

I Object!

– James Eckert, Esq.

Summary Contempt

There will always be times when a Judge needs the ability to deal with problems in the courtroom caused by someone else. "F**k you" probably calls for summary contempt, unless it's testimony about prior conversation. Other times do not. For example, when a court deputy reports that one spectator whispered mild profanity to another, the judge should not clear and close the courtroom, call the individual to the bench and question her, then summarily sentence her to jail (*Williams v Cornelius*, 76 NY2d 542 [1990]).

"[t]he exercise of the enormous power of summary contempt requires strict compliance with statutory safeguards, including giving the accused an appropriate warning and the opportunity to desist from the supposedly contumacious conduct and preparing an order setting forth the basis for the ruling" (*In re Hart*, 7 NY3d 1 [2006]).

One of the lessons for judges is that the misuse of summary contempt will not only produce the Habeas we have traditionally won, but places the offending Judge in serious jeopardy of written criticism. Granted, the written criticism has a more-in-sorrow-than-in-anger in tone, or more-in-chagrin-than-in-sorrow-or-anger, but it is punishment. It can also be a basis for removal (*Matter of Hamel*, 88 NY2d 317 [1996]).

If a Judge wishes to hold someone in summary contempt, the contemptuous activity must have occurred in the view and presence of the court. If other testimony or evidence is required, the summary contempt procedure cannot be used. Further, the individual must be given an opportunity to speak in defense or mitigation, and the court must properly fill out the paperwork after (this is invariably inadequate). Summary contempt is not intended to be used all the time, and presumably therefore it should rarely be threatened. Where the contempt power is misused, the affected party should be released.