

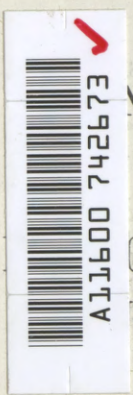
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COURT LEAVE

GOVERNMENT
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HEARING
BEFORE THE
SUBCOMMITTEE ON
POWER AND CIVIL SERVICE
OF THE
COMMITTEE ON
OFFICE AND CIVIL SERVICE
HOUSE OF REPRESENTATIVES
NINETY-FIRST CONGRESS

FIRST SESSION
ON

H.R. 10247

A BILL TO AMEND TITLE 5, UNITED STATES CODE, TO GRANT
COURT LEAVE TO EMPLOYEES OF THE UNITED STATES AND
THE DISTRICT OF COLUMBIA WHEN CALLED AS WITNESSES
IN CERTAIN JUDICIAL PROCEEDINGS ON BEHALF OF STATE
AND LOCAL GOVERNMENTS

JUNE 11, 1969

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COURT LEAVE

HEARING
BEFORE THE

COMMITTEE ON POST OFFICE AND CIVIL SERVICE

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(B; Benton Bray, Associate Staff Director, Room B-370(b), Rayburn Building—Ext. 2821)

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COURT LEAVE

WEDNESDAY, JUNE 11, 1969

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

The subcommittee met at 10 a.m., in room 112, Cannon Building, Hon. David N. Henderson (chairman of the subcommittee) presiding.

Mr. HENDERSON. The subcommittee will come to order. We are meeting today to consider H.R. 10247, a bill which I introduced in April of this year.

At present, Federal employees and those employed by the District of Columbia government who are absent for jury service in either a State court or a court of the United States do so without charge to leave or loss of pay. The same is true when such employees appear as witnesses on behalf of the Federal Government or the District of Columbia. However, there is no protection when such employees appear as witnesses on behalf of State or local governments.

In H.R. 10247 we are seeking to rectify this apparent inequity by granting court leave to such employees of the United States and the District of Columbia when called as witnesses in certain judicial proceedings on behalf of State and local governments.

In these days of deep concern over crime and crime control, employees should not be penalized when called upon by a State or local government to serve as witnesses.

A copy of H.R. 10247 will be made a part of the record at this point.

(The bill referred to is as follows:)

(1)

91ST CONGRESS
1ST SESSION

H. R. 10247

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 1969

Mr. HENDERSON introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to grant court leave to employees of the United States and the District of Columbia when called as witnesses in certain judicial proceedings on behalf of State and local governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
That section 6322 of title 5, United States Code, is amended to read as follows:

“§ 6322. Leave for jury or witness service

“Except as provided by section 5515 of this title, the pay of an employee as defined by section 2105 of this title or an individual employed by the Government of the District of Columbia may not be reduced during a period of absence for jury service in a State court or a court of the United States, or for service as a witness on behalf of a State or local government in a judicial proceeding (including a condemnation proceeding), because of the absence.

The period of such an absence is without deduction from other leave of absence authorized by statute. This section does not affect leave authorized by section 1823 of title 28.”.

SEC. 2. Item 6322 in the analysis of chapter 63 of title 5, United States Code, is amended to read as follows:
 “6322. Leave for jury or witness service.”.

SEC. 3. Section 5515 of title 5, United States Code, is amended to read as follows:

“§ 5515. Crediting amounts received for jury or witness service

“An amount received by an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia for jury service in a State court, or for service as a witness on behalf of a State or local government in a judicial proceeding (including a condemnation proceeding), for a period for which the employee or individual is entitled to leave under section 6322 of this title shall be credited against the pay payable by the United States or the District of Columbia to the employee or individual.”.

SEC. 4. Item 5515 in the analysis of chapter 55 of title 5, United States Code, is amended to read as follows:

“5515. Crediting amounts received for jury or witness service.”.

Mr. HENDERSON. We will also include, without objection, the Civil Service Commission official report on H.R. 10247, with the Commission's enclosure of a proposed substitute bill and section analysis. (The official report, with enclosures, follows:)

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., June 11, 1969.

Hon. THADDEUS J. DULSKI,
*Chairman, Committee on Post Office and Civil Service,
House of Representatives.*

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Civil Service Commission on H.R. 10247, a bill "To amend title 5, United States Code, to grant court leave to employees of the United States and the District of Columbia when called as witnesses in certain judicial proceedings on behalf of State and local governments."

The Commission urges enactment of H.R. 10247, but suggests certain changes which would broaden its coverage.

The Commission recommends that the coverage of the bill be extended so that it (1) applies to appearances in judicial or administrative proceedings in which any governmental body is a party irrespective of whether the appearance is on behalf of the governmental body; (2) covers proceedings in the Commonwealth of Puerto Rico or a territory or possession of the United States; and (3) authorizes payment of travel expenses and per diem for an officer or employee of the United States who is required by law or assigned by his employing agency to testify in his official capacity or to produce official records.

H.R. 10247 in its present form would authorize leave for witness service on behalf of a State or local government. If this bill is revised as recommended by the Commission, it would apply to Government employees appearing as witnesses in a judicial or administrative proceeding in which any governmental body is a party. It would apply to employees appearing as witnesses in such proceedings whether they appear as witnesses for the governmental body or the other party.

The proposed bill, if revised in the manner the Commission recommends, should be instrumental in removing the financial hardship now faced by some Government employees who must take either annual leave or leave without pay to testify in judicial proceedings. Employees, by serving as witnesses, can play an important role in the administration of justice. This measure is particularly timely when crime control is a matter of such great concern to the entire nation.

In addition, the Commission recommends that title 5 be amended to include (1) the provisions relating to employees of the United States or the District of Columbia called as witnesses, now appearing in section 1823 of title 28, United States Code; and (2) provision for the payment of travel expenses for employees of the United States summoned, other than on behalf of the United States, to testify in their official capacity or to produce official records. Section 1823 of title 28 would be repealed.

A draft of a substitute bill to accomplish these changes, with a section by section analysis, is enclosed.

It is reasonable to assume that the cost resulting from enactment of this bill would be very small. While statistics are not available, we believe that the proportion of employees absent from work for the purpose of appearing as witnesses in judicial and administrative proceedings is small. While the cost of the legislation would be low, the resulting benefits, both to Government employees serving as witnesses and to efforts to improve law enforcement and the administration of justice in the United States, would be substantial.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON, *Chairman.*

Enclosure.

A BILL To amend title 5, United States Code, to revise, clarify and extend the provisions relating to court leave for employees of the United States and the District of Columbia

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 6322 of title 5, United States Code, is amended to read:

"§ 6322. Leave for jury or witness service

"(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia is entitled to leave, without loss of, or reduction in, pay, leave to which he is otherwise entitled, credit for time or service, or performance or efficiency rating, during a period of absence with respect to which he is summoned by a court or agency, responsible for the conduct of the proceeding, to serve—

"(1) as a juror in a judicial proceeding; or

"(2) as a witness in a judicial or administrative proceeding (other than a proceeding involving only private parties); in the District of Columbia or in a State, territory, or possession of the United States including the Commonwealth of Puerto Rico.

"(b) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia is performing official duty during the period when he is summoned, or assigned by his agency, to—

"(1) testify or produce official records on behalf of the United States or the District of Columbia; or

"(2) testify in his official capacity or produce official records on behalf of other than the United States or the District of Columbia.

"(c) The Civil Service Commission may prescribe regulations for the administration of this section."

(b) Item 6322 in the analysis of chapter 63 of title 5, United States Code, is amended to read:

"6322. Leave for jury or witness service."

SEC. 2. (a) Section 5515 of title 5, United States Code, is amended to read:

"§ 5515. Crediting amounts received for jury or witness service

"An amount received by an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia for service as a juror or witness during a period for which he is entitled to leave under section 6322(a) of this title or is performing official duty as referred to in section 6322(b) of this title shall be credited against the pay payable by the United States or the District of Columbia to him with respect to that period."

(b) Item 5515 in the analysis of chapter 55 of title 5, United States Code, is amended to read:

"5515. Crediting amounts received for jury or witness service."

SEC. 3. (a) Section 5537 of title 5, United States Code, is amended to read:

"§ 5537. Fees for jury and witness service

"(a) An employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia may not receive fees for service—

"(1) as a juror in a court of the United States or the District of Columbia; or

"(2) as a witness in a judicial or administrative proceeding on behalf of the United States or the District of Columbia.

"(b) An official of a court of the United States that is located in the District of Columbia or in a State, territory, or possession of the United States including the Commonwealth of Puerto Rico may not receive witness fees for attendance before a court, commissioner, or magistrate where he is officiating."

(b) Item 5537 in the analysis of chapter 55 of title 5, United States Code, is amended to read:

"5537. Fees for jury and witness service."

SEC. 4. (a) Chapter 57 of title 5, United States Code, is amended by inserting at the end thereof the following new subchapter:

"Subchapter IV—Miscellaneous Provisions

"§ 5751. Travel expenses of witnesses

"(a) Under such regulations as the Attorney General may prescribe, an employee as defined by section 2105 of this title summoned, or assigned by his agency, to testify or produce official records on behalf of the United States is entitled to travel expenses under subchapter I of this chapter. If the case involves the activity in connection with which he is employed, the travel expenses are paid from the appropriation otherwise available for travel expenses of the employee under proper certification by a certifying official of the agency concerned.

If the case does not involve its activity, the employing agency may advance or pay the travel expenses of the employee, and later obtain reimbursement from the agency properly chargeable with the travel expenses.

"(b) An employee as defined by section 2105 of this title summoned, or assigned by his agency, to testify in his official capacity or produce official records, other than on behalf of the United States, is entitled to travel expenses under subchapter I of this chapter, except to the extent that travel expenses are paid to the employee for his appearance by the court, agency, or private party which caused him to be summoned."

(b) The analysis of chapter 57 of title 5, United States Code, is amended by inserting at the end thereof:

"Subchapter IV—Miscellaneous Provisions

"5751. Travel expenses of witnesses."

SEC. 5. (a) Section 1823 of title 28, United States Code, is repealed.

(b) The analysis of chapter 119 of title 28, United States Code, is amended by striking out item 1823.

SECTION ANALYSIS

Subsection (a) of the first section of the bill amends 5 U.S.C. 6322 which presently authorizes leave for employees of the United States and the District of Columbia during a period of absence for service as a juror in a State court or a court of the United States.

Under the proposed amendments of section 6322, provisions for jury leave would be continued under subsection (a)(1), and the geographic area for jury service would be extended so as to include, in addition to the several States and the District of Columbia, the territories and possessions of the United States including the Commonwealth of Puerto Rico.

Under subsection (a)(2), employees of the United States and the District of Columbia would be entitled to leave for witness service in any judicial or administrative proceeding within the same geographic area as that specified in subsection (a)(1) with respect to jury service. As a safeguard, the subsection provides that the witness service must be in response to a summons issued by the court or agency responsible for the conduct of the proceeding. However, witness leave would not be available if the judicial or administrative proceeding involved only private parties.

Both jury leave under subsection (a)(1) and witness leave under subsection (a)(2) would be without loss of, or reduction in, pay, leave to which he is otherwise entitled, credit for time or service, or performance or efficiency rating.

Subsection (b) provides that employees of the United States and the District of Columbia who are summoned, or assigned by their agencies, to (1) testify or produce official records on behalf of the United States or the District of Columbia or (2) testify in their *official capacity* or produce official records on behalf of other than the United States or the District of Columbia, are performing official duty. This reflects existing law and interpretations of the Comptroller General.

Subsection (c) authorizes the Civil Service Commission to prescribe regulations for the administration of section 6322.

Subsection (b) of the first section of the bill makes a corresponding change in item 6322 in the analysis of chapter 63 of title 5.

Section 2(a) of the bill amends 5 U.S.C. 5515 which presently provides for crediting against pay amounts received by employees of the United States and the District of Columbia received for jury service in State courts. Under the proposed amendment of section 5515, amounts received for jury or witness service during a period for which the employee is entitled to leave under section 6322(a) of title 5, or is performing official duty referred to in section 6322(b) of title 5 would be credited against his pay.

Section 2(b) makes a corresponding change in item 5515 in the analysis of chapter 55 of title 5.

Section 3(a) of the bill amends 5 U.S.C. 5537 which currently provides that employees of the United States and the District of Columbia may not receive fees for service as a juror in a court of the United States. Under the proposed amendment of section 5537 this prohibition is retained in subsection (a)(1). Reference to service as a juror in a court of the District of Columbia is added for clarity and to reflect past interpretations that the courts of the United States include, for the purpose of this section, courts of the District of Columbia. Subsection (a)(2) would prohibit employees of the United States and the District of Columbia from

receiving a fee for witness service in a judicial or administrative proceeding on behalf of the United States or the District of Columbia. This later prohibition is a corollary of the provision proposed to be included in 5 U.S.C. 6322(b)(1) which provides that an employee performing this type of service is performing official duty.

Subsection (b) of the amended section 5537 restates, without substantive change, provisions currently set forth in 28 U.S.C. 1823(c).

Subsection 3(b) makes a corresponding change in item 5537 in the analysis of chapter 55 of title 5.

Section 4(a) of the bill amends chapter 57 (relating to travel and transportation) of title 5 by inserting a new section 5751 captioned "Travel expenses of witnesses" in a new subchapter IV. Subsection (a) of the new section 5751 restates, without substantive change, those provisions of 28 U.S.C. 1823(a) which authorize payment of travel expenses to employees of the United States who appear to testify or produce official records on behalf of the United States.

Subsection (b) of the new section 5751 would authorize payment of such travel expenses to employees of the United States who are summoned, or assigned by their agency, to testify *in their official capacity*, or produce official records on behalf of other than the United States. Travel expenses paid to the employee either by the court or agency or by a party for his appearance would be deducted from the travel expenses authorized by this subsection.

Section 5 repeals 28 U.S.C. 1823. As noted above, the provisions of 28 U.S.C. 1823 have been included in the appropriate sections of title 5, United States Code, by the amendments made by this bill.

Mr. HENDERSON. We have as our first witness Mr. Anthony L. Mondello, the very capable General Counsel of the Civil Service Commission. We are delighted to have you and we welcome you to the subcommittee.

Mr. MONDELLO. Thank you.

STATEMENT OF ANTHONY L. MONDELLO, GENERAL COUNSEL, U.S. CIVIL SERVICE COMMISSION

Mr. MONDELLO. I am accompanied this morning by Edward F. Willett whose work I believe is known to the chairman and the committee.

We appreciate this opportunity to discuss H.R. 10247, a bill to grant court leave to employees of the United States and the District of Columbia when called as witnesses in certain judicial proceedings on behalf of State and local governments.

The Civil Service Commission endorses the principles of H.R. 10247 which would grant court leave to employees called as witnesses on behalf of State and local governments. We fully concur in the thesis that employees should not suffer financial burdens when they are called upon to perform these important civic functions.

The present restrictions on the granting of court leave have caused hardship to a number of employees, and some employees have inquired about the possibilities of broadening the coverage of court leave. Among the hardship situations known to the staff of the Commission are those of a man who, after observing a hit-and-run accident, pursued the offender and was called as a witness for the State and we learned he lost time in leave; a witness to a highway accident who lost 2 days of work because he was subpoenaed by a State attorney general; and a robbery victim who took 3 days of annual leave to serve as a witness for the county. In another case, an employee who was subpoenaed as a State witness in a murder trial lost 11 days of annual leave. When that trial ended in a mistrial, the employee used additional leave to serve as a witness in the second trial.

A number of employee-hardship cases could also be cited in the noncriminal area, involving cases in which a governmental body is a party. These cases include various suits involving State and Federal administrative agencies; for example, tax suits and eminent domain actions.

At a time when crime control is a matter of great concern to the Nation, it seems unwise to continue unchanged the present system concerning witness leave, which places a burden on the Government employees who serve as witnesses and play an important role in the administration of justice. They perform an important civic function both by assisting in the prosecution of criminals, and by helping in the full development of litigated facts in cases in which State and local governments are parties—factual development which is a basic condition for holding trials or hearings which produce fair results for all parties to litigation. Moreover, the Federal Government should reciprocate the benefits it receives from other governmental jurisdictions; for example, Maryland and Virginia, whose employees are granted leave or unofficial time off to testify in Federal courts.

The practice of granting leave for witness service is also common in private industry. The Bureau of Labor Statistics, in a 1963 survey entitled "Supplementary Compensation for Nonproduction Workers," found that over 60 percent of the industries included in the survey granted this type of leave to their employees.

Enactment of H.R. 10247 would assist States and cities in the fight against crime by removing the financial burden from Government employees who can play an important role in the fair and efficient administration of their laws.

While we endorse H.R. 10247, we feel that it stops short of the Government's doing what it reasonably can do to promote the administration of justice. For example, H.R. 10247 would restrict leave to employees called as witnesses on behalf of State and local governments. If a man steps forward as a witness in the interests of criminal justice but is called by the defense rather than the State, he would not be entitled to leave under the provisions of H.R. 10247. Knowing in advance that he alone would bear the cost of this civic burden might deter an employee from being eager to step forward in the first place.

We have furnished to your committee, Mr. Chairman, a draft of a bill to amend title 5, United States Code, to revise, clarify and extend the provisions relating to court leave for employees of the United States and the District of Columbia. We have also furnished a section analysis which explains the provisions of that draft bill in detail. The Bureau of the Budget advises that from the standpoint of the administration's program, there is no objection to the submission of these items.

Our proposed revisions in this draft bill to H.R. 10247 would cover testimony given in behalf of any party in both judicial and administrative proceedings provided the proceeding is one in which a governmental body is a party. It is the very nature of justice that it be impartial. We think it would be inappropriate to make it more advantageous financially for the Government employee to appear as a witness for the State than for the other party to the proceeding.

Moreover, it is not always possible to know in advance that the testimony given by a particular witness will benefit the party who calls him. We think that considerations of what party will benefit from testimony is irrelevant to the Government's higher concerns for the proper administration of justice.

Our revisions would also authorize payment of travel expenses of Government employees summoned, or assigned by the agencies, other than on behalf of the United States, to testify in their official capacity or to produce official records. Existing law (28 U.S.C. 1823(a)) authorizes payment of travel expenses when the employee is summoned on behalf of the United States. The Comptroller General has ruled, however, that since it is not a function of the Government to furnish witnesses or official records subpoenaed by private litigants, appropriated funds cannot be paid for the travel expenses of Government employees who perform such functions, even though it is clear that the employee performs those functions as a part of his official duty in a duty status. Our revision explicitly authorizes payment of travel expenses when an employee is summoned to testify in his official capacity or produce official records other than on behalf of the United States. While we have not gone one step further in our proposed revision, the committee may consider it advisable to authorize agencies to pay the travel expenses of employees summoned to testify in proceedings to which a government is a party, where the employee is not called in his official capacity, but merely because he has personal knowledge of events which are being litigated.

The cost to the Government of this proposed bill, and our revisions, is difficult to estimate; no statistics are available on the amount of annual leave or leave without pay taken by employees to appear in judicial proceedings. It would be reasonable, however, to assume that the cost would not be very great. While we could expect that more employees would appear in court as witnesses, the proportion of employees absent from work for this purpose now is probably very small. While the cost of the legislation would be low, the resulting benefits, both to Government employees serving as witnesses and to efforts to improve law enforcement and the general administration of justice in the United States, would be significant.

Thank you for asking me to come this morning. I shall be pleased to try to answer any questions you may have about my testimony.

Mr. HENDERSON. Mr. Mondello, I would like to take the second proposed amendment or revision first, because I have less problem with that one.

As I understand your recommendation, it would extend title 28 of the United States Code, specifically section 1823(a), which authorizes travel expenses when the employee is summoned on behalf of the U.S. Government.

Mr. MONDELLO. Yes. That much of it is in section 1823(a) now.

Mr. HENDERSON. Now, is the District of Columbia covered under that provision? Would it be under your revision?

Mr. MONDELLO. Yes, sir; it would be under the revision if the employee is summoned in his official capacity or to produce official records. It is not now.

Mr. HENDERSON. It is not now. If the District of Columbia subpoenaed a Federal employee on their behalf, would he be covered under your revision?

Mr. MONDELLO. That is correct, if summoned in his official capacity.

Mr. HENDERSON. In addition to that, you would recommend that any government employee subpoenaed in any case in which either the U.S. Government or the District of Columbia was a party would be entitled to travel expenses in addition to the present provision of the law authorizing leave?

Mr. MONDELLO. It is already the case when the employee appears on behalf of the Government of the United States that travel expenses would be authorized. What we are adding is the ingredient about Federal employees being called on to testify in proceedings other than on behalf of the United States.

Mr. HENDERSON. Where they testify in an official capacity or produce official records?

Mr. MONDELLO. That is correct. This is the kind of case where the Weather Bureau is called on in a——

Mr. HENDERSON. The one case that I think of evolves out of the aircraft accident of Piedmont Airlines in Asheville, N.C. As I understand, several suits have been filed against the airline and I believe the U.S. Government is made a party to that suit because of the FAA controller operations.

Mr. MONDELLO. Yes, sir.

Mr. HENDERSON. If, under the present law, an employee of the Federal Aviation Agency or the Civil Aeronautics Board, who either investigated that particular accident, or had other official records, or because of his official position, was subpoenaed by the Federal Government, his travel expenses would be paid. However, if he was subpoenaed by the private parties to that litigation, to testify on their behalf, under the present law, travel expenses would not be paid. You recommend that if he is subpoenaed in that action, in which the Government is a party, by either of the parties, he would be paid travel expenses?

Mr. MONDELLO. In either case; yes, sir.

Mr. HENDERSON. I personally, at the present time, do not see any reason why this is not a reasonable extension and I appreciate you calling it to our attention.

Now, with regards to the other provision where Government employees would be subpoenaed in a criminal action, the purpose of the bill, as introduced, would be to pay the employee if subpoenaed by any one of the States as a State witness. Your recommendation is that if the defense were to call a Federal employee he, too, would be given the same benefits.

I have one problem with that. We did discuss this at the staff level as we were attempting to draft the bill, and it is my belief that the State government or the city government, Mr. Gross, would not subpoena a witness unless they felt that that witness was essential to the prosecution of the case. But I could not envision what would keep the defense attorneys from subpoenaing large numbers of Government employees who might not have any real testimony to present bearing on the case.

If, in some way, Mr. Mondello, we could determine that the witness' presence was essential to the defense, I think that I would not be

quite so concerned about it. But I am concerned that we do not have the same responsibility on the part of the defense as we do the prosecution.

Mr. MONDELLO. In section 6322(a) of the draft bill, we employ the expression, "during a period of absence with respect to which he is summoned by a court or agency responsible for the conduct of the proceeding to serve as a juror or witness." We had hoped through that language, "responsible for the conduct of the proceeding," coupled with the authority of the Civil Service Commission if this draft bill were to be accepted as it is now, to prescribe the regulations for the administration of the section, to see that we did maintain the same kind of responsibility in terms of our being able to deal with the court or agency that ultimately is the issuing authority for the subpoena.

The practice is currently available, of course, where if an employee is subpoenaed you can go to a local court and see that the subpoena is of a witness who has evidence that might bear on the case, so that there is some reason to believe that we could restrict having irrelevant subpoenas issued to witnesses who do not know anything about the case.

Mr. HENDERSON. One thought I had as we talked about this was whether or not we could get the court to make a determination that those witnesses, that had been subpoenaed by the defense, would be entitled, after the fact, to the benefits of the bill. I was afraid that this would complicate the bill by requiring the courts or the administrative officer of the Federal courts to give us an opinion on that, and I am not sure that this could be handled well enough to be beneficial.

I am afraid that if we had this in the law without some very careful restrictions we would find Federal employees who were interested in the proceedings but perhaps not essential to them, even volunteering to defense counsel. It would be an easy way to get out of work for a few days when they are nonessential.

It is only on that point that I would tend to disagree with your recommendations. I personally do not see any problems with regards to the second revision.

Mr. Gross.

Mr. GROSS. I think I must agree with you, Mr. Chairman. You are an attorney and I am not, and this gets into some involvements that I am perhaps not too competent to address myself to, but I can see where capriciousness could enter into this thing, particularly in certain areas. I tend to agree with the chairman that unless some way can be found to make quite clear what you are proposing here—

Mr. MONDELLO. Mr. Congressman, I think there are ways that we can probably explore to see if we cannot keep the situation under control. Obviously, if a witness is called because he knows the defense counsel and wants a few days at the place where the court is being held, it is just going to cost us money that is needlessly spent. I think it can be controlled, either by tightening up a provision something like this one I pointed to, "responsible for the conduct of the proceeding," or if the legislation itself, the text of the act contained some expression of this concern, so that on the basis of it, the Commission, in issuing regulations, could control the situation so that only witnesses were required in the interest of that litigation.

Mr. HENDERSON. Let me ask this question, because I am of the impression, Mr. Gross, from my own legal experience, that the primary responsibility in the administration of justice for presenting defense testimony is with the defense and that all of the usual cost is on the defense.

It seems to me that your recommendation to pay Government employees as defense witnesses is going beyond the basic philosophy that the cost of the defense testimony should be borne by the defense.

Mr. MONDELLO. I do not think this draft bill really does that. In many States, if you want a witness and you have to get him from afar, over a hundred miles or so, the figures vary in different State statutes—when you get a subpoena out of the local court to cause him to appear, some States require that the attorney calling him, the defense in the case of the defense, has to send a check paying those expenses, the expense of travel and perhaps the witness fee for the time that he would be there.

In the bill we make provision for deduction for offsetting those amounts which are paid by others than the Government, from the money that the Government would have to pay. So, in terms of cost, I think we have taken care of that situation. There are some inherent brakes in a system of this sort. There are counsel who, if it is easy to do and it is free to do, might call too many witnesses or might want to subpoena them. But counsel who knows he has to pay generally restricts the number of his witnesses to the budget so that there are inherent brakes I think we can take advantage of by regulation. Obviously, this would take a little more work.

Mr. HENDERSON. That is the one point that I have concern on and I certainly would like to be able to assure the Members of the House, if the bill goes through, exactly what the situation would be. If we were going to tackle the more complicated situation, it might be wise to do that in separate legislation after we had had fuller testimony of the necessity, and some analysis of all of the State laws and perhaps calling in Federal judiciary administration witnesses to tell us specifically—give us their opinions on that. I do not believe that that testimony is necessary for the other provisions of the bill.

Mr. GROSS. I think along that line, Mr. Chairman, if you will permit me, I think we are taking a good first step with the bill as it is. If you gentlemen can come up with language that is acceptable, it might well be added as an amendment to the bill on the floor of the House or we can get to it in other legislation at a later date. I think we are taking a good first step and rather than go into something here that I am doubtful of—

Mr. HENDERSON. I think we should have testimony from the Department of Justice, if we were going to go that far, as to their opinions of the effect on the administration of justice. Again, I do not believe their testimony would be necessary for the other provisions of the bill or your other recommended revision.

Mr. White, do you have any questions? Mr. Gross, did you have any other questions?

Mr. GROSS. No; I think not.

Mr. WHITE. I was wondering—

Mr. HENDERSON. Let me ask this—if you would yield for just a minute—Mr. Mondello, I am not sure that my bill, H.R. 10247,

includes Puerto Rico or the territories, and I do not believe you made any specific recommendation on that.

Mr. MONDELLO. I think your bill does not, sir.

Mr. WHITE. What about the trust territories?

Mr. HENDERSON. I think the same question would apply there, perhaps.

Mr. MONDELLO. Yes, our bill makes this geographic difference.

Mr. HENDERSON. So a part of your recommendation is that we do include Puerto Rico and the trust territories?

Mr. MONDELLO. Yes, sir; both as to jury service and witness service.

Mr. HENDERSON. I would see no reason why Puerto Rico and the trust territories should not be included in the bill.

Mr. MONDELLO. We agree; yes.

Mr. HENDERSON. Mr. White.

Mr. WHITE. Mr. Chairman, just taking a quick look at this bill, I personally have previously voiced the thought that perhaps we are being a little unfair in not giving some time to those who do serve as non-Government witnesses.

Wouldn't you be controlling it better if you provided for a reasonable period of time off and included actual service as a witness, because otherwise the man would be called and could be just sitting around the halls, or could use a call as a subterfuge for missing work. See what I am talking about? After all, the administration of justice means for both plaintiff and defendant.

Mr. HENDERSON. That is the point that Mr. Mondello has made this morning, but the one problem that I cannot get over is our basic understanding that the burden of the cost of the defense lies on the defense. Perhaps your argument is a better one.

Mr. WHITE. Mr. Chairman, you know that so often many of these plaintiffs are impecunious. They have no money. Lawyers take their case on a contingency basis and if you are going to penalize the plaintiffs and give every advantage to the Government, State or Federal, then you are sort of loading the deck on them.

Mr. HENDERSON. It seems to me, though, if we were going to do this, that we need more testimony. This is a problem in the administration of justice and one that we would want to open this up for testimony, perhaps from the Department of Justice, the American Bar Association, and the Judicial Conference of the United States. My feeling is that if we went into that issue as carefully as we should, we would obviously delay the enactment of the bill, the necessity of which is so obvious.

Mr. WHITE. May I add something for the record? When you have a case in the court, suppose one question of some counsel is to ask who is paying you. Now, if it is a State witness the man merely says, under this bill, "Well, nobody is except the U.S. Government. I work for the U.S. Government." If it is a defense counsel and if it is the plaintiff, they say, "Who is paying you?" Then they say, "Well, the plaintiff is." Immediately, they make something nefarious about this, "so, he is being paid by the plaintiffs to come in and testify." So you are loading it before the jury against them, as far as partisanship.

Mr. HENDERSON. Let me explore just a minute with Mr. Mondello one of the provisions it was my decision to add to the bill, that perhaps

would clarify somewhat on this point. I put in condemnation, which is a proceeding in the nature of civil action rather than criminal, because obviously in condemnation actions you have a governmental body bringing the action. Even on that specific point, I did not add the defense or the landowner's witnesses if they were Government employees. My feeling, basically, on the point that you make, when the Government brings condemnation action, is the Government obviously is doing all it can to develop the fair market value of the land. The defense attorneys and landowners do all they can to get witnesses that are so favorable to them, and as you point out, they have to pay them; and this would certainly restrict the witnesses that they would subpoena. They would not just be trying to overwhelm the court with the number of records or taking some chance that some witness would add more to it than they could reasonably expect to be added. It is very obviously of monetary gain to the landowner to present all of the evidence he can as to the value of the property. So in that case, it seems to me that it is not so much of a problem.

Now, in the criminal actions, your motivation, of course, is a different one. I think on this point that we would want to go into it with a great deal of care and have far more testimony than I feel is necessary on the other points.

Mr. MONDELLO. Mr. Chairman, if I may comment on Mr. White's problem, I do not understand that the bill, H.R. 10247, or the Civil Service Commission bill, really intends to focus on that problem. If there is a problem involving motivation of witnesses in terms of where they are being paid from, I think that is really a different problem than any we are trying to solve here. Also, to permit a Government employee to have leave rather than let him testify at his own cost in terms of leave, and to grant him his expenses to get from this city to that city to go and testify, seems to me a fairly narrow range concern of the Government. It is simply making witnesses available.

This other question as to whether you testify the way you testified because the Government paid you your travel expenses is ordinarily not a question that is—

Mr. GROSS. What would the judge tell them? Wouldn't he tell the jury to ignore that?

Mr. MONDELLO. Yes, sir. I do not think the court would allow it to be brought up if it were just this kind of payment. State governments and local governments pay jurors' fees and witnesses' fees.

The administration of justice is a whole area where the Department of Justice can reach out into the private sector in order to get witnesses who simply have knowledge of the case and they have appropriations to take care of that to pay witnesses' fees and nothing much is made of that. It varies a bit if you have experts testifying in land condemnation cases or even criminal cases who are getting substantial fees for the mere fact that they are there to testify. That is different from paying them travel expenses. This is paying them something.

Mr. WHITE. What do you think of such language as this: "Witnesses testifying for the State and local governments and defense witnesses certified by the court as necessary witnesses"? Would that obviate the padding of witness ranks and also make certain that the man was a material witness to the case?

Mr. MONDELLO. I would rather keep the burden of deciding that a witness is required or not within the confines of the executive branch where somewhere between the General Accounting Office, the Attorney General, and the Civil Service Commission you can regulate that affair so we are not simply losing money.

Mr. WHITE. But they are not sitting in the court.

Mr. MONDELLO. No, sir; but I do not know that courts would very willingly accept this burden. Don't forget you would be placing the burden on every State and local court and every State and local agency that has the power to summon witnesses.

Mr. WHITE. Is not that better than what you have got now? It is a matter of getting nothing for them or maybe getting something else.

Mr. MONDELLO. It is half a loaf, certainly. It is midground between. But I think it could be done more directly, and I would rather spend our efforts to assist the subcommittee in trying to work that out.

Mr. WHITE. Apparently, from the committee, they are not going to entertain an expansion of this bill at this time, this year, to plaintiffs' witnesses. They are not going to expand into plaintiffs' witnesses that are nongovernmental at this time. Are you going to say nongovernmental witnesses instead of defense or plaintiffs? This should say nongovernmental.

Mr. HENDERSON. Let me say that the point Mr. Mondello made was the one that gave me great trouble, because of my own experience. Any attorney that goes to the court and asks for a subpoena for a witness can pretty well get a subpoena for anybody he says he wants.

Mr. MONDELLO. That is certainly true.

Mr. HENDERSON. If I were satisfied that after the fact it was determined that the Government employee subpoenaed as a witness on behalf of a party other than the Government was essential—he does not necessarily have to testify, either, as far as I am concerned. The problem there, Mr. White, as I see it, is that the legislative branch, in hearing this proposed legislation, is authorizing the executive branch to do something that would then be determined by the judiciary. I have doubts as to whether the judiciary would take on that responsibility or would agree to do it without having testimony to that effect, and I am not sure that it would relieve us of a great deal of the problem either.

Mr. MONDELLO. Also, sir, it is not a judiciary that the Congress can control. It is State and local courts.

Mr. HENDERSON. That is right. We are not just talking about Federal courts.

Mr. GROSS. I would suggest that be brought up with a separate bill.

Mr. HENDERSON. This would be my recommendation, that we should have more hearings on this if there is a problem here.

Mr. WHITE. Let me say this—through my experience as a private practitioner representing a lot of people who did not have a lot of money on a lot of different types of cases—not only personal injury, not only land cases, but also the ordinary variety of many other kinds of cases—it is tough to get witnesses when they are at work when you won't and cannot pay them and if the witnesses are going to lose money from their job they are not coming in, and when they do not come in you do not get the true picture to the jury.

Mr. MONDELLO. Yes, sir; and I think this bill would facilitate that.

Mr. WHITE. No; it would not. It only takes care of governmental witnesses.

Mr. MONDELLO. Yes; but that is all the Civil Service Commission can be interested in, is government employees who are sought as witnesses. We are simply——

Mr. WHITE. But the bill provides for, as I understand it, payment to witnesses for the government, for State or Federal or city. Am I right?

Mr. MONDELLO. That is correct about H.R. 10247.

Mr. HENDERSON. My bill was that restrictive. The Commission has recommended that we go beyond that.

Mr. WHITE. But in this bill——

Mr. MONDELLO. No, sir; not in that bill.

Mr. HENDERSON. Their recommendations for amending the bill would cover the point you make.

Mr. WHITE. Amend this particular bill, that is what I am saying.

Mr. HENDERSON. Yes. Let me also say, in your testimony you suggested the committee may consider it advisable to authorize agencies to pay travel expenses of employees who are summoned to testify in proceedings where the employee is not called in his official capacity, but merely because he has personal knowledge of events which are being litigated. I feel very strongly that I would not want to go that far in this bill. It may be that as experience develops, this would be a reasonable thing, but I do not feel at the present time it is.

Mr. GROSS. I want to join with you, Mr. Chairman, in saying that I am not prepared to go that far in this bill.

Mr. HENDERSON. Again, I think the best deterrent is to require the parties involved to pay for the witnesses. Mr. White, I think we have come to the one point where I do not know that I necessarily disagree with your position, but I feel that the needs for the primary purposes for which I introduced my bill are so great and so clear that there would be no controversy if we proceed on those points. If we do extend the coverage of the bill, as recommended by the Commission and as you indicate you are inclined to agree on, we would complicate this bill greatly in its passage and perhaps jeopardize passage of the bill.

Even beyond that, I would have to give a great deal of thought to my own feeling as to whether or not government employees ought to be given leave to testify for private parties even when government is a party; that is, where parties other than the government call government employees as witnesses.

Mr. WHITE. Of course, the government could mean independent school districts and it could mean reclamation districts.

Mr. HENDERSON. If the government employee is subpoenaed by any State, municipal or—as presently covered under the law—or Federal Government, I would go that far, I think.

Mr. LUKENS. Mr. Chairman, a question I had also, I understand the language of your bill includes only State or local governments, and local government would not necessarily include—I think by current interpretation legally—a subdivision of a county. Did you make yours exclusive of counties or down to and including boards of education?

Mr. HENDERSON. Let's look at the bill a moment.

Mr. LUKENS. Basically, I support your bill, but I think I would hesitate supporting it if it included boards of education. You know, a county government seemed to me a logical cutoff for an extension of the concept of government.

Mr. HENDERSON. I think in behalf of the State or local government—

Mr. LUKENS. The word "local" is what I am questioning here, sir.

Mr. HENDERSON. I think what we are talking about is a governmental unit. I do not believe that it would go to housing authorities created by cities. I do not think it would go that far.

Mr. MONDELLO. I do not, either, by reason of the fact that what this bill concerns itself with is the capacity of a local body to summon somebody. I do not think most boards of education have such power, for example, and the use of the language is "summon." To me, that is in your bill.

Mr. WHITE. In my State, local school boards are elected and set up by law and they have the taxing power within themselves.

Mr. HENDERSON. Do they have the power to subpoena witnesses?

Mr. WHITE. I would not be surprised. I do not know.

Mr. HENDERSON. They do not in my State.

Mr. LUKENS. They do not in Ohio to my knowledge. I certainly agree with the intent of your bill and I think it is a much-needed provision, but I am concerned about how far we take this.

Mr. HENDERSON. My recollection of the State of North Carolina laws is in order to bring an action against a county board of education, you must bring it against the official county commission board, and join the board of education into that suit.

Mr. WHITE. Mr. Chairman, suppose a J.P. court has a traffic accident against a defendant. Does this bill cover the witnesses for the county in that J.P. action or before a police court?

Mr. MONDELLO. It would not in New York State because the J.P. does not have the power to summon anybody.

Mr. WHITE. It would in my State.

Mr. MONDELLO. The J.P. has to hold him over for a court of record if it is going to the point of summoning witnesses.

Mr. WHITE. In my State they have the power to issue subpoenas, to pronounce judgments, put them in jail, fine them—

Mr. HENDERSON. If they have the power to subpoena a government employee or any witnesses, then this bill would cover required attendance, I believe. Again, you are making the argument that I had not thought of against extending it to all parties.

Mr. WHITE. That is why I suggested this wording of necessary witnesses and let the court determine who are necessary witnesses. If you get in frivolous witnesses then you can control that.

Mr. HENDERSON. Again, I think we have got some problem, though, of saying that the pay of government employees shall be determined by a State court. However, when you remind me that you are going to let every magistrate, perhaps in Texas, subpoena—they would not do it in North Carolina for they do not have the power to subpoena—I would be more fearful of extending it that far.

I think this is such a separate issue that I would not want to bog down this bill, which is fairly simple, by going that far. It is really for that reason that I think I would strongly oppose your suggestion that we might consider covering parties not called in an official capacity.

Mr. WHITE. Maybe we need to define what you mean by local governments.

Mr. HENDERSON. Well, I do not think we have any problem unless we do extend the bill as recommended by the Commission. I do not think we would have any real problem.

Mr. LUKENS. Mr. Chairman, because of my absence of legal training and not being a lawyer, I am not clear on this point. I raise it for this basic fear. As I think you know, I would like to support this bill and certainly I support the intent, but at the present time, until this question is resolved, I do not feel I can support the bill in this form. I think it is fairly vital that we define it just because of the existence of certain subordinate levels of government, such as in the State of Texas, who do have the power of subpoena and which level of subpoena power I would oppose.

I think it should be extended down to a county level and stop at a county level. I think the nearest thing to legislatures is probably the county commissioner, who is both executive and legislative in function, at least in Ohio. I would like to see a cutoff that is, to me, reasonable and I am not sure that does not agree with your concept but I would like to see it defined so I could support the bill; because I believe it is needed.

Mr. HENDERSON. It was the intent of the bill to clearly cover municipalities. Now, then, you could even get the question of agencies in the cities, but I think we could make this clear in the report if it is a problem. I had not anticipated we had any problem with the term "local" government.

Let me ask the witness. What is the situation currently with regard to the Federal employees that are covered under the present act?

Mr. MONDELLO. Well, we do not have the State and local complication there. I would like to make one suggestion about the last question. If a local governmental body has the power of the kind that was described by Congressman White to affect the lives and fortunes of people, then I should think that it would be totally consistent with an almost necessary part of the justification that we do make for the extensions to the bill; namely, for better, more effective administration of justice. The Federal Government should facilitate having witnesses go and attend even those very low proceedings, if they can have such traumatic effect on the lives of people.

So if the local body does have the subpoena power and can summon somebody because it is given the power to put them in jail and cause them to lose their jobs, then I think it follows that you ought to follow along because you are not doing any more than facilitating.

Mr. LUKENS. I hesitate to disagree because of my novelty in this field, but I would suggest it would have a very dramatic impact on the country's taxpayers and the Federal tax money again being used to support activities at levels which we did not intend to support in this bill.

I would like to clearly defined so the taxpayers know on what we are voting and I know for what I am voting. We cannot afford to offer support to that level because if it were expanded to that extent that a local school board had the power to subpoena, as in Texas, we could find ourselves besieged with bills we never considered.

Already I get a lot of mail complaining of per diem allowance for Congressmen, let alone for the average government employee subject

to subpena. I think we would be honestly and sincerely opening Pandora's box in terms of a new source of expenditure that maybe should be clearly defined somewhere.

I noticed one thing I would like to have explained. It says in line 19, "or local government in a judicial proceeding." Now, the court system stops at a certain level. I wonder if it would not be in keeping with the attendant bill to cut off at a court level commensurate with a certain level of court system.

Mr. HENDERSON. This was the intent of the wording, "judicial proceeding," Mr. Mondello, as I understood it. Clearly it would not involve even a city or county hearing or investigation. It would have to be a judicial proceeding.

Mr. LUKENS. Now I am confused. I thought you said you wanted to include municipalities.

Mr. HENDERSON. Or court.

Mr. LUKENS. If they were a court, then they would have the power to subpena. Is this sufficient enough to delineate at this level to just say "in a judicial proceeding"; would this delineate it sufficiently?

Mr. MONDELLO. Yes, sir.

Mr. HENDERSON. It would be one in which there was an adverse action and in which the Government is involved on one side. This merely restricts it. The Government is always a party to the action in which there is a judicial proceeding and in which a judgment would be rendered.

Mr. LUKENS. I will temporarily withdraw my objection in light of that interpretation. I would like some additional data substantiating that view because I am a little leery of judicial interpretations sometimes.

Mr. MONDELLO. I would like to suggest that in title 28, section 1823, where they do now talk about such things and permit witnesses to participate on behalf of the Federal Government, for example, they use the simple expression "judicial proceeding" and nobody has ever had any trouble with it.

Mr. LUKENS. I did not know that and I appreciate your information.

Mr. MONDELLO. Mr. Chairman, one final thing, if I may. The danger that is discussed in terms of how far, how broadly are we going. I think it is wrong to put the face on either H.R. 10247 or the suggestions the Commission has made, that this is all there is controlling these matters, because this is far from being so. All that I think your bill would do or our revisions to your bill would do is facilitate to a greater extent permitting witnesses to be available when it is important that they be called.

Actually, there are a great many brakes on the process of just willy-nilly running out to the private sector and saying "You are a witness." The witness has means of his own to stop a subpena. I know of no Federal provision for subpoenas that is not attended by the requirement of relevancy, and such questions can be tested out in court before somebody has to respond, and agencies can do that on behalf of their employees, as can the Justice Department, so it is not that wide open.

Mr. HENDERSON. You would agree that the enactment of H.R. 10247 would be helpful without either of the revisions that you recommend?

Mr. MONDELLO. Yes, sir. We think it is a good step in the right direction.

Mr. HENDERSON. It would be a congressional decision as to how far we would like to go.

Mr. MONDELLO. Yes, sir.

Mr. HENDERSON. Thank you, sir. If you can, I think it would be helpful if you can remain for the session because there may be other questions that will arise as a result of the testimony of other witnesses.

Our second witness is from the National Federation of Federal Employees. We are glad to have you gentlemen with us this morning.

STATEMENT OF IRVING GELLER, COUNSEL FOR THE NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. GELLER. Thank you. My name is Irving Geller. I am counsel for the National Federation of Federal Employees, and to my right is Ben Hinden, deputy counsel for the federation. Dr. Wolkomir unavoidably could not attend and he wanted me to express his regrets.

Our organization has a long and consistent record of support of constructive legislation for Federal employees.

The subcommittee is addressing itself at this time to H.R. 10247, a bill which you introduced, Mr. Chairman, to grant court leave to Federal employees and employees of the District of Columbia when called as witnesses in certain judicial proceedings including a condemnation proceeding on behalf of State and local governments. The NFFE strongly supports H.R. 10247 and urges its enactment. There is no logical reason why employees of the United States and the District of Columbia should not be entitled to have court leave when called for service as a witness on behalf of a State or local government in a judicial proceeding.

Mr. Chairman, as you so appropriately stated on the floor of the House of Representatives on April 17, 1969, "employees should not be penalized when called upon by a State or local government to serve as witnesses." There are instances when employees are subpoenaed by a State or local official to testify in behalf of a State or local government in a judicial proceeding and under the present law the employee is forced to use his annual leave. This is manifestly unfair as the employee has no control over such appearance in court and must appear on behalf of a State or local government.

Under present regulations court leave is defined as the authorized absence without charge to leave or loss of compensation, of an employee from official duty for jury duty, or for attending court in a nonofficial capacity as a witness on behalf of the United States or the government of the District of Columbia. The court may be a Federal, State, or District of Columbia court. For court leave purposes, courts in the State system, such as county and municipal courts, are considered State courts. H.R. 10247 supplies the proper recognition of the service rendered by a Federal employee or an employee of the District of Columbia called as a witness on behalf of a State or local government by granting such employee court leave.

Government agencies have misconstrued court leave provisions. We had a case of a Federal employee who worked as a firefighter and was on a 24-hour duty. He was called as a witness in a Federal

court on behalf of the Government and for that day he was given 12 hours court leave but charged 12 hours annual leave. We took this up with the proper authorities as we felt it to be unreasonable to charge any annual leave under these circumstances. It was our position that while a firefighter may be on 24-hour duty it is entirely unwarranted to charge anything but court leave for attendance in a Federal court as a witness in behalf of the Federal Government. Subsequently the employee's leave was changed to properly show 24 hours court leave on that day and his supervisor was directed to allow this type of leave for the 24 hours.

The NFFE is grateful for the opportunity to testify on H.R. 10247 and it is our hope that this legislation will be enacted into law.

Mr. Chairman, I am glad to present the views of the National Federation of Federal Employees on this bill, and thank you again for the opportunity to present them.

Mr. HENDERSON. Thank you very much for your usual very fine statement. I do not believe I have any questions.

Mr. Lukens.

Mr. LUKENS. I have none.

Mr. HENDERSON. Thank you for coming this morning and helping us.

Mr. John McCart, operations director of the Government Employees Council, is our next witness. John, it is always good to have you before the subcommittee.

STATEMENT OF JOHN A. McCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES COUNCIL, AFL-CIO

Mr. McCart. Thank you, Mr. Chairman. I would like to have my formal statement included as part of the record and I will be happy to offer some brief comments.

First, we want to express our gratitude to you for sponsoring the bill under consideration.

Since 1948 the Federal Government has recognized the equity of not requiring employees to incur a financial detriment when it is necessary for them to appear in litigation on behalf of the Federal Government itself. This, of course, is not true of those who are required to appear in State and local proceedings.

In recent years there has been an increasing emphasis on the desirability of intergovernmental cooperation and we believe that H.R. 10247 provides an excellent illustration of the Federal Government's desire to cooperate with the State and local jurisdictions by permitting witnesses to appear without suffering any financial loss.

This morning I had occasion to read a communication from an attorney to a Member of Congress in which he asserted that it is no longer a practice in private industry to dock employees for appearances in court proceedings. This matter was alluded to in the testimony of the Civil Service Commission.

Mr. HENDERSON. I thought it was very significant, Mr. McCart, that in the Bureau's study, 60 percent of industry granted this type of leave and, of course, that is a growing figure I am sure.

Mr. McCart. Yes. Of course, we must consider this factor as well, that in many instances Federal employees may be innocent bystanders to actions that result in legal proceedings and they may be subpoenaed

to appear without any involvement at all. It seems to be unfair to expect them to subsidize such appearances.

Mr. HENDERSON. For the record, this is exactly what triggered my attention to this matter. It was not a constituent but a citizen in North Carolina. A Federal employee in North Carolina was a witness to a murder and was subpoenaed by the State of North Carolina. He was not given the leave provisions that this bill would extend in that type case in the future.

Mr. McCART. That is certainly an apt illustration.

With respect to the recommendations of the Civil Service Commission, the council concurs in the proposals for revising H.R. 10247. Obviously, there are matters of legal jurisprudence involved. I certainly do not feel competent to comment with any authority on those points. I would simply offer this suggestion for the subcommittee. If you expand the coverage of the bill it would be desirable to establish uniformity in the treatment of the employees involved. If someone makes decisions as to whether an individual's testimony will be relevant, it will cause misunderstanding, dissatisfaction, grievances, and appeals. There may even be a situation where one employee will appear in a case and be reimbursed and another employee will appear in the same case and not be reimbursed.

We would simply propose to the subcommittee if you plan to proceed with these revisions that any action be looked at from the standpoint of standards and uniformity in treatment of Federal employees.

It is one thing to view the judicial side of this issue. The other is that the Federal employee, regardless of his desires, is compelled to make an appearance, and this is what the bill is designed to correct basically.

These remarks are not intended to detract from the original bill at all. We fully support the original bill, and we certainly commend you, Mr. Chairman, for taking an interest in this necessary piece of legislation.

Mr. HENDERSON. Thank you very much, Mr. McCart. I do not believe I have any questions.

Mr. Lukens.

Mr. LUKENS. Nor I, Mr. Chairman.

Mr. HENDERSON. Thank you very much, sir.

(The prepared statement of Mr. John McCart follows.)

PREPARED STATEMENT OF JOHN A. MCCART, OPERATIONS DIRECTOR, GOVERNMENT EMPLOYEES COUNCIL, AFL-CI

Mr. Chairman and members of the subcommittee, the Government Employees Council and its 34 member unions are pleased to endorse the bill under consideration today. We are grateful to you, Mr. Chairman, for offering the proposal and to the members of the subcommittee for receiving our comments on its value.

For more than 20 years, the Federal Government has recognized the desirability of permitting its employees to appear as witnesses in behalf of the Federal or District of Columbia governments without loss of leave or pay. The Act of June 25, 1948 (28 U.S.C. 1823(b)) clearly states this principle. It accepts the concept that an individual who performs the civic obligation of testifying during litigation involving the Federal Government should not do so to his financial detriment.

This is not the case with the Federal worker who appears to testify for a state or local government. We believe this omission in the present statute should be corrected.

In recent years, much emphasis has been placed on the desirability of inter-governmental cooperation. Through the Commission on Intergovernmental Relations, governments at all levels are pooling their knowledge and ideas in an effort to achieve more efficient service to the public by local, State and Federal administrations. Various bills to attain this objective are under active consideration by this Congress.

Certainly, one additional method of illustrating this cooperative spirit would be extension of the same consideration to Federal employe witnesses who appear for state and local governments.

The current stress on combating crime and its tragic consequences provides another incentive for favorable action on this bill, which will discontinue the inequity now in effect.

Examples of the hardships encountered by employes in such instances were supplied by the Chairman of the Subcommittee in introducing H.R. 10247.

The Council recommends that the Subcommittee act promptly to advance the bill towards final passage.

Mr. HENDERSON. The next witness is Mr. Carl Sadler, the legislative director of the American Federation of Government Employees. It is always good to have you and your associates.

STATEMENT OF CARL SADLER, LEGISLATIVE DIRECTOR, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Mr. SADLER. Thank you, Mr. Chairman. For the record, I have with me Mr. Stephen A. Kozak, who is our research director.

The American Federation of Government Employees is pleased to appear today to testify in support of H.R. 10247, introduced by David N. Henderson, which will grant court leave to employees of the United States and the District of Columbia when they are called as witnesses in certain judicial proceedings on behalf of State and local Governments.

Mr. HENDERSON. Mr. Sadler, would you permit me to point out, as your statement brings it to my attention, I think it is pretty well agreed that the bill as I introduced it was restricted to employees of the United States and the District of Columbia. The Commission recommended that we include Puerto Rico, the territories and the trust territories. I think that we could all agree that the language should be that broad, Mr. Sadler.

Mr. LUKENS. I might add, Mr. Chairman, that I would certainly agree with that conclusion.

Mr. SADLER. Our organization, with a dues-paying enrollment of well over 300,000 and representing approximately 550,000 Federal employees under exclusive recognition contracts, can attest to the urgent need for this legislation. Our members work and live in every State of the Union and the District of Columbia, and I might add, overseas, as well, Mr. Chairman, and consequently are involved almost every day in the year in some judicial proceeding which requires them to attend as witnesses.

Existing law permits an employee to appear as a witness on behalf of the Federal Government or the District of Columbia, or in his official capacity, without charge of leave or loss of pay. There is, however, no such provision for an employee appearing as a witness on behalf of a State or local government. This omission has caused hardships.

The files of the personnel officers of the Federal departments and agencies are full of leave applications of Federal employees who have been placed under subpoena to appear as witnesses to traffic accidents.

Similarly, employees have been required to appear in court as witnesses in cases of assault and battery, as well as in cases of robbery and murder.

These cases reveal an obvious inequity of the existing law. This fact alone would indicate that the provisions of H.R. 10247 to authorize court leave for Federal employees as witnesses in judicial proceedings of State and local governments are necessary. But there are additional developments in the restructuring of intergovernmental relations which demonstrate that such legislation is most urgently needed now.

As the members of this subcommittee are aware, there has been an evergrowing participation by Federal employees in the personnel interchange programs between Federal, State and local personnel systems. Recent legislation and recent events indicate that this participation will grow in the future at an even greater rate. Thus individual Federal employees will find themselves increasingly in situations where they are working with ever greater frequency with State and local employees in joint or in cooperative undertakings. This environmental change means that the occasions where they must appear as witnesses in State and local courts will increase to include not only such cases as murder, robbery, assault and battery and traffic accidents but such additional types of court cases which now regularly involve State and local officials.

What is the magnitude of intergovernmental operations and how great is their impact on Federal employees?

I should like to recall here that joint intergovernmental expenditures in the United States are already approaching \$100 billion annually, and that almost \$1 out of every \$8 produced by all enterprises and by all workers of the United States, private and governmental, professional, clerical, manual and technical, is spent on these intergovernmental projects.

This is the situation today. To see the trend, we should look at what the situation was yesterday, and what the projection for the future is.

In 1945, there were only 3.3 million persons employed in State and local governments. Ten years later, their number was 4.7 million. The next 10 years saw this rise to 7.7 million. This was four times the rate of growth in employment in the U.S. economy as a whole and 17 times, I wish to emphasize, 17 times the rate of growth in the Federal Government which rose from 2.9 million in 1945 to approximately 3.1 million today. The most recent projections available to us indicate that by 1975 approximately 12 million Americans will be employed by State and local governments.

With the growing intermingling through assignment, detail, and temporary duty of an expanding percentage of the 3 million Federal employees and of the more than 8 million State and local employees, it is obvious that the need for the appearance of Federal employees as witnesses in State and local court cases will rapidly increase. Unless Federal employees are assured that they will not be penalized by losing days of their own leave through having to appear as witnesses in State and local courts, they may be less willing to accept assignments, details, and temporary duty in State and local jurisdictions. This would greatly hamper Federal, State, and local government operations. Thus, it is in the direct interest of the Federal Government

itself as well as the direct interest of State and local governments that Federal employees find conditions of employment such that they willingly take on these intergovernmental exchange assignments.

Mr. Chairman, your bill, H.R. 10247, happily serves two eminent purposes. First, it provides equity to Federal employees when they have to appear as witnesses in State and local courts. Secondly, it provides the Federal and State and local personnel managers with an employment environment to assure the steady and efficient interchange of governmental personnel.

As with all good personnel legislation, this bill H.R. 10247, therefore meets the criteria of being both in the interest of the Federal Government as employer and as manager as well as being in the interest of the Federal employee. For this reason, we endorse this bill fully and urge its speedy passage.

In closing, I wish to thank again the distinguished chairman of this subcommittee, Representative David N. Henderson, both for introducing this excellent bill, H.R. 10247, and for affording our organization the opportunity today to endorse it and to urge its speedy passage.

Mr. HENDERSON. Thank you. I have no questions.

Mr. LUKENS. I would like to commend the gentleman. He is obviously doing a fine research job and I am particularly impressed with the figure of the growth in the State and local governments of which I was not aware.

Mr. SADLER. Thank you.

Mr. HENDERSON. Mr. Whitney, we are glad to have you before the subcommittee.

Mr. WHITNEY. Thank you, Mr. Chairman. My apologies to the subcommittee for not having a prepared statement for you this morning but my remarks will be very brief.

Mr. HENDERSON. That is quite all right.

STATEMENT OF ALAN WHITNEY, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Mr. WHITNEY. The NAGE believes firmly that the need for the legislation which you have introduced is so obviously justified that we did not feel it was necessary to appear before you this morning and weight the record down with the additional examples of the very real hardship imposed on Federal employees who are called to serve as witnesses or jurors in proceedings at the State and local levels. We believe that the examples which you cited on the floor of the House in introducing the legislation amply point out the need for the legislation and I would simply like to place this association on record as wholeheartedly supporting the legislation and also we would like to concur and support the recommendations set forth this morning by the witness from the Civil Service Commission.

As one witness pointed out earlier this morning, the basic thrust of the legislation, as we understand it, is to eliminate the continued imposition of the financial burden upon employees who are subpoenaed as witnesses in situations over which they have no control. With that as our guiding light, I think that there is ample justification for extending the coverage of this legislation. However, if the subcommittee feels that additional information is needed and that it must

examine the ramifications of such an extension, we would hope that such an examination could take place at an early date.

Mr. HENDERSON. Thank you for your very fine statement. It could not have been better prepared.

Mr. WHITNEY. Thank you.

Mr. HENDERSON. Mr. Mondello, would you come back for an additional question that I think might be helpful to our record.

I would ask what you would think of the committee report indicating that the Commission had made the recommendation with regards to extension of the bill to Government employees summoned by nongovernmental parties. If we decide not to include that in the bill, we would point out that we did not feel that we had adequate testimony and developed sufficient evidence to make a decision on that point. We could then recommend that the Commission, together with the Justice Department and possibly court officials, make a study on this and submit, at a later date, a recommendation on this point.

Mr. MONDELLO. I am certain we could do that. I think it only fair to tell you, Mr. Chairman, that the Justice Department was consulted about the Commission's proposal and is in favor of it. It does not bridge the gap you were mentioning about not really having enough information to make that decision in committee yourself, but maybe we can bridge that gap, too, and do it quite timely if the committee would indicate to us what its pleasure is.

Mr. HENDERSON. The other suggestion that I would have is that we immediately give thought, between your office and the staff, to preparing the best statement we can with regards to the limitations of the language "judicial proceedings" so there would be no question on the part of Mr. Lukens or others as to the extent to which the legislation would go.

Mr. MONDELLO. We would be glad to assist the committee in that.

Mr. HENDERSON. Mr. White, do you have any other questions?

Mr. WHITE. Yes, I do. I remember some of the acts that have occurred in my own State, the wording of them, and I wonder in this instance if you would not be pinning it down even more if you provided for something like this: "subpenaed for service as a witness," because when you subpoena a man you place upon him an official position and it is not as haphazard.

Mr. MONDELLO. Well, the language in H.R. 10247—

Mr. WHITE. It says for service on behalf of the State or local government in a judicial proceeding, but why not say "or who has been served a subpoena as a witness in behalf of"? This is an indication from the governmental body that they want this witness at a specified time.

Mr. MONDELLO. Well, my only objection to that would be the use of the word "subpena." It has a fairly crusty definition, a very closed definition in many areas and many States. Are you acquainted, sir, with the—it is a little ticket that you are given if you are involved in a traffic accident in the District of Columbia which, in effect, invites, although it comes close to commanding your presence at a counter desk somewhere. The committee, when it judges these matters, might decide that it wants to see such invitations or commands honored, and it is not really technically a subpoena.

We used the word "summoned" because of the dictionary definition which suggests that that word implies an issuance by an authority, somebody who has the capacity to command. It seems close enough to the word "subpena" without using it to effect what you want to do.

Mr. WHITE. A summons could be by telephone.

Mr. HENDERSON. If the gentleman would yield to me, I had this experience a few weeks ago in North Carolina. I was almost involved in an accident and was a witness to an accident. I was so incensed that this drunk driver ran me and everybody else off the road before he actually was involved with two other motorists that I stopped at the scene and offered the State highway patrol just to call me and I would be glad to go testify in the case.

Now, if I were a Government employee and the bill required a subpoena in order to get me there, I would have to go through the court proceeding formally to get the subpoena from the court and have it served on me. I guess this could be done even after I arrived in the courtroom. The thing that would worry me is that we are encouraging here, as much as we can, the full administration of justice and if the Government employee obtains his leave under the requirements that he would have to do that, and actually serves as a witness in behalf of the State, I think the bill would cover that situation.

Mr. MONDELLO. Yes, sir. I would like to point out that section 1823 of title 28 right now uses the expression "summoned as a witness on behalf of the United States" and nobody has had difficulty with what that means.

Also, I like the idea, Mr. Chairman, of the committee using whatever language it wishes to cause the Federal Government to be in fairly tight control of how it lets its money go out, both for travel expenses and the granting of leave. I think you can manage that and still have no difficulty with placing it under too tight circumstances in the text of the bill or the text of the law itself, that you cannot get paid unless you have served as a witness, because you might have difficulty as to what it means to serve as a witness. You could be called as a witness under circumstances where all of us would agree that you ought to show up, and then the case which you are there for is settled right under your nose, right after the second day of trial, let's say, and you are to go on the next morning. You have not really done anything wrong in the sense that we are talking about, by making that person available to testify. He did not know it was going to be settled the next day so he takes the train trip and comes back and finds out that it is at his cost because he did not serve as a witness. I think that would be inequitable.

Mr. WHITE. That is the way your language reads now, "or for service as a witness on behalf of"——

Mr. HENDERSON. I think the point the counsel is making is that this language would not require that he actually testify. Service as a witness would be broad enough to serve as actual attendance but not necessarily testify.

Mr. MONDELLO. I think it would.

Mr. WHITE. If you want to get to the language you are talking about, then you would be served or be called as a witness because service and calling is a lot different.

Mr. MONDELLO. We did not like calling because anybody can call.

We liked summoning because it is used in title 28 already and there is an appreciation of what it means. It does suggest that there is an authority that has the capacity to call.

Mr. WHITE. You are suggesting to insert "summon as a witness"?

Mr. MONDELLO. Yes. I think that would be a useful idea.

Mr. WHITE. That is better than what we have got. But in our own State we use subpoenas and there are certain implications whenever you have a subpoena as to payment of witnesses, as to their duties. They are immediately upon service. They are under the authority of the court.

Mr. MONDELLO. I think every State has its own GAO, so to speak, which insists on formalities of that sort for the regularity of payment concerning the subpoena.

An alternative, of course, would be to leave the language alone and by legislative history, within the committee report, bridge the gap by stating what is meant by service as a witness.

Mr. WHITE. I personally do not like that system, because when a lawyer is looking it up he is not going to have available all the committee hearings. He should be able to look at the statute as it stands.

Mr. HENDERSON. I would suggest that with regards to improving the language, that we leave it to our staffs to work with us and the Commission, and perhaps we should have a clean bill embodying the best language we can come up with.

Mr. MONDELLO. We would be happy to work with the staff, Mr. Chairman.

Mr. HENDERSON. That is all I have. Thank you very much, gentlemen, for coming.

(Whereupon, the committee adjourned at 11:35 a.m.)

(The following statement was received by the subcommittee for insertion in the record:)

NATIONAL ASSOCIATION OF LETTER CARRIERS,
Washington, D.C., June 12, 1969.

HON. DAVID N. HENDERSON,
Chairman, Subcommittee on Manpower and Civil Service, Committee on Post Office and Civil Service, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HENDERSON: We appreciate very much your prompt attention to H.R. 10247 and the fact that you have already scheduled hearings on this important legislation.

We certainly support the merits of H.R. 10247 and I want you to know that it has been a concern of our membership that consideration has never been given to the fact that postal employees are called upon to serve as witnesses in state courts or a court of the United States. Only recently we had an incident where a letter carrier observed a hold-up while making his deliveries, notified the authorities and then suffered the necessity of using annual leave while he appeared as a witness for the State. More and more we need citizens to speak up and act in support of our Constitution and in support of freedom. Many are reluctant to participate in any manner or to "become involved" for reasons such as having to be called upon to sacrifice wages in order to have a thug, robber or other hoodlum properly prosecuted.

This, therefore, very briefly places our organization on record as being in complete support of your bill, H.R. 10247, and we trust that a favorable report will be made by your Subcommittee. We thank you for the opportunity of presenting our views on this important legislation.

Sincerely yours,

JAMES H. RADEMACHER, President.