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Constitutional Law -- Sixth Amendment -- Fair Trial by Impartial Jury

injury arisen out of, or been due to the employment, recovery of a lump sum payment might be warranted. The court in the instant case by refusing to allow recovery in a lump sum payment where the injury arose out of the employment refutes that possible distinction, and decides that the measure of recovery should be the same whether or not the injury or illness results from the employment.

In deciding the principal case the court was cognizant of the impossibility of ascertaining the future expenses of the seaman; the indefiniteness of the mortality table would make its use impracticable as a basis for a lump sum award, and the sliding scale between injuries and illness, thus bringing about lack of uniformity and difficulty of application. Giving the seaman a sum for future medical treatment, where such treatment may be ascertained, has been allowed by admiralty courts,[20] but a lump sum payment making the shipowner an insurer would be contrary to the spirit of the doctrine. The improvident nature of the seaman underlies the policy of the court in limiting recovery to the amount that the sailor has paid out for medical aid.[21] If a lump sum was allowed and the money was dissipated, the sailor would be left to his own resources and would undoubtedly become a charge of the state, which the doctrine, as formulated, sought to prevent.

CONSTITUTIONAL LAW—SIXTH AMENDMENT—FAIR TRIAL BY IMPARTIAL JURY

Defendant, a communist, was convicted of contempt for wilful failure to respond to a subpoena issued by the House Committee on Un-American Activities. The trial court refused defendant's motion to exclude from jury service those jurors who were employees of the Federal Government. *Held,* on appeal, that denial of petitioner's motion to exclude all government employees from the jury panel did not deprive defendant of a fair trial by an impartial jury. *Dennis v. United States,* 171 F.2d 986 (D.C. Cir. 1948), cert. granted, 18 U.S.L. Week (U.S. July 5, 1949).

The Sixth Amendment of the Federal Constitution provides for the right to a fair trial by an impartial jury.[1] At common law, Crown employees were absolutely disqualified from serving as jurors in criminal cases;[2] but Congress removed such disqualification regarding criminal trials in the District

20. Barnes v. American Hawaiian S.S. Co., 79 F. Supp. 699 (N.D. Cal. 1948); United States v. Robinson, 170 F.2d 578 (5th Cir. 1948) (by implication).
21. See Hardin v. Gordin, 11 Fed. Cas. No. 6,047, at 483 (C.C.D. Me. 1823).

1. U.S. CONST. AMEND. VI.
2. Crawford v. United States, 212 U.S. 183 (1908) (common-law grounds).

of Columbia.[3] Thus, federal employment alone does not disqualify a juror in a prosecution for larceny,[4] or a violation of the narcotics law.[5]

While government employees are not to be excluded from jury service simply because they are government employees,[6] it does not necessarily follow that they cannot be disqualified by a showing of bias. It cannot be doubted that communistic sympathy renders the position of federal employees perilous. Recent legislative and administrative acts have been designed primarily to assure the unquestionable loyalty of all employees of the government, as for instance, the Executive Order[7] which established a thorough investigative review procedure with regard to the loyalty of all government employees. Similarly, the House Committee on Un-American Activities[8] was created expressly for the purpose of investigating any suspicion of subversive activities or disloyalty to the government. These acts were undoubtedly designed primarily to protect government agencies from any infiltration of persons antagonistic to our form of government[9] and they have certainly created a fear in the minds of government employees of being suspected of communistic sympathies. In *Eisler v. United States,*[10] the defendant, a communist, sought to establish the bias of certain jurors by showing that federal employees are anxious to avoid sympathizing with communists since it would subject them to closer scrutiny and endanger their personal security. Thus, it was argued, fruitlessly, that jurors who are federal employees would tend to convict an admitted communist rather than acquit him, to avoid suspicion of any such tendencies.

In the instant case, defendant openly admitted that he was affiliated with the communist party in this country. Although he was not convicted for being disloyal to our government, he was tried on other counts before jurors who were federal employees. It is submitted that although employees of the government would not be endangered by a sympathetic verdict for the defendant in a prosecution for larceny or a narcotics violation,[11] and consequently, would not tend to convict rather than acquit, it is not so where the defendant is a

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3. 49 STAT. 682 (1935 amending D.C. CODE 1929). Federal employees by statute are not exempted, 28 U.S.C. § 1861 (1948), and in the District of Columbia are qualified expressly, D.C. CODE § 11-1420 (1940).

4. United States v. Wood, 299 U.S. (1939); *cf.* Baker v. Hudspeth, 129 F.2d 779 (10th Cir. 1942).

5. Frazier v. United States, 335 U.S. 497 (1947); Higgins v. United States, 160 F.2d 222 (App. D.C. 1946); *accord,* United States v. Chapman, 158 F.2d 417 (10th Cir. 1946); Schackow v. Govt. of the Canal Zone, 108 F.2d 625 (5th Cir. 1939); Great Atlantic and Pacific Tea Co. v. District of Columbia, 89 F.2d 502 (App. D.C. 1937).

6. Cases cited note 5 *supra.*

7. Exec. Order No. 9835, 12 FED. REG. 1935 (1947).

8. 60 STAT. 828 (1946).

9. Friedman v. Schwellenback, 159 F.2d 22 (App. D.C. 1946), *cert. denied,* 330 U.S. 838 (1947) (federal employee dismissed, based on suspicion of subversive activities).

10. United States v. Eisler, 75 F. Supp. 640 (D.C. 1948).

11. United States v. Wood, *supra;* Frazier v. United States, *supra;* Higgins v. United States, *supra.*

communist. It is obviously prudent for federal workers to convict an alleged communist and imprudent to acquit him. One cannot disregard the conclusion that trial by jurors whose personal security will either actually or apparently be promoted by conviction and endangered by acquittal is not trial by an impartial jury.[12]

It is therefore imperative that in selecting a jury which would consist of federal employees in the District of Columbia, the courts be solicitous in considering the nature and circumstances of the matters involved in the prosecution.[13] In view of the above considerations, the court, in the instant case, would be justified in imputing bias to all federal workers who serve as jurors in communist trials.

CONSTITUTIONAL LAW—SYSTEMATIC EXCLUSION OF NEGROES FROM GRAND JURIES—SUFFICIENCY OF EVIDENCE FOR PRIMA FACIE CASE

The defendant, a Negro, was indicted for assault. Motion was made to vacate the indictment on the ground that Negroes were systematically and intentionally excluded from serving on the grand jury. Evidence was introduced showing that though there were qualified Negroes who had served on the petit jury from whose members the grand jurors were chosen, no Negroes had been called on the grand jury for ten years. *Held*, on appeal, the defendant failed to present a prima facie case of systematic exclusion. *People v. Dessaure*, 299 N.Y. 126, 85 N.E.2d 900; *cert. denied*, 69 Sup. Ct. 1510 (1949).

While a Negro has no right to racial representation on a grand jury in proportion to the number of his race in the community,[1] nor even to be represented,[2] the Constitution [3] guarantees a defendant that his race shall not be discriminated against by state officials in the selection of juries. Because of the difficulty of showing intentional discrimination by direct proof of such misconduct by state officials, the Negro defendant has had to resort to other means of proving systematic exclusion of his race from jury service.

In *Neal v. Delaware* [4] the Supreme Court determined that a prima facie case of systematic exclusion was established by showing absence of Negroes from jury panels for a long period of time, together with proof that there were

12. *See* United States v. Eisler, 75 F. Supp. 640 (D.C. 1948) (dissenting opinion).
13. *See* United States v. Wood, *supra*; Frazier v. United States, *supra*.

1. Thomas v. Texas, 212 U.S. 278 (1908).
2. Martin v. Texas, 200 U.S. 316 (1906).
3. U.S. CONST. AMEND. XIV § 1; 18 STAT. 336 (1875), 8 U.S.C. § 44 (1942) "No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as *grand* or petit juror in any court of the United States or of any State on account of race, color, or previous condition of servitude. . . ." (Emphasis added).
4. 103 U.S. 370 (1880).