a jury trial.[73]

However, prior to *Muniz* the Court had not fashioned guidelines as to what would constitute a serious or a petty criminal contempt when the punishment was a fine rather than imprisonment.[74]

Muniz was the first case in which the Court considered whether or not the imposition of a fine for criminal contempt, unaccompanied by imprisonment, requires a jury trial if the defendant demands one.[75] Local 70[76] claimed that a $10,000 fine[77] was not petty,[78] and that it was therefore constitutionally entitled to a jury trial.[79] However, the majority concluded that the fine imposed was not "a deprivation of such magnitude that a jury should have been interposed to guard against bias or mistake."[80] This upheld the Ninth Circuit's finding that there was no constitutional right to a jury trial in this situation.[81]

It is difficult to summarize the test that emerges from *Muniz*. The test suggested by the majority opinion is to determine "the seriousness of the risk and the extent of the possible deprivation faced by a contemnor."[82] Presumably, if the seriousness of the risk and the extent of the possible deprivation are significant, the contemnor is entitled to a jury trial. This test seems simple enough, but its meaning is vague because the Court provided no definitions and few guidelines for determining the seriousness of the risk or

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[73] 422 U.S. at 476.

[74] This is not to be confused with the issue of whether or not a fine is considered excessive. *See, e.g.*, United States v. UMW, 330 U.S. 258, 304-05 (1947).

[75] 422 U.S. at 476.

[76] Local 70 is an unincorporated union of some 13,000 members. *Id.* at 477.

[77] *See* note 20 *supra*.

[78] Local 70 argued that "petty" was defined by 18 U.S.C. § 1(3) (1970). 422 U.S. at 476. That section of the criminal code states: "Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than $500, or both, is a petty offense." 18 U.S.C. § 1(3) (1970).

[79] Muniz did not appeal on constitutional grounds because his one year suspended sentence was clearly constitutionally permissible. *See* Frank v. United States, 395 U.S. 147, 151 (1969) (three year suspended sentence without jury trial permissible).

[80] 422 U.S. at 477.

[81] Hoffman v. Teamsters Local 70, 492 F.2d 929, 937 (9th Cir. 1974). *See* note 21 *supra*.

[82] 422 U.S. at 477.

the extent of possible deprivation. This vagueness, of course, makes the test flexible, but precise analysis is elusive.

The majority is apparently confused about the "seriousness of the risk" test. The Court seems to use the term "risk"[83] in a manner similar to the way it uses the criterion of "maximum authorized penalty"[84] in making the distinction between serious and petty crimes. Further analysis, however, shows that in the case of a criminal contempt fine imposed after the proceedings, the "risk" merges with the "possible deprivation" and the latter becomes the only relevant criterion.[85]

The one factor that the Court suggested was important in this case was the number of dues-paying members of the union.[86] In general terms, this means the economic resources of the union, but it is at this point that the test becomes unclear. The extent of the contemnor's resources is compared to the size of the fine. Thus "deprivation" is a relative term: a fine of $10,000 may or may not be deprivation of such magnitude as to require a jury trial, depending on the particular defendant.[87]

This is quite unlike the other tests for "serious" and "petty." The other tests examine either the nature of the offense committed, the possible maximum penalty, or the penalty actually imposed.[88] Only the *Muniz* test looks at the nature of the defendant; it is remarkable because it makes the constitutional right to a jury trial of the criminal contemnor who is fined dependent on his

[83] Justice White stated that "it is not tenable to argue that the possibility of a $501 fine would be considered a serious risk to a large corporation or labor union." *Id.*

[84] *See* note 69 *supra.* The Court certainly did not mean "chances of conviction" when it used the term "risk." That would mean that the test requires essentially a determination of guilt before a decision could be made as to the need for a jury. Nor did the Court mean the risk of a biased or mistaken judicial decision. *See* notes 102-05 and accompanying text *infra.* Had the majority intended this as the meaning of "risk," "seriousness of the risk" would have had content as a separate factor. *See* note 85 *infra.* The constitutional test emerging from this case would then have been direct and clear. As it now stands, the test has two parts which on their face seem different but which actually are the same.

[85] "Seriousness of the risk" in tbe context of the test of this case is not meaningful as a separate factor. It can only be determined relative to the contemnor—a fine is a "risk" to the defendant that can be measured by making a comparison between the size of the fine and his wealth. Therefore, it is actually the same as the "possible deprivation faced by a contemnor." The Court implicitly recognized this since in its conclusion it spoke only of the "magnitude of the deprivation" faced by the union. 422 U.S. at 477.

[86] Although the number of dues-paying union members was clearly a factor in the Court's decision, the majority was unwilling to directly admit this. Justice White stated that "[t]his union, *the Government suggests,* collects dues from some 13,000 persons . . . ." 422 U.S. at 477 (emphasis added).

[87] This seems to suggest that tbere is no absolute amount of fine which will make the contempt one which is considered serious.

[88] *See* notes 67-69 and accompanying text *supra.*

economic status. The Court said, in effect, that there was no need to interpose a jury to "guard against bias or mistake" because $10,000 was not a large sum to the union.[89] This, however, seems contrary to all notions of due process and equal protection. In a series of cases involving indigent defendants, the Supreme Court has held that the wealth of the defendant is not a proper criterion for determining his constitutional rights.[90] Local 70 was clearly not indigent, and this factor may explain the Court's decision in *Muniz*. Regardless of the explanation, however, this opinion creates an unusual basis for determining a defendant's constitutional rights. Moreover, the Court did not mention any other factors which should go into the determination of the right to a jury trial.

Justice Douglas in the lone dissent on this issue did not discuss the test formulated by the majority. He objected to the conceptual serious-petty distinction[91] and argued that there is a right to a jury trial in all cases of criminal contempt.[92] He also argued that, in

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[89] Justice Douglas disputed this point, stating that "a $10,000 fine is not a matter most locals would take lightly." 422 U.S. at 480 (dissenting opinion).

[90] *See, e.g.*, Bullock v. Carter, 405 U.S. 134 (1972); Boddie v. Connecticut, 401 U.S. 371 (1971); Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966); Douglas v. California, 372 U.S. 353 (1963); Griffin v. Illinois, 351 U.S. 12 (1956).

The *Muniz* test is surprising in light of these and other precedents. Justice Black hest summarized this line of cases by declaring that "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has." Griffin v. Illinois, 351 U.S. 12, 19 (1956). *Griffin* held unconstitutional, on due process and equal protection grounds, a state procedure that in effect precluded appellate review by denying free transcripts to indigent defendants.

Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966), struck down the Virginia $1.50 poll tax as a violation of equal protection. The Supreme Court stated that "[l]ines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored." *Id.* at 668 (citation omitted).

In Douglas v. California, 372 U.S. 353 (1953), the Court held unconstitutional, as a violation of the fourteenth amendment, a state procedure which denied counsel to virtually all indigents' appeals. In reaching its decision, the Court stated that "there can be no equal justice where the kind of appeal a man enjoys 'depends on the amount of money he has.'" *Id.* at 335, *quoting* Griffin v. Illinois, 351 U.S. 12, 19 (1956).

Boddie v. Connecticut, 401 U.S. 371 (1971), involved Connecticut's refusal to permit the institution of divorce actions without the payment of court fees and service-of-process costs. The Supreme Court held this was a denial of due process since it prevented many indigents from obtaining divorces. And in Bullock v. Carter, 405 U.S. 134 (1972), a statutory candidate filing fee scheme was held to be a denial of equal protection because it excluded poor hut otherwise qualified individuals from being listed on the ballot. *See* Nowak, *Realigning the Standards of Review under the Equal Protection Guarantee—Prohibited, Neutral, and Permissive Classifications*, 62 GEO. L.J. 1071 (1974); 2 ST. MARY'S L.J. 251 (1970); 45 MISS. L.J. 467 (1974).

[91] 422 U.S. at 480 (Douglas, J., dissenting opinion). The other dissenters would have granted a jury trial under § 3692 and did not discuss the constitutional issue. *Id.* at 481-89 (Stewart, J., dissenting opinion).

[92] *Id.* at 480 (Douglas, J., dissenting opinion).

any event, a fine of $10,000 would place the contempt in the "serious" category.[93]

III

Effect of Refusal to Grant a Jury Trial

The Court applied a very narrow interpretation to the seemingly broad provisions of section 3692.[94] Unless Congress changes the statute, or clearly indicates a contrary intention, the Court's decision will be controlling.[95]

By restricting the application of section 3692 to the Norris-LaGuardia Act, Justice White confined it to an area of the law described as "obsolescing"[96]—most labor injunctions are now initiated by the NLRB pursuant to the Labor Management Relations Act because it is relatively harder for employers to obtain injunctions under the Norris-LaGuardia provisions.[97] Thus, in the majority of labor disputes, criminal contemnors will not automatically have the statutory option of a jury trial, and they will have to commit a serious contempt before they will have a constitutional right. As a practical matter, this will supply judges with considerable control over parties to such disputes because the seriousness of the criminal contempt will be decided after the fact on the basis of the penalty imposed.

The *Muniz* analysis of the constitutional right to a jury trial marks the first time that the Court has established guidelines in this area. The test is difficult to use—it would have been clearer had the Court simply stated that a fine of more than a certain amount makes the contempt serious.[98] Also, the test is sufficiently vague so that further litigation will be necessary to delineate the factors that determine "the seriousness of the risk" and the "magnitude of the deprivation."[99] Even though the test itself is vague, the general

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[93] *See* note 89 *supra.*

[94] *See* note 23 *supra.*

[95] It is unlikely that Congress will modify the statute. As early as 1952 the courts had held that § 3692 did not apply to contempts arising out of violations of statutes other than the Norris-LaGuardia Act. *See* NLRB v. Red Arrow Freight Lines, 193 F.2d 979 (5th Cir. 1952). During the intervening period of more than two decades, Congress did not change the law. Furthermore, now that the *Bloom* decision constitutionally guarantees a jury trial for all "serious" criminal contempt cases, there should not be such strong pressures for change.

[96] *See In re* Union Nacional de Trabajadores, 502 F.2d 113, 119 (1st Cir. 1974).

[97] *See id.*

[98] This would have made the test similar to the rule governing criminal contempt cases where the punishment is imprisonment. *See* note 73 and accompanying text *supra.*

[99] *See* notes 82-88 and accompanying text *supra.*

meaning of *Muniz* is clear: there is no constitutional right to a jury trial as long as the judge imposes a fine which is not large relative to the economic strength of the contemnor.

The most immediate and practical effect of *Muniz* will be felt by unions and employers in labor disputes. Criminal contemnors in such controversies (except those arising out of Norris-LaGuardia situations) will have no more and no fewer rights to a jury trial than other criminal contemnors. The holding that the imposition of large fines does not per se require a jury trial should encourage the summary use of the fine in labor injunction cases.[100] It is doubtful that the results will be as dire as predicted by some,[101] but this case will certainly be interpreted as a signal for judges to use their summary power to control labor injunction contemnors. Because of the size of fines permissible after *Muniz,* that power is great indeed.

More important, this case may exacerbate the hostility that has historically existed between the federal judiciary and organized labor.[102] It was because of this hostility that Congress interposed a jury between the judge and the union by the enactment of section 3692 and its predecessor.[103] The jury has since guarded against bias or mistake of judges who become too personally involved in the case and has considerably eased the previous tension.[104] By removing the protection that a jury affords a union,[105] *Muniz* may unnecessarily reopen another period of friction and tension between labor unions and the courts.

CONCLUSION

Muniz is the Supreme Court's most recent analysis of the right to a jury trial in criminal contempt proceedings. Restricting section 3692 to the now seldom used Norris-LaGuardia statute will en-

[100] *See* Bartosic & Lanoff, *Escalating the Struggle Against Taft-Hartley Contemnors,* 39 U. CHI. L. REV. 255, 257, 280-84 (1972). These authors argued for wider use of contempt in controlling labor disputes, calling it the "ultimate sanction . . . [that] is crucial to the regulatory scheme of the [Taft-Hartley] Act . . . ." *Id.* at 256.

[101] *See, e.g.,* Brief for Center for Constitutional Rights as Amicus Curiae at 10, Muniz v. Hoffman, 422 U.S. 454 (1975).

[102] For a catalog of abuses of the summary contempt power, see F. FRANKFURTER & N. GREEN, *supra* note 57, at 1-134. *See also* Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1921); Loewe v. Lawlor (The Danbury Hatters Case), 208 U.S. 274 (1908); *In re* Debs, 158 U.S. 564 (1895).

[103] *See* note 30 and accompanying text *supra.*

[104] *See* note 102 *supra.*

[105] The majority alluded to this protection in its discussion of the constitutional right to a jury trial. *See* 422 U.S. at 477. *See also* Duncan v. Louisiana, 391 U.S. 145, 155-57 (1968).

courage the use of the summary contempt power in labor disputes. The large fines permitted by the *Muniz* test, and the limiting of jury protection, may usher in another era of uneasy relationships between the federal judiciary and labor unions. This case, furthermore, signals a halt to the extension of the constitutional right to a jury trial in cases of criminal contempt, and continues the Supreme Court's recent assault on the jury system in general.[106]

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[106] *See, e.g.,* Apodaca v. Oregon, 406 U.S. 404 (1972) (convictions by less-than-unanimous jury verdicts upheld); Johnson v. Louisiana, 406 U.S. 356 (1972) (less-than-unanimous jury verdicts in criminal cases permitted); Williams v. Florida, 399 U.S. 78 (1970) (constitutional guaranty of jury trial does not require jury membership to be fixed at 12). *Cf.* Colgrove v. Battin, 413 U.S. 149 (1973) (six man jury permitted under seventh amendment right to jury trial in civil cases).