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HEARING BEFORE THE COMMITTEE ON OFFICE AND CIVIL SERVICE USE OF REPRESENTATIVES EIGHTY-SEVENTH CONGRESS FIRST SESSION ON H.R. 6141 and related bills

JUNE 13, 1961

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RESTORATION OF ANNUITIES IN
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HEARING

REMARKS

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RESTORATION OF ANNUITIES IN CERTAIN CASES

TUESDAY, JUNE 13, 1961

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE OF THE
COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:30 a.m., in room 215, Old House Office Building, Hon. James C. Davis presiding.

Mr. DAVIS. The subcommittee will come to order, please.

This subcommittee was appointed to consider the House bills H.R. 6141, H.R. 112, H.R. 1033, H.R. 1042, and H.R. 6286 of this Congress. The members of the subcommittee are Mr. Lesinski, Mrs. Granahan, Mr. Henderson, Mr. Gross, Mr. Broyhill, and Mr. Johansen, and I was designated chairman.

These bills all have a common general purpose—that is, to eliminate harsh inequities that have resulted under Public Law 769, 83d Congress, the so-called Alger Hiss Act.

H.R. 6141, H.R. 112, H.R. 1033, and H.R. 6286 would amend Public Law 769 so as to eliminate the inequities while at the same time strengthening the very necessary security provisions of the law relating to payment of Federal benefits to persons who are disloyal or have committed acts adversely affecting the national security. H.R. 1042 would repeal Public Law 769.

H.R. 6141 and the related bills are identical in purpose and effect to H.R. 4601, 86th Congress, which was reported unanimously by the House Post Office and Civil Service Committee and passed by an overwhelming majority in the House. However, due to lateness in the session and some misunderstanding of the content of the bill in the other body, it was not passed by that body.

At the time the bill that became Public Law 769 was considered in 1954, the primary concern was to prevent payment of a civil service retirement annuity to Alger Hiss, who then was scheduled to be released from a Federal penitentiary after serving a term for perjury in a matter involving subversive activities. However, a number of other far-reaching provisions were included in this legislation which seemed desirable at the time. The legislation presently before the committee deals primarily with these additional provisions and the denial of annuities thereunder to an extent which now does not appear to have been necessary or desirable to carry out the original purpose.

Experience under Public Law 769 has developed clear evidence, based on reports of the Civil Service Commission and from other sources, that many individuals have lost valuable annuities or retired pay for offenses in no way related to security and under circumstances constituting gross miscarriage of justice in some cases. Many

of these offenses were minor in nature and often the courts did not even assess penalties, yet the individuals lost their annuities.

This denial of annuity rights extends, also, to innocent widows and children, who also have lost valuable survivor annuities in some cases simply because their husbands or parents committed offenses having nothing whatever to do with loyalty or national security. This, in effect, has compounded the inequities which have developed under Public Law 769.

Keeping in mind the primary purpose of preventing Federal annuities or retired pay to disloyal persons or subversives, it will be seen now that some of the broad provisions of Public Law 769 cannot be reconciled with this congressional intent. The law now denies annuities for such penal offenses—even though security is not involved—as those relating to claims and services affecting the Government and to contracts with the Government, offenses involving the postal service, and any other act which is a felony under the laws of the United States or the District of Columbia if committed in the exercise of official Government duty or after separation if directly related to such duty. The law also denies annuities in cases of perjury in connection with any such offenses, even though loyalty of the national security is not involved.

Section 2(a) of Public Law 769 denies an annuity to any person, or his survivor, if the person has failed or refused to testify or produce papers or documents with respect to his service as an officer or employee of the Government in any proceeding before a Federal grand jury, U.S. court, or congressional committee, even though loyalty or the national security is not involved. This section properly denies annuities for such failure to testify or produce documents or papers in any case involving loyalty or the national security, and this provision is continued in the bills before the committee.

Section 2(a) of Public Law 769 is the section held unconstitutional by the Court of Claims of the United States in the case of *Max Steinberg v. the United States* (Court of Claims No. 74-57, decided July 16, 1958).

In summary, therefore, Public Law 769, 83d Congress, prohibits the payment by the Federal Government of any annuity or retired pay to any person (1) who has been convicted of a criminal offense specified in the first section of such act or (2) who has failed or refused to appear, testify, or produce records, or has made false or fraudulent statements, involving matters related to the performance of official duties by such person for the Government.

In effect, this statute prohibits any payment of annuity or retired pay under Federal laws to an individual convicted of any of the enumerated criminal offenses, or in violation of those provisions of the act which relate to noncriminal acts or omissions, regardless of whether the offense, act, or omission involves the national security. This prohibition extends, also, to survivor benefits under such laws based on the service of such individual.

H.R. 6141 and related bills propose the elimination of the existing prohibition against payment of Federal annuities and retired pay to persons convicted of criminal offenses, or in violation of those provisions of the act which relate to noncriminal acts or omissions, except in those cases in which the offense, act, or omission involves loyalty or the national security.

Thus the legislation, if approved, will authorize the payment of annuities and retired pay in accordance with existing laws authorizing such annuities and retired pay in the case of any individual whose wrongful offense, act, or omission does not involve the national security. This will carry out the primary objective of Public Law 769—that is, that no Federal annuity or retired pay shall be paid on the basis of the service of any individual guilty of a criminal offense, act, or omission involving the national security.

In addition, section 2 of the bills provides for restoration of annuity or retired pay to persons previously deprived of annuity or retired pay under existing law but who are entitled to annuity or retired pay under the provisions of the bills.

Each member will find on his desk copies of Public Law 769 and the related report, last year's committee report on H.R. 4601, and the official report of the Civil Service Commission recommending approval of H.R. 6141 and containing a record of civil service annuities denied under Public Law 769.

(H.R. 6141 follows:)

[H.R. 6141, 87th Cong., 1st sess.]

A BILL To amend the Act of September 1, 1954, in order to limit to cases involving the national security the prohibition on payment of annuities and retired pay to officers and employees of the United States, to clarify the application and operation of such Act, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to prohibit payment of annuities to officers and employees of the United States convicted of certain offenses, and for other purposes", approved September 1, 1954, as amended (68 Stat. 1142, 70 Stat. 761; 5 U.S.C. 2281-2288), is amended to read as follows:

"That (a) there shall not be paid to any person convicted, prior to, on or after September 1, 1954, under any article or provision of law specified or described in this subsection, of any offense within the purview of such article or provision to the extent provided in this subsection, or to any survivor or beneficiary of such person so convicted, for any period subsequent to the date of such conviction or subsequent to September 1, 1954, whichever date is later, any annuity or retired pay on the basis of the service of such person (subject to the exceptions contained in section 10 (2) and (3) of this Act) which is creditable toward such annuity or retired pay—

"(1) any offense within the purview of—

"(A) section 792 (harboring or concealing persons), 793 (gathering, transmitting, or losing defense information), 794 (gathering or delivering defense information to aid foreign government), or 798 (disclosure of classified information), of chapter 37 (relating to espionage and censorship) of title 18 of the United States Code,

"(B) chapter 105 (relating to sabotage) of title 18 of the United States Code,

"(C) section 2381 (treason), 2382 (misprison of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of government), 2387 (activities affecting armed forces generally), 2388 (activities affecting armed forces during war), 2389 recruiting for service against United States), or 2390 (enlistment to serve against United States), of chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code,

"(D) section 10(b) (2), 10(b) (3), or 10(b) (4) of the Atomic Energy Act of 1946 (60 Stat. 766, 767; 42 U.S.C., 1952 edition, sec. 1810 (b) (2), (3) and (4), as in effect prior to the enactment of the Atomic Energy Act of 1954 by the Act of August 30, 1954 (68 Stat. 919; Public Law 703, Eighty-third Congress; 42 U.S.C. 2011-2281),

"(E) section 16(a) or 16(b) of the Atomic Energy Act of 1946 (60 Stat. 773; 42 U.S.C., 1952 edition, sec. 1816 (a) and (b)) as in effect prior to the enactment of the Atomic Energy Act of 1954 by the Act of

August 30, 1954, insofar as such offense under such section 16(a) or 16(b) is committed with intent to injure the United States or with intent to secure an advantage to any foreign nation, or

"(F) any prior provision of law on which any provision of law specified in subparagraph (A), (B), or (C) of this paragraph is based;

"(2) any offense within the purview of—

"(A) article 104 (aiding the enemy) or article 106 (spies) of the Uniform Code of Military Justice (chapter 47 of title 10 of the United States Code) or any prior article on which such article 104 or article 106, as the case may be, is based, or

"(B) any current article of the Uniform Code of Military Justice (or any prior article on which such current article is based) not specified or described in subparagraph (A) of this paragraph on the basis of charges and specifications describing a violation of any provision of law specified or described in paragraph (1), (3), or (4) of this subsection if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of such sentence as finally approved;

"(3) perjury committed under the laws of the United States or of the District of Columbia—

"(A) in falsely denying the commission of an act which constitutes any of the offenses—

"(i) within the purview of any provision of law specified or described in paragraph (1) of this subsection, or

"(ii) within the purview of any article or provision of law specified or described in paragraph (2) of this subsection insofar as such offenses is within the purview of any article or provision of law specified or described in paragraph (1) or paragraph (2) (A) of this subsection,

"(B) in falsely testifying before any Federal grand jury, court of the United States, or court-martial with respect to his service as an officer or employee of the Government in connection with any matter involving or relating to any interference with or endangerment of, or involving or relating to any plan or attempt to interfere with or endanger, the national security or defense of the United States, or

"(C) in falsely testifying before any congressional committee in connection with any matter under inquiry before such congressional committee involving or relating to any interference with or endangerment of, or involving or relating to any plan or attempt to interfere with or endanger, the national security or defense of the United States; and

"(4) subornation of perjury committed in connection with the false denial or false testimony of another person as specified in paragraph (3) of this subsection.

"(b) There shall not be paid to any person convicted, prior to, on, or after the date of enactment of this amendment, under any article or provision of law specified or described in this subsection, of any offense within the purview of such article or provision to the extent provided in this subsection, or to any survivor or beneficiary of such person so convicted, for period subsequent to the date of such conviction or subsequent to the date of enactment of this amendment, whichever date is later, any annuity or retired pay on the basis of the service of such person (subject to the exceptions contained in section 10 (2) and (3) of this Act) which is creditable toward such annuity or retired pay—

"(1) any offense within the purview of—

"(A) section 222 (violation of specific sections) or section 223 (violation of sections generally of the Atomic Energy Act of 1954 (68 Stat. 958; 42 U.S.C. 2272 and 2273) insofar as such offense under such section 222 or 223 is committed with intent to injure the United States or with intent to secure an advantage to any foreign nation,

"(B) section 224 (communication of restricted data), section 225 (receipt of restricted data), or section 226 (tampering with restricted data) of the Atomic Energy Act of 1954 (68 Stat. 958 and 959; 42 U.S.C. 2274, 2275, and 2276), or

"(C) section 4 (conspiracy and communication or receipt of classified information), section 112 (conspiracy or evasion of apprehension during internal security emergency), or section 113 (aiding evasion of apprehension during internal security emergency) of the Internal Security

Act of 1950 (64 Stat. 991, 1029, and 1030; 50 U.S.C. 783, 822, and 823);

"(2) any offense within the purview of any current article of the Uniform Code of Military Justice (chapter 47 of title 10 of the United States Code), or any prior article on which such current article is based, on the basis of charges and specifications describing a violation of any provision of law specified or described in paragraph (1), (3), or (4) of this subsection, if the executed sentence includes death, dishonorable discharge, or dismissal from the service, or if the defendant dies before execution of such sentence as finally approved;

"(3) perjury committed under the laws of the United States or the District of Columbia in falsely denying the commission of an act which constitutes any of the offenses within the purview of any provision of law specified or described in paragraph (1) of this subsection; and

"(4) subornation of perjury committed in connection with the false denial of another person as specified in paragraph (3) of this subsection.

"SEC. 2. (a) There shall not be paid to any person who, prior to, on, or after September 1, 1954, has refused or refuses, or knowingly and willfully has failed or fails, to appear, testify, or produce any book, paper, record, or other document, relating to his service as an officer or employees of the Government, before a Federal grand jury, court of the United States, court-martial, or congressional committee, in any proceeding with respect to—

"(1) any relationship which he has had or has with a foreign government, or

"(2) any matter involving or relating to any interference with or endangerment of, or involving or relating to any plan or attempt to interfere with or endanger, the national security or defense of the United States, or to the survivor or beneficiary of such person, for any period subsequent to September 1, 1954, or subsequent to the date of such failure or refusal of such person, which ever date is later, any annuity or retired pay on the basis of the service of such person (subject to the exceptions contained in section 10 (2) and (3) of this Act) which is creditable toward such annuity or retired pay.

"(b) There shall not be paid to any person who, prior to, on, or after September 1, 1954, knowingly and willfully, has made or makes any false, fictitious, or fraudulent statement or representation, or who, prior to, on, or after such date, knowingly and willfully, has concealed or conceals any material fact, with respect to his—

"(1) past or present membership in, affiliation or association with, or support of the Communist Party, or any chapter, branch, or subdivision thereof, in or outside the United States, or any other organization, party, or group advocating (A) the overthrow, by force, violence, or other unconstitutional means, of the Government of the United States, (B) the establishment, by force, violence, or other unconstitutional means, of a Communist totalitarian dictatorship in the United States, or (C) the right to strike against the Government of the United States,

"(2) conviction, under any article or provision of law specified or described in subsection (a) of the first section of this Act, of any offense within the purview of such subsection (a) to the extent provided in such subsection, or

"(3) failure or refusal to appear, and testify, or produce any book, paper, record, or other document, as specified in subsection (a) of this section, for any period subsequent to September 1, 1954, or subsequent to the date on which any such statement, representation, or concealment of fact is made or occurs, whichever date is later, in any document executed by such person in connection with his employment in, or application for, a civilian or military office or position in or under the legislative, executive, or judicial branch of the Government of the United States or the government of the District of Columbia, or to the survivor or beneficiary of such person, any annuity or retired pay on the basis of the service of such person (subject to the exceptions contained in section 10 (2) and (3) of this Act) which is creditable toward such annuity or retired pay.

"(c) There shall not be paid to any person who, prior to, on, or after the date of enactment of this amendment, knowingly and willfully, has made or makes any false, fictitious, or fraudulent statement or representation, or who, prior to, on, or after such date, knowingly and willfully, has concealed or conceals any material fact, with respect to his conviction, under any article or provision of law specified or described in subsection (b) of the first section of this Act, of any offense within the purview of such subsection (b) to the

extent provided in such subsection, for any person subsequent to the date of enactment of this amendment or subsequent to the date on which any such statement, representation, or concealment of fact is made or occurs, whichever date is later, in any document executed by such person in connection with his employment in, or application for, a civilian or military office or position in or under the legislative, executive, or judicial branch of the Government of the United States or the government of the District of Columbia, or to the survivor or beneficiary of such person, any annuity or retired pay on the basis of the service of such person (subject to the exceptions contained in section 10 (2) and (3) of this Act) which is creditable toward such annuity or retired pay.

"SEC. 3. There shall not be paid to any person—

"(1) who (A) after July 31, 1956, is under indictment, or has outstanding against him charges preferred under the Uniform Code of Military Justice, for any offense within the purview of subsection (a) of the first section of this Act, or (B) after the date of enactment of this amendment, is under indictment, or has outstanding against him charges preferred under the Uniform Code of Military Justice, for any offense within the purview of subsection (b) of such first section, and

"(2) who willfully remains outside the United States, its Territories and possessions, and the Commonwealth of Puerto Rico for a period in excess of one year with knowledge of such indictment or charges, as the case may be,

for any period subsequent to the end of such one-year period, or to the survivor or beneficiary of such person, any annuity or retired pay on the basis of the service of such person (subject to the exceptions contained in section 10 (2) and (3) of this Act) which is creditable toward such annuity or retired pay, unless and until—

"(i) a nolle prosequi to the entire indictment is entered upon the record, or such charges have been dismissed by competent authority, as the case may be,

"(ii) such person returns and thereafter the indictment, or charges, is or are dismissed, or

"(iii) after trial by court or court-martial, as applicable, the accused is found not guilty of the offense or offenses referred to in paragraph (1) of this section.

"SEC. 4. (a) In the case of—

"(1) the conviction of any person, under any article or provision of law specified or described in subsection (a) of the first section of this Act, of any offense within the purview of such subsection (a) to the extent provided in such subsection, or the commission by any person of any violation of subsection (a) or (b) of section 2 of this Act, or

"(2) the conviction of any person, under any article or provision of law specified or described in subsection (b) of the first section of this Act, of any offense within the purview of such subsection (b) to the extent provided in such subsection, or the commission by any person of any violation of subsection (c) of section 2 of this Act,

any amounts (not including employment taxes) contributed by such person toward an annuity the benefits of which are denied under this Act (less any amounts previously refunded or previously paid as annuity benefits) shall be refunded, upon appropriate application therefor—

"(A) to such person,

"(B) if such person is deceased, to such other person or persons as may be designated to receive refunds by or under the law, regulation, or agreement under which the annuity (the benefits of which are denied under this Act) would have been payable, or

"(C) if there is no such designation, in the order of precedence prescribed in section 11(c) of the Civil Service Retirement Act (70 Stat. 755; 5 U.S.C. 2261(c)) or section 2771 of title 10 of the United States Code, as applicable.

"(b) Each refund under subsection (a) of this section shall be made with interest at such rates and for such periods as may be provided under the law, regulation, or agreement under which the annuity would have been payable. Such interest shall not be computed—

"(1) if paragraph (1) of subsection (a) of this section is applicable, for any period after the date of conviction or commission of violation, as the case may be, or after September 1, 1954, whichever date is later, or

"(2) if paragraph (2) of subsection (a) of this section is applicable, for any period after the date of conviction or commission of violation, as the case may be, or after the date of enactment of this amendment, whichever date is later.

"(c) No person whose annuity is denied under this Act shall be required to repay that part of any annuity otherwise properly paid to such person which is in excess of the aggregate amount of his own contributions toward such annuity, with applicable interest.

"(d) No survivor or beneficiary of any such person shall be required to repay that part of any annuity otherwise properly paid to such person or to such survivor or beneficiary on the basis of the service of such person which is in excess of the aggregate amount of the contributions of such person toward annuity, with applicable interest.

"Sec. 5. (a) No person (including an eligible beneficiary under chapter 73 of title 10 of the United States Code or under section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504; 37 U.S.C., 1952 edition, Supp. III, sec. 374)) to whom payment of retired pay is denied under this Act shall be required to refund to the United States any retired pay otherwise properly paid to such person or beneficiary which is paid in violation of this Act.

"(b) In the case of the conviction of, or the commission of any violation by, any person to the extent provided in paragraph (1) or paragraph (2), as the case may be, of section 4(a) of this Act, any deposits made under section 1438 of chapter 73 of title 10 of the United States Code, or under section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504; 37 U.S.C., 1952 edition, Supp. III, sec. 374), to provide the eligible beneficiary with annuity for any period (less amounts previously paid as retired pay benefits) shall be refunded, upon appropriate application therefor, in accordance with such section 4(a), with interest as provided in section 4(b) of this Act.

"Sec. 6. (a) The right to receive an annuity or retired pay shall be deemed restored to any person convicted, prior to, on, or after September 1, 1954, of an offense which is within the purview of the first section of this Act or which constitutes a violation of section 2 of this Act, for which he is denied under this Act an annuity or retired pay, to whom a pardon of such offense is granted by the President of the United States, prior to, on, or after September 1, 1954, and to the survivor or beneficiary of such person. Such restoration of the right to receive an annuity or retired pay shall be effective as of the date on which such pardon is granted. Any amounts refunded to such person under section 4 or section 5(b) of this Act shall be redeposited before credit is allowed for the period or periods of service covered by the refund. No payment of annuity or retired pay shall be made, by virtue of such pardon, for any period prior to the date on which such pardon is granted.

"(b) The President is authorized to restore, effective as of such date as he may prescribe, the right to receive an annuity or retired pay to any person who is denied, prior to, on, or after September 1, 1954, an annuity or retired pay under section 2 of this Act, and to the survivor or beneficiary of such person. Any amounts refunded to such person under section 4 or section 5(b) of this Act shall be redeposited before credit is allowed for the period or periods of service covered by the refund. No payment of annuity or retired pay shall be made, by virtue of such restoration of annuity or retired pay by the President under this subsection, for any period prior to the effective date of such restoration of annuity or retired pay.

"(c) The right to receive an annuity or retired pay shall not be denied because of any conviction of an offense which is within the purview of the first section of this Act or which constitutes a violation of section 2 of this Act, in any case in which it is established by satisfactory evidence that such conviction or violation resulted from proper compliance with orders issued, in a confidential relationship, by a department, agency, establishment, or other authority of any branch of the Government of the United States or of the government of the District of Columbia.

"Sec. 7. No accountable officer or employee of the Government shall be held responsible for any payment made in violation of any provision of this Act if such payment is made in due course and without fraud, collusion, or gross negligence.

"SEC. 8. (a) The President may—

"(1) drop from the rolls any member of the armed forces, and any member of the Coast and Geodetic Survey or of the Public Health Service, who is deprived of retired pay under the provisions of this Act, and

"(2) (A) restore to any person so dropped from the rolls to whom retired pay is restored by reason of any provision of or change in this Act (including the provisions of section 2 of the Act which enacts this clause) his military status, and (B) restore to him and his beneficiaries all rights and privileges of which he or they were deprived by reason of his name having been dropped from the rolls.

"(b) If the person restored was a commissioned officer he may be reappointed by the President alone to the grade and position on the retired list which he held at the time his name was dropped from the rolls.

"SEC. 9. This Act shall not be construed to restrict any authority under any other provision of law to deny or withhold benefits authorized by law.

"SEC. 10. As used in this Act—

"(1) the term 'officer or employee of the Government' includes—

"(A) an officer or employee in or under the legislative, executive, or judicial branch of the Government of the United States;

"(B) a Member of, Delegate to, or Resident Commissioner in, the Congress of the United States;

"(C) an officer or employee of the government of the District of Columbia; and

"(D) a member or former member of the armed forces, the Coast and Geodetic Survey, or the Public Health Service.

"(2) the term 'annuity' means any retirement benefits (including any disability insurance benefit and any dependent's or survivor's benefit under title II of the Social Security Act and any monthly annuity under section 2 or section 5 of the Railroad Retirement Act of 1937) payable by any department or agency of the Government of the United States or the government of the District of Columbia upon the basis of service as a civilian officer or employee of the Government and any other service which is creditable to an officer or employee of the Government toward such benefit under the law, regulation, or agreement providing such benefit, except that—

"(A) the term 'annuity' does not include any benefit provided under laws administered by the Veterans' Administration;

"(B) the term 'annuity' does not include salary or compensation which may not be diminished under section 1 of Article III of the Constitution of the United States;

"(C) the term 'annuity' does not include, in the case of a benefit payable under title II of the Society Security Act, so much of such benefits as would be payable without taking into account (for any of the purposes of such title II, including determinations of periods of disability under section 216(1)) any remuneration for service as an officer or employee of the Government;

"(D) the term 'annuity' does not include any monthly annuity awarded under section 2 or section 5 of the Railroad Retirement Act of 1937 prior to the date of enactment of this amendment (whether or not computed under section 3(e) of such Act) and, in the case of any annuity awarded under such section 2 or 5 on or subsequent to the date of enactment of this amendment, does not include so much of such annuity as would be payable without taking into account any military service creditable under section 4 of such Act;

"(E) the term 'annuity' does not include any retirement benefit (including any disability insurance benefit and any dependent's or survivor's benefit under title II of the Social Security Act) of any person to whom such benefit has been awarded or granted prior to September 1, 1954, or of the survivor or beneficiary of such person, insofar as concerns the conviction of such person, prior to such date, under any article or provision of law specified or described in subsection (a) of the first section of this Act, of any offense within the purview of such subsection (a) to the extent provided in such subsection, or the commission by such person, prior to such date, of any violation of subsection (a) or (b) of section 2 of this Act; and

"(F) the term 'annuity' does not include any retirement benefit (including any disability insurance benefit and any dependent's or survivor's benefit under title II of the Social Security Act) of any person to whom such benefit has been awarded or granted prior to the date of enactment of this amendment, or of the survivor or beneficiary of such person, insofar as concerns the conviction of such person, prior to such date, under any article or provision of law specified or described in subsection (b) of the first section of this Act, of any offense within the purview of such subsection (b) to the extent provided in such subsection, or the commission by such person, prior to such date, of any violation of subsection (c) of section 2 of this Act.

"(3) the term 'retired pay' means retired pay, retirement pay, retainer pay, or equivalent pay, payable under any law of the United States to members or former members of the armed forces, the Coast and Geodetic Survey, and the Public Health Service, and any annuity payable to an eligible beneficiary of any such member or former member under chapter 73 (annuities based on retired or retainer pay) of title 10 of the United States Code, or under section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504; 37 U.S.C., 1952 edition, Supp. III, sec. 374), except that—

"(A) the term 'retired pay' does not include any benefit provided under laws administered by the Veterans' Administration;

"(B) the term 'retired pay', as applicable to retired pay, retirement pay, retainer pay, and equivalent pay, does not include any such pay of any person to whom such pay has been awarded or granted prior to September 1, 1954, insofar as concerns the conviction of such person, prior to such date, under any article or provision of law specified or described in subsection (a) of the first section of this Act, of any offense within the purview of such subsection (a) to the extent provided in such subsection, or the commission by such person, prior to such date, of any violation of subsection (a) or (b) of section 2 of this Act;

"(C) the term 'retired pay', as applicable to retired pay, retirement pay, retainer pay, or equivalent pay, does not include any such pay of any person to whom such pay has been awarded or granted prior to the date of enactment of this amendment insofar as concerns the conviction of such person, prior to such date, under any article or provision of law specified or described in subsection (b) of the first section of this Act, of any offense within the purview of such subsection (b) to the extent provided in such subsection, or the commission by such person, prior to such date, of any violation of subsection (c) of section 2 of this Act; and

"(D) the term 'retired pay', as applicable to an annuity payable to the eligible beneficiary of any person under chapter 73 of title 10 of the United States Code, or under section 5 of the Uniformed Services Contingency Option Act of 1953 (67 Stat. 504; 37 U.S.C. 1952 edition, Supp. III, sec. 374), does not include any such annuity of any such beneficiary if such annuity has been awarded or granted to such beneficiary, or if retired pay has been awarded or granted to such person, prior to the date of enactment of this amendment insofar as concerns—

"(i) the conviction, prior to such date, of the person on the basis of whose service such annuity is awarded or granted, under any article or provision of law specified or described in the first section of this Act, of any offense within the purview of such first section to the extent specified in such section, or

"(ii) the commission by such person, prior to such date, of any violation of section 2 of this Act.

"(4) the term 'armed forces' shall have the meaning provided for such term by title 10 of the United States Code.

"Sec. 11. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

"Sec. 12. (a) Section 3282 of title 18 of the United States Code is amended by striking out 'three' and insert in lieu thereof 'five'.

"(b) The amendment made by subsection (a) shall be effective with respect to offenses (1) committed on or after September 1, 1954, or (2) committed prior

to such date, if on such date prosecution therefor is not barred by provisions of law in effect prior to such date."

SEC. 2. (a) Subject to subsection (b) of this section, any person, including his survivor or beneficiary, to whom annuity or retired pay is not payable under the Act of September 1, 1954, as in effect at any time prior to the date of enactment of this Act, by reason of any conviction of an offense, any commission of a violation, any refusal to answer, or any absence under indictment, or under charges, for any offense, shall be restored the right to receive such annuity or retired pay for any and all periods for which he would have had the right to receive such annuity or retired pay if the Act of September 1, 1954, had not been enacted, unless, under the amendment made by the first section of this Act, such annuity or retired pay remains nonpayable to such person, including his survivor or beneficiary.

(b) No annuity accrued or accruing, prior to, on, or after the date of enactment of this Act, on account of the restoration, by reason of the amendment made by the first section of this Act and by reason of subsection (a) of this section, of the right to receive such annuity, shall be paid until any sum refunded under section 3 of the Act of September 1, 1954, as in effect prior to the date of enactment of such amendment, is deposited or is collected by offset against the annuity.

Mr. DAVIS. Our first witness is the Honorable John W. Macy, Jr., Chairman of the U.S. Civil Service Commission.

Mr. Macy, we are delighted to have you.

Mr. GROSS. Mr. Chairman, might I make one observation before Mr. Macy begins? It will be very brief.

When the original act was passed, I had some very serious reservations about it at that time, and joined Mr. Corbett in expressing my views. I am pleased that this action is coming here today, that this hearing is being held, and I hope we will be successful this year in passing a bill to take care of the injustices that have been done.

Thank you, Mr. Chairman.

STATEMENT OF HON. JOHN W. MACY, JR., CHAIRMAN, CIVIL SERVICE COMMISSION, ACCOMPANIED BY WARREN B. IRONS, EXECUTIVE DIRECTOR, AND ANDREW RUDDOCK, DIRECTOR, BUREAU OF RETIREMENT AND INSURANCE

Mr. MACY. Thank you, Mr. Gross, and thank you, Mr. Chairman.

Mr. GROSS. Might I make one suggestion?

I would like to see this bill acted upon, if possible, today. I don't want to rush it out of the committee, however it would be my hope that where possible, witnesses might highlight their statements.

Mr. DAVIS. We will certainly work toward that objective, Mr. Gross, and I am sure all the witnesses will cooperate.

Mr. MACY. Thank you, Mr. Chairman, for the opportunity to testify on this legislation, and, recognizing the limit on time, I would like to make reference once again to the point that you have already cited, namely, that the Commission's official report is in the form of the committee print dated June 9, 1961, strongly supporting the legislative proposal in H.R. 6141.

Because of the existence of that report, I have a very brief statement that I would appreciate the opportunity to read in order to highlight the situation that leads to this legislative hearing.

Mr. DAVIS. Very well.

Mr. MACY. Mr. Chairman and members of the committee. I appreciate this opportunity to present the Commission's views on the several bills relating to the act of September 1, 1954. This act, commonly referred to as Public Law 769 and sometimes called the Hiss Act, prohibits payment of Federal annuity or retired pay in cases of civilian or military personnel who are convicted of certain criminal offenses or who commit certain acts which in effect constitute a breach of faith in respect to their official duties.

As I understand it, the matters before the subcommittee are four duplicate bills, H.R. 112, introduced by Mr. Libonati, H.R. 1033, introduced by Mr. Multer, H.R. 6141, introduced by Chairman Murray, and H.R. 6286, introduced by Mr. Corbett, which would amend Public Law 769 to limit its application to offenses involving the national security. Also for consideration is H.R. 1042, introduced by Mr. Multer, which would repeal Public Law 769 from and after its enactment date.

Public Law 769 was passed in the wake of the Alger Hiss conviction when Congress decided to deprive him, and any other employees convicted of offenses involving the national security, of a Federal annuity. However, a number of farreaching provisions were included in the measure which went considerably beyond the basic intent of preventing Federal annuities or retired pay to disloyal persons or subversives.

It has been the consistent position of the Commission that so far as possible there should be adherence to the traditional American legal concept, designed to afford equal justice—that crimes and penalties for their commission should be defined and established through the criminal statutes. This decidedly does not mean that we condone any of the criminal actions which now bar retirement benefits nor that we think crimes should go unpunished. Yet we cannot see that civil benefit statutes such as the Civil Service Retirement Act are a proper vehicle for criminal penalties in general.

The Commission favors revision and not outright repeal of Public Law 769. We fully agree that violations of law and other offenses involving the national security should abrogate any obligation on the part of the United States to pay annuity or retired pay based on the service of the offenders. We are convinced, however, that the restrictions should stop there.

Thus, as stated in our June 2 report to Chairman Murray, the one that is now the committee print, the Commission strongly recommends enactment of the proposal embodied in the bills to limit the application of Public Law 769 to offenses involving the national security. The language of these bills is identical to that of H.R. 4601 of the last Congress as it passed the House April 14, 1959. It is the result of painstaking drafting and careful consideration, the basic work having been done by the office of the House Legislative Counsel in collaboration with staff members of this committee and of the Commission. Technical assistance, to care for needs under laws they administer, was secured from the Departments of Defense and Health, Education, and Welfare, and the Railroad Retirement Board. Suggestions by the Department of Justice are incorporated. The overall effect under the



Civil Service Retirement Act of enactment of the measure would be as follows:

Claims initially denied under Public Law 769 during period September 1, 1954, to February 28, 1961.....	213
Claims later allowed.....	36
(a) Based on Presidential pardon.....	28
(b) Based on Court of Claims decision.....	3
(c) Based on administrative reappraisal of evidence.....	5
Subtotal.....	36
Claims still denied as of February 28, 1961.....	177
Claims which proposal would still deny (security offenses).....	12
Claims which proposal would restore.....	165

Thus amended, Public Law 769, would serve its original and proper purpose, that of denying Federal annuities and retired pay to persons who, by crimes and other offenses against the security of our country, should be considered to have forfeited all rights to such benefits. On the other hand, it would no longer produce such inequities and harsh results as in the following examples:

CASE NO. 1, EXHIBIT 4 OF THE COMMISSION'S REPORT

A postal clerk, after 36 years and 1 month of service, was detected embezzling \$165 collected for parcel post mailing matter. He was removed from the service and indicted for his crime. The court, on considering all the evidence and circumstances in the case, imposed neither fine nor prison sentence but placed the individual on 3 years' probation.

Public Law 769 has imposed the added penalty of denial of an annuity valued at \$35,000.

CASE NO. 85, EXHIBIT 4

A truckdriver for the Department of the Air Force, after serving 16 years and 1 month reached age 70 and was separated for automatic age retirement April 30, 1956. In developing his annuity claim, his World War I military service was verified and it was found that he had been convicted by court-martial in March 1918 of theft and selling of a Government pistol while a member of the U.S. Army.

The penalty imposed by court-martial was dismissal from the service. Thirty-eight years later, Public Law 769 imposed the added penalty of denial of his old-age annuity valued at \$8,000, which he had earned through 16 years of honorable civilian service.

CASE NO. 93, EXHIBIT 4

A Navy plasterer applied for retirement March 31, 1956, after 35 years and 4 months of service. In checking out his prior service it was found that in August 1946 he had been removed from his Federal position for theft of Government property. He was tried and convicted of the offense. This was his sentence: to serve 1 hour in the custody of the U.S. Marshal.

Under Public Law 769, the Commission was obligated to impose the added penalty of denial of annuity having a present value of

\$34,000. Later, I am happy to report, he was given a Presidential pardon and we were able to allow him his annuity from the pardon date.

May I conclude by reiterating the Commission's view that any of the four duplicate bills to revise Public Law 769 would produce a result which will be equitable and proper from the standpoint of the Government as well as fair to the employee and his survivors. I, therefore, urge upon Congress the desirability of early approval action.

Mr. DAVIS. Mr. Chairman, we thank you very much for this clear and probative statement.

Are there any questions?

Mr. BROYHILL. Mr. Chairman.

Mr. DAVIS. Mr. Broyhill.

Mr. BROYHILL. With respect to Public Law 769, I think the most ironic thing is that after the employee committed the crime, was indicted, convicted, and punished and then allowed to continue to work for the Federal Government, he is denied the annuity which he had earned subsequently to that crime. I think that is grossly unfair. I have a private bill pending right now for a person who had a minor offense in 1936, paid for that crime and—the offense was with the Post Office Department—he went back to work with the Naval Weapons Plant and worked for a total of 40 years. Now he is retired on disability because he is unable to work any longer, but he is denied a pension after 40 years of service, and after 24 years of service after this so-called crime was committed for which he was punished.

That case was listed in the examples.

Mr. MACY. That is in the summary, Mr. Broyhill, and I certainly agree with you. I think that is an injustice. This is an excessive penalty, and this legislation is desirable to correct that type of situation.

Mr. GROSS. Does Public Law 769 deny the annuity to those that committed a felony subsequent to their retirement?

Mr. MACY. It's a felony committed in connection with their official duties, as I understand it.

Mr. DAVIS. Active service.

Mr. MACY. Active service. So once out of active service, any felony committed would not result in—

Mr. BROYHILL. We have a case in northern Virginia of a retired naval officer who committed involuntary manslaughter after retirement and was sentenced to the penitentiary for 5 years, and he was denied his annuity—his wife and children were denied the benefits of that annuity.

Now there was a provision in the naval regulations that denied him the annuity, and the Armed Forces restored it, but at that time they cited this Hiss Act as one of the provisions of law that would forbid him receiving that annuity.

Mr. MACY. I don't understand how that could have happened. Maybe Mr. Ruddock could answer.

Mr. RUDDOCK. It's my understanding of Public Law 769, as presently worded, that there can be denial of retired pay for an offense committed after you leave the service only if that felony was an outgrowth of your employment. If, because of your former position and

contacts or information that you still had resulting from that employment, you committed a felony, it would be denied, but there has to be a relationship to the employment.

Mr. JOHANSEN. Mr. Chairman.

Mr. DAVIS. Mr. Johansen.

Mr. JOHANSEN. I have two questions; one for a point of information.

I note in the chairman's statement on page 3 that he states that under the existing law an annuity is denied if the person involved has failed or refused to testify or produce papers and so on, even if loyalty or the national security is not involved.

I want to make sure I understand that portion of this provision which relates to the failure to testify or produce documents involving any case of loyalty or national security is retained.

Mr. MACY. That, Mr. Johansen, is retained, but limited to instances of loyalty and security.

Mr. JOHANSEN. So that a Federal employee who refused to testify or produce records connected with his official service and duty, but not related to national security or loyalty, would not be subject to the loss of annuity?

Mr. MACY. That is correct.

Mr. JOHANSEN. I have just one other question.

I supported this bill on the floor the last time it was up, and there is one area of concern that has been in the back of my mind. I wonder what legal opinions there have been on this point.

Is there any possibility that the elimination of all types of offenses, including felonies that may be of the gravest character, outside of the area of security and loyalty will weaken in subsequent adjudication—I realize this may be asking you to speculate on what the courts might do—might weaken the provisions of the act that do relate to security and loyalty by reason of an alleged discrimination in that area of offenses? Now if it's discrimination, so be it, as far as I am concerned. But I am wondering what legal import that might have.

Mr. MACY. I don't believe I can give you any adequately responsive answer. It would be my belief that making this discrimination should not in any way change the approach of the judicial process with respect to cases—

Mr. JOHANSEN. I would agree it should not, but I confess to some concern that it might.

I don't want to throw the baby out with the bath water.

Mr. MACY. I appreciate that, and that has been very carefully reviewed with the Justice Department, and though I don't recall their view on the particular point that you make, it was their belief that the bill as presently drafted would provide adequate protection.

Mr. JOHANSEN. I am glad to have that on the record.

Mr. GROSS. Mr. Chairman.

Mr. DAVIS. Mr. Gross.

Mr. GROSS. These bills, H.R. 6141, H.R. 6286, H.R. 112, and H.R. 1033 are identical?

Mr. MACY. Yes.

Mr. GROSS. You do not support H.R. 1042?

Mr. MACY. We would oppose that because that would call for a total repeal. We believe that the provisions of Public Law 769 that relate to loyalty and security matters should be maintained.

Mr. GROSS. Thank you.

Mr. HENDERSON. One question, Mr. Chairman.

Mr. DAVIS. Mr. Henderson.

Mr. HENDERSON. Would the enactment of H.R. 6141 permit the payment of a Federal annuity to Alger Hiss?

Mr. MACY. No, sir.

Mr. HENDERSON. That is all, Mr. Chairman.

Mr. DAVIS. Thank you very much.

Mr. MACY. Thank you, sir.

Mr. DAVIS. The next witness is Mr. James Campbell, president of the American Federation of Government Employees.

We will be glad to have your statement, Mr. Campbell.

STATEMENT OF JAMES CAMPBELL, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. CAMPBELL. For the record, my name is James Campbell, and I represent the American Federation of Government Employees, an organization made up of Federal employees throughout the Federal service.

The bills before this committee for consideration today have an important objective from the standpoint of the American Federation of Government Employees in that they would correct certain inequities in existing law while affording additional means of combating disloyalty and subversion in the public service. They would amend Public Law 769 of the 83d Congress which has required the withholding of annuities and retired pay as a penalty for the commission of offenses specified in the act.

The bills include four which are identical in their language, namely, H.R. 6141, by Chairman Murray, H.R. 112, by Representative Libonati, H.R. 1033, by Representative Multer, and H.R. 6286, by Representative Corbett. A fifth bill, H.R. 1042, by Representative Multer, would repeal Public Law 769 in its entirety. We believe the law serves a good purpose and should not be repealed.

The American Federation of Government Employees endorses these four bills amending the act. They would accomplish two objectives, first to restrict the denial of any Federal annuity or retired pay only to individuals who have committed offenses involving the security of the United States, and to restore retirement benefits (including those relating to survivorship) which the existing law denies to individuals who have committed offenses which do not involve the national security.

We share the opinion of various Government officials that the present law requires extensive amendment so that it will impose the severe penalty of denial of annuities only upon those who in law and public opinion merit such harsh treatment.

To understand the purpose of Public Law 769 and realize the need for its amendment, it is necessary to have in mind the background of events which led to its enactment by the 83d Congress and its approval September 1, 1954. Enactment of this law was prompted

by the conviction of Alger Hiss who had occupied an important position in the State Department and was convicted of perjury after he had denied passing secret documents to a Communist spy ring. Thus this law became known as the Hiss Act.

The legislation was an outgrowth of enraged public opinion directed at this individual and of course at others who would commit similar offenses. But it was phrased in such a way that it applied to all Federal employees who were guilty of offenses indicated in section 1(1) of the act. Not only was it directed at offenses relating to sabotage, treason, sedition, or subversion, but also to bribery and graft, and to claims and contracts involving the Government. It also covered such Federal offenses as perjury or felonies committed in the performance of an employee's official duties.

The law as it is now phrased is unduly harsh, and in a sense discriminatory because it does not impose this added penalty of withholding an annuity upon all persons who commit the same or similar crimes. The non-Federal employee who defrauds the Government fulfills his debt to society by paying the fine or serving the sentence imposed by the court. This law provides added punishment for the Federal employee. The Hiss Act runs counter to the American concept of law that crimes and penalties for crimes be defined and established by the criminal statutes.

Up to now there have been more than 200 cases in which annuities have been denied to Federal employees and their survivors who otherwise would have benefited under the retirement law. Payment has been denied in an additional number of cases involving annuity or retired pay authorized by other laws.

Less than 10 percent of the Federal employee retirement cases involved the national security. These are the cases on which were based the demand for the law in 1954. They involve the betrayal of our national security. Though persons involved in the other cases violated the criminal statutes to a varying degree, the facts were submitted to a court of law, and the required penalties were imposed. In approximately half the cases related to the Federal retirement law prison sentences were suspended. It is understood that persons whose annuities had been stopped were reemployed and served the Government satisfactorily for some years thereafter.

Amendment of the act would restore the original concept of the retirement law in all but those instances in which the national security has been endangered. From the effective date of the Civil Service Retirement Act until the passage of the Hiss Act, the underlying principle of the law was that an employee who met the requirements it specified was entitled to annuity irrespective of the reason for his separation or any other circumstance of his service. The same concept was applied to survivorship when it was added to the law.

Public Law 769 has been shown to be not only unjust but defective from a constitutional standpoint. It applied its penalty also to persons who refused to answer questions or produce records before a grand jury, court, or congressional committee upon the ground of self-incrimination. In other words, annuity payments were to be denied the person who invoked the fifth amendment, although a constitutional right, which has been held by the courts not to be construed as an indication of guilt. The U.S. Court of Claims in the case of

Steinberg v. U.S., decided July 16, 1958, held section 2(a) of the Hiss Act to be unconstitutional, and that decision was not appealed by the Government. It is our understanding that these bills will apply only to a refusal to testify or produce records which relate to national security.

This proposal to amend the Hiss Act appears upon analysis to strengthen the law while at the same time removing certain inequities. This strengthening will result from its extension to violations of the Atomic Energy Act of 1954, the Internal Security Act, and the Uniform Code of Military Justice to the extent that they relate to offenses involving the national security. Such violations were not included in the present law.

These bills would also permit restoration of annuity or retired pay in cases which do not involve conviction of a crime. The person who has committed a crime may receive a Presidential pardon which will permit restoration of his annuity payment. In the case that does not involve a crime and conviction, a pardon may not be granted. This legislation would supply this deficiency by providing for a Presidential order permitting restoration.

We believe, Mr. Chairman, that the proposed amendments to Public Law 769 are desirable and necessary, and that they should be enacted. We are appreciative of this opportunity to express our views on this legislation.

And in the interest of expediting the hearing, Mr. Chairman, I should like to simply say that our federation is opposed to the repeal of Public Law 769. We are in favor and support the other bills that are before the committee, because they would serve to clear up some obvious inequities that exist under the present legislation.

Mr. DAVIS. We are glad to have your appearance, Mr. Campbell, and glad to have in the record your comprehensive statement.

Are there any questions anyone would like to ask of Mr. Campbell? (No response.)

Mr. DAVIS. We appreciate your cooperation in attending this hearing.

Mr. CAMPBELL. Thank you, Mr. Chairman.

Mr. DAVIS. We are delighted to have with us this morning our colleague in Congress from Virginia, the Honorable William M. Tuck.

Governor Tuck, I understand you want to make a statement.

STATEMENT OF HON. WILLIAM M. TUCK, REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. TUCK. Thank you, Mr. Chairman. I might say I am glad to have the privilege of appearing before this committee.

Mr. DAVIS. We are delighted to have you, sir.

Mr. TUCK. I formerly had the distinction of being a member with you, along with Mr. Gross and Mr. Broyhill and others.

Mr. DAVIS. Would you like to be seated, Governor?

Mr. TUCK. No, sir. Thank you.

I have no prepared statement and I have only a superficial knowledge of this bill, but I do know about it in a general sort of way. It is the bill that was introduced to amend what is known as the Hiss Act, Public Law 769. I certainly do not want to go on record

before this committee or anywhere else as condoning people who commit crimes, but I know that there are a great many instances where under Public Law 769 this situation has worked grave injustices.

I would never be in favor of a bill that would restore these retirement privileges to persons who are guilty of some act that involved the national security, or some person who has committed some act that would show that he was a traitor to this country. But there are a good many crimes that, while we deprecate them and frown upon them and do what we can to suppress them, at the same time they are not sufficiently serious in my judgment to deprive the persons who commit these acts of the benefits they have earned.

I have in mind the case of a soldier from my district who was a sergeant in the Army and who has served for more than 20 years, and who was charged sometime last year with some offense which I consider of a trifling nature. It happened that the officers took it very seriously, and they gave this man a general court martial and threatened to turn him out of the service, and did convict him. They permitted him to reenlist at the end of his enlistment. He was eligible at the time for retirement, and the effect of the verdict of this military court is such as to deprive this man and his family of the benefits which he has earned, having shed his blood on several of the battlefields of the world in wars in which his country participated during his service.

We had cause to believe that this man was suffering from some sort of mental depression at the time that he committed this little act. He was a brother of a colonel in the Army who died rather suddenly, and the death of his brother seemed to have a deleterious effect on his mental and nervous stability. Cases of this kind should be excluded from the Hiss Act. Some amendment should be passed to relieve such persons in cases of that kind from being deprived of the benefits which they have earned.

Now this bill to which I have reference, or a similar bill, as I understand it, has heretofore been reported by this committee in either the preceding Congress, or the Congress before that, and it was passed by the House of Representatives, and I would—since this is the first session of the present Congress—certainly hope that it would be the will of this committee in the exercise of their wisdom to report this bill as early as practicable in order that action may be taken on it in time to get it over to the Senate.

I thank you very much, and if there is any way in which I can be of assistance in this matter, please do not hesitate to call upon me.

Mr. DAVIS. Governor, I recall with great pleasure your association with us as a member of this committee in years gone by, and let me say that it is always a great pleasure to have the distinguished gentleman from Virginia appear before the committee, and we appreciate your very good statement on this legislation.

Mr. GROSS. I certainly join with the chairman in those remarks.

Mr. BROYHILL. I associate myself likewise, Governor.

Mr. JOHANSEN. I would like to offer the observation that as an associate of Governor Tuck on the House Committee on Un-American Activities, I know of his complete dedication to legislation that will strengthen the security of the United States in matters of loyalty and

matters of national security, and I particularly for that reason appreciate these comments on this aspect of the pending bill.

Mr. TUCK. Thank you all very much.

Mr. DAVIS. Thank you, Governor.

We will now hear Congressman Multer of New York, author of the bill, H.R. 1042.

Mr. Multer.

**STATEMENT OF HON. ABRAHAM J. MULTER, CONGRESSMAN FROM
NEW YORK**

Mr. MULTER. Mr. Chairman, allow me to express my appreciation for this opportunity to appear before the committee to explain the purpose of my bill, H.R. 1042.

If this legislation is enacted it will expunge from our law one of the harshest and most unfair pieces of legislation in our history. It would repeal Public Law 769 of the 83d Congress in its entirety. This law—the so-called Hiss Act—prohibits the payment of annuities or retired pay to retired civilian officers and employees of the Federal Government and to retired military officers and enlisted men who are or who ever have been convicted of certain criminal offenses or who commit certain acts in the future.

The penalties prescribed by the Hiss Act are so harsh as to border on the unconstitutional. This committee has received reports from the administration which indicate the numbers of persons presently being denied their annuities or retirement benefits as a result of this law. It is my firm belief that not only is repeal the simplest way to deal with what promises to develop into a very complicated problem, but that it will prove to be the most effective and cheapest way. If allowed to stand it will eventually be the subject of endless litigation with the probable result that its provisions will be chipped away by the courts until no law remains. In this process those bringing the suits and the Government will expend great sums which would be saved if the law is repealed.

This law was passed during what might be termed the witchcraft era on Capitol Hill. The motives of those who sponsored the legislation are not under attack here; I am sure they were of the highest. The bill, however, passed the House of Representatives without debate and went unchallenged—despite the warnings of the Civil Service Commission that its language was so vague and general that inequities and hardships were bound to result.

Perhaps the most tragic result was the number of cases where the Government had on its payroll persons whose convictions were known by the Government when it hired them. They had been convicted and punished for offenses which did not make them ineligible for public service. They were not only allowed to work for years but in many cases required to contribute to the Civil Service Retirement Fund. Others made such contributions voluntarily, but with the expectation that they would be entitled to pension benefits when they retired. With the passage of this bill, however, they and their families were suddenly denied these benefits and the years of contributions vanished into thin air.

This, I submit, is hardly in keeping with the basic American concept of justice and fairplay.

About one-third of the crimes for which a person can lose his retirement rights are misdemeanors. As a result we have had the case where one employee lost an annuity valued at over \$49,000 for a conviction in which the court saw fit not to impose any fine or imprisonment. Another case involved a person who in his youth stole a ham from the Army. Many, many years later a very valuable property—his right to retirement pay—was lost because of that minor offense.

In view of the abuse which this law leads to and its doubtful constitutionality I urge the committee to report favorably on H.R. 1042 so that this mistake can be rectified.

If the committee is unwilling to go that far, then the Congress must at least modify the law so that the inequities referred to are removed.

To accomplish this purpose I would support and urge favorable consideration of H.R. 1033, which I introduced on January 3, 1961, or H.R. 6141, introduced by this committee's distinguished chairman on April 10, 1961. These two bills are identical and would accomplish necessary revisions which will at least do part of the job. I have introduced a bill to repeal this act in every Congress since the 84th. I congratulate the chairman and this committee for proceeding with these hearings which I trust will result in favorable action by the Congress.

Thank you.

Mr. DAVIS. Thank you, Mr. Multer.

Congressman Libonati of Illinois, author of H.R. 112, will be heard at this time.

STATEMENT OF HON. ROLAND V. LIBONATI, CONGRESSMAN FROM ILLINOIS

Mr. LIBONATI. H.R. 112 was introduced to limit the prohibition (Hiss Act) against payment of retirement or annuities to officers or employees of the United States, to offenses involving the national security (amending U.S.C. 2281-2288).

The general purpose of this legislation is:

First, this bill continues in full force and effect the prohibitions now contained in the Act of September 1, 1954 (68 Stat. 1142, Public Law 769, 83d Congress), as amended (70 Stat. 761, 5 U.S.C. 2281-2288), against payment of any Federal annuity or retired pay on the basis of the service of any individual who has committed an offense involving the national security of the United States.

Second, this legislation restores certain Federal retirement benefits (including survivor benefits) which, under the existing provisions of the Act of September 1, 1954, have been denied to a number of individuals, not because of the commission by such individuals of offenses involving the national security, but because of the commission by them of comparatively minor offenses, which are in no way related to the national security.

This legislation will restore retirement benefits to a number of employees in the Federal service, including their survivors, who have been deprived of these benefits under the existing provisions of the Act of September 1, 1954. Many of these individuals, in fact, continued

in or returned to Government employment, and rendered faithful and efficient service until retirement. In these cases, there is no doubt as to the complete loyalty of these people to the United States. These people are not charged with any offense involving the national security.

This bill will restore the Federal retirement benefits to those individuals who have been deprived of them without just cause, and because of offenses other than those which involve the national security.

This bill does preserve and extend, however, the existing prohibition against payment of any Federal annuity or retired pay, to any individual who has committed an offense involving national security, or to his survivors.

Thank you.

Mr. DAVIS. Thank you, Mr. Libonati.

The next witness is Mr. Vaux Owen, president of the National Federation of Federal Employees. His statement is to be presented by Mr. Luther Steward, who is assistant to the president.

**STATEMENT OF VAUX OWEN, PRESIDENT, NATIONAL FEDERATION
OF FEDERAL EMPLOYEES, PRESENTED BY LUTHER STEWARD,
ASSISTANT TO THE PRESIDENT**

Mr. STEWARD. I am Luther C. Steward of the National Federation of Federal Employees.

Mr. Owen asked me to express to the committee his regrets that he could not be here personally.

The National Federation of Federal Employees wishes to endorse H.R. 6141, which will clarify the application and operation of the act of September 1, 1954, Public Law 83-769.

This bill proposes to amend the act of September 1, 1954, in order to limit to those cases involving the national security the prohibition on payment of annuities and retired pay to officers and employees of the United States.

H.R. 6141, if enacted, would not deny the payment of annuities where an employee had been convicted of an offense not involving national security but would preserve the existing prohibition where there was a conviction in an offense endangering the national security.

H.R. 6141 would be retroactive in its application and permit payment to those who had been convicted since September 1, 1954, of offenses not involving national security. It is believed that it was the intention of the act of September 1, 1954, to limit its application to cases endangering the national security and not to relatively minor offenses.

This bill with its clarifying language and with its retroactive revisions recognizes the original legislative intent and makes clear and definite its objectives.

I think this view has been generally accepted by all persons interested in the Federal service.

I thank the committee for the opportunity of supporting this bill and urge favorable action by the committee.

This concludes Mr. Owen's statement.

We enthusiastically support the legislation.

Mr. DAVIS. The next witness is Mr. Jerome Keating, vice president of the National Association of Letter Carriers.

STATEMENT OF JEROME KEATING, VICE PRESIDENT, NATIONAL ASSOCIATION OF LETTER CARRIERS

Mr. KEATING. After the very fine comprehensive statement made by yourself, as well as the able testimony by Commissioner Macy, I agree with Congressman Gross that I would like to see action on the bill today.

Mr. Chairman and members of the committee, my name is Jerome J. Keating and I am vice president of the National Association of Letter Carriers, an organization representing 143,000 letter carriers.

I am here today to seek simple justice. Six years under Public Law 769 have been sorry years. People who have committed slight offenses have suffered drastic penalties. Not only have they paid the prescribed penalty, but, in the denial of their annuities, they have in effect been fined from \$10,000 to \$30,000. The individual himself has been doomed to perpetual punishment for an offense for which he has already paid the legal price.

We understand and support the purpose for which this law was passed. There is no penalty too great for one who commits offenses against the safety and security of his country. The punishment meted out to these individuals is entirely deserved, but a grave injustice has been done to many people who have erred slightly. The injustice has been compounded in that it has been perpetually levied on the man and his family. A wise Frenchman once stated: "The love of justice is simply, in the majority of men, the fear of suffering injustice."

Let us do something to prevent others from suffering injustice. Thomas Jefferson in the Declaration of Independence called for "equal and exact justice for all men." Public Law 769 does not provide "equal and exact justice."

The law has gone much further than intended, in that it denies annuity rights to those guilty of relatively minor offenses. It denies annuity rights to widows and children of employees who have committed minor offenses.

In many instances, the offense was of such minor nature that the prosecutor n^ot pressed the action. In others, a suspended sentence or probation was imposed, the judge feeling that dismissal from the Government job, together with the resulting disgrace, was sufficient punishment; yet the employee finds that this very valuable retirement has also been denied him. For a relatively minor offense he has been fined \$10,000, \$20,000, or \$30,000.

The Post Office Department takes great pride in maintaining the honesty of the postal service. The employees take equal pride in this fine tradition. The postal inspection force zealously tracks down and prosecutes all violations. The minor crime that merely results in dismissal in private industry, or some other agency of Government, results in prosecution in the postal service. That, of course, is why about 75 percent of these cases are in the postal service. There is great stress and emphasis placed on honesty in the service, and the slightest dishonest action results in prosecution.

There are many Federal crimes that are peculiar to the postal service. One of them is injuring letter boxes. That is a crime and a man who injures a mailbox can be given probation, perhaps made to pay for the box, but when he comes to retire, he gets an additional penalty which is certainly neither exact nor just.

As a result of this policy, and as a result of the vigorous activities of postal inspectors, we find that approximately 75 percent of all employees denied their annuities under Public Law 769 are postal employees. The punishment previously received by these postal employees has been severe, and to impose further punishment by denying these people their annuities is entirely too drastic and defeats the ends of equal justice.

We believe that the rights of simple justice can be best served by amending Public Law 769 so as to deny the payment of annuities only in cases involving national security.

We favor the adoption of H.R. 6141 by Chairman Murray, or H.R. 6286 by Mr. Corbett. These are companion bills. We want to commend Chairman Murray and Mr. Corbett in their efforts to restore justice to these people. We also wish to express our thanks to Mr. Libonati and Mr. Multer for their interest in this legislation. We want to express our deep thanks to Chairman Davis and this committee for promptly scheduling this important hearing and we hope this legislation will be favorably and promptly reported by the committee.

Mr. DAVIS. Our next witness is Mr. Dan Jaspan, legislative representative, National Association of Postal Supervisors.

We are glad to have your statement.

STATEMENT OF DAN JASPAN, LEGISLATIVE REPRESENTATIVE, NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

Mr. JASPAN. Mr. Chairman, and members of the committee, I feel the same way. We want to get this bill underway as fast as possible.

My name is Daniel Jaspan. I am the legislative representative of the National Association of Postal Supervisors, composed of about 26,000 supervisors in the postal field service.

Although our association has not heard of any of its members being affected by Public Law 769, 83d Congress, resolutions proposing amendments to that act have been passed at every convention since the enactment of that law. There is always the danger that a postal supervisor or any other employee may perform long and faithful service in the post office and find, when he has decided to retire, that he will be denied his annuity.

It is our opinion that the U.S. Government enters into a sacred contract with every employee from whose salary deductions are made for retirement annuities. The fact that the employee has this protection for himself and his family is probably the most compelling reason for him to remain in the Federal service when job opportunities arise in industry which provide better financial compensation than the Federal position. Employees refuse to yield to the temptation of higher salaries because of the future annuity they expect when they leave the service. All of our plans for the future as well as those concerning our families after our death, such as life insurance, health

insurance, etc., are based on the premise that we, as employees, and our families, as survivor annuitants, will someday come under the provisions of our retirement laws. This retirement contract, which is entered into in good faith by the Government and the employee, should be noncancelable. We agree completely that security risks or members of parties or organizations devoted to overthrowing or otherwise affecting our Government adversely should not be entitled to any benefits. On the other hand, those employees who have committed a felony and have been convicted and sentenced are being twice penalized for one crime. This is manifestly unfair. It is only in cases when he serves his sentence and enters into or continues his Federal service that he is denied his annuity which he has earned. There is no penalty assessed if he enters private industry or his own business.

It comes as a severe shock to the employee who has been faithful to his position and to his country to find, upon retirement, that he is not eligible to receive an annuity and that his dependents are not eligible to receive survivor benefits on account of a law that was originally passed to deny an annuity to a person or persons who attempted to interfere with or endanger the national security or defense of the United States. Public Law 769 was the result of mass indignation and practically mass hysteria based on the actions of one individual. It was enacted at a time when unusual pressures were being exerted upon Congress for legislation to deny this one person certain benefits. The Civil Service Commission, foreseeing the results of the extension of the provisions of this hastily enacted law, opposed the original bills leading to such enactment.

It is interesting to note that, during the years between retirement legislation (1920) and the enactment of Public Law 769 (1954), the employees who met the requirements for retirement benefits was always entitled to receive his annuity regardless of the reason for separation or other consideration. In other words, the Government guaranteed the individual employee defined retirement benefits upon his completion of certain stipulated service, payment of the required contributions, and attainment of a certain age or becoming disabled. If he met these requirements, he received his annuity whether he was discharged for cause, committed a crime, or even lost his U.S. citizenship. The survivor benefits were also continued in these circumstances. Now he can lose his retirement benefits and his family can be penalized for matters outside the realm of national security—and he is denied these benefits without due process of law: there is no trial granted to see whether he should lose these benefits.

We will not come to the defense of any person convicted of any action or actions endangering the national security or defense of the U.S. Government. No penalty is too severe for these people, and this is especially true if they are employees of the U.S. Government. We cannot emphasize the above statements too strongly. However, we fully believe that the loss of annuity benefits should be restricted to those people only. H.R. 6141 and H.R. 6286 spell out the amendments to clarify the present law so that there will be no more innocent victims. By clarifying specifically the actions that will lead to the loss of annuity, it lessens and apparently eliminates the possibility of its being applied to other than those for whom the penalties were intended.

We are in accord with the provisions of H.R. 6141 and H.R. 6286, and hope that both Houses of Congress will move swiftly to correct the injustice already done in the past and to prevent such occurrences in the future. We cannot emphasize too strongly how frustrating it can be to have all plans shattered by the extended, and apparently not intended, application of Public Law 83-769.

We appreciate the opportunity of presenting our views to this subcommittee and urge immediate favorable action. All of our plans are based upon our future and the future of our families. Nothing is more frustrating than to live in the constant fear that we may unwittingly do something at some time that will shatter all our future plans.

I had one thing that highlights it for us. We have a possible case pending now where a man in the postal service for more than 42 years has recently walked out of the post office with a beat-up umbrella and a few magazines. He is reaching the age of senility, and actually he should have retired before this time. But on account of an item like that he may be one that would lose his annuity on account of this so-called Hiss Act; and there probably will be many more cases like that. So we are very much in favor of having this bill enacted into law as soon as possible for the protection of him and others.

Mr. DAVIS. Thank you for your statement, Mr. Jaspán, and thank you for cooperating with us.

The next witness is Mr. David Silvergleid, secretary-treasurer, National Postal Union.

**STATEMENT OF DAVID SILVERGLEID, SECRETARY-TREASURER,
NATIONAL POSTAL UNION**

Mr. SILVERGLEID. It was impressed upon me that the committee wanted to expedite the matter, so I haven't even submitted a written statement. I would merely like to go on record in complete concurrence with everything the chairman said, and the statement made by the Chairman of the Commission. I hope that the bill will be reported out favorably, and very quickly.

Thank you very much.

Mr. JOHANSEN. One question, Mr. Chairman.

Mr. DAVIS. Mr. Johansen.

Mr. JOHANSEN. Do I understand that you associate yourself with the statement of other witnesses, that you oppose H.R. 1042 which would totally repeal this act?

Mr. SILVERGLEID. That is correct.

Mr. JOHANSEN. Thank you.

Mr. DAVIS. The next witness is Mr. C. L. Dorson, president, Retirement Federation of Civil Service Employees.

**STATEMENT OF C. L. DORSON, PRESIDENT, RETIREMENT
FEDERATION OF CIVIL SERVICE EMPLOYEES**

Mr. DORSON. Mr. Chairman and members of the subcommittee. My name is C. L. Dorson. I am president of the Retirement Federation of Civil Service Employees of the U.S. Government, an organization

of approximately 95,000 members, most of whom are presently employed in the Department of Defense.

The bills under consideration, with the exception of H.R. 1042 which proposes repeal, would amend the act of September 1, 1954, the so-called Hiss Act, so as to limit its application to offenses involving the national security. We have long been interested in this matter and supported similar bills in the 86th Congress.

The act of September 1, 1954, imposed additional punishment on Federal employees many years after the error, on which the punishment is based, was committed and the original penalties paid as provided by law. Quite often, this severe additional punishment is visited on the employee and his family for offenses which were relatively minor mistakes of youth and after many succeeding years of useful citizenship and service to our Nation. This act appears the more indefensible when it allows the person Federal employment but denies him retirement. If he may be properly employed, why deny him retirement?

Most certainly, modification, if not outright repeal, of the act of September 1, 1954, is past due and we sincerely appreciate the efforts of the author of the bill and this subcommittee in attempting a proper solution. We make no plea for those who have knowingly been guilty of treason, sedition, or subversion in any form, but the penalty imposed by this act for lesser offenses is severe indeed.

H.R. 112, 1033, 6141, and 6286 contain the same provisions as H.R. 4601 which was favorably reported by your full committee and passed by the House of Representatives of the 86th Congress. Believing such action to be both proper and desirable, we support these bills. We ask that they be reported favorably and enacted at an early date.

Mr. Chairman, we thank the subcommittee for the opportunity to express our views.

We favor the enactment of H.R. 6141 and similar bills before the subcommittee.

Mr. DAVIS. Thank you for your statement and cooperation.

Mr. Glenn Simcox, president, National Association of Retired Civil Employees.

We are glad to have you with us, Mr. Simcox.

STATEMENT OF GLENN SIMCOX, PRESIDENT, NATIONAL ASSOCIATION OF RETIRED CIVIL EMPLOYEES, ACCOMPANIED BY JOHN A. OVERHOLT, LEGISLATIVE REPRESENTATIVE

Mr. SIMCOX. Mr. Chairman and members of the subcommittee. My name is Glenn R. Simcox. I am president of the National Association of Retired Civil Employees, which has over 100,000 members and nearly 800 chapters. I am accompanied by Mr. John A. Overholt, legislative representative of our association. We have a brief statement in support of Chairman Murray's bill, H.R. 6141, to amend the Act of September 1, 1954 (68 Stat. 1142, 70 Stat. 761, 5 U.S.C. 2281-2288), in order to limit to cases involving the national security the prohibition on payment of annuities and retired pay to officers and employees of the United States, to clarify the application and operation of such act, and for other purposes.

We believe that the act of September 1, 1954, has resulted in numerous cases of injustices that were not intended at the time it was enacted, and we sincerely hope that corrective measures such as those proposed in H.R. 6141 and companion bills H.R. 112, H.R. 1033, and H.R. 6286 will be approved.

We thank the subcommittee for this opportunity to present the views of our association.

Mr. DAVIS. Thank you for your statement and your cooperation.

Mr. Fred J. Scanlan, national secretary, Fleet Reserve Association, Washington, D.C.

STATEMENT OF FRED J. SCANLAN, NATIONAL SECRETARY, FLEET RESERVE ASSOCIATION, WASHINGTON, D.C.

Mr. SCANLAN. Mr. Chairman and members of the committee. I am Fred J. Scanlan, USN, retired, national secretary, Fleet Reserve Association and Association of Career Enlisted Personnel.

The so-called Hiss Act, which was enacted by Congress during the McCarthy era in an effort to rid the Government of Communist sympathizers; and, more particularly; to deny pensions or annuities to those convicted of serious offenses, while holding offices of trust in the Government, was a sort of shotgun approach which enmeshed many hard working and otherwise law abiding citizens within its coils. In fairness to the many individuals concerned, the harsh terms of this law should be modified, as I do not believe that it was the intent of the Congress to deprive conscientious career personnel of the Federal Government of the equity they have built up over the years.

This law denies retirement annuities or pensions to any military man or Federal employee who has been convicted of a felony against the Government. Although the law was aimed at Hiss, it has resulted in many injustices against many hundreds of civilians and military personnel. Some of the offenses occurred when the personnel concerned were just starting their careers. Many of the offenses were considered of a minor nature when committed, and punishment for the offense was meted out accordingly. In the case of the military personnel, they received honorable discharges upon the termination of their enlistments; they were recommended for reenlistment.

Many of the offenses committed were of a very minor nature. However, the Comptroller General of the United States has taken the position that regardless of the punishment assigned for the crime for which convicted, if such crime constituted a felony, the party concerned would not be entitled to retirement benefits under the harsh terms of the law. A résumé of some of the offenses include: A sergeant driving a Government vehicle, deviated from the usual route; was court-martialed and received light punishment. His crime was considered a felony. He is being denied retirement pay estimated at \$32,000. A civilian employee was convicted of claiming pay for 195 hours overtime, amounting to about \$300. He made full restitution to the Government. He is being denied a lifetime annuity of approximately \$33,000. In another case a Marine sergeant who has completed more than 20 years of honorable service, will be transferred to the Fleet Marine Corps Reserve on July 1, 1961, without pay. He

wrongfully appropriated a Government vehicle for his own use, while acting as truckmaster during the Korean campaign. He was convicted by a court-martial and sentenced to reduction in rating. His offense was committed many months before there was such a law as the Hiss Act. Based on actuarial tables, this man will be deprived of approximately \$35,000 in retirement pay. He is a combat veteran of World War II and the Korean campaign.

Legislation has been introduced in previous years to modify the harsh terms of this law. Again this year, Members of the Congress have introduced measures which would more nearly outline the intent of the Congress in the application of this necessary law. I feel sure that the present administration will support any action which the Congress may initiate. Incidentally, President Eisenhower has previously stated that he supported modification of this law.

The Navy Department feels apprehensive, and I am sure that the other military services may agree, that many of their enlisted and officer personnel who may be due for future retirement are threatened with loss of retirement pay. We feel that military and civilian offenses, committed while serving with the military forces, or employed by the Federal Government, should be punished. The punishment should fit the crime. We do not feel that such punishment should reach down through the years and deprive our citizens of the right to retirement pay and annuities, after long and faithful service to the Government of the United States.

I am in accord with the testimony I have heard so far. I oppose repeal of the Hiss Act, but I believe the harsh terms should be modified.

Mr. DAVIS. You concur, then, in the statements previously made regarding the legislation?

Mr. SCANLAN. Yes.

Mr. DAVIS. Thank you very much.

The next witness is Mr. Ross Messer, legislative representative, National Association of Post Office and General Services Maintenance Employees.

**STATEMENT OF ROSS A. MESSER, LEGISLATIVE REPRESENTATIVE,
NATIONAL ASSOCIATION OF POST OFFICE AND GENERAL SERVICES
MAINTENANCE EMPLOYEES**

Mr. MESSER. Thank you, Mr. Chairman.

I would like to place our organization on record as favoring the provisions set forth in H.R. 6141 and related bills relative to correction of inequities in the Hiss Act.

Mr. DAVIS. Do you have a prepared statement?

Mr. MESSER. No, sir; I do not.

Mr. DAVIS. We appreciate very much having your testimony, and thank you for your cooperation.

Mr. Tommy M. Martin, president, National Rural Letter Carriers Association, will be our next witness.

STATEMENT OF TOMMY M. MARTIN, PRESIDENT, NATIONAL RURAL LETTER CARRIERS' ASSOCIATION

Mr. MARTIN. Mr. Chairman and members of the committee. My name is Tommy M. Martin. I am president of the National Rural Letter Carriers' Association, an organization representing 38,500 regular, substitute, and retired rural letter carriers of the United States.

This association has long appreciated the efforts of those who have been interested in legislation aimed at correcting the gross injustice which we believe exists in the present operation of Public Law 769 of the 83d Congress. We have previously testified on such legislation during hearings held by the House Post Office and Civil Service Committee and the Senate Post Office Committee.

I sincerely appreciate this opportunity to appear before this committee and express the views of our association. Our interest is primarily to recommend and endorse amendments which would prevent the loss of civil service annuities to those who have not been convicted of any offense involving national security or disloyalty to the United States.

Public Law 769 has resulted in denial of annuities to employees whose offenses have had no relation whatsoever with security or loyalty to our Government. Although the total number who have lost their annuities under this act is less than 200, the majority have been postal employees. Among them have been several rural letter carriers.

An example of the injustice which has come about through the operation of Public Law 769 can best be demonstrated by citing a case which came to our attention during 1958. It involved a rural carrier in one of our eastern seaboard States.

The carrier was charged with the intent to destroy bulk third class mail. To our knowledge, there was no actual destruction of such mail although it had been removed from proper mail channels. The carrier claimed this was an oversight and that there was no intent to destroy the mail. Charges were brought by the Post Office Department. Inasmuch as the mail had been removed from mail delivery channels there was no question but that a violation of postal regulations and law existed. Whether this was an intentional act, or an inadvertent one as claimed by the carrier, the fact remained that this one charge was obviously substantiated. In view of this obvious violation, notwithstanding that there had been no actual destruction of mail, this carrier was advised to plead guilty when his case was brought up in the U.S. District Court. The court findings were stated as "Adjudged guilty without prejudice." No term sentence was imposed although he was placed on a 1-year probation. The carrier sought civil service retirement. He was advised by the Civil Service Commission of the fact that annuity rights were denied under the provisions of Public Law 769. This example case causes this association to believe that this law should be amended. In this case, we feel that the loss of an annuity after 33 years of loyal and efficient

service was an extreme, severe penalty and constituted an unusually high fine which was a collateral sentence even though no such sentence was imposed by the court.

The value of this man's annuity, at time of retirement, was estimated to be in excess of \$44,000. His deposits in the retirement fund amounted to approximately \$6,000, which means he was in effect fined \$38,000 under this law even though no fine was actually made a part of the sentence of the court.

The National Rural Letter Carriers' Association most assuredly does not condone the committing of any offense contrary to postal laws, regulations, or laws of the United States. We feel, however, that penalties for violations of offenses should be dealt with by permissible sentences under findings of the court in line with the events and circumstances involved. We do not believe that the double penalty automatically meted out under the operation of Public Law 769 is in the spirit of justice, when the nature of the offense is clearly not in line with matters relating to national security or disloyalty to the United States.

A type of third penalty also follows employees denied annuities under the Hiss Act. This small group carries with them a stigma which they cannot shake. The operation of Public Law 769 brands them as subversive individuals and their communities, their friends and associates, who do not understand the operation of the law, hold the firm belief that they have in some way acted contrary to the security of our Nation, or committed an act of disloyalty.

A particularly harsh feature of the law is that widows and dependent children of such employees can never receive a survivor annuity from the Civil Service Retirement Fund.

There is unfairness in the operation of Public Law 769. The National Rural Letter Carriers' Association supports and recommends action to correct these injustices. We trust that this committee may act favorably on legislation before you which would accomplish this. Any such favorable action should also restore annuities to this small group whose offenses did not involve security or loyalty but who were denied annuities under the act.

We have supported similar legislation in the past and we would like for the record to show that we support the legislation now before the committee. We are, of course, opposed to H.R. 1042 or any proposal which would completely eliminate the Hiss Act.

We have no other comments.

Mr. DAVIS. Thank you very much, Mr. Martin.

The next witness is Mr. James R. Wilson, Jr., director, national security division of the American Legion.

STATEMENT OF JAMES R. WILSON, JR., DIRECTOR, NATIONAL SECURITY DIVISION OF THE AMERICAN LEGION

Mr. WILSON. Mr. Chairman and members of the subcommittee. At its last national convention, the American Legion adopted resolution No. 953 which has as its purpose the amendment of Public Law 769, 83d Congress. The text of that resolution follows:

Whereas a recent ruling of the Comptroller General of the United States under the provisions of Public Law 769, 83d Congress, has brought about a delay in the

retirement of thousands of members of the Armed Forces eligible for retirement; and

Whereas the provisions of this act as interpreted by the Comptroller General work a severe hardship upon members of the military services who have been convicted by military courts-martial, but who have subsequently been rehabilitated and have performed many years of active and honorable service in the Armed Forces: Now, therefore, be it

Resolved by the 42d National Convention of the American Legion assembled at Miami Beach, Fla., October 17, 1960, That we hereby express ourselves as being in favor of legislation designed to correct the situation with respect to members of the Armed Forces under the interpretation of Public Law 769, 83d Congress, by the Comptroller General.

As your committee is aware, last year the House of Representatives passed H.R. 4601 and favorably reported this bill to the Senate without amendment on January 10, 1960. Unfortunately, this bill which would have somewhat limited the scope of Public Law 83-769 was not enacted into law.

In our opinion, H.R. 112, while correcting certain inequities which have come about by ruling of the Comptroller General, still carries forward the legislative intent of the Congress in its passage of the act of September 1, 1954. We believe that Public Law 83-769, now widely known as the Hiss Act, was needed legislation insofar as it denies retirement benefits to civil and military servants of the Government of the United States who engage in disloyal activities to the detriment of our Government.

It is my understanding that serious morale problems have been created within our military departments by Public Law 83-769, and that the Department of Defense itself has gone on record strongly supporting legislation similar to H.R. 4601 which would confine its provisions to those activities which were in mind when the law was enacted.

The American Legion, based on this national convention resolution, appreciates this opportunity to support H.R. 112, a bill introduced by Congressman Libonati of Illinois, which proposes to amend the Act of September 1, 1954. We believe it carries out the intent of National Convention Resolution No. 953.

Mr. DAVIS. Mr. John F. O'Connor, legislative director, United Federation of Post Office Clerks, will be our next witness.

**STATEMENT OF JOHN F. O'CONNOR, LEGISLATIVE DIRECTOR,
UNITED FEDERATION OF POST OFFICE CLERKS**

Mr. O'CONNOR. Mr. Chairman and members of the committee, my name is John F. O'Connor and I am legislative director of the United Federation of Post Office Clerks. As a result of a merger agreement recently approved by both organizations, the National Federation of Post Office Clerks and the United National Association of Post Office Craftsmen are now one organization and is known by the foregoing title.

May I express our thanks to the chairman of the committee, Congressman Murray, and to the ranking minority member, Congressman Corbett, on their introduction of H.R. 6141, and H.R. 6286, both providing for amendment of the act of September 1, 1954, generally known as the Hiss Act. We are also grateful to Congressman Libonati and Congressman Multer for their introduction of H.R. 112, and H.R. 1033, also designed to accomplish this purpose.

It is not my intent to take the time of the committee this morning in going into detail concerning the necessity for this legislation. Since the enactment of Public Law 769, many injustices and inequities have resulted when it came time for some Federal and postal employees to retire. These employees have lost their annuities because at some earlier time in their life they were guilty of minor infractions of law. We believe that the original legislation was designed to deprive a person guilty of endangering the security of our country through subversive activity of an annuity paid from the retirement funds of the Government. We wholeheartedly approve of such a law.

There have been previous hearings before this committee on legislation designed to correct these injustices and inequities, all of them bringing out in considerable detail the need for the amendments proposed in the contents of these bills.

Without question, the Retirement Division of the Civil Service Commission has made available to the committee information concerning employees who were deprived of their justified annuities at the time of their retirement. Most of these employees had been convicted of a minor infraction many years prior to their retirement and were, without question, surprised and disheartened when reaching the retirement age to find that under the so-called Hiss Act they were not entitled to an annuity.

We are of the belief that this committee, in its wisdom, will report out this legislation, and we appreciate very much the opportunity to appear before the committee in support of this legislation.

Mr. DAVIS. We will next hear Mr. James K. Langan, operations director, Government Employees' Council.

**STATEMENT BY JAMES K. LANGAN, OPERATIONS DIRECTOR,
GOVERNMENT EMPLOYEES' COUNCIL**

Mr. LANGAN. Mr. Chairman and members of the subcommittee, the Government Employees' Council, AFL-CIO, representing 24 Federal unions with a membership of over 600,000 Federal employees, employed in all areas of governmental activity, wishes to express their complete endorsement of H.R. 6141. This bill will correct a manifest injustice in present law which imposes strict and harsh penalties, on former Federal employees, entirely out of proportion to their acts of misconduct and not consistent with penalties imposed for like offenses upon those in private employment.

We desire to thank the chairman and the members of the subcommittee for their action in holding hearings on this bill and trust that it will be approved by this subcommittee and the full committee and reported to the House of Representatives without delay.

Mr. DAVIS. The next witness is Col. John T. Carlton, executive director, Reserve Officers Association of the United States.

**STATEMENT OF COL. JOHN T. CARLTON, EXECUTIVE DIRECTOR,
RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES**

Colonel CARLTON. Mr. Chairman and members of the committee, we appreciate the opportunity to present our views on this most important piece of legislation.

We are in full accord with the provisions of this bill.

We are sure that Congress did not intend that members of the armed services who had received court-martial sentences for certain actions but which had nothing to do with reference to an offense against the security of our country would, as the law is presently written, be punished the second time.

Those members of the armed services who received sentences from courts-martial and who served their sentences, and who became rehabilitated, had every reason to believe that they would receive no further punishment.

Unfortunately, members of the armed services in this category now find that under the wording of the present law that they would be further punished by forfeiting the retired pay which they have rightly earned.

We think H.R. 6141 accomplishes this purpose and strongly recommend that your committee report favorably on the bill and that every effort be made to see that this much needed legislation be enacted into law.

Mr. DAVIS. Are there any other persons present who would like to submit statements in connection with this legislation?

STATEMENT OF PAUL NAGLE, PRESIDENT, NATIONAL POSTAL TRANSPORT WORKERS

Mr. NAGLE. I am Paul Nagle, president, National Postal Transport Workers, and I would like to declare our support for H.R. 6141, which would amend the act, and our opposition to H.R. 1042, which would repeal the act.

Mr. DAVIS. Do you have a prepared statement?

Mr. NAGLE. I do not. This is my declaration of affirmation for the bill.

Mr. DAVIS. We are very glad to have your statement on the subject, and we appreciate your cooperation with the committee.

Mr. NAGLE. Thank you very much, indeed.

Mr. DAVIS. This concludes the open session and the subcommittee will go into executive session.

(Whereupon, at 11 :24 a.m., the subcommittee adjourned to executive session.)



