

# Casenote

## ***United Mine Workers v. Bagwell*: The Civil/Criminal Indirect Contempt Fine Distinction Revisited**

*United Mine Workers v. Bagwell*<sup>1</sup> involves the imposition of indirect contempt fines stemming from a labor dispute in Virginia.<sup>2</sup> In April 1989, respondents Clinchfield Coal and Sea "B" Mining Companies filed suit to enjoin petitioner International Union, United Mine Workers of America from conducting unlawful strike activities.<sup>3</sup> The trial court entered an injunction that prohibited the union and its members from undertaking illegal strike-related activities.<sup>4</sup> In subsequent hearings,

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1. 114 S. Ct. 2552 (1994).

2. *Id.* at 2555.

3. *Id.* The illegal strike activities included throwing rocks, smashing car windows, blocking company facilities, and exceeding the number of picketers at specified locations. *Id.* Apparently a favorite tool of the striking workers was the "jackrock." This device consisted of nails welded together in such a way that a sharp point was always pointing upwards. Jackrocks were spread across roadways to puncture tires. At the height of the strike, police measured the number of jackrocks used in pounds rather than count. Respondent's Brief at n.1.

4. 114 S. Ct. at 2555. In its order, the trial court characterized the fine schedule as being designed to "coerc[e] the defendants to comply with the court's injunctions" and that it was "the court's intention that the fines [we]re civil and coercive." *United Mine Workers v. Clinchfield Coal Co.*, 12 Va. App. 123, 126, 402 S.E.2d 899, 901 (1991).

the court imposed over \$64,000,000 in fines.<sup>5</sup> The trial court required that the companies prove violations of the injunction beyond a reasonable doubt but did not afford the union the right to a jury trial.<sup>6</sup> While the contempt order was on appeal the parties settled the labor dispute through an agreement that vacated the contempt fines.<sup>7</sup> The trial court granted the parties' joint motion to dismiss, lifted the injunction, and vacated the fines that were payable to the companies.<sup>8</sup> The trial court determined that the remaining \$52,000,000 was not absolved through the settlement and was still owed by the unions.<sup>9</sup> Since the companies had withdrawn from the action and local Commonwealth Attorneys disqualified themselves, the trial court appointed John L. Bagwell to collect the remaining fines on behalf of the Commonwealth.<sup>10</sup> The Court of Appeals of Virginia reversed the order imposing contempt fines and ordered that the contempt fines be vacated pursuant to the settlement agreement.<sup>11</sup> The Supreme Court of Virginia reversed and held that since the fines were civil, imposition of the fines did not require a jury trial.<sup>12</sup> The Supreme Court granted certiorari and reversed.<sup>13</sup> Indirect criminal contempts involving fines in excess of fifty million dollars are of such serious nature that the contemnor is entitled to full criminal process including a jury trial.<sup>14</sup>

From its inception in English common law, the distinction between civil and criminal contempt fines has been based on the nature of the contumacious conduct.<sup>15</sup> The basic distinction that is still used today in the United States was established in *Gompers v. Buck Stove*.<sup>16</sup> The Court held that the determination as to whether a contempt fine is criminal or civil is based on the character and purpose of the contempt

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5. 114 S. Ct. at 2556.

6. *Id.* at 2555.

7. *Id.* at 2556.

8. *Id.*

9. *Id.*

10. *Id.*

11. *United Mine Workers v. Clinchfield Coal Co.*, 12 Va. App. 123, 133-34, 402 S.E.2d 899, 905 (1991).

12. *Bagwell v. United Mine Workers*, 244 Va. 463, 476-77, 423 S.E.2d 349, 357-59 (1992).

13. 113 S. Ct. 2439 (1993).

14. 114 S. Ct. at 2562-63.

15. Earl C. Dudley, *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts*, 79 VA. L. REV. 1025, 1034 n.28 (1993). This article offers a comprehensive analysis of the history of the imposition of indirect contempt sanctions in the United States. *Id.* at 1034-43.

16. 221 U.S. 418 (1911).

fine.<sup>17</sup> Even at this early stage, the determination between civil and criminal contempts was a difficult task.<sup>18</sup> Justice Lamar stated that “[c]ontempts are neither wholly civil nor altogether criminal. And ‘it may not always be easy to classify a particular act as belonging to either of these two classes. It may partake of the characteristics of both.’”<sup>19</sup> Criminal contempts are those that are punitive in nature and designed to vindicate the authority of the court.<sup>20</sup> On the other hand, civil contempt fines are imposed to compel a party to undertake an act commanded by the court.<sup>21</sup> In *Gompers*, the Court focused on the nature of the injunction the contemnors had violated.<sup>22</sup> Another distinction elicited at this time was that civil contempt fines involve the parties to the action, whereas criminal contempt fines are between the public and the contemnor.<sup>23</sup> The Court categorized the contempts as civil based on the fact that the contempt proceedings were instigated by one party against the other.<sup>24</sup> The action did not involve a representative of the United States acting to vindicate judicial authority and thus was not viewed as being criminal in nature.<sup>25</sup> While *Gompers* offers guidance in distinguishing between contempts, the Court, in *Hicks v. Feiock*,<sup>26</sup> recently emphasized the overlapping nature of civil and criminal contempt:

In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both: when a court imposes

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17. *Id.* at 441.

18. *Id.*

19. *Id.* (quoting *Bessette v. W.B. Conkey Co.*, 194 U.S. 329 (1904)).

20. *Id.* See also *Bloom v. Illinois*, 391 U.S. 194 (1968). Criminal contempt is comparable to an ordinary crime and is indistinguishable from ordinary criminal convictions. *Id.* at 201. For this reason the right to a jury trial is fundamental in contempt cases in which the criminal punishment would require a jury trial. *Id.* at 207-08. The maximum length of imprisonment that can be imposed without a jury trial as petty contempt is six months. *Taylor v. Hayes*, 418 U.S. 488, 495 (1974).

21. 221 U.S. at 443. See also *United States v. United Mine Workers*, 330 U.S. 258 (1947) (established court's power to impose purgable civil fines that will be suspended upon compliance with a court ordered instruction). If a contempt fine is non-compensatory, it is civil only when used as a coercive sanction to compel performance. *Penfield v. SEC*, 330 U.S. 585 (1947).

22. 221 U.S. at 441. See also *Shillitani v. United States*, 384 U.S. 364 (1966). Imprisonment to compel testimony was held to be civil because it was conditional, contingent on the contemnor testifying. *Id.* at 368. While imprisonment is punitive, the conditional nature of the imprisonment makes the contempt civil. *Id.* at 370.

23. *Gompers*, 221 U.S. at 444-45.

24. *Id.* at 445-46.

25. *Id.* at 451-52.

26. 485 U.S. 624 (1988).

finer and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it also is seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order.<sup>27</sup>

While state law may offer procedural guidelines to a determination of the nature of contempt, the question is one of federal law not state law.<sup>28</sup> In *Hicks* the Court established that criminal contempt is characterized as determinate and unconditional while civil contempt is conditional and purgable.<sup>29</sup>

In the present case, the Supreme Court restated the characteristics that typify criminal and civil contempts.<sup>30</sup> From the standards established in *Gompers* and *Hicks*, the Court laid out the framework that the classification of a contempt is based on an objective examination of the character and purpose of the relief itself and not the subjective intent of the courts when imposing the contempt.<sup>31</sup> The injunction from which the contempt fines arose was a complex listing of prohibited conduct with a variety of provisions.<sup>32</sup> The Court based its review of the contempt fines on an examination of the nature of the entire decree of the trial court, instead of focusing on individual provisions that varied in scope and quality or the subjective purpose set forth by the judge.<sup>33</sup> The injunction established a listing of prohibited strike-related activities and an associated fine for each violation.<sup>34</sup> The Virginia Supreme Court held,<sup>35</sup> and the respondents argued, that the prospective announcement of the fines made the contempt fines comparable to a purgable civil contempt fine.<sup>36</sup> The Court reasoned that this listing of banned activities was no different than ordinary criminal statutes that codify prohibited conduct.<sup>37</sup> Since the fines were not compensatory to one party and the contemnor was not given the opportunity to purge after imposition of the fine, the Court held that the fines were criminal in nature.<sup>38</sup> In his concurrence, Justice Scalia agreed with the classification of the fines as criminal in nature, but justified this characteriza-

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27. *Id.* at 635.

28. *Id.* at 630.

29. *Id.* at 632-33.

30. 114 S. Ct. at 2256-61.

31. *Id.*

32. *Id.* at 2561.

33. *Id.*

34. *Id.* at 2555.

35. *Bagwell*, 244 Va. at 477, 423 S.E.2d at 357.

36. 114 S. Ct. at 2561.

37. *Id.* at 2562.

38. *Id.*

tion on a historical analysis of the change of injunctions from simple restrictions to complex and broad reaching decrees.<sup>39</sup> Justice Ginsburg also held that the contempt fines were criminal in nature.<sup>40</sup> She attacked the argument that the fine schedule was conditional because the unions could have avoided the fines through compliance with the decree.<sup>41</sup> Ginsburg reasoned that all court orders would be labeled conditional (and thus civil in nature) if viewed in this manner.<sup>42</sup> Justice Ginsburg also focused on the status of the parties in pursuit of the remaining fines.<sup>43</sup> The litigants in the action had settled their dispute and respondent Bagwell was pursuing the imposition of the fines on behalf of the Commonwealth of Virginia.<sup>44</sup> The prosecution of the fines by a representative of the Commonwealth was indicative of the criminal and punitive nature of the fines.<sup>45</sup>

The direct effect of the ruling in this case is that certain indirect contempts resulting from violations of injunctions will be subject to full criminal process.<sup>46</sup> Since the fines issued in this case were excessive, the bright line dividing petty criminal contempts from serious criminal contempts still has not been addressed.<sup>47</sup> While there is a limitation on the judicial power to impose indirect serious criminal contempts, the other areas of contempt were left untouched.<sup>48</sup> The ruling in *Bagwell* does not address direct contempts nor does it restrict the imposition of petty contempts.<sup>49</sup> Also, courts are free to continue to impose broad compensatory awards in civil litigation.<sup>50</sup> As far as redefining the distinction between criminal and civil contempts, the Court restated the parameters from *Gompers* and *Hicks*, but then concluded that “[u]nder such circumstances, disinterested factfinding and even-handed adjudication were essential, and petitioners were entitled to a criminal jury trial.”<sup>51</sup> In presenting these policy reasons to justify the result in the case, the Court weakens the importance of the classification scheme it

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39. 114 S. Ct. at 2563-65 (Scalia, J., concurring).

40. 114 S. Ct. at 2565-67 (Ginsburg, J., concurring).

41. *Id.*

42. *Id.* at 2567.

43. *Id.*

44. *Id.* at 2556.

45. 114 S. Ct. at 2567 (Ginsburg, J., concurring).

46. *Id.* at 2563.

47. *Id.* at 2562. *See also* *Muniz v. Hoffman*, 422 U.S. 454 (1975) (establishes current upper level of petty offenses at \$10,000).

48. 114 S. Ct. at 2563.

49. *Id.*

50. *Id.*

51. *Id.*

developed.<sup>52</sup> By not explaining how the criminal/civil distinction rule specifically applied to the injunction in this case, the Court weakened the use of the determinate nature of the fines as justification for its decision.<sup>53</sup> In emphasizing the purgable nature of civil contempt fines, the Court has given judges who want to avoid the procedural restrictions of imposing serious criminal contempts the incentive of fashioning decrees so that the contemnor has the ability to purge the fine through future conduct.<sup>54</sup> While a specific area of the imposition of contempt fines has been confined procedurally, only indirect serious criminal fines fall within this restriction.<sup>55</sup>

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52. *Id.*

53. *See id.*

54. *See id.* at 2561-2563.

55. *See id.*