Criminal Law and Procedure

Contempt of Court & Broken Windows: Why Ignoring Contempt of Court Severely Undermines Justice, the Rule of Law, and Republican Self-Government

*By Michael Warren**

I. Introduction

Former Mayor Rudolph Giuliani dramatically reduced serious crime in the city of New York by rigorously enforcing what were until then widely considered insignificant criminal laws and ordinances. Under Mayor Giuliani, New York began to enforce long neglected laws against vandalism, graffiti, loitering, underage drinking, public use of intoxicants, public indecency, subway gate jumping, and similar matters. Although many critics demeaned the enforcement of these laws as trivial and unworthy of the resources of the police, when used in conjunction with complementary strategies, the investment paid off handsomely. Overall crime was cut by more than half; murders plunged by over 70 percent; robbery fell by over 60 percent; total violent crimes dropped by over 50 percent; and total property felonies fell over 60 percent.[1] In implementing this policy, Mayor Giuliani relied heavily on a theory originally posited by Harvard political scientists James Q. Wilson and George L. Kelling. In a 1982 Atlantic Monthly article, "Broken Windows," they posited that the failure to address so called petty crimes encourages criminals to engage in more serious felonies, thereby plunging communities into a spiral of urban decay and crime.[2] Broken windows that are not fixed lead to graffiti, which leads to loitering, which leads to prostitution, which leads to drugs, which lead to gangs and even murder.

Although most courts do not need to replace any broken glass, the administration of justice has the equivalent of broken windows—contempt of court. The shards facing the courts mostly involve two major forms of contempt of court—perjury and violations of court orders. The failure to act in the face of clear perjury and blatant violations of court orders seriously impairs the effective administration of justice, denigrates the rule of law, and undermines our republican form of government. Moreover, when contemnors are not held accountable in the halls of justice, they are encouraged to engage in additional misconduct and commit additional crimes.

II. The Dirty Little Secret of Modern Litigation: Rampant Perjury and Disobedience of Court Orders

That perjury is commonplace is the dirty little secret of modern litigation.[3] Seasoned lawyers and judges more than suspect that many litigants sign improper discovery answers, file misleading or false affidavits, provide baseless deposition testimony, and lie under oath at trial. Although people may hear and see events differently, often trial testimony is so diametrically opposed that the only rational explanation for the contradictions is that at least one witness is simply lying under oath. Indeed, at times, the evidence that a witness is committing perjury becomes overwhelming. Real world examples in my own courtroom include, among others, tape recordings of conversations a witness testified never occurred; certified court records of convictions a witness claimed he never possessed; positive drug and alcohol tests results taken immediately after the witnesses swore under oath that they were not under the influence of alcohol or drugs; handwriting expert testimony confirming forgery of documents that the forger testified that he witnessed signed by the opposing party; a counselor who knowingly misrepresented that a treatment facility was a 24 hour secure, "lock-down" placement when a subsequent hearing revealed that all patients were free to leave of their own free will; criminal defendants who testified alternatively that they did, did not, and did commit the charged crimes; testimony by criminal defendants that they had no meaningful legal representation by counsel belied by stacks of legal files and correspondence from the maligned lawyers; and testimony of neutral eyewitnesses of an assault in the courtroom that occurred just minutes before the perpetrator swore under oath that the assault did not occur. Antidotal evidence strongly suggests that my courtroom is hardly unique.

Similarly, disobedience of duly issued orders and judgments is widespread. Many litigants tend to view court orders as all but advisory opinions from which they may pick and choose with what to comply. Most lawyers are familiar with the problematic area of discovery, but other areas appear to suffer from the same epidemic. Violations of child support, spousal support, parenting time, personal protection (restraining), and probation orders are rampant. Many litigants flagrantly disobey the orders of the court. Examples in my court alone include, among others, a woman who purposefully brought the wrong child to a court ordered paternity test; a juror who refused to serve and left the jury room after being directly ordered to remain until the empanelled jury rendered a verdict; a father who conspired with his daughter to violate parenting time orders; a divorcee who violated a court order to evenly divide the proceeds of a land sale by selling the property at a *de minimis* price and keeping the entire proceeds; and the failure of a counselor to notify the court as required by an order when she became aware that a bond condition was violated by her client. Again, the experiences of my brethren reveal that my courtroom is indicative of the broader justice system.

III. No Minor Matter: Exercise of the Contempt Power is Indispensable to the Administration of Justice, the Rule of Law, and the Republican Form of Government

One might be tempted to suggest that these transgressions, even if open and obvious, are too trivial to be worth any significant expenditure of court resources. In fact, the prevailing perspective of many lawyers and judges appears to be that contempt is a fact of life which is overshadowed by the merits of the underlying cases. After all, the underlying cases involve very serious matters such as murder, rape, armed robbery, wrongful death, civil rights, medical malpractice, trade secrets, contracts, divorce, and custody matters. Many reason that the courts' energies should be dedicated to the substantive law for which cases are initiated and defended—not to procedural niceties and court rules. Thus, the use of criminal contempt to punish perjury or blatant violations of court orders appears to be a rare phenomenon.

Yet, a review of first principles reveals that the prevailing perspective is an affront to justice, the rule of law, and republican self-government. Throughout the States and the federal government, the authority of the government has been divided between the legislative, executive, and judicial branches. With regard to the judiciary, its "primary functions. . .are to declare what the law is and to determine the rights of parties conformably thereto."[4] Thus, "[b]y the judicial power of courts is generally understood the power to hear and determine controversies between adverse parties, and questions in litigation."[5] The primary means by which the courts exercise the judicial power is by entering orders and judgments.

From "time immemorial" the judicial power has included the authority to compel compliance with the court's orders and judgments and to punish misconduct that impairs the preservation of order in proceedings.[6] In fact, this power is an essential and necessary part of the constitutional power vested in the courts under the doctrine of separation of powers, which authority may not be infringed or tampered with by either the executive or legislative branches.[7] Indeed, the power of the courts to find parties and litigants in contempt of court *"is as ancient as the courts, and antedates Magna Charta."*[8]

A. Exercise of the Contempt Power is Essential to the Administration of Justice

As an ancient power intrinsic in the nature of courts, the exercise the power of contempt is no trivial matter or simply meant to assuage the personal feelings of judges—it is an indispensable component of the constitutional authority of the court.[9] Thus, the judiciary should be a jealous guardian of the contempt power, as it is inherently necessary to the administration of justice. As the United States Supreme Court has explained, "[i]f a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls 'the judicial power of the United States' would be a mere mockery."[10]

Justice is seriously impaired when those subject to the authority of the court violate the orders or rules of the court and are not held accountable. Of course, the contempt power is to be used sparingly. Nevertheless, when contempt is let alone, contemnors are rewarded for their misconduct, while those who act properly are severely prejudiced. This is especially troubling when perjury or other contempt is obvious and unaddressed. After all, if one can lie under oath with impunity or simply disregard the orders of the court without consequence, then such wrongdoers and others are certainly encouraged to undertake additional misconduct. Such misconduct includes both obvious disdain for the court as well as the subtle circumvention of the oath and court orders.

In fact, much of the gamesmanship in courts today is plainly encouraged by the courts' reluctance to act to punish obvious contempt. After all, if a court is unwilling to act in the face of brazen perjury or violation of court edicts, then the cost-benefit analysis for more clever misconduct is easy, especially when the stakes of modern litigation are so high. In addition, the impotence of the courts in the face of unashamed disobedience instills a strong sense of disillusionment in those who do not engage in such conduct.

B. Contempt of Court is Critical to the Rule of Law and Protecting our Liberties

In a parallel fashion, the exercise of the contempt power is essential to preserving the rule of law and protection of our liberties. In the end, the rule of law is preserved by the courts. The courts render verdicts enforcing the criminal and civil law. Before such verdicts may be rendered, due process requires that certain rules and orders of the court be adhered to. Apparently mundane matters such as scheduling orders, discovery rules, and subpoenas are critical to ensuring that the machinery of justice works toward the final resolution of cases. If the procedural mechanisms of the law are ignored, then justice is impossible to achieve. Furthermore, the courts protect the rights of the people against government oppression by enforcing constitutional rights such as the free exercise of religion, free speech, free press, the right to associate, the bar against quartering troops, the prohibition of the establishment of a government religion, the prohibition of warrantless or unreasonable searches and seizures, the prohibition against cruel and unusual punishment, and the right to bear arms. The courts also defend the integrity of the constitutional and statutory structure of the government by enforcing the separation of powers, checks and balances, federalism (and home rule, in some states), and ensuring that government agencies act in accordance with the law and their duly authorized powers. Likewise, the courts ensure the rendering of justice in private disputes by enforcing contracts, holding tortfeasors accountable, enforcing property rights, and enforcing civil rights and similar legislation.

The power of contempt is the means by which the

court enforces its fundamental authority. Courts have no armies to command and no taxes to raise and spend. In a very fundamental sense, the judicial power *is* the contempt power; and the failure to exercise it becomes a failure of the judiciary.

As the New York Supreme Court has explained, when the courts neglect to invoke the contempt power and allow litigants to lie under oath or violate court orders without consequence, our system of justice and liberties are at grave risk:

> Whenever we subject the established courts of the land to degradation of private prosecution, we subdue their importance and destroy their authority. Instead of being venerable before the public, they become contemptible; and we thereby embolden the licentious to trample upon everything sacred in society, and to overthrow those institutions which have hither-to been deemed the best guardians of civil liberty.[11]

Stated another way, the failure to pursue blatant perjury and clear disobedience of court orders rapidly leads to a wholesale disrespect for the law.[12] After all, if courts are perceived as unwilling to protect the integrity of the legal process in the very courtrooms in which the law is enforced, wrongdoers would seem to have full license to disregard the law on the streets. Why keep your word in a business deal if you face no sanction for lying to a court? Why not forge a signature on a check if a court is unwilling to act on a forged document offered in a case? Why tell the truth to your patients if the court is ambivalent about your lying under oath about your practice in discovery responses? If the very palladium of the law does not concern itself with truth telling and misconduct before it, then we are fools to expect that those inclined to engage in illegal activities would not be encouraged by such infirmity.

C. Contempt of Court is Critical to Maintaining our Republican Form of Self-Government

Another essential, but often overlooked, vital characteristic of the contempt power is the maintaining the republican form of self-government. In America, the people are sovereign. The people have delegated their authority to the three branches of government. Lawmaking is delegated to the State legislatures and Congress. Enforcement and execution of the law is delegated to the governors and President. Ascertaining the law, resolution of legal controversies, and the administration of justice is delegated directly (in States in which judges are entirely elected) or indirectly (such as in the federal system or appointed state systems) to the courts. Hence, the failure to obey the duly executed orders and judgments of the courts, or acts or omissions that impair the orderly administration of justice in those courts, is a direct affront to the republican government. The Colorado Supreme Court has eloquently elaborated:

> It was said in argument by counsel for respondents "that by the common law every judge was regarded as the direct representative of the sovereign, and upon this fiction the power to punish for contempt was based." With us the people have been substituted for the crown. The courts are created by the people, and are dependent upon the popular will for a continuation of the powers granted. They are the people's courts, and contemptuous conduct toward the judges in the discharge of their official duties tending to defeat the administration of justice, is more than an offense against the person of the judge; it is an offense against the people's court, the dignity of which the judge should protect, however willing he may be to forego the private injury.[13]

Put another way, the failure to invoke the power of contempt when appropriate not only undermines the administration of justice and the rule of law, it strikes at the heart of our republican form of government. Judges have been given a sacred trust to ensure that the law established by the duly appointed representatives of the people is appropriately ascertained, applied, and administered. When courts shirk their duty to exercise the power of contempt, they also abandon their sacred trust to ensure that law, not the lawbreakers, prevail. When the law can be flaunted in the people's courts without sanction, then the people's law is no more. Only by appropriately exercising the power of contempt can the judiciary ensure that the law of the people governs.

IV. A Modest Self-Study in the Exercise of the Contempt Power

Those seasoned attorneys well acquainted with the difficulties of invoking the power of contempt might be skeptical as to whether exercising that power is practical and whether its benefits outweigh its costs. Although the procedural and substantive aspects of contempt proceedings are not within the scope of this article, there is no doubt that it is a sophisticated and complicated field of law jam-packed with technical and procedural hurdles ready to trip the inexperienced. Even those well grounded in such matters must exercise special care to successfully avoid the pitfalls.[14] Nevertheless, my short tenure on the bench reveals that thoughtfully attended to contempt proceedings may be undertaken without significant docket disruption and with considerable benefits. Although obviously not encompassing all of the various difficulties, aspects, or approaches regarding contempt proceedings, my experience may be illuminating.

As crimes against the public welfare, whether to pursue criminal contempt is generally a matter for the court.[15] In these instances, the court must consider whether criminal proceedings are a necessary and appropriate means by which to punish potential contemptuous behavior and vindicate the authority of the court.[16] When significant evidence of

criminal contempt is alleged or apparently occurred in my court, I have issued orders to show cause potential contemnors for criminal contempt. Some of these proceedings have been handled by the prosecutor's office. When the prosecutor's office has demurred to prosecute criminal contempt matters, I have invoked the court's inherent constitutional authority to proceed with contempt matters and appointed special prosecutors to handle the matters.[17] These prosecutors are often independent, but on occasion are the counsel for an opposing party in a civil matter.[18] In any event, each of these proceedings has successfully resulted in a guilty verdict—through pleas, pleas taken under advisement, and bench trials.

Furthermore, the actual prosecution of the criminal contempt proceedings generally has taken little time and energy. Like most criminal cases, most of the defendants plead guilty or have pleas taken under advisement. In fact, unlike most other criminal proceedings, the majority of the defendants appear to be genuinely remorseful and embarrassed that their behavior has been uncovered and taken seriously by the court. The few cases that have proceeded to trial are generally no more burdensome than any other misdemeanor criminal trial.

Unlike criminal contempt, civil contempt serves to vindicate the interests of a private party by compelling an opposing party to comply with an order of the court.[19] Thus, such proceedings are generally driven by the actions of the aggrieved party. When parties have satisfied the necessary procedural and substantive requirements, I have issued orders to show cause to potential contemnors for civil contempt and, where appropriate, I have rendered suitable sanctions to compel adherence to the orders of the court. Again, simply the initiation of these proceedings is often sufficient to obtain compliance with the court's orders. Those matters that require more significant proceedings are usually no more troublesome than most other evidentiary hearings the court routinely holds, and often result in the righting of wrongs committed by parties on the court's watch.

One could reasonably ask whether the effort has been worthwhile. While invoking the power of contempt is not a daily experience, it has been important to protecting the integrity of the administration of justice in my court. Apparently word has spread. I have been told by a number of prominent litigators (including the current president of the county bar association) that they are well aware of the criminal contempt prosecutions that have occurred in my court, and that they support the revivification of the oath and the importance of orders. If one believes what they say, the behavior of at least some of the parties before my court has been modified to remove any possible contempt entanglements with the court. In fact, there has been a drop in the number of contempt proceedings in my court over the last few months.

V. Conclusion

The exercise of the power of contempt is indispensable to the administration of justice, maintaining the rule of law, and preserving our republican form of government. As the Michigan Supreme Court has explained, "[i]t is the right and duty of a conscientious court" to exercise the power of contempt when its authority is challenged in an open manner.[20] Indeed, the United States Supreme Court has declared that "there is no more important duty than to render such a decree as would serve to vindicate the jurisdiction and authority of courts to enforce orders and to punish acts of disobedience."[21] Thus, a court should fulfill this duty regardless of how forgiving or reluctant the judge might otherwise be to pursue the matter.

During his confirmation hearings, Chief Justice John Roberts noted that the role of the judge is to call balls and strikes. However, the judge's role is also to ensure that the game is played by the rules—corked bats and greased balls are prohibited in baseball, and civil and criminal contempt of court are barred in legal proceedings. Enforcing the oath and court orders is the only manner in which the rules of the judicial proceedings are appropriately enforced and maintained and the basic underpinnings of our system of justice are preserved.

If the oath means nothing, it should not be given. If court orders are to be ignored, they should not be issued. On the other hand, if the rule of law is to prevail, the oath and orders should be vigorously enforced, and those who breach the same should be held accountable for their misconduct. If litigants understand that they can blatantly lie under oath (even when extrinsic evidence clearly proves the falsity of the statements) and violate court orders without consequence, we only degrade the rule of law. After all, perjury is generally a felony,[22] and in some jurisdictions and circumstances perjury can be a life offense.[23] Indeed, historically taking an oath was a solemn responsibility fundamental to justice and living a just life.[24]

Lies under oath lead to violating court orders; broken court orders lead to more serious crimes. Contemnors are simply emboldened to lie with impunity and to violate the orders of the court without consequence. If the truth does not matter in our courts of law, how can it matter elsewhere? If we will not enforce the law in our own courts, how can we expect that it will be adhered to outside of them? In the end, the courts must stand against contempt of court or stand for nothing at all.

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Footnotes

[1] *See, e.g.*, George L. Kelling and William H. Sousa, Jr., Center for Civic Innovation at the Manhattan Institute, Do Police Matter? An Analysis of the Impact of New York City's Police

Reforms, Civic Report No. 22, p. 1 (December 2001). (In fact, one study concluded that "Over 60,000 violent crimes were prevented from 1989 to 1998 because of 'broken windows' policing." *Id*., Executive Summary. Another authority summarized the prevailing sentiment:

> Under his leadership, a city that had long been regarded as out of control and ungovernable made the most dramatic recovery in the history of urban America. Innovative crime-fighting strategies, soon to become a model for cities around the world, cut crime by more than half, until the FBI recognized New York as the safest large city in America. Times Square itself, long considered a symbol of the city's deterioration, experienced a dramatic rebirth. (Profile: Rudolph Giuliani, Academy of Achievement, http://www.achievement.org/autodoc/page/giu0pro-1).

Even the skeptics acknowledge that crime was reduced significantly. *See, e.g*., D. Francis, National Bureau of Economic Research What Reduced Crime in New York City, ("[b]etween 1990 and 1999, homicide dropped 73 percent, burglary 66 percent, assault 40 percent, robbery 67 percent, and vehicle hoists 73 percent")).

[2] The theory was extensively studied and confirmed in Catherine M. Coles and George L. Kelling, Fixing Broken Windows: Restoring Order and Reducing Crime in our Communities (1996).

[3] Even a cursory review of the local media supports this proposition. *See, e.g*., Cynthia Hubert, *The Truth about Lying*, The Detroit News, November 3, 2005, p E-1, E-5 ("John Mayoue, an Atlanta divorce lawyer who has represented famous clients, including Jane Fonda in her breakup with Ted Turner, says lying is rampant in his business. 'In the courtroom, there is no end to lying, particularly if money is at stake.' Moyoue says, 'The more money, the bigger the lies'); Jeff Plungis, *Honda Witness Destroyed Proof*, The Detroit News, November 4, 2005, p C-1 ("A leading expert witness who has testified on behalf of automakers in vehicle rollover trials destroyed evidence in a high-profile case involving Honda Motor Co. according to a California court ruling unsealed this week"); David Shepardson, *Informant Who Misled FBI, Court Faces Prison,* The Detroit News October 28, 2005, p 5B ("Strong also fabricated evidence which resulted in the arrest and jailing of two individuals for drug trafficking crimes which they did not commit; he fabricated evidence resulting in judges of this court issuing wiretap orders and search warrants," Joseph Allen, a special assistant U.S. attorney, said in a court filing.).

[4] Johnson v. Kramer Bros. Freight Lines, Inc., 357 Mich. 254, 258; (1959), quoting 16 CJS, Constitutional Law § 144, p 687.

[5] Daniels v. People, 6 Mich 381, 388 (1859). Although the citations throughout this article are based on federal and Michigan law (the author's home State), such law appears to prevail throughout the States. *See, e.g*., 17 Am Jur 2d Contempt § 1; 17 C J S Contempt.

[6] *See, e.g*., *In re* Chadwick, 109 Mich. 588, 601; (1896), quoting *Ex Parte Robinson,* 86 U.S. 505, 510 (1973)(the power of contempt is "'essential to the preservation of order in judicial proceedings and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice'"); Nichols v. Judge of Superior Court of Grand Rapids, 130 Mich. 187, 195; (1902).

[7] *See, e.g*., *Ex Parte Robinson, supra* at 510 ("The power to punish for contempts is inherent in all courts"); Langdon v. Judges of Wayne Circuit Courts, 76 Mich. 358, 367 (1889)("Courts of record in this state have inherent power to hear and determine all contempts of court which the superior courts of England had at the common law"); *In re* Dingley, 182 Mich. 44, 50 (1914) ("The right of the court to punish as for a criminal contempt an offender is no longer an open question in this state. . . . The courts possess the power independent of the statute"); People v. Doe, 226 Mich. 19 (1924) (Fellows, J.) ("The power to punish for contempt is inherent in the court. It is a part of the judicial power. It is as firmly vested in the constitutional courts by the Constitution as is the exercise of any other judicial power. That the exercise of the judicial power and all of it cannot be taken away from constitutional courts by the Legislature is settled." [opinion of four justices, affirming by evenly split decision the trial court's exercise of the contempt power]); *In Re* Huff, 352 Mich. 415 (1958)("There is inherent power in the courts, to the full extent that it existed in the courts of England at the common law, independent of, as well as by reason of statute." [citations omitted]); *In re* Contempt of Dougherty, 429 Mich. 81, 92 n14 (1987)("Michigan courts have, as an inherent power, the power at common law to punish all contempts of court."). "Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it." *Huff, supra* at 415-416. Hence, the Legislature, although codifying the processes, procedures, and sanctions applicable for contempt of court, is without authority to prohibit, regulate, or curtail the court's authority to exercise such power. *See, e.g*., *Langdon, supra* at 358 ("Courts of record in this state have inherent power to hear and determine all contempts of court which the superior courts of England had at the common law; and the statute has not undertaken to limit or prohibit their jurisdiction in the matter of contempts. The statutes are in affirmation of the common-law power of courts to punish for contempts, and, while not attempting to curtail the power, they have regulated the mode of proceeding and prescribed what punishment may be inflicted."); *Huff, supra* at 415 ("There is inherent power in the courts, to the full extent that it existed in the courts of England at the common law, independent of, as well as by reason of statute [C.L.1948, § 605.1 *et seq*. (Stat Ann § 27.511 *et seq*.)] which is merely declaratory and in affirmation thereof, to adjudge and punish for contempt, and determination of the issue is not for a jury but the court. Such inherent power extends not only to contempt committed in the presence of the court, but also to constructive contempt arising from refusal of defendant to comply with an order of the court. Such power, being inherent and a part of the judicial power of constitutional courts, cannot be limited or taken away by act of the legislature nor is it dependent on legislative provision for its validity or procedures to effectuate it." [citations omitted]).

The Arkansas and Michigan Supreme Courts have elaborated:

> The legislature may regulate the exercise of, but cannot abridge the express or necessarily implied powers granted to, this court by the constitution. If it could, it might encroach upon both the judicial and executive departments, and draw to itself all the powers of government, and thereby destroy that admirable system of checks and balances to be found in the gigantic framework of both the federal and state institutions, and a favorite theory in the governments of the American people. As far as the act in question goes, in sanctioning the power of the courts to punish as contempts the 'acts' therein enumerated, it is merely declaratory of what the law was before its passage. The prohibitory feature of the act can be regarded as nothing more than the expression of a judicial opinion by the legislature that the courts may exercise and enforce all their constitutional powers, and answer all the useful purposes of their creation, without the necessity of

> punishing as a contempt any matter not enumerated in the act. As such, it is entitled to great respect, but to say that it is absolutely binding upon the courts would be to concede that the courts have no constitutional and inherent power to punish any class of contempts, but that the whole subject is under the control of the legislative department; because, if the general assembly may deprive courts of power to punish one class of contempts, it may go the whole length, and divest them of power to punish any contempt.
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> (*In re* Chadwick, *supra* at 599-600, quoting State v. Morrill, 16 Ark. 384 (1855)).

[8] *Nichols, supra* at 196.

[9] *See, e.g.*, *Id.* at 193-195.

[10] Gompers v. Bucks Stove & Range Co, 221 U.S. 418, 450 (1911). *See also* Young v. United States *ex rel* Vuitton et Fils S.A., 481 U.S. 787, 796 (1987), quoting *Gompers, supra* at 450.

[11] Yates v. Lansing, 5 Johns. 282 (N.Y. 1810). *See also Ex Parte Gilliand*, 284 Mich. 604, 611 (1939), quoting *Yates, supra*.

[12] *See, e.g.*, *In re* Chadwick, *supra* at 596 ("The power to punish for contempt is inherent in, and as ancient as, courts themselves. It is essential to the proper administration of the law, to enable courts to enforce their orders, judgments, and decrees, and to preserve the confidence and respect of the people, without which the rights of the people cannot be maintained and enforced.").

[13] Cooper v. People, 13 Colo. 373 (1889).

[14] *See, e.g.*, Hon. Michael Warren, Institute for Continuing Legal Education, How-to Kit: How to Obtain an Order for Contempt of Court (2005).

[15] People v. Joseph, 179 N.W.2d 383 (Mich. 1970)("Criminal contempt is a crime and public wrong.").

[16] Criminal contempt proceedings are intended to vindicate the authority of the court by imposing criminal sanctions upon those who violate a court's order or judgment. Like other crimes, criminal contempt proceedings punish past misdeeds that cannot be rectified. *See, e.g.*, *In re* Contempt of Doughtery, *supra* at 93-94.

[17] In the event a prosecutor refuses to prosecute criminal contempt, the court issuing the order to show cause possesses the inherent constitutional authority to appoint a private prosecutor to proceed with the case. *See, e.g.*, *Young, supra* at 796 n 22.

[18] Although federal courts have ruled that under federal law an interested party may not be appointed as the special prosecutor and that a private attorney shall be appointed only after the federal prosecutor has declined to proceed, Michigan law holds to the contrary. *See, e.g.*, *In re* Contempt of Mitan, unpublished opinion of the Court of Appeals, decided September 17, 2002 (Docket Nos. 222230 and 222231), 2002 WL 31082190 at 10.

[19] People v. Goodman, 17 Mich. Ct. App. 175, 177-178 (1969). ("Civil contempt addresses disobedience of a court order by remedying the violation. Civil contempt proceedings are coercive in nature—they attempt to compel the contemnor to obey a prior order or judgment of the court.").

[20] *Ex Parte Gilliland*, 284 Mich. 604, 611 (1938), *cert. den.* 306 U.S. 643 (1939), *reh den* 306 U.S. 643 (1939). *See also Chadwick, supra* at 603, quoting *Yates, supra*; Mundy v. McDonald, 185 N.W. 877 (Mich. 1921) ("The chancellor, in the case of the plaintiff, was bound in duty to imprison and reimprison him, if he considered his conduct as amounting to a contempt of his court. The obligations of his office left him no volition. He was as much bound to punish a contempt committed in his court, as he was bound in any other case to exercise his power.").

[21] *Gompers, supra* at 450.

[22] *See e.g.*, 18 USC 1621 (five year felony); Mich Comp Law 750.422 and 750.423 (fifteen year felony).

[23] *See, e.g.*, Mich Comp Law 750.422 (life offense in the event the perjury is "committed on the trial of an indictment for a capital crime").

[24] At one time the oath was so solemn that St. Thomas More literally became a martyr rather than take an oath he knew would be false. Indeed, the Ten Commandments forbid a person from giving false testimony. *Exodus 20:16.* ("You shall not bear false witness against your neighbor," New American Bible (Catholic); "You shall not give false testimony against your neighbor," The Bible, New International Version; "You shall not bear false witness against your neighbor," The Bible, New American Standard Version; "Thou shalt not bear false witness against thy neighbour," King James Bible). Similar commandments to speak truthfully and not bear false testimony are set forth in the Islamic Qur'an 6.151-53 ("And if you give your word, do it justice, even if a near relative is concerned; and fulfill your obligations before God. Thus does He command you, that you may remember"); the Buddhist Nagrajuna, Precious Garland 8-9 ("Not killing, no longer stealing, forsaking the wives of others, refraining completely from false, divisive, harsh and senseless speech, forsaking covetousness, harmful intent and the views of Nihilists—these are the ten white paths of action, their opposites are black.") and Majjhima Nikaya iii. 251-52 ("What is right speech? Refraining from lying speech, refraining from slanderous speech, refraining from harsh speech, refraining from gossip—this is called right speech."); the Jainist Acarangasutra 2.15 ("The second great vow, Sir, runs thus, I renounce all vices of lying speech arising from anger or greed or fear or mirth. I shall neither myself speak lies, nor cause others to speak lies, nor consent to the speaking of lies by others. I confess."); and the Hindu Laws of Manu 10.63 ("Nonviolence, truthfulness, not stealing, purity, control of the senses—this, in brief, says Manu, is the Dharma for all the four castes."). For concise and informative surveys of such religious principles, *see* Andrew Wilson, World Scripture, The Decalogue, http://www.unification.org/ucbooks/WorldScr/WS-02-03.htm and *Ten Commandments,* From Wikipedia, http://en.wikipedia.org/wiki/Ten_Commandments#Texts_of_the_commandments.