RECENT CASES

JURORS

IMPARTIALITY OF GOVERNMENT EMPLOYEES AS AFFECTED BY THE LOYALTY ORDER

According to the recent opinion of the Supreme Court in *Dennis v. United States*,[1] "a holding of implied bias to disqualify [government employed] jurors because of their relationship with the Government is no longer permissible."[2] The effect of this decision upon the Sixth Amendment's guaranty of "trial by impartial jury" merits consideration.

The propriety of allowing employees of the Government to serve on juries when the United States is a party was first considered in 1908 in *Crawford v. United States*.[3] Charged with conspiring to defraud the government, the defendant challenged one juryman solely because he operated a sub-postoffice. A denial of the challenge was held by the Supreme Court to be error on the ground that the common law rule—which implies bias as a matter of law against a servant juror when the master is a party—[4] was equally applicable to governmental personnel.

Implied bias results from a relationship between a juror and a party which experience dictates would ordinarily lead to partiality.[5] The common law, it is true, considered the employment relationship to be of this nature;[6] but it is

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1. 70 S. Ct. 519 (1950). Justice Minton wrote the opinion of the Court. Justice Reed concurred specially; Justice Jackson concurred in an opinion which is discussed in note 30 *infra;* Justices Frankfurter and Black dissented with separate opinions; Justices Clark and Douglas did not participate in the decision.

Justice Frankfurter was concerned over the effect of the Dennis rule as an impairment of the concept of fairness in the judicial process. Justice Black was concerned more with the need to protect individual rights covered by the Sixth Amendment and he felt the Dennis rule to be a violation of the constitutional mandate of jury impartiality. The thesis of this note is substantially in accord with Justice Black's dissenting opinion.

Justice Douglas has since placed himself with the dissenters in the *Dennis* case. Morford v. United States, 70 S. Ct. 586 (1950).

2. *Id.* at 523.

3. 212 U. S. 183 (1908).

4. 3 Bl. Comm. * 363; 4 *Id.* * 352.

5. 3 Bl. Comm. * 363. The distinction between actual and implied bias of jurors was developed at common law, and was recognized in the two forms of challenge allowed against prospective jurors: *principal* and *to the favour*. The principal challenge was allowed for kinship to a party, financial interest in the action, or close relationship—such as employer-employee—with one of the parties. In such cases bias was implied in law and the challenged juror's disqualification was absolute. The challenge to the favour merely presented grounds for suspicion of actual bias—such as acquaintanceship—and resulted in a determination by triors of whether any bias in fact existed. If it did not, the juror could serve. *Ibid.* These distinctions are generally unchanged in American jurisdictions. See Block v. State, 100 Ind. 357 (1884).

6. 3 Bl. Comm. * 363. For American cases see Miller v. United States, 38 App. D.C. 361 (1912); Central R.R. Co. v. Mitchell, 63 Ga. 173 (1879); Temples v. Central of Ga. Ry., 15 Ga. App. 115, 82 S. E. 777 (1914); Pearce v. Quincy Mining Co., 149

fairly clear also that the common law did not allow a challenge for implied bias against an employee of the Crown.[7] To the latter extent, therefore, the *Crawford* case was based on weak authority. Yet, common law practice would not be binding nor necessarily appropriate in this country in view of the constitutional requirement of jury impartiality. The Sixth Amendment demands at least a policy of exclusion of jurors with any questionable interest in the controversy.[8] To effectuate this policy the Court formed the rule of the *Crawford* case by analogy to situations in civil and criminal trials. It was noted that the employer-employee relationship had been accepted as grounds

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Mich. 112, 112 N. W. 739 (1907); Louisville Ry. v. Mask, 64 Miss. 738, 2 So. 360 (1887); Hufnagle v. Delaware & H. Co. 227 Pa. 476, 76 Atl. 205 (1910); State v. Thompson, 24 Utah 314, 67 Pac. 789 (1902).

The rule has commonly been extended to those who have a financial interest or are employed by one who has a financial interest in the case. Evans v. State, 13 Ga. App. 700, 79 S. E. 916 (1913); Gaff v. State, 155 Ind. 277, 58 N. E. 74 (1900); Zimmerman v. State, 115 Ind. 129, 17 N. E. 258 (1888); Block v. State, 100 Ind. 357 (1884); State v. Golubski (Mo. App.) 45 S. W.2d 873 (1932).

7. Rex v. Hampden, 9 How. St. Tr. 1054 (K. B. 1684). Hampden, charged with sedition, challenged for implied bias an officer of the King's Forest who was a prospective juror. The Lord Chief Justice denied the challenge, saying, "It is no cause of challenge even to be the King's tenant, and there is a great deal of reason for it. For if that were a good cause of challenge, mark the consequences, then all persons that hold lands in England, hold them mediately or immediately of the King, and so the King could have no freeholders to be jurymen in his cause." *Id.* at 1058. The Attorney General also pointed out that, "If all that receive salary or wages from the King are not to be jurymen in the King's causes, then all the deputy lieutenants and militia officers which generally are the most substantial freeholders, are excluded from being jurymen." *Id.* at 1059.

The questioned juror eventually was removed by agreement of counsel, as was another who was a sergeant-at-arms of the King. But the Chief Justice remained firm that they could not be removed by challenge:

Attorney General: . . . "for no reason that has been offered."

Chief Justice: "No, no, I do not hear anything of reason offered for it." *Ibid.*

Although Blackstone did not comment directly on the problem, he remains the strongest supporter of the contrary rule. His detailed discussion of jury challenges is presented in reference to civil actions at 3 BL. COMM. * 363. Respecting criminal trials, however, he declares that challenges may be made "either on the part of the King, or on that of the prisoner . . . for the very same reasons that they may be made in civil causes." 4 *Id.* * 352. This statement is supported by a reference to the judiciary's tendencies to favor the Crown, and the apprehension arising from that fact. "More is to be apprehended from the violence and partiality of judges appointed by the Crown in suits between the King and subject, than in disputes between one individual and another." 4 *Id.* * 349. The same would manifestly be true of jurors whose livelihood comes from the King, and there would be as much reason to fear the juror as the judge.

Two other commentators agree that the principal challenge might be allowed against a menial servant of the King, a member of his livery, or an immediate tenant. 5 BACON'S ABRIDGMENT 355 (1876); Co. LITT. * 156 a n.5. Hawkins disagrees, but concludes that the problem is unsettled. 2 HAWKINS, PLEAS OF THE CROWN c.43, § 33 (1824). Surprisingly, it is said that a challenge to the favour should never be allowed against the Crown, since everyone should favor the King by allegiance. BACON, *supra;* COKE, *supra.*

8. Notes, 25 NOTRE DAME LAW. 751 (1950); 11 TEMPLE L. Q. 430, 431 (1937). The requirement even at common law and without the strength of a written constitution was that a juror should be *omne exceptione majoris.* 4 BL. COMM. * 352. The common restatement of this rule is that a juror must be "indifferent as he stands unsworn."

for imputing bias even where the employer was an impersonal entity—a corporation.[9]

But Government employees are not so apt to favor their employer as are privately employed persons. The interest of the United States in the prosecution of ordinary criminal cases is somewhat less than that of a corporation or other employer whose concern in most actions is both direct and immediate. Likewise, the relationship of the Government employee with the Government is more impersonal than that of the private employee with his employer; there is, on the whole, less "pressure" on the former than on the latter. If these differences are sufficient to serve as basis for the application of different rules, then Congress could, in its discretion, overrule the *Crawford* decision.

In 1935 Congress did so. The *Crawford* rule had harsh consequences in the District of Columbia. Since government employes were disqualified as jurors in even the most minor criminal cases, other residents of the District were burdened with additional jury service. To remedy this inequity a bill was prepared to overrule the *Crawford* case. It declared that ". . . persons, otherwise qualified according to law whether employed in the service of the Government of the United States or of the District of Columbia . . . shall be qualified to serve as jurors in the District of Columbia and shall not be exempt from such service. . . ."[10] The validity of this statute was immediately attacked in *United States v. Wood*.[11] The defendant was charged with petit larceny. Two of the jurors who convicted him were employed by the Government and another was the recipient of a civil war pension. Challenges for implied bias against all three were overruled. On appeal, the Supreme Court held that Congress could constitutionally remove the imputation of bias recognized by the *Crawford* case without impairing the Sixth Amendment

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9. Crawford v. United States, 212 U. S. 183, 196 (1908). *See e.g.*, Central R.R. Co. v. Mitchell, 63 Ga. 173 (1879); Louisville Ry. v. Mask, 64 Miss. 738, 2 So. 360 (1887); State v. Thompson, 24 Utah 314, 67 Pac. 789 (1902).

10. D. C. CODE § 11-1420 (1940). The bill was designed to bring about general improvements in the jury system of the District. 79 CONG. REC. 13, 401 (1935). It was drafted by a committee appointed to investigate minor criminal prosecutions in the District, among whose members were the president of the District Bar Association and representatives of many civic groups. Committee reports show that the purpose of the bill was to eradicate a number of exemptions from jury service which had made the selection of juries much more difficult. Among these was mentioned the exemption "by judicial construction" which applied to all Government employees in criminal cases. H. R. REP. No. 1421, 74th Cong., 1st Sess. (1935); SEN. REP. No. 1297, 74th Cong., 1st Sess. (1935).

For cases typifying the operation of the statute in ordinary criminal prosecutions with which Congress was concerned, see: Weldon v. United States, 183 F.2d 832 (App. D. C. 1950) (sodomy); Wright v. United States, 183 F.2d 821 (App. D. C. 1950) (pandering) (both citing the *Dennis* case); Higgins v. United States, 160 F.2d 222 (App. D. C. 1946) (narcotics charge); Great A. & P. Tea Co. v. District of Columbia, 89 F.2d 502 (App. D. C. 1937) (fraudulent weights and measures).

11. 299 U. S. 123 (1936), noted in 50 HARV. L. REV. 692 (1937); 27 J. CRIM. L. & CRIM. 914 (1937); 21 MINN. L. REV. 608 (1937); 11 TEMPLE L. Q. 430 (1937).

mandate of trial by impartial jury. The prior disqualification was felt to be "artificial and not necessary to secure impartiality."[12]

Again, in 1948, the validity of the statute was brought into question. In *Frazier v. United States,*[13] the defendant was tried for violation of a narcotics act by a jury composed entirely of Government employees. A blanket challenge for implied bias was denied and the conviction affirmed on the authority of the *Wood* case, the purport of which was said to be that ". . . Government employees and persons privately engaged were put on the same basis. . . ."[14]

But nowhere is there to be found any indication that Congress intended to do more than remove the implied bias arising from the bare fact of government employment. The statute was the nemesis only of the *Crawford* holding.[15] Certainly the *Wood* and *Frazier* cases approved no more broad an interpretation than this; for in *Wood* it was said:

> . . . We think that the imputation of implied bias simply by virtue of governmental employment, *without regard to any actual partiality growing out of the nature and circumstances of particular cases,* rests on an assumption without any rational foundation. . . . It is suggested that an employee of the government may be apprehensive of the termination of his employment in case he decides in favor of the accused in a criminal case. *Unless the suggestion be taken to have reference to some special and exceptional case,* it seems to us far-fetched and chimerical. . . . (emphasis added).[16]

And in *Frazier* also the Court made a similar statement:

> The effect of these rulings . . . was to make Government employees subject, as are all other persons and in the same manner, to challenge for 'actual bias' and under all *ordinary* circumstances only to such challenge. In that view, *absent any basis for such challenge,*

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12. United States v. Wood, 299 U. S. 123, 148 (1936).

13. 335 U. S. 497 (1948), noted in 37 GEO. L. J. 431 (1949); 28 NEB. L. REV. 446 (1949).

The defendant's hope for reversal here was predicated on the fact that after the *Wood* decision a system grew up in the District which resulted almost inevitably in a substantial portion of all jurors being government employees. Largely because of his own actions in the trial court, the defendant was unsuccessful in the Supreme Court, but three Justices joined with Justice Jackson's condemnation of the system. See Frazier v. United States, 335 U. S. 497, 514 (1948) (dissenting opinion). The system had in fact been discontinued before the Supreme Court considered the case. Comment, *Justice, Jury Trials, and Government Service,* 35 CORN. L. Q. 814, 819 (1950).

This decision is also said to have extended the *Wood* doctrine since employees of a department directly interested in the prosecution of narcotics violations were held not to be disqualified for implied bias. Note, 37 GEO. L. J. 431 (1949). This is true, but Frazier remains a weak case on which to base an extension since it was apparent that the defendant deliberately stacked his jury with government employees, apparently hoping to increase his chances of reversal on appeal. The actions did not go unrecognized, however. Frazier v. United States, 335 U. S. 497, 505 (1948).

14. *Id.* at 510.

15. See note 10 *supra.*

16. United States v. Wood, 299 U. S. 123, 149 (1936).

> we do not see how a right to challenge [for implied bias] . . . can arise from the mere fact . . . of government [employment]. . . . (emphasis added).[17]

Further, it is proper to question whether Congress has the power, consistent with the spirit of the Sixth Amendment, to completely immunize government employees from challenge for implied bias. To do so would force defendants to prove the existence of actual bias in every instance. Yet, impartiality itself, or the want of it, is not susceptible of absolute proof. "It is a state of mind."[18] In a close case the burden would be so great that there would be little possibility of its successful accomplishment as to any substantial number of jurors.[19] And, since the Constitution was drafted at a time when the two forms of challenge for bias were concretely embedded in the common law, it would be arbitrary and unreasonable to abolish one form of challenge as to a particular group of jurors while leaving others subject to such challenge. The broad scope of the Sixth Amendment[20] contains no license for such discriminatory action. In light of these considerations, the narrow interpretation put on the statute by *Wood* and *Frazier* seems both logical and constitutionally proper.

But the Supreme Court rejected this interpretation in the *Dennis* case, where there was an attempt to show the existence of "special and exceptional" circumstances which, under *Wood* and *Frazier,* might still allow an imputation of bias against a Government-employed juror. Dennis, the general secretary of the American Communist Party, was cited for contempt by the House of Representatives for deliberate refusal to make an appearance before the House Un-American Activities Committee in answer to a subpoena.[21] At trial in the District of Columbia, Dennis challenged all government employees on the jury, asserting that as a result of President Truman's Loyalty Order[22] they would be fearful of casting a vote for acquittal of a notorious Communist.[23]

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17. Frazier v. United States, 335 U. S. 497, 510 (1948).

18. *See* United States v. Wood, 299 U. S. 123, 145 (1936).

19. A defendant in this situation must therefore choose between a costly and time-consuming *voir dire* examination or the silent acceptance of jurors whose indifference is questionable. In cases of public concern, it is likely that extended *voir dire,* forced on defendants by the *Dennis* rule, will operate to their detriment in public opinion by being labelled "delaying tactics" and harassment of the judge. To emphasize this, one need only call attention to the unanimity of public opinion against the eleven "top Communists" who were recently convicted of Smith Act violations, and the extent of public comment on their trial tactics.

20. U. S. CONST. AMEND. VI: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ."

21. H. Res. 193 (1947). For the rather lengthy debate on the Resolution, see 93 CONG. REC. 3813 *et. seq.* (1947).

22. Exec. Order No. 9835, 12 FED. REG. 1935 (1947). The Order is also published in an annotation to 5 U.S.C.A. § 631 (Supp. 1949).

23. Dennis is probably one of the best-known Communists in this country. As a major leader of the party, he has made little effort to conceal his affiliations. In debate on the Resolution, Representative Mundt called Dennis the number one or two Commun-

The challenge was denied and the Supreme Court, in affirming his conviction, held that the statute which abolished *Crawford* would not admit of any exceptions.[24]

The basis of Dennis' contention was the current mass hysteria against Communists. Assuming the presence of such hysteria, however, it alone furnishes no ground for distinguishing between an employee of the Government and any other juror. Presumably both would be subject to the same anti-Communist feelings. And although Congress did not have this situation in mind when removing the *Crawford* rule,[25] the import of *Wood* and *Frazier* is that as to factors which affect all jurors alike, Government employees should stand on the same footing as other jurors.[26] But Dennis' sword was more pointed. The Government-employed juror, it was pointed out, was subject to extrinsic compulsion not to "associate" or be "sympathetic" with Communists.[27] It was argued that this action created pressure on the mind of a government employee which would not be present in the mind of other jurors; this Dennis asserted to be sufficient to remove the question from the area covered by the statute and impute bias as a matter of law to those affected by the loyalty order.

There is substantial merit in Dennis' arguments. The juror's livelihood is represented by his Government employment; it is his source of income which he is not anxious to jeopardize. In the typical criminal case he need not even remotely consider the possibility of discharge because he votes for acquittal. But where the employer has announced his intention to *summarily* discharge employees having disloyal *sympathies,*[28] rare would be the employee-juror who would not reflect on the consequences of acquitting a leader of the group which the employer designated the most disloyal.[29] It is no longer chimerical

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ist in the United States. 93 CONG. REC. 3814 (1947). He has become even more widely known as one of the eleven Communist Party leaders convicted in New York of violating the Smith Act. See Dennis v. United States, 183 F.2d 201 (2d Cir. 1950).

24. *See* Dennis v. United States, 70 S. Ct. 519, 523 (1950).

25. See note 10 *supra.*

26. *See* Frazier v. United States, 335 U. S. 497, 510 (1948).

27. These are the words of the Order itself. See Exec. Order No. 9835, 12 FED. REG. 1935 (1947). See also note 29 *infra.*

28. *See, e.g.,* Bailey v. Richardson, 182 F.2d 46 (App. D. C. 1950), presently under consideration by the Supreme Court, 70 S. Ct. 1025 (1950).

29. It was recognized from the inception that the Loyalty program was directed mainly against Communists and sympathizers in Federal employment. Agitation for such a program came almost exclusively from those concerned over sympathy to Russia or Communism. *E.g.,* "Although they were not singled out in the order, Communists and Communist sympathizers would be the first targets, it was indicated. There have been repeated allegations in Congress that Communists held Federal posts." N. Y. Times, March 23, 1947, p. 1, col. 8.

It is not the purpose of this note to indict or excuse the loyalty program, hence no lengthy discussion of its processes is undertaken here. Since most of the documents concerned are still secret, discussion would be at best largely a matter of hearsay. But that the loyalty program is actively directed against Communists and their cohorts, and

to say that such a juror's impartiality is likely to be impaired. Nor can it be said that the statute protects the juror in such a case unless it is argued that the statute grants immunity from even well-founded challenges for implied bias in specific cases. Such a declaration would clearly be an extension of *Wood* and *Frazier,* and would be repugnant to the spirit of the Sixth Amendment. The extrinsic pressures present in this case would be held to give rise to implied bias in any non-governmentally employed juror against whom they were directed; it is only circumstance that here they were directed toward government employees. Thus the implied bias asserted here results from the pressure, not the employment relationship.

The Supreme Court, rejecting in whole Dennis' contentions, characterized the problem as one of carving out of the statute an exception for Communists;[30] rather than permit this, the Court foreclosed all exceptions. This

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that the inquiries are thorough almost to the point of absurdity, are matters of common knowledge.

It is relevant to consider that recent inroads on the secrecy of the juryroom have resulted in almost complete loss of anonymity in deliberation and voting, at least in cases of public concern. The outstanding example of this is the first trial of Alger Hiss for perjury, in New York. The jury disagreed, and newspapers throughout the country publicized the names of the jurors and how they had voted on the case. Along with this should be considered statements made on the floor of Congress to the effect that the Attorney General should be impeached unless he obtained a speedy trial of Dennis, and that nothing less than the maximum sentence would vindicate the Congressional affront Dennis had committed. 93 CONG. REC. 3815 (1947).

Further, it should not seem surprising that officials of the loyalty program would take cognizance of a government employee's participation in the acquittal of a person such as Dennis. It may be assumed that a Communist or a sympathizer would favor Dennis, a party official, in the face of even stern facts. Thus anyone who did so might readily fall under suspicion. That such information may indeed be gathered and employed in the procedures under the loyalty program, see Emerson and Helfeld, *Loyalty Among Government Employees,* 58 YALE L. J. 1 (1948), especially at pp. 68-79. For an enlightening controversy over this article, see the articles by J. Edgar Hoover and the authors, *Id.* at 401 *et seq.*

Others have also emphasized that suspicion is sufficient to initiate investigations of loyalty of government employees. ANDREWS, WASHINGTON WITCH HUNT 48, 95, 214 (1948). And it has been shown that no one, despite his past record or position, is free from investigation once suspicion has attached. *Id.* at 74; Durr, *The Loyalty Order's Challenge to the Constitution,* 16 U. CHI. L. REV. 298, 303 (1949): "The judges acquit at their personal peril, for they themselves may be brought to account for their acquittals. They are assigned the roles of judges but are accountable as prosecutors."

30. *See* Dennis v. United States, 70 S. Ct. 519, 523 (1950). Justice Jackson's concurring opinion, *Id.* at 524, makes it clear that this characterization is his.

Justice Jackson's position in the *Dennis* case deserves comment. While announcing adherence to his dissent in the *Frazier* case and his preparedness to overrule that "weird and misguided" decision at any time, he voted to affirm Dennis' conviction on the ground that an exception to the *Frazier* rule is uncalled for. The basis of Justice Jackson's dissent in the *Frazier* case, however, is no longer available, since the system to which he objected has been discontinued. See note 13 *supra.* Thus his latest objections to the *Frazier* rule must be based on other grounds—in effect, constitutional ones. In this light, his concurrence in the *Dennis* case seems, as an application of constitutional principles, fundamentally unsound. For if the rule of the *Frazier* case is a constitutional infringement, application of the rule without exceptions where exceptions are permissible seems tantamount to a declaration that one person's constitutional rights should be violated be-

characterization was erroneous. Properly, the constitutionality of the statute and its applicability to the usual criminal case could have been reaffirmed without formulation of the Dennis rule. It was unnecessary to carve an exception to a statute which was inapplicable; and it was improper to hold that the statute foreclosed a challenge for implied bias based on special circumstances with which the statute was not concerned.

The *Dennis* case has extended the operation of the statute. Thus, the danger of the case lies not in the decision but in its force as precedent, for the opinion has foreclosed any question of implied bias imputable to government employees.[31] In this, the case stands as more than a faulty job of statutory construction. It represents a nebulous, almost stumbling infringement of an important constitutional right. Nor was the Court forced into this position; Dennis' conviction could have been affirmed on the merits without the formulation of such an unfair rule since *voir dire* showed that the jurors were not in fact biased.[32] But the error, however made, still calls for correc-

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cause another's have been before. Justice Jackson's basic concern, that Communists should not be favored with an exception to a rule which applies to Republicans or Democrats, is ably answered in Justice Frankfurter's dissenting opinion. *Id.* at 526.

31. Justice Reed's concurring opinion indicates his belief that the majority opinion may be read to mean that implied bias may be found to disqualify government employees when "circumstances are *properly* brought to the court's attention which convince the court that Government employees would not be suitable jurors in a particular case" (emphasis added). That there is some basis for this position is shown by the facts discussed in note 32 *infra*. This interpretation was not shared by any other member of the Court, however. Dennis v. United States, 70 S. Ct. 519, 523 (1950).

32. This evaluation of the *Dennis* decision is made in light of two significant facts. First, the offense with which Dennis was charged was one of which the proof is relatively simple and the facts nearly indisputable. There would ordinarily be little room for jury doubt in such a case. Second, the government employees who served as jurors in the Dennis case were honestly, although erroneously, convinced that their Civil Service tenure would protect them from the threats of the Loyalty Order. It is likely therefore that they were not in fact subject to prejudice because of the Order.

E.g., from the *voir dire* examination of two jurors:

Q. You are familiar with the Government loyalty oath investigation?

A. I believe I am. I have heard something of it.

Q. Do you feel that rendering a verdict of not guilty in this case, if you come to that conclusion, it would stop you, any criticism or embarassment among your fellow employees?

A. None whatsoever . . .

Q. You would not have any thought that would be taken as evidence of friendliness to communism?

A. No; I am not worried about my job that way.

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Q. Now . . . you have heard, have you, of the loyalty test or loyalty investigation which is going on to test the loyalty of government employees? . . .

A. Yes, I have.

Q. Are you aware of the fact that one of the tests that might disqualify or prevent you from Government employment is friendly association with any Communist person or any Communist organizations?

A. That would not. I am a Civil Service employee. I have taken an examination for my job.

Q. . . . Are you aware of the fact that, despite any Civil Service protection, still

tion. The remedy seems clear: the *Dennis* case should be overruled.[33]

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a finding that you were in friendly association with any Communist or Communist organization would render you ineligible to continue in your Government position?

A. It would not.

Q. What?

A. It would not.

See Dennis v. United States, 70 S. Ct. 519, 522 n.4 (1950).

In light of these facts, any court might be reluctant to reverse an apparently substantial conviction.

33. Failing this, the concept of a fair trial demands that discretion to determine actual bias should be exercised liberally in favor of defendants at the trial level. This suggestion is not new. It was made, omnisciently, in United States v. Wood, 299 U. S. 123, 149-150 (1936): "But when we consider the range of offenses and the general run of criminal prosecution, it is apparent that [such] cases of special interest would be exceptional. The law permits full inquiry as to actual bias in any such circumstances. . . . We must assume that the courts of the District, with power fully adequate to the occasion, will be most careful in those special instances, where circumstances suggest that any actual partiality may exist, to safeguard the just interests of the accused."